

[Benjamin van Rooij](#) and I published the following in the [New York Times](#) op-ed page today. In short, it is about the challenges the new Environmental Protection Law will face in practice and the critical reforms needed to overcome these challenges:

China's national legislature has adopted sweeping changes to the country's Environmental Protection Law, revisions that have been hailed as major steps toward saving China's environment from rampant degradation.

The authorities will now have stronger enforcement powers, including the right to detain persistent violators for up to 15 days and to fine polluters more heavily than before. Some legally registered civil-society organizations will now be able to initiate public-interest litigation as well.

The law, approved late last month, solidifies the use of environmental targets to assess bureaucrats, who for too long have been measured primarily on economic performance. It also increases transparency by requiring major violators to disclose pollution data and local governments to release information on environmental quality and enforcement.

These changes offer hope to the hundreds of millions of people exposed to the extraordinary risks of China's severe air, water and soil pollution. We believe the new Environmental Protection Law is a signal from the government that it is taking the issue seriously. Moreover, it is a victory for the countless people in China who have worked for years for environmental change. Even a decade ago, most of the amendments to the law would have been unthinkable.

And yet the new law alone may end up doing little to end the impunity that polluters regularly enjoy. Only deep and fundamental changes in the organization of the party-state can bring down the extreme levels of pollution in China.

Environmental law enforcement has failed across the country largely because the regulatory agencies face conflicts of interest that limit their ability to do their jobs. Local governments provide most of the budgets for local environmental bureaus, but also maintain strong economic and political ties to the companies that pollute. Moreover, a significant part of local environmental regulatory budgets comes from pollution-discharge fees. Because these fees are based on the amount of pollution, this leads to the perverse result that reduced pollution can mean the loss of crucial environmental enforcement funds.

If systemic problems like these are not resolved, it is unlikely that the environmental authorities will avail themselves of the stronger enforcement powers granted to them by the

new law. The introduction of more stringent environmental targets for local leaders is a step in the right direction, but it does not fully resolve the core conflict between environmental regulation and polluting industries.

These problems are well known in China, as are potential solutions, such as a recentralization of enforcement authority away from local governments, further decoupling of relations between the state and the companies it controls, and full payment of the regulatory budget out of sources unrelated to pollution enforcement. Such reforms go far beyond the reach of mere environmental law, however, and will require a basic rethinking of central-local relations and the operations of state capitalism.

Experience in both developed and emerging economies shows that citizens and civic organizations are necessary to oversee polluting companies as well as regulators. In this vein, China's new law promotes "societal supervision" of polluters and regulators through greater transparency, public participation and the right to sue polluters.

The nation's leaders nevertheless remain fearful of citizen unrest breaking out over pollution violations, and preventing social unrest remains the top priority. The government continues to restrict citizens from exercising their legal rights to help control pollution. Other laws limit the registration of civic organizations, making it nearly impossible for national or regional environmental organizations to develop.

At present, petitioners and advocates for the environment run the risk of harassment and arrest. Courts often refuse to even accept difficult or sensitive cases. The Supreme People's Court has adopted rules for breaking up class-action lawsuits and relegating individual suits to co-opted lower-level courts. Citizens are therefore often unable to use the law against polluters, especially ones with strong ties to the government. As a result, citizen supervision has been blunted and pollution only grows. The new law may empower citizens, but it still fails to correct systemic barriers that restrict citizen action in practice.

China's half-hearted effort at legal reform is a major risk for the party-state. It raises public expectations for a better environment, but fails to lay sufficient groundwork for improvements in environmental performance. The resulting growth in under-regulated pollution will lead to more public grievances. While many citizens may not be willing to risk aggressive action, an increasing number will conclude that only disruptive activism can force the government's hand. Ever-increasing environmental protests throughout the nation have already highlighted the costs of this approach to the party-state.

In the end, protecting China's beleaguered environment will require the government to

reach beyond its comfort zone and confront the limits of its economic and political model. It will require the courage of the central leadership to face down vested interests in the state and industry that oppose the creation of impartial administrative and judicial institutions to regulate pollution. It will also require the good sense to allow society the genuine freedom to act as environmental watchdog without fear of repercussion.

These suggestions would touch the heart of the current power structure — but so does the country's immense environmental crisis. China's new leadership has shown the courage to confront corruption at the highest levels of power. Surely, it can now demonstrate the same commitment toward saving the nation's environment.

*Benjamin van Rooij is the John S. and Marilyn Long Professor of U.S.-China Business and Law at the University of California's Irvine School of Law, and the author of "Regulating Land and Pollution in China." Alex Wang is an assistant professor at the U.C.L.A. School of Law and the former director of the China Environmental Law & Governance Project at the Natural Resources Defense Council in Beijing.*