

DEVELOPING A WORKING MODEL FOR LEGAL NGOs IN CHINA

The history of civil society in China is relatively short compared to many other countries.¹ The history of civil society organizations (CSOs), or what the international forum knows as non-governmental organizations (NGOs),² is therefore even shorter. In recent years, however, NGOs have been paving significant new ground in the People's Republic of China (PRC), opening up areas no longer strictly within governmental control to provide services to the public. This change is due in large part to China's reform and economic development, which will be discussed in greater detail later. However, as NGOs in China are currently subject to the regulations of China's Communist Party, they do not enjoy the same independence NGOs elsewhere do. Despite these limitations, legal NGOs are cropping up to answer the societal call for direct legal services. One successful legal NGO puts forth a model upon which to base growing NGOs who strive to sustain themselves in the relatively new niche allocated to civil society.

This Note first explores the roots of civil society in China and the factors involved in the emergence of NGOs under the Communist Party. Second, this Note examines the relationship between the current state and NGOs. Third, this Note explains the details of the proposed model of the

1. A number of factors brought the concept of "civil society" onto the international scale during the end of the 20th century, including the collapse of the Soviet Union and Eastern Europe and the end of apartheid in South Africa. These events contributed to the advocacy of transnational pressure groups, led by those involved in the environment, to facilitate debate around and contribute to worldwide change.

Additionally, citizen organizations in Latin America and South and Southeast Asia were calling for more participatory approaches to development. International financial institutions such as the World Bank and International Monetary Fund considered NGOs useful in correcting market failures and in improving governance through "citizen pressure for greater government accountability and respect for human rights." Nick Young, *NGOs and Civil Society in China*, THE HAUSER CENTER FOR NONPROFIT ORGANIZATIONS, Feb. 16, 2009, <http://hausercenter.org/chinanpo/2009/05/ngos-and-civil-society-in-china/>.

2. NGOs, in the context of this Note, are non-governmental, non-profit organizations (such as associations, societies, foundations, schools, and hospitals). NGOs include a broad swath of social institutions that operate outside the state and market and are also commonly referred to as the "voluntary sector," "civil society," or the "independent sector." See ZHANG YE, CHINA'S EMERGING CIVIL SOCIETY 3 (2003), available at <http://www.brookings.edu/fp/cnaps/papers/ye2003.pdf>.

NGOs and CSOs are used interchangeably throughout much of the literature in the field. I will use the term "NGO" throughout this Note as it is the more commonplace term for Western audiences; the usage of the term "CSO" within China refers to the same non-profit, non-governmental organizations without the controversial "non-government" label in the term itself.

"Civil society" will be used to refer to the collective range of non-governmental, non-market actors, rather than specific organizations.

Beijing Children's Legal Aid and Research Center ("BCLARC") and the strategies it suggests for successfully implementing the model. Last, this Note argues for the merits of BCLARC's model based on BCLARC's own success, the recent developments in civil society and government policy, and the traditional political attitudes rooted in Confucianism that continue to influence the country today. The Note concludes in favor of BCLARC's proposed working model of an effective and sustainable legal NGO.

Terminology is also an important aspect of NGOs and their perception in China—there is no consistent term for them and they have been referred to in writing as "civil society organizations", "social organizations", "non-profit organizations", or "mass organizations", along with the international standard "non-governmental organizations".³

I. THE DEVELOPMENT OF POST-1949 CIVIL SOCIETY IN CHINA

We must first examine the background of civil society in China to fully understand the context in which the new NGOs operate.

Many factors have contributed to the recent emergence of NGOs in China, and many of those are intertwined with the reasons that civil society itself has been so comparatively late to develop. First, the historical Chinese social structure was based not on the individual, but on the family. This social structure did not demand the development of a civil society.⁴ Second, before the reforms in 1978, there were few diversified

3. Diction is important to the Chinese: the usage of specific terms over other terms is a matter that has caused debate due to the implications attached to certain words. There is a preference for organizations within China to refer to NGOs as "civil society organizations" rather than "non-governmental organizations." See, e.g., *id.* ("The names for NGOs are inconsistent in Chinese writings. They are referred to as 'social organizations,' 'non-profit organizations,' 'nongovernmental organizations,' or 'mass organizations.' To understand Chinese NGOs, we may want to put them into a broad socio-economic development perspective and view them in the context of the social and political transition in which NGOs' development, like that of other sectors, reflects China's political pluralism and social dynamics."); Paul Gewirtz, *The U.S.-China Rule of Law Initiative*, 11 WM. & MARY BILL RTS. J. 603, 606 (2003) ("Still . . . there was a good chance the Chinese would be receptive to the Initiative if we used language and rhetoric carefully . . . if we characterized the work as 'law' and 'legal expertise,' rather than emphasizing the more highly charged phrases of 'human rights' and 'political reform.'").

4. Before recent structural changes, "the state and the society were a highly integrated unity [and] the entire social structure carried a feature of uniformity, which provided the political and cultural grounds for the constitution of this structural system." This precluded the necessity (and the potential) for civil society or NGOs, as the omnipresent political power played an important role in "maintaining the nation's unity and ensuring the economic recovery and development." The law was not an independent social regulating factor in the social life of China prior to the reform and open-door policy but rather a subsidiary administrative means: the government had a tendency to weigh administrative measures over statutory laws. Donghong Ding, *Formation of China's Civil Society and*

and conflicting interests due to the absence of a flourishing economic market. There simply were no strong interests requiring the development of civil society. Moreover, before the reform, the government touched every corner of society; there were no gaps for civil societies to fill.⁵

A. *Social Organizations Short of NGOs*

Though modern NGOs have been slow to develop, recent academic studies reveal that China, in fact, had “social organizations” as early as the Sui, Tang, and Song Dynasties.⁶ Mass organizations also existed under the Communist Party, from 1949 until the Cultural Revolution, and were promoted as citizens’ organizations celebrating the power of the people. These organizations, however, were not nearly as independent as modern NGOs would become; the Party continued exercising significant control over the political orientation and identity of those so-called NGOs.⁷

After the reform and opening policy of the 1970s, China saw significant economic changes. Decentralization and market competition opened up more opportunities for society and altered the ways in which society interacted with the state.⁸ China’s drive towards economic reform and modernization in the past twenty-five years created new opportunities for citizen participation.⁹ The Chinese people sought ways to organize their own institutions in response to social needs and to convey grievances and concerns in a way that influenced the policy-making process.

its Value Paradigm (Xiaozhuang Lou trans.), CHINESE ACAD. OF SOC. SCIS., May 13, 2003, http://bic.cass.cn/English/infoShow/Arcitle_Show_Conference_Show_1.asp?ID=19.

5. See Ding, *supra* note 4; see also LIHUA TONG & WENJUAN ZHANG, CIVIL SOCIETY IN CHINA: A NEW FORCE FOR EQUITABLE DEVELOPMENT—EXPERIENCES AND THOUGHTS OF A LEGAL AID CSO (2009), <http://www.chinapilaw.org/white-paper> [hereinafter “CIVIL SOCIETY IN CHINA”].

6. These social organizations included everything from guilds, clan societies, and cultural salons to professional organizations, charitable organizations, private schools, churches, academic organizations, arts and literature groups, secret underground triads or gangs, and foreign missionary-funded organizations. See ZHANG, *supra* note 2, at 4–5.

7. Mao Zhedong supported a “dictatorship of the people” as the Communist Party rejected the old Kuomintang system. Although citizens’ rights were given greater importance under Mao, the government was at the same time given wide discretion to punish counterrevolutionaries. The fifth article of the Interim Provision on the Registration of Social Organizations, which was adopted on October 19, 1950, dictated that the PRC must suppress all counterrevolutionary activities, even to the point of stripping those actors of their political rights. Under this principle, NGOs that were labeled “feudalistic” or “reactionary” were banned altogether. The NGOs with a pro-communist political orientation were often absorbed into the state’s Political Consultative Conference, resulting in the loss of their independent identity. *Id.* at 6–8.

8. *Id.* at 9.

9. “The government’s policy of ‘small state, big society’ opened up space for NGO development in China.” Xiaohua Liu, *NGOs in China: An Overview*, INT’L CMTY. FOUND., Sept. 2002, at 1, available at <http://www.icfdn.org/publications/NGOsInChina-ICFWhitePaper.doc>.

B. *The Emergence of NGOs within the New Civil Society*

Many social scientists believe that the ability of a country to progress toward a more open, pluralistic, and competitive political system hinges on whether the country allows a civil society to emerge.¹⁰ While the concept of civil society is an abstract notion covering a wide variety of social dynamics,¹¹ the crucial measure of its presence in any nation is the ability of NGOs to develop and progress.¹² At this point, China is

10. The late 20th century saw increasing attention and support for NGOs across the globe, particularly that of an international discourse on human rights. The discourse began to displace the ideologies of “right” and “left” to an extent, perpetuating a gradual shift from dependency on mainstream political initiatives by parties towards a reliance on NGOs (i.e., “civil society” groups) and the media.

“According to one American scholar the era was seeing a ‘global associational revolution’ marked by ‘striking upsurge . . . in organized voluntary activity and the creation of private, nonprofit or nongovernmental organizations.’” Lester M. Salamon, *The Rise of the Nonprofit Sector*, 73 FOREIGN AFFAIRS 109 (1994).

The political atmosphere in China, too, began to shift towards embracing civil society: Chinese NGOs had been operating under severe laws that were drafted shortly after the Tiananmen incident in June 1989 and allowed for strict governmental control over NGO activity. One aspect in particular illustrating state involvement was the registration requirements, necessitating a state actor to sponsor and supervise the NGO activity. Two major statutes—“Regulations on the Registration and Management of Social Organizations”, 社会团体登记管理条例, Order 250, State Council of the People’s Republic of China, Oct. 25, 1998, available at http://www.law-lib.com/law/law_view.asp?id=399 (English translation available at <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=51018>), and “Regulations on People Managed Not-For-Profit Institutions”, 民办非企业单位登记管理暂行条例, Order 251, State Council of the People’s Republic of China, Oct. 25, 1998, available at <http://www.mca.gov.cn/article/zwgk/fvfg/mjzzgl/200709/20070900001726.shtml> (also translated as “Provisional Regulations for Registration and Administration of Civilian-Run Non-Enterprise Unit”, English version available at <http://tradeinservices.mofcom.gov.cn/en/b/1998-10-25/44329.shtml>)—provided the basic legal framework for non-profit activity in China. By the early 21st century, however, a new category of organizations had been created for “people-run non-enterprise units,” which evidenced the slowly loosening grip of the government on NGOs. Young, *supra* note 1.

11. The London School of Economics Centre for Civil Society provides an instructional definition of civil society:

Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organisations such as registered charities, development non-governmental organisations, community groups, women’s organisations, faith-based organisations, professional associations, trades unions, self-help groups, social movements, business associations, coalitions and advocacy groups.

Glossary of Terms, LSE CCE, July 3, 2006, available at www2.lse.ac.uk/LSECities/citiesProgramme/pdf/bankside123/16GlossaryAW20pgs.pdf. See also “What is Civil Society?”, BBC WORLD SERVICE, July 5, 2001, http://www.bbc.co.uk/worldservice/people/highlights/010705_civil.shtml.

12. See ZHANG, *supra* note 2, at 2, 19. (“The past two decades have witnessed a rapid development in China’s NGO sector, driven by the opening of China’s market and its integration with the international community. NGOs have been delivering services and conducting advocacy in a way

experiencing these sorts of dynamic social changes, a foreshadowing of emerging civil society.

After the reforms conducted by the Chinese Communist Party in the 1970s, a greater demand for NGOs emerged along with the rapid development of the market. There were many areas that required more attention than the government or the market could provide.¹³ Those gaps were where NGOs were most needed; this resulted in the rapid growth of NGO work in China.¹⁴ The Communist Party and government were actively calling on “social forces” (*shehui lilian*) to “subsidize and fill gaps in state services” by the late 1980s.¹⁵ Government agencies helped establish many government-sponsored organizations (termed “government-organized NGOs” or “GONGOs”) in order to advance state-directed philanthropy and create professional, trade, and industry associations.¹⁶ Numerous groups and associations emerged in the first ten years, some boasting national networks that could support the federal Ministry of Civil Affairs in local areas.¹⁷

Today, statistics from the Ministry of Civil Affairs show that more than 380,000 NGOs currently exist in China.¹⁸ Another source claims that the number of active NGOs is actually as high as 700,000–800,000.¹⁹ The number discrepancy may be attributed to the fact that numerous NGOs operate without being registered, and the Ministry will only report those who have been officially documented.²⁰ Despite the uncertainty of the

that is more independent of the state. Chinese laws and regulations have not fully endorsed NGOs or all activities conducted by NGOs, yet Chinese NGOs manage to bypass the government’s restrictions in one way or another. Over the years, NGOs in China have been able to attract funding from various sources and build their own capacities, enabling them to conduct programs and work in a more independent manner. There is clearly a trend of an emerging civil society in China.”)

13. See *infra* note 21 (discussing the areas where NGOs have seen rapid development).

14. TONG & ZHANG, *supra* note 5, at 1.

15. Young, *supra* note 1.

16. *Id.*

17. Among these groups were the China Association for International Understanding (1981); China Education Association for International Exchange (1981); the China Family Planning Association (1981); a China Children and Teenagers Fund (1981) and a China Women’s Development Foundation (1988) (created by the Women’s Federation); and a China Disabled Persons Federation (1988) (established under the personal leadership of the paralyzed son of then “paramount leader”, Deng Xiaoping). Young, *supra* note 1.

18. TONG & ZHANG, *supra* note 5 (citing 根据人权理事会第5/1号决议附件第15(a)段 [Annex to Human Rights Council Resolution 5/1, paragraph 15(a)], 人权理事会 [The Human Rights Council], available at http://www.upr-info.org/IMG/pdf/A_HRC_WG6_4_CHN_1_China_national_report.pdf).

19. Figure estimated by Zhuang Ailing, founder of the Shanghai-based Non-Profit Organisation Development Centre. Agnes Chong, *Chinese Civil Society Comes of Age*, OPEN DEMOCRACY, Sept. 21, 2005, http://www.opendemocracy.net/democracy-china/civil_society_2859.jsp.

20. “China also has a great number of NGOs not registered due to their different situation (around one million at present), including [non-profit organizations] registered with industrial and

exact number, it is evident that China's non-governmental organizations are on the rise and playing key roles in their respective sectors.

Existing NGOs in China have typically been focused on environmental protections, education, women and children's rights, and health and medical rights, with particular emphasis on HIV/AIDS.²¹ These areas of nongovernmental work have been more tolerated, if poorly, by the government.²² However, amidst these permitted NGOs, very few operate in the legal field.

commercial authorities, urban community organizations, public benefit and mutual aid organizations in rural communities, farmers' organizations, religious groups, foreign-funded organizations, etc." HAOMING HUANG, *NGO DEVELOPMENT TRENDS IN CHINA* (2001), available at http://base.china-europa-forum.net/rsc/docs/doc_616.pdf.

21. Current trends find that NGOs are most active in areas with strong social demands that are, for various reasons, difficult for the government or the market to provide services to the people. These fields include women and children's rights, environmental protection, poverty reduction, education, and AIDS prevention and treatment, among others. When faced with minimal governmental intervention, NGOs can rapidly fill these gaps in society. See HUANG, *supra* note 20, at 1 ("At present, Chinese NGOs are involved in many fields of work related to social development. According to a report by Prof. Wang Ming of Tsinghua University, we can see that NGOs are active mainly in: social services (45%), survey and research (43%), industrial associations' and societies' work (40%), legal counseling and service (25%), policy consulting (22%) and poverty reduction (21%)."); see also Chong, *supra* note 19 ("This burgeoning civil society can be seen in the role of NGOs in environmental activism in China, the promulgation of new rules governing foundations, the growth of democracy at the grassroots level in rural China and the growth of legal aid . . ."). Two important state rulings have increased public knowledge of China's environmental NGOs. The first dealt with a state decree won by an NGO campaign effort: Yu Shaogang of Yunnan People's River Basin and Wang Yongchen of Green Earth Volunteers led the movement opposing the building of thirteen dams over the River Nu in Yunnan. Their vehemently-fought battle received wide media coverage and was eventually recognized by the central government. The second ruling took place on January 18, 2005 and denoted a landmark victory for Chinese environmental NGOs when China's State Environmental Protection Administration took notice of NGO protests and shut down thirty major construction projects because they had not conducted the legally required environmental impact studies. The ruling forced the majority of these construction projects to comply with the requirements, to conduct environmental impact assessment, and to pay fines of \$24,000 for each project. *Id.*

22. In 2005, Chinese state leaders attempted to curtail activist civil society organizations (i.e., NGOs), painting them as an effort by the West to sabotage the government. See *supra* note 3 and accompanying text. However, this effort in turn acknowledged the existence of numerous environmental NGOs and produced the All-China Environment Federation, a state-run alliance of NGOs controlled by current and former state officials. *New GONGO makes splash with environmental survey*, CHINA DEVELOPMENT BRIEF, Aug. 15, 2005, <http://www.chinadevelopmentbrief.com/node/33> ("New GONGO"). In reality, the All-China Environment Federation was closer in operation to a government-organized NGO (GONGO) than a truly "non-governmental" organization, due to its quasi-governmental status. See *id.*; CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, *DEVELOPMENT OF RULE OF LAW AND THE INSTITUTIONS OF DEMOCRATIC GOVERNANCE: THE DEVELOPMENT OF CIVIL SOCIETY* (2005), available at http://www.cecc.gov/pages/annualRpt/annualRpt05/2005_5a_civilsociety.php ("CECC ON CHINA"). Its purpose was to improve cooperation between the ministries and the environmental NGOs and thereby allow for policy input by non-governmental actors. *New NGO founded to rally all Chinese people against worsening pollution*, XINHUA, Apr. 24, 2005, http://english.peopledaily.com.cn/200504/24/eng20050424_182520.html. While the government clearly remained ill at ease in offering any significant political power to NGOs, and sought to curtail this power through involving government officers, the environmental

Modern NGOs in China boast a variety of strengths and suffer from weaknesses as well. Their strengths include an increased capacity for organization and a focus on grassroots demands. Chinese NGOs have also welcomed both experts and volunteers and have actively cultivated better interaction with other stakeholders such as government agencies, the business sector, and the international community. Their weaknesses include lack of a clear mission and long-term strategy; lack of operational experience, including transparency and accountability; and lack of professional human resources. Low pay rates prove to be obstacles for NGOs seeking to attract qualified people.²³

II. THE RELATIONSHIP BETWEEN THE STATE AND THE NGO

NGOs in China do not enjoy the same independence as NGOs in many other developed or developing countries. The environment provided by the Chinese government and political sphere remains central in what an NGO in China is capable of achieving or what it is even permitted to do. An ideal relationship between the state and civil society would be one of cooperation and coexistence, as well as of conflict and clash; that is, while society should not undermine the necessary powers of state authority, neither should the state overshadow the function and autonomy of society. A strong civil society would only better achieve a government's objectives of development and reform.²⁴

However, despite the growing development of civil society and NGOs, the Chinese government has continued to maintain a restrictive regulatory environment. National regulations require NGOs to register with the Ministry of Civil Affairs, which in turn requires the NGOs to have a government-approved sponsor organization. Translated into practical terms, this means NGOs must effectively be sponsored by the Chinese Communist Party or the government.²⁵ This requirement has been

organizations at the very least attained recognition and an opportunity (if meager) to make their voices heard. CECC ON CHINA.

23. HUANG, *supra* note 20, at 2.

24. *See, e.g.,* Chong, *supra* note 19. In an ideal civil society, the state is responsible for ensuring its coexistence with a healthy and active society; this should take the form of effective legal systems and supportive social institutions that are enforced by the rule of law. "A strong society is one that allows its citizens to freely associate with social organisations and integrates the voices of individuals into the political system." *Id.* NGOs are necessary to achieve development and reform, as they tend to be more alert to newly occurring problems and be useful information sources to policy-makers.

25. Regulations in China require designated Party and government bureaus to sponsor NGOs. In order to obtain sponsorship, the organization must meet six criteria. It must have (1) over fifty individual members or thirty unit members; (2) a standardized name and organizational structure; (3) a fixed domicile; (4) full-time staff; (5) lawful assets and sources of funding that meet minimum

criticized as too strict even by researchers inside the country.²⁶ The state remains reluctant to give *full* autonomy to NGOs. Social stability remains the paramount concern.²⁷ Recently, China's Communist Party appears to be gradually embracing a notion of public participation that opens the way for more independent NGOs. Both the Ministry of Civil Affairs and the

financial requirements depending on whether the NGO is national or local; and (6) the ability to bear civil liabilities independently. Liu, *supra* note 9, at 5–6.

The requirements for private non-enterprise organizations are less rigorous: there is no minimum number for members or for business funds, and a full-time staff and ability to bear civil liabilities are not required. *Id.* at 6. Overall, the requirements “reflect the complicated and cumbersome path NGOs must face in order to be granted government approval.” The government retains ultimate discretion over the foundation and sponsorship of NGOs. *Id.*; see also CECC ON CHINA, *supra* note 22, at 81 (“A restrictive regulatory environment continues to hamper the development of Chinese civil society. National regulations require that non-governmental organizations have a government-approved ‘sponsor organization’ to register. Official Chinese sources indicate that only designated Party and government bureaus and mass organizations may sponsor non-governmental organizations.”); Christian Fleming, *Establishing NGOs in China*, Apr. 11, 2009, <http://www.china-briefing.com/news/2009/04/11/establishing-ngos-in-china.html> (“Under the law, NGOs are allowed to establish a representative office in the country. An NGO must first find a relevant ministry in China that is willing to sponsor its registration. This can be hard to come by because ministries will not want to be associated with a potentially controversial organization. If approved, the proposed foundation will then need to be reviewed by the Ministry of Civil Affairs but if the registration is rejected, there is no appeal process.”).

26. The director of Qinghua University's NGO Research Institute has estimated that there are around three million social organizations, out of which only 280,000 have been registered. CECC ON CHINA, *supra* note 22, at 81–82. He attributes this to the overly strict requirement for sponsorship. *Id.* at 82. As a result of the strictness of the requirement, many NGOs will ignore the registration requirements, and consequently one academic survey reports that “only 22 percent of organizations to which rural residents belong are formally registered.” *Id.* Despite circumventing the official dictates of the law, these unregistered groups will normally encounter little or no interference from the government as long as they do not make “overt political challenges” or create financial trouble that draws state attention. *Id.*

27. “[S]ocial stability is a perennial concern of Chinese authorities and some continued to see NGOs as a threat [to said stability].” Young, *supra* note 1. A number of reasons can be seen as contributing to this stance. First, Chinese political leaders view the international advocacy groups emphasizing human rights (particularly those that point at sweatshops or Tibet) as an unfriendly and overtly critical front whose true goal is pulling the plug from China's economic development. *Id.* The Party fears similar “Western” activism will spread to the Chinese public and manifest itself in “unpatriotic” NGOs seeking to overturn the government. *Id.* Second, despite state efforts to control and curb the Internet for the sake of social harmony, NGO activists both inside and outside the country can promulgate their goals through use of the Internet (and that of other communication technologies). *Id.*; see also Maureen Fan, *China's Party Leadership Declares New Priority: “Harmonious Society”*, WASH. POST, Oct. 12, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/11/AR2006101101610.html>; Randy James, *Chinese Internet Censorship*, TIME MAG., Mar. 18, 2009, available at <http://www.time.com/time/world/article/0,8599,1885961,00.html>. Third, social and economic inequalities sharpened against a background of unchecked government corruption around the early 1900s and resulted in protests and grassroots groups. These groups might be considered the roots of the modern NGO, which may be the cause for governmental wariness. In truth, these grassroots groups sought harmony and cooperation with the government, deliberately avoiding confrontational approaches to better abide by Hu Jintao and Wen Jiabao's stated objective of a “harmonious society.” Young, *supra* note 1.

State Environmental Protection Agency have demonstrated support for civil society organizations.²⁸ The government even issued new regulations for the management of foundations,²⁹ illustrating the state's willingness to modify the legal environment in which NGOs operate.³⁰ As one observer noted, "The state is progressively recognising that civil society is an effective mechanism to address the social problems resulting from the

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[Officials from the Ministry of Civil Affairs] have suggested publicly that the sponsorship requirement should be eliminated and have submitted multiple draft civil society regulations to the State Council that would remove it. The State Council, however, has rejected these proposals. Chinese news reports suggest that upcoming revisions to the 1998 regulations on social organizations will liberalize current rules somewhat, but will not change the sponsor organization requirement.

CECC ON CHINA, *supra* note 22, at 82; *see also* Young, *supra* note 1. The Ministry of Civil Affairs revised regulations on foundations in 2004, allowing for the creation of "fully private, grant-making foundations." *Id.* The Ministry is "keen to channel some of China's new, private wealth to 'social welfare.'" *Id.*

China's State Environmental Protection Agency (SEPA) has both implicitly and explicitly supported NGO activity through its words and actions. 主要职责 [Main Responsibilities], 中华人民共和国环境保护部 [Ministry of Environmental Protection of the PRC], *available at* <http://www.mep.gov.cn/zhxx/jgzn/> (English translation available at http://www.chinacp.org.cn/eng/cporg/cporg_sep.html) (promoting involvement of the public and NGOs in environmental protection). SEPA has also worked with environmental NGOs to achieve common goals, for instance on the redevelopment project of Beijing's Summer Palace (Yuanmingyuan). Nick Young, *Public Enquiries Draw SEPA and Green NGOs Closer Together*, CHINA DEVELOPMENT BRIEF, Apr. 25, 2005; Elizabeth C. Economy, *China's Environmental Movement*, COUNCIL ON FOREIGN RELATIONS, Feb. 7, 2005. Additionally, NGOs are now being considered as a more effective means for addressing pressing social issues such as poverty. "The State Council's Leading Group for Poverty Reduction has also considered NGOs as a potential means for more effective targeting and delivery of poverty reduction programs."

29. A foundation is defined as "an organization that undertakes projects with the intention of benefiting the public and is funded by donations from individuals, legal persons, or other organizations." Fleming, *supra* note 25. The distinction between public and private foundations was delineated in the 2004 Foundations Regulations, which also regulates fundraising activities by public foundations. *Id.*

For the new regulations, see 基金会管理条例 [Foundations Regulations], Order 400, State Council of the People's Republic of China, Mar. 8, 2004.

30. The 2004 Foundations Regulations mentioned above were intended to "protect the legal rights of the foundation, donors and beneficiaries; promote participation of social organisations; simplify the process of establishing charitable foundations; and standardise the organisation and activities of foundations." Chong, *supra* note 19. Besides making a distinction between public and private foundations, the regulations also freed overseas foundations from background checks prior to setting up operations in China and raised the minimum amount required to establish a foundation from 30,000–100,000 RMB to 2–8 million RMB. *Id.* Foundations are required to register with the Ministry of Civil Affairs as well as the Tax Bureau "so that foundations, donors and beneficiaries receive preferential tax treatment," which will optimistically result in increased financial resources and more private overseas foundations. *Id.* The reform of regulatory rules for foundations have many hoping that NGO laws will similarly be changed to reduce some of the problems NGOs face, including the difficulty of finding a sponsor in order to qualify for official registration. *Id.*

market economy.”³¹ Of course, it will be some time before the state embraces its role in stimulating and protecting a flourishing civil society.³² Numerous challenges for NGOs remain. Even now, individual organizations often face official censure or retaliation when they directly challenge governmental decisions.³³ Overall, however, recent developments demonstrate that the situation for NGOs is improving.

III. THE ROLE FOR LEGAL NGOS: BCLARC’S PROPOSED STRATEGIES

As mentioned above, the most prominent NGOs in China today focus on environmental issues, medical and health concerns, and educational rights.³⁴ But what about legal services? Is there a need for them, a gap for NGOs to fill? One legal aid NGO, the Beijing Children’s Legal Aid and Research Center (“BCLARC”), believes that there is indeed an important role for legal NGOs to play in promoting equitable development.³⁵ This Note argues in support of the four strategies for creating a sustainable legal NGO in contemporary China and the four methods of implementing those strategies that have been proposed by BCLARC.

BCLARC has been active in Beijing and throughout the nation since 1999. It has, in its existence, litigated leading cases, proposed legislation, shaped policies, and established a nationwide network of lawyers engaged

31. *Id.*; see also ZHANG, *supra* note 2, at 19 (“In the years ahead, the push and pull between the state and society will continue. Governmental officials have stated in recent NGO conferences that the state shall encourage the development of some types of NGOs that can enhance China’s market economy. Officials have also pointed out the need for ‘research’ and ‘pilots’ for the creation of NGOs that contribute to rural development and can help bring the farmers into a market economy. The tone of these comments demonstrates that economic development and social stability are the government’s priorities.”).

32. See, e.g., HUANG, *supra* note 20, at 2–3. The recognition of civil society in China by either the public or government is still weak. The legal system limits the reach of NGOs and fails to provide a supporting legal environment. NGOs still lack a number of things, including a method for measuring NGO accountability. Moreover, greater focus remains on economic development rather than on the development of the NGO sector, which lacks sufficient research and structural support.

33. See CECC ON CHINA, *supra* note 22, at 82 (“In March, Chinese authorities ordered the Beijing AIDS Institute of Health Education, a registered non-governmental organization, to eliminate the terms ‘Health Education’ and ‘AIDS’ from its name or be closed. Institute sources voiced concern that this order would affect the group’s financial operations and limit its AIDS prevention efforts. Although officials asserted that the terms violated NGO naming rules, they issued the order a week after the Institute released a report alleging that government plans for using international AIDS funds lacked adequate public participation and representative patient sampling. Similarly, local authorities in Henan province detained and arrested AIDS activists who criticized local government actions and attempted to contact higher-level government authorities.”).

34. See *supra* note 21.

35. TONG & ZHANG, *supra* note 5, at 1.

in juvenile protection.³⁶ BCLARC has developed a successful, sustainable model for other legal NGOs through four distinct strategies. This model is suggested by BCLARC to “encourage thoughts on means to strengthen the forces of social development, which will eventually promote a sound social governance structure.”³⁷

The four strategies designed to ensure a successful working model consist of (1) a grassroots approach, (2) safeguarding rights in accordance with the law, (3) integrating NGOs into society, and (4) sound internal governance.³⁸ The first strategy addresses the need to bridge the gap between the government and the people. NGOs must understand the needs of the public in order to provide effective, direct assistance and to defend the public’s interests. BCLARC’s proposition for the grassroots approach encourages NGOs to provide free legal services and foster public awareness of such services thus establishing knowledge about the NGOs and generating trust in them.³⁹ Vulnerable groups have limited resources for legal assistance, as the government provision of legal aid fails to cover

36. The Beijing Children’s Legal Aid & Research Center (“BCLARC”) is now known together with its sister organization Beijing Legal Aid Office for Migrant Workers (“BLAOMW”) under one name: Zhicheng Public Interest Law. For purposes of clarity, the original names will be used throughout this Note. BCLARC was founded in 1999 and officially registered in May 2003 by Mr. Tong Lihua as China’s first NGO specializing in children’s rights. BCLARC has lawyers in sixteen satellite offices as well as a central office in Beijing. The organization plays a leading role in encouraging and guiding lawyers throughout China to advocate and protect the rights of minors, to establish an integrated network of professionals, organizations, and government departments in the field of child protection, and to enhance research and legislation on child protection laws. About Us, BEIJING CHILDREN’S LEGAL AID AND RESEARCH CENTER, <http://sites.google.com/a/chinapilaw.org/bclarc/about-us> (last visited Oct. 4, 2011).

See also Guan Xiaofeng & Wang Qian, *Authorities Seek Greater Enforcement of Child Labor Laws*, CHINA DAILY, June 12, 2008, available at http://www.chinadaily.com.cn/china/2008-06/12/content_6754284.htm; *Legal Aid and Protection Network for Children Established*, PLAN UK, available at <http://www.plan-uk.org/wherewework/asia/china/legalaid/>.

37. TONG & ZHANG, *supra* note 5, at 1.

38. *Id.* at 2–18.

39. “BCLARC[. . .]’s reputation [is] primarily based on the large scale of their direct legal services and large number of beneficiaries. Many beneficiaries reach out to BCLARC . . . after learning of them from colleagues. Beijing residents and government officials from an increasing number of governmental agencies such as the Departments of Labor Arbitration and Labor Supervision, the Construction Committee, the State Bureau for Letters and Visits, and the courts, have also begun directing migrant workers who turn to them for help to [Beijing Legal Aid Office for Migrant Workers, renamed Beijing Zhicheng Legal Aid and Research Center for Migrant Workers (“Beijing Zhicheng Legal Aid”) in late 2009 and sister office to BCLARC, founded and operated by the same group of lawyers under Tong Lihua and the Zhicheng Law Firm].”

BCLARC asserts that, “although contemporary mass media may sometimes create overnight fame, the experiences of the [BCLARC and Beijing Zhicheng Legal Aid] suggest that building social acceptance and sustainable reputations begins with work on individual consultations and cases.” Their model is meant to “serve as a reminder to [other] NGOs that service for vulnerable groups should be practical and professional if it is to yield sustainable development.” TONG & ZHANG, *supra* note 5, at 3.

many areas—most distinctly, the failure to seek enforcement of any judgments found in the plaintiff’s favor. When legal NGOs step in where there is room to provide direct services to the public, they will more effectively establish a positive reputation as being helpful to those in need.

The second strategy underscores the importance of working in accordance with the law; legal NGOs should strive to be seen as important contributors to social development rather than negative detractors that challenge social governance and rule of law. This aspect is particularly important in China’s sensitive political atmosphere. To better facilitate the provision of legal assistance in accordance with the law, a legal NGO needs to do two things: safeguard clients’ rights and educate clients about their legal rights.⁴⁰ Doing so will promote the public’s trust in the legal system as well as confirm the importance of compliance with the law.⁴¹ Moreover, providing legal assistance in accordance with the law will help prevent NGOs from losing the trust of the government.⁴²

The third strategy proposed by BCLARC focuses on the integration of legal NGOs into society, particularly by actively cooperating with the government and the media and by mobilizing relevant social actors. External support is vital to the survival and development of NGOs, especially in China where the government continues to exert significant

40. According to BCLARC, laws often overlook the interests of vulnerable or marginalized groups, which face further consequences when more prominent groups abuse their rights. These vulnerable groups often lack faith in the legal system due to its complicated nuances and seeming inaccessibility; this attitude compounds the problem because the groups who most need to exercise their rights will instead choose not to, turning instead to means outside of the law. BCLARC attempts to address this issue by stressing the fact that “NGOs must give due attention to all clients that turn to them for help, and not be concerned with handling only sensationalist cases or cases that are easy to win.” Sensationalist cases can increase the visibility of NGOs but undermine the core values and goals of the NGO when they are the only kinds of cases that are taken.

As BCLARC asserts in its white paper, “[t]he public recognizes the law only through individual experiences with the legal system. When those encounters are positive, they can enhance public trust in the law, and with that trust, people will turn to the law as a means of solving their problems.” TONG & ZHANG, *supra* note 5, at 6–8.

41. “BCLARC and [Beijing Zhicheng Legal Aid]’s practice has proven that encouraging clients to pursue claims without a legal basis or to intensify their conflicts only causes greater harm to the clients. Therefore, lawyers have an essential responsibility to lead their clients to safeguard their rights in compliance with the law.” TONG & ZHANG, *supra* note 5, at 10.

42. The three primary reasons why legal NGOs should emphasize strict adherence to the law while advocating for their clients are as follows: (1) the public expects NGOs to teach clients the importance of compliance with the law; (2) this focus can prevent NGOs from losing the basic trust of the government; and (3) doing so can protect the clients in the long term, as taking actions outside the law to address problems might lead them to commit crimes that ultimately worsen the lives of vulnerable individuals. See TONG & ZHANG, *supra* note 5, at 9–10.

influence over ostensibly “non-governmental” agencies.⁴³ The extent and the effectiveness of a legal NGO’s ability to provide services to the public depend on how much independence the NGO is granted to do their work. However, an NGO’s independence does not suggest that the NGO is or should be working adverse to the government. To the contrary, both the government and NGOs share the goal of promoting public well-being; it is their approach that differs. Therefore the government and legal NGOs should work symbiotically, supplementing each others’ services to the benefit of the public.⁴⁴

The media also plays an important role in the mainstreaming of NGOs. Similar to the media in other countries, “the Chinese media, apart from its traditional role of informing the public, also serves to provide internal information to high level government officials.”⁴⁵ This aspect of the Chinese media allows it to directly impact government policy-making, making the establishment and maintenance of a good relationship with the media another essential factor for successful and sustainable legal NGOs.⁴⁶ Such a relationship will promote the work of the NGOs and awareness for the issues they deal with. Additionally, the media can help foster

43. While China’s NGOs are not technically government agencies, “the Chinese government still has an influence over them through various establishment and oversight mechanisms inherent in the national legislation.” Fleming, *supra* note 25.

See also Liu, *supra* note 9, at 1. (“The relations between government and NGOs in China are still closer than that in western countries. Chinese NGOs possess particular ‘Chinese characteristics’, due to China’s unique economic, social and political context. This often leads some westerners to question the real nature of these NGOs. An important standard for evaluating how ‘genuine’ NGOs are is the degree of autonomy of the NGOs.”).

44. BCLARC asserts that even in liberal Western countries where NGOs have been established far longer than in China, the view that NGOs and the government work in opposition is not the mainstream view. See William F. Fisher, *Doing Good?: The Politics and Antipolitics of NGO Practices*, 26 ANN. REV. ANTHROPOLOGY 439, 451 (1997) (“While the moniker ‘nongovernment organization’ suggests autonomy from government organizations, NGOs are often intimately connected with their home governments in relationships that are both ambivalent and dynamic, sometimes cooperative, sometimes contentious, sometimes both simultaneously.”).

“There is a close and symbiotic relationship in social governance between the government, the market, and civil society. This symbiosis promotes coordination of interests and helps foster equitable development . . .” TONG & ZHANG, *supra* note 5, at 10. The government has an obligation to provide public services, especially protecting vulnerable groups. With the advent of NGOs, these public services will be improved by a better division of resources. *Id.*

45. TONG & ZHANG, *supra* note 5, at 12.

46. BCLARC has utilized the media to (1) expose the illegal behaviors involved in certain cases; (2) raise awareness of common problems seen repeatedly over the course of BCLARC’s work; (3) publish and disseminate research results and suggested policy solutions; (4) promote the spirit of public interest legal service by expanding the recognition of public interest law; and (5) convey recommendations to high-level government officials regarding central issues facing China. A strategic relationship between a legal NGO and the media will serve to normalize the role of the NGO and the services it provides as well as encouraging discussion and awareness of the issues that the NGO deals with. TONG & ZHANG, *supra* note 5, at 12–14.

knowledge and awareness of the NGOs for both the public as well as the government, which will aid the integration of the NGOs into mainstream society.

Along with government and media cooperation, BCLARC emphasizes the need to mobilize relevant social actors in the process of integrating legal NGOs into society. Though national policies provide some limited support, NGOs can “expand their work within the existing legal framework” by maximizing cooperation with other non-state actors such as charitable foundations or law schools.⁴⁷ Benefits of mobilizing societal actors include creating ties that increase sustainability and effecting change to solve the problems that the NGOs have identified.

The fourth strategy for a successful legal NGO demands the establishment of sound internal governance. Without reliable internal organization, NGOs will be unable to effectively utilize outside resources. A solid internal structure and the cultivation of human capital are both needed to establish the foundation for a successful NGO. The institutionalization of NGOs in China has been a slow process:⁴⁸ most NGOs rely predominantly on the investments of a single founder in their early days and face pressures related to funding, staff selection, and organizational development.⁴⁹ The model structure proposed by BCLARC includes the following: decision-making structures that allow for

47. For example, BCLARC has established relationships with China Legal Aid Foundation and the clinical legal programs of various Chinese law schools. *Id.* at 15–16.

48. Though NGO development has been steadily increasing in post-reform China, China’s NGO sector is still in its infant stage. Few social organizations constitute genuine NGOs due to the control exercised by the Chinese government and the subsequent lack of autonomy in these social organizations. Li-Qing Zhao, *Strategic Options for Building the Chinese NGO Sector in an Open World*, 2 INT’L J. NOT-FOR-PROFIT L. 2 (1999), available at http://www.icnl.org/KnoWleDge/ijnl/vol2iss2/art_2.htm; see also Liu, *supra* note 9, at 1 (“[T]he government is afraid rapid NGO development might release social forces it’s not able to control, so it maintain [sic] strict control over these NGOs. The theme of China’s NGO legislation is controlling and limiting NGOs, by requiring NGOs to find a government or Party sponsor for registration. The legislation is also insufficient and ambiguous in many respects, failing to keep up with the needs of NGO development. . . . [NGOs are] still at an initial stage of development, [and] they face many serious problems, which remain to be solved.”).

49. “According to the newly enacted regulations of NGOs, it is very difficult for Chinese citizens to privately organize a non-profit organization, providing that they could find a government agency to rely upon. There are not enough persons both trusted by the government and capable of leading the activity of NGOs, and some people have little opportunity to privately organize a NGO. The declining and shrinking of international aid constrains the potential of external support of Chinese NGOs. That means those Chinese NGOs which depend absolutely upon foreign aid will be small in number, narrow in scope of activity, and perhaps more importantly, their sustainability of surviving will be a serious problem in the future. Furthermore, the Chinese government might doubt the intention of those Westerners who exclusively assist private Chinese NGOs. If a private Chinese NGO solely relied on foreign aid, that would hamper its efforts at sinking its roots into the Chinese society.” ZHAO, *supra* note 48.

democratic processes; staff manuals that are continually updated and approved through staff meetings; and a monitoring and evaluation system that includes logging work hours, submission of quarterly work reports, and an objective performance evaluation rubric.⁵⁰ Another challenge facing NGOs seeking development and sustainability is the cultivation and retention of human capital: “there is no developed network for channeling talent towards civil society.”⁵¹ In order to effectively integrate human capital into the internal structure of the NGO, BCLARC encourages a diversified staff, a mentoring system with practical hands-on work, and each staff member to become an expert in his or her field.⁵² These methods will contribute to a solid structural foundation for a legal NGO to exert influence on a broad array of legal and policy issues and to maintain its work successfully.

In combination, the four strategies proposed by BCLARC will establish a flourishing and sustainable legal NGO in harmony with China’s currently developing civil society and political sphere.⁵³ From there, BCLARC proposes four methods of actualizing the strategies it advocates in order to best effect change in the field of public interest law in China.

IV. THE FOUR MODELS OF A SUCCESSFUL LEGAL NGO

In addition to its four abovementioned strategies, BCLARC has outlined four internal models for a successful legal NGO operating within Chinese civil society. These four models, when integrated with the four strategies, combine to create a pragmatic and visionary example for sustainable legal NGOs in the modern Chinese market. BCLARC recommends: (1) an integrated model that includes direct legal services, evidence-based research, and policy advocacy; (2) a model emphasizing national expansion; (3) a model that will bring together full-time public interest lawyers and volunteer lawyers; and (4) a gradualist model that achieves internationalization by building on domestic success and focusing on international standards.⁵⁴

50. See TONG & ZHANG, *supra* note 5.

51. *Id.* at 17.

52. “[C]omprehensive talent cultivation system and staff leadership developments are key strategies that the two NGOs employ to actualize talent development and continuity. They are also important bases for the two NGOs’ sustainable development.” *Id.* at 18.

53. “NGOs need to build sound governance and management structures and attract more qualified professionals to work for them. They also need to strengthen communication and cooperation with international NGOs to enhance management and fundraising ability.” ZHAO, *supra* note 48.

54. TONG & ZHANG, *supra* note 5, at 18–19.

The first model aims to address the needs and interests of marginalized groups. To do so, an NGO must provide services as well as conduct research. Services without research will limit an NGO from contributing “sound suggestions to the legislative and policy-making process” and instead be “confined to the passive application of the law in individual cases.”⁵⁵ This is particularly true in China, a civil law country, where judgments in cases rarely make for precedential law.⁵⁶ Research without practice strips an NGO of the ability to fully grasp important issues and to provide feasible solutions.⁵⁷ A successful legal NGO should be able to detect issues arising from their practical legal practice and follow up with evidence-based research that will form the basis for proposed legislation and policy-making.⁵⁸

The second model BCLARC suggests combines the resources of NGOs and nationwide lawyers’ associations to bring about national expansion of the NGO and its work. NGOs and lawyers’ associations both have a number of strengths and a number of weaknesses. An NGO, for instance, boasts full-time staff and professional knowledge in public interest law,

55. An NGO choosing to focus solely on providing legal services without conducting evidence-based research will be unable to contribute to the policy-making process. Suggestions based on sound research are necessary to affect the legislation of overarching laws; otherwise an NGO will be limited to “the passive application of the law in individual cases.” *Id.*

56. China has a civil law legal system, unlike the U.S.’s common law system, and reflects heavy influence from traditional Chinese law, modern Japanese law, and German law. In a civil law jurisdiction, interpretation of the law in each case is executed by the judge in individual instances; cases do not necessarily have precedential value. William C. Jones, BASIC PRINCIPLES OF CIVIL LAW IN CHINA, xvi–xvii, 25–27 (M.E. Sharpe 1989); *see also* Cases and Court Decisions, NOVEXCN.COM, http://www.novexcn.com/cases_court_decisions_main.html (last visited Oct. 4, 2011).

57. NGOs also cannot concentrate only on theoretical research without practical experience—to do so would miss the real-world issues in proposing feasible solutions to the problems at hand. Practice helps NGOs better understand and analyze what issues are relevant to society and how to address those issues in a way that will be accepted by the public. BCLARC believes that a comprehensive model including both practice and research is the most effective way an NGO can operate to the best of their abilities. TONG & ZHANG, *supra* note 5, at 19.

58. BCLARC and its sister NGO focusing on migrant workers rights, Beijing Zhicheng Legal Aid, provide direct legal services to children and migrant workers by offering free legal consultations and representing clients in legal aid cases. These cases help individuals, but a good policy will benefit a broader group within society. Policymakers need background information and data about practical issues encountered in law enforcement; to this end, BCLARC and Beijing Zhicheng Legal Aid provide suggestions for legislation based on issues arising from their actual legal practice as well as evidence-based research. Examples of reports the NGOs have put forth over the years include *Report on Migrant Workers’ Delayed Wages*, the *Report on Migrant Workers’ Workplace Injury*, and the *Report on Group Cases*. Moreover, BCLARC’s research on children’s health insurance received coverage in the China Education Journal and the People’s Daily Online during the 2008 National People’s Congress and Chinese People’s Political Consultative Conference. The NGOs have also been involved in the drafting of legislation, including the Law on Mediation and Arbitration of Labor Disputes. The Beijing Justice Bureau has also invited the two NGOs to participate in the investigation and demonstration process for the Beijing Act on Legal Aid. *Id.* at 19–21.

but lacks the resources for regional expansion. Lawyers' associations, on the other hand, "can promulgate policies for the legal profession, provide professional guidance for lawyers, and establish professional networks" at all levels, but face difficulties in finding an effective means to implement their policies.⁵⁹ BCLARC has implemented this model with much success. Working together, NGOs and lawyers' associations can expand their reach and increase the effectiveness of their work.⁶⁰

The third model calls for full-time public interest lawyers and volunteer lawyers to work together. Ideally, full-time public interest lawyers would be sufficient in providing capable professional legal services to vulnerable groups; however, the reality of the high demand and limited resources in China makes sole reliance on full-time public interest lawyers impractical. Collaboration with private litigators willing to take on pro bono cases is essential. Full-time public interest lawyers have the advantage of devoting their undivided efforts to specific public interest issues and can assist volunteer lawyers with guidance and support. Volunteer lawyers have the advantage of being spread across the country with strong relationships to local networks that assist their participation in the protection of vulnerable groups' rights. When NGOs and the private sector work together, more well-organized opportunities for legal aid will be created for volunteer lawyers to contribute their time.⁶¹

59. *See id.* at 21–24.

60. *Id.* at 23 ("Starting in 2007, in order to enhance the administration and capacity of its lawyers network, BCLARC began a series of 'hundred cities and thousand counties' trainings for volunteer lawyers in seventeen provinces. Eighty percent of the volunteer lawyers involved were grassroots attorneys working at the county level. The 'hundred cities and thousand counties' workshops greatly promoted the development of the volunteer lawyers [sic] network at the county level, which is the most local level for lawyers."). The current Lawyers' Network includes over 8,000 lawyers from across thirty provinces and municipalities. Moreover, fifteen satellite trainings have taken place in fifteen provinces, involving nearly 1,600 lawyers. BCLARC's involvement in All-China Lawyers' Association has also contributed towards the establishment of a national child protection committee, twenty-seven special committees at provincial level, and eighty-six at municipality level. Our Network, BEIJING CHILDREN'S LEGAL AID & RESEARCH CTR. <http://sites.google.com/a/chinapilaw.org/bclarc/our-network> (last visited Oct. 4, 2011).

61. *See* TONG & ZHANG, *supra* note 5, at 24–26. In 1999, BCLARC established the China Lawyers' Cooperative Network for Children's Rights Protection ("Lawyers Network") and, by the end of 2008, the network boasted 8,189 volunteer lawyers across the country. *Id.* at 24–25. The Lawyers Network has been recognized by international colleagues as the world's largest national volunteer cooperative legal network on child protection. *Id.* at 25. Volunteer lawyers and full-time public interest lawyers in the Network have established good reputations in their local communities and in the child protection field, and their work has helped promote the development of local volunteer lawyers' networks. *Id.* The services of the Lawyers Network include "hotline consultations, legal representation in juvenile cases, coordinated action on controversial issues related to child protection, awareness-raising and legal training sessions, and media advocacy." *Id.*

The fourth model proposed by BCLARC emphasizes the need to internationalize the process gradually by building on domestic successes (like that of BCLARC) and focusing on international standards. Chinese NGOs, despite their progress in recent years, remain in an early phase of development, and BCLARC cautions against internationalizing too quickly.⁶² Eventual internationalizing of China's NGOs is considered both positive and likely inevitable, as evidenced by the trend of NGOs worldwide.⁶³ International NGOs have also been active within China for many years now, contributing to the gradual development and reform of civil society and operating in the "civil society" space permitted to NGOs, independent of the government.⁶⁴ NGOs derive numerous benefits from their participation in international initiatives. For instance, such participation helps NGOs gain experience in program management. "Participation in international exchange programs related to human rights has provided [BCLARC]", along with other legal NGOs in the field, "with opportunities to interact with international human rights mechanisms and UN human rights agencies."⁶⁵ Through these participation and interaction

62. Global trends suggest that internationalization of Chinese NGOs is largely inevitable, but BCLARC recommends that they do not internationalize too quickly as they remain in an early phase of development. *Id.* Internationalization will likely assist in building the capacity of Chinese NGOs. *Id.* at 26.

63. Young, *supra* note 1.

64. For example, as of 2000, there were "at least 70 grant-making foundations, 70 advocacy groups, 200 humanitarian organizations, and 150 faith-based charitable groups working in China." These organizations included American NGOs such as the Committee on Scholarly Communication with China, the National Committee on US-China Relations, and the US-China Business Council.

One of the most prominent NGO figures, the Ford Foundation, began working unofficially in China as early as 1979 and officially opened its China office in Beijing in 1988. The Foundation focuses its work in broad areas that have seen rising demand in social recognition. These areas include economics, poverty reduction, governance, international relations, reproductive health, and culture and education. Another prominent organization, the Asia Foundation, has also been active in recent years in the areas of migrant women workers, international affairs, administrative law, China's legal compliance to the WTO, and NGO development in China. ZHANG, *supra* note 2, at 16.

65. For example, in 2005, the United Nations High Commissioner for Human Rights and the United Nations Special Rapporteur on Torture visited BCLARC and Beijing Zhicheng Legal Aid; in 2007, lawyers from the two NGOs attended the United Nations Treaty Mechanism Training held in Geneva; and in 2008, the two NGOs submitted two shadow reports for the Universal Periodic Review on China which were referred to on multiple occasions in subsequent UN documents. BCLARC and Beijing Zhicheng Legal Aid have also received numerous international delegations from the Swiss Human Rights Bureau, the Swedish Ministry of Education, the Australian Inter-Country Adoption Branch of the Attorney-General's Department, the European Union, and UNHCR's program evaluation group. These delegations were all authorized by national departments such as the Ministry of Foreign Affairs. TONG & ZHANG, *supra* note 5, at 27-28.

efforts, NGOs will be “able to stimulate and learn from a fruitful dialogue between domestic and foreign voices.”⁶⁶

V. THE STRENGTH OF BCLARC’S COMPREHENSIVE MODEL

In light of BCLARC’s own successful history, it would appear that their proposed model to establish and maintain legal NGOs in contemporary China must have some merit. This Note will now describe the contours of that model, revealing that its successful implementation not only takes into account the changes in civil society and government policy in recent years, but also integrates the traditional Chinese political attitudes that remain.

First, BCLARC’s suggestions and proposals for sustainable legal NGOs in China must be evaluated in light of BCLARC’s organizational success. BCLARC was founded in 1999 as China’s first NGO specializing in children’s rights. It was registered with the Beijing Bureau of Civil Affairs in May 2003 and, in addition to its central office in Beijing, maintains lawyers in its sixteen satellite offices across sixteen Chinese provinces. BCLARC encourages Chinese lawyers to participate in child welfare protection; to establish an integrated network of professionals, organizations, and government departments in the field of child protection; and to enhance child protection law research and legislation.⁶⁷ Since its inception, the organization has offered free legal consultation and court representation, conducted legal and policy research, held periodic seminars and training workshops, and been heavily involved in legislative initiatives.⁶⁸ BCLARC has implemented every strategy and model it

66. *See id.* at 28; *see also* ZHANG, *supra* note 64, at 21 (“Chinese NGO development requires interaction and collaboration with the outside world. As China continues to participate in the globalization process, Chinese NGOs need to learn from NGOs in other parts of world. While financial support to Chinese NGOs is essential to NGOs’ survival and development, exchanges, trainings, and networking will help Chinese NGOs become more standardized and professional.”).

67. *See Legal Aid and Protection Network for Children Established, supra* note 36 (“The lawyers [at BCLARC] work closely with local government agencies in education, civil affairs, labour inspection, and juvenile justice to provide quality legal support to cases involving street children, physical punishment, juvenile crime, sexual abuse, and child labour. . . . After experimentation and evaluation, the project will spread to more than 20 provinces. The experience of the project will be shared with other organisations and government officials to promote the development of child protection in China.”).

68. BCLARC provides free legal consultation through a number of means, including telephone hotlines, mail correspondence, and one-on-one consultation. Since 2001, BCLARC has aided approximately 40,000 people through consultation and has represented children from impoverished families in over 200 court cases.

BCLARC is also heavily involved in research, with over 30 books and 100 reports on child welfare issues to its name. BCLARC’s bi-monthly journal has been distributed to officials in the

proposed in its white paper and has remained a top NGO in the legal field since 1999, continuing to offer services that impact both the public and governmental policies. The model it has put forth has been met with approval and support from government officials, legal researchers, and law professors alike.⁶⁹

Second, changes in China after its reform and opening in 1978 have altered the playing field.⁷⁰ In the new open world, China needs to build up its civil society and NGO sector in response to the demands due to the

National People's Congress, to various government departments, other legal NGOs, and law enforcement officials. The government has taken notice of BCLARC's contributions and the Ministry of Justice has awarded twenty-one of BCLARC's publications. In addition to paper research, the organization seeks to expand knowledge of relevant child welfare issues by hosting over 140 legal training classes and lectures for more than 100,000 participants from 31 Chinese provinces.

Beyond direct legal aid and research, BCLARC also contributes to the legislation process, helping study, draft, and amend laws involving the protection of minors. For example, BCLARC was involved in the drafts of the Beijing Act on Children's Protection and the PRC Law on Protection of Minors. About Us, *supra* note 36.

69. On June 18, 2009, the Beijing symposium on "Equitable Development: The Role of CSOs in Chinese Society" adopted for discussion BCLARC's white paper, "Civil Society in China: A New Force for Equitable Development—Experiences and Thoughts of Legal Aid CSO." In attendance were representatives from the People's Supreme Court, the Ministry of Civil Affairs, the Department of Commerce, UNDP, and the European Commission, as well as representatives from twelve Beijing-based legal public interest groups, and a host of reporters from major media outlets.

Liu Zhenguo, Director of the Office for CSO Management of the Ministry of Civil Affairs, expressed pleasure with BCLARC's profound understanding of the position of NGOs in China. He was particularly impressed with the clear and accurate vision of the NGOs' future direction, founded on their efforts in personnel training, internal management, organizational expansion, and interdepartmental collaboration.

Chen Min, an associate research fellow of the Supreme People's Court with legal aid experience and familiar with the current development of NGOs, stressed the importance of learning from the "valuable examples set by BCLARC and [Beijing Zhicheng Legal Aid]'s collaboration with governmental and other organizations, their methods of organizational expansion, their approach to representing the interests of disadvantaged groups, and their comprehensive model that combines direct services, research, and policy advocacy."

Wang Chengguang, Director of China Law Society Legal Education Research Association Professional Committee of Clinical Legal Education and professor of law at Tsinghua University, was the third person to comment. He emphasized the importance of broad cooperation and of good internal management that facilitates better use of resources. LIHUA TONG AND WENJUAN ZHANG, *Afterword, CIVIL SOCIETY IN CHINA: A NEW FORCE FOR EQUITABLE DEVELOPMENT—EXPERIENCES AND THOUGHTS OF A LEGAL AID CSO* 32–33 (2009), available at <http://www.chinapilaw.org/white-paper> [hereinafter *Afterword*].

70. The reform and opening have helped transition the country from a planned to a market economy, spurred the development of rural industry and private enterprises, and elevated the standard of living nationwide. With these changes have come serious problems, however, including environmental degradation, poverty and inequality, and an underfinanced education sector. Liu, *supra* note 2, at 1–3; see also Zhao, *supra* note 48 ("In the past two decades, China has made great achievements in its development. However, several factors are threatening the sustainability of its development, such as population explosion, severe scarcity of resources, degradation of environment, and polarization of the rich and the poor, etc. To resolve these problems and make its development sustainable, China needs to establish its NGO sector.").

transition to a market economy.⁷¹ The Chinese government has taken on a new role, leaving a gap for NGOs to fill by providing various social services that were previously the responsibility of the government. “Building up the Chinese NGO sector requires efforts from various sides, including intellectuals, government officials, journalists, and people from many other circles.”⁷² This need is emphasized and paralleled in BCLARC’s proposed comprehensive model, which stresses the importance of cooperation with the government, the media, and other relevant social actors. Backed with the strength of their hands-on experience in consulting and in handling cases, BCLARC has been able to best pinpoint the weaknesses in the system and the strategies to best address these problems.⁷³

Lastly, the implications of China’s traditions and the control the government still maintains over the NGO sector are important to any NGO seeking sustainability. As noted by numerous sinologists, contemporary China (i.e., the PRC) remains deeply entrenched in the roots of its legal history in Confucianism and Legalism.⁷⁴ The emphasis on family and the

71. See Qin Hui, *NGO in China: The Third Sector in the Globalization Process and Social Transformation*, MIT NEW MEDIA ACTION LAB, Apr. 21, 2005, at 5, available at http://web.mit.edu/chinapolicy/www/seminars/4_21_04_ngo.pdf (NGOs are necessary to sustain the post-industrialization market, providing where the government and market fail).

72. In post-reform China, domestic NGOs have been affected by economic globalization, new types of international aid, and the formation of international civil society. They have been pressured to play a more active role both at home and abroad. The transition towards the market economy, with the new role and functions required of the Chinese government, has provided an opportunity for Chinese NGOs to take on many of the functions previously occupied by the government. The NGO sector is needed to address the emerging problems that the market and state cannot or are reluctant to tackle. NGOs will be able to promote sustainable development by mobilizing, organizing, and supporting ordinary people to participate in the process of social and economic development. In order to build up the Chinese NGO sector, contributions are necessary from various sides, including the government, the media, the literati, and others. Zhao, *supra* note 48; see also Hui, *supra* note 71.

73. See *Afterword*, *supra* note 69 (“[W]hile an individual case can help certain individuals, a good policy can benefit a broader segment of the public. Policymakers need basic data and information about practical issues involved in law enforcement, and the work of BCLARC and [Beijing Zhicheng Legal Aid] meets that need. The organizations detect issues arising from actual legal practice and conduct evidence-based research to provide feasible suggestions for legislation and policy-making.”).

74. The ideological paradigm shift within the PRC from a socialistic revolution against capitalism to the pursuit of a harmonious international community in which China’s economy can flourish reflects an ironic new embracing of Confucian ideals by the Party that spent its earlier days in power deliberately rejecting the ancient philosophy. JOHN-REN CHEN, *GOODBYE MARX HELLO CONFUCIUS: IDEOLOGICAL PARADIGM CHANGE IN ECONOMIC TRANSITION OF PRC* (Center for the Study of International Institutions ed., 2007), available at http://www.uibk.ac.at/csi/symposium/2007/goodbye-marx-hello-confucius_chen.pdf.

See also *Confucianism as Soft Power*, THE USELESS TREE: ANCIENT CHINESE THOUGHT IN MODERN AMERICAN LIFE, http://uselesstree.typepad.com/useless_tree/2009/10/confucianism-as-soft-power.html (last visited Oct. 4, 2011) (quoting Jian Jinbo, “[L]ocal governments’ respect for Confucius is centered on economic interests. . . . For local officials, there is less culture on their minds

good of the whole over the good of one,⁷⁵ while perhaps not as strong today as in the past, continues to underpin social philosophy. Even today, society maintains a mentality of “us vs. them” regarding the West and its imported values, and consequently regard NGOs with wariness.⁷⁶ The government must feel capable of trusting NGOs to allow them the space they need to operate successfully and provide legal services to the people. The public, too, must feel capable of trusting NGOs in order to avail themselves of the NGOs’ services. BCLARC acknowledges these needs and calls for legal NGOs and their lawyers to cooperate with the government, to better integrate the NGOs into society and serve people who need their aid.⁷⁷ BCLARC’s relationship with the government over the years has resulted in its being commissioned to perform important research, write education manuals, and even help with legislative

than local gross domestic product growth—a sure ticket to promotion. Some intellectuals also make fortunes by ‘popularizing’ Confucian ideas with paid lectures and by publishing books. . . . All this is embodied in a popular propaganda slogan, ‘Culture provides the stage for the economy to perform’. That is, culture is just a means of fueling economic growth. . . . In short, in the early 21st century, Confucianism is an assistant to the Chinese god of wealth and a representative of Chinese diplomacy . . .”).

75. See, e.g., CONFUCIUS ANALECTS 1–2 (Edward Slingerland trans., Hackett Publishing Co. 2003).

76. For example, when Paul Gewirtz participated in the drafting of the U.S.-China Rule of Law Initiative, he observed that Chinese political leaders, despite responding to the “expanding rights-consciousness in the public,” retained their wariness about U.S. concepts of rule of law. “In earlier times, such looking outward and consorting with U.S. experts might have raised questions in China, particularly because legal issues often touch upon matters that are ‘sensitive’ domestically.” Paul Gewirtz, *The U.S.-China Rule of Law Initiative*, 11 WM. & MARY BILL RTS. J., 603, 610 (2003).

China is still far from embracing U.S. conceptions of human rights: the “rule of law” remains a contested ideal and is still contending for preeminence with phrases such as “rule by law” and “ruling the country according to law.” China’s use of the phrase “rule of law” has been used to mean very different things from the usage in the West; its usage in the West “might suggest things that the leadership in China does not accept.” *Id.* at 609.

See also Liu, *supra* note 9, at 4 (“The relations between government and NGOs in China are still closer than that in western countries. Chinese NGOs possess particular ‘Chinese characteristics’, due to China’s unique economic, social and political context. This often leads some westerners to question the real nature of these NGOs. An important standard for evaluating how ‘genuine’ NGOs are is the degree of autonomy of the NGOs.”).

77. “Since their establishment, BCLARC and [Beijing Zhicheng Legal Aid] have consistently emphasized the importance of establishing cooperative relationships with governmental agencies, judicial departments, and other governmentally-based social organizations. BCLARC and [Beijing Zhicheng Legal Aid] have established close relationships and closely cooperated with the following organizations: the National People’s Congress, the Supreme People’s Court, the Supreme People’s Procuratorate, the National Working Committee on Children and Women under the State Council, the Migrant Workers Office under the State Council, the Ministry of Human Resources and Social Security, the Ministry of Civil Affairs, the Ministry of Public Security, the Ministry of Justice, the All-China Women’s Federation, the China Youth League, the All-China Lawyers’ Association, the Institute of Law of China Academy of Social Science, and other bureaus or organizations at the Beijing municipal level and the Fengtai district level.” AFTERWORD, *supra* note 69, at 11.

drafting.⁷⁸ These activities have improved its outreach efforts to the public, including children, parents, teachers, and public officials, in a way that effects change, without the restrictions of a displeased government.⁷⁹

CONCLUSION

Legal NGOs have a niche to fill in the developing civil society in China. Recent economic reform and modernization have opened up new opportunities for citizen participation, and as a result, NGOs in other fields such as environmental protection, education, and health and medicine have emerged as important social components over recent years. These NGOs have been successful despite government regulations on their establishment and work. BCLARC, with ten years of experience as a legal NGO operating primarily out of Beijing, has put together a proposed model for the operation of successful and sustainable legal NGOs. The model emphasizes bridging the gap between the government and people, particularly by integration of NGOs into society through governmental cooperation and direct legal aid to marginalized groups. BCLARC advocates making use of both existing law and other social actors to further the NGO's goal of achieving a reputation as a staunch defender of people's rights that works within the system, not without it. This goal ensures the sustainability of the NGO against the skepticism of the public and the wariness of bureaucrats, both of which would undermine NGO effectiveness. Civil social forces are ultimately essential to the future development of the PRC, their existence an inevitable reaction to both foreign and internal pressures. BCLARC's model offers the most advantageous and robust example of a legal NGO that can fulfill its role of cooperation, coexistence, and conflict with the government within society.

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78. *Id.* at 12.

79. *See, e.g.*, Fleming, *supra* note 26.

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