

TO JUDICIALIZE THE ECO-CIVILIZATION POLICY IN CHINA: A PERSPECTIVE OF GRASSLANDS PROTECTION

Xing Lijuan*

INTRODUCTION

Natural grasslands occupy approximately 400 million hectares in China.¹ They are not only the source of livelihood for a large portion of the Chinese population; they also constitute the biggest land ecosystem in the country.² Grasslands received general legal protection as a recognized type of natural resources from the 1982 Constitution of the People's Republic of China ("PRC"), and the laws and policies in China in respect to grassland utilization and preservation began to take shape in the 1980s – as of the promulgation of the first Grasslands Law in the country in 1985.³ The abstractness of the provisions of the Grasslands Law 1985 resulted in the weak clarity and enforceability of the grassland policies thereunder, which brought about a revision of the law in 2002. Nonetheless, the fact that the grasslands have degenerated ever since, even with these regulations,⁴ effectively challenges the credibility of the policy and legal regimes of grasslands protection, under which the struggles to achieve a balance between grassland utilization and grassland preservation had always been conspicuous. China's adoption of an eco-civilization in the early 2010s, which urges for prioritizing the preservation of the natural resources (including grasslands) in the social development of the

* Assistant Professor at the City University of Hong Kong School of Law.

1. Minister of Environmental Protection, *Gazette of the Environmental Conditions in China 2015*, Ministry of Environmental Protection of the People's Republic of China (May 20, 2016), <http://www.mep.gov.cn/gkml/hbb/qt/201606/W020160602411685220884.pdf>.

2. *Id.*

3. Zhonghua Renmin Gongheguo Xianfa (中华人民共和国宪法) [Constitution of the People's Republic of China] (promulgated by the Fifth Nat'l People's Cong., Apr. 12, 1985, effective Apr. 12, 1985; revised in 1988, 1993, 1999, 2004), art. 9 (China). See Zhonghua Renmin Gongheguo Caoyuan Fa (中华人民共和国草原法) [Grassland Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., June 18, 1985, effective Oct. 1, 1985) [hereinafter Grasslands Law 1985] (revised at the 31st Session of the Standing Comm. of the Ninth Nat'l People's Congress, Dec. 28, 2002; amended at the Tenth Session of the Standing Comm. of the Eleventh Nat'l People's Congress, Aug. 27, 2009; amended at the Third Session of the Standing Comm. of the Twelfth Nat'l People's Congress, June 29, 2013) (China).

4. See Ministry of Agriculture (MOA), *Report on National Grasslands Surveillance*, in COMMUNICATION OF ANIMAL HUSBANDRY IN CHINA 28 (2007, Issue 6).

country, now has a profound influence on the country's policy preference between the utilization of, and the preservation of, the natural resources (including grasslands), where the two contradict with each other, and this development has spurred policy, legislative, and judicial reforms in respect to grasslands utilization and preservation.⁵ The main purpose of this paper is to crystallize the legal essentials of the eco-civilization policy and its implications for policy, legislative, and judicial reforms in China from a perspective of grasslands protection.

I. GRASSLAND LAWS AND POLICIES PRIOR TO THE ADOPTION OF THE ECO-CIVILIZATION POLICY: A BRIEF REVIEW

The Standing Committee of the National People's Congress ("NPC") of the People's Republic of China ("PRC") enacted in 1985 China's first Grasslands Law ("Grasslands Law 1985"), which contained only 23 articles.⁶ Despite the abstractness of those articles, the importance of preserving and reclaiming grassland ecosystems in China had drawn close attention from the draftsmen, as Article 1 of the Grasslands Law 1985, spelled out the fundamental tasks of the legislation and underscored ecological concerns in grassland policies.⁷ The Grasslands Law 1985 also established the principles that conversion and destruction of grasslands shall be prohibited and that over-grazing on the grasslands shall be prevented.⁸ The legislation provided that the local government give rewards to those entities or individuals who either have made remarkable achievements in protecting, managing, and constructing the grasslands areas, or have boosted grassland husbandry,⁹ and these provisions reflect the efforts of the draftsmen to stress simultaneously both the preservation of grasslands, and utilization of grasslands. However, in addition to the those general principles regarding the utilization and protection of grasslands, the Grasslands Law 1985 established no further rules which were specific sufficiently as to how those general principles should be implemented in practice.

Weakness in the enforcement provisions in the Grasslands Law 1985 – partially due to a lack of clarity regarding administrative liability and the absence of criminal penalties in respect of the pertinent offenses of those policies¹⁰ –

5. See Sun Youhai, *The Eco-Civilization Construction Urges for Pushing Further the Rule of Law*, in 13 JOURNAL OF CHINA UNIVERSITY OF GEOSCIENCES (SOCIAL SCIENCES EDITION) 11 (2013, Issue 1).

6. Grasslands Law 1985, *supra* note 3.

7. *Id.* at art. 1 ("This Law is formulated in accordance with the provisions of the Constitution of the People's Republic of China with a view to improving the protection, management and development of grasslands and ensuring their rational utilization; protecting and improving the ecological environment; modernizing animal husbandry; enhancing the prosperity of the local economies of the national autonomous areas; and meeting the needs of socialist construction and the people's life.")

8. *Id.* at arts 10, 12.

9. *Id.* at art. 17.

10. Liu Xiaoli & Kong Yan, *Thought on the Reconciliation between Administrative*

brought about an overhaul of the legislation in 2002. The Grasslands Law 2002 contained 75 Articles grouped into nine chapters,¹¹ covering ownership of grasslands, planning, development, utilization, preservation, supervisions and inspection, legal liabilities, and supplementary provisions. Following the provisions of the Grasslands Law 1985, the Grasslands Law 2002 reiterated the fact that the grasslands are owned by the State, with exception of those owned by the collectives as provided for by the law.¹² The Grasslands Law 2002 specified some aspects of the connotations of the State- and collective-ownership of grasslands – such as the right to entrust the use of grasslands, and the right to transfer the right to use grasslands based on contractual operation.¹³ Under the Grasslands Law 2002, both the ownership of grasslands and the right to use grasslands are to be registered with the competent authorities.¹⁴ The law also provides that the parties that use or operate the grasslands shall assume the obligation of preserving, developing, and reasonably utilizing the grasslands.¹⁵

The ideology of preserving the grassland ecosystem was present throughout the Grassland Law 2002. First, the law makes it clear that grassland preservation is to serve as the check and balance of various activities of grassland utilization. The fodder-livestock balance, rotational grazing, the rotational cutting or collecting of grass, and the restraint from occupying grasslands in mining and construction projects are the main policy instruments for curbing grassland utilization.¹⁶ Second, the preservation of ecosystems – that is, preserving rather than damaging the grassland ecosystem – should be one of the factors that guide the planning and developing of grasslands.¹⁷ Third, the preservation of ecosystem is identified as the ultimate purpose for the adoption of some preservative measures prescribed by the law. The law requires that mechanisms of preserving prime-grasslands, establishing grassland natural reserves, prohibiting the reclamation of grasslands, returning farmlands to grasslands, prohibiting the collecting or digging of plants in certain areas are all designed with an aim of preserving and ameliorating the grassland ecosystem.¹⁸

Under the Grasslands Law 2002, any person who commits pertinent offences may be subject to civil, administrative, or criminal liabilities for the offenses. These include such offenses as (a) dereliction of duty on the part of a

Enforcement and Criminal Adjudication of Grasslands Law, in 142 CONTEMPORARY L. REV. 48, 48 (2010, Issue 4).

11. Minor changes of a term used in the Grasslands Law 2002 were made in 2009. Grasslands Law 2009, *supra* note 3, at arts. 38, 39, 63, changing the term “requisite” into “expropriate and requisite”.

12. Collective ownership, like State ownership, is a form socialist public ownership, in accordance with art. 6(1) of the Constitution, *supra* note 3. Collective ownership means ownership enjoyed by a collective group of working people, either in urban or rural areas. *Id.*

13. Grasslands Law 2002, *supra* note 3, at arts. 9, 10, 13.

14. *Id.* at art. 12.

15. *Id.* at arts. 10(2), 14(2).

16. *See id.* at ch. 5.

17. *See id.* at ch. 3, ch. 4.

18. *See id.* at ch. 6.

public servant (e.g., failing to perform the duty of supervision and inspection, withholding or misappropriating funds to be used for grasslands, and illegally approving the requisition or expropriation of grasslands), and (b) offenses committed by a person who illegally transfers the right to use grasslands, illegally uses grasslands, illegal converts grasslands, illegally collects or digs plants on the grasslands, or illegally opens a mine or excavates sands on the grassland areas.¹⁹ However, as a practical matter, those criminal liabilities could not effectively be imposed on offenders because no grassland-related crimes were in fact prescribed under the then-Criminal Law²⁰ or in the judicial interpretations thereof, except for dereliction of duty on the part of a public servant.²¹ The enforcement of the Grasslands Law 2002, accordingly, has relied heavily on administrative investigation and punishments and encountered practical difficulties in resorting to criminal investigation and penalties. This has rendered the consolidated grassland policy somewhat toothless, as the main form of administrative penalties is the imposition of fines.²² In addition, due to the lack of quantified standards of “reasonableness” in grasslands utilization, the ecological concerns in respect to grasslands preservation seem to remain on the “bookshelf” rather than having practical effect.

II. THE ECO-CIVILIZATION POLICY AND ITS LEGAL ESSENTIALS

Now this situation has changed. The significance of China’s adoption of an eco-civilization policy in China for the preservation of grasslands lies in the fact that it aims to ensure that the ecological ideology in laws and policies will step down from the “bookshelf” into actual practice. The ideology of “eco-civilization” has prompted reforms in policy-making, in legislation, and in judicial practices pertaining to the protection of the environment, and the preservation of the natural resources (including the country’s grasslands).

A. A Survey of China’s Eco-Civilization Policy

China’s eco-civilization policy was conceived at the 18th National Congress of the Communist Party of China (“CPC”) held in November 2012.²³

19. See Grasslands Law 2002, *supra* note 3, at ch. 8.

20. See *Zhonghua Renmin Gongheguo Xingfa* (中华人民共和国刑法) [Criminal Law of the People’s Republic of China] (promulgated by the Standing Comm. Nat’l People’s Cong., July 1, 1979) (amended in 1999, 2001, 2002, 2005, 2006, 2009, 2011, 2015) (China).

21. Judicial interpretations are judicial documents produced by the Supreme People’s Court (SPC) which gives interpretation on questions concerning specific application of laws and decrees in judicial proceeding. *Zhonghua Renmin Gongheguo Renmin Fayuan Zuzhifa* (中华人民共和国人民法院组织法) [Organic Law of the People’s Courts of the People’s Republic of China] (promulgated by the Fifth Nat’l People’s Cong., July 1, 1979, effective Jan. 1, 1980; revised in 1983, 1986, 2006) (China), art. 33.

22. Liu & Kong, *supra* note 10, at 48.

23. Hu Jintao, *Report at the 18th National Congress of the Communist Party of China*, CHINA NETWORK NEWS (Nov. 11, 2012), http://news.china.com.cn/politics/2012-11/20/content_27165856.htm.

As a reaction to the country's increasing resource constraints, severe environmental pollution, and a deteriorating ecosystem, the eco-civilization policy is urged by the country leadership to be incorporated into all aspects of the nation's efforts to advance economic, political, cultural, and social progress.²⁴ In the Opinions on Accelerating the Eco-Civilization Construction²⁵, the Central Committee of the CPC and the State Council expressed their expectation from the eco-civilization construction in the coming years that "by the year of 2020, eco-civilization should be appreciated by the entire society as a predominant social value".²⁶ Accordingly, a remarkable contribution that can be expected from the eco-civilization policy to the improvement of China's eco-environment lies in the fact that it can largely bring some conclusion to the long-term debate over how ecological concerns are to be balanced and integrated with other social values, especially economic growth, in respect to social development.

An incontestable presumption under the eco-civilization policy is that ecological concerns predominate many other social values, especially the value of economic growth, in the pursuit of social development by the country. According to the Central Committee of the CPC and the State Council, under the eco-civilization policy, the saving, preservation, and natural restoration of the country's natural resources and the various ecosystems lying within its borders are the highest priorities of all social concerns²⁷ – which means that the value of *saving* of natural resources outweighs the value of their *utilization*; the value of protecting the environment outweighs the value of its development; and the value of the natural restoration of the environment outweighs the value of its artificial restoration.²⁸ These principles serve as the foundation for reforms in policy-making, legislation, and adjudication in respect to the preservation and utilization of the natural resources (including grasslands) in the contemporary China. The eco-civilization approach, accordingly, reflects the country's determination to build an eco-civilization system that emphasizes the prevention of any occurrence of ecological impairment, effective control after such an occurrence, compensation for damages, accountability of liable parties, ascertainment of ownership, use control over natural resources, the red line of ecological preservation, subsidies and rewards for preserving the ecology, and the eco-environmental management.²⁹

B. Implications for Policy Making

Grassland policies in China can be largely grouped into three main

24. *Id.*

25. Central Committee of the Communist Party of China & State Council, *Opinions on Accelerating the Eco-Civilization Construction*, XINHUA NEWS AGENCY (May 5, 2015), http://www.gov.cn/xinwen/2015-05/05/content_2857363.htm.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

categories: (1) those relating to grasslands utilization; (2) those pertaining to the prevention and mitigation of natural disasters and their impacts on the grasslands; and (3) those attending to the preservation of the grassland ecosystem.³⁰ As for grasslands utilization, policies relating to grass seeds, grassland husbandry, fodder production, and grass products are crucial.³¹ The incorporation of ecological concerns into these policies necessitate the activities pertaining to grasslands utilization – such as breeding and spreading good grass varieties; rationally utilizing the grassland resources for husbandry; coordinating the growing of foodstuffs, economic crops, and fodders; and enhancing the productivity of the grasslands – to be conducted in a way that does not impair the grassland ecosystem.³² The Ministry of Agriculture (“MOA”) in its 13th Five-Year National Plan on Grasslands Preservation and Use (“13th Five-Year Grasslands Plan”) also recognized the positive role of financial, tax, and market leverages as well as technical support in prompting the ecological contribution of those activities.³³

As for the prevention and mitigation of natural disasters and their impacts on the grasslands, the eco-civilization policy advocates for constructing a surveillance and early warning system, which is expected to provide surveillance and early warning information to the grasslands authorities as well as the grassland owners or operators about natural disasters on grasslands, pest disasters on grasslands, the carrying-ratio capacity of the grasslands, and the ecological value of the grasslands.³⁴ To improve the grassland ecosystem, the MOA called for a strengthening of the administrative law enforcement in respect to assessing and supervising grazing prohibitions, grazing land resting, rotational grazing, and the fodder-livestock balance; improvements in the rational utilization of water resources; and providing financial support to insurance, loans, and guaranty relating to disasters on the grasslands.³⁵ The MOA also undertook to uphold the construction or improvement of the policies pertaining to the appropriation of subsidies and rewards among the grassland owners or users for the achievements in preserving the grassland ecosystem, returning farmlands and grazing areas to grasslands, reconciling agricultural activities with grassland preservation, and constructing grassland natural reserves.³⁶

30. See Ministry of Agriculture, Animal Husbandry Secretary, *Notice of the Ministry of Agriculture on Printing Distributing the Thirteenth Five-Year Plan of Nation Grasslands Protection and Utilization* (Jan. 1, 2017), <http://www.grassland.gov.cn/grassland-new/Item/9037.aspx> [hereinafter 13th Five-Year Grasslands Plan].

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. 13th Five-Year Grasslands Plan, *supra* note 30.

C. Implications for Legislation

The founding values of the grassland legal regime as reflected in the earlier grasslands laws are compatible with the eco-civilization policy, inasmuch as ecological concerns have been incorporated into the fundamental legislation of grassland since the 1980s.³⁷ Nonetheless, the actual enforcement of these eco-compatible values and principles in the context of China's grasslands will require further action in order to create a definite legal basis and instruments for implementation. The following paragraphs highlight some of these.

One pertinent legal mechanism that needs further elaboration relates to property rights over grasslands. Despite the provisions of the Grasslands Law 2002 that grant the State ownership and collective ownership of the grasslands,³⁸ those parties that assume obligations of preserving, developing, and rationally utilizing the grasslands are, in accordance with the law, the users or operators, rather than the owners, of the grasslands.³⁹ In respect to the grasslands that have not been put into use or operation, the rights, obligations, and liabilities of the owners – that is, the State or the collective owners – are not specified by the Grasslands Law 2002. This obscurity in respect to the accountability of grassland owners now entails immediate and efficient reactions from legislation; otherwise, the protection provided by the legal regime to the grasslands is apparently insufficient and ineffective.

Also, for the purpose of correctly identifying the parties that should be responsible for preserving the grassland ecosystem, a comprehensive system of registration of grasslands-related rights should also be created. As required by the Grasslands Law 2002, the State ownership of grasslands, the collective ownership of grasslands, and the right of collectives to use the State-owned grasslands shall be registered with the authorities.⁴⁰ The grasslands owned by, or assigned by the State to, a collective may be contracted for operation to the households within the said collective.⁴¹ Such contractual operation, nonetheless, is not subject to registration under the Grasslands Law 2002. Given that it is the grassland users or operators that are responsible for preserving, developing, and rationally utilizing the grasslands, a system of registering all the grasslands-related rights and right-holders is indispensable for improving the transparency and accuracy with respect to the legal status of all grasslands.

The principle of *nulla poena sine lege* – that is, no punishment without a law authorizing it⁴² – has begged for an imminent and seamless linkage between grassland offenses and criminal liabilities imposed thereon. Despite the fact the some provisions of the Criminal Law of the PRC have alluded to environment and resources-related crimes, none of them have directly addressed grasslands-

37. See text accompanying *supra* note 3.

38. Grasslands Law 2002, *supra* note 3, at arts. 10, 14.

39. *Id.* at 10(2).

40. *Id.* at art. 11.

41. *Id.* at art. 13.

42. Black's Law Dictionary, 10th ed., 2014.

or ecosystem-related offenses.⁴³ The need to ascertain charges and criminal liabilities specifically concerning grasslands- and ecosystem-related offenses has become apparent under the enforcement requirements of the eco-civilization policy.

Despite the realization that liable parties should compensate for impairment of (grassland) ecosystems, the prevalent legal regime has not specified how this principle can be implemented.⁴⁴ Procedural issues including qualifications of claimants, rules of imputing liabilities, burdens of proof, admission of evidence, amount of damages, forms of liabilities, and execution of administrative orders or court rulings are all awaiting clarification from legislation.

D. Implications for Adjudication

The adjudication of ecological or environmental-resources cases enlists both the correct application of legal rules and the proper admission of scientific evidence. Some crucial issues that need to be addressed in ecological or environmental-resources cases in Chinese courts, such as the ecological value of grasslands, fall within the expertise of ecologists and environmentalists, rather than lawyers.⁴⁵ Consequently, the courts have to strengthen their capacity to apply the general principles of the laws to diverse and complex scientific facts in different cases. In the absence of clear legal rules and solid judicial practice, the judges have to exercise discretion in many respects of ecological or environmental-resources adjudication – such as the admission of expert opinions, the deference to administrative decisions, the determination of appropriate forms of remedies, the confirmation of an offender's malice, the balance between ecological and economic or other social concerns, the choice between leniency and severity in criminal sentencing, and the attendance of both the function of adjudication to educate the offenders and the function thereof to punish them. The wide discretion enjoyed by the courts in that regard substantiates a need for the courts to crystallize their relevant judicial practices. On the one hand, the analysis and evaluation of those divergent judicial practices can assist the courts to appreciate and follow prudent adjudicative practice. Given that the Chinese legislature is inexperienced with dealing with ecological and environmental-resources issues, the crystallization of relevant judicial practices can also provide ideas and hits for the legislature about what practical problems it should give resolutions and/or what are practical resolutions.

III. POLICY REACTIONS

In the 13th Five-Year National Plan for Economic and Social Development

43. Zhao Bingzhi & Chen Lu, *China's Legislation against Environmental Crimes and Its Improvement*, in 33 MODERN L. SCI. 90, 93 (2011, Issue 6).

44. See Liu Xiaoli, *Reflection on Chinese Grassland Ecological Compensation Legal System*, in 282 J. NORTHEAST NORMAL UNIV. (PHIL. & SOC. SCI. VOL.) 85, 88-89 (2016).

45. *Id.* at 88.

of the People's Republic of China ("13th Five-Year National Plan") released in March 2016, the latest programmatic document of China's economic and social policies, the Central Committee of the CPC accentuated on the eco-civilization construction, demanding, *inter alia*, the restoration, preservation, and improvement of grassland ecosystem.⁴⁶ Those overarching policies have been further spelled out in the 13th Five-Year National Plan on Grasslands Preservation and Utilization⁴⁷ and some other documents produced by the MOA, as discussed in the following paragraphs of this part.

A. The Overall Policy Objectives

The MOA released its own 13th Five-Year National Plan on Grasslands Preservation and Utilization ("13th Five-Year Grasslands Plan") on December 30, 2016.⁴⁸ In that document, the MOA reported that both the protection and utilization of the grasslands had been improved by the implementation of the 12th Five-Year National Plan for Economic and Social Development of the PRC.⁴⁹ By 2015, the vegetation grassland cover rate reached 54%; the area of prime natural grasslands on which the livestock were carried at a ratio in excess of the permitted one took 13% of the total area of prime natural grasslands, decreasing by 16.5% compared with that in 2010; and the productivity of husbandry and the income of farmers and herdsmen increased.⁵⁰ It is posited by the MOA that, under the 13th Five-Year Grasslands Plan, the following principles be relied upon to sustain the following grassland policies: (a) the preservation of grassland should be prioritized and the restoration thereof should be accelerated; (b) science-based planning and zoning governance should be strengthened; and (c) special local conditions and priorities should be attended to.⁵¹ The overall objectives of grasslands preservation and utilization under the 13th Five-Year Grasslands Plan include mainly the following: by 2020, (a) the eco-functions of grasslands are significantly enhanced – the vegetation grassland cover rate reaches 56%; the area of prime grasslands is about 3.6 billion *mu*;⁵² (b) the productivity of grasslands steadily increases – fresh grasses growing on the grasslands are around 1.05 billion tons; the area of artificial pasture is about 450 million *mu*; (c) the science-based utilization of grasslands is strengthened – the area of grazing prohibition is around 1.2 billion *mu*; that of grazing land resting is 1.944 billion *mu*; that of rotational grazing is 420 million *mu*; the

46. Central Committee of the Communist Party of China, *13th Five-Year National Plan for Economic and Social Development of the PRC*, XINHUA NEWS AGENCY (Mar. 3, 2017), http://www.china.com.cn/lianghui/news/2016-03/17/content_38053101.htm [hereinafter 13th Five-Year National Plan].

47. 13th Five-Year Grasslands Plan, *supra* note 30.

48. *Id.*

49. *Id.* Central Committee of the Communist Party of China, *12th Five-Year National Plan for Economic and Social Development of the PRC*, CENTRAL PEOPLE'S GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA (Mar 16, 2011), http://www.gov.cn/2011lh/content_1825838.htm.

50. 13th Five-Year Grasslands Plan, *supra* note 30.

51. *Id.*

52. "Mu" is a unit of area used in China (1 mu = 0.0667 hectares).

average carrying ratio of prime natural grasslands is controlled below 10%; (d) the capacity of grasslands to resist disasters are improved; and (e) the grassland infrastructure facilities are further developed – specifically, around 55 grassland natural preserves are established, the area fenced for returning grazing areas to grasslands is increased to 2.25 billion *mu*, and more than 1 million households build cattle barns, grassland-storage barns, and grass-storage cellars.⁵³

B. Subsidies and Rewards for Preserving the Grassland Ecology

The policy of subsidies and rewards for preserving the grassland ecosystem was launched in 2011.⁵⁴ A new round of such subsidies and rewards was initiated under the 13th Five-Year National Plan, and the MOA and the Ministry of Finance (MOF) implemented these in March 2016 when the two authorities jointly enacted the Guiding Opinions on the Enforcement of the Policy of a New Round of Subsidies and Rewards for Preserving the Grassland Ecology (2016-2020).⁵⁵ This policy is now enforced in thirteen out of the thirty-four administrative regions at the provincial level in the country.⁵⁶ Through providing subsidies and rewards to those that have contributed to the preservation of grassland ecosystem, the policy aims to (a) enhance grazing prohibition, grazing land resting, rotational grazing, and the fodder-livestock balance, (b) increase the delineation and preservation of prime grasslands, (c) enact steady restoration of grassland-ecology and environment, (d) transform production methods of grassland husbandry, (e) increase supply of featured husbandry products, and (f) elevate farmers and herdsman income.⁵⁷

The major measures adopted by the MOA and MOF in the new round of subsidies and rewards for preserving grassland eco system include the following: (i) to provide subsidies for those affected by grazing prohibition – in respect of the areas in which (a) the environmental and living conditions are wretched, (b) the grasslands severely degenerated, (c) the grasslands are not suitable for grazing, or (d) the grasslands bear headstreams of grand rivers, the revenue of the central government will appropriate a sum for subsidies at the rate of RMB 7.5 yuan per *mu* per year for consecutive five years (upon the

53. 13th Five-Year Grasslands Plan, *supra* note 30.

54. State Council (PRC), Report on the Work on Constructing the System of Eco-Subsidies (Apr. 23, 2013), http://www.npc.gov.cn/npc/xinwen/2013-04/26/content_1793568.htm.

55. Ministry of Agriculture (PRC) & Ministry of Finance (PRC), Guiding Opinions on the Enforcement of the Policy of a New Round of Subsidies and Rewards for Preserving the Grassland Ecology (2016-2020) (Mar. 1, 2016), http://www.moa.gov.cn/zwl/m/tzgg/tfw/201603/t20160304_5040527.htm [hereinafter Guiding Opinions].

56. The thirty-four administrative regions at the provincial level include 23 provinces, five autonomous regions, four municipalities directly under the Central Government, and two special administrative regions. State Council (PRC), Administrative Division (Mar. 26, 2017), http://english.gov.cn/archive/china_abc/2014/08/27/content_281474983873401.htm. The thirteen provinces or autonomous regions in which the policy of subsidies and rewards are implemented are Hebei, Shanxi, Inner Mongolia, Liaoning, Jilin, Heilongjiang, Sichuan, Yunnan, Xizang, Gansu, Qinghai, Ningxia, and Xinjiang. Guiding Opinion, *supra* note 56.

57. *Id.* at §4.

expiration of the subsidy term, the measures applicable to the pertinent grasslands can be either grazing prohibition or the fodder-livestock balance);⁵⁸ (ii) to provide rewards for improving the fodder-livestock balance, the revenue of the central government will appropriate a sum for pecuniary rewards at the rate of RMB 2.5 yuan per *mu* per year to the herdsmen who have achieved the fodder-livestock balance or adopted seasonal resting of grazing lands and rotational grazing in husbandry activities;⁵⁹ and (iii) to provide rewards based on the appraisal of the performance of the local governments, the revenue of the central government will appropriate a sum for rewards to the provincial governments which have prominently performed in preserving the grassland ecosystem (such a sum should be spent by the local governments on preserving the grassland ecology and developing grassland husbandry in an environmentally friendly way).⁶⁰

C. Requisition and Expropriation of Grasslands

Upon the authorization from the Grasslands Law 2002, the MOA developed the Measures for Review and Approval of Grassland Expropriation and Requisition in 2014 and amended the same in 2016, which strictly restricts the expropriation and requisition of grasslands for construction and exploitation purposes.⁶¹ Under these Measures, the requisition or expropriation of grasslands should not bring about any severely adverse impacts on the local eco-environment, local husbandry industry, or the living conditions of local herdsmen.⁶² Mining activities and construction projects should not occupy any grasslands, or should only occupy grasslands to the extent absolutely necessary.⁶³ In addition, no construction projects may occupy the prime grasslands except the State's key construction projects.⁶⁴ Where the mining activities or construction projects – except those directly serving the grasslands protection or animal husbandry – truly need to occupy grasslands, the occupier should enter into agreements with the owners, users, or operators for compensation and subsidies for their relocation.⁶⁵ Nonetheless, the prevalent legal system has not provided any hint about the situations in which the mining activities or construction projects “truly need to occupy grasslands”. The

58. *Id.*

59. *Id.*

60. *Id.*

61. See Ministry of Agriculture (PRC), Measures for Review and Approval of Grassland Utilization and Requisition (Apr. 25, 2014, amended June 1, 2016), <http://www.mofcom.gov.cn/article/b/g/201607/20160701359213.shtml>.

62. *Id.* at art. 9 (iii).

63. *Id.* at art. 5.

64. *Id.* The State's key construction projects shall be the construction projects that have profound influence on the national economy and social development, subject to the approval of, and registration with, the State Council – such as infrastructure construction. State Planning Committee, State Council (PRC), Measures for the Administration of National Key Construction Projects (Jan. 8, 2011), http://www.gov.cn/gongbao/content/2011/content_1860853.htm.

65. Ministry of Agriculture, *supra* note 61, at art. 11(1)(iv).

determination of whether the application for grasslands occupation can be approved falls within the discretion of the land authorities and grassland authorities. If the occupation is temporary, the occupier should also submit a plan of rehabilitating the grasslands.⁶⁶

The construction projects that directly serve the grasslands protection or animal husbandry are facilitated under the Grasslands Law 2002, given that the applicants for occupying grasslands by such construction projects are not required to initiate the proceedings with the land authorities for the review and approval for construction land use.⁶⁷ Such projects mainly refer to the construction of: (1) facilities for producing and storing seeds of forage or grass shoots or tissues and forage grass and fodder; (2) facilities for livestock pens, breeding centers, shearing centers, medicated bath pools and drinking water for human beings and livestock; (3) bases for scientific research, experiments and demonstration; and (4) facilities for grassland fire protection and for irrigation.⁶⁸

D. Registration of Grasslands-Related Rights

In 2015, the MOA implemented a system of registration of grasslands-related rights in certain areas that adopt the policy of subsidies and rewards for preserving the grassland ecosystem, by releasing the Notice about the Adoption of Registration of Grasslands-Related Rights in Pilot Areas.⁶⁹ The objective of this new system is to stabilize and improve the system of grassland contractual operation, insomuch as to effectively protect the interests, and to ascertain obligations, of those that operate the grasslands by contract.⁷⁰ The major measure thereunder is for the local grassland authorities to collect basic information of grassland contractual operations in the covered areas.⁷¹ To construct such a system, the grassland authorities should: (i) register the information collected based on operation contracts, pertinent archives, or account books; (ii) improve the drafting of operation contracts, and prompt the conclusion of written contracts; (iii) issue certificates regarding the grassland-related rights; (iv) strengthen archive file management; and (v) facilitate dispute settlement by (a) monitoring the transference of the right to contractual operation, (b) assisting the farmers and herdsmen to settle their disputes through consultation, administrative mediation, arbitration, and litigation, and (c) prompting the reconciliation between the disputing parties through mediation or other activities consistent with the law.⁷²

66. *Id.*

67. Grasslands Law 2002, *supra* note 3, at art. 41(1).

68. *Id.* at art. 41(2).

69. Ministry of Agriculture (PRC), Notice about the Adoption of Registration of Grasslands-Related Rights in Pilot Areas (Mar. 30, 2015), http://www.xmys.moa.gov.cn/cybhjs/201504/t20150408_4494148.htm.

70. *Id.* at §1.

71. *Id.*

72. *Id.* at §4.

E. The System of Paid Use of State-Owned Natural Resources

The State Council released the Guiding Opinions on Reforms of the System of Paid Use of State-Owned Natural Resources in January 2017.⁷³ Under the overarching policies that preservation be prioritized and utilization be rationalized, the State-owned natural resources can be used upon payment only, except otherwise explicitly provided for by the law, pursuant to that official document.⁷⁴ One of the objectives of the system of paid use of State-owned natural resources is to facilitate the separation between the ownership and the right to use, by virtue of the urged renovation of the methods of enforcing the ownership of the natural resources.⁷⁵ Specific rules regarding the access to, approaches of, and procedures for, the paid use of the State-owned resources need to be further clarified.⁷⁶ The State Council encouraged the grassland authorities to formulate and introduce competition (such as competition through public bids) into the proceedings of determining the selection of assignees in respect to the right to use grasslands, pursuant to the principles of openness, fairness, and impartiality.⁷⁷ The State Council also underscored the imperatives of the significant improvement of the legal rules of identifying the holders of the right to dispose, upon payment, of the natural resources as well as the appraisalment of the value and price of the State-owned resources.⁷⁸

F. Compensation for Ecological Impairment

The Central Committee of the CPC and the State Council released in November 2015 the Plan of Adopting a System of Compensation for Ecological Impairment in Pilot Areas ("the Plan"),⁷⁹ and completed the selection of such areas in August 2016.⁸⁰ Under the Plan, the local governments, rather than the courts, of the pilot areas are instructed to lead the construction of a system for evaluating the liability for compensating ecological impairment in any of the following circumstances: (i) the occurrence of emergent and severe environmental incidents; (ii) the occurrence of incidents which caused pollution

73. State Council (PRC), Guiding Opinions on Reforms of the System of Paid Use of State-Owned Natural Resources (Jan. 16, 2017), http://www.gov.cn/zhengce/content/2017-01/16/content_5160287.htm.

74. *Id.* at §I.B.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. Central Committee of the Communist Party of China & State Council (PRC), A Plan of Adopting a System of Compensation for Ecological Impairment in Pilot Areas (Jan. 16, 2017), http://news.xinhuanet.com/politics/2015-12/03/c_1117348804.htm.

80. Ministry of Environmental Protection (PRC), Reforming the Mechanisms of Compensation for Ecological Impairment, Intensifying Enterprises' Liability for Pollution Damages (Nov. 9, 2016), http://www.mep.gov.cn/gkml/hbb/qt/201611/t20161109_367153.htm. The regions selected by the Leading Group for Comprehensive Deepening Reforms under the Central Committee of the CPC are Jinlin, Jiangsu, Shandong, Hunan, Chongqing, Guizhou, and Yunnan. *Id.*

or ecological impairment in the key ecology-preserving zones or the zones permitting no utilization; and (iii) other environmental incidents that severely impair the ecosystem.⁸¹

G. Accountability of Public Servants

To ensure a strict adherence to the eco-civilization policy, the public servants in the governments or cadres in the CPC are now subject to the lifelong accountability.⁸² In addition to administrative sanctions or criminal liabilities, those with records of damaging the environment or natural resources will also be subject to the risk of being deprived of the opportunity to chair crucial positions or get promoted in the government or the CPC.⁸³

IV. LEGISLATIVE REACTIONS

The eco-civilization policy also prompted amendment and drafting activities with respect to pertinent laws and administrative regulations, such as the Grasslands Law and the Environmental Protection Law.⁸⁴

A. Amendments to the Grasslands Law

The Grasslands Law 2002, which was slightly amended in 2013, imposes further restrictions on driving motor vehicles on the grasslands. The amendment, compared with the pertinent provisions of the Grasslands Law 2002,⁸⁵ imposes on the persons driving on the grasslands one additional obligation – that is, in addition to reporting the driving routes in advance, the persons shall also actually enforce the approved routes. Under the Grasslands Law 2013, vehicles driving on the grasslands should not deviate from the routes which have been reviewed and approved by the grassland authorities; otherwise, the offenders shall be liable for resorting the impaired grassland vegetation within a time limit and for any losses caused to thereby to the grasslands owners or users, and may, in addition, be imposed upon a fine not less than three times but not more than nine times the average output value of the grasslands in the three years before they are impaired.⁸⁶ Such an amendment was made with an aim of minimizing the possible impairment of vegetation grasslands due to the passing through of motor vehicles.

81. *Id.*

82. Central Committee of the Communist Party of China & State Council (PRC), An Overall Plan for the Reform of Eco-Civilization System (Sept. 21, 2015), pt. IX, ¶ 51, http://www.gov.cn/guowuyuan/2015-09/21/content_2936327.htm.

83. *Id.*

84. Zhonghua Renmin Gongheguo Huanjing Baohu Fa (中华人民共和国环境保护法 [Environmental Protection Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 26, 1989, rev'd Apr. 24, 2014, effective Jan. 1, 2015) (China).

85. Grasslands Law 2002, *supra* note 3, at arts. 55, 70.

86. Grasslands Law 2013, *supra* note 3, at arts. 55, 70.

Legislation to preserve prime grasslands is now in progress. The principle of protecting prime grasslands was established under the Grasslands Law 2002.⁸⁷ Under the Grasslands Law 2002, prime grasslands include: (1) important pastures; (2) meadows; (3) man-made grassplots used for pursuits of animal husbandry, grassplots restored from reclamation, improved grassplots and bases for seeds of forage or grass shoots or tissues; (4) grasslands that play a special role in readjusting the climate, conserving the sources of water, preserving water and soil, providing shelter from the wind, and fixing sand; (5) grasslands that provide the living environments for wild animals and plants under special protection by the State; (6) bases for grassland research and experiments in teaching; and (7) other grasslands that should be defined as the essential ones in accordance with the regulations of the State Council.⁸⁸ The provisions of the Grasslands Law 2002 that prime grasslands shall be subject to rigorous management and that the State Council is authorized to formulate specific measures to protect prime grasslands indicate that the preservation of prime grasslands deserves more accentuation than other grasslands.⁸⁹ However, specific rights, obligations, and liabilities of the owners, users, and operators in respect to the preservation and utilization of prime grasslands have not been effectively distinguished from those in respect to other grasslands. The State Council was entrusted to formulate measures for protecting prime grasslands under the Grasslands Law 2002, but did not incorporate the formulation of the proposed Regulations on the Protection of Prime Grasslands into its legislative agenda until 2015.⁹⁰

B. Amendments to the Environmental Protection Law

The Environmental Protection Law underwent an overhaul in 2014 – incorporating intensive amendments into its text for the purpose of echoing the eco-civilization policy. Promotion of eco-civilization is inserted into Article 1 of the law, which builds the founding values and fundamental tasks of the law.⁹¹ The principles of complying strictly with the red line of the ecosystem preservation and implementing the system of subsidies and rewards for the ecosystem preservation are now erected as legal principles under the law.⁹² Also, disciplinary sanctions on the public servants who are directly responsible for severe adverse impacts on the environment are specified as part of their legal liabilities under the law.⁹³

87. Grasslands Law 2002, *supra* note 3, at art. 42.

88. *Id.*

89. *Id.*

90. State Council (PRC), 2015 Legislative Agenda of the State Council (Apr. 13, 2015), http://www.gov.cn/zhengce/content/2015-09/02/content_10127.htm.

91. Environmental Protection Law, *supra* note 85, at art. 1 (“This Law is developed for the purposes of protecting and improving environment, preventing and controlling pollution and other public nuisances, safeguarding public health, promoting ecological civilization, and enhancing sustainable economic and social development.”).

92. *Id.* at arts. 29, 31.

93. *Id.* at art. 68.

C. Rules of Uniform Registration of Natural-Resources-Related Rights

The Leading Group for Comprehensive Deepening Reforms under the Central Committee of the CPC released in November 2016 the Rules of Uniform Registration of Natural-Resources-Related Rights (Provisional) (“the Rules”).⁹⁴ According to the Rules, the State establishes a system of uniform registration of natural-resources-related rights.⁹⁵ The ownership of natural resources shall be determined in accordance with the principles of public-ownership, *numerus clausus*, and uniform registration.⁹⁶ All the rights pertaining to the natural resources within the national space shall be subject to registration. The main functions of such registration are: (i) to identify the owners of all the natural resources, (ii) to delineate the boundaries between the State-owned and collective-owned natural resources, (iii) to delineate the boundaries between the natural resources the ownership of which is exercised by the Central Government and those the ownership of which is exercised by the provincial governments, and (iv) to delineate the boundaries between the natural resources owned by different collective entities.⁹⁷ Resources including waters, forests, mountains, grasslands, uncultivated lands, mudflats, and minerals are all subject to the Rules.⁹⁸

Registration of natural-resources-related rights shall be conducted with reference to the registration of immovable property rights, pursuant to the Rules.⁹⁹ The register book established by a grassland authority shall contain the following information collected or authenticated thereby: (i) natural status of the natural resources at issue, including location, spatial scope, acreage, type, quantity, and quality, etc. thereof; (ii) owners of the natural resources, representatives or trustees of the owners and the scope of their rights; (iii) restrictions on the utilization, the red line of the ecosystem preservation, public control, and special needs for protection, etc., in respect to the natural resources; and (iv) other issues where appropriate.¹⁰⁰ Maps showing the boundaries of the registered natural resources, area, identity of the owners, registered immovable rights, boundaries and area of different types of the registered natural resources, shall be attached to the register book.¹⁰¹ Information registered shall be available for agricultural, water conservancy, forest, environmental protection, and finance and taxation authorities for the purpose of their comprehensive and interactive management of the natural resources.¹⁰²

94. Leading Group for Comprehensive Deepening Reforms under the Central Committee of the Communist Party of China, Rules of Uniform Registration of Natural-Resources-Related Rights (Provisional) (Nov. 1, 2016), http://www.chinagoldres.com/appUpdata/file/20161223/20161223170035_9864.pdf.

95. *Id.* at art. 2(1).

96. *Id.* at art. 2(2).

97. *Id.* at art. 3.

98. *Id.*

99. *Id.* at art. 4.

100. Rules of Uniform Registration, *supra* note 94, at art. 9.

101. *Id.* at art. 10(1).

102. *Id.* at art. 27.

V. JUDICIAL REACTIONS

To offer timely and practical assistance to the enforcement of the eco-civilization policy, the Supreme People's Court ("SPC") of the PRC has undertaken various activities targeted at judicial practices of the courts, intending to externalize the relevant policies, concepts, and principles in the pertinent laws and public policies. In July 2016, the SPC publicized its first White Paper on Environmental-Resources Trial in China ("White Paper").¹⁰³ According to the White Paper, between January 2012 and June 2016, the courts nationwide heard and concluded 550,138 environment-related civil, administrative, and criminal cases.¹⁰⁴

As revealed by the SPC in the White Paper, the following criminal charges had been frequently invoked in the aforementioned environmental criminal cases: (i) the crimes prescribed in Chapter VI Section 6 of the Criminal Law, which relate to those damaging the environment and natural resources; (ii) the crimes prescribed in other sections and chapters of the Criminal Law, such as setting or causing fires that destroy forests; smuggling wastes; smuggling treasurable plants, animals, or their products; etc. – which relate to the preservation of the eco-environment; and (iii) crimes relating to dereliction of duty in respect to environmental protection and the preservation of the ecosystem.¹⁰⁵ The environmental civil cases mainly arose from disputes over: (i) pollution and impairment of the environment and ecosystem; (ii) ownership, tort, and contracts relating to preservation, exploration, utilization, of the natural resources and environment; (iii) carbon emission, energy saving, green finance, bio-diversity, etc., which relate to climate change; (iv) environmental public interest litigation instituted by the procuratorates (i.e., public prosecutors) or social entities; and (v) compensational claims initiated by the provincial governments for damages to the natural resources.¹⁰⁶ The environmental administrative cases are mainly those relating to: (i) administrative activities pertinent to administrative punishments, licensing, administrative coercion, ascertainment of rights, registration, transparency, abstaining from an act, review of administrative execution, and state compensation; and (ii) the prosecution from the procuratorates against the environmental authorities or entities for their illegitimate exercising of the administrative power or for their abstention from properly acting in environmental public interest litigation.¹⁰⁷

A. Administrative Law Enforcement

The Grassland Monitoring and Supervision Center affiliated to the MOA and its local offices are responsible for administrative enforcement of the laws

103. SUP. PEOPLE'S CT. (PRC), WHITE PAPER ON ENVIRONMENTAL-RESOURCES TRIAL IN CHINA (July 27, 2016).

104. *Id.* at pt. I.

105. *Id.*

106. *Id.*

107. *Id.*

and regulations in respect to grassland utilization and preservation.¹⁰⁸ Since 2005, the Grassland Monitoring and Supervision Center began publicizing the statistics of administrative and criminal offences on illegal reclamation of grasslands nationwide, as well as the facts and penalties under some representative cases.¹⁰⁹ In the enforcement of grasslands law, the initiation of criminal proceedings generally relies on the handing over of severe offences – which were discovered by the grassland authorities – from the grassland authorities to the judicial organs.¹¹⁰ It was reported that, in 2013, the grassland authorities at various levels discovered more than 18,700 offenses and transferred more than 270 cases to the judicial organs for further investigation and sentencing.¹¹¹ In 2014, 17,848 offenses were uncovered, and 621 cases among them were transferred to the judicial organs for criminal investigation – 2.23 times of that in the previous year.¹¹² In 2015, the number of uncovered offenses amounted to 16,427, among which 572 cases were transferred to the judicial organs.¹¹³ In accordance with Article 51 of the Administrative Punishments Law, if the administrative counterpart fails to carry out the decision made by a competent authority on administrative penalty within the prescribed time limit, the administrative authority that made the decision can apply to a court for mandatory execution.¹¹⁴ Accordingly, the grassland authorities may apply to the courts for mandatory execution of their administrative orders – especially orders containing administrative punishments – against grassland offenders.

B. General Advocate to the Eco-Civilization Policy

In 2014, the SPC publicized its Opinions on Fully Strengthening Environmental Resources Trial Work to Provide Powerful Judicial Safeguards for Promoting Eco-Civilization Construction (“Opinions on Eco-Civilization Construction”), with an aim of unifying judicial practices in ecological case.¹¹⁵

108. Grassland Monitoring and Supervision Center, Ministry of Agriculture (PRC), Introduction to the Grassland Monitoring and Supervision Center (Nov. 20, 2007), <http://www.grassland.gov.cn/grassland-new/Item/452.aspx>.

109. Liu & Kong, *supra* note 10, at 48.

110. *Id.* at 50.

111. See Grassland Monitoring and Supervision Center, Ministry of Agriculture (PRC), 2013 Report on Statistics and Analysis of National Grassland-Related Offences, in CHINA ANIMAL INDUSTRY 68 (2014, Issue 5).

112. See Grassland Monitoring and Supervision Center, Ministry of Agriculture (PRC), 2014 Report on Statistics and Analysis of National Grassland-Related Offences, in CHINA ANIMAL INDUSTRY 17 (2015, Issue 4).

113. See Grassland Monitoring and Supervision Center, Ministry of Agriculture (PRC), 2015 Report on Statistics and Analysis of National Grassland-Related Offences, in CHINA ANIMAL INDUSTRY 62 (2016, Issue 6).

114. Zhonghua Renmin Gongheguo Xingzheng Chufa Fa (中华人民共和国行政处罚法 [Administrative Punishments Law (PRC)]) (promulgated by the Nat'l People's Cong., Mar. 17, 1996, effective Oct. 1, 1996 (2009) (amended by the Standing Comm. of the Eleventh Nat'l People's Cong., Aug. 27, 2009).

115. Sup. People's Ct. (PRC), Opinions on Fully Strengthening Environmental Resources

The principles established thereunder in respect to the adjudication of eco-environmental cases include these mainly: (i) to protect the eco-environment in accordance with the law; (ii) to prioritize protection and preservation; (iii) to stress prevention of occurrence; and (iv) to make liable party accountable.¹¹⁶

In its Opinions on Eco-Civilization Construction, the SPC urged that the preservation of the eco-environment and natural resources be considered as an important value in civil adjudication. The courts should effectively employ various remedial measures such as preservation of actions and advanced execution to prevent or mitigate the impairment of the eco-environment, and the courts should facilitate and expedite the filing, review, approval, and execution of the applications for the adoption of such remedial measures.¹¹⁷

In respect to administrative cases, the SPC encouraged the courts to explore the methods of bridging administrative and civil cases based on the same facts and improving the evidential rules in environmental administrative litigation.¹¹⁸ The execution of administrative judgments is expected to strengthen with the employment of remedial measures targeting at specific performance within the prescribed time limit, vicarious performance, or other forms of performance.¹¹⁹ The court should also review the effects of the execution of court rulings to assure the complete and effective enforcement thereof. For non-litigation administrative cases, where the competent authority applies for mandatory execution of an effective administrative order, the court should effectuate the mandatory execution in a timely manner where the application is approved.¹²⁰

In addition, the SPC urged for full respect and protection of the right of the public to initiate environmental public interest litigation.¹²¹ The SPC further clarified in the Opinion on Eco-Civilization Construction that the initiation of environmental public interest litigation does not prevent the individuals, legal persons, or other entities to bring about a lawsuit for damages caused thereto by the illegal activities.¹²² The court may obtain evidence *ex officio* – that is, by virtue of the authority implied by office, rather than a party's application – in public interest disputes, where the plaintiffs have encountered difficulty in collecting evidence.¹²³ Where the facts involving public interest are within the burden of proof of the plaintiffs and need to be appraised, the court may also

Trial Work to Provide Powerful Judicial Safeguards for Promoting Eco-Civilization Construction, § 1 ¶ 3 (June 23, 2014), http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=228785 [hereinafter Opinions on Eco-Civilization Construction].

116. *Id.* § 2, ¶ 5.

117. *Id.* § 3, ¶ 8.

118. *Id.* § 3, ¶ 9.

119. *Id.* § 3, ¶ 10.

120. *Id.*

121. See Sup. People's Ct. (PRC), Notice of the Supreme People's Court, the Ministry of Civil Affairs and the Ministry of Environmental Protection on Implementing the Environmental Civil Public Interest Litigation System (Dec. 26, 2014), <http://en.pkulaw.cn.ezproxy.cityu.edu.hk/display.aspx?cgid=240915&lib=law>.

122. *Id.* § 4, ¶ 11.

123. *Id.* § 4, ¶ 13.

entrust an appraiser for such appraisal *ex officio*.¹²⁴ Where the disputing parties have reached a mediation or reconciliation agreement to withdraw the litigation, the court shall examine the agreement, in particular with regard to whether the national interest, public interest, or the interest of other parties, is impaired thereby.¹²⁵

The SPC required the courts to determine the forms of remedies as well as the scope of compensation in the environmental public interest litigation.¹²⁶ The courts shall also explore the possibility to construct a sound mechanism for allocating the litigation costs between the pertinent parties.¹²⁷ The legal aid provided to the plaintiffs in public interest litigation can also be further strengthened. The court may approve the application from the plaintiffs to withhold, reduce, or waive the charges for case filing or for preservation of evidence or conducts.¹²⁸ Where the plaintiffs win the case, the reasonable legal costs, expenses for investigation and obtaining evidence, and expenses for appraisal may be attributed to the defendants.¹²⁹ Where a fund for environmental public interest litigation is established, the costs on the part of the plaintiffs can be appropriated from the fund.¹³⁰ Where appropriate, special tribunals for environmental-resources disputes can be established within the courts.¹³¹ The courts should also explore the approach of optimizing the judicial resources by attempting at trying civil, administrative, and/or criminal cases in one special tribunal or court.¹³²

The SPC also intended to strengthen the role of scientific experts in the adjudication of environment-resources cases. It authorized the courts to invite scientific experts to function as mediators to prompt the liable parties to consciously acknowledge their fault, rehabilitate the environment, and compensate the damages.¹³³ The competent authorities shall collaborate with each other, promoting the mechanisms of environmental appraisal for environmental impairment.¹³⁴

In 2016, the SPC advanced its propositions in the Opinions on Fully Employing the Adjudicative Power to Provide Judicial Service and Safeguards for Promoting Eco-Civilization Construction and Green Development (“Opinions on Eco-Civilization Construction and Green Development”) regarding the judicialization of the eco-civilization policy.¹³⁵ The SPC

124. *Id.*

125. *Id.*

126. *Id.* § 4, ¶ 14.

127. Sup. People’s Ct (PRC), *supra* note 121, at § 4, ¶ 14.

128. *Id.* § 4, ¶ 15.

129. *Id.*

130. *Id.*

131. *Id.* § 5, ¶ 16.

132. *Id.* § 5, ¶ 17.

133. Sup. People’s Ct (PRC), *supra* note 121, at § 6, ¶ 20.

134. *Id.* § 6, ¶ 21.

135. Sup. People’s Ct. (PRC), Opinions on Fully Employing the Adjudicative Power to Provide Judicial Service and Safeguards for Promoting Eco-Civilization Construction and Green

recognized the roles of environment-recourses trials in safeguarding environmental rights, checking administrative power, settling disputes, and shaping public policy.¹³⁶ The courts are required to balance the relationship between the environmental protection and the economic development by strictly complying with the environment-resource legal mechanisms.¹³⁷ The application of the precautionary principle¹³⁸ may be intensified where appropriate.¹³⁹ The SPC called on the courts to employ instruments of preservation of actions and advanced execution in a manner that can effectively prevent the occurrence or deterioration of the environmental impairment.¹⁴⁰ The remedies for damages, pursuant to the SPC, should center on the eco-environmental rehabilitation and the harmonization of the imposition of civil, administrative, and criminal liabilities, in order to rehabilitate the eco-environment to the utmost degree.¹⁴¹ In addition, the courts should enhance both the science-based adjudication and the public participation.¹⁴²

The courts, for the purpose of vigorously advocating the eco-civilization as essential social value, should adhere strictly to the principles of prevention of impairment occurrence, compensation for damages, and accountability of liable parties, to help the entire society intensify its consciousness in environmental protection.¹⁴³ The courts should also further build their capacity of trying administrative cases that involve environmental impact assessment, license on pollutant discharge, grazing prohibition, rotational grazing, grazing areas resting, and the protection of desertification land.¹⁴⁴

In cases involving the exploration and utilization of natural resources (including grasslands), the courts should strengthen their capacity of safeguarding the right of the users or operators to use the natural resources, enhancing the resources saving, and protecting the environmental simultaneously. Where ecological concerns are perceived, the preservation of the eco-environment and natural resources should be an important factor for the

Development (May 26, 2016), <http://www.chinacourt.org/article/detail/2017/01/id/2509587.shtml> [hereinafter *Opinions on Eco-Civilization Construction and Green Development*].

136. *Id.* § 1, ¶ 1.

137. *Id.* § 1, ¶ 2.

138. The precautionary principle aims to ensure a higher level of environmental protection through preventative decision-making in the case of risk in the circumstances “where specific evidence is insufficient, inconclusive or uncertain and there are indications through preliminary objective scientific evaluation that there are reasonable grounds for concern that the potentially dangerous effects on the environmental, human, animal or plant health may be inconsistent with the chosen level of protection.” European Commission, Communication from the Commission on the Precautionary Principle, COM (2000) 1 final, 9-10.

139. *Opinions on Eco-Civilization Construction and Green Development*, *supra* note 137, at § 1, ¶ 2.

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.* § 1, § 3.

144. *Id.* § 2, ¶ 9.

courts in their adjudication.¹⁴⁵ The courts should further develop procedures and mechanisms that can facilitate the social entities to initiate environmental public interest litigation.¹⁴⁶ The SPC demanded the courts to balance between the employment of judicial remedies and that of other forms of remedies (such as administrative instruments), and to give sufficient deference to the decisions of the administrative authorities with a view to advocating the administrative authorities to properly perform their duties.¹⁴⁷

In public interest litigation, the courts may attempt to adopt such special mechanisms as preservation of evidence, advanced execution, and supervision of the effects of judicial execution, with an aim of crystallizing and accumulating pertinent judicial practices which are meaningful for public policy formulation in turn.¹⁴⁸ It is suggested by the SPC that the prosecutions made by the procuratorates against the conducts impairing the eco-environment be filed by the courts as civil or administrative litigation based on public interest.¹⁴⁹ In addition, in the eco-environmental cases, the courts should safeguard the procedural rights enjoyed by different parties – such as those relating to burden of proof, court debate, and cross-examination.¹⁵⁰

In the view of the SPC, the criminal adjudication of eco-environmental cases should assume the educational and punitive functions. In criminal sentencing, the courts should adhere to the principles of *nulla poena sine lege* and the combination of leniency and severity.¹⁵¹ The crimes causing severe consequences or committed with severely malicious intents shall be published rigidly in accordance with the law, with an aim of effectively deterring potential offenses, educating the people to preserve the eco-environment out of consciousness, and preventing or mitigating environmental pollution or ecological impairment.¹⁵²

The civil adjudication of eco-environmental cases should assume the remedial and restorative functions, pursuant to the SPC. On the one hand, the personal rights, property rights and other types of environmental interest of individuals, legal persons, and other entities should be remedied in case of infringement.¹⁵³ On the other hand, the impaired eco-environment should be rehabilitated. Rules of applying punitive liability for compensation should be clarified and strengthened to make the liable party accountable for restoring the eco-environment and for compensating damages to the service functions of the

145. Opinions on Eco-Civilization Construction and Green Development, *supra* note 137, at § 3, ¶ 13.

146. *Id.* § 5, ¶ 17.

147. *Id.*

148. *Id.*

149. *Id.* § 5, ¶ 18.

150. *Id.*

151. Opinions on Eco-Civilization Construction and Green Development, *supra* note 137, at § 6, ¶ 22.

152. *Id.*

153. *Id.* § 6, ¶ 23.

eco-environment.¹⁵⁴ In the administrative and civil cases on the eco-environment, the courts' attempts to intensify the employment of measures such as specific performance within the prescribed time limit, vicarious performance, management by a third party, and other forms of remedies should be founded on the principle of restorative justice.¹⁵⁵

The SPC enacted the Interpretation on Several Issues Concerning the Application of Law in Trying Criminal Cases of Damaging Grassland Resources ("Interpretation on Grasslands-Related Criminal Cases") in November 2012, elucidating, for the first time, the application of the Criminal Law in grasslands-related offences.¹⁵⁶ Generally, illegal activities may be subject to criminal penalties under the charges based on the crime of illegally occupying agricultural land, the crime of illegally approving land acquisition and occupation, the crime of obstructing State personnel from discharging their duties, and the crime of instigating the masses to use violence to resist the law enforcement.¹⁵⁷

Article 1 of the aforementioned judicial interpretation sets the threshold to criminal liability where anyone illegally occupies any grasslands, or changes the use of the occupied grasslands of large size – i.e., 20 *mu* – which causes great damages to the grassland, the person shall be convicted and punished for the crime of illegally occupying agricultural land according to Article 342 of the Criminal Law.¹⁵⁸ The following activities will be treated as having caused great damages to the illegal occupied grasslands: (1) planting food crops, economic crops, and trees by cultivating grassland; (2) building kilns, houses and roads; (3) excavating sand; (4) conducting quarrying or mining; (5) fetching earth; (6) shearing greensward on the grassland; (7) stacking or discharging wastes on the grassland, which causes great damage or serious pollution to the original vegetation on the grassland; or (8) planting hay crops and feed crops by violating the plans of grassland protection, development, and utilization, which causes sand encroachment on the grasslands or serious soil erosion.¹⁵⁹

In accordance with Article 3(1) of the Interpretation on Grasslands-Related Criminal Cases, where a public servant practices favoritism or makes

154. *Id.*

155. *Id.* § 6, ¶ 24.

156. Sup. People's Ct. (PRC), Interpretation on Several Issues Concerning the Application of Law in Trying Criminal Cases of Damaging Grassland Resources (Judicial Interpretation [2012] No. 15) (Nov. 22, 2012) (passed at the 1588th Session of the Judicial Committee of the Supreme People's Court on Oct. 22, 2012), <http://www.chinacourt.org/law/detail/2012/11/id/146001.shtml> [hereinafter Interpretation on Grasslands-Related Criminal Cases].

157. The charges and the penalties thereon are prescribed in Articles 342, 410, 277, and 278 of the Criminal Law.

158. Interpretation on Grasslands-Related Criminal Cases, *supra* note 158, at art 1. Art 342 of the Criminal Law provides that, "Those who illegally occupy farmland for other uses in violation of land administrative law and regulations in a relatively large area and cause damage to large tracts of farmland are to be sentenced to not more than five years of fixed-term imprisonment or criminal detention, and in addition be sentenced to a fine or may be sentenced to a fine only."

159. Interpretation on Grasslands-Related Criminal Cases, *supra* note 158, at art. 2.

falsification, violates such land administration laws as the Grasslands Law, the threshold to criminal liability of the public servant under Article 410 of the Criminal Law is as the following: (1) illegally approving the expropriation, requisition, or occupation of the grasslands of more than 40 *mu*; (2) illegally approving the expropriation, requisition, and occupation of the grasslands, which causes damages to grasslands of more than 20 *mu*; or (3) illegally approving the expropriation, requisition, and occupation of the grassland, which causes direct economic losses of more than RMB 300,000 yuan; or (iv) other vicious circumstances.¹⁶⁰

Where anyone obstructs, by violence or threat, any grassland supervisor and inspector from legally performing his duties, and the obstruction constitutes a crime, the person shall be charged, according to Article 4 of the Interpretation on Grassland-Related Criminal Cases, with the crime of disrupting the public service in accordance with Article 277 of the Criminal Law.¹⁶¹ Where anyone instigates people to resist the enforcement of grassland laws and administrative regulations by violence, and the instigation constitutes a crime, the person shall be charged with the crime of instigating people to resist law enforcement by violence in accordance with Article 278 of the Criminal Law.¹⁶²

C. Environmental Public Interest Litigation

The concept of environmental public interest litigation was first introduced into Article 58 of the Environmental Protection Law by its 2014 amendments, which empowers a social entity which satisfies the legal conditions to institute an action in a court against an act of polluting environment or causing ecological

160. *Id.* at art. 3(1). Art 410 of the Criminal Law provides that, “State organ work personnel, who practice favoritism and malpractice, violate land management rules, and abuse powers in illegally approving land acquisition and occupation, or illegally leasing out land use rights at a price lower than market value, shall – in cases of a serious nature – be punished with imprisonment or criminal detention of less than three years; or – for cases causing extraordinary heavy losses to state or collective interests – with imprisonment of over three years and less than seven years.”

161. Interpretation on Grasslands-Related Criminal Cases, *supra* note 158, at art. 4. Art 277 of the Criminal Law provides that, “Whoever uses violence or threat to obstruct state personnel from discharging their duties is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, or control; or a sentence of a fine. Whoever uses violence or threats to obstruct National People’s Congress deputies, or local people’s congress deputies, from discharging their lawful deputy duties is to be punished according to the preceding paragraph. Whoever, in the event of a natural disaster or an emergency, uses violence or threats to obstruct Red Cross personnel from discharging their lawful responsibilities is to be punished according to the first paragraph. Whoever intentionally obstructs the state’s security or public security organs from carrying out their security assignments, and has caused serious consequences even though no violence or threat is used is to be punished according to the first paragraph.”

162. Interpretation on Grasslands-Related Criminal Cases, *supra* note 158, at art. 4. Art 278 of the Criminal Law provides that, “Whoever instigates the masses to use violence to resist the enforcement of state laws and administrative regulations is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, control, or deprivation of political rights; when serious consequences have been caused, the sentence is to be not less than three years but not more than seven years of fixed-term imprisonment.”

damage in violation of public interest.¹⁶³ In 2015, the SPC externalized that concept in its Interpretation on Several Issues Concerning the Application of Law in the Environmental Civil Public Interest Litigation (“Interpretation on Environmental Public Interest Litigation”), which aims, on the one hand, to strengthen further the judicial power over the eco-environmental offences, and, on the other hand, to reinforces the rights and benefits of the people in respect of the State-owned or collective-owned natural resources.¹⁶⁴

A competent authority or social entity is entitled to bring about a lawsuit, according to Article 1 of the Interpretation on Environmental Public Interest Litigation, against any conduct that pollutes the environment and damages the ecosystem, which has impaired the public interest or threatened to impair the public interest.¹⁶⁵ A procuratorate, an authority administering environmental protection, a social entity, an enterprise, or a public institution may, in accordance with Article 11 of the Interpretation on Environmental Public Interest Litigation, support a social entity in legally filing an environmental public interest litigation by such means as providing legal consultation, submitting written opinions, assisting investigation and the gathering of evidence.¹⁶⁶

The rule of reverse burden of proof applies in environmental tort disputes.¹⁶⁷ In accordance with Articles 65 and 66 of the Law on Tort Liability of the PRC, the polluter shall assume the liability for any harm caused by environmental pollution, and assume the burden to prove that it should not be liable or its liability could be mitigated under certain circumstances as prescribed by the law or to prove that there is no causation between its conduct and the harm.¹⁶⁸ This rule is upheld further in the Interpretations on Several Issues

163. Environmental Protection Law, *supra* note 85, at art. 58.

164. Sup. People’s Ct. (PRC), Interpretation on Several Issues Concerning the Application of Law in the Environmental Civil Public Interest Litigation (Judicial Interpretation [2015] No. 1)(Jan. 7, 2015) (passed at the 1631st Session of the Judicial Committee of the Supreme People’s Court on Dec. 8, 2014), <http://www.chinacourt.org/law/detail/2015/01/id/148058.shtml> [hereinafter Interpretation on Environmental Public Interest Litigation].

165. *Id.* at art. 1. “For an act polluting environment or causing ecological damage in violation of public interest, a social organization which satisfies the following conditions may institute an action in a people’s court: (1) It has been legally registered with the civil affairs department of the people’s government at or above the level of a districted city. (2) It has specially engaged in environmental protection for the public good for five consecutive years or more without any recorded violation of law.” Environmental Protection Law, *supra* note 85, at art. 58. As for the scope of competent authorities that are entitled to initiate environmental public interest litigation as plaintiffs, the prevalent legal regime has provided no clear guidance. It is taken by some scholars that they are limited to administrative authorities that administer environmental issues, but not including the procuratorates. See, e.g., Jia Yuan, *The Past and Future of the Subject of Environmental Public Interest Litigation – An Analysis Based on the Law Text*, in J. of Qiqihar Univ. (PHIL. & SOC. SCI. VOL.) 76, 78 (2016, Issue 11).

166. Interpretation on Environmental Public Interest Litigation, *supra* note 167, at art. 11.

167. Zhonghua Renmin Gongheguo Qinquan Zeren Fa (中华人民共和国侵权责任法) [Law on Tort Liability (PRC)] arts. 65, 66 (promulgate by the Standing Committee of the Nat’l People’s Cong., Dec. 26, 2009, effective July 1, 2010) (China).

168. *Id.*

Concerning the Application of Law in the Trial of Disputes over Liability for Environmental Torts (“Interpretation on Environmental Tort”), which applies to both environmental tort disputes and environmental public interest litigation.¹⁶⁹ Nonetheless, in the environmental public interest litigation, the court shall conduct investigation and collect the evidence necessitated by the adjudication thereof.¹⁷⁰ Under the Interpretation on Environmental Public Interest Litigation, the plaintiffs shall assume the burden of proof to the effect that the defendant’s conduct has damaged the public interest or has the major risk of damaging the public interest, in order to establish a *prima facie* case before the court.¹⁷¹ However, the court may assist the plaintiffs with discharging such burden of proof by entrusting a qualified appraiser to conduct appraisal if the pertinent issues involve professional knowledge and are essential for the dispute settlement.¹⁷²

Given the critical role of scientific experts’ opinion in the adjudication of environmental disputes, the SPC also spared some effort to clarify the possible functions of expert witnesses or testimony in the Interpretation on Environmental Public Interest Litigation. The court may request an expert witness to explain his opinion, before the court, special issues such as the casual relationship between the complained conduct and the impairment, the methods of restoring the eco-environment, the expenses for restoring the eco-environment, and the damages to the service functions of the eco-environment.¹⁷³

D. Remedies for Damages to the Eco-Environment

Damages to the eco-environment shall be assumed by the offender to the aggrieved party in accordance with the principle of strict liability.¹⁷⁴ In the litigation, the plaintiffs assume the burden of proof that (i) the polluter discharged the pollutants; (ii) damage has been caused to the aggrieved party; and (iii) the pollutants discharged by the polluter are relevant to the damage.¹⁷⁵ Upon the principle of reverse burden of proof, the polluter is obliged to provide the evidence to prove one of the following facts in order to rebut the causation between the polluting activities and the damages: (i) the discharged pollutants could not possibly have caused the damage; (ii) the discharged pollutants that may cause the claimed damage have not reached the place where the damage

169. Sup. People’s Ct. (PRC), Interpretations on Several Issues Concerning the Application of Law in the Trial of Disputes over Liability for Environmental Torts (Judicial Interpretation [2015] No. 12) arts. 6, 7, 18 (June 3, 2015) (passed at the 1644th Session of the Judicial Committee of the Supreme People’s Court on Feb. 9, 2015), <http://www.court.gov.cn/fabu-xiangqing-14615.html> [hereinafter Interpretation on Environmental Tort].

170. Interpretation on Environmental Public Interest Litigation, *supra* note 167, at art. 14(1).

171. *Id.* at art. 8.

172. *Id.* at art. 14(2).

173. *Id.* at art. 15(1).

174. Law on Tort Liability, *supra* note 170, at art. 65. Interpretation on Environmental Tort, *supra* note 172, at arts 1, 18.

175. Interpretation on Environmental Tort, *supra* note 172, at art. 6.

occurred; or (iii) the damage has occurred before the discharge of the claimed pollutants; or (iv) any other circumstance under which it can be proven that there is no causal relationship between the pollution and the claimed damage.¹⁷⁶ For the special issues on the ascertainment of facts in environmental pollution cases, a forensic appraisal institution with the relevant qualification may be authorized to issue appraisal report or an institution recommended by the environmental protection authorities under the State Council may issue an inspection report, testing report, assessment report or monitoring data.¹⁷⁷

In environmental tort cases, the court may, based on the claims of the aggrieved party and the specific circumstances, render a judgment to order the polluter to assume civil liabilities, including the cessation of the tortious act, removal of obstruction, elimination of danger, restoration to the original state, making an apology, and making compensation for losses.¹⁷⁸ To mitigate or eliminate impairment of the ecosystem, the court may render a ruling to order the defendant to immediately stop pollution or take pollution prevention and control measures in environmental tort cases.¹⁷⁹

The court can demand a remedy of vicarious performance in environmental tort adjudication.¹⁸⁰ Where the aggrieved party requests restoration to the original state, the court may, in accordance with the law, render a judgment that the polluter shall assume the liability for restoring the environment, and at the same time, determine the expenses for restoring the environment that shall be borne by the defendant when it fails to perform the obligation of restoring the environment.¹⁸¹ Where the polluter fails to perform the obligation of restoring the environment within the time limit determined in the valid judgment, the court may authorize someone else to restore the environment, and the required expenses shall be borne by the polluter.¹⁸²

176. *Id.* at art. 7.

177. *Id.* at art. 8.

178. *Id.* at art. 13.

179. *Id.* at art. 12. Article 63 of the Environmental Protection Law provides that, "Where any enterprise, public institution, or other business commits any of the following acts, if no crime is constituted, in addition to imposing punishment in accordance with the provisions of relevant laws and regulations, the environmental protection administrative department or any other relevant department of the people's government at or above the county level shall transfer the case to the public security authority, which shall detain the directly liable person in charge and other directly liable persons for not less than 10 days but not more than 15 days; or, if the circumstances are relatively minor, for not less than 5 days but not more than 10 days: (1) It refuses to comply with an order requiring it to cease construction of a construction project which has not undergone environmental impact assessment as legally required. (2) It refuses to comply with an order requiring it to cease discharge of pollutants for its illegal discharge of pollutants without a pollutant discharge license. (3) It illegally discharges pollutants by installing underground pipelines, using seepage wells or pits, conducting perfusion, or altering or forging monitoring data, through the abnormal operation of pollution prevention and control installations, or by other means to avoid supervision. (4) It refuses to comply with an order requiring it to make correction for its production or use of pesticides which have been expressly prohibited by the state from production or use."

180. Interpretation on Environmental Tort, *supra* note 172, at art. 14.

181. *Id.* at art. 14(1).

182. *Id.* at art. 14(2).

In environmental public interest litigation, for any conduct that pollutes the environment and damages the ecology, which has impaired the public interest or has threatened to impair the public interest, the plaintiff may request the defendant to assume the civil liabilities including but not limited to the cessation of the tortious act, removal of the obstruction, elimination of the danger, restoration to the original state, compensation for losses, and apology; for the purpose of preventing the occurrence and enlargement of damage to the ecological environment, the plaintiff is entitled to request the defendant to cease the tortious act, remove the obstruction, and eliminate the danger.¹⁸³ In environmental tort disputes, the scope of damages suffered by the aggrieved party, though not being stressed in the Law on Tort Liability, is drawn somehow by the SPC in the Interpretation on Environmental Tort – inclusive of property loss and personal injuries caused by the pollution, as well as reasonable costs incurred by taking necessary measures to prevent the expansion of pollution or to eliminate pollution.¹⁸⁴

Under the Interpretation on Environmental Public Interest Litigation, the SPC authorized the courts to exercise discretion in determining the amount of expenses for restoring the eco-environment, where it is difficult for an appraiser to determine that amount or where the charges from an appraiser to do so are excessively high.¹⁸⁵ To determine the amount of such expenses, the courts may take into account the factors such as the extent and degree of environmental pollution and ecological destruction, the scarcity of the ecological environment, the difficulty to restore the ecological environment, the operating cost of pollution prevention and control equipment, the benefits obtained by the defendant out of the tortious act, the extent of fault.¹⁸⁶ Courts may also consider the opinions of expert witnesses and the authorities administering the environmental protection.¹⁸⁷

Also in the environmental public interest litigation, where the plaintiffs request the restoration to the original state, the court may render a judgment in accordance with law that the defendant shall restore the eco-environment to the state and functions before the damage occurs.¹⁸⁸ If complete restoration is impossible, the court may permit the adoption of alternative restoration methods.¹⁸⁹ The court may, when rendering a judgment that the defendant shall restore the ecological environment, determine the expenses for restoration, in case the defendant fails to perform the restoration obligation and vicarious performance is necessitated; or the court may directly render a judgment that the defendant shall assume the expenses for restoring the eco-environment where

183. Interpretation on Environmental Public Interest Litigation, *supra* note 167, at arts. 18, 19(1).

184. Interpretation on Environmental Tort, *supra* note 172, at art. 15.

185. Interpretation on Environmental Public Interest Litigation, *supra* note 167, at art. 23.

186. *Id.* at art. 23.

187. *Id.*

188. *Id.* at art. 20(1).

189. *Id.*

performance of a third party is necessary.¹⁹⁰ The plaintiffs are also entitled to require the defendant to pay expenses for the loss of service functions of the ecosystem, and the expenses the plaintiffs have paid for taking reasonable preventive and disposal measures so as to cease the tortious act, remove the obstruction, and eliminate the danger.¹⁹¹ In environmental tort cases, where the aggrieved party files a lawsuit to require the polluter to stop pollution, remove obstruction, or eliminate danger, such a claim is not subject to the time bar for general environmental tort disputes as prescribed in Article 66 of the Environmental Protection Law – i.e., three years starting from the time when a party knows or should have known the harm caused thereto.¹⁹²

E. Judicial Institutions

An Environmental-Resources Tribunal was established within the SPC in July 2014. In the Opinions on Eco-Civilization Construction and the Opinions on Eco-Civilization Construction and Green Development, the SPC prompted the courts at different levels to build institutions and capacity of hearing civil, administrative, and criminal environmental-resources cases in one special tribunal or court.¹⁹³ The SPC explicitly urged the courts to explore such a “three-in-one” mode of trial in environmental-resources cases, when releasing its first White Paper on Environmental Resources Trial in China in July 2016.¹⁹⁴

F. Compensation for Ecological Impairment

As discussed in Part III Section F above, the Central Committee of the CPC and the State Council have pushed the work and research on a system of compensation for ecological impairment in pilot areas. The tasks assigned to the local governments in this regard, however, cannot be effectively and efficiently fulfilled without effective advocate from the courts, because those tasks – which mainly refer to: (a) defining the scope of compensation for ecological impairment, (b) identifying liable parties, (c) identifying right-holders, (d) launching negotiations for compensation; (e) improving the litigation procedure for compensation; (f) strengthening the execution and supervision of the ecological restoration and damage compensation; (g) regulating appraisalment and assessment of ecological impairment; and (h) enhancing the management of the funds for ecological-impairment compensation¹⁹⁵ – have much overlap with the judicial practices of the courts in

190. *Id.* at art. 20(2).

191. Interpretation on Environmental Public Interest Litigation, *supra* note 167, at arts. 21, 19(2).

192. Interpretation on Environmental Tort, *supra* note 172, at art. 17. Art 66 of the Environmental Protection Law provides that, “The time limitation for instituting an environmental action for damages shall be three years, starting from the time when a party knows or should have known the harm caused to the party.”

193. Interpretation on Eco-Civilization and Green Development, *supra* note 137, at § 7, ¶ 26.

194. Sup. People’s Ct., *supra* note 104, pt. III.B.

195. Central Committee of the Communist Party of China & State Council (PRC), *supra* note

adjudicating the eco-environmental cases.

The SPC, in its Opinions on Eco-Civilization Construction and Green Development, clarified that the provincial governments in the pilot areas, are entitled to claim for ecological-impairment compensation before the courts against the entities or individuals who caused such impairment.¹⁹⁶ The courts, therefore, are urged to delve carefully into (a) the regular pattern of adjudication of the cases involving the State-ownership of natural resources, and (b) the employment of various forms of remedies based on the malice and financial status of the parties.¹⁹⁷ The SPC further clarified that the right of the provincial governments to compensation should not prejudice the right of the public to institute public interest litigation, or the right of individuals, legal persons, or other entities to institute environmental tort lawsuits.¹⁹⁸ Nonetheless, as such three types of cases – i.e., the claims of provincial governments for ecological impairment, the environmental public interest litigation, and the environmental tortious disputes – may be based on the same facts or tortious acts, it is clear that the claims of the right holders, the ascertainment of facts, and execution of judgments in the three types of cases should be connected and coordinated by the courts.¹⁹⁹

VI. CONCLUSION: TO JUDICIALIZE THE ECO-CIVILIZATION POLICY

The eco-civilization policy is inciting profound reforms of public policy, legislation, and adjudication in China, especially in respect to the preservation and utilization of the natural resources (including grasslands) and eco-environment. On the one hand, the eco-civilization policy has contributed to remolding the founding values and principles of the eco-environment-related policy-making, legislative, and judicial practices by fortifying the predominance of ecological concerns over, in particular, economic concerns. On the other hand, the eco-civilization policy entails both deft annotation of its essentials in the pertinent public policies and meticulous rules of its implementation in laws and adjudication. The elaboration in the above parts reveals that, the governmental authorities in China have annotated delicately the eco-civilization policy in their policy documents, and have indicated the roles of legislation and adjudication in externalizing that policy.

Nevertheless, when such policy conception is being converted into specific legal rules and concrete judicial practice in respect to the preservation and utilization of the natural resources (including grasslands), the concerns as to the legitimacy, practicability, accountability, and credibility of the expected rules or practices, as well as their compatibility to the contemporary legal regime in China, etc. have made such a process of conversion fairly onerous and time-

80, at § IV.

196. Interpretation on Eco-Civilization and Green Development, *supra* note 137, at § 5, ¶ 19.

197. *Id.*

198. *Id.*

199. *Id.*

consuming. The legislative and judicial reactions as perceived so forth represent preliminary steps only, given that fundamental values and principles echoing the eco-civilization policy have been embedded to the basic legal system of eco-environment.

As an accountable and credible legal system of the eco-environment in China is being constructed largely from scratch, the legislative activities and judicial practices serve as each other's premise, foundation, and origin of inspiration. The courts must adjudicate the eco-environmental cases based on definite and solid legal basis, on the one hand. On the other hand, the vision of the law draftsmen has to be widened and elongated by the complex and diverse situations and problems the courts have encountered in adjudication. In this regard, the judiciary plays, somehow, a more crucial and decisive role in externalizing the eco-civilization policy than the legislature because the imminent mission of the latter is to, based on the judicial practice of the former, delineate the scope of specific legal issues which must be addressed in legislation. Consequently, the judicialization of the eco-civilization policy now serves as the crux of the anticipated effective and efficient implementation of the same.

By moving the policies pertaining to the preservation and utilization of grasslands in China toward the legal system, the eco-civilization policy directs the courts to reflect, based on their judicial practice, on the following issues:

(1) the subjects – the basic and distinctive rights, obligations, and liabilities of (i) the State (as owner or user), (ii) collective entities (as owners or users), (iii) individuals or entities (as users or operators), (iv) the provincial governments (as trustee of the State), (v) the public, and (vi) the procuratorates, in different situations such as where (a) the grasslands are owned by the State but have not been put into use; (b) the grasslands are owned by the State but appropriated to collective entities for use; (c) the State entrusts the provincial governments to exercise the rights of ownership enjoyed by the State; (d) the grasslands are owned and used by collective entities; (e) the State-owned grasslands are contractually operated by individuals or entities; and (f) the collective-owned grasslands are contractually operated by individuals or entities.

(2) the subject matter – (i) the divergent legal status of prime grasslands and other grasslands and its implications for determining the rights, obligations, and liabilities of the pertinent parties; (ii) the implications of the different grades and classes of grasslands for determining the rights, obligations, and liabilities of the pertinent parties; (iii) the admission of evidence as to the natural status, the characteristics, and special needs pertaining to the preservation, utilization, or restoration of the grasslands; and (iv) legal effect and implications of the grasslands-related registration.

(3) the legal relations – (i) the balance between deference to, and check of, administrative powers in respect to grassland law enforcement, grassland planning, administrative mediation, distribution of subsidies and rewards for

preserving the grassland ecosystem, and drafting and popularizing standard contracts for grassland operation; (ii) the rights, obligations, and liabilities of the receivers of subsidies and rewards for preserving the grassland ecosystem; (iii) legal implications of the paid use of grasslands; (iv) the situations and conditions that justify public interest litigation on the grassland ecosystem; and (v) the similarities and distinctions between the eco-environmental litigation based on the State/collective ownership and the eco-environmental litigation based on public interest.

(4) the remedies – (i) the ascertainment of the amount of damages to the grass ecology or the enforceable standards for the restoration of the grass ecosystem; (ii) the forms of remedies as well as the selection and employment thereof in different situations; (iii) the reconciliation between grasslands-related offences and the applicable criminal penalties; (iv) the balance between the aim of education and that of punishment in respect to the grasslands-related criminal sentences – for instance, the consideration of factors that can justify the mitigation or aggravation criminal penalties out of ecological concerns; and (v) the diversity of the approaches to judgment execution.

