



公平发展 公共治理
Governance for Equitable Development

中国民间组织： 公平发展的新兴力量

——来自法律类民间组织的经验和思考

Civil Society in China:
A New Force for Equitable Development-
Experiences and Thoughts
of a Legal Aid CSO

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“公平发展 公共治理” 项目介绍

“公平发展 公共治理”项目的目的是支持提高政府管理的透明度和可信度，加强全国人大、司法系统和公民社会的职能完善。该项目旨在协助政府，通过推进机构改革、民主立法、参与、交流和试点等工作，促进公民社会的发展和法治建设。

国际捐助方

欧盟与联合国开发计划署

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实施机构

全国人民代表大会 最高人民法院 民政部

Introduction of Governance for Equitable Development Project

The Governance for Equitable Development project is about supporting the process of governance in China towards more transparency and accountability while strengthening the emerging institutions of the NPC, the judiciary and civil society. The project aims to contribute to the government's efforts by promoting civil society development and the rule of law through institutional reform, democratic lawmaking, participation, communications and piloting.

International Donors

The European Community and the United Nations Development Programme

Government Coordinating Authorities /Implementing Partner

China International Center for Economic and Technical Exchanges, MOFCOM

Implementing Agencies

National People's Congress

Supreme People's Court

Ministry of Civil Affairs

“公平发展 公共治理”项目系列专题报告序言

法治是欧盟建立的重要支柱。欧盟委员会与中国政府合作多年，协助中国政府在法治的基础上推动一个开放和公平的社会。本着合作精神以及为了达成总体目标，欧盟委员会已经资助了并正在资助治理和法治领域的很多合作项目。

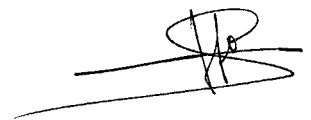
“公平发展 公共治理”（GED）项目——加强中国的法治和公民社会的参与，由欧盟委员会与联合国开发计划署共同努力推动，侧重于三个基本领域：司法公正、政策制订以及公民社会参与。我们与这些领域所对应的中国政府的关键部门合作，他们是全国人民代表大会法律工作委员会、最高人民法院、民政部。同时，该项目还吸纳了许多社会组织参与。

中国在国家改革与建立法治社会方面取得了重大进展，并广获认可。中国的领导人认识到建立法治社会对中国保持高速的经济增长和有效管理中国社会向市场经济的转型至关重要。

日渐充满活力的公民社会部门的出现是自1978年以来的改革所带来的中国国家和社会变革的直接结果。中国政府明确的认识到公民社会在变革的中国社会中的作用。

为了支持中国正在进行中的充满活力的改革规划，“公平发展 公共治理”项目将推出一辑六册的专题报告，它们着眼于司法公正、政策制订和公民社会参与等相关主题。这些出版物将与更广泛的公众分享“公平发展 公共治理”项目的成果产出，同时也传达了在这三个领域中项目所开展工作的重要信息。

我相信中国和欧洲双方都会从政府治理和法治领域的合作中获益。我们也希望能够和中国政府与公民社会一同在这条道路上继续前行。



赛日·安博
欧盟驻华大使

GED -Foreword for monographs

Rule of law is a key pillar on which the European Union has been built. The European Commission has been engaged for many years together with the Chinese Government in supporting China's efforts to develop an open and equitable society based on rule of law. In the spirit of cooperation and with the aim of reaching this overall objective, the European Commission has financed and is financing various cooperation programmes in the area of governance and rule of law.

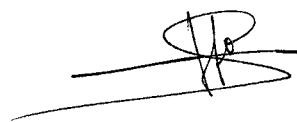
The Governance for Equitable Development (GED) - Strengthening Rule of Law and Civil Society Participation in China - project is a joint effort of the European Commission and the United Nations Development Programme which focuses on three fundamental areas: access to justice, policy making and involvement of civil society. We are working with key Chinese Government counterparts in these areas, namely the National People's Congress Legal Affairs Commission (NPC), the Supreme People's Court (SPC) and the Ministry of Civil Affairs (MoCA). The project also involves a number of Civil Society Organisations.

It has to be acknowledged that China has made great progress in reforming the country and towards establishing a society based on rule of law. China's leaders espouse the principle that establishing a society based on rule of law is critical to China's ability to sustain its rapid economic growth and effectively manage Chinese society's transition to a market economy.

The emergence of an increasingly vibrant civil society sector in China has been a direct consequence of the changes in the Chinese state and society since the beginning of the reforms in 1978. The Chinese government explicitly recognizes the role civil society has to play in a reformed Chinese society.

To support the ongoing dynamic reform programme in China, the GED project will produce a series of six monographs on fundamental themes relevant to the areas of access to justice, policy making and involvement of civil society. These publications will be an instrument to share with a larger public the outcome of GED and to pass key messages in the three areas of intervention.

I am convinced that our cooperation on good governance and rule of law is beneficial to both China and Europe, and we remain willing to continue on this path together with the Chinese Government and civil society.

A handwritten signature in black ink, consisting of a stylized 'S' and 'A' followed by a horizontal line.

Serge ABOU
EU Ambassador

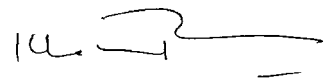
“公平发展 公共治理”项目系列专题报告序言

在过去的三十年里，中国经济的高速增长极大地减少了贫穷，改善了人民的生活水平。然而，更大的社会差异随之而来。这就使得通过法治改革和健康的公民社会来完善法治、社会公正、和公平的公共服务显得尤其重要。广泛的公共参与是均衡和公平发展的基础，而法治是中国的可持续化发展、社会稳定和实现千年发展目标的必要保证。

为了支持中国政府为获得基于良好治理的公平发展所做出的努力，欧盟与联合国开发计划署联合资助了“公平发展 公共治理”项目（GED）。通过与全国人大法律工作委员会、最高人民法院、民政部和社会组织的紧密合作，该项目旨在加强全国人大、司法系统和公民社会的职能完善，特别是关注城乡平衡、性别问题和弱势群体，来支持更透明和负责任的政府管理。

“公平发展 公共治理”项目将会出版六本专题报告，来倡导在中国的公平发展中法治和公民社会参与的重要性。这一系列专题报告体现了“公平发展 公共治理”项目在改善法律和政策制订体系，增强司法公正和扩宽公民社会参与政策制订和公共服务方面的价值。这一辑专题报告涵盖了诸多重要命题，比如社会组织在公平发展中的作用，完善法律的制订，人人享有公正，关于完善司法体系和公众参与决策的工作。

这一系列专题报告传达了关于民主治理和公平发展的重要信息。我们希望它们将会触发关于中国的法治改革和公民社会发展的相关讨论。更重要的是，通过增强治理过程中的公众参与意识，改善公共事务管理的负责任度和透明度，以及通过增强法治来推动社会、立法和司法的公平，欧盟、联合国开发计划署和中国政府之间的伙伴关系将会进一步促进中国为实现和谐社会和以人为本的发展目标的实现。



马和励先生
联合国系统驻华协调代表
联合国开发计划署驻华代表处代表

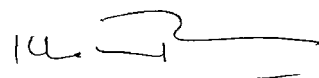
Foreword to GED Monographs

China's rapid economic growth over the past three decades has reduced poverty and greatly improved people's living standards. However, greater social disparities coming along with it bring the need for rule of law, social justice and equitable public services through legal reform and a robust civil society to the forefront. Balanced and equitable development based on broad popular participation and the rule of law is necessary to ensure that China's development is sustainable, that society remains stable and that the Millennium Development Goals are reached.

With an aim to contribute to China's effort of achieving equitable development based on good governance, the European Union and the United Nations Development Programme co-funded the Governance for Equitable Development (GED) project. Through close partnership with the National People's Congress Legal Affairs Commission (NPC), the Supreme People's Court (SPC), the Ministry of Civil Affairs (MoCA), and civil society organizations (CSOs), the project supports greater transparency and accountability while strengthening the emerging institutions of the NPC, the judiciary and civil society with a special focus on urban-rural balance, gender issues and vulnerable groups.

Six monographs of the GED project are being published to advocate the importance of rule of law and civil society participation in achieving equitable development in China. The monographs reflect the value of the GED project in improving the law and policy-making system, increasing access to justice and broadening civil society involvement in policy-making and public service delivery. The themes of the monographs cover significant topics, such as CSO's role in equitable development, making a better law, justice for everyone, working on a better judicial system and public participation in decision-making.

The monographs convey the key messages of democratic governance and equitable development. We are hopeful that they will trigger discussion on legal reform and civil society development in China. More importantly, through increasing the recognition for public participation in governance process, improved accountability and transparency in the management of public affairs, and enhancing the rule of law to promote social, legal and judicial equity, the partnership between the European Union, the United Nations Development Programme and the Chinese Government can serve as a catalyst for accelerating China's effort to reach the goal of harmonious society and people-centered development.



Khalid Malik
UN Resident Coordinator
UNDP Resident Representative

此专题报告由欧盟与联合国开发计划署资助制作，其中的观点不能代表欧盟与联合国开发计划署的官方观点。
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中国民间组织：公平发展的新兴力量

——来自法律类民间组织的经验和思考

文/佟丽华¹ 张文娟²

所谓公平发展，就是通过政策和机制，让那些可能被边缘化的弱势群体真正有机会表达他们的利益诉求，并在权利受到伤害的时候获得保障。民间组织，尤其是法律类民间组织，作为重要的社会建设力量，恰恰可以协助政府来实现这个目标。

与西方很多国家相比，民间组织在中国的发展历史还是比较短的。为什么我们的传统社会没有产生民间组织呢？原因可能有很多。如，在中国的传统社会结构中，不是以个人为基础的，而是以家庭为基础的，发展民间组织的社会结构基础不足。再如，1978年改革开放前，计划经济下，利益没有那么多多元化，利益冲突也没有那么激烈，对民间组织的社会需要还没有那么强烈。还有，在改革开放前，政府的职能是包罗万象的，民间对社会组织的服务需求也没有那么急切。

改革开放后，随着市场经济的发展和政府职能的转变，社会和政府都对民间组织的发展有了很大需求，民间组织也因此快速发展起来。到2007年底，据民政部的统计，中国注册的民间组织已达38万多家。³但是，仔细观察，我们也会发现，众多民间组织主要还是集中在教育、医疗等慈善领域，法律服务领域相对缺乏。法律服务领域对民间组织没有需求吗？政府和民众不需要低成本、高质量的服务吗？如果答案是肯定的，那么，法律类民间组织如何成为公平发展的积极力量呢？

北京青少年法律援助与研究中心（以下简称中心）、北京市农民工法律援助工作站（以下简称工作站）在过去十年间探索出了值得研究和推广的模式与路径。这种模式和路径将为法律类民间组织在未来争取积极发展政策和有效参与社会公平发展等方面提供有效经验，也为壮大社会建设力量以有效促进科学社会治理结构的完善提供了思路。

概括起来，中心和工作站的经验为：以坚持四大定位为立身之本，以创新四大模式为发展之策。

一、作为立身之本的四大定位

民间组织必须有清晰而合适的定位，才能生存和发展，才能更好服务于弱势群体，才能有利于科学社会治理结构的建构。中心和工作站用十年的时间探索出了法律类民间组织的四大定位作为立身之本，发展之源。相信这四大定位不论对国内民间组织同行的发展，还是对在华国际组织的项目开展都同样有启发意义。

（一）、植根民众

民间组织本身的职能之一就是要在政府与民众之间架起沟通的桥梁。但如果民间组织置身在豪华的办公室里，让民众看不到、摸不着，它如何了解民众的诉求，如何给政府提供有用的决策信息？如果它不给民众提供有效服务，民众又如何知道它有用？又如何相信它能真正帮助自己表达利益诉求？中心和工作站用十年

1 作者系北京青少年法律援助与研究中心主任、北京市农民工法律援助工作站主任、中华全国律师协会未成年人保护专业委员会主任、中华全国律师协会法律援助与公益法律事务委员会副主任。

2 作者系北京青少年法律援助与研究中心副主任、北京市农民工法律援助工作站项目主管、《中国律师与未成年人权益保障》执行主编。

3 中国根据人权理事会第5/1号决议附件第15（a）段提交的关于UPR审议国家报告，网址：http://www.upr-info.org/IMG/pdf/A_HRC_WG6_4_CHN_1_China_national_report.pdf。

时间摸索出的民间组织的第一个定位是植根民众，只有这样，民间组织才能在服务和需求表达方面真正架起政府与民众的桥梁。

对于法律类的民间组织而言，植根民众的关键一点是，应该对民众的直接法律服务功能，这既增加民众对组织的感性认识，也会拉近组织与民众的距离。

1、通过大量的免费法律服务，培养民众对民间组织的了解和信任

中心和工作站均有直接法律服务功能，面向未成年人和农民工提供免费的法律咨询和案件代理。两组织不仅将对民众的法律服务列入工作内容，还开辟了多种方便民众寻求法律服务的方式，仅咨询方式就包括热线咨询、网上咨询和来访咨询。⁴在办公场地选择上，两组织也特别注意，办公场地非常简朴，且易于寻找。⁵在时间上，也会考虑方便农民工，如考虑到农民工的特殊状况，工作站周末设有值班律师⁶。

自成立到2009年3月31日，中心共接待法律咨询近4万件，直接办理法律援助案件200多件，曾帮助父亲突然去世、母亲残疾无力抚养的北京小男孩王成龙争取到民政部门的监护⁷；为一名因恶作剧而组织他人抢劫的初中生辩护，使他最终免于刑事处罚而回到学校继续上学⁸；历时3年为断臂童工于浩追讨赔偿款80多万元，现在于浩已返回家乡上学⁹；说服医院及时为因拖欠医药费而停止治疗并濒临死亡的男孩实施手术从而挽救了一个年轻的生命……¹⁰

工作站成立的初衷就是首先让农民工及时获得法律帮助。2005年9月正式成立到2009年3月底，接待来访、电话和网络咨询20159件，涉及农民工95680人次，涉及金额7亿3千5百万元以上；决定援助案件3566件，涉及农民工5651人次；办结案件3346件，涉及农民工5426人次，涉及金额42264560.6元，通过诉讼、仲裁和律师调解切实帮农民工得到34220564元。

大量的直接法律服务和受益人群，是两组织获得社会口碑的重要基础。很多当事人都是通过口口相传找到中心和工作站的。劳动仲裁、劳动监察、建委、信访、法院等很多部门以及越来越多的政府官员和北京市民都把向他们寻求帮助的农民工介绍到工作站。从两组织的经验能够看出，法律类民间组织的社会认可度是一次次咨询和一个个案件堆积起来的。虽然现代传媒业的发展让成名变得容易，但是，对于那些处于弱势地位的人群以及社会各界来说，人们的判断标准都是务实的。这也提醒民间组织，对弱势群体的服务，一定要扎实，任何的投机都不利于可持续性发展。

2、树立服务品牌意识，让民众真正从服务中获得公平正义

可能有人认为，自己提供的服务是纯免费的，即使质量差些也无所谓。但从民间组织可持续性发展及社会公平发展角度来看，民间组织提供的服务不是施舍，也不是单向慈善，而是职业服务。否则，难以取得民众信任，也难以证明民间组织作为科学社会治理结构重要参与力量的价值。

中心和工作站自成立以来一直非常重视服务品牌，视服务质量为立身之本。两组织经常自问：与政府和

4 中国律师网，“北京市农民工法律援助工作站经验总结”，网址：<http://www.acla.org.cn/pages/2007-12-9/s42215.html>。

5 北京市法律援助网，“市司法局局长吴玉华与农民工一起为北京市农民工法律援助工作站新址揭牌”，网址：http://www.bjlegalaid.gov.cn/zxflzx/zxflzx-gzdt/t20060509_126636.htm。

6 中国法律信息网，“佟丽华律师在全国政法系统学习贯彻党的十七大精神和胡锦涛总书记重要讲话专题研讨班上做大会发言”，网址：<http://www.law-star.com/cacnew/200807/130020034.htm>。

7 2005年5月31日北京青年报对该案中间进展进行了报道，全部案情及办案经过见张雪梅《父亡母残，十岁男孩谁来抚养？》，载《未成年人维权典型案例精析》，佟丽华主编，法律出版社2007年10月出版。

8 见赵辉《一次恶作剧埋下的苦果》，载《中国律师与未成年人权益保障》，2007年第4期。

9 见《谁动了他们的权利？——中国农民工权益保护研究报告》，佟丽华主编，第156页；另见时福茂《伤残童工司法救济制度研究》，载《未成年人法学系列丛书——司法保护卷》，佟丽华主编，法律出版社2007年9月出版。

10 见2007年5月24日中央电视台《新闻会客厅》栏目对佟丽华律师采访。

市场的法律服务供给相比，独特优势是什么？为此，两组织确立了树立服务品牌的两大支撑：依托专职律师提供服务和以当事人为本。

专业化的核心价值是，让弱势群体不仅形式上获得法律服务，而且在实质上获得司法公正。为实现专业服务，两组织在服务对象上特定化，在服务提供者上实行专职化。

中心将服务群体定位于未成年人，工作站在服务对象上定位于农民工劳动权利。除了服务对象上的特定化，更为重要的是服务提供者的专职化，也即依托专职律师提供服务。工作站目前有专职人员16名，中心有专职人员14名，均以专职律师为主。所有专职人员均拿薪酬，不能在外兼职或办理商业收费案件。¹¹专职化有两大好处：一是保障专业化，二是保障纯公益，而这两项恰恰是公益法律服务品牌的两大基点。

正是这种专业化和公益化，使两组织在面临强大经济组织时，能够胸有成竹，也能在关键时刻，帮助处于弱势地位的当事人赢得公正。如温某等41人欠薪案¹²中，法院判决温某可以得到18万元的工资和赔偿款，但是，有赔偿能力的某装饰公司只在2万元范围内承担连带责任，剩余的16万由包工头独立承担，实际上意味着大部分的赔偿责任化为了泡影。温某等不服法院判决，找到工作站申请法律援助，工作站律师运用专业的劳动法律知识，经过与法院多次沟通，促使法院二审作出终审判决：由公司在全部赔偿责任范围内承担连带责任。还有河南籍农民工王某人身损害赔偿案，王某在工作期间被雇主饲养的狗咬伤，伤残为九级。关于王某的伤残赔偿数额的计算难点是，按王某河南老家农村标准还是按城镇标准来赔偿。王某在一审时自己请了一个律师，一审法院判按农村标准计算赔偿数额。一审律师本身对案件结果也不满意，便将案件介绍到工作站。在二审中，工作站律师立足法律据理力争，最终，法院支持了工作站律师提出的按城镇标准计算的请求。工作站的专业化服务赢得了法官、仲裁员、律师同行，甚至是对方当事人的尊重。现在很多法院、仲裁机构及地方政府，都保留着工作站的维权卡，遇到农民工案件，即介绍到工作站；还有些企业专门请农民工律师去给他们培训，帮助规范用工制度；有些决策部门也会专门邀请农民工律师就相关棘手问题提供建议。

专职、专业律师模式，发挥的是集体智慧，依托的是集体资源平台，这使中心和工作站有能力处理许多重大有影响的案件，从而实现办理的效果最大化，也进一步提升了品牌含量，如中心曾办理过湖北小鄯告国家烟草专卖局和24家大的烟草公司案¹³，工作站曾办理过徐某等状告肯德基案件等，这些都在国内外产生了重大影响。以徐某诉肯德基案¹⁴为例：农民工徐某自1995年来一直在肯德基公司打工，到2003年时，肯德基公司要求包括徐某在内的所有仓储员工都与劳务派遣公司签订合同。2005年徐某被解雇，肯德基公司认为徐某不是其员工，拒绝支付经济补偿金。工作在受理了徐某的法律援助申请后，对该案件高度重视，多次集体研讨办案思路，并对相关法律规定作深入、细致的研究，经过长时间艰苦的调查取证、申请仲裁、提起诉讼，以及召开新闻发布会，最后工作站与肯德基公司中国总部达成协议——不仅圆满解决了徐某和其他当事人的补偿问题，而且肯德基公司还承诺，除特殊情况外，该公司在中国停止使用劳务派遣制度。此外，原先使用的派遣员工被转为直接聘用人员，肯德基员工认可其以前的工龄；新员工将直接与肯德基公司签订劳动合同。这一结果将使肯德基公司在华数千员工直接受益至少数千万元！

对于弱势群体而言，他们可寻求的帮助途径有限。因此，以当事人为本，应成为法律类民间组织的服务

11 新农村商务信息网，“北京律师佟丽华：探索开展公益法律服务新模式”，网址：http://xnc.shangdu.com/news/144/1/20081112/1255374_3.shtml。

12 北京劳务网，“农民工法律援助律师讲维权故事：经常受各式威胁”，网址：<http://www.bjlaowu.net/fenye/9857/Maintain.htm>；另见网易新闻，《农民工法律援助律师讲述维权故事 公益律师收入低有人只好步行办案》，来源于法制日报，网址：<http://news.163.com/09/0420/08/57B4E8JQ0001124J.html>。

13 见郑直《我为谁的权益而告》，载2001年7月4日《北京青年报》。

14 关于此案有14家媒体进行了15篇报道，如法制日报，《逆向派遣其实就是假派遣》，记者陈晶晶，网址：<http://finance.sina.com.cn/review/20060727/10512768873.shtml>；新京报，《肯德基劳务派遣风波当事人 肯德基主动提和解》，记者杨华云，网址：<http://www.scol.com.cn/economics/bxsh/20060816/200681691404.htm>。

原则，也只有这样的服务才能真正赢得其独立品牌。以两组织为例，在案件没有基本证据时，律师会先试着取证，不是简单拒绝受理案件。尤其是农民工案件，绝大多数都没有劳动合同，很多连基本证据都没有。¹⁵在这种情况下，律师们会凭借自己丰富的办案经验，先帮助农民工取证，然后再决定是否受理案件，而不是像有些机构那样简单拒绝。考虑到执行难的中国处境，两组织将法律服务延伸到执行阶段¹⁶，这也是目前政府法律援助范围所不包括的。对于情形特别紧急的，律师有时还会半夜到工地，与包工头斗智斗勇，为农民工及时争取工资款或工伤赔偿款。¹⁷虽然律师们知道，很多都是他们职责范围外的。但是，他们也知道，在当前的农民工保护现状下，如果不这么做而错过了时机，很多农民工可能就得不到辛苦劳动的血汗钱，从而使他们的生活陷入可怕的恶性循环。

就是专业化和以当事人为本的服务原则，为两组织的服务树立了品牌，也为两组织甚至是法律类民间组织在社会民众中赢得了信任。

(二)、依法维权

不论从社会治理的角度还是从法治的角度，民间组织作为社会建设的重要载体，应该是增加社会信任、增强法律权威的积极因素，而不是消极因素。因此，依法维权应该成为其工作开展的基本定位。依法维权具体包括两个层面的内容：一是积极维护当事人依法拥有的权利；二是引导当事人依法维护权利。

1、尽全力维护当事人合法权利

法治社会如何建设？民众得信法律。如何让民众信法律？就是在他们权利受到伤害的时候，他们能够感受到法律的力量。如何让他们感受到法律的力量？那就是在他们遇到具体法律问题的时候，有人愿意帮助他们通过法律获得应有的公正。

对于弱势群体而言，他们的利益有些可能在立法和政策中没有被顾及，但更多的是，那些已被法律、法规赋予的权利却为强势群体所践踏。往往是，在复杂而昂贵的司法救济制度中，他们以个人的力量，很难通过法律保护自己，从而破坏了他们对法律的基本信任。一个不信任法律的社会，无助人群诉诸非法律手段来解决问题的就更多。¹⁸这既不利于社会秩序，也给他们本就糟糕的处境带来二次伤害。面临这种情况，民间组织就不能挑肥拣瘦，避重就轻。如果看到难的案件就避开，只挑容易引发社会关注的案件处理，尽管能创造社会知名度，但无法体现组织存在的价值，也无法让弱势群体感受到其存在的必要。

工作站和中心充分认识到这一点，只要依据现有法律规定能够实现的权利，律师们就不畏艰险，不畏困难，尽全力帮助当事人。如张某等13位女工被拖欠工资案¹⁹就典型体现了律师的大无畏精神：张某等13位女工受雇于北京市昌平区的一个印刷厂，没有签劳动合同，只是口头约定了工资。2006年9月，因为印刷质量和拖欠工资等问题，发生争执。女工们先向劳动监察求助，但因为对方态度强硬，调解无果，劳动监察也不再碰这棘手的案件。后女工向中华全国总工会求助，全总将其转介到工作站。9月8日双方发生激烈争执，单

15 人民网，“北京市农民工法律援助工作站年度总结报告”，网址：<http://www.mingong123.com/news/21/200805/eb5327bd777904a2.html>。

16 因为社会诚信体系没有完全建立和法院权威不够等原因，执行问题是困扰中国的一个大问题。

17 见北京市法律援助网，“奥运开幕前日十八名农民工讨薪未果企图闹事，启动应急预案法律援助历经两天一夜妥善解决”，网址：http://www.bjlegalaid.gov.cn/zxflzx/zxflzx-fysjt/t20081107_242562.htm。

18 见东方法眼，为权利而自杀——转型中国农民工的“以死抗争”，作者徐昕，网址：<http://www.dffy.com/faxuejieli/zh/200901/20090130182713.htm>。

19 见中国包装网，《记为农民印刷工提供法律援助的公益律师佟丽华、时福茂》，网址：<http://news.pack.cn/qydt/rwzf/20070926/091508.shtml>。

位要求13人晚上6点之前全部离开，不发一分工资。无助的她们有一种质朴的判断，工作站会帮助她们，便给工作站打了电话。考虑到女工的紧急需要和危险处境，工作站即刻派了四位男律师前往，当时单位已经聚集了20多名脚穿尖头皮鞋、身穿运动服的男青年蓄势待打。工作站律师小心谨慎、有理有节地做说服调解工作，从下午5点到晚上将近8点，最后才说服雇主先把11名员工的部分工资结清，其余部分写一份调解协议书，叙明工资支付情况。但是接下来几天，单位并没有按照协议支付工资。13名女工都想要回工资，但是谁也不敢直接去单位要，怕去了就回不来了，便再次请求律师前往。律师答应后，她们就分散回老家了。工作站律师在与厂家沟通无效后，提起了劳动仲裁。在开庭当天，除了厂方代表和律师外，始终有两名保镖形象的人在场，在整个开庭和调解过程中，不时放话威胁律师，甚至辱骂律师。是责任和专业，让律师最终帮助13名女工们讨回了他们应有的血汗钱，并分别邮寄给他们。像这样的棘手、艰险案件，律师处理的可不只这一件。凭着对专业的自信和对法律的负责任，他们总能冲锋在前，也让那些无助的人群因此看到法律的力量和正义的曙光。

有些案件是因为艰险，还有的案件是因为现有诉讼制度设计的问题，让人从经济效益和社会效益上都感觉劳神费，让人感觉处理这些案件不值得。但是，很多弱势群体的案件都具有这个特点，如农民工案件程序复杂、维权成本高是公认的事实。在全某工伤案²⁰中，仅确认劳动关系就花费了一年半的时间。从发生事故到拿到赔偿，共耗时2年9个月，经过了1次行政复议和11次仲裁、诉讼。再如，高某工伤案中，律师为查清事实并确认用人单位，共去法院15次，外出调查取证7次，接待当事人高某25次，申请公告2次。如果没有专职律师精细、繁琐的工作，这些案件就得不到及时处理，而这对弱势群体本身及其整个家庭的影响将是毁灭性的。但也正是这些案件，更需要民间组织和专职律师的专业服务。

社会的公正是建立在对每个社会个体的公正上，对于普通人而言，他们通过什么感受法律？就是要通过个案的司法经历。每一次这样的司法经历带给这些群体的将是对法律信心的增强。只有他们对法律有信心，他们才会在今后的生活中想到用法律来解决问题。对于普通人而言，他们凭什么信任民间组织？就是在他们权利受到伤害却无力救济时，民间组织比他本人更能解决问题。中心和工作站援助过的很多当事人，都通过他们的个案经历增强了对法律的信心，律师们能感受到他们在第一次来工作站时与他们拿到工资和赔偿款离开工作站时对律师和法律态度的明显变化。现在，有些农民工当起了义务普法宣传员，²¹还有的甚至给工友讨回了工资。中心帮助过的很多未成年人，有的是断臂童工，有的是被判处缓刑的失足少年，他们都给律师来信，有些已经重返校园上学，有些诉说将来上大学要学法律，毕业后要成为公益律师。

2、引导当事人依法维权

正如前面所言，民间组织应该是增加社会信任、增强法律权威的积极因素，这就要求其与普通商业律师实体的定位略有不同，不单纯是当事人利益最大化，更要引导当事人依法维权。怎么理解呢？可以说，引导当事人依法维权，是社会对民间组织的应有期待，这是理由之一。理由之二，引导当事人依法维权，有利于民间组织的自我保护。目前，民众以及政府对民间组织的信任尚未完全建立，相关的政策也非常谨慎，如果民间组织把握不住依法维权的底线，会给自身招致麻烦。理由之三，这也是对当事人的保护，寻求法律之外解决问题的手段尽管暂时可能会有作用，但是，潜在的风险却非常之大，有些农民工情绪激动之下违法犯罪，导致家庭更加贫穷甚至四分五裂。

正是基于这样的考虑，工作站和中心一直本着负责任的态度向当事人提供法律服务，对于没有法律依据

20 见刘耀堂《佟丽华：建议修改工伤保险条例保护农民工》，中国律师网，载中国法律信息网，网址：<http://www.law-star.com/cacnew/200705/40008455.htm>；另见郑祖伟《公益律师建议修改〈工伤保险条例〉》，载2007年6月6日《公益时报》，转引自中国法律信息网<http://www.law-tar.com/cac/40009283.htm>。

21 首都政法网，“丰台区聘请农民工‘赤脚律师’为义务普法宣传员”，网址：http://www.bj148.org/fzxc/pfsx/pfzt/pfzt/200812/t20081203_24620.html。

或者在法律上明显有问题的主张,律师会认真劝说当事人放弃并解释理由;对于情绪激动、怀疑法律的当事人,但凡有依法解决的空间,律师也会尽全力把他们拉到依法解决问题的轨道;对于明显存在欺诈行为的当事人,律师也会做细致调查,及时制止他们的这种行为……

河北郭某等68名农民工²²,在经过近两年的艰苦讨薪而没有任何希望时,他们打算把老板砍死,然后集体去中南海自首。中心和工作站多位律师经过3年多的努力,投入了上万元办案成本,终于为他们讨回了被拖欠的工资,使这些农民工最终没有做出极端行为。河南张某²³在北京打工受伤后,因为不能及时获得工伤赔偿,其父到天安门广场打出“李某赔偿我儿子”的条幅,想以此迫使老板给钱,被民警拦下。后经人介绍来到工作站,律师最终依法为其讨回了赔偿款。张某一家人非常感激,其所在的河南荏玉县政府也特意给律师打来电话表示感谢。摔断了腰、老板却不管不问的刘某想“以牙还牙”来报复老板,律师知道后将其拦下,并引导其通过诉讼维护自己的合法权益。律师晚上9点多跑到工地,劝说眼看与包工头发生冲突的被欠薪的五十多农民工保持冷静,并在工地上与包工头斗智斗勇,直到凌晨三点多钟把农民工的47000元欠薪全部讨回……

工作站于2006年3月受理了一起202人讨薪案件²⁴,该案曾经众多国家机关多次调解,但都没有调成。当时,由于证据基本齐全,来寻求帮助的包工头又有经过公证的授权委托书,工作站及时受理了申请,但多次开会研究后,律师从细节材料中发现该案可能另有隐情。为慎重起见,工作站先是安排律师参加了与本案有关的庭审,而后派两名律师到有关省份进行调查。两名律师历时4天,每天工作17个小时,共走访5个行政村、51户、46人,做了37份笔录,最终把案件的来龙去脉搞清楚。原来包工头提交的一些证据系伪证,其真实目的是打着讨薪的旗号追讨工程款。在翔实的调查材料面前,包工头也被农民工律师夜以继日的工作精神所打动,包工头接受了工作站终止援助的决定,并听从了工作站的劝阻,不再上访闹事。至此,一个涉及200多人的群体性事件得以圆满解决。

这里提到的引导当事人依法维权,与前面提到的“避重就轻”、“避难从易”是完全不同的。后者是有法律依据,只是因为处理过程复杂或危险而避开,而前者是因为依据现有法律规定,主张没有依据或者存在明显问题,或者当事人采用法律以外的违法犯罪手段解决问题。长期的实践证明,诱导当事人对那些在法律上本没有依据的主张长期坚持,或者怂恿他导致矛盾激化,都可能对当事人带来巨大伤害。所以说,律师在引导农民工依法维权时所给出的建议,都是深思熟虑的,是有明确法律依据和事实支撑的,是对法律和当事人高度负责责任的。

(三)、主流化

民间组织与周围环境的关系,就如同鱼与水的关系。民间组织的生存和发展离不开外部环境的支持。民间组织能否发挥作用及发挥多大的作用,就看它能为自己争取到多大的外部空间,对于法律类民间组织尤其如此。民间组织积极争取外部空间的过程,实际上就是民间组织主流化的过程。中心和工作站用十年的探索验证了上述结论。两组织还总结出,民间组织主流化过程中,处理好与政府和媒体的关系甚为关键。

1、积极与政府合作

在一些会上,听到来自民间组织的人说,“非政府组织就应该与政府唱反调。”有时听到来自政府的人说,

22 此案有20多家媒体的35篇报道,如:《农民工:讨薪路上依然艰难》,记者李秀玲,2007年1月7日《工人日报》;《农民工维权路上还要劈开几座山》,记者张亦嵘、袁定波,中国普法网,网址:http://www.legalinfo.gov.cn/misc/2006-11/02/content_443750.htm。

23 关于本案报道见《北京律师佟丽华:探索开展公益法律服务新模式》,中国平安网2008年6月8日,网址:http://www.chinapeace.org.cn/dwjs/2008-06/18/content_48670.htm。

24 关于本案报道见《北京律师佟丽华:探索开展公益法律服务新模式》,中国平安网2008年6月8日,网址:http://www.chinapeace.org.cn/dwjs/2008-06/18/content_48670.htm。

“一些民间组织刻意与政府保持距离，他们在基层做了那么多事，我们都不知道，其实，要是早知道的话，很多资源可以协调使用。”

对于前一种观点，即便是在高度自由化的西方国家也已不是主流论点。持这种论点的人，可能还没有真正理解民间组织存在的深远社会意义。在社会治理结构中，政府、市场和民间是存在共生关系的，三者共生的目标就是促进利益协调，从而实现公平发展，这已经是共识。对于后一种观点，反映出民间组织与政府之间的信息不对称。

民间组织应该保持相对独立性，这是没有争议的，但是，说民间组织不应该与政府合作，就过于极端了。其一，对于很多公共产品的提供，尤其是对弱势群体的服务，本应该是政府的责任，民间组织的存在是让政府从直接服务变为间接服务，以提高资源利用的效率和公共产品的质量。两者目标一致，分工不同，本就有充分的合作基础。其二，原则上，民间组织应该与外部环境中的积极因素合作，政府显然是其中的重要因素之一，甚至是外部一切积极因素中最有实力的一个。因此，如果有合作的可能，没有理由不合作。其三，民间组织如果刻意回避政府，如何让政府了解其工作，了解其在社会建设中的重要角色？政府对其不了解，又如何能制定出有利于民间组织成长的政策？政府与民间组织信任关系的建立，也需要双方深度了解，而合作显然是建立这种了解的最好渠道。

中心和工作站自成立以来，一直高度重视与政府相关部门以及司法机关、政府类社会组织合作。目前，已与全国人大常委会、最高人民法院、最高人民检察院、国务院农民工办、国务院妇女儿童工作委员会、人力资源和社会保障部、民政部、公安部、司法部、国家人口与计划委员会、全国妇联、共青团中央、中华全国律师协会、中国儿童收养中心、中国法律援助基金会、社科院法学所、中国青少年犯罪研究会、北京市人大、北京市高级人民法院、北京市人民检察院、北京市未成年人保护委员会、北京市司法局、北京市法学会、北京团市委、丰台人大、丰台政法委、丰台司法局，以及与很多省的共青团组织、司法行政部门、律师协会、司法机关等建立了密切的联系，并与很多部门建立了深度合作关系。²⁵

不仅合作主体多层次，多部门，而且合作方式多元化。有些已经建立机制化合作，如：与中华全国律师协会合作，中心和工作站分别成为未成年人保护专业委员会和法律援助与公益法律事务委员会秘书处²⁶；与北京团市委合作，在中心设立北京市未成年人保护委员会法律事务部²⁷；与北京市高院、福建高院、河南高院联合开展未成年人司法救助基金²⁸；与东城区人民法院少年法庭签订少年司法合作备忘录；与丰台区司法局合作，长期承接其148热线咨询解答。

鉴于在相关领域的专业能力受到充分认可，两组织还与政府相关部门就人员培训、课题研究、立法修法 and 两网评估等方面建立深度合作。如中心多名律师担任国务院妇女儿童工作委员会《儿童发展纲要》评估督导专家²⁹；承接全国人大内司委委托的《未成年人保护法》解读读本学校保护部分的编写³⁰；承接民政部法制办委托的《社会福利机构未成年人保护手册》法律部分的撰写工作；受北京市教委委托，就北京市专门教育立法开展专题研究³¹；承接全国妇联委托的全国妇联系统培训教材《未成年人保护法读本》的编辑工作³²；受

25 见《中国律师与未成年人权益保障》，2007年第2期，《中国未成年人保护志愿律师手册》。

26 见《中国律师与未成年人权益保障》，2007年第2期，《中国未成年人保护志愿律师手册》。

27 见张文娟主编《中国未成年人保护机制研究》，法律出版社2008年12月出版，第128页。

28 见罗书臻《北京二中院启动未成年人司法救助基金——刑事案件被害人的女儿摆脱辍学困境》，中国法院网<http://www.court.gov.cn/news/bulletin/region/200811140020.htm>；另见福建省未成年人保护委员会《转发〈福建省高级人民法院关于在全省各级人民法院开展“新起点”小额爱心资助公益活动工作的通知〉的通知》，http://www.fjedu.gov.cn/html/2008/06/376_35805.html。

29 见《中国律师与未成年人权益保障》，2006年第4期“工作快讯”。

30 该书是由全国人大内务司法委员会未成年人保护法修订起草组织编写的《未成年人保护法学习读本》，中国法制出版社，2007年2月第一版。

31 2007年，受北京市教育委员会委托，北京青少年法律援助与研究中心开展专门教育立法研究并撰写研究报告。

32 2008年，受全国妇联委托，北京青少年法律援助与研究中心律师负责编写《未成年人保护法读本》作为妇联干部培训教材，全书总计大约16万字。

中国收养中心、最高人民法院、全国妇联的邀请为全国福利院院长、少年法庭法官和妇儿工委基层干部等开展法制培训³³。

这种多元合作，理顺了未成年人和农民工这两个群体的利益诉求表达机制，更有利于两组织对未成年人和农民工的法律服务工作；这种多元合作还更好地保障了两组织的独立性，并为两组织的人才培养搭建了广阔的平台。

2、与媒体建立深度良性合作

对于民间组织的主流化而言，媒体也是非常具有影响力的合作伙伴之一。与其他国家媒体相比，中国的媒体除了有面向公众的影响职能外，部分媒体还具有面向高层领导人的内参职能。后者是中国媒体独有的职能，其对决策的影响力非同一般。正是因为中国媒体有这样的强大职能，民间组织与媒体建立良性合作，对于其主流化发展意义非同寻常。

中心和工作站自成立以来，一直高度重视与媒体的合作，目前已经与中央电视台、新华社、人民日报、中国国际广播电台、中国青年报、法制日报、检察日报、中国律师杂志、望周刊、中国律师网、北京青年报、北京日报等众多媒体建立深度合作关系。媒体在以下几方面帮助两组织开展工作，实现主流化：

一是通过媒体报道推动个案的进展。有些案件中，法律规定是明确的，只是因为对方太强势，不依法办事，而导致案件进展困难。媒体会通过个案的追踪，将对方的恶劣行为暴露在公众面前，以此推动案件的进展。在工作站和中心办理的大量案件中，都有媒体个案跟进的努力，有的甚至是多家媒体介入。

二是通过新闻发布会就一类案件暴露出的问题向民众和决策者传达信息。当中心和工作站发现多个案件重复出现类似问题时，也会通过媒体将讯息传达给民众和决策者，以推动“亡羊补牢”，如中心和工作站曾就伤残童工问题³⁴、劳务派遣问题³⁵等专门召开新闻发布会，每次都有十家以上知名媒体参加，其中新华社北京分社关于伤残童工的报道，得到了当时北京市委、市政府领导的批示。

三是通过知名媒体发布重大调研成果，将一些关键问题和相应建议传达给民众和决策者。中心和工作站曾就教师语言暴力问题³⁶、未成年人性侵害现状³⁷、民办学校教学现状³⁸、农民工维权成本³⁹等社会热点、难点问题

33 见《中国律师与未成年人权益保障》，第2006年第3期、第4期、第5期“工作快讯”。

34 见王亦君《17岁少女工伤失右臂难获赔偿》，载2006年1月17日《中国青年报》。

35 2006年6月12日北京农民工法律援助工作站就案件劳务派遣问题专门召开发布会，之后就该案件与肯德基中国公司进行交涉，2006年8月8日，肯德基公司宣布该案以和解告终，并且肯德基叫停劳务派遣方式，具体内容见：《和谐的劳资关系有助于企业长期良好成长——访北京市致诚律师事务所主任佟丽华》，中国贸易新闻网2006年6月12日，作者王哲，网址：<http://www.nyw.cc/n/n4786398.html>；东方网2006年8月9日报道，《肯德基承认管理有“纰漏”叫停“劳务派遣”方式》，网址：<http://finance.eastday.com/eastday/finance/node77285/node77756/node153723/u1a2241546.html>。

36 见《教师“语言暴力”调研报告》，张雪梅，《中国教师》2006年第6期；另外该报告也被《法制日报》、《中国教育报》、《现代教育报》、《中国青年报》等多家报刊、网站刊登。

37 北京青少年法律援助与研究中心多年来一直关注未成年人遭受性侵害问题，研究成果主要见：2009年北京青少年法律援助与研究中心编辑发布《律师办理未成年人遭受性侵害案件指导手册》，该手册被发放给未成年人保护志愿律师以及相关未成年人保护工作者；张文娟，《色情服务与未成年人——一个沉重而让人深思的话题》，载《未成年人法学——社会保护卷》，法制出版社，2007年9月出版；另见李艳楼，《未成年人遭受性侵犯，定罪之难？》，载《中国律师与未成年人权益保障》2006年第4期，总第11期。媒体报道另见崔丽，“莫让花季再流泪——专访北京青少年法律援助与研究中心主任佟丽华”，中国青年报，2009年4月13日报道，网站链接：http://www.cyol.net/zqb/content/2009-04/13/content_2619686.htm。2009年4月25日，北京青少年法律援助与研究中心召开“性侵害案件未成年人保护研讨会”，见法制网记者张鑫，《法律存在缺陷，未成年被害人很受伤——保护遭受性侵害的未成年人仍需完善相关法律》，法制网2009年5月9日，网址：http://legaldaily.cn/misc/2009-05/09/content_1088992.htm。

38 见北京青少年法律援助与研究中心《北京市民办流动人口子女学校调研报告》，见中国青少年维权中心网站<http://www.chinachild.org/zhi/rdgz/3txt.asp?id=204>，另见《中国律师与未成年人权益保障》2009年第1期，总第22期。

39 2004年，中心就农民工维权成本问题开展全国性调查，并最终完成了《中国农民工维权成本调查报告》，该报告产生广泛社会影响，两天内就有40多家中外网站转载，如《农民工不能承受的维权成本之重》，作者子非我，网址：<http://www.jcrb.com/zyw/n635/ca382829.htm>；中华全国总工会，《把农民工维权成本降下来》系列报道6，作者桑葚，网址：<http://www.aclu.org/template/10004/file.jsp?aid=50457>；《农民工欠薪难讨的制度症结》，记者崔丽，《中国青年报》2005年6月9日，网址：http://zqb.cyol.com/content/2005-06/09/content_1127970.htm。

题进行过系统调研，并通过媒体将调研的核心成果向社会发布，引起了强烈反响。其中，农民工维权成本的调查结论被中青报独家报道后，当天四十多家网站转发，国务院有关部门都引用其中的核心数据；结合贵州习水公职人员强奸案件的背景，中心性侵害案件报告通过中青报⁴⁰公布后，中央有关部门给中青报打电话，关注这份报告，并给予积极评价。

四是通过媒体宣传公益法律服务精神和公益律师。中国有14万名律师⁴¹，但是专职的公益律师却非常缺乏，尚不足百名，公益法律文化在中国律师界尚没有主流化，社会的认可度也非常低。为此，中心和 workstation 与中央电视台的讲述⁴²和新闻会客厅⁴³等栏目，与人民日报⁴⁴、法制日报⁴⁵、中国律师网⁴⁶、中国律师杂志⁴⁷等一起宣传律师参与未成年人保护工作的亮点⁴⁸，宣传第一代农民工律师⁴⁹的茁壮成长，社会效果非常好。

五是将一些核心问题的建议通过内参直达高层关注。中心和 workstation 已经推动就流浪未成年人救助、专职农民工律师的培养、农民工维权成本高等写成内参，得到了国家领导人的批示，对于制度的构建和政策的出台发挥了积极作用。

都说，媒体是一把双刃剑。所以，对于民间组织来说，在与媒体的合作中，一定要建立深度联系，这样双方才能培养信任和共识，才能达到事半功倍的效果。从上面的介绍来看，中心和 workstation 与多家知名媒体已经建立起战略合作伙伴关系，是一种基于充分信任和共识的双赢合作，是有利于民间组织主流化，也有利于民众和决策者及时掌握实务和研究信息的合作。

3、广泛动员一切社会力量

目前关于民间组织的政策支持是相对有限的，一些组织对此也颇有抱怨。与很多组织不同的是，中心和 workstation 对此的态度更务实：一方面会利用各种机会，推动相关政策的完善；另一方面，要在现有法律框架下争取更多的拓展途径。除了上面提到的政府和媒体外，两组织还广泛动员其他任何可以合作的力量，以优化自己的外部处境，调动更多资源帮助更多的人，做更多的事。其中，与中国法律援助基金会及高校诊所教育的合作值得单独一提。

与中国法律援助基金会的合作，解决了民间组织筹集善款时不能给予捐赠者抵税或免税待遇的局限，从而拓展了工作空间，为更多弱势群体带来公平的希望。从2006年开始，中心和 workstation 已经推动中国法律援助基金

40 崔丽，“莫让花季再流泪——专访北京青少年法律援助与研究中心主任佟丽华”，中国青年报，2009年4月13日报道，网站链接：http://www.cyol.net/zqb/content/2009-04/13/content_2619686.htm。

41 见徐盈雁《我国执业律师总数达14万人》，载2008年10月28日《检察日报》。

42 见中央电视台CCTV10“讲述”栏目《我有一个梦想》。

43 见中央电视台“新闻会客厅”栏目2007年5月24日《佟丽华：我为青少年维权》；另见该栏目2007年11月5日《佟丽华：十年公益维权路》；又见该栏目2008年1月26日《佟丽华：请农民工兄弟相信法律的力量》。

44 见《北京农民工法律援助站律师免费专职帮农民工打官司：变农民工跑为律师跑》，《人民日报》2007年9月17日；另见人民网2007年10月15日报道，《10律师两年为农民工讨薪1400万》，网址<http://acftu.people.com.cn/GB/6376462.html>。

45 见刘宏《农民工法律援助律师讲维权故事：经常受各式威胁》，《法制日报》2009年4月20日。

46 见中国律师网《拿什么奉献给你，我们的孩子——保护未成年人，律师在行动》，中国律师网2007年6月1日，网址<http://www.acla.org.cn/pages/2007-6-1/s39544.html>。

47 见陈秋兰《让童年像花儿一样盛开——中国律师参与未成年人保护工作侧记》，载《中国律师》2008年第11期。

48 见张文娟，《中国律师参与未成年人保护工作八大亮点》，载人权杂志2005年第4期。

49 是指北京农民工法律援助工作站培养的，专职从事农民工法律维权公益法律服务的律师，各媒体报道中也对第一代农民工律师进行过报道，如：李朝民《农民工律师：法援背后的故事》，农民日报社主办三农在线2008年1月4日，网址：http://www.farmer.com.cn/sh/dg/shgz/200801/t20080104_375476.htm；另见中央电视台《新闻调查》栏目于2008年10月18日播出的《农民工律师》专题电视节目。

会设立了“未成年人法律援助与保护基金”⁵⁰、“农民工法律援助基金”⁵¹、“12·4法律援助基金”⁵²三个分基金，为农民工、未成年人和其他群体的公益法律服务筹集社会善款。以“中国未成年人法律援助与保护基金”为例，已经从香港爱心人士刘銓雄先生那儿筹款100万港元，作为该基金的启动资金。该分基金已发起三个项目，关注未成年人的健康成长与公平保护，具体包括：“新起点——小额爱心基金项目”，对权利受到侵害无法得到实际赔偿的未成年人给予小额资助，已为169名未成年受害人提供了19万元的资助；设立“未成年人维权网络律师办案资助项目”，通过补贴直接费用鼓励律师多办理政府法律援助之外的未成年人维权案件，已资助律师办理500多件未成年人保护案件；设立“失足少年奖学金”，对家庭生活确实困难、本人又愿意求学的失足未成年人给以资助，已资助了43名失足未成年人36670元，用于学习一技之长，还与司法部预防犯罪研究所《黄丝带》月刊于2007年发起了建国以来首次以未成年服刑人员为征文对象的“‘黄丝带杯’新起点与成长”征文活动。⁵³

参与高校的诊所教育是动员高校资源的重要形式。高校的优势是有着丰富学生资源，但高校面临的问题是，现有的法学教育在教给学生实务技巧和职业伦理培训方面有很大欠缺。对于法律类民间组织而言，人手严重欠缺，他们的需求是志愿资源；从长远来看，要想推动公益法律文化的主流化，需要从法学院校这个源头上推动公益法律文化。两组织正是基于对学校 and 民间组织的优势和需求的准确判断，积极推动律师参与高校法律诊所教育。2007年8月，两组织还推动中华全国律师协会未成年人保护委员会、中华全国律师协会法律援助与公益法律事务委员会与中国法学会法学教育研究会诊所法律教育专业委员会联合发布了推动两方加深合作的倡议书。⁵⁴据不完全统计，从2006年至2008年，工作站就接收超过150名大学生实习，至少涉及40个不同的法学院。实习大学生普遍反映，通过在工作站实习，不但学到了很多书本上没有的实践知识，而且深切感受到了农民工等弱势群体的生活艰辛。

动员一切社会力量的理念，不仅仅是民间组织的一种生存智慧，更反映出其建设性思维。发现问题、发牢骚是相对容易的，在困难的处境中，发现问题后能利用自己的智慧解决问题，对社会的贡献才是建设性的。

（四）、科学内部建设

如果说植根民众、依法维权和主流化是因为其优化组织外部生存环境而被列为立身之本的话，那么接下来说的科学内部建设如果不算更重要，至少也与其有同等的分量，因为其真正解决的是组织的本的问题。没有科学的内部建设，外部环境再好，民间组织也没有能力开发利用外部资源，没有能力抓住发展的机遇。从中心和工作站十年的发展来看，民间组织科学内部建设的两大支柱是制度建设和人才培养。

1、制度建设

由于中国民间组织的制度化成长环境尚不完全具备，很多民间组织的创立依赖的是某个公民的意识和投

50 见全国律师协会网站2007年4月2日新闻《全国律协专业委员会工作大事记》，<http://www.acla.org.cn/pages/2007-4-2/s38789.html>。

51 见《为农民工维权和法律援助专项基金启动》，中国发展门户网2007年2月28日，<http://cn.chinagate.cn/chinese/rdzz/42323.htm>。

52 见《中国法律基金募集200万元解决农民工维权问题》，正义网2007年12月4日，<http://review.jcrb.com/200712/ca659484.htm>。

53 该数据来源于2008年全国律师协会未成年人保护专业委员会秘书处向中国法律援助基金会提供的项目执行报告，是截止到2008年6月的统计数字。

54 2007年9月，在由中国诊所法律教育专业委员会主办，中华全国律师协会法律援助与公益法律事务委员会、中华全国律师协会未成年人保护专业委员会协办，北京大学承办的“2007国际诊所法律教育与法律职业论坛”上，主办方和协办方共同发出《倡议书》，载中国诊所法律教育网站2007年9月4日更新的最新动态，http://www.cliniclaw.cn/article_view.asp?id=361&menuid=20036198507592&menuname=最新动态。

入，法律类民间组织尤其如此。这种创立方式导致民间组织在成立之后的较长一段时间内（我们不妨将其称为“民间组织的哺乳期”），资金筹集、人员招聘和组织发展定位都面临着很多现实的压力，需要非常稳定的“乳源”。谁最可能成为稳定的乳源呢？从众多民间组织发展的经验教训来看，往往是创始人本人。成功发展起来的组织，通常都是创始人勇于承担责任，帮助组织度过了艰难的哺乳期。

但是，我们也会发现，这种哺乳期对创始人本人的严重依赖，很容易导致一个奇怪的现象，那就是创始人将这种依赖变成了习惯，结果导致管理上过于个人化，反过来，阻碍了组织的进一步发展。

中心和工作站如同其它民间组织的创立一样，也有过艰难的哺乳期，正是创始人勇于承担责任，才能发展至今。但是，与众多组织不同的是，两组织的创始人没有将依赖变为习惯，而是根据组织发展的情况，推动组织从个人管理向制度型管理方向转变。具体包括：

在机构上，建立集体决策机制，实现重大事项决策民主化。中心和工作站共同筹建一个管理委员会，决定中心和工作站的重大发展问题，委员会成员包括创始人、负责中心和工作站日常事务的两位副主任、负责研究和项目的副主任与财务负责人5人组成。管理委员会原则上每周召开一次会议，也可就重大事项临时召开会议。

通过员工大会，讨论出台员工手册⁵⁵，将与员工有关的事项明确化，防止随意决断。员工手册的内容包括人员招聘、加班考勤、行政以及财务管理、薪酬与福利、风险预防与控制、纪律处分、组织文化、受理以及办理案件等内容。所有员工人手一册，对员工的奖惩由制度决定，而非由创始人个人随机决定。

建立起科学、明确的监督与评估制度。一是建立网上日志系统，对北京及其全国网络的专职律师和工作人员，进行网上日常工作监督；二是建立工作报告制度，所有员工月度或季度都要提交工作报告，总结本人的工作内容，并作为评估的重要依据；三是开发量化指标，建立客观评估体系，通过打分评估专职人员的工作情况，并根据评估结果设定不同的激励机制⁵⁶。

2、人才战略

如果说制度是保障事业发展的基石，那么人才就是保障事业发展的核心动力。当前，对于众多民间组织而言，筹款的压力只是表面上的压力，真正的压力是人才的压力。在社会治理结构的三大因素中，政府和市场显然比民间在吸引人才方面更有优势。与此同时，民间才刚刚起步，本身也没有形成人才市场。这种现状导致民间组织在人才战略上必须有两个心理准备：一是要有自己培养人才的心理预期；二是要有留住人才的眼光。中心和工作站正是因为较早看到了这两点，并探索出了相对成熟的人才培养机制，从而实现了人才的良性发展。

中心和工作站建立了“手把手”人才培养模式。两组织对人的培养是不遗余力的，所有新来的人员，不论是律师还是研究人员，都会有相应的、经验丰富的老员工进行手把手式的培养。从诉讼文书撰写、取证技巧，到案例分析文章的结构和项目申请书的格式等，老员工会不厌其烦地指导和修改，帮助新员工一步步地积累经验，提高能力。

为员工设定专家型律师培养目标，并为人才的发展搭建广阔的平台。对于民间组织的律师，显然既不能当官，又不能发财，他们职业发展的目标在哪里呢？中心和工作站为律师和研究人员设定了专家型人才目标。这个目标不仅仅是口号，两组织为鼓励律师往此方向发展，专门设定激励机制，如鼓励律师不仅办案，还要写案例分析，并给与物质奖励；鼓励律师外出讲课，所有报酬归本人所有等。除了物质激励外，两组织还会

55 《致诚公益团队员工守则》于2008年6月经职工大会讨论通过并印刷第一版，2008年7月1日起实施；于2009年4月经职工大会讨论通过修改并印刷第二版，2009年5月1日起实施。

56 见2008年7月，北京市农民工法律援助工作站以中华全国律师协会法律援助与公益法律事务委员会秘书处名义发布的《推动律师参与农民工法律服务实施办法（试行）》，该办法规定了对农民工法律服务专门机构和农民工法律服务专职律师的评估指标和评估机制。这是中国本土民间组织首次开发有关民间组织和专职律师的评估体系。

拓展外部平台，为员工尽可能多地创造这样的机会，如通过各种有力的推荐方式，让年轻律师获得接受媒体采访、外出讲课和参加重要会议的机会等。

建立人尽其才的分类培养机制，让每位员工都找到富有成就感的定位。对于业务能力强、研究和英语弱一些的律师，两组织会让他们侧重办案，以积累丰富的办案经验，并让他们尽可能多地参加国内重要业务会议和接受媒体采访，并积极推荐其担任行业协会和相关机构的职务，参加一些国内重大评选活动，以提升其知名度。对于研究能力强、英语好的新毕业生，两组织会侧重培养他们的研究能力和项目管理能力，并积极推荐他们参加一些国际会议和境外访问学习项目，以开阔视野，更好提高他们的英语和研究能力。

正是通过上述不遗余力的人才培养模式和人尽其才的人才发展战略，中心和工作站已经建立了一个分工协作、优势互补的人才队伍。30名专职人员当中，既有办案经验丰富的专家型办案律师，也有来自名校法学院的专业研究和项目管理人员。这种人才队伍为民间组织在更高、更广的层面上发挥影响奠定了坚实基础。

除了全面的人才培养机制外，两组织还非常重视人才梯队建设，建立稳定的、独当一面的骨干律师队伍。目前，两组织已自主培养的骨干律师包括张雪梅、时福茂、张文娟和王芳等人，他们已经在未成年人法律服务和法学研究、农民工法律服务和法学研究以及项目管理方面独挡一面。梯队建设和稳定骨干队伍，既是“手把手”人才带动和培养的需要，也能起到稳定整个组织人才的效应。

正是通过全面人才培养机制和梯队建设与稳定骨干队伍的策略，中心和工作站实现了人才的全面开发和高度稳定，而这也是两组织可持续性发展的核心动力和超强竞争的软实力。

二、作为发展之策的四大模式

植根民众、依法维权、主流化、科学内部建设是中心和工作站作为立身之本的基本战略。接下来的话题是，两组织如何发展成为中国最有影响力的法律类民间组织。除了上述四大立身之本之外，还要归功于两组织探索出的四大发展之策。这四大发展之策为：从直接法律服务到实证研究再到政策倡导的利益诉求综合表达模式，民间组织与行业协会优势互补的全国拓展模式，专职律师与志愿律师相结合的律师资源最大动员模式，立足国内与面向国际的稳步国际化模式。这四大策略可谓立足中国实际，实用而富有智慧。

（一）、从直接法律服务到实证研究再到政策倡导的利益诉求综合表达模式

如果民间组织只做实务，不作研究，那它们只能永远关注微观和具体案件，只会埋头适用法律和政策，而不能提出好的改革建议。如果民间组织只做研究，不关注实务，那它们就会陷于空谈，问题找不准，建议不可行。实务，让民间组织植根于民众，让民众直接受益；植根于现实，把问题找准。研究，让民间组织对问题进行理性分析，并根据现实需要提出可行性立法建议。所以，只有民间组织发展以实务为基础、以研究和政策倡导为核心的利益诉求表达综合模式，才能使其社会服务职能效果最大化。中心和工作站皆为此种模式，并探索出了很多可复制的经验。

两组织通过提供咨询和办理法律援助案件为未成年人和农民工提供直接法律服务。但是，两组织的服务却并不止步于此。一个案件只能帮助一个或几个当事人，而一个好的法律条款却让更多的人受益。对于政策制定者而言，他们特别缺乏立法和政策执行的一手信息，而这也是完善立法和政策的基础性信息。两组织就发挥了这样一个桥梁作用，从直接法律服务中发现问题，然后通过专题研究或实证调查报告形式，将问题予以提炼、总结，并通过研究提出具体可操作的建议，从而推动立法和政策的完善。如工作站出版的《农民工

欠薪问题研究报告》、《工伤问题研究报告》、《群体性案件问题研究报告》⁵⁷等得到了北京市司法局、人力资源与社会保障部工伤保险等部门的高度重视。中心也专门就未成年人户口登记问题、未成年人医疗保障问题⁵⁸、流浪未成年人救助问题⁵⁹、学校语言暴力问题⁶⁰、未成年人受到性侵害问题⁶¹、女童特殊保护问题、工读教育问题、少年司法制度问题等开展专题研究，其中流浪未成年人救助研究被有关媒体写成内参，国务院总理温家宝对此专门做出批示，要求尽快制定独立流浪未成年人救助制度⁶²，未成年人医疗保障制度研究也在2008年两会期间被《中国教育报》和人民网予以大篇幅专题报道⁶³。

针对公益法领域理论研究落后的现状，除了专题研究外，两组织还进行系统研究，已经出版了《未成年人法学》(2001)⁶⁴、《未成年人法学》(系列丛书)(2007)⁶⁵、《中小学实用法律丛书》⁶⁶、《和谐社会与公益法》⁶⁷、《中国未成年人保护机制研究》⁶⁸、《谁动了他们的权利——中国农民工维权案例精析》⁶⁹、《谁动了他们的权利——中国农民工权益保护研究报告》⁷⁰等著作近40本，3000余万字，在中国未成年人保护、农民工保护和公益法等学术研究领域占有重要位置。其中，《未成年人法学》一书，首次将未成年人作为独立法律主体研究，把民事、刑事、行政、诉讼程序等部门法中与未成年人有关的内容综合成一个新的体系，开辟了未成年人法学这一学科。

正因为两组织在未成年人保护、农民工保护和法律援助等领域的系统深入研究，使其深度参与了《北京市未成年人保护条例》、《北京市法律援助条例》、《未成年人保护法》、《劳动争议调解仲裁法》、《社会保险法》等法律法规的修订起草工作。具体包括：

2003年，受北京团市委的委托，中心就《北京市未成年人保护条例》修订进行前期立法调研，并且起草《条例》修订草案。由佟丽华律师牵头，作为起草组的核心成员，完成了从第一稿到第七稿的起草工作，并全程参与了调研、论证和向北京市人大常委会的汇报工作，直至最后通过。2004年，受全国人大常委会委托，共青团中央负责《未成年人保护法》修订草案前期起草工作。共青团中央便委托中心进行前期立法调研和修订草案第一稿的起草。草案到人大阶段后，佟丽华律师被邀请深度参与了草案的修改讨论，成为民间专家中参与最深的一个。2009年，受全国妇联邀请，中心律师参与《预防与制止家庭暴力法（草案）》的调研和建议稿的论证工作，很多从实践案例中总结的立法建议被建议稿采纳。

工作站也在参与立法中发挥类似重要的作用。如在《劳动争议调解仲裁法》制定阶段，全国人大内司委曾专门到工作站进行立法调研，佟丽华律师被邀请参与全国人大的内部立法论证，其关于取消劳动仲裁收费、

57 载《谁动了他们的权利？——中国农民工权益保护研究报告》，法律出版社2008年11月出版；

58 见张文娟《细若游丝的年幼生命 期待健康“救生圈”》，《中国教育报》2008年3月9日第三版，另见中国教育新闻网，http://www.jyb.cn/zgjyb/three/200803/t20080309_147097_3.html，2008年3月9日；载《未成年人法学系列丛书——社会保护卷》，法律出版社，2007年9月第一版，第79页；该文还收录于《构建未成年人法律体系研究》，北京市法学会未成年人法学研究会主持编写，北京出版社2009年2月第1版，第193页。

59 见吴向荣《流浪儿童救助制度研究》，载《未成年人法学系列丛书——社会保护卷》，法律出版社，2007年9月第一版，第147页。

60 见《教师“语言暴力”调研报告》，张雪梅，《中国教师》2006年第6期；另外该报告也被《法制日报》、《中国教育报》、《现代教育报》、《中国青年报》等多家报刊、网站刊登。

61 见《花季泪：未成年人遭受性侵害案件分析报告》，记者崔丽，《中国青年报》2009年4月13日。

62 见《佟丽华：捐出正义》，载2007年12月《公益时报》，转引自新浪网2007年12月22日，网址：<http://gongyi.sina.com.cn/axrw-3/2007-12-20/1357320.html>。

63 见张文娟《细若游丝的年幼生命 期待健康“救生圈”》，《中国教育报》2008年3月9日第三版，另见中国教育新闻网2008年3月9日，http://www.jyb.cn/zgjyb/three/200803/t20080309_147097_3.html。

64 佟丽华著，法律出版社，2001年3月出版。

65 该系列丛书包括四册，即家庭保护卷、社会保护卷、司法保护卷和学校保护卷，佟丽华主编，法律出版社，2007年9月出版。

66 《中小学实用法律丛书》，包括《中小学法制教育手册》、《学生伤害事故预防及处理手册》、《中小学师生权益保护手册》3册，群众出版社，2004年2月1日出版。

67 《和谐社会与公益法——中美公益法比较研究》，佟丽华主编，中国民主法制出版社，2005年7月出版。

68 《中国未成年人保护机制研究》，张文娟主编，法律出版社2008年12月出版。

69 《谁动了他们的权利？——中国农民工维权案例精析》，佟丽华主编，法律出版社，2006年6月出版。

70 《谁动了他们的权利？——中国农民工权益保护研究报告》佟丽华主编，法律出版社，2008年11月出版。

简化仲裁程序的建议都受到高度重视。很多农民工因工受伤后，用人单位逃避责任，不支付医疗费，导致农民工因延误医治而病情加重甚至死亡。多年来，工作站一直就此问题进行呼吁。在《社会保险法》起草过程中，工作站多次与人力资源和社会保障部、全国人大、国务院法制办等负责官员进行沟通，其政府垫付医疗费而后由政府追缴的建议受到各方重视，已经被正式列入草案。

2008年，中心和工作站还应北京市司法局邀请，参与《北京市法律援助条例》草案的起草与论证工作。民政部等相关部委、辽宁、山东等省在制定与未成年人有关的政策和地方立法过程中，中心的意见也受到高度重视。

（二）、民间组织与行业协会优势互补的全国拓展模式

如何想到民间组织与行业协会的结合，这就涉及到对两者目前工作开展的优势和局限的深入了解。民间组织的优势是：有专职人员，有专业知识，有系统推动一个领域的理念和经验；局限是地域拓展的限制和缺乏行业辐射的影响力。对于行业协会而言，优势也很明显。像中华全国律师协会，它对全国律师有业务指导职能，可以发布行业政策，在机构建设上，也实现了全国、省、地市的三级网络体系。当然，对于行业协会而言，其实质发挥作用也面临挑战。像中华全国律师协会，虽然也建立了十四个专业委员会，并对相关领域的工作进行指导，但是，委员会有做事的架构，却缺乏专职做事的人，也缺乏系统的工作开展理念和经验。

正是基于对上述民间组织和行业协会的优势与问题的深刻把握，中心和工作站与中华全国律师协会建立了战略伙伴关系，探索出了法律类民间组织与行业协会优势互补的全国拓展模式。如中心于2003年成为全国律协未保委的秘书处，承担指导全国律师参与未成年人保护工作的职能；工作站于2007年成为全国律协法律援助与公益法律事务委员会秘书处，承担指导全国律师参与包括农民工法律援助在内的公益法律服务工作。

作为秘书处，两组织协助中华全国律师协会推动专业委员会的全国性覆盖，如中心于2004年推动中华全国律师协会下发《推动律师参与未成年人保护工作的意见》⁷¹，明确要求各省、市、自治区律师协会要建立未成年人保护委员会，并对委员会的工作给与倾斜性支持。到目前为止，在未成年人保护领域，全国27个省、市、自治区已经建立未成年人保护委员会，另有86个地市级律师协会主动建立未成年人保护委员会，使未成年人保护工作也实现了三级网络。与此同时，还有一个8189名的志愿律师网络同时发展。这使得中国律师参与未成年人保护工作成为律师参与公益法律服务工作最早实现行业化、组织化发展的领域。在农民工领域，工作站也推动中华全国律师协会于2006年初下发了《关于推动农民工法律援助工作的意见》⁷²。《意见》明确提出，要“在所有省、自治区、直辖市至少建立一家农民工维权律师服务机构”。到2008年底，在北京之外，全国已建立了18家农民工公益法律服务专门机构，律师组织化参与农民工公益法律服务正有条不紊地进行。可以说，没有全国以及各省律师协会的大力支持和强大的组织动员能力，这种发展速度是不可能实现的。⁷³

行业协会的支持和参与还体现在更多方面，如全国律师协会对未成年人保护专业委员会的经费一直给予特别支持，并专门设立了“未成年人保护特别贡献律师”的表彰机制；绝大多数省律师协会免收专职未成年人保护和农民工保护律师的年检注册费用；天津、江西、山东、山西、四川等省都从会费中确定专门预算以支持农民工法律援助工作站的工作；很多省律师协会都积极协调法律援助部门通过办案补贴方式支持当地工

71 见中国律师网2006年5月59日报道，<http://acla.org.cn:8088/program/article.jsp?CID=983778365&ID=35055>；该文件具体内容见中国律师网，网址：<http://www.chineselawyer.com.cn/program/article.jsp?ID=20438&CID=605850858>。

72 见中国律师网2007年2月4日报道，网址：<http://www.acla.org.cn/pages/2007-2-4/s38195.html>；该文件具体内容见中国律师网2006年5月15日，网址：<http://www.chineselawyer.com.cn/pages/2006-5-15/s34851.html>。

73 对于各地建立农民工公益法律服务专门机构的情况，各媒体都有报道，如中国律师网2008年4月29日报道，《全国律协推动律师深入参与农民工法律援助》，记者樊治强，网址：<http://www.acla.org.cn/program/article.jsp?CID=542347961&ID=44548>；另见《全国律协法律援助与公益法律事务委员会2007年度工作总结2008年度工作计划》，网址：<http://www.chineselawyer.com.cn/pages/2008-3-31/s43703.Html>。

工作站的发展……

委员会的全国性覆盖只是工作开展的载体，作为秘书处，两组织还将自己在业务领域探索出的体系化理念和经验，通过行业协会的业务指导职能和发布行业政策的职能迅速推广到全国。从2004年开始，中心推动全国律协创办了刊物《中国律师与未成年人权益保障》；从2009年开始，工作站推动全国律协建立律师参与农民工公益法律服务简报，而中心和工作站都办有专业性的网站“中国青少年维权中心⁷⁴”和“中国农民工维权网⁷⁵”，通过上述平台，将专业知识、办案技巧、组织发展等经验动态发布给全国参与未成年人保护和农民工维权工作的律师。两组织还通过组织各种培训和发布行业政策等方式，推动各级律师协会和全国律师更有质量的参与到对未成年人和农民工的公益法律服务工作中。如2007年5月，中心与全国律协未保委在17个省开展了为期一年多的“百城千县”未成年人保护志愿律师能力建设培训，其中80%被培训律师来自县级，直接带动了未成年人保护律师网络在县域层面的发展。

这种民间组织与行业协会相结合的模式优势明显，并得到了实践的检验。目前，未成年人保护委员会和法律援助与公益法律事务委员会已经成为中华全国律师协会重要的公益品牌，对于中心和工作站而言，它们也通过两个委员会迅速实现了模式和经验的全国性推广。

（三）、专职律师与志愿律师相结合的律师资源最大动员模式

专职律师模式，不论对于公益法的发展，还是对于弱势群体的保护，都是非常好的模式。但是，根据目前弱势群体的需求量，单纯专职律师模式需要的投入是非常高的，在中国尚不现实。从另一个角度看，律师行业不是一个纯商业的领域，法律人的心底都或多或少有着一份伸张社会正义、勇于承担社会责任的感情，如果有合适的平台，很多律师还是愿意在业余时间做一些力所能及的公益法律服务工作。

基于这样一个认识，在一个案件的触动下，中心推动建立了中国第一个未成年人保护志愿律师网络。1999年底，中心受理了一起案件：一对广西姐妹在母亲去世后，被父亲遗弃在北京海淀区的一个地下招待所里，姐姐当时11岁，妹妹7岁。后中心指派律师专门护送两个女孩回到广西。律师经过长途跋涉，到达广西后，开始四处奔波，最终协调两姐妹由姑姑抚养。这个案件给我们带来的思考是：专职律师异地办案，成本高；因为人生地不熟，效率低，有时候效果也不一定好。怎么解决这个问题？“中国律师未成年人保护志愿协作网”的建立成为解决问题的钥匙。1999年，中心向全国律师界发起号召，当时有一百多名律师响应，表示愿意用自己的业余时间参与未成年人保护事业。⁷⁶

到2003年，中华全国律师协会成立未成年人保护专业委员会后，该网络正式纳入行业协会管理，而后在各省律师协会的支持下，网络取得快速发展。当全国志愿律师人数发展到三千多名，单单秘书处的几个人已无法有效协调时，中心又在十几个省依托律师协会未成年人保护专业委员会配备专职律师，让专职律师与志愿律师的协调分解在省级层面，以期实现“一名专职公益律师带动一个省”的发展目标。这种发展，让专职律师与志愿律师的结合更有效率，并把志愿律师网络推广到未成年人保护工作最为薄弱的县级层面。截止2008年底，安徽、山西的县级志愿律师的覆盖率达100%，全国至少13个省份县级志愿律师覆盖率达80%。目前，全国志愿律师已经发展到8189名，被国外同行称为全球最大的“未成年人保护志愿律师网络”。得益于专职律师的配合，北京、安徽、福建、辽宁、天津、重庆、内蒙等省、市、自治区还涌现出了一些在未成

74 网址：www.chinachild.org。

75 网址：www.zgnmg.org。

76 信息来自CCTV《新闻会客厅》栏目2007年5月24对佟丽华律师专访，网址：<http://news.sohu.com/20070524/n250210413.shtml>。

年人保护领域享有很高社会声望的骨干志愿律师，为网络的纵深发展起到很好的带动作用⁷⁷。

“中国律师未成年人保护志愿协作网”正在中国未成年人保护领域发挥着越来越重要的作用，体现在热线咨询、案件援助、介入未成年人保护重大事件、普法培训、媒体倡导等各个方面。在办理案件方面，据不完全统计，2006年8月至2008年10月，各地志愿律师至少办理500多件未成年人维权案件。在普法培训方面，据不完全统计，仅2007年各地律师以中小学、幼儿园、中专、职高、高校等各类学校为阵地，开展的普法活动就超过4000场，受益人数超过120万人。⁷⁸在媒体倡导方面，安徽志愿律师每年开展的“律师·媒体·儿童”沙龙和安徽省“未成年人保护十大事件评选”活动，已成为未成年人保护的品牌倡导活动。⁷⁹

“中国律师未成年人保护志愿协作网”充分发挥志愿律师遍及全国的优势，及时介入和妥善处理有重大影响的未成年人事件。2004年，阜阳劣质奶粉事件成为全国媒体关注的焦点。中心作为全国律协未保委的秘书处，指导律师深入当地调查了解情况，安排内蒙、福建等相关省律师帮助调查取证，在北京组织召开政策倡导座谈会，为保障受害婴儿权利发挥了重要作用。⁸⁰2007年6月针对山西“黑砖窑”事件中的受害童工问题，中心协调各地在全国开通30多部法律帮助热线，为山西“黑砖窑”事件中的受害人员提供免费法律帮助；同时，为了避免当地律师受到阻力，中心还协调陕西律师深入山西调查了解情况，高效稳妥地维护了受害童工的权利。⁸¹2008年9月，严重伤害婴儿身体健康的“三鹿奶粉”事件浮出水面后，全国律协未保委积极行动，及时开通了咨询热线向患儿家长提供法律咨询，指导、帮助家长依法维护患儿权利。⁸²

该志愿律师网络之所以快速成长为全国乃至全球非常有影响力的未成年人保护网络，除了归功于前面提到的民间组织与行业协会优势互补的全国拓展模式外，还归功于专职律师与志愿律师相结合的律师资源动员模式。专职律师精力集中、业务专业，可以发挥志愿律师资源协调、志愿律师业务指导和志愿律师资源支持的中枢作用；而志愿律师主要是利用业余时间开展公益服务，他们精力不集中、地域相对分散，如果没有一个中枢系统提供服务、搭建平台、持续动员，很难会有可持续性公益服务热情。当然，志愿律师的优势是，人数多、地域覆盖广阔，每个人本身带有地域资源，如果存在中枢协调，将会实现1+1大于2的效果。

在农民工保护领域，因为有大量案件需要帮助且其案情相对复杂，所以目前的主要精力是培养专职律师。在农民工专职律师发展到一定规模时，也将引入专职律师与志愿律师相结合的模式。实际上，当前有些省的律师协会已经开始了这样的探索。

77 见全国律师协会未成年人保护专业委员会年会《中国律师参与未成年人保护工作报告》，2008年12月21日中华全国律师协会未成年人保护专业委员会2008年年会上发布，载《中国律师与未成年人权益保障》，2009年第1期。

78 见全国律师协会未成年人保护专业委员会年会《中国律师参与未成年人保护工作报告》，2008年12月21日中华全国律师协会未成年人保护专业委员会2008年年会上发布，载《中国律师与未成年人权益保障》，2009年第1期。

79 见《安徽律师携手媒体保护儿童权益》，原载中国律师网2005年6月1日，转引自西部律师网，网址：<http://www.xblaw.com/news.asp?nid=2755>；另见《中国未成年人保护机制研究》，张文娟主编，法律出版社2008年12月出版，第137页。

80 见南方网2004年6月4日报道《阜阳奶粉事件的法律思考》，网址：<http://www.southcn.com/law/fzzt/spaq/spaqxgpl/200406040675.htm>；另见中国普法网《一切为了孩子——阜阳劣质奶粉事件的法律思考》，网址：http://www.legalinfo.gov.cn/zt/2004-05/25/content_102245.htm；另见《全国律师协会开通阜阳劣质奶粉受害者咨询热线》，中国食品产业网，<http://www.foodqs.com/news/gnspzs01/20044247506.htm>，2004年4月24日。

81 见《中国律师协会采取措施救助山西“黑砖窑”童工》，记者朱磊，载人民网，网址：<http://society.people.com.cn/GB/42735/5899312.html>，2007年6月22日；另见中国法院网<http://www.chinacourt.org/public/detail.php?id=253071>，2007年6月22日；另见《法律援助热线向受困童工施援手》，记者崔丽，载《中国青年报》2007年6月22日。陕西律师赴山西办案的报道见《律师赴山西为一少年维权》，记者卫晓宁，网址：<http://www.chinachild.org/zhi/mtgz/3txt.asp?id=194>；另见2007年7月2日、7月3日和7月4日《华商报》。

82 见《全国律协开通法律咨询热线》，记者李克诚，2008年9月17日《东方早报》，网址：http://epaper.dfdaily.com/dfzb/html/2008-09/17/content_83987.htm；另见青少年维权中心网站，网址：<http://www.chinachild.org/zhi/mtgz/3txt.asp?id=201>。

(四)、立足国内与面向国际的稳步国际化模式

中国民间组织发展起步晚，在目前阶段，实现迅速国际化尚不现实。但是，这并不意味着中国民间组织不能走向国际。从联合国人权机制的发展来看，民间组织将在国际人权机制中扮演越来越重要的角色，中国民间组织走向国际是大势所趋。首先，获得经社理事会咨商地位的民间组织正在迅速增长，民间组织对联合国的决策机制影响越来越大；其次，从条约机构的改革和发展来看，民间组织在报告撰写和审议中的地位更加明显⁸³；最后，人权委员会改人权理事会，在审议材料的撰写中，民间组织与政府的影响几乎是平分秋色。同样重要的是，作为发展中的中国民间组织，也需要国际组织的资金资助和技能培训。⁸⁴

从上面的背景信息来看，中国民间组织需要走向国际，这不用更多的讨论。关键是，如何走向国际？民间组织走向国际的路径可能有很多种，可能是一夜成名式，也可能需要更长时间的稳步发展。从中国民间组织发展的现状和背景来看，更可行的是稳步发展模式，这是比较稳妥的也是有利于可持续性发展的国际化模式。

如何稳步发展？从中心和工作站的发展经验来看，首先是要立足国内，然后才能稳步迈向国际。所谓立足国内，就是前面提到的核心内容，即要把国内的服务工作做扎实，做出品牌，做出社会影响力，这是走向国际的根基。所谓稳步迈向国际，就是在日常工作中要有国际眼光，要熟悉与自己领域相关的国际公约，留意国际人权机制的发展，积极参与一些国际人权交流合作与人权交流活动，积极稳妥地与相关国际组织开展交流与合作。尤其值得提出的是，两组织在所有活动参与中，都要本着客观宣介的态度。

首先，积极参与国际合作项目，为组织发展积累国际项目管理经验。2004年中心接受欧盟项目资助，与团中央合作组织开展了“中西部未成年人维权干部法律培训”项目，先后到中西部12个省对1200多名共青团维权干部和青少年维权岗进行未成年人保护与犯罪预防的培训。⁸⁵2007年，工作站积极承接联合国开发计划署与中华全国律师协会关于推动律师参与农民工法律服务的项目，指导十五个省建立农民工公益法律服务专门机构，并负责十五个机构的项目管理。为高标准、高水平地管理项目，工作站积极探索，制定了《推动律师参与农民工公益法律服务项目实施办法》⁸⁶，设定机构管理和专职律师管理量化指标体系，并建立客观评估机制，受到了很多国际组织的高度评价，认为达到了国际项目管理的先进水平。

其次，积极参与国际人权交流活动，搭建两组织与联合国人权机构的联系平台，积累参与国际人权机制的经验。如中心和工作站于2005年8月接待联合国人权高专阿尔布尔女士⁸⁷，同年11月接待联合国酷刑特别报告员诺瓦克先生；2007年9月派律师参加在日内瓦举行的“联合国条约机制讲习班”；于2008年9月提交了有关中国普遍定期审议的影子报告，两份影子报告受到高度关注，在联合国文件中多次被引用。⁸⁸除此之外，应外交部等单位安排，中心和工作站多次接待国外来访使团，如已接待加州市长代表团、瑞士人权司代表团、瑞典教育部长代表团、澳大利亚跨国收养部代表团、欧盟代表团和联合国人权高专办评估团等。

中心和工作站非常看重中国公益法在海外法学院的推广，并努力与海外法学院建立密切联系。中心和工

83 上述信息来自于2007年9月份在日内瓦接受联合国人权高专办的“联合国条约机构讲习班”的培训材料。

84 上述信息来自于2008年6月份联合国协会举办的“联合国人权机制”培训班上获得的材料。

85 见《中国——欧盟法律和司法合作项目 中西部未成年人维权干部培训圆满完成》，载中国共青团网，《社区和权益工作》第9期，http://www.ccyi.org.cn/bulletin/qyb_scyqy/200611/t20061130_3055.htm。

86 经项目管理委员会多次研讨，制定并印刷此实施办法，于2008年7月1日起下发并开始实施。

87 《联合国人权高专阿博尔女士与中国非政府组织座谈》提到了这次活动，《人权》杂志2005年第5期；另见中国人权研究会网站<http://www.humanrights-china.org/china/rqzt/zt200200619171635.htm>。

88 联合国人权高专办提供的利益相关者材料中，有七处引用了中心(BCLARC)或工作站(BLAOMW)的材料，网址：http://www.upr-info.org/IMG/pdf/A_HRC_WG6_4_CHN_3_E.pdf。

作站曾多次派人到国外知名大学法学院学习考察，举办演讲，客观宣介中国民间组织和中国公益法的发展。目前，中心和工作站已经与美国的耶鲁大学法学院、纽约大学法学院、哥伦比亚大学法学院等著名大学法学院建立了密切联系。中心和工作站的演讲也吸引到了很多法学院优秀学生的实习申请，以2009年为例，申请到中心和工作站实习的来自美国前五位法学院的JD学生就达到八位。

通过申请和执行国际项目、积极参加联合国人权机制的活动和与海外法学院建立密切联系等方式，中心和工作站正在稳步进行国际化，并不断获得各方面的积极评价。正如前面所总结的那样，两组织之所以能够稳步进行国际化，其经验可简单概括为两个词：“稳步”、“客观”。

结语

虽然，民间组织在很多国家的发展已经相对成熟，但是，在中国的背景下，民间组织如何成长，如何成为公平发展的新兴力量，尤其是法律类民间组织如何定位，如何成为公平发展的积极推动力量，却是一个没有现成答案的话题。

对于一个良性发展的、健康的社会而言，应具备三大基础因素：政府、市场和民间。⁸⁹从新中国的发展脉络来看，我们最为发达的是政府。大约在三十年前，我们开始努力将市场从“大政府”中释放出来，成了独立的社会治理因素之一。随着市场的逐步发育，我们发现利益主体逐步多元化，有些群体的利益诉求处于“政府管不好，市场不愿意管”的状态，利益协调不畅导致社会冲突加剧，法治培植条件恶化。也正是基于这样一个背景，大约在几年前，我们开始试图从政府中再释放出社会治理结构中的第三大基础因素——民间。但与市场相比，社会或者民间这个因素的发育受政治和文化的影响更大，其效果的可监测性相对不明显，由此，中国民间社会的发展，尤其是法律类民间组织的发展，一直处于相对迟缓的状态。

对于法律类民间组织而言，当务之急是尽快探索出一种发展模式，向社会证明，它是一种增强社会信任和法律权威的积极因素，是一种有利于促进社会公平发展和改善社会治理结构的积极力量。从某种意义上说，我们认为，北京青少年法律援助与研究中心、北京市农民工法律援助工作站提供了这样的证明。它们探索出的植根民众、依法维权、主流化制度和人才双重保障的四大立身之本，以及他们探索创新的包括从直接法律服务到实证研究再到政策倡导的利益诉求综合表达模式、民间组织与行业协会优势互补的全国拓展模式、专职律师与志愿律师相结合的律师资源最大动员模式、立足国内与面向国际的稳步国际化模式的四大发展之策，值得国内同行借鉴和思考，相信也对国际组织在华开展项目有重要启发。

89 赵黎青 柏特南、公民社会与非政府组织《国外社会科学》1999年第1期，第54页。

Civil Society in China: A New Force for Equitable Development

— Experiences and Thoughts of a Legal Aid CSO

By Lihua Tong¹ & Wenjuan Zhang²

In order to ensure equitable development, policies and systems must be in place that provide opportunities for vulnerable groups to express their interests and that safeguard their rights. NGOs, particularly legal NGOs, can act as important forces for social developing, assisting the government in promoting equitable development.

Compared to many other countries, the history of civil society in China is relatively short. Why is it so new? There are many factors. 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. Second, before the reforms in 1978, there were few diversified 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 in.

After the reforms, with the rapid development of the market, a greater demand for NGOs has emerged. There are many areas that require more attention than the government or the market can provide. These gaps are where NGOs are needed most, and this need has resulted in the rapid growth of NGO work in China. Statistics from the Ministry of Civil Affairs show that there are more than 380,000 NGOs in China today.³ Upon closer examination, you will find very few legal NGOs. Most existing NGOs focus primarily on education or medical aid. However, does this mean that legal services are not in demand? Is there gap here for NGOs to fill? Do the government and the people not need low-cost, high-quality legal service? How can legal NGOs play an important role in promoting equitable development?

Over the past ten years, the Beijing Children's Legal Aid and Research Center ("BCLARC") and the Beijing Legal Aid Office for Migrant Workers ("BLAOMW") have developed distinctive models and methodologies for reference. These models and methodologies provide legal NGOs with positive examples, experiences, and suggestions relevant to their participation in furthering equitable social development. Moreover, these models and methodologies can encourage thoughts on means to strengthen the forces of social development, which will eventually promote a sound social governance structure.

Generally, the core experiences of BCLARC and BLAOMW can be summarized by four basic strategies and

1 Lihua Tong, Director of Beijing Children's Legal Aid and Research Center, Director of Beijing Legal Aid Office for Migrant Workers, Director of Child Protection Committee of ACLA, Vice Director of Legal Aid and Public Interest Legal Affaires Committee of ACLA.

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3 http://www.upr-info.org/IMG/pdf/A_HRC_WG6_4_CHN_1_China_national_report.pdf.

four models.

I Four Strategies

Only with proper positioning can NGOs exist and develop and best serve the needs of vulnerable groups. The proper positioning of NGOs can promote the social governance structure. Over the past ten years, BCLARC and BLAOMW have developed four strategies that are the bases for our development. We believe that our four basic strategies will benefit not only domestic NGOs but also cooperative programs established by many international organizations in China.

Strategy 1: A grassroots approach

NGOs act as bridges between the government and the people. If NGOs are located in luxury offices that cannot be easily accessed by common people; they can neither understand the needs of the common people and grassroots movements nor provide useful suggestions to the government. If NGOs do not provide tangible and effective assistance to common people, the people will not feel that NGOs are useful or believe that NGOs can defend their interests effectively. To address this concern, BCLARC and BLAOMW's first strategy is to follow a grassroots approach and base operations amongst the people to build real bridges.

For legal NGOs, one of the key motivations for adopting a grassroots approach is the ability to provide direct service to common people. This will increase public awareness of the organization and narrow the gap between the people and the organization.

1. Establishing knowledge about and trust of NGOs through the provision of free legal services

Both BCLARC and BLAOMW provide direct legal services as a part of their core missions. In addition, they have developed various methods to make these services readily accessible. For example, free legal consultations: BCLARC and BLAOMW provide hotlines, online consultations, and face-to-face consultations.⁴ The offices are easy to locate, simply furnished, and welcoming.⁵ Additionally, in consideration of migrant workers' demanding schedules, BLAOMW arranges for full-time lawyers to be on duty during the weekends.⁶

From its establishment through March 31, 2009, BCLARC has provided approximately 40,000 free legal

4 China Lawyers' Network, "Summary of the Experience at Grass-roots Migrant Worker Legal Aid Organizations" <http://www.acla.org.cn/pages/2007-12-9/s42215.html>

5 Beijing Legal Aid Network, "City Secretary of Justice Wu Yuhua Together With Migrant Workers Unveils New Site of Beijing Legal Aid Center."

6 China's Legal Information Network, "Tong Lihua, Lawyer Studies, and Implements Principles of 17th Party Congress and The Discussion Group on the Key Points of Hu Jintao's Address to the General Assembly."

consultations and represented clients in more than 200 legal aid cases. A few demonstrative, noteworthy cases include: helping a Beijing boy, whose father suddenly passed away and whose mother was physically disabled and unable to care for him, seek a guardian from the civil administration department;⁷ defending a middle school boy who as part of a practical joke influenced others to steal, allowing him to avoid criminal punishment and instead return to school;⁸ spending three years helping an injured child laborer who has now returned to school, receive worker's compensation of over ¥800,000;⁹ persuading a hospital to provide a life-saving operation for a boy whose life was put in jeopardy because of his inability to pay for medical treatment.¹⁰

The original purpose of BLAOMW was to provide migrant workers with timely legal aid. From its formal establishment in September 2005 through March 31, 2009, BLAOMW has provided free legal services for 95,680 migrant workers in 20,159 legal consultations involving more than ¥735 million, and has provided court representation for 5,651 migrant workers in 3,566 cases. Of these cases, 3,346, involving 5,426 migrant workers and ¥42,264,560.6, have come to a successful conclusion, resulting in the award of ¥34,220,564 to the migrant workers.

BCLARC and BLAOMW's respected reputations are primarily based on the large scale of their direct legal services and large number of beneficiaries. Many beneficiaries reach out to BCLARC and BLAOMW 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 BLAOMW. Although contemporary mass media may sometimes create overnight fame, the experiences of the two NGOs suggest that building social acceptance and sustainable reputations begins with work on individual consultations and cases. This can serve as a reminder to all NGOs that service for vulnerable groups should be practical and professional if it is to yield sustainable development.

2. Fostering public awareness of provided services to facilitate access to justice

Some may believe that because a service is free, it will necessarily diminish the quality of such service. Sustainable NGO development and equitable social development, however, requires that such services be treated professionally. Otherwise, legal service NGOs will fail to garner the trust of the people or prove their

7 Beijing Youth Daily reported on the progress of the case, May 31, 2005; for all of the facts of the case and how it was handled, see Zhang Xuemei, "Father Dies, Mother Disabled; Who Will Support Ten Year Old Boy?" in "A Refined Analysis of Rights in Typical Cases Involving Minors," Tong Lihua, editor-in-chief, Legal Publishing House October 2007.

8 See Zhao, "Planting of A Hoax Yields Bitter Fruits" in "The Rights and Interests of China's Lawyers and The Protection of Minors," 2007 4.

9 See "Who Moved Their Rights? - Research Report on the Protection of Migrant Workers," Tong Lihua, editor, p. 156; also see Shi Fumao, "Study on the Judicial Relief System for Disabled Children" in "Series on Juvenile Law - Judicial Protection Volume," Tong Lihua, editor-in-chief, Legal Publishing House September 2007.

10 See May 24, 2007 China Central Television "News Room" section, interview with lawyer Tong Lihua.

worth as important forces in modern society.

Both BCLARC and BLAOMW take great care to maintain their reputations and the quality of their services. The two NGOs often consider the comparative advantages of their legal services over those provided by the government and the private market. To distinguish themselves, BCLARC and BLAOMW established two practices: relying on professional legal services provided by full-time lawyers and always acting in the clients' best interests.

This core value of professionalism provides vulnerable groups with access not only to legal services in a procedural sense but also to judicial justice in a substantive sense. To provide professional services, the two NGOs targeted specific groups and established full-time staff.

The target group of BCLARC is children while BLAOMW's target group is migrant workers. Both NGOs have full-time staff providing professional service: presently, there are sixteen full time employees at BLAOMW and fourteen at BCLARC, the majority of which are lawyers. All employees receive fixed salaries and are not permitted to accept commercial jobs, even on a part-time basis, in order to avoid conflicts of interest.¹¹ There are two key advantages to providing professional services that support the public interest legal service brand: first, guaranteeing professionalism; second, sustaining the character of pure public interest.

As a result of these two advantages, the two NGOs have been able to provide effective and timely help to vulnerable groups in order to safeguard their rights, even when challenging strong economic powers. For example, in an employment compensation case involving forty-one migrant workers who were employed at a decoration company,¹² the court ruled that the workers should receive ¥180,000 for salary and damages, with the company jointly liable for ¥20,000, and the labor contractor, who had no money, independently liable for the remaining ¥160,000. The migrant workers were not satisfied with this judgment and turned to BLAOMW for assistance in filing an appeal. The lawyers at BLAOMW represented the workers in court, and drawing on of their professional knowledge of labor law they were able to persuade the appellate court to alter the judgment. The final judgment held that the decoration company bore full liability. Another case that highlights BLAOMW's work was a workers' compensation case. Mr. Wang, a migrant worker, was bitten by his boss's dog while working and, as a result, was severely disabled. The trial court calculated compensation in accordance with the living standards for rural residents, despite the objections of Mr. Wang and his lawyer. After the judgment, Mr. Wang's lawyer recommended that he turn to BLAOMW for legal help. The BLAOMW lawyers represented Mr. Wang on appeal, where he won compensation calculated in accordance with the living standards for city citizens. BLAOMW's professionalism has earned respect from

11 "Beijing Lawyer Tong Lihua: Exploring a New Model for Public Interest Legal Services," New Countryside Commerce Information Web,

12 "Migrant Workers' Legal Aid Lawyers Tell Rights Protection Stories: Constant Threats of Every Kind," Beijing Labor Net, <http://www.bjlaowu.net/fenye/9857/Maintain.htm>; see also "Migrant Workers' Legal Aid Lawyers Tell Rights Protection Stories: On Public Interest Lawyer's Income, Best For Some To Handle Cases On Foot," from Legal Daily, <http://news.163.com/09/0420/08/57B4E8JQ0001124J.html>.

lawyers, judges, labor arbitrators, and even opponents. Many governmental agencies, courts, and labor arbitrations retain BLAOMW's contact information and distribute BLAOMW's cards to migrant workers that approach them for assistance. Some companies have invited BLAOMW's legal aid lawyers to give lectures on standardizing their employment systems. Some government departments have also invited migrant workers' lawyers to provide suggestions on how to handle challenging issues.

The professional, full-time legal service model allows the two NGOS to handle impact cases by leveraging each organization's collective capacity and resources. These impact cases provide the added benefit of promoting the NGOs' brands. For example, BCLARC represented a seventeen-year-old boy in Xiao Yan vs. the China Tobacco Monopoly Bureau and 24 Tobacco companies,¹³ and BLAOMW represented migrant worker Mr. Xu in Xu Yang vs. KFC.¹⁴ In Xu Yang vs. KFC, Mr. Xu, a migrant worker from Shandong, was dismissed from KFC without compensation after having worked for the company for over ten years. The BLAOMW legal aid lawyers investigated the case, collected evidence, applied for arbitration, and finally represented Mr. Xu in negotiating an agreement with KFC's China headquarters. Furthermore, in response to this case, KFC promised to cease its discriminatory labor practices against migrant workers and to ensure that all KFC employees in China would establish direct labor relationships with KFC. By winning the case, thousands of KFC migrant worker employees benefited; their interests, involving tens of millions yuan, were protected.

Vulnerable groups have limited resources for legal assistance. Therefore, one of the basic principles of NGO services should be representing the best interests of the clients. Only in this way can the NGOs' reputations and brands become widely respected. This principle must form the basis of the lawyers' work. For example, at BCLARC and BLAOMW, when there is insufficient basic evidence, lawyers will work to identify and collect additional evidence rather than simply refuse to accept the case. This is especially an issue in migrant workers' cases, where most workers do not have labor contracts or other basic evidence.¹⁵ In these situations, lawyers will assist migrant workers in collecting evidence based on their experiences, before deciding whether or not to accept the case. Additionally, because enforcement of judicial verdicts in China is very difficult, both BCLARC and BLAOMW have extended their legal aid services into the enforcement stage.¹⁶ The government's provision of legal aid does not currently include this level of service, which, again, gives BCLARC and BLAOMW an advantage. On a few urgent occasions, lawyers have even accompanied migrant workers to construction sites at night, in order to directly negotiate with the labor contractors and

13 See Zheng Zhi, "For Whose Rights I Sued," Beijing Youth Daily, July 4, 2001

14 This case is discussed in fifteen separate reports by fourteen different media publications. See Chen Jingjing, "Reverse Dispatching is False Dispatching," Legal Daily, <http://finance.sina.com.cn/review/20060727/10512768873.shtml>; Yang Huayun, "Party in Storm over KFC Labor Dispatching; KFC Proposes Reconciliation," New Beijing News, <http://www.scol.com.cn/economics/bxsh/20060816/200681691404.htm>.

15 "Beijing Legal Aid Office for Migrant Workers, Yearly Report," Workers' Net, <http://www.mingong123.com/news/21/200805/eb5327bd777904a2.html>.

16 Due to weak societal trust in the system, the inadequacy of the authority of courts, and for other reasons, enforcement of legal judgments is one of the major problems afflicting China today.

guarantee that the migrant workers will receive their salaries or injury compensation in a timely manner.¹⁷ Although the lawyers recognize that such work is beyond the scope of their duties, they continue to provide such assistance because they know that otherwise many migrant workers will simply lose the opportunity to safeguard their rights.

Strategy 2: Safeguarding rights in accordance with the law

From the perspective of both social governance and the rule of law, NGOs should not be viewed as negative factors. To the contrary, they can be viewed as important contributors to social development that bolster social trust and legal authority. Safeguarding the rights of vulnerable groups in accordance with the law should be the basis of an NGO's work. There are two important aspects to this: first, safeguarding the clients' legal rights; second, raising clients' awareness about safeguarding their rights lawfully.

1. Doing the best to protect the clients' legal rights

How can a society establish the rule of law? How does the public grow to believe in the law? It is crucial that the public believe that the law can protect their rights and serve as a fair, impartial, and final determiner of those rights. The best way to ensure this is to provide the public with legal resources when they are confronted with legal problems.

Laws and policies do not always represent the interests of vulnerable groups. An even more serious problem, however, occurs when stronger groups deprive vulnerable groups of their existing legal rights. It is quite common for vulnerable groups to find themselves unable to safeguard their rights because the judicial system is too complicated and seemingly inaccessible. This erodes their basic faith in the law. In a society in which there is no trust in the law, people who can not safeguard their rights lawfully will resort to illegal methods of handling problems.¹⁸ This practice is harmful to both the social order and the people. Therefore, NGOs must give due attention to all clients that turn to them for help, and not be concerned with handling only sensationalist or easy cases. While sensationalist cases can increase the popularity of NGOs, only accepting this type of case will not reflect the essential core values of NGOs.

The lawyers of BCLARC and BLAOMW try their best to help all clients as long as they see an opportunity to safeguard legal rights. For example, in a case involving delayed wages for thirteen women migrant workers,¹⁹ BLAOMW lawyers strove to protect the migrant workers' rights without concern for their own

17 See, e.g., "On Eve Of Olympics, 18 Unpaid Migrant Workers Attempt Disturbance; In Emergency Case, Over Two Days And One Night, Legal Aid Finds A Solution," Beijing Legal Aid Net, http://www.bjlegalaid.gov.cn/zxflzx/zxflzx-fysjt/t20081107_242562.htm

18 See Xu Xin, "Suicide For The Sake Of Rights: In Transforming China, Migrant Workers' 'Resistance By Death' " Eastern Eye On The Law: <http://www.dffy.com/faxuejieti/zh/200901/20090130182713.htm>.

19 See "Public Interest Lawyers Tong Lihua and Shi Fumao Look Back: Legal Aid for Migrant Printworkers, China Pack Net, <http://news.pack.cn/qydt/rwzf/20070926/091508.shtml>.

safety.

The thirteen women in that case were employed without labor contracts by a printing factory in suburban Beijing. They had only an oral agreement with their employer as to their wages. In September 2006, they entered a dispute with the employer over delayed wages and poor work conditions. The women turned to the labor supervision department of labor and social security agency, which tried to intervene and mediate the dispute, but the employer was so aggressive that the labor supervision department could not reach a resolution. The women then turned to the Chinese National Federation of Trade Unions, which introduced them to BLAOMW.

On September 8, 2006, the conflict between the women and their employer intensified, and the employer intimidated the women into leaving the factory without any payment. Disappointed and frightened, the women called BLAOMW's lawyers. Considering the emergency circumstances, four lawyers went to the factory immediately after receiving the call. When they arrived, they found that the women's boss had gathered more than twenty strong men to threaten the lawyers. Undeterred, the lawyers negotiated with the boss for three hours and were able to persuade the factory to conclude an agreement with the thirteen workers. The employer promised to pay the past two months' wages to eleven workers and concluded an agreement with the workers about the rest of the wages.

In the following days, however, the boss did not carry out his promises. The thirteen women were so frightened by their previous experience that they did not dare to go to the factory by themselves. They again retained BLAOMW's lawyers to argue for their wages. After that, the thirteen women returned to their hometown. The lawyers tried to negotiate with the factory and convince the boss to act in accordance with the agreement, but he refused. The lawyers then initiated a labor dispute arbitration, representing the thirteen women. At the hearing, two bodyguards accompanied the factory representatives, who verbally abused BLAOMW's lawyers throughout the proceedings. The lawyers stuck to their claims, however, and presented sound reasoning to the tribunal. Finally, the tribunal supported the lawyers' claims and enforced the agreement as to the women's wages. The lawyers sent the wages to the workers by mail.

This is an illustrative example of the many complicated, emergency cases that BLAOMW and BCLARC lawyers handle. In handling these cases, the lawyers perform in accordance with their duties and with the professional confidence that their work will build the migrant workers' trust in the law and the legal system.

Some challenges to BLAOMW's work arise from the risks that vulnerable groups face. Others, however, arise from the high costs and complicated procedures of China's litigation system. For example, in a worker's compensation case involving Mr. Gong,²⁰ it took one and a half years simply to confirm his labor

20 See Liu Yaotang, "Tong Lihua: Amend The Regulations On Work-Related Injury Insurance, Protect Migrant Workers," China Lawyer's Network, available at Law Star, <http://www.law-star.com/cacnew/200705/40008455.htm>; see also Zheng Zuwei, Public Interest Lawyer Proposes Amendment of Regulations On Work-Related Injury Insurance, Public Interest Times, June 6, 2007; available at Law Star, <http://www.law-star.com/cac/40009283.htm>.

relationship with the employer. From December 2005, when Mr. Gong's injury occurred, to September 2008, when the case ended, twelve complicated legal proceedings took place, including one administrative reconsideration and eleven arbitration or litigation events. In another case involving a workplace injury to Mr. Gao, in order to verify the facts and obtain information from the employer, BLAOMW's lawyers met with their client twenty-five times, conducted seven investigative research trips, and went to court fifteen times. Without BLAOMW lawyers' conscientious and diligent work, it would be nearly impossible for many migrant workers to safeguard their rights. It is in these challenging or complicated cases that workers require assistance from NGOs and full-time professional lawyers.

The 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.²¹ For common people, trust in NGOs arises from the NGOs' ability to solve their problems when they lack resources to look for assistance elsewhere. Many clients do not trust the law when they firstly approach BCLARC and BLAOMW. In the experience of both NGOs, clients have more strongly recognized the value of the law after they have been able to solve problems through the law. They trust the legal system more when that system helps them, for instance, receive overdue wages. Many of the migrant workers who have received legal assistance from BLAOMW have later served as legal trainers for their colleagues;²² some have even helped their friends recover overdue wages. Many juveniles who have received legal assistance from BCLARC (in cases including child labor injuries, juvenile delinquency, and probation in juvenile justice) have sent letters to their lawyers saying that they have returned to school and hope to become public interest lawyers after they graduate.

2. Leading clients lawfully to safeguard their rights

As explained above, NGOs can be positive forces in strengthening social trust and legal authority. This requires that legal NGOs be distinct from commercial lawyers' agencies. Legal NGOs place primarily emphasis on leading their clients to lawfully safeguard their rights. There are three primary reasons why legal NGOs should emphasize strict adherence to the law while advocating for their clients. First, the public expects NGOs to teach clients the importance of compliance with the law. Second, this focus can prevent NGOs from losing the basic trust of the government. Third, it 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.

For these reasons, BCLARC and BLAOMW lawyers take a responsible attitude when providing advice

21 See, e.g., Justice System Reform Council, Recommendations of the Justice System Reform Council for a Justice System to Support Japan in the 21st Century, 2002 ST. LOUIS-WARSAW TRANSATLANTIC L.J. 119, 212 ("After all, for the justice system to achieve its functions fully, it is indispensable that the justice system obtain broad support from the people and that the popular base be established.").

22 See "Migrant Worker 'Barefoot Lawyers' Wanted in Fengtai District for Legal Public Education," Capital Politics Web, http://www.bj148.org/fzxc/pfsx/pfzt/pfzt/200812/t20081203_24620.html.

to clients. When clients' claims lack a legal basis, the lawyers conscientiously explain the problem and persuade the clients to abandon thoughts of acting outside the law. With those, often agitated, clients who do not trust the law, the lawyers do their best to persuade them to resolve their problems through legal means. When clients provide obviously false information, lawyers undertake diligent investigations and terminate services.

In a delayed wages case involving sixty-eight migrant workers,²³ the client (Mr. Guo) and his colleagues were bitterly disappointed after they had pursued their wages unsuccessfully for almost two years. Prior to hearing about BLAOMW, the workers had even contemplated killing their boss and then surrendering themselves to the government. Instead, BLAOMW's lawyers helped them get their delayed wages after more than three years of hard work, at a direct cost of more than ¥10,000. The lawyers' timely intervention prevented the migrant workers from taking radical action.

In a workplace injury case, a client from rural Henan province (Mr. Zhang) was injured during work but was unable to obtain timely compensation.²⁴ In order to exert pressure on his employer, Mr. Zhang's father went to the Tian'anmen Square and held up a scroll that read, "Compensate my son." After this, the police dissuaded Mr. Zhang from further action. After Mr. Zhang learned about BLAOMW, lawyers there helped him to receive his compensation. Mr. Zhang, his family, and even their local government expressed their appreciation to BLAOMW.

In another workplace injury case,²⁵ Mr. Liu's waist was badly injured, but his boss did nothing. Mr. Liu was disappointed and intended to retaliate against the boss. BLAOMW lawyers persuaded him to give up his plan and helped him lawfully safeguard his rights.

BLAOMW lawyers are also experienced in negotiation and conflict prevention. In one case, for example, they were dispatched to a construction site at 9 p.m. to persuade more than fifty migrant workers—who were embroiled in an intense conflict with a labor contractor—to solve their problems rationally. The lawyers helped the workers negotiate with the contractor until 3 a.m. and successfully secured the workers' ¥47,000 in delayed wages.

In March 2006, BLAOMW accepted a delayed wages case brought by a Baogongtou involving 202 migrant workers.²⁶ This case had already been mediated by many governmental agencies, without resolution. Although there was apparently sufficient evidence, and an apparently legitimate labor contractor with a

23 This case has been covered in thirty-five reports by twenty different publications. See, e.g., Li Xiuling, "Migrant Workers: Recovering Wages Still A Hard Road," *Workers' Daily*, July 1, 2007; Zhang Yirong and Yuan Dingbo, "The Road to Migrant Worker Rights Protection: A Few Mountains Left to Split," *Legal Daily Net*, http://www.legaldaily.cn/misc/2006-11/02/content_444491.htm.

24 On this case, see "Beijing Lawyer Tong Lihua: Exploring a New Model for Public Interest Legal Services," *China Peace*, June 8, 2008, http://www.chinapeace.org.cn/dwjs/2008-06/18/content_48670.htm.

25 *Id.*

26 *Id.*

notarized letter of authority, the two lawyers assigned to the case discovered abnormalities after detailed review and deliberation. To be thorough, they traveled to relevant provinces to investigate the case. They conducted investigations over four long days, working seventeen hours per day, visiting forty-six individuals, fifty-one families in five villages, and accumulating thirty-seven records. The investigation revealed that some of the evidence provided by the Baogongtou was false, and that the Baogongtou's goal was to pursue construction debt instead of delayed wages. In the end, confronted with this evidence and moved by the spirit and diligent work of the lawyers, the Baogongtou²⁷ accepted BLAOMW's decision on cutting off legal aid and promised not to take any more radical action. Thus, BLAOMW's lawyers helped to bring a group dispute involving more than two hundred people to a safe resolution.

Leading the clients to lawfully safeguard their rights is unrelated to the often criticized lawyerly tactic of avoiding complicated and difficult cases while dwelling on those that are easy and eye-popping. BCLARC and BLAOMW's practice has proven that encouraging clients to pursue claims without a legal basis, or 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.

Strategy 3: Integrating NGOs into Society

The relationship between NGOs and their surrounding environment is comparable to the relationship between fish and water. External support is essential to the survival and development of NGOs. The role of NGOs and the extent of their impact depend on how much external space they receive. This is especially true for legal NGOs. For NGOs, the process of striving for external space is actually a process of mainstreaming. During their ten years of existence, BCLARC and BLAOMW have determined that establishing good relationships with the government and the media is crucial.

1. Actively cooperating with the government

At a conference, an NGO representative once said that NGOs should be against the government. At another conference, an official once said that because some NGOs were intent on being distant from the government, although NGOs have done many helpful things, the government often remains unaware of their work, limiting the possibility of a better coordination of resources.²⁸ The language employed by the official reflects the asymmetry of information between NGOs and the government.

²⁷ The existence of Baogongtou is a special phenomenon in Chinese construction employment. Baogongtou organize migrant workers to work for a construction project. Some of them make profits from the migrant workers they organize. They have private contract with subcontractors instead of employment. The others are employed like other migrant workers. They don't make profit from other migrant workers. The later is within the legal aid scope of BLAOMW, but the former is not. Since there are special policies for protecting migrant workers working in construction business, some baogongtou use this policy to collect their debt in the name of collecting wages for migrant workers colleagues.

²⁸ An internal conference of Early Recovery and Disaster Risk Management Programme partners organized by UNDP China office.

The view that NGOs should be against the government is not the mainstream view even in highly liberal Western countries.²⁹ People who hold this view do not understand the far-reaching social significance of the existence of NGOs. 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.³⁰ There is already a consensus around this view.

The independence of NGOs does help foster their integration into society. But to suggest that NGOs should not cooperate with the government goes too far for several reasons. First, it is the government's responsibility to provide public goods, especially services for vulnerable groups. The existence of NGOs makes the government's provision of services indirect rather than direct, which can help both to utilize resources effectively and improve the quality of public goods. The government and NGOs have the same end to promote the well-being of the people; the only difference is that they have different approaches. This recognition serves as the basis for cooperation between the government and NGOs.

Second, NGOs should cooperate with other positive elements in society. The government is certainly one of the most important of these elements. If an NGO has the opportunity to cooperate with the government, therefore, there should be no reason for it to refuse.

Third, if NGOs maintain their distance from the government, the government will not know of their work and their important role in social development. If the government does not know about NGOs, how can it make policies that are helpful to their development? Through cooperation, then, NGOs and the government can establish a beneficial relationship of trust based on mutual understanding.

Since their establishment, BCLARC and BLAOMW have consistently emphasized the importance of establishing cooperative relationships with governmental agencies, judicial departments, and other governmentally-based social organizations. BCLARC and BLAOMW 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

29 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.").

30 See, e.g., A.N. Zafar Ullah et al., *Government-NGO Collaboration: The Case of Tuberculosis Control in Bangladesh*, 21 HEALTH POL'Y & PLANNING 143 (2006) (providing a case study of the benefits of government-NGO collaboration).

municipal level and the Fengtai district level.³¹

These partners come from many different departments at different levels, and their methods of cooperation with BCLARC and BLAOMW have also been diverse. Some collaborations involve the establishment of stable, institutional relationships. For instance, BCLARC became the administrative office for the All-China Lawyers' Association's (ACLA's) Special Committee on Child Protection, and BLAOMW became the administrative office for ACLA's Legal Aid and Public Interest Legal Affairs Committee.³² Similarly, the Beijing Youth League appointed BCLARC to carry out its legal affairs work by establishing an office located at BCLARC.³³ BCLARC has also cooperated with the Beijing High Court, the Fujian High Court, and the Henan High Court to establish a Children's Judicial Aid fund.³⁴ BCLARC signed a cooperation memo with the Juvenile Tribunal in Beijing's Dongcheng District Court, and it has also cooperated with the Beijing Fengtai District Justice Bureau by providing legal consultation services for the Bureau's hotline.

BCLARC and BLAOMW's relationships with government departments have provided platforms for activities including staff training, research, legislative drafting, and the assessment and supervision of the implementation of the Women's Development Outline and the Children's Development Outline.³⁵ Many lawyers in BCLARC were invited to be experts during the assessment of the latter Outline. After the promulgation of the new Law on the Protection of Minors by the Committee for Internal and Judicial Affairs under the National People's Congress, BCLARC undertook the task of writing the school protection chapter for the new law's interpretation book. It has also written a manual for the protection of children in welfare institutions (commissioned by the Ministry of Civil Affairs), conducted research about special education in Beijing (commissioned by the Beijing Education Bureau), and written the Reading Book of the Law on the Protection of Minors (commissioned by the All-China Women's Federation). BCLARC has also received invitations from the China Center for Adoption Affairs, the Supreme People's Court, and the All-China Women's Federation to conduct legal training for the directors of welfare organizations, juvenile tribunal judges, and officers of the local Working Committees on Children and Women all over the country.³⁶

This diverse cooperation streamlines the mechanisms for representing the interests of children and migrant workers. Cooperation is helpful to the independence and legal service work of the two NGOs, and also provides a platform for staff training and career development.

31 See "Chinese Lawyers and Children's Rights Protection," 2007, 2; China Children's Protection Volunteer Lawyer's Handbook.

32 *Id.*

33 See Zhang Wenjuan ed., *Mechanisms for the Protection of Children in China*, Law Press, December 2008, 128.

34 See Luo Shuzhen, *Beijing Second Middle Level Court Launches Children's Judicial Aid Fund, Crime Victim's Daughter Breaks Free Of School Cost Difficulties*, China Court Net, <http://www.court.gov.cn/news/bulletin/region/200811140020.Htm>; see also Fujian Province Children's Protection Committee, "Forwarded Message: Fujian High Court's Notice Concerning "Small Start" Public Interest Financial Aid at All Provincial Courts, http://www.fjedu.gov.cn/html/2008/06/376_35805.Html.

35 In 2008, at the request of the All China Women's Federation, BCLARC attorneys produced the Children's Protection Law Reader, a roughly 160,000-word training coursebook for Women's Federation cadres.

36 See "Work Updates," *Chinese Lawyers and Child Protection*, 2006, 3, 4, 5.

2. Establishing a cooperative relationship with the media

The media is an important and effective partner in the mainstreaming of NGOs. Like 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. This particular character of the Chinese media allows it to directly impact government policy-making. Therefore it is of great importance for NGOs to establish and maintain cooperative and trusting relationships with the media.

Since the establishment of BCLARC and BLAOMW, the two NGOs have focused on cooperating with the media. Both NGOs have developed positive and mutually supportive working relationships with well-known Chinese media outlets including CCTV, China Radio, China Radio International, China Education TV, Xinhua News, China Daily, Legal Daily, and China Youth Daily. The media can help the two organizations mainstream their activities in the following ways:

First, the media can promote the resolution of specific cases. Although the law may be clear in some cases, powerful adversarial parties may flout legal regulations. Media coverage can publicly expose such illegal behavior, encouraging progress in legal cases. The media is generally interested in many of the cases handled by BCLARC and BLAOMW, some being covered by a wide variety of media outlets.

Second, through press conferences, BCLARC and BLAOMW can convey information about cases to both the public and policy-makers. When common problems appear across many cases, the NGOs are able to use the media to raise awareness of these issues and thereby promote their resolution by the public and policymakers. For example, BCLARC and BLAOMW hold press conferences related to problems of disabled child laborers³⁷ and labor dispatching.³⁸ On each such occasion, over ten well-known media outlets participated. In one instance, a report from the leaders of the Beijing municipal government, in turn, commented on the piece written by Xinhua News Agency's Beijing branch about disabled child laborers.

Third, BCLARC and BLAOMW use the media to publish important research results and disseminate information about key problems and suggested solutions to the public and policymakers. The two organizations conduct research on difficult contemporary problems including: teachers' verbal abuse,³⁹ child

37 See Wang Yijun, "For 17-Year-Old Female Worker, Compensation Difficulty for Lost Right Arm," China Youth Daily, January 17, 2006.

38 On June 12, 2006, BLAOMW held a press conference on the labor dispatching issues in the KFC case. Subsequent negotiations with KFC led to the company's August 8th, 2006 announcement that it had settled the case and would no longer use labor dispatching. See Wang Zhe, "Harmonious Labor-Capital Relations Aid Beneficial Corporate Growth: An Interview With Zhi Cheng Law Firm Director Tong Lihua," China Trade News Net, June 12, 2006, <http://www.nyw.cc/n/n4786398.html>; "KFC Admits Supervision 'Leaks', Will End Labor Dispatching Practices," East Web, August 9, 2006, <http://finance.eastday.com/eastday/finance/node77285/node77756/node153723/u1a2241546.html>.

39 See Zhang Xuemei, "Research Report On 'Verbal Violence' by Teachers," Teachers' Journal, 2006, 6. This report was also published in print and online by Legal Daily, China Education, Modern Education News, China Youth Daily, and others.

sexual abuse,⁴⁰ private schooling,⁴¹ and the costs of protecting migrant workers' rights.⁴² Media coverage of BCLARC and BLAOMW's research on these issues evoked strong public response. For example, after the report on the costs of protecting migrant workers' rights was published in the China Youth Daily, more than forty websites further publicized the report, and its core statistics were cited by departments in the State Council. In another instance, the China Youth Daily published a report from BCLARC about child sexual abuse based on a child sexual abuse case in Xishui County, Guizhou Province.⁴³ Several central government departments took notice and contacted the China Youth Daily to express their approval.

Fourth, BCLARC and BLAOMW utilize the media to promote the spirit of public interest legal service. While there are 140,000 lawyers in China,⁴⁴ fewer than one hundred work as full-time public interest lawyers. A public interest legal culture is not yet part of the Chinese legal mainstream. To expand social recognition of public interest law's importance, the two organizations have collaborated with CCTV,⁴⁵ People's Daily,⁴⁶ Legal Daily,⁴⁷ and numerous Chinese legal websites⁴⁸ and journals⁴⁹ to produce reports on the work of

40 For many years, BCLARC has noted the problem of sexual abuse of children. Relevant BCLARC research is summarized in Guidebook for Attorneys Handling Child Sexual Abuse Cases, edited by BCLARC and published in 2009. This handbook has been distributed to child protection volunteer attorneys and others working in the field of child protection. See also Zhang Wenjuan, "Sexual Services and Children: A Serious and Thought-Provoking Issue", in Child Law: Social Protection, Law Press, September 2007; Li Yanlou, "Children Suffering Sexual Abuse: Difficult to Convict?", in Chinese Lawyers and Children's Rights Protection, 2006, 4. For media reporting on this issue, see Cui Li, "Don't Let Youth Keep On Crying – An Interview with Beijing Children's Legal Aid and Research Center Director Tong Lihua", China Youth Daily, April 13, 2009, http://www.ciol.net/zqb/content/2009-04/13/content_2619686.htm. On April 25, 2009, BCLARC held a Sexual Abuse Cases and Children's Protection Research Conference. See Zhang Xin, "Problems in the Law Hurt Child Victims: Relevant Law Must be Perfected To Protect Children Suffering from Sexual Abuse," Legal Daily Web, May 9, 2009, http://legaldaily.cn/misc/2009-05/09/content_1088992.htm.

41 See Beijing Children's Legal Aid and Research Center, Report on Private Education for "Floating Population" Children in Beijing; BCLARC website at <http://www.chinachild.org/zhi/rdgz/3txt.asp?id=204>; Chinese Lawyers and Children's Rights Protection, 2009, 1.

42 In 2004, BLAOMW conducted a national survey of migrant worker rights protection costs, completing its Report on the Costs of Chinese Migrant Worker Rights Protection. This highly influential Report was noted in over forty domestic and foreign media publications within two days of its release. See Zi Feiwo, "Migrant Workers Can't Bear Weight Of Rights Protection Costs," Procuratorial Daily Online, <http://www.jcrb.com/zyw/n635/ca382829.htm>; Sang Wei, "'Reduce The Costs Of Migrant Worker Rights Protection' Series, Report 6, All China Federation of Trade Unions, <http://www.acftu.org/template/10004/file.jsp?aid=50457>; Cui Li, "The Institutional Cause Of Migrant Worker Wage Withholding," China Youth Daily, June 9, 2005, http://zqb.ciol.com/content/2005-06/09/content_1127970.htm.

43 See Cui Li, "Don't Let Youth Keep On Crying – An Interview with Beijing Children's Legal Aid and Research Center Director Tong Lihua", China Youth Daily, April 13, 2009, http://www.ciol.net/zqb/content/2009-04/13/content_2619686.htm.

44 See Xu Yingyan, China's Practicing Lawyers Total 140,000, Procuratorial Daily, October 28, 2008.

45 See CCTV10, Narration (讲述), "I Have A Dream"; CCTV, News Guestroom (新闻会客厅), "Tong Lihua: 'I Protect Children's Rights'", May 24, 2007; News Guestroom, "Tong Lihua: Ten Years on the Path of Rights Protection", November 5, 2007; News Guestroom, "Tong Lihua: Migrant Worker Brothers, Please Believe In the Strength of the Law", January 26, 2008.

46 See "Beijing Migrant Workers Legal Aid Station Attorneys Help Migrant Workers Litigate for Free: Lawyers Run Instead of Migrant Workers, People's Daily, September 17, 2007; "Ten Attorneys Spend Two Years Recovering 14 Million Yuan in Wages for Migrant Workers," People's Web Report, October 15, 2007, <http://acftu.people.com.cn/GB/6376462.html>.

47 See Liu Hong, Migrant Workers' Legal Aid Attorneys Tell Rights Protection Stories: Constant Threats of Every Kind", Legal Daily, April 20, 2009.

48 See "What To Offer You, Our Children: Lawyers Are Moving to Protect Children", China Lawyers' Network, June 1, 2007, <http://www.acla.org.cn/pages/2007-6-1/s39544.html>.

49 See Chen Qiulan, Let Childhood Bloom Like A Flower: Sidelights from Chinese Attorneys' Child Protection Work", Chinese Lawyer, November 2008.

Chinese children's rights attorneys⁵⁰ and of the first generation of Chinese "migrant worker lawyers."⁵¹

Finally, BCLARC and BLAOMW use the media to convey recommendations to high level officials regarding some of the central issues facing China today. Both organizations have publicized reports domestically about improving the protection of street children, fostering full-time public interest attorneys, and the costs of protecting migrant workers' rights. Each of these internal reports were commented on in a report by central government leaders and positively influenced subsequent policymaking.

Despite its natural inclination towards sensationalism and simplification, the media can serve an invaluable role in promoting the work of public interest lawyers and the issues of workers' and children's rights. For NGOs, establishing close relationships with the media can cultivate trust and public discussion of important domestic issues. As explained above, BCLARC and BLAOMW have established strategic partnerships with a number of well-known media outlets. This cooperation helps normalize the role of NGOs as mainstream, and valuable contributors to Chinese society. Such cooperation can also encourage policymakers and the public to learn more about NGO practices and research.

3. Mobilizing relevant social actors

Although some Chinese NGOs complain that current national policies provide limited support, BCLARC and BLAOMW have consciously adopted a positive and pragmatic attitude. On the one hand, both NGOs seize every possible opportunity to promote improvements in NGO-related policies. On the other hand, they remain active and strive to expand their work within the existing legal framework. Beyond cooperation with the government and media outlets, BCLARC and BLAOMW engage other relevant actors to enrich the civic environment and consolidate resources. For instance, the NGOs cooperate with the China Legal Aid Foundation and clinical programs at various universities.

Since donors do not receive tax benefits for donations to NGOs in China, cooperative arrangements with foundations can help to maintain funding for important social causes. In 2006, BCLARC and BLAOMW advocated the establishment within the China Legal Aid Foundation of three sub-foundations: a Child Protection and Legal Aid Fund,⁵² a Migrant Workers Protection and Legal Aid Fund,⁵³ and a 12·4 Legal

50 See Zhang Wenjuan, "Eight Highlights of Chinese Attorneys' Child Protection Work", Human Rights, 2005, 4.

51 "Migrant Worker Lawyers" refers to full-time public interest attorneys in the field of migrant worker legal aid, trained at BLAOMW. Numerous media publications have reported on this first generation of attorneys. See Li Chaomin, "Migrant Worker Lawyers: The Story Behind Legal Aid," Farmers' Daily 农民日报社主办三农在线 January 4, 2008, http://www.farmer.com.cn/sh/dg/shgz/200801/t20080104_375476.htm; "Migrant Worker Lawyers," aired on CCTV News Survey, October 18, 2008.

52 See "ACLA Special Committee Work Notes," news report from the ACLA Website, April 2, 2007, <http://www.acla.org.cn/pages/2007-4-2/s38789.html>.

53 See "Special Funds Launched for Migrant Worker Rights Protection and Legal Aid," Chinagate, February 28, 2007, <http://cn.chinagate.cn/chinese/rdzz/42323.htm>.

Aid Fund.⁵⁴ These three funds help to provide public interest legal services for children, migrant workers, and other vulnerable groups. As an example, the sub-foundation for Child Protection and Legal Aid began with the charitable donation by Mr. Liu Luanxiong from Hong Kong of one million Hong Kong dollars. The foundation funds a broad array of assistance programs, including (1) the New Start Program for Child Victims, to assist children whose rights have been violated and who are unable to obtain compensation, which has provided ¥190,000 to 169 child victims to date; (2) the Financing Program for Lawyers Providing Legal Aid to Children, which has financed costs incurred by attorneys in handling over five hundred children's legal aid cases, thus encouraging lawyers to take cases which do not qualify for government legal aid; and (3) the Juvenile Offenders Scholarship Program, which has thus far given over ¥36,000 to support impoverished juvenile offenders who want to continue their education and receive occupational training. Together with the Ministry of Justice's Crime Prevention Institute, the Juvenile Offenders Scholarship Program also initiated the "Yellow Ribbon Cup – New Start and Growth" essay writing competition, which is the first program in China to collect essays from imprisoned juveniles.⁵⁵

BCLARC and BLAOMW are also actively engaged in clinical legal education programs in several universities. Law schools provide many student volunteers who can assist in the work of expanding public interest legal services. NGOs often depend on volunteer services, and though law students may lack practical skills or experience in matters of professional ethics, their help can be of great assistance. Over the long run, mainstreaming public interest law in China should promote the inclusion of public interest law in legal education. The involvement of BCLARC and BLAOMW in clinical legal education is a necessary first step. In August 2007, the NGOs published a memo promoting cooperation between ACLA's Special Committee on Child Protection, ACLA's Legal Aid and Public Interest Legal Affairs Committee, and the Committee of Chinese Clinical Legal Educators.⁵⁶ From 2006 to 2008, BLAOMW and local migrant workers' legal aid offices accepted more than 150 student interns from more than forty law schools. These internships provided students with not only practical legal skills but also a glimpse into the difficult lives of China's migrant workers.

Mobilizing a multitude of societal actors is not only wise for the survival of NGOs but also reflects constructive thinking. By adopting a positive and pragmatic approach, NGOs can do more than simply identify problems and voice concern: they can work to solve difficult societal problems.

Strategy 4: Sound Internal Governance

54 See "China Legal Funds Raise 2 Million Yuan to Resolve Migrant Worker Rights Protection Issues," Procuratorial Daily Online, December 4, 2007, <http://review.jcrb.com/200712/ca659484.htm>.

55 Data from 2008 Special Executive Report to the ACLA Legal Aid Foundation by the Administrative Office of the ACLA Special Committee On Child Protection 2008. The statistics cited cover the period ending June 2008.

56 This memo was released in September 2007 at the 2007 International Clinical Legal Education and Legal Profession Forum," organized by the Special Committee on Chinese Clinical Legal Education with the assistance of ACLA Working Committee on Legal Aid and Public Interest Law and ACLA Special Committee on Child Protection, and hosted by Beijing University. The memo is available at the China Clinical Legal Education website as a Web Update for September 4, 2007. http://www.cliniclaw.cn/article_view.asp?id=361&menuid=20036198507592&menuname=最新动态.

At least as important as the three strategies discussed above is the need for successful NGOs to have an effective internal structure. Without proper internal organization, no matter how favorable the legal environment, NGOs will fail to make the best use of outside resources. The experiences of BCLARC and BLAOMW over the last ten years illustrate the importance of sound internal governance and the cultivation of human capital and talent as the basis for an NGO's internal organization.

1. Establishment of governance

In China, the institutionalization of NGOs has been a slow process. Most NGOs, early in their existence, rely predominantly on the investments of a single founder. Many pressures related to funding, staff selection, and organizational development confront Chinese NGOs at the outset. The commitment of founders can help NGOs to grow during this initial period. But the initial support of founders tends to cause NGOs to become too dependent on a single individual, which severely limits institutionalization and organizational development.

Both BCLARC and BLAOMW went through difficult startup periods. They both succeeded in avoiding dependence on their founder by modifying their management models. A number of specific changes were made to transform the management structures of both NGOs into systematic configurations.

BCLARC and BLAOMW established decision-making structures that allowed for democratic decision-making processes on critical issues. They organized a joint board of directors consisting of five members: the organizations' founder, three deputy directors, and the financial officer. The board generally meets once a week, with additional meetings held as needed to discuss important issues as they arise.

The BCLARC and BLAOMW staff manual contains policies, continually updated and approved through staff deliberation, to ensure the efficient operation of the offices.⁵⁷ The manual is divided into several sections, including employment and work attendance, salary and welfare, organizational culture, administration and financial systems, risk prevention and internal control, and accepting and handling cases. The manual prevents the founder from making arbitrary decisions on issues related to staff. All employment decisions are thereby made in accordance with established procedures rather than individual preferences.

BCLARC and BLAOMW have also established an effective monitoring and evaluation system for their staffs. There are three aspects of this system. First, an online logging system records the daily work of staff in the Beijing and local satellite offices. Second, all staff must submit quarterly or monthly working reports summarizing their activities, producing reference materials for the annual staff evaluations. Third, a quantified

57 The Zhicheng Public Interest Group Staff Regulations were passed at a general staff meeting in June 2008 and a first edition printed. The Regulations went into effect on July 1, 2008. At another general meeting in April 2009, the Regulations were amended and a second edition printed, the amended Regulations taking effect on May 1, 2009.

index and objective performance evaluative system determines staff incentives according to evaluative and objective marks.⁵⁸

2. Cultivating talents

The cultivation of talent is an important element in the development of NGOs. For many NGOs today, the pressure to raise funds is a relatively superficial concern, while finding and keeping talented employees is a central worry. Among the three elements that constitute social governance, the government and the market have an obvious advantage over civil society in attracting talent. There is no developed network for channeling talent towards civil society. NGOs must therefore focus on two strategies: cultivating talent and retaining talent over time. Because BCLARC and BLAOMW considered these strategies from the outset, they have explored and created a relatively developed talent cultivation system to promote staff development.

BCLARC and BLAOMW encourage staff development through a hands-on, institutionalized model. In both NGOs, new lawyers and support staff are partnered with experienced staff members for mentorship and orientation training. This mentoring is wide-ranging, covering basic skills, such as drafting files and gathering evidence, and complicated tasks such as case analysis and project proposals. Through patient instruction and repetition, new staff members improve quickly and learn through practical experience.

The two NGOs aim for staff members to become experts in their fields and strive to provide a platform for talent development. They take a number of specific steps to achieve this goal. For example, their lawyers are encouraged to write articles based on evidentiary research in addition to handling cases. Lawyers are permitted to retain any monetary compensation they receive for writing articles or giving lectures. Beyond these material incentives, the two NGOs utilize external resources to encourage research and initiative—for instance, by recommending staff for media interviews, lectures, and important meetings in their fields.

The two NGOs do their utmost to help every member of the staff craft an individually appropriate career development model. Diversified staff development is encouraged. For lawyers with practical case experience but few research or foreign language skills, the NGOs encourage participation in domestic professional trainings, media interviews, and other activities aimed at improving their public relations skills. For newly graduated law students who excel at research and foreign languages, the NGOs encourage the development of project management skills and support participation in international conferences, academic symposiums, or study abroad programs.

58 See the Implementation Guidelines for the Promotion of Attorney Participation in Migrant Worker and Craft Worker Legal Services (Preliminary), released in July 2008 by BLAOMW in its capacity as Secretary of the ACLA Committee on Legal Aid and Public Interest Law. These Guidelines provide indices and mechanisms for the evaluation of organizations and attorneys dedicated to providing legal services to migrant workers. This is probably the first time a Chinese civil society organization has developed such an evaluation system for civil society organizations and full time attorneys.

By following an effective strategy to cultivate and develop talent, BCLARC and BLAOMW have established a diverse, cooperative, and talented team. Included among the thirty full time staff are lawyers experienced in handling cases as well as recent graduates from top law schools with professional expertise in research and project management. This staff provides a solid foundation for the two NGOs to exert influence on a broad array of legal and policy issues.

BCLARC and BLAOMW have cultivated a growing pool of leading lawyers in the field of children's and migrant workers' rights. Attorneys such as Ms. Zhang Xuemei, Mr. Shi Fumao, Ms. Zhang Wenjuan, and Ms. Wang Fang have all played leading roles in providing legal services and research to protect children and migrant workers. This opportunity for leadership not only embodies the hands-on model but also preserves talent within the two organizations.

A comprehensive talent cultivation system and staff leadership development 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.

II Four Models

BCLARC and BLAOMW rely on several fundamental strategies: adopting a grassroots approach, safeguarding rights based on existing law, remaining mainstream in focus, and building an effective internal structure. Their development methodologies have made them the top legal NGOs in China. These methodologies, which have proven to be effective under the reality of current circumstances in China, are embodied in four models: (1) an integrated model that best serves the needs and interests of the marginalized, including direct legal services, evidence-based research, and policy advocacy; (2) a model stressing national expansion by partnering with NGOs and lawyers associations; (3) an initiative model that brings full-time public interest lawyers and volunteer lawyers together to make best use of the resources from China's legal profession; and (4) a steady internationalization model that is rooted in the domestic situation, but with a focus on international standards. These four methodologies are grounded in the Chinese context and have proven to be both pragmatic and visionary.

Model 1: An integrated model that best serves the needs and interests of the marginalized, including direct legal services, evidence-based research, and policy advocacy

If an NGO focuses only on the provision of services, without conducting any evidence-based research, it will not be able to contribute sound suggestions to the legislative and policy-making process. It will be confined to the passive application of the law in individual cases. On the other hand, if an NGO concentrates only on theoretical research, without practical experience, it will not be able to grasp all the key issues or provide

feasible solutions. Practice helps NGOs understand important issues and contributes to their acceptance by the public. Research promotes NGOs' ability to rationally analyze issues and helps to inform their provision of services and advice. Only through such a comprehensive model, which includes both practice and research, can NGOs make the most of their social service function. This model has been applied in both BCLARC and BLAOMW and is replicable for other organizations.

BCLARC and BLAOMW provide direct legal services to children and migrant workers by offering free legal consultations and representing clients in legal aid cases. The two NGOs believe that, while 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 BLAOMW 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. In this way, the two NGOs have acted as a bridge between practical experience and legislation.

In recent years, the two NGOs have published a number of research reports that proffered policy suggestions. BLAOMW's published works, including the Report on Migrant Workers' Delayed Wages; the Report on Migrant Workers' Workplace Injury and the Report on Group Cases,⁵⁹ have attracted the close attention of governmental organs such as the Beijing Justice Bureau and the Workplace Injury Insurance Bureau of the Ministry of Human Resources and Social Security. BCLARC has conducted research on issues including children's hukou registration, children's health insurance,⁶⁰ assistance for street children,⁶¹ verbal abuse in schools,⁶² child sexual abuse,⁶³ special protections for girls, special education, and the juvenile justice system. The BCLARC report on assistance to street children received intense media coverage and was noted even by Premier Wen Jiabao, who responded by demanding that an independent system of relief for street children be established as soon as possible.⁶⁴ Additionally, 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.⁶⁵

In addition to research on particular subjects, BCLARC and BLAOMW conduct systematic research to promote public interest law in China. To date, the two NGOs have published almost forty books, including

59 See *Who Moved Their Rights? – A Report on Chinese Migrant Workers' Rights*, Law Press, November 2008.

60 See Zhang Wenjuan, "Young Lives as Fragile as Gossamer – Awaiting a Health 'Life Preserver'", China Education News, March 9, 2008, p. 3; China Education Website, March 9, 2008, http://www.jyb.cn/zgjyb/three/200803/t20080309_147097_3.html; also in *Children's Law Book Series: Social Protection*, Law Press, First Edition September 2007, p. 79, and *Building A System Of Children's Law*, produced by the Beijing Law Society Children's Law Research Group, Beijing Press, First Edition February 2009, p. 193.

61 See Wu Xiangrong, "Relief Systems for Street Children," in *Children's Law Book Series: Social Protection*, Law Press, First Edition September 2007, p. 147.

62 See Note 39 above.

63 See Cui Li, "Tears of the Flowering Season: Report and Case Analysis on Sexual Abuse of Children," China Youth Daily, April 13, 2009.

64 See "Tong Lihua: Donate Justice," in *Public Interest Times*, December 2007; from Sina.com, December 22, 2007, <http://gongyi.sina.com.cn/axrw-3/2007-12-20/1357320.html>.

65 See Note 50 above.

a monograph on Children's Law Studies in 2001⁶⁶ and the Children's Law Studies book series in 2007;⁶⁷ Practical Legal Workbooks for Elementary and Secondary Schools;⁶⁸ The Harmonious Society and Public Interest Law;⁶⁹ China's Child Protection Mechanisms;⁷⁰ Who Moved Their Rights? – Case Analysis in Chinese Migrant Workers Rights Protection;⁷¹ and Who Moved Their Rights? – A Report on Chinese Migrant Workers' Rights Protection.⁷² Director Tong Lihua's 2001 monograph on Children's Law Studies was instrumental in establishing a new academic framework for the study of children's law, considering children as a special subject and synthesizing the civil, criminal, administrative and procedural provisions that relate to children.

The two NGOs' concentrated research on areas of public interest law, including child protection, migrant workers rights and the legal aid system, have contributed to their participation in national and local legislative processes. The two NGOs have participated in the drafting or modification of several pieces of legislation, including Beijing's Act on Children's Protection, the Beijing Act on Legal Aid, the PRC Law on Protection of Minors, the PRC Law on Mediation and Arbitration of Labor Disputes, and the Law on Social Insurance.

In 2003, Mr. Tong Lihua, director of the two NGOs, was selected to serve as a key participant in the legislative process for Beijing's Act on Children's Protection. In this role, he conducted the preliminary investigations, prepared the first seven drafts of the bill, and reported to the Standing Committee of the Beijing People's Congress throughout the entire process. In 2004, the Youth League, authorized by the Standing Committee of the National People's Congress, organized the initial drafting of the PRC Law on Protection of Minors. The Youth League authorized BCLARC to conduct investigations and draft the first version of the bill. After the draft was submitted to the Standing Committee of the National People's Congress, Mr. Tong was invited to join a panel as a civil society participant to discuss the proposed provisions and modifications. In 2009, invited by the All China Women's Federation, BCLARC lawyers participated in the legislative process for the draft Law on Prevention and Curbing of Domestic Violence, conducting preliminary investigations and drafting.

BLAOMW also has played a vital role in the drafting processes of relevant legislation. During the drafting of the Law on Mediation and Arbitration of Labor Disputes, the Committee for Internal and Judicial Affairs under the National People's Congress came to BLAOMW to investigate relevant practical issues, and

66 Tong Lihua, Law Press, March 2001.

67 Tong Lihua, ed., Law Press, September 2007. This series includes volumes on children's rights within the family, social welfare, judicial protections, and child protection in schools.

68 Masses Press, February 2004. This series includes the volumes Primary and Secondary School Legal Education Handbook, Student Accident Prevention and Response Handbook, and Primary and Secondary School Teacher's and Student's Rights Protection Handbook.

69 Tong Lihua, ed., The Harmonious Society and Public Interest Law: A Comparative Study of Public Interest Law in China and the United States, China Democratic Legal Press, July 2005.

70 Zhang Wenjuan, ed., China's Child Protection Mechanisms, Law Press, December 2008.

71 Tong Lihua, ed., Who Moved Their Rights? – Case Analysis in Chinese Migrant Workers Rights Protection, Law Press, June 2006.

72 Tong Lihua, ed., Who Moved Their Rights? – A Report on Chinese Migrant Workers' Rights Protection, Law Press, November 2008.

Mr. Tong was invited to attend an internal legal demonstration meeting, where suggestions on abolishing charges for labor arbitration and simplifying labor arbitration procedures garnered much attention. BLAOMW participated similarly in the legislative process for the Law on Social Insurance, suggesting that governmental agencies pay workers compensation for workplace injuries (receiving reimbursement from employers afterwards) in order to curb the problem of delayed medical treatment of injured workers due to their employers' refusal to pay.

In 2008, the Beijing Justice Bureau invited BCLARC and BLAOMW to participate in the investigation and demonstration process for the Beijing Act on Legal Aid. The Ministry of Civil Affairs and local legislatures in Liaoning and Shandong invited BCLARC's lawyers to be present during their discussions and paid attention to BCLARC's suggestions during the legislative and policy-making processes.

Model 2: A model stressing national expansion by partnering NGOs with lawyers associations

The innovative idea of combining the resources of NGOs and lawyers associations grew out of our intimate knowledge of the work of these organizations, including their strengths and weaknesses. The NGOs' strengths include full-time staff, professional knowledge, and experience in systematically promoting areas of public interest law; their weaknesses include limited capacity for regional expansion and a lack of influence among the entire legal profession. The lawyers associations have a number of strengths. ACLA, for example, can promulgate policies for the legal profession, provide professional guidance for lawyers, and establish professional networks at the national, provincial, and municipal levels. However, the lawyers associations also have weaknesses. They face a specific challenge of effectively implementing policies. Although ACLA has fourteen professional committees that provide guidance and a framework for policy implementation, they lack the full-time staff necessary to promote their work.

Based on their understanding of the strengths and weaknesses of the legal profession and the lawyers associations, BCLARC and BLAOMW have established a strategic cooperative relationship with the ACLA. In 2003, BCLARC was appointed to be the administrative office for the ACLA Special Committee on Child Protection, undertaking the responsibility of providing professional guidance for lawyers' participation in child protection all over the country. BLAOMW was selected in 2007 to be the administrative office for the ACLA Special Committee on Legal Aid and Public Interest Legal Affairs, assuming the responsibility of providing guidance for Chinese lawyers' participation in public interest legal service, including legal aid for migrant workers.

In this capacity, the two NGOs assist ACLA in expanding the national influence of its special committees. In 2004, ACLA adopted a Memorandum on Promoting Lawyers' Participation in the Work of Child Protection,⁷³

73 Chinese Lawyer Web report, May 59, 2006, <http://acla.org.cn:8088/program/article.jsp?CID=983778365&ID=35055>; complete contents available at <http://www.chineselawyer.com.cn/program/article.jsp?ID=20438&CID=605850858>.

which explicitly required that all lawyers associations at the provincial level establish a special committee on child protection and that a national cooperative network be established among these committees. So far, lawyers associations have established 27 provincial special committees and 86 municipal committees. These committees, in conjunction with ACLA's national committee, constitute a three-tiered network of lawyers working on children's rights issues.

BCLARC has simultaneously developed a network of lawyers, currently containing 8,189 members, who are committed to acting as pro bono volunteers for protecting children's rights. The participation of Chinese lawyers in protecting children's rights has become a model for systematically engaging the legal profession in an area of public interest legal service.

With respect to the protection of migrant workers rights, the ACLA adopted a Memorandum on Promoting Legal Aid Work for Migrant Workers,⁷⁴ which explicitly required that at least one lawyers' organization on legal aid for migrant workers be established in each province, autonomous region, and municipality. By the end of 2008, eighteen local legal aid offices for migrant workers had been established outside of Beijing, reflecting a stable growth in the number of lawyers providing legal services to migrant workers. There is no doubt that without the support of national and local lawyers' associations, it would not have been possible to achieve such extensive development in this field.⁷⁵

The support and participation of the lawyers associations is also illustrated in other ways. ACLA consistently supports its Special Committee on Child Protection by providing financial aid and establishing a formal honor for "Lawyers with Special Contribution to Child Protection in China." Also, in most of the areas in China where there are full-time public interest lawyers working on protecting the rights of children or migrant workers, the provincial lawyers associations have exempted such lawyers from their annual registration fees. In several provinces such as Tianjin, Jiangxi, Shandong, Shanxi, and Sichuan, a portion of bar membership fees is budgeted to support local legal aid offices for migrant workers. And in quite a few areas, the provincial lawyers associations have coordinated with local governmental legal aid centers to provide subsidies for legal aid cases handled by lawyers in the local offices.

As administrative offices for ACLA's special committees, BCLARC and BLAOMW are able to leverage the lawyers association's policymaking role and its responsibility to provide professional guidance. Since 2004, ACLA has published a journal entitled Chinese Lawyers and Child Protection with the support of BCLARC; since 2009, BLAOMW has advocated that ACLA establish a newsletter on the participation of

74 Chinese Lawyer Web report, February 4, 2007, <http://www.acla.org.cn/pages/2007-2-4/s38195.html>; complete contents available from Chinese Lawyer Web, May 15, 2006, <http://www.chineselawyer.com.cn/pages/2006-5-15/s34851.html>.

75 The establishment of local migrant workers' public interest legal services organizations has been featured in numerous media reports. See, e.g. Pan Zhiqiang, "ACLA Urges Lawyers to Participate Thoroughly In Migrant Workers' Legal Aid," Chinese Lawyer Web report, April 29, 2008, <http://www.acla.org.cn/program/article.jsp?CID=542347961&ID=44548>. See also ACLA Working Committee on Legal Aid and Public Interest Law Year 2007 Work Report and Year 2008 Work Plan, <http://www.chineselawyer.com.cn/pages/2008-3-31/s43703.Html>.

Chinese lawyers in migrant workers' legal aid. Both BCLARC and BLAOMW have websites⁷⁶ where Chinese children's rights and migrant workers' rights lawyers can draw on the two organizations' professional knowledge, lawyering skills, and experience. The two NGOs have also advocated for the organization of professional trainings and the publication of relevant professional policies on lawyers' participation in public interest legal work. 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 network at the county level, which is the most local level for lawyers.

This model has proven to be very useful. At present, the ACLA's Special Committee on Child Protection and Special Committee on Legal Aid and Public Interest Law have become well-known brands in the public interest legal field. BCLARC and BLAOMW have also been able to promote their experiences and models all over the country with this partnership.

Model 3: A model for bringing full-time public interest lawyers and volunteer lawyers together to make utmost use of China's legal resources

A model in which full-time public interest lawyers provide professional legal services is ideal for protecting the rights of vulnerable groups. However, the high demand for legal aid and the limited resources available to the public-interest sector make it unfeasible to rely exclusively on full-time public interest lawyers. Collaboration with the private sector is crucial, given this reality. Indeed, there exist in China a large number of private litigators who, were they given a platform for contributing their time and skills, would be eager to take cases on a pro bono basis.

Recognizing Chinese lawyers' growing interest in public interest legal work, BCLARC established the China Lawyers' Cooperative Network for Children's Rights Protection ("Lawyers Network") in 1999. A tragic abandonment case prompted the establishment of the network. In 1999, BCLARC learned that two sisters from Guangxi province (eleven and seven years old, respectively) had been abandoned by their father in a small underground Beijing hotel room. The girls' mother was deceased. Looking for somebody to take custody of the children, BCLARC lawyers escorted the two girls back to Guangxi, about 2300 km from Beijing. After arriving in Guangxi, the lawyers arranged to have the girls' aunt look after them. The cost of travel, the difficulty of securing local cooperation, and the lawyers' unfamiliarity with local conditions underscored the need for a trans-regional network. The Lawyers Network offered a solution to these problems by connecting lawyers around the country. When BCLARC first sent out its call to the Chinese legal profession in 1999, over one hundred lawyers answered, joining the Lawyers Network and using their

76 The China Children's Rights Protection Center, www.chinachild.org, the China Migrant Workers' Rights Protection Network, www.zgnmg.org, and their English-language site, www.chinapilaw.org.

spare time for pro bono work to protect children's rights.⁷⁷

After the establishment of its Special Committee on Child Protection in 2003, the ACLA assumed responsibility for the management of the Lawyers Network, while child protection committees at the provincial level began organizing and managing local branches. In 2006, when the number of volunteer lawyers reached more than three thousand, BCLARC staff alone could no longer keep pace with the development of the Lawyers Network. Thus, in May 2006, BCLARC initiated a full-time public interest lawyers program, with full-time public interest lawyers working alongside volunteer lawyers at provincial child protection committees. The ultimate goal of the program was to have at least one full-time public interest lawyer in each province responsible for the protection of children's rights – integrating efficiently the resources of volunteer and full-time lawyers and expanding the Lawyers Network to the grassroots county level.

By the end of 2008, each county in Anhui and Shanxi provinces had volunteer lawyers from the Lawyers Network, and 95% of the counties in Shaanxi province had volunteer lawyers. In at least thirteen provinces, 80% or more of the counties had volunteer lawyers from the Lawyers Network. Across the country, there were 8,189 volunteer lawyers in the Lawyers Network. The Lawyers Network has been recognized by international colleagues to be the largest national volunteer cooperative legal network on child protection in the world. Assisted by full-time public interest lawyers, volunteer lawyers in the Network have been active in areas including Beijing, Anhui, Fujian, Liaoning, Tianjin, Chongqing, and Inner Mongolia. These volunteer lawyers have established good reputations in their local communities and in the child protection field, and their work has helped to promote the development of local volunteer lawyers' networks.⁷⁸

The Lawyers Network has played an increasingly important role in protecting the rights of Chinese children. Its services 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. According to incomplete statistics, the Lawyers Network handled more than five hundred cases between August 2006 and October 2008. And in 2007 alone, there were more than four thousand awareness-raising activities with more than 1,200,000 targeted participants in kindergartens, primary and secondary schools, professional schools, and colleges.⁷⁹ In the area of media advocacy, volunteer lawyers in Anhui province initiated the annual Lawyers, Media and Children Salon as well as the yearly Top Ten Child Protection Events, both of which have become important in the child protection movement.⁸⁰

77 Information from interview with Tong Lihua, CCTV News Guest Room, May 24, 2007, <http://news.sohu.com/20070524/n250210413.shtml>.

78 See ACLA Special Committee on Child Protection, Work Report on Chinese Lawyers and Children's Rights Protection, in Chinese Lawyers and Children's Rights Protection, 2009, 1. This report was released at the yearly meeting of the ACLA Special Committee on Child Protection, December 21, 2008.

79 *Id.*

80 See "Anhui Lawyers Join Forces with Media to Protect Children's Rights," originally published by Chinese Lawyer Web, June 1, 2005, archived at Western Lawyer Web, <http://www.xblaw.com/news.asp?nid=2755>. See also Zhang Wenjuan, ed., Mechanisms for the Protection of Children in China, Law Press, December 2008, 137.

The Lawyers Network has also coordinated lawyers across China to handle high-profile and controversial child protection cases. In 2004, for example, tainted milk powder in Fuyang poisoned many infants and attracted national media attention. Functioning in its capacity as the administrative office for ACLA's Special Committee on Child Protection, BCLARC provided guidance to local lawyers on investigation techniques, organized lawyers to assist with investigation and evidence collection in Inner Mongolia, Fujian, and other affected regions, and held a policy proposal forum in Beijing.⁸¹ In June 2007, when the media exposed exploitative child labor practices in Shanxi's illegal brick kilns, BCLARC coordinated satellite offices for child protection and migrant workers and opened more than thirty special hotlines all over the country to provide legal aid to the injured children and their families.⁸² Cognizant of the fact that local Shanxi lawyers might suffer stigma if they intervened, BCLARC coordinated lawyers from Shaanxi province to enter Shanxi and conduct investigations. In September 2008, when news of the Sanlu melamine milk scandal became public, BCLARC opened hotlines for injured children and their families, offering free legal advice.⁸³

The success of the Lawyers Network derives from its ability to combine the resources of full-time public interest lawyers with those of the Network's volunteer lawyers. Full-time public interest lawyers have the advantage of devoting their undivided efforts to specific public interest issues; they are thus poised to act as a bridge to volunteer lawyers by assisting with coordination and communication and by providing ongoing 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 children's rights. Obviously, volunteer lawyers are unable to concentrate exclusively on providing public interest legal services or to maintain their commitment to such work without an organizational platform. Collaboration between NGOs and the private sector offers volunteer lawyers adequate and well-organized opportunities to contribute their free time to work on children's rights.

In the field of migrant worker's rights, the complexity and sheer volume of cases has led BLAOMW to focus on cultivating a strong group of full-time public interest lawyers. While BLAOMW hopes eventually to establish a collaborative network with the private sector (akin to the above-mentioned Lawyers Network), there must first exist a developed cohort of full-time public interest lawyers working on the issue. At present,

81 See "A Legal Analysis of the Fuyang Milk Powder Incident," Southern Web report, June 4, 2004, <http://www.southcn.com/law/fzzt/spaq/spaqxgpl/200406040675.htm>. See also "All For The Children: A Legal Analysis of the Fuyang Tainted Milk Powder Incident," China Legal Education Web, http://www.legalinfo.gov.cn/zt/2004-05/25/content_102245.htm; "ACLA Opens Fuyang Tainted Milk Powder Victims' Consultation Hotline," China Food Industry Web, April 24, 2004, <http://www.foodqs.com/news/gnspzs01/20044247506.htm>.

82 See Zhu Lei, "ACLA Takes Measures to Aid Shanxi 'Black Kiln' Child Laborers," People's Web, June 22, 2007, <http://society.people.com.cn/GB/42735/5899312.html>. See also China Court Web, June 22, 2007, <http://www.chinacourt.org/public/detail.php?id=253071>; Cui Li, "Legal Aid Hotline Lends A Hand to Child Laborers In Need" China Youth Daily, June 22, 2007. On Shaanxi attorneys traveling to Shanxi to take cases, see Wei Xiaoning, "Lawyers Head to Shanxi to Protect Children's Rights," <http://www.chinachild.org/zhi/mtgz/3txt.asp?id=194>; see also China Business View, July 2, July 3, and July 4, 2007.

83 See Li Kecheng, "ACLA Opens Legal Consultation Hotlines," Oriental Morning Post, September 17, 2008, http://epaper.dfdaily.com/dfzb/html/2008-09/17/content_83987.htm. See also BCLARC website, <http://www.chinachild.org/zhi/mtgz/3txt.asp?id=201>.

BLAOMW is exploring the possibility of adopting the collaborative model in a small number of provinces.

Mode 4: A gradualist approach to internationalization – building on domestic success and focusing on international standards

Insofar as Chinese NGOs remain in an early phase of development, they are well advised not to internationalize too quickly. Global trends, however, suggest that internationalization of Chinese NGOs is largely inevitable. Internationalization will likely assist in building the capacity of Chinese NGOs. As demonstrated by the development of the UN human rights system, NGOs have played an increasingly important role in international human rights advocacy. An increasing number of NGOs have obtained “consultative status” with the UN Economic and Social Council, and NGOs wield ever-growing influence in the UN decision-making process. They play increasingly varied roles related to the reform and development of treaty bodies, including drafting shadow reports and conducting other impact activities.⁸⁴ When the Human Rights Commission was replaced by the Human Rights Council, NGOs played a critical role in the drafting of country evaluation materials. Finally, the needs of Chinese NGOs for financial support and capacity training from international organizations cannot be ignored.⁸⁵

There remains debate over how NGOs should internationalize. While there are various schools of thought, the approach best suited to Chinese NGOs focuses on stable development.

How does one promote stable development? The experience of BCLARC and BLAOMW illustrates that internationalization must be based on a strong domestic foundation, which includes a positive domestic reputation and a portfolio of positive domestic results. NGOs should, in their daily work, keep their long term goals and the international situation in perspective. An NGO should be familiar with international conventions relevant to its field, pay attention to the development of international human rights mechanisms, participate in international cooperative efforts related to human rights, and establish cooperative relationships with international organizations. It is worth emphasizing that BCLARC and BLAOMW adopt an impartial, objective stance during their participation in international activities.

NGOs derive numerous benefits from their participation in international initiatives. First, such participation helps NGOs gain experience in program management. In 2004, with the support of the EU-China Legal and Judicial Cooperation Program, BCLARC and the Central Youth League launched training programs for child protection officers (mainly from the Communist Youth League) in twelve provinces, autonomous regions, and municipalities on the topics of child protection and delinquency prevention.⁸⁶ In 2007,

84 From training materials distributed at the “Treaty Body Training Workshop for Civil Society Representatives - 24 September to 3 October 2007 - Geneva,” organized by the UN High Commissioner for Human Rights.

85 From materials distributed at the “UN Human Rights System” training session, June 2008 organized by the United Nations Association of China.

86 See “China-EU Legal and Judicial Joint Program: Training Work for Children’s Rights Protection Cadres of Western and Central China Roundly Successful,” in *Community and Rights Work*, Volume 9. See also China Communist Youth League Web, http://www.ccyf.org.cn/bulletin/qyb_scyqy/200611/t20061130_3055.htm.

BLAOMW participated in a program run by UNDP and the ACLA on promoting migrant workers' legal aid. In this program, BLAOMW guided and assisted the establishment of fifteen local special organizations for migrant workers' legal aid; it also assumed responsibility for supervising the daily management of the fifteen local satellite offices. To improve the effective management of the program, BLAOMW developed a set of "Implementation Guidelines for the Promotion of Public Interest Legal Services Programs for Migrant Workers,"⁸⁷ establishing standardized operations and an evaluation mechanism for organizational and staff management. These guidelines received positive feedback from many international organizations for their advanced approach to the management of international programs.

Participation in international exchange programs related to human rights has also provided the two NGOs with opportunities to interact with international human rights mechanisms and UN human rights agencies. In August 2005, BCLARC and BLAOMW received a visit from the United Nations High Commissioner for Human Rights, Ms. Louise Arbour;⁸⁸ in November 2005, they received the United Nations Special Rapporteur on Torture, Mr. Manfred Nowak; in September 2007, lawyers from the two NGOs attended the United Nations Treaty Mechanism Training held in Geneva; and in September 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.⁸⁹ Additionally, authorized by national departments such as the Ministry of Foreign Affairs, BCLARC and BLAOMW have received many international delegations. These have included 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.

BCLARC and BLAOMW have also placed emphasis on the promotion of Chinese public interest law overseas and have made substantial efforts to establish close cooperative relationships with top law schools abroad. The two NGOs have sent staff to study at and participate in study tours at top law foreign schools, where the staff have given presentations introducing the development of Chinese NGOs and public interest law in China. So far, the two NGOs have established close relationships with Yale Law School, Harvard Law School, New York University Law School, and Columbia Law School. The presentations by BCLARC and BLAOMW have inspired many excellent law school students to apply for internship positions with the two NGOs. In 2009, eight J.D. students from the top five law schools in the U.S. applied to intern with BCLARC and BLAOMW.

87 The Guidelines were drafted after numerous discussions by the Program Management Committee, and were implemented on July 1, 2008.

88 The visit is referenced in "UN High Commissioner High Commissioner for Human Rights Arbour Meets With China NGOs," Human Rights magazine, 2005, Volume 5; See also the website for the China Society for Human Rights Studies, <http://www.humanrights-china.org/china/rqzt/zt200200619171635.htm>

89 Materials distributed to interested persons by the Office of the UN High Commissioner for Human Rights cite BCLARC and BLAOMW materials on seven different occasions. See http://www.upr-info.org/IMG/pdf/A_HRC_WG6_4_CHN_3_E.pdf.

Through participation in international programs and in UN Human Rights activities, and by establishing strong relationships with top law students abroad, BCLARC and BLAOMW have been able to stimulate and learn from a fruitful dialogue between domestic and foreign voices.

Conclusion

Although the development of foreign NGOs offers a valuable precedent, questions remain as to how Chinese NGOs, especially those with a legal focus, can mature and become a new force for equitable development within the unique Chinese context.

A well-developed, balanced, and healthy society requires three basic elements: the government, the market, and civil society.¹ As seen from the PRC's past sixty years of change, the government has been the most powerful element. About twenty years ago, China started to release the market from "big government." With the maturation of the Chinese market, stakeholders diversified, and the interests of some groups were not represented by either the government or the market. This change led to new social tensions. In response, China has, during recent years, tried to encourage the growth of civil society as an independent element of society. But as the influence of civil society (unlike that of the market) overlaps with that of politics and culture, the effect of civil society is difficult to measure. This accounts for why Chinese NGOs, especially legal NGOs, have been developing slowly.

It is useful for legal NGOs to explore a good growth model to demonstrate that they are a positive factor in enhancing social trust and legal authority and that they will promote equitable social development. To some extent, we believe that BCLARC and BLAOMW have served this role. We also believe that the two NGOs' four strategies and four models will not only provide helpful lessons to domestic colleagues but will also be a useful reference for international organizations' cooperative programs in China.

1 Zhao Liqing and Bo Tenan, "Civil Society and Non-Governmental Organizations," *Social Sciences Abroad*, 1999, 1, 54.

后记

尽管这本专题报告侧重于两个密切相关的法律援助社会组织的工作经验方面，但是它就社会组织、当前中国的公平发展以及社会组织领域在未来将如何发展等方面提出了一些有趣的、一般性的问题。

什么是公平的社会？

公平社会的一种定义就是，社会上的所有人都能参与其中并促进其公平正义的包容性。

这正是中国倡导的和谐社会的一部分。法律援助社会组织在这本专题报告中作为典范被予以介绍；显而易见，它所提供的公共服务正在解决贫困农民工和儿童的问题——如何帮助他们参与法律程序和通过正当渠道参与社会。正是如此，它提供公共服务，从而使公众被纳入到社会的法律进程中来；也正是如此，它正在对公平发展做出着积极贡献。该专题报告的案例研究是关于社会组织如何做出贡献，以实现中国社会发展的更广泛目标的一个范例。

什么是社会组织发展的空间？

当今中国社会组织发展空间的性质是什么？随着全国范围内已有380,000家注册的社会组织存在，表明社会环境正逐渐有益于社会组织的发展。当然在2006年之前，社会组织有过显著增长，但自那以后，有迹象表明公民团体发展的速度放缓。然而，四川地震展现了社会组织为救灾所做的贡献。这进一步提高了社会组织的形象，也进一步扩大了社会组织为社会提供服务的范围，从而为社会组织的发展创造出更多的空间。重要的是，伴随着“公平发展 公共治理”项目同民政部的合作，在民间组织注册、社会组织财务管理等方面，对社会组织的管理正在改变。在未来，社会组织将能在民政部直接注册，而无需上级主管部门。最近税务制度方面的改变，有利于民间组织抵纳税款，从而更好地吸引个体和企业为社会组织提供资金。来自民政部的最新数据表明，中国社会组织43%的捐款来自于私营企业。此外，政府在全国设立民间组织服务站的举动将会促进政府购买民间组织的服务。总体而言，研讨会的与会者对于中国社会组织未来的发展是很乐观的，证据表明社会组织发展的环境正在改善。

社会组织在社会中的作用是什么？

有趣的是，对于社会组织来说，它在任何文化情景中都缺少理论支持。对于商业来说，明确的内在合理性就是满足人们的需求、盈利和经济附加值。对于政府来说，它的职能是提供那些企业不能提供的“公共产品”，诸如法律、秩序和国防等。往往社会组织的发展，是为了满足因为缺乏盈利，所以市场无法提供服务的某一特殊需求；以及因为资源有限或者不是政府的优先议题，从而政府无法满足的需求。对于中国来说，没有可供民间组织吸取的历史经验或传统。

对社会组织和政府来说都是如此。在这一新的领域内，社会组织和政府都在探索未来的途径。

此次研讨会的讨论反映了社会组织在中国的作用，强调了它们在社会发展和社会改革中的作用，而且它们并没有处在政府的对立面。由于快速的经济和社会变革，中国的社会发生了变化，而通过法律架构来明确社会组织的作用将是向前迈出的重要一步。

扶持民间组织是政府的职能吗？

该专题报告中提出的模式，是一家民间组织在政府的扶持下免费向顾客/客户提供公共服务，以保障社会‘包容性’的范例。这样做是为了直接援助农民工和儿童，同时也是通过解决农民工和儿童的权利这些关键的社会问题，来确保整个社会更广泛的获益。这个道理也可以运用到教育、健康、环境卫生，甚至于雇佣关系等方面。在这些方面，社会组织提供服务和直接援助，而结果可以使整个社会更广泛的获益。该模式有潜在的扩展可能性，以解决公共服务不足所带来的其它社会问题，比如在社会组织有能力提供服务的农村地区。

政府与社会组织之间是何种关系？

社会组织与政府间的关系没有单一的模式。社会组织为政府提供公共服务可以采取多种形式，在一些情况下可以起到顾问作用；在另外的一些情况下，可以起一种倡导作用。中国社会组织的管理机制仍在发展，这导致社会组织与政府间的关系是根据具体情况，而不是由一种清晰的法律架构来指导。缺乏清晰的规章和以往‘双重管理’的要求已导致某些社会组织以商业身份注册，却从事社会组织的工作。这种情况正在改变，政府已采取了一些措施来购买社会组织更多的服务，并对社会组织为社会做出的贡献不断予以肯定。尽管如此，在没有一种可接受、可操作的法律架构之前，如何管理社会组织的问题仍然存在。“公平发展 公共治理”项目活动正努力推动学习其他国家的关于政府与社会组织之间的合作经验。

社会组织内部管理的重要性如何？

很自然，无论是社会组织，还是企业或政府部门，内部管理和治理是其成功的关键。不善的内部管理和财务控制被认为局限了中国社会组织的发展。如果社会组织想要参与社会的公共服务，并得到政府及捐助者的支持，内部管理体制需要加强，以便使它们能提供高效而又实际的服务。通过与民政部的合作，“公平发展 公共治理”项目正在支持全国范围内社会组织的管理培训工作。在成都和兰州，对社会组织的领导者进行了培训。此外，正在开发针对社会组织工作人员的全面培训材料，该材料在未来的培训中将被采用。

社会组织在与政府的政策对话中是否能起作用？

社会组织的工作重点经常集中在所面临的一些具体问题上，关于社会中边缘化或弱势群体问题，诸如农民工、残疾人或贫困人群等群体。其工作着重解决如缺水、环境和健康等问题。这些都是社会面临的问题，为了和谐发展，这些问题需要政府的政策性回应。这正是社会组织为政策对话提供信息和意见的用武之地。

有趣的是，北京农民工法律援助工作站依据基于调研和实际经验的证据，向政府提供系统性信息。这些信息结合媒体的报道，引起了相关政府机构对这些问题的注意。

然而，在某种程度上，这只是临时性的。发展一种更系统的对话途径才能有助于改善政策制订的程序。将社会组织纳入与政府的对话是“公平发展 公共治理”项目的主旨之一。例如，召开全国性的社会组织研讨会和社会组织双月论坛，使得社会组织之间、社会组织与政府之间能够进行对话。

能否设想社会组织在中国的多种发展模式？

社会组织的发展会有不同的途径，这几乎是必然的趋势，也取决于需要解决的问题的性质和大小，资金来源及对社会组织的管理与治理。全球公民社会有一大批多种多样的组织：一些志愿服务网络；另外一些类似跨国公司性质的、规模比较大的组织。事实上，社会组织的发展没有一个特定模式。目前在中国，政府性质的民间组织看来似乎是一种受欢迎的模式，就是政府资助部分资金并参与管理，但不会非常严格地予以控

制。尽管如此,随着信心的增长,法律体制的形成,社会组织对发展包容性社会所做的贡献日益为人们所认同,社会组织更多样的模式或者是组织形式将会被人们接受。正如企业或政府部门没有同一模式一样,无论从个体层面还是社会层面来讲,社会组织发展也没有模式。总体来说,公民社会是伴随着政府与公民关系的变化而发展的。在中国,社会组织的发展将会基于政府的周密决策。这是相对于其它国家而言,从历史角度来看,那些国家的社会组织是伴随着政府的发展而自发地发展的。

总之,我们希望此次专题报告和研讨会能推进讨论,也能对与会者和该专题报告的读者有所裨益。“公平发展 公共治理”项目将会继续支持有关社会组织/非政府组织发展的调研,为政府和民间组织提供对话平台来交流观点,并传播有助于中国公民社会发展讨论的信息。

Afterthoughts

Interestingly although the monograph focuses on the experience of two closely linked legal aid CSOs it raises some interesting general questions about CSOs and equitable development in China today and how the CSO sector will develop in the future.

What is an equitable society?

One definition of an equitable society is one where all can participate and prosper a society of 'just and fair inclusion'. This is one part of China's vision of a harmonious society. The legal aid CSO presented in the monograph as an example it is evident that its services are addressing the issues of poor migrant workers and children who are excluded from legal processes and effectively excluded from participation in society through proper channels. In this way it is offering services which will allow people to be included in society's legal processes and in this way is contributing to equitable development. The case study in the monograph is a clear example of how CSOs can contribute directly to the wider goals of social development in China.

What is the space for CSOs to develop?

What is the nature of the space for civil society organisations to grow in China today? With about 380,000 registered CSOs throughout China it suggests the environment may increasingly conducive to CSOs development. Certainly there was significant growth in CSOs to 2006 but with evidence of a slowing in the rate of growth of civic groups since. However the Sichuan earthquake illustrated the contribution CSOs can make in disaster relief situations. This has further enhanced the profile and services CSOs can offer a society thus creating more space for development. Importantly regulations are changing with the GED project working with MoCA on topics such as NGO registration, financial regulations for CSOs. In future CSOs will be able to register directly with MoCA without a sponsoring government organisation. Recent changes to the tax regime allow contributions to NGOs to be offset against tax, making it more attractive for individual and businesses to contribute to CSO funding. According to the latest data from MoCA private business provided 43% of donations to NGOs in China. Additionally government is moving to set up NGO service stations across China to facilitate government purchasing from NGOs. Overall seminar participants were optimistic about the future of CSO development in China and evidence points to an improved environment for CSOs to develop.

What is the role of CSOs in Society?

Interestingly there does not seem to be theoretical underpinning for any culture for civil society organisations. There is clear rationale for business to address people's wants, make a profit and add value to the economy. For government it is to provide 'public goods' which business cannot deliver such as law and order and

defence. Often CSOs have grown up to serve a specific need which cannot be served by the market because of lack of profitability and cannot be supplied by government because of resource constraints or the problem being low on the governments priorities. For China there is not a history or tradition of non government organisations on which to draw experience.

This is true of both CSOs and government. It is a new world where both civil society organisation and government are feeling their way to the future.

The seminar discussion reflected on the role of CSOs in China and emphasised their role in social development and social reform and not to occupy a position opposed to government. As Chinese society changes with the rapid economic and social change clarifying the role of CSOs through a legal framework will perhaps be a significant step forward.

Is it the role of government to assist NGOs?

The model presented in the monograph is an example of a NGO's being assisted by government to provide services at a zero price to the customer/client to ensure 'inclusion'. This is done to assist migrant workers and children directly but also to secure wider social benefits to society by addressing key social issues of workers and children's rights. However this reasoning could also be applied to education, health, sanitation and even employment where direct assistance to provide services results in wider benefits to society. Potentially the model could be one which can be expanded to address other social issues where services are underprovided, potentially in rural areas if there are NGOs with the capacity to deliver services.

What is the relationship between government and CSOs?

There is no one format for CSO-government relationships. It can take many forms with CSOs delivering services for the government, playing an advisory role in some situations and in others taking an advocacy role. The regulatory regime for CSOs in China is still developing and consequently the CSO-government relationships are situation specific rather than guided by a clear legal framework. The lack of clear regulations and the previous requirement for 'dual management' has led some CSOs to register as businesses and work as CSOs. This is changing and there are moves from government to procure more services from CSOs and also to increasingly recognise the contribution of CSOs to society. Nevertheless until there is an accepted working legal framework the question of how to manage CSOs will remain. The GED project is supporting activities which will facilitate learning from other countries about government –CSO co operation.

How important is CSOs internal management?

Naturally the management and governance of an organisation whether it be a CSO, business or

government is critical to its success. Weak internal management and financial controls have been identified as constraints on CSO development in China. If CSOs want to be involved in delivering services to society and gain support from government and donors the internal management systems will need to be strong so they can deliver efficiently and effectively. The GED project, through MoCA, is supporting the training of CSO management across China and has held training events for CSO leaders in Chengdu and Lanzhou. Additionally comprehensive training materials are being developed for CSO staff which will be used in future training.

Is there a role for CSOs in having a policy dialog with government?

Often CSOs work is focused on tangible problems facing excluded or disadvantaged groups in society such as migrant workers, handicapped or the poor. It can also focus on issues such as water shortages, the environment and health. These are issues faced by society and which for harmonious development need a policy response from government. This is where CSOs can contribute information and ideas to inform the policy dialog. Interestingly BLAOMW present systematic information to government bases on evidence based research and practical experience. This combined with media reports resulted in getting the attention of relevant government organisations on issues.

However this is to some extent ad hoc in nature and a more systematic approach to dialog could help improve policy making processes. Involving CSOs in a dialog with government is one of the key themes of the GED project. For example a national CSO conference and bi monthly CSO forum are being promoted where CSOs can have a dialog between themselves and with government.

Can different models for CSOs development in China be envisaged?

There almost inevitably will be different ways CSOs can develop depending on the nature and size of problems to be addressed, the funding sources and the governance and management of CSOs. Global civil society is a vast array of diverse organisations some voluntary networks, others large scale organisations akin to multinational companies. In fact there is no one model of CSO development. Currently in China the GONGO or government NGO seems to be a favoured model where the government part funds and manages, however loosely, the organisation. However as confidence grows, a legal framework is developed and CSOs contribution to developing an inclusive society is increasingly recognised a greater variety of models and organisational forms may be accepted. Just as there is no one model for business or government there is no one model for CSO development either individually or at the level of society. Overall civil society develops as the relationship between government and citizens changes. In China the development of CSOs will be based upon a deliberate decision by the government. This is in contrast to many other countries where historically CSOs developed spontaneously alongside government.

Overall we hope the monograph and seminar provided stimulation for discussion and also brought some useful benefits for participants and monograph readers. The GED project will continue to support research on the practice of CSO/NGO development, provide a dialog for government and NGOs to exchange ideas and disseminate information helpful to the discussion on civil society development in China.

