New Citizens, Service Providers and Policy Entrepreneurs: The Role And Impact Of Civil Society Organisations On Development And Reform In China

August 2014

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This project is funded by the European Union

This project is implemented by a Consortium led by Steinbeis GmbH & Co. KG für Technologietransfer
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<table>
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<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>ACFTU</td>
<td>All-China Federation of Trade Unions</td>
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<td>ACWF</td>
<td>All-China Women's Federation</td>
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<td>CDPF</td>
<td>China Disabled Persons' Federation</td>
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<td>CSR</td>
<td>corporate social responsibility</td>
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<td>CWSLS</td>
<td>Center for Women's Studies and Legal Services</td>
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<td>GCA</td>
<td>Green Choice Alliance</td>
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<td>GDP</td>
<td>gross domestic product</td>
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<td>GONGO</td>
<td>government-organised non-governmental organisation</td>
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<td>HBV</td>
<td>Hepatitis B virus</td>
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<td>ICT</td>
<td>Information &amp; communication technologies</td>
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<td>IPE</td>
<td>Institute of Public and Environmental Affairs</td>
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<td>MCA</td>
<td>Ministry of Civil Affairs</td>
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<tr>
<td>LGBT</td>
<td>lesbian, gay, bisexual and transgender people</td>
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<td>NIMBY</td>
<td>not-in-my-back-yard</td>
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<tr>
<td>NGO</td>
<td>non-governmental organisation</td>
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<td>PX</td>
<td>paraxylene</td>
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<td>SEPA</td>
<td>State Environmental Protection Agency</td>
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1. EXECUTIVE SUMMARY

- A civil society sector has emerged in China and Chinese non-governmental organisations (NGOs) play an increasingly important role in policy-making processes, on issues ranging from dam-building and pollution to discrimination and civil rights. In the early 1990s, the notion of the government reversing a decision as a result of civil society activism would have been unthinkable. Today, there is ample evidence of NGOs which make use of the cracks and spaces in China’s fragmented political system to press for changes which go beyond the state’s intentions and control.

- The emergence of civil society is, however, not a sign that the Chinese Communist Party is liberalising or democratising. NGOs are pressing for change, but they do so under great structural restraints and in a fundamentally unequal relationship with the government. Parallel with recent government policies emphasising more sustainable development, rule of law and the important role of “social organisations”, the government is cracking down on NGOs and activists that are perceived to challenge the current system.

- A model of “consultative authoritarianism” has emerged in China, combining an expansion of civil society with the development of more indirect and sophisticated tools of state control. NGO survival and advancement in this restrictive environment takes skilful manoeuvring embedded in local networks and structures. Knowledge and understanding of these important dynamics and aspects of Chinese development and policy-making is lacking in the EU. Mistaken assumptions about China’s civil society and policy-making process lead to misguided strategies for EU-China dialogue and cooperation.
• International funding and support are important for the development of China’s civil society sector. The EU can promote more pluralistic, inclusive and sustainable development by supporting China’s civil society organisations, and by upholding basic human rights principles in all cooperation and dialogue with China.

• The EU should also invest resources in building knowledge about China and Chinese civil society organisations in Europe, through collaboration between European and Chinese civil society organisations, and by supporting European expertise in this field.
2. INTRODUCTION

When Chinese development and policy reform are discussed in Europe, it is often in terms of a top-down process, with the Chinese government “lifting” people out of poverty and senior party cadres introducing new legislation when they decide that it is time to make some reforms. Whether it is the environmental crisis, working conditions in factories or the death penalty, new policies and legislation are seemingly always the brainchild of the Chinese Communist Party, or the result of pressure from abroad. The only actor with some agency in this story about China is the Party-state, as a strategic reform driver or controller, either cracking down or liberalising. The role and impact of non-state actors – of Chinese civil society – is invisible, or they make an appearance mainly as passive victims or marginalised dissidents.

The fact that civil society is so tightly regulated and controlled in China has led some observers to question whether China has a civil society at all, and to dismiss Chinese NGOs as co-opted enablers of the one-party state. In their view, Chinese NGOs are not sufficiently independent, adversarial, assertive or “political” to qualify as civil society. Conversely, others tend to overstate the nature, role and impact of civil society activism, misinterpreting specific events as though they herald an imminent democratic revolution. Both these depictions fail to capture the complexity of state-society relations in China today. Rather, the emergence of civil society is a dialectical process with public space being shaped both from above by the state and from below by citizens.

The Chinese Party-state takes an ambivalent stance towards civil society. On the one hand, the Communist Party is deeply suspicious and controlling of independent civil society organisations. On the other hand, the state needs civil society organisations to help provide social services which the state is no longer able to provide. After decades of adhering to Deng Xiaoping’s policy of “Development is the only hard truth”, China is facing tremendous environmental and urbanisation challenges, including desertification, pollution, the impact of climate change on food security, a surge in cancer deaths, and a large migrant population.
without access to basic social services. The old welfare structures have been dismantled, and
the provision of public services is being decentralised. The government neither can nor
wants to be responsible for all these challenges, and civil society advances as the state
withdraws. There are over 500,000 registered non-governmental organisations in China
today, working with a range of issues including environmental campaigns, legal aid to
vulnerable groups, public health, community development, and education for migrant
workers and their children.

This paper aims to illustrate the role and impact of civil society organisations on Chinese
policy-making, with a focus on non-governmental organisations working with environmental
and urbanisation issues. First, I discuss the emergence of the civil society concept and sector
in China since the 1990s. The next section (section 4), provides a snapshot of different forms
of civil society activism, the strategies and methods employed by Chinese NGOs, and the
restraint they face. In section 5, I discuss recent government responses and policy
developments related to the civil society sector, and current challenges for Chinese NGOs. In
conclusion, I discuss the growing role and impact of civil society organisations on policy-
making in China, why this is a key issue for EU policy-makers, and what the EU can do in
support.
3. THE MEANING OF CIVIL SOCIETY IN CHINA – DEFINITIONS AND CONCEPTUAL FRAMEWORKS

“Civil society” is a broad and fluid concept, and a normative ideal rather than a neutral policy instrument. Civil society has often been described as a positive force, with an essential role in promoting both democracy and free and flourishing market economies. More critical explorations of the relationships between civil society, the state and the market in the context of democratic development have however demonstrated that there is no causal relationship between capitalism, the emergence of civil society and democracy. In order to understand the meaning and purpose of civil society in different contexts, it is necessary to do a deeper analysis of the particular political, social and economic power structures in which the concept is cultivated.

At a very basic level, the notion of “civil society” can be defined as the existence of a public space between the individual household, the state and the market, in which people can debate, organise and take action – a third sector separate from the government and business sectors. Non-governmental organisations (NGOs) constitute an important part of this third sector, and while society is of course a lot more complex than merely the “governmental” and “non-governmental”, this dichotomy is important for how the notion of civil society is understood in most contexts.

3.1 Civil society with “Chinese characteristics”

NGO is not a frequently used term in China. The term “non-governmental organisation” (非政府组织) sounds too much like “anti-governmental organisation” for the government’s comfort. Instead, NGOs are commonly referred to as “social organisations” (社会组织), “civil organisations” (民间组织), or “public welfare organisations” (公益组织). The Chinese Party-state has always been suspicious of individuals and organisations seeking

autonomy, distance and independence from the Party’s United Front, mass organisations and mass line. Since the 1990s, the state has however taken a more ambivalent stance towards civil society organisations. On the one hand, the state needs NGOs to provide social services which it is no longer willing or able to provide, and civil society is associated with modernity, development and innovation. On the other hand, civil society is perceived as a challenge to “stability” and the Party’s continued power monopoly.

Up until the early 1990s, there was no NGO sector to speak of in China. Mass organisations and “GONGOs” (government-organised NGOs) like the All-China Women’s Federation (ACWF), the All-China Federation of Trade Unions (ACFTU), and the China Disabled Persons’ Federation (CDPF) had a monopoly over their respective issues and the state only recognised one organisation as representative of the interests of that particular constituency (women, workers, persons with disabilities etc).

The 4th World Conference on Women held in Beijing in 1995 was an important catalyst for the establishment of NGOs in China. The conference brought together NGOs from different parts of the world, debating and criticising government policies, which helped to promote the idea of independent NGOs in China. The conference spurred the establishment of several government-organised NGOs and university-affiliated research centres on “women’s issues”, which provided the beginning of a platform and alternative space for research, education and mobilisation on gender and women’s rights. Some of China’s most prominent environmental organisations were also launched soon after the Conference, including Global Village Beijing and the Center for Legal Assistance to Pollution Victims.

The rules for registering a non-profit, non-governmental organisation with the Ministry of Civil Affairs (MCA) were and continue to be very strict, although they were relaxed somewhat in 2011. The registration system requires not only approval by the MCA, but also sponsorship from a government office or GONGO related to the field of work of the NGO. The sponsor – also known as the “mother-in-law” – is responsible for supervising the NGO, with obvious implications for its autonomy and independence. Nevertheless, the number of
organisations registered with the MCA grew from about 500 in the early 1990s to around 500,000 in 2012. But because of the strict dual registration rules, the great majority of China’s grassroots NGOs are not registered, or are registered as businesses but operating as non-profit organisations. Depending on how one counts, there are probably around 5 million registered and unregistered civil society organisations in China, with some estimates as high as 8 million registered and unregistered groups.²

Throughout the 1980s and the early 1990s, most Chinese associations functioned as corporatist extensions of the state. Much has changed since then and the NGO sector has become increasingly diverse, in particular in the last decade. Both GONGOs and grassroots groups exist, furthermore, in a continuum of dependence and autonomy rather than in dichotomous categories.³ GONGOs still try to monopolise space to the exclusion of other groups – the central and official trade union (ACFTU) has been instrumental in suppressing grassroots labour organisations, and other GONGOs are seemingly employed to silence and intimidate independent Chinese organisations in international fora, like the China Association for Preservation and Development of Tibetan Culture at a recent UN Human Rights Council meeting.⁴ Since the early 2000s, multiple grassroots groups representing the same constituency have nevertheless proliferated.

### 3.2 From corporatism to consultative authoritarianism

Why does the Chinese state promote the idea of grassroots NGOs at all? Ever since the onset of economic reforms, the Party has recognised the need to transfer some functions and responsibilities from the state to social organisations like charities and professional associations. In the 1980s, the central government also transferred primary responsibility for provision of public goods (education, health care and social security) to local governments,

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³ Teets J 2013 *Let many civil societies bloom: the rise of consultative authoritarianism in China* *The China Quarterly* 213:19-38
⁴ See http://mobile.nytimes.com/blogs/sinosphere/2014/03/24/chinese-ngo-member-barred-from-united-nations/
who in turn did not possess the necessary fiscal means to shoulder this responsibility. This gap between responsibility and funding was an important reason why local governments started to see civil society organisations as potential partners in solving social welfare problems. The retreat of the state from many aspects of daily life meant that a space opened up for NGOs, and decentralisation supported the idea of a cooperative relationship between local governments and civil society organisations. “Small government, big society” became a key slogan in the 1990s.

Beginning in the early 1990s, international NGOs and funding agencies started funding Chinese grassroots groups. This further motivated local governments to partner existing NGOs, or to help create new organisations to be able to tap into this new funding stream. There are now a couple of hundred international NGOs with a long-term presence and programme in China, out of which 50 or so are registered. International funding and support through some of these NGOs and international campaign networks (such as the Ford Foundation and Oxfam) have played a significant role in promoting development in China through partnerships with government, business and civil society actors.

However, the idea of civil society as essential for modernisation and development was challenged by the 2008 global economic crisis and in the wake of the colour revolutions and the Arab Spring. Numerous Party statements were issued about the risks and threats of ideological and cultural infiltration by hostile forces and foreign-funded NGOs conspiring to bring down the government through “peaceful evolution”. In the years following the 17th Party Congress in 2007, the government ordered multiple crackdowns on lawyers and activists, and several prominent civil society organisations working with HIV/AIDS issues, women’s rights, and the rule of law were harassed and forced to shut down.

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5 Teets supra note 3
6 Ibid.
This tension between the notion of grassroots NGOs as useful partners, and of civil society as a threat to the Party-system has persisted ever since. The long-promised new national regulations on NGO registration were put on hold, while “social management” pilots were developed in Beijing and Shenzhen, which allowed certain organisations to register without the support of a “mother-in-law”. A new model of “consultative authoritarianism” emerged, which combined an expansion of civil society with the development of more indirect tools of state control.⁸ NGOs no longer serve as mere appendages to the state, but have operational autonomy with independent staff, resources and projects. Meanwhile, a “shadow civil society”⁹ emerged, made up of hundreds of thousands of informal and non-registered NGOs and groups with one foot in the shadows and one foot in the open and formal arena, co-existing with GONGOs and registered social organisations in a negotiated public space.

As Jessica C. Teets and others have argued, this model of consultative or responsive authoritarianism challenges both the conventional wisdom that autonomous civil society organisations cannot exist in authoritarian regimes, as well as the assumption that the presence of civil society is an indicator of democratisation.¹⁰ Instead, the Party builds consensus around policies through deliberation and consultation with social organisations which represent relevant constituencies. This results in increased citizen satisfaction with the Party regime and better governance under the conditions of authoritarianism. In his insightful article on why and how grassroots NGOs survive in authoritarian China, Anthony J. Spires describes the current situation as a “contingent symbiosis” – a relationship of mutual suspicion and mutual need, in which the state tolerates grassroots NGOs “as long as particular state agents can claim credit for any good works while avoiding blame for any problems”.¹¹

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⁸ Teets supra note 3
¹⁰ Teets supra note 3
¹¹ Spires A 2011 Contingent symbiosis and civil society in an authoritarian state: understanding the survival of China's grassroots NGOs American Journal of Sociology 117/1: 1-45
The emergence of civil society and increased participation and pluralisation are thus not a sign that the Chinese Communist Party is liberalising or democratising; instead it may extend the current regime of authoritarian adaptation and responsiveness. Some scholars have therefore argued that China’s emerging NGO sector has been co-opted in a new and more inclusive form of neo-corporatism. However, this paper illustrates that it is important to hold two thoughts at the same time: the Chinese party-state is not liberalising or democratising – quite the opposite. Yet at the same time, Chinese civil society is advancing, with increased participation and pluralisation as a result. As Andrew C. Mertha argues in his interesting and detailed account of citizen action and policy change on the Nu River, the increasing levels of participation in this system at some point also begin to resemble a more pluralistic system of competing interests and impact on policy, contributing to a more dynamic political process.\(^\text{12}\).

3.3 Dreaming different dreams: alternative notions of civil society in China

As Isabel Hilton points out in an indispensable book on China’s environmental movement, it is also important to know that China’s emerging civil society is “bouncing back” rather than evolving from scratch.\(^\text{13}\) Chinese society thrived with secret societies, kinship associations, political organisations, religious associations and business associations before the Mao Zedong-era. The pursuit of civil society was part of the modern society envisioned around the revolution in 1911. These developments were interrupted by the communist revolution - with the Cultural Revolution as the final chapter in the destruction of civil society - but resumed again in the 1980s.\(^\text{14}\)


\(^{14}\) Gao B 2013 Is Chinese society a kind of civil society? The emergence of an independent third sector in China Paper presented at Forum on NGO Governance and Management in China Edmonton 16 August 16 2013, available at https://docs.google.com/file/d/0BxzGT6Btpa-keHpoRz8hQ1drcGM/edit
The Chinese Communist Party’s prescription for civil society is focused on unity, order and stability – a vision of a “harmonious society” which tends to ignore and conceal social diversity, disparities and conflicts. Stability is the primary goal of the Party, with instability defined as social unrest, which might threaten the hegemony of the party-state. Hu Jintao’s concept of harmony has prompted popular sarcasm (“to be harmonised” is a euphemism for censorship and politically motivated, arbitrary arrests), but also provided an opportunity and a legitimate discourse for Chinese intellectuals and activists to construct alternative visions of harmony and civil society. Scholars and public intellectuals have questioned the government policy of “stability above all”, arguing that the stability maintenance or “rigid stability” only leads to increased conflict, and that there cannot be any harmony without rule of law, transparency and accountability.\(^\text{15}\) In these alternative notions of stability and harmony, social conflict is seen as unavoidable in modern society, and harmony is based on tolerance, democracy and rule of law, with civil society playing a key role in preventing and resolving conflict.\(^\text{16}\) When Xi Jinping started promoting the “Chinese Dream” as a slogan in 2013, Peking university students protested that they did not want their dreams presented to them like a decree from above, while others pointed out that their dream was of simple things like fresh air and clean water, rather than Xi’s more grandiose vision of national rejuvenation and a powerful China.

There is a tendency among some Western China observers to dismiss the claims of Chinese civil society groups as insufficiently political, rights-based or adversarial to constitute a proper civil society. Protest and activism in China is not about rights, they say, but about “soft” issues like social and economic welfare and the environment. This perspective represents a limited and one-dimensional notion of what human rights are, and an ideal view of how civil society functions. It also fits rather well with the Chinese Communist Party’s claims about “Chinese values” as fundamentally different to “Western values” (and about the Communist Party as representative of China). Most importantly, it fails to grasp

\(^{15}\) Yu J Reassessing Chinese society’s ‘rigid stability’. Stability preservation through pressure, its predicament and the way out (transl. Todd J), available at http://www.thechinastory.org/2013/01/chinas-rigid-stability-analysis-of-a-predicament-by-yu-jianrong-%E4%BA%8E%E5%BB%A9%E5%85%98/

important dynamics in Chinese state-society interactions and the discourse and tactics which are employed by civil society organisations to survive and mobilise support in a restrictive environment. As the next chapter aims to demonstrate, by providing a number of snapshots of different forms of civil society activism and policy impact, there is clearly something which deserves to be called a civil society in China, albeit with distinct Chinese “characteristics” and particularities.¹⁷ These particularities have less to do with “Chinese culture” or political lack of interest and more to do with discourse and strategies employed to negotiate for space in China’s authoritarian Party-state.

¹⁷ A point made by Nick Young more than ten years ago in his interesting paper on civil society and human rights in the Chinese context. Does this cat catch mice? China Development Brief 1 July 2003
4. THE POLICY IMPACT OF CHINESE CIVIL SOCIETY ORGANISATIONS

4.1 Fragmented authoritarianism and policy entrepreneurs

Although Chinese NGOs are dependent on the state, they have a large degree of operational autonomy. This autonomy arises partly because of the fragmented nature of the state. China’s “fragmented authoritarianism” means that there are spaces in the institutional and political landscape where incremental changes can enter entrenched policy-making processes. In these spaces, Chinese NGOs act as “policy entrepreneurs”, advocating for particular policy proposals and ideas in ways that engage the political process rather than stand in direct opposition to it.18 Government officials may also act as policy entrepreneurs and ally themselves with NGOs on particular issues. China is diverse and encompasses huge regional differences. Central and local governments have different objectives and may respond to the same issues differently. While local governments often support development projects for the financial rewards they bring, they may oppose them when such projects threaten local infrastructure projects or local tourism revenues, turning local officials into policy entrepreneurs allied with NGOs in opposition to central government plans.

What is considered “sensitive” for NGOs to work on is also elusive and frequently specific to the locality.19 In Guangdong, with its tens of millions of migrant workers working under often intolerable conditions, labour issues are considered a highly sensitive issue for NGO work. In other places, the most sensitive issue may be environmental concerns or HIV/AIDS. During “sensitive periods” like the days and weeks leading up to the 4th of June anniversary, even words and phrases such as “square” and “today” become sensitive and blocked on Weibo. Sensitive topics and periods unfortunately only seem to have increased during the last few years. Most importantly, the lines are blurred and arbitrary, and the main problem for NGOs is uncertainty and policy shifts which suddenly make previously non-sensitive matters sensitive. Ultimately, “sensitivity” is about whether an NGO or individual directly challenges

18 Mertha supra note 12
19 Spires supra note 11
the Party-state and to what degree NGO activities clash with local economic and political interests.

Different ministries and governments at central and local levels also adopt different attitudes to particular individual activists and NGOs. In the words of Liang Congjie, the founder of the NGO Friends of Nature:

“It is hard to generalise what the government thinks about us. The government is not a monolithic bloc in this regard. SEPA [the State Environmental Protection Administration] supports us and has called us their ‘natural ally’. The MOWR [Ministry of Water Resources] probably likes us much less and the provincial government in Yunnan undoubtedly hates us”.

At the same as the founder of Yunnan NGO Green Watershed, Yu Xiaoguang received praise from top officials for his contributions to sustainable development, he was also under attack from the local authorities in his home province.

With the support of other policy entrepreneurs and external allies like journalists, lawyers and public intellectuals, NGOs are able to occupy spaces from which they can articulate and amplify their issue. Individual bureaucratic patrons sometime protect particular NGOs, and some NGO founders also have political connections and lineage which may help insulate them from political sanctions. Liang Congjie, the founder of one of China’s very first and most successful environmental NGOs, is the grandson of the Qing dynasty intellectual Liang Qichao and the son of master architect Liang Sicheng. Yu Xiaoguang, the founder of Yunnan NGO Green Watershed, is a Chinese Communist Party member, who in 1968 volunteered to aid the Burmese communists in their fight to overthrow the government in Yangon. Wu Qing, a well-known and very vocal women’s rights advocate is the daughter of the famous writer Bing Xin.

**Issue framing and embedded activism**

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20 Quoted in Mertha p.27 supra note 12  
21 Ibid.
Issue framing is also an important strategy for Chinese civil society organisations to take their agendas forward. Effective frames push the boundaries, but remain within the formal and informal rules of officially sanctioned discourse.\textsuperscript{22} Chinese NGOs thus tend to frame and formulate their issues and agendas in relation to the state, and not just in relation to their constituencies, emphasising that their activities help the government implement policies and laws, and safeguard "stability". This type of legitimising, non-confrontational discourse is a central element of NGO advocacy and activism in China. Women’s rights activists have framed the widespread problem of domestic violence as a “feudal” practice which is detrimental to “modernity”.\textsuperscript{23} Environmental activists argue that good environmental governance and public participation is instrumental in building a “harmonious society”. More broadly, environmental protection is a relatively safe and ostensibly non-political frame for NGO activism, with demands formulated in opposition to particular industrial and economic policies and not to the political regime. Opposition framed in terms of cultural heritage issues or as criticism mainly of foreign companies can also be very effective and politically safe.

High expectations on the rule of law are also invoked as part of this legitimising discourse, often with reference to speeches by political leaders and Party documents, rather than to the rights enshrined in the Chinese Constitution, as in this open letter from the NGO Beijing Yirenping Center to the court upon losing a case of discrimination against Hepatitis B virus (HBV) carriers:

"In the circumstances where the Party and the state have paid special attention to the problem of employment discrimination against HBV carriers....the trial judge in this case treated the legal provisions as window dressing. He also sabotaged the policies and spirits through which the Party and the state give care to HBV carriers.”\textsuperscript{24}

\textsuperscript{22} Ibid.
\textsuperscript{23} Keech-Marx S 2008 Airing dirty laundry in public: anti-domestic violence activism in Beijing in Unger J (ed.) \textit{Associations and the Chinese State: Contested Spaces} New York & London: M.E. Sharpe

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Participants of protests frame their activities as lawful, and present themselves as partners of the central government in combatting local power abuse. This assertion of rights derived from government policies and laws is an important aspect of what O’Brien & Li call “rightful resistance”.25

International standards and laws have also provided a useful frame, though this frame seemingly peaked a decade ago around the time for China’s accession to the WTO and its bidding for the Olympic Games. Recently, an important Party document banned both talk of “universal values” and of “civil society”.26 It is a fine balance for Chinese NGOs to promote a rights discourse by naming and shaming government and corporate offenders, while also keeping the rhetoric down, so as not to invite censorship and political sanctions. Survival and advancement in this harsh and restrictive environment takes skilful manoeuvring embedded in local social networks and institutional structures.27

Another key aspect of this manoeuvring and negotiation for space is for NGOs to give “political credit” or “political face”. Successful relations with a particular government agency - and ultimately the success of an NGO campaign or activity - often depend on whether that government agency or official is able to claim political credit for the work of that NGO in their jurisdiction.28

4.2 Legal mobilisation and its limits

Legal aid to vulnerable groups and litigation on anti-discrimination, labour and environmental cases count among the more moderate approaches to activism in China, and are politically relatively safe. Beijing Children’s Legal Aid and Research Center and the Beijing Zhicheng Migrant Workers’ Legal Aid and Research Center, both established by the lawyer Tong Lihua in 1999 and 2005 respectively, are prominent examples of organisations

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27 Fu supra note 24
28 Spires supra note 11

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dedicated to providing legal aid to rural children and migrant workers. The two organisations have provided free legal consultation to hundreds of thousands of clients, and Tong Lihua is one of the leading figures in public interest law in China – sometimes criticised by other activists for being too close to the government. Another leading figure in this field is the environmental lawyer Wang Canfa, who in 1998 founded the Center for Legal Assistance for Pollution Victims, China’s most important environmental legal aid NGO, which has assisted pollution victims in more than 200 cases.

Litigation is, however, notoriously difficult. Plaintiffs in environmental and labour cases have little hope of winning, or even of getting their case accepted by the court. Local courts receive their funding from local governments, which makes the courts vulnerable to government interference motivated by “stability maintenance”. The Third Plenum Decision included a broad and vaguely formulated resolution to “guarantee that judicial and prosecutorial powers are exercised according to the law, independently and fairly” and to “explore the establishment of judicial jurisdiction systems that are suitably separated from administrative areas” but provided very little detail or concrete proposals that might be considered real progress towards judicial independence.

Legal scholar Fu Hualing has described the legal route as a “legal trap which sucks workers into a dark tunnel and once in it, few can see light at the other end”. Individualised legal action can also deflect political contention, in ways that are not conducive to rights assertion. One important motivation behind the Party-state’s promotion of rule of law and legal channels is to keep aggrieved citizens (workers and peasants) from the protest and petitioning (信访 xinfang) route. As Mary Gallagher has observed, directing disputes to the legal system distances the individual case from the government, and reduces expectations on the government and the workplace for social welfare. Rule of law and legal options are part of a transformation of how the Chinese state relates to its citizens, and can serve to reduce claims rather than grant rights. The corporate social responsibility (CSR) agenda and

29 Fu supra note 24
the notion of non-governmental social organisations as service providers also fit well with these objectives.

Nevertheless, rule of law reforms and litigation, even when not successful, have created new venues for political participation and activism in China. Environmental lawyer Wang Canfa further describes litigation as a form of public participation and a service to society more widely, in the sense that it puts pressure on powerful companies and helps achieving public goals.\(^{31}\) Litigation and the act of bringing a case to court – even when it is not accepted by the court – function as a form of advocacy and awareness-raising activity. Through the work of women’s rights activists and NGOs like the Center for Women’s Studies & Legal Services (CWSLS), Beijing Zhongze Women Legal Consultant & Service Center and the Anti-Domestic Violence Network, the issue of discrimination and violence against women is being transformed from being considered – by the police, courts and society at large – a “private issue” to a public concern. The lack of legal protection in China for domestic violence victims means that they rely entirely on NGOs like these for support. CWSLS was China’s first NGO specialising in legal aid for women, founded at Peking University in 1995 by the lawyer Guo Jianmei and others. Guo Jianmei later established the Beijing Zhongze Women Legal Consultant & Service Center, in response to the closing down of CWSLS by Peking University in 2010. In 2013, a Chinese court for the first time accepted, and provided a remedy, in a case of gender-based employment discrimination. The case was brought to the court with the backing of lawyers connected to another NGO working with anti-discrimination, Beijing Yirenping Center (Yirenping).\(^{32}\)

Yirenping is a showcase of the potential of civil society-led reform in China more broadly. They have been exemplary in finding an effective approach to rights advocacy and mobilisation in China, using litigation as a catalyst for broader public participation. Yirenping has acted as “policy entrepreneurs” on the issue of discrimination against Hepatitis B virus


carriers. An estimated 130 million people live with the Hepatitis B virus in China, a unique and big community, and a space which had not been previously monopolised by the Party’s governance structure of GONGOs and mass organisations. 33 Yirenping is an organisation that has been built from bottom up with staff members who come from the community which they represent, with common concerns and interests.

33 Fu supra note 24
The case of Yirenping

HBV FORUM was created in 2001 as an online forum to provide social networking and information services for Hepatitis B virus (HBV) carriers. At the time, China had a wide range of discriminatory laws and policies against HBV carriers, including rules which required civil service applicants to undergo hepatitis tests, and regulations banning HBV carriers from holding service occupations in public, which in effect banned all HBV carriers from employment both in government and private sectors. With the help of HBV FORUM and pro bono legal services, China saw its first high profile anti-discrimination lawsuit launched by an HBV carrier in 2003. The case was widely reported in the media. After the filing of this case, HBV FORUM launched a public campaign and submitted an open letter to the Standing Committee of the National People’s Congress calling for a change in laws discriminating against HBV carriers. As a result, a series of laws were subsequently passed, including a law to end employment discrimination against HBV carriers.

In 2006, the organisers of HBV FORUM established Beijing Yirenping Center (registered as a company), with the purpose of organising offline activities supported by the membership and network mobilised through the HBV FORUM. Since then, Yirenping has been instrumental in promoting non-discrimination and equal rights, and is one of the most successful civil society organisations in China using public interest litigation and a wide range of other online and offline activities to challenge discriminatory law and practice. By 2010, all legal barriers for HBV carriers to employment and education had been removed, and Yirenping’s focus has shifted from the government to implementation of existing laws in the private sector. In recent years, Yirenping has worked on a broader range of discrimination issues, including gender-based discrimination and discrimination against persons with disabilities, combing litigation with a use of media, social networks and small demonstrations (called “performance art”), which serve an educational and awareness-raising purpose.

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34 Summary based on Fu supra note 24
4.3 Protest as participation

As discussed above, legal channels remain limited – and limiting - in China. Litigation is notoriously difficult, the petitioning system\(^\text{35}\) rarely leads to action by the government, and it is rare to gain a permit to organise a legal demonstration. The failure of legal channels to deliver justice push people to take more radical action like strikes and protests (and even desperate acts like suicide, destruction of property and kidnapping of factory managers). The number of annual protests has grown steadily since the early 1990s. Tsinghua University professor Sun Liping has estimated that there were around 180,000 protests, riots and other mass incidents in China in 2010 alone, three times the number in 2003.

In their excellent paper on protest, Göbel and Ong argue that protest should be seen as a form of public participation, and that rising incidents of unrest might not be the result of mounting grievances but the result of the inadequacy of formal channels, combined with enhanced opportunities to mobilise and participate in social unrest through the use of ICT. Public protests are increasing because citizens lack legal and legitimate channels to seek redress and participate in public decision-making that affect their lives. The motivations that drive public protests vary – from negotiation for specific terms to “anger-venting incidents”, in which seemingly minor events trigger large protests, highlighting underlying issues of corruption and injustice and deeper tensions between citizens and the government. In the 1990s, protests mainly concerned peasant resistance against illegal taxation. In the last decade, urban residents have also been engaging in protests, against land grabs, house evictions and factory lay-offs.\(^\text{36}\) Previously staged mainly by a desperate underclass, protests are also increasingly a strategy employed by the urban middle class, like the not-in-my-backyard (NIMBY) protests against planned para-xylene (PX) plants in Xiamen in 2007, in Dalian in 2011, in Kunming in 2013 and most recently in Maoming in April 2014. These protests have less to do with livelihood and survival, and more with quality of life and growing aspirations of the urban middleclass.

\(^{35}\) Xinfang信访, which allows citizens to file complaints with local and central government authorities
The most common causes for social unrest and protests today are land disputes, environment-related disputes, and labour disputes. In its 2011 “Blue Book of China's Society,” the Chinese Academy of Social Sciences (CASS) reported that land disputes – over inadequate compensation and forced land expropriation – accounted for about 65 per cent of all cases of social unrest. Environmental degradation – resulting in a loss of crops, unsafe food and water, cancer and other serious public health concerns – is another leading cause. In 2007, the environmentalist and founder of the NGO Institute of Public and Environmental Affairs, Ma Jun, pointed out that mass protests caused by environmental issues had increased by 29 per cent annually during the previous five years.

Labour-related protests are also increasing, and strikes are almost an everyday occurrence. In April 2014, there was a massive strike in Dongguan, a protest over social insurance payments which began with a few hundred employees and eventually snowballed into a strike of perhaps 40,000 workers. This strike and other landmark cases like the Honda factory strike in 2010, signal a shift in attitudes and bargaining capacity among workers, prompted by new society- and market dynamics including labour shortages, the use of social media and the support of labour NGOs. As with protest more generally, there has also been a (slow and uneven) shift in the government’s handling of labour disputes, and the ACFTU has realised that it needs to do a better job as mediator. Independent trade unions remain banned however, and “collective consultations” with local government-organised unions are encouraged, rather than collective bargaining on equal terms. The government still cracks down hard on protest organisers, albeit in a more discrete and sophisticated way than used to be the case. Labour protests also remain workplace-based, with few signs of unification and a more sustained and organised labour movement.

While protests against the political regime and central government are rare, it would be wrong to describe public protests in China as non-political. Environmental, land and labour

37 Ibid.
38 Crothall G In China, labour activism is waking up, available at http://www.clb.org.hk/en/content/china-labour-activism-waking
disputes over legal entitlements also touch on underlying issues of corruption, accountability, transparency and participation, problems that are rooted in the institutional structure of the authoritarian party-system. Demands that go beyond specific, local issues and are perceived to pose a threat to the legitimacy of the Party-state will however be met with uncompromising sanctions and even military force, as demonstrated all too clearly in the crackdown on protesters across China in June 1989, when hundreds of demonstrators, many of them students, were killed by military troops on the orders of the Party. Considering this traumatic experience and the repression which followed in its aftermath, it is hardly surprising or strange that most protestors and civil society organisations avoid breaking the informal and formal rules of protest and civil society activism set by the Party regime.

Protests are most successful when they are “forceful, while the government incurs low costs when it concedes”. Other important success factors include access to journalists, personal connections, ability to attract the attention of higher-level officials, and linking grievance to broader local governance problems.

4.4 The environmental movement

Conservation and Friends of Nature

The single most common focus in China’s NGO sector is the environment, followed by groups focusing on education; on aiding the disabled; on community development; and on the rights of migrant workers. China’s civil society sector has developed alongside China’s growing environmental movement, and environmental NGOs remain at the forefront of civil society development in China today. Environmental issues have been used also as vehicles for addressing broader social and governance issues.

Although pollution is currently perhaps the most visible area of concern and activism, it is only one of many issues which have been targets of environmental campaign over the last

39 Göbel & Ong supra note 36
40 Shieh et al supra note 2

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two decades. Environmental activists have lobbied on conservation, dam building, desertification, climate change and many more issues – and it started with a campaign to protect the snub-nosed monkey in the mid-1990s, in which the NGO Friends of Nature played a pivotal role. This was the first NGO-initiated campaign in Chinese history to affect national policy change. It demonstrated the ability of the early environmental groups to bring local violations to the attention of the central government, and helped lay the foundation for the Chinese conservation movement.41

Friends of Nature was one of the very first legally registered environmental NGOs in China, registered in 1994 with the purpose of raising environmental awareness. Its founder Liang Congjie was a pioneer, and he has been praised for his ability to address sensitive issues without alienating the government. The next generation after Liang Congjie has been more activist, and the founder of the NGO Institute of Public and Environmental Affairs, Ma Jun, has established himself both as a government ally and an agent of change.42

Dams, Green Watershed and Green Earth Volunteers

The emergence of the present generation of Chinese environmental NGOs was prompted by big hydro projects and large-scale dam-building. In terms of affecting government policy, the most notable success was the suspension of the dam on the Nu River in Yunnan Province.43 Large dams are being built across China and in some of China’s most ecologically sensitive landscapes, with only one large river, the Nu, left un-dammed today. China’s state-owned energy corporations and local governments both have very strong financial incentives for building these dams, and social and environmental responsibilities are routinely ignored. In addition to their environmental impact, another consequence of this massive dam building is

42 Ibid.
43 Hilton supra note 13. The suspension of the dam in 2005 was a major victory but the latest news indicate that construction is going ahead again. A detailed account of the Nu River Campaign is provided in Mertha supra note 11
that tens of millions have been relocated under unjust conditions, losing their livelihoods, often without receiving adequate compensation.\textsuperscript{44}

Green Watershed was founded by Yu Xiaoguang in Yunnan in 2002 as the first Chinese NGO specialising in water management. Green Watershed played a key role in the Nu River campaign, educating the local population about the potential impacts of the dam and involving them in the campaign. Yu Xiaoguang also brought two local peasant activists with him to an international high-level hydropower conference in Beijing – breaking all unspoken rules of such conferences – and delivered a speech entitled “The Relationship between Dam Construction and the Rights of Original Inhabitants to Participation”. International involvement through the International Rivers Network and the involvement of journalists, scholars and SEPA officials was also crucial to the success in this case. In 2004, Premier Wen Jiabao ordered the suspension of the dam construction programme, until its environmental impact had been properly considered. Although recent news indicate that construction is going ahead again, this was a major victory. It delayed the project, reduced its scale and forced the government to reconsider the issue of compensation for the villagers to be relocated.\textsuperscript{45}

Another NGO which played a key role in the Nu River campaign was Green Earth Volunteers, founded in 1996 by environmental journalist Wang Yongchen. Green Earth Volunteers was also one of nine NGOs which petitioned Premier Wen in the campaign to stop the dam on the Tiger Leaping Gorge in 2004-2006. The petition caused a public outcry against the dam, turning it into the biggest environmental story since the Nu campaign. The dam was suspended, thereby safeguarding one of China’s most beautiful landscapes and saving the homes of more than 100,000 ethnic minority peoples. As in the Nu River campaign, the success of the Tiger Leaping Gorge campaign involved three factors: the involvement of

\textsuperscript{44} The majority resettled for hydropower projects remain living in poverty. Of the sixteen million resettled in the 1990s until 2005, ten million were still living in poverty. See Mertha \textit{supra} note 12

\textsuperscript{45} Boyd \textit{supra} note 41 and Mertha \textit{supra} note 12
NGOs which spread information and knowledge to local people, press coverage turning it into a big national story, and getting the attention of top government leaders.\footnote{Liu J Defending Tiger Leaping Gorge in Geall S (ed.) 2013 \textit{China and The Environment: The Green Revolution} London & New York: Zed Books}

In the early 1990s, the notion of the government reversing a decision as a result of opposition at the local level would have been unthinkable. Since then, a critical mass of NGOs has emerged on certain issues and in regions like Yunnan, keeping people informed about the potential social and environmental impacts of particular policies and development projects. While opposition to stop the Three Gorges Dam in the 1980s failed – with activists harassed and some even jailed – the government has stalled a number of contentious projects since then as a result of public protests and effective civil society campaigns. Since the 2004 Nujiang campaign, several environmental NGO networks have also emerged to address other issues like climate change and industrial pollution.

**Pollution, Open Government Information and the Institute of Public and Environmental Affairs**

A large part of the problem of industrial pollution in China is that basic information and data are often impossible to obtain. The government and industry frame projects in terms of economic development and scientific merits, but refuse to make environmental impact assessments publicly available, making it difficult for the public to provide valid counter-arguments. New regulations on Open Government Information came into force in 2008 along with Measures on Open Environmental Information. These regulations grant citizens the right to obtain government information and the means to monitor and bring polluting companies to public attention. With the usual caveat about the gap between law and actual implementation in China, this was an important step forward for public participation.

The PM 2.5 air quality campaign organised in Beijing in 2012 is another, concrete milestone for public participation in environmental governance. For some time, Beijing residents had been discussing the obvious and worrying discrepancy between the rosy picture presented
in Beijing’s official air pollution statistics, and the thick, grey smog covering the city. In 2011, the US Embassy started releasing its own data, which also included fine particulates (PM 2.5), from an independent air-quality monitor. Through a comparison between official statistics and US Embassy data, it became apparent that the Beijing city authorities had deflated and falsified data. This caused outrage not only about the severity of the pollution, but also about the government’s dishonesty and lack of transparency. The well-known property developer Pan Shiyi started an online poll and the NGO Green Beagle helped organise Beijing residents to use home-testing kits and post air-quality readings online, resulting in tens of thousands calling for the government to be more honest and release more accurate measurements. The outpouring reached the highest levels of government and resulted in the announcement in 2012 of revised national air quality rules.47

In 1999, journalist Ma Jun published China’s first major book on the subject of the environmental crisis, China’s Water Crisis. Ma Jun’s research indicated that 70 per cent of China’s rivers were polluted and that 300 million rural residents were drinking unsafe water. In 2006, Ma Jun founded the Institute of Public and Environmental Affairs (IPE) with the purpose of mapping the sources of China’s water pollution problem. IPE runs online maps and databases of water and air pollution, and has documented more than 90,000 air and water violations by national and multinational companies. Offending companies get their names blacklisted, and removed by passing an independent environmental audit. Through IPE’s database, companies can access data on environmental record of potential suppliers, cross-check contractors against IPE’s violators database, help monitor and regulate their supply-chain. IPE focuses on major international brands and pressures them not to source from polluters.

A crucial strategy for the environmental movement has also been to join forces for greater effect. The Green Choice Alliance (GCA), a formal coalition of 50 campaign groups led by IPE, was established in 2008. In 2010, GCA identified and wrote to leading electronics companies alerting them to the fact that their suppliers were contributing to China’s heavy-metal

47 Boyd supra note 41
pollution and environmental health problems, and asked them to be more transparent about their procurement procedures. While several companies were quick to respond, Apple remained silent. With international support, IPE then started to mobilise consumers and soon almost 1,000 Americans had written in protest to Apple. The following year, in 2011, IPE, Friends of Nature and Green Beagle released a report criticising the company more generally for its lack of transparency and incidents in its supply chain, including a series of suicides among workers at a Foxconn factory in Shenzhen. Later that year, Apple finally broke its silence and agreed to meet the campaign coalition and to improve transparency and independent audits of its supply-chain.\footnote{Ibid.}
4.5 The impact of ICT and new media— a bigger cage?

The environmental movement emerged with China’s changing media. Many of China’s most prominent environmental activists – including the founders of Green Beagle, the Institute of Public and Environmental Affairs and Green Earth Volunteers - were also among China’s first investigate reporters. Like Chinese civil society more broadly, while journalists live in close and contingent symbiosis with the state, they also make use of government policies to push the boundaries of acceptable political behaviour, and engage in critical reporting which goes beyond the state’s original intentions and control.49 This boundary-pushing gives rise to a “negotiated space” shaped jointly by the different state and civil society actors. The strategies used by journalists to navigate China’s media environment has been likened by one Chinese journalist to shooting edge balls in ping-pong: “If you hit the ball and miss the end of the table, you lose. If you hit the near end of the table, it’s too easy. So you want to aim to just nick the end of the table. That’s our policy”.50

Their backgrounds as journalists also give these NGOs access to the media. Green Earth Volunteers organises a salon which brings together journalists, NGOs and experts. Other well-known journalists like Deng Fei and Wang Keqin have become involved in charity work and fund-raising campaigns to help rural and trafficked children and migrant workers, campaigns which have later developed into registered social organisations.51 The anti-discrimination NGO Yirenping also works very pro-actively with the media, inviting the media to attend court hearings, preparing detailed press-releases, offering free training courses to journalists and sending out condemning and celebratory messages in an “almost ritualistic cycle of news management”.52

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49 Svensson M 2012 Media and civil society in China: community building and networking among investigative journalists and beyond China Perspectives 2012 3:19-28
51 Svensson supra note 49
52 Fu supra note 24
ICT and new social media have been instrumental in mobilisation and information-sharing. China today has 600 million internet users, and they are no longer just the young, male, educated population. This new connectivity and access to information over the last decade has created space for “ironic resistance”, for humour and information as resistance. It has also helped to transform people’s attitudes to China’s environmental problems. Photos of the high-speed rail accident in Wenzhou in 2011 which were shared through social media triggered a public debate about corruption and transparency. Short text messaging was instrumental in mobilising protestors in Dalian in 2011, when residents organised a "stroll" (the euphemism used for "protest" to avoid censorship) to protest against a planned paraxylene (PX) factory, forcing officials to suspend construction pending a new and more extensive environmental impact assessment. There are many examples like these, of the cat and mouse game between the Party-state and civil society online.

This information-sharing and solidarity among journalists, NGOs, scholars and rights defenders on the internet is however not a sufficient counterweight to the underlying problems of lack of freedom of speech and association in China. Journalists and civil society organisations face tremendous structural restraints, and pay a high price if they cross the boundaries – boundaries which are often unspoken and shifting. Rebecca MacKinnon has described how social media is used by the authorities to gauge public opinion and to try influence it, in a way that has given rise to a “networked authoritarianism” rather than to a liberating space and the collapse of the Party-state. In this way, the internet gives a false sense of empowerment and is used by the government as a sounding board which strengthens rather than weakens the Party. Criticising government policy is one thing, mobilising around a common purpose quite another. The authorities tend to pre-empt attempts to link workers and peasants with intellectuals, protests from spreading beyond the local level, and online discussion from turning into offline activism.

The influential blogger Han Han has deplored the function of social media as a decompression valve, observing how events that in the past might have spurred people into
action (as in the Sun Zhigang case described below), now merely cause a brief outpouring in social media until everyone’s attention has shifted to the next scandal.\textsuperscript{54} Online debate and advocacy have potential to shape public opinion and influence government decisions, but its impact remains limited if people merely use it to vent their anger without engaging in activities offline. Weibo is furthermore a rather exclusive tool, used primarily by people who already have a voice, and not by marginalised groups. News media and online social platforms have recently come under even stricter control than before, and it is obvious that the new leadership regards the media as a tool and a channel to guide public opinion rather than as independent watchdogs.

\textbf{The revolutions that weren’t}

In his detailed and fascinating account of the PX protest in Xiamen 2007, Jonathan Ansfield describes the protest as an “alpha moment” for the not-in-my-backyard cause. It was hailed in Western media as a backlash against power abuse, a people’s victory and a major breakthrough for civil society. In reality, the event can just as well be read as an “allegory for the adaptive capacity of China’s single-party apparatus”.\textsuperscript{55} While the protest was a climax for the environmental movement and a catalyst for similar protests in other cities, the lesson learnt by the government from Xiamen was about protest control, and not about public participation. Also, the PX plant project was in conflict with the interests of local property developers, a factor which weighed in favour of relocating the PX plant anyway, regardless of the public protest. In the words of a Chinese journalist quoted in Ansfield's article: “only when the interests at the highest levels are allied with the interests at the lowest level can it lead to, on the surface, a ‘civil society’ incident”.\textsuperscript{56}

Similarly, the events in Wukan in 2011 – when villagers protested the illegal sale of communal land to developers – were applauded as a new model for resolving social

\begin{footnotes}
\footnote{Epstein G 2013 A giant cage: China and the internet \textit{The Economist Special Report 6 April 2013}}
\footnote{Ibid.}
\end{footnotes}
contradictions in rural China. But also in this case, other important dynamics were at play, signalling “an incremental return of clan leadership infused with patriarchal ideology” rather than a turning point or an uprising against the regime.\(^{57}\) The government’s handling of the protest was in line with recent, more sophisticated, but equally authoritarian, approaches based on not making mass arrests when protests take place, but rather on gathering intelligence and quietly detaining protest leaders when the crowds have dispersed and media attention has turned elsewhere.

Nevertheless, as Liu Jianqiang points out, unlike the protests around Tiananmen and across China in 1989, people are using more complex and effective means to win democratic rights today, with the help of the internet and through the work of NGOs, and there is political space to take action in certain fields, including the environmental field.\(^{58}\) While before, the policy agenda was very much set by the government through official media; the rules of the game have certainly changed today.

### 4.6 From service provision to participatory governance?

Service provision remains the predominant mode of Chinese NGOs, however, and the needs are tremendous. China’s market reforms have triggered the largest rural-urban migration flow in world history, and there are currently more than 260 million migrant workers in China. Due to the household registration system (the *hukou* system), which categorises citizens by their place of birth, migrant workers are excluded from social welfare and live as second-class citizens in the cities where they work, with no equal right to education and other social services. As many as four-fifths of them, or about 157 million mothers and fathers, are therefore forced to leave their children behind when they move to the cities to work, with the result that 60 million children grow up without their parents.\(^{59}\) NGOs provide much-needed services to this huge, discriminated and vulnerable group of people. Another

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\(^{57}\) Lagerkvist *supra* note 9  
\(^{58}\) Liu *supra* note 46  
\(^{59}\) See survey by the Beijing-based Centre for Child-Rights and Corporate Social Responsibility  
group facing tremendous difficulties and discrimination are people with disabilities – millions of children with disabilities are denied education, and government departments employ on average less than 0.5 per cent employees with disabilities.\(^{60}\)

As discussed above, service provision – rather than advocacy and public participation – is central to the government’s vision for Chinese civil society, as reflected in the concept of “social management innovation”, which refers to a reliance on non-state actors to provide social services. However the boundaries between service provision and advocacy and participation are not always clear-cut, and there are examples of service delivery projects which have evolved into something more akin to participatory governance projects. One such example is the partnership between the non-profit organisation Shining Stone Community Action and a Beijing district street office, using a community-participation model to deliver services to migrant communities in Beijing suburbs (28 neighbourhoods including 110,000 registered residents and 20,000 migrant workers).\(^{61}\)

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**Shining Stone – from service delivery to collaboration for participatory governance\(^{62}\)**

SSCA was founded in 2002 by Song Qinghua, and in the same year received a grant from the Ford Foundation to train government officials and residents in participatory methods and project management skills in a Beijing suburb. After the collapse of the former model of welfare delivery, municipal officials were unsure how to adopt more new models of service delivery without being overwhelmed by citizen dissatisfaction. Government officials tend to fear the “chaos” more participatory methods may cause, and lack knowledge and experience about how to manage expectations. On the other hand, when people are allowed to participate and become not just consumers of social services but producers, they tend to be less critical and disapproving of the outcomes. SSCA-proposed projects, like training centres for migrants employed as domestic helpers, and library and kindergarten programmes for migrant children have assisted residents’ committees in meeting their “social innovation” requirements, and collaboration with organisations like SSCA has changed many officials’ idea of service delivery and more broadly of the role of civil society. However, Ms. Song Qinghua also notes that “Many officials have their own idea of citizen participation: ‘We decide, you participate’\(^{\prime}\)."

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\(^{60}\) Palmer J What’s it like to be disabled in China? *Aeon Magazine* available at http://aeon.co/magazine/world-views/whats-it-like-to-be-disabled-in-china/

\(^{61}\) Teets *supra* note 3

\(^{62}\) Summary based on Teets, ibid.
Migrant worker NGOs are another example of organisations which play a role not only as service providers. Many of these organisations function as a substitute for trade unions, providing advice to workers not only on basic city-life skills but also on labour law and rights, and physical and psychological health issues, such as how to deal with parenthood away from their children. The earthquake in Sichuan in 2008, which killed nearly 90,000 people and left many others in desperate situations, was a turning point for recognition of the role of NGOs, which played an important role in rescue and relief operations. The rapid emergence of NGO networks after the earthquake demonstrated their capacity and stimulated pressure for change in the fundraising and policy environment for NGOs. \(^{63}\)

Contacts between foreign and Chinese journalists and between journalists and NGOs during the earthquake led to increased demands for access to information and for accountability.

### 4.7 Rights Advocacy and the New Citizen Movement

Many Chinese grassroots groups take a more assertive stance today when compared to a decade ago. In a 2006 survey done by China Development Brief, a majority of groups said that they saw their primary role as raising awareness or collaborating with government programs. The picture is different today, with more Chinese NGOs adopting a rights-based and advocacy-oriented perspective in their work. \(^{64}\)

As discussed above, many of the most prominent advocacy organisations are environmental groups, but there are also a number of impressive groups focusing on other issues like women’s rights, anti-discrimination, and the rights of persons living with HIV/AIDS. To mention a few, there is Zhongze and Yirenping introduced above, and Yirenping’s affiliate organisations Tianxiagong in Nanjing and Hengping in Shenzhen. There is Aizhixing, which works with rights of people living with HIV/AIDS, Huiling Community Services for People with Intellectual Disabilities, Aibai which works with rights of the LGBT community, and a number of NGOs which work with labour


rights and migrant workers, including Little Bird Hotline, Institute of Contemporary Observation, Migrant Workers Home and Shenzhen Chunfeng Labor Disputes Services Centre.

The women’s rights movement has, like the environmental movement, seen a generational shift from the original focus on academic research and awareness-raising to more assertive and activist approaches, including strategic litigation and public protest, or “performance art”, as Chinese NGOs usually call these small, but attention-grabbing, street actions. On Valentine’s Day for example, to protest against domestic violence, women dressed in white bridal gowns smeared with red paint and demonstrated with posters that read "Love is no excuse for violence" and "Only Equality is Harmonious".65 Well-known feminist and blogger Ye Haiyan last year launched an online campaigns against child sex abuses in school, during which she and other women activists, including filmmaker and university professor Ai Xiaoming, posted topless pictures of themselves in front of signs which read: "Principals: If you want to get a room, get one with me. Leave the schoolchildren alone".66

NGOs and individual activists who are perceived as crossing the boundaries by directly challenging the Party-system and addressing issues which are politically taboo pay a high price and are frequently harassed and detained on suspicion of the crime of “picking quarrels and provoking troubles” or "gathering crowds to disrupt public order". Shenzhen Chunfeng Labor Dispute Service Center has been evicted from its offices several times and received repeated police warnings to stop their work or face the consequences.67 In June 2014, Yirenping’s office in Zhengzhou had its bank account frozen and office computers and documents seized by the local police because of Yirenping’s connection with lawyer Chang Boyang, who was criminally detained in May on suspicion of “gathering a crowd to disturb order in a public place”. Cao Shunli, an advocate for greater transparency and citizen

participation, who helped prepare a civil society report for China’s second Universal Periodic Review by the UN Human Rights Council in 2013, was 'disappeared' on her way to Geneva for a human rights training session. Later detained on suspicion of “picking quarrels and provoking troubles”, she was denied medical treatment for a known medical condition and died half a year later in February 2014.\textsuperscript{68} Ni Yulan, a wheel-chair bound lawyer and advocate for victims of land rights violations, was sentenced in 2012 to two years and eight months in prison on charges of causing a disturbance and committing fraud. Wan Yanhai, the founder of the HIV/AIDS advocacy group Aizhixing fled China in 2010 after months of harassment by the authorities. In 2009, one of the most innovative, ground-breaking organisations in China, Gongmeng (also known in English as Open Constitution Initiative) was forced to close down after one of its founders, Xu Zhiyong, was detained on tax charges.

\textbf{The revolution is a dinner party}

After Gongmeng was shut down, Xu Zhiyong and Gongmeng co-founder Teng Biao went on to found the New Citizens’ Movement, a broad grassroots movement which has worked to promote a range of civil rights, from equal access to education for migrant workers’ children to government transparency, demanding that officials publicly declare their wealth. By that time, as Teng Biao described in a recent op-ed in the Washington Post, the government saw Xu and Teng as “troublemakers, if not enemies of the state” and the two lawyers seized their efforts to be a “regular non-governmental organisations”\textsuperscript{69}. As part of the New Citizens’ Movement, sympathisers and like-minded citizens met each month in more than 30 cities for dinner gatherings in restaurants to discuss public affairs, the rule of law and reform. In January 2014, Xu was sentenced to four years in prison for “assembling a crowd to disturb public order”.


Rights Advocacy from Sun Zhigang to the New Citizens Movement

In 2003, a young college graduate, Sun Zhigang, was beaten to death in police custody in Guangzhou. He had been taken into custody under the Custody and Repatriation system, by which the police could detain people in cities if they did not carry a valid residence permit (hukou) on them. Sun was violently beaten and died three days later in custody. Sun’s death, which happened about the time Internet use was taking off, sparked a national outcry and brought together journalists, lawyers and legal scholars in a joint cause to end this system. The three lawyers Xu Zhiyong, Teng Biao and Yu Jiang (who had studied law together at Peking University) wrote an open letter to the standing committee of the National People’s Congress, requesting a constitutional review of the Custody and Repatriation system, which was responsible for the deaths of Sun and for discrimination and violence against many migrant workers before him. The State Council later bowed to the public outrage and abolished the system. The Sun Zhigang case laid the foundation for China’s civil rights movement.

Xu, Teng and Yu later that year set up an NGO called Gongmeng (known in English as the Open Constitution Initiative), to promote constitutionalism and the rule of law in China. Gongmeng provided legal assistance to victims of injustice and spearheaded China’s rights movement. The same year, Xu also won an election as an independent candidate for the Haidian District People’s Congress in Beijing, declaring that he was hoping his participation would help enhance democratic awareness and make these elections – which are rarely taken seriously by anyone - more competitive. In the years that followed, Gongmeng was involved in almost every major case in China, defending in several death penalty cases, organising an investigation of forced abortions, and getting compensation for thousands of victims of melamine-tainted milk formula. Gongmeng also engaged in research and policy studies and produced a report making policy recommendations on ethnic tensions and unrest in Tibet. In 2009, Gongmeng was charged with tax evasion, Xu detained for a month and Gongmeng shut down. Sometime later, Xu and others went on to start “The New Citizens’ Movement”. Their work on education rights sought to help millions of children across China gain access to education where their parents live and work but don’t have a local household registration (hukou). They also organised street activities calling for officials to disclose their assets and regular dinners in restaurants across China to meet and discuss public affairs. For his role in organising these activities, Xu was recently sentenced to four years in prison. In his recent op-ed in The Washington Post, Teng Biao writes:

“Over the past decade, two competing priorities emerged in China: rights defense and stability maintenance. For the government, stability rules above all else. Yet more and more Chinese have stood up to demand their rights as human beings and as citizens. The Chinese government will continue to crack down on civil society, but no crackdown will stop the growing rights awareness of millions of Chinese and their courage and determination to fight for their freedom. ‘Crimes’ they are convicted of in the course of their struggle will be great badges of honor to them”.

Ibid.
5. RECENT GOVERNMENT RESPONSES AND POLICY DEVELOPMENTS

5.1 The sustainability and inclusion discourse: a change in tone but how about practice?

The ideas of sustainability, inclusion and a more balanced growth entered into the mainstream in China with the 12th Five Year Plan adopted in 2011. Recent policies and development blueprints, including the “Decision on Major Issues Concerning Comprehensively Deepening Reforms” adopted in November 2013 and the “National New-type Urbanisation Plan” issued in March 2014, also underscore human-centered and environment-friendly development. This sustainability and inclusion discourse has been encompassed within the official orthodoxy for quite a few years, but policy-making and implementation remains, by and large, very top-down, paternalistic and focused on GDP growth.71 As in other fields of Chinese law and policymaking, there is a big gap between law and implementation, and between central policy and local practices. Recent statements and campaigns also contain a number of contradictory messages, which ultimately boil down to questions of rule of law, judicial independence, the role of the Communist Party and the need for political reforms.

While making statements about the importance of the rule of law, fighting corruption and “listening to the people’s voice”, China’s new leadership has also launched an anti-rumour campaign, detaining hundreds of people on charges of libel or "inciting trouble" for posting critical information on the internet. While the central government has launched an anti-corruption campaign, activists who call for senior Party officials to disclose their personal assets have been detained and sentenced to years in prison. And while recent policy and development blueprints speak of “social governance” and emphasise the need to “arouse the energy” of social organisations, other Party documents ban the word “civil society” altogether and accuse civil society organisations of cultivating “anti-China forces”.72

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71 Hilton supra note 13
72 See Document 9 supra note 26
In 2009, the costs for “stability maintenance” – i.e. the costs for police, public security and other agencies responsible for monitoring potential unrest – exceeded China’s military spending. The performance of local government officials has been evaluated primarily against their ability to deliver two things: GDP growth and “social stability”. Failure to do so leads to demotion or reprimands. These cadre evaluation criteria have had negative and sometime unintended consequences, including a singular and unsustainable focus on economic development without regard for social and environmental impacts. In the name of “stability” and in order to conceal social unrest, which may be seen as a sign of mismanagement, people have also been forcibly prevented from using existing legal channels and means to complain to higher-level authorities, further aggravating local social conflicts and grievances. The ever-increasing costs for domestic security have prompted a debate about the need to address the sources of China’s social conflicts and to find more effective ways to resolve them. The capacity of the government to prevent and handle social unrest is to be improved, with a focus on prevention rather than putting out fires and offering concessions on a case-by-case basis. New guidelines on reforming the petitioning system issued in February 2014 call for improved dialogue between stakeholders and increased transparency and public participation in the decision-making process.  

The government is also generally poor at responding to concerns and requests for information from the public in relation to planned development projects. Both with regard to anti-XP protests and anti-dam protests, a large part of the problem is that basic information and data are often impossible for the public to obtain. Local governments frame development projects in terms of their scientific merits, but refuse to make environmental impact assessments publicly available. This makes it impossible for project opponents to provide scientific counter-arguments, meaning they have to make do with anecdotal evidence. They are then accused of being unscientific and irrational in their concerns. The overall result is a meaningless debate over the merits and risks of these projects.

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74 Mertha supra note 12
Environmental impact assessment regulations require that expert and public opinion be solicited and taken into consideration, but the process is prone to corruption and power abuse. Consequently, in parallel with China’s enormous and growing pollution problem, the passage rate of assessments of basic infrastructure projects was 99 per cent according to estimates by an EIA expert in 2007.\textsuperscript{75} The outright contempt shown for public concerns by concealing environmental impact assessments and rigging public consultation conferences, which are in reality one-sided industry-lobbying events, has caused more public outrage and resistance against, for instance, PX projects. Meanwhile, the cost of violation has often been lower for companies than the cost of compliance.

Against this background, the recently amended Environmental Protection Law is a major breakthrough even if, as always, the law now has to prove its worth in practice. The law went through a 3-year long revision process, which turned into an unprecedented case of public input directly impacting the formulation of law.\textsuperscript{76} As a result of the work of a broad coalition of proponents of tighter environmental protection, the fourth and final draft of the law is dramatically different from the first draft. In contrast to the earlier law, which only imposed one-time penalties on polluting enterprises, the amended law now enables environmental authorities to fine polluting enterprises on a daily basis for as long as they fail to bring their operations in line with environmental regulations. Another important new provision concerns environmental public interest litigation. The initial drafts gave only one (government-organised) NGO standing to litigate, the All-China Environment Federation. Thanks to protest from civil society, the final version gives all NGOs registered with a Civil Affairs Bureau above city level the right to file lawsuit against polluting enterprises. This will apply to about 300 NGOs, and is a major improvement over the current system, although the possibilities for environmental litigation will remain limited, for reasons discussed above.

\textsuperscript{75} Moser \textit{supra} note 31
and since many NGOs are registered below city-level or registered as enterprises rather than as NGOs.\textsuperscript{77}

\textsuperscript{77} Ibid. See also Pettit D 2014 A step forward for public interest litigation in China Natural Resources Defence Council Blog 28 April 2014, at http://switchboard.nrdc.org/blogs/dpettit/a_step_forward_for_public_inte.html
5.2 Carrots and sticks

After years of discussion and pilots in different cities, the strict regulations for registering NGOs are now being relaxed nationwide. Under the new rules, certain types of organisations will be able to register directly with the Civil Affairs authorities at different levels – i.e. without the sponsorship of a “mother-in-law” (discussed above). The organisations that will be able to register directly include professional associations, chambers of commerce, scientific and technological organisations, charitable (or public benefit) organisations and urban-rural community service organisations. “Political, legal, and religious” organisations do not come within the new system, however, and as Beijing University Center for Civil Society Studies points out, “the selective loosening of policies does not go anywhere near far enough”. In addition, direct registration is not allowed in Tibet and Xinjiang. This means that many of the unregistered NGOs which have so far been operating “in the shadows” or in the grey-zone of registered enterprises operating as non-profit making organisations will continue to do so, with all the implications that this has for their ability to open bank accounts, receive funding, tax exemptions etc. Needless to say, registered organisations can also still be deregistered and shut down, if their work falls out of favour with the authorities.

Emphasising the need to speed up the creation of a “modern social organisation system”, the government has also issued decisions about bureaucratic streamlining and decentralisation, and a new blueprint for procurement of services from (legally registered) social organisations, while also initiating multiple grants programmes to fund social initiatives and “social innovation”. An optimistic take on these new policies might conclude that they acknowledge the importance of a third sector, and allow more organisations to register and operate as NGOs. A more pessimistic view would caution that the last few years have been marked by greater attention to strengthening regulation, and that this is part of a
wider effort of positive and negative incentives to bring unregistered NGOs under better control. The state has certainly played a more assertive role in guiding civil society in the last couple of years, and combines carrot and sticks to encourage groups to work in areas in which the state want them to work, such as solving social welfare-provision problems.
5.3 Between a rock and a hard place: current challenges for NGOs

So, while 2014 looks like it will be an interesting year for NGOs on the policy front, many NGOs will opt not to register and apply for government funding, since it would mean that they have to tone down and adapt their work. Increasingly, local governments around China have started to purchase social services from NGOs and critics worry that state funding will “co-opt” these NGOs. Huge amounts of funding also create new opportunities for corruption and rent-seeking. Some local governments have set up NGOs to tap into the new official funding sources, and service-provision contracts tend to go to well-connected insiders, who sometimes sub-contract, taking a cut on the way.80

Furthermore, when procurement of services from NGOs functions more as intended – as a means to modernise the Chinese bureaucracy and provide much-needed social services closer to local communities – the cooperation between the state and civil society organisations is fraught with difficulties. While contracting with non-profit organisations may result in greater service provision, there is a lack of mechanisms which would allow the knowledge, experience and “social innovation” of these organisations to feed back into the policy process.81 Government funding and the growing specialisation and service function of NGOs may also lead them further away from their original mission of representing and organising social groups, and more towards meeting the government’s needs and requirements. In places like Shenzhen and Shanghai, where governments contract services from NGOs, many NGOs are becoming purely service organisations.82 Meanwhile, charity, philanthropy and CSR (corporate social responsibility) have become buzzwords in China, and corporate funding is a growing funding source for social organisations. Most of these charity

and CSR programmes are however also top-down and based on company choice of which social issues to address and how, rather than rights-based approaches, where relevant stakeholders participate in agenda-setting and programme design in a meaningful way.

While the number of NGOs is increasing fast in China, most grassroots organisations are understaffed and lack funding sources. Many organisations are more or less one-person operations, and many of the most prominent, first generation NGOs established in the 1990s relied on the charisma and personal connections of their founders. The government further tries to limit and control inter-regional cooperation and different NGOs linking up on issues of common interest. The only authorised nation-wide NGOs are GONGOs. While opportunities for fundraising in China are increasing, fund raising is tightly regulated and most NGOs are not allowed to engage in public fundraising. Most donors work through local government intermediaries to support NGOs, and channel funding through government bodies or government affiliated organisations like China HIV/AIDS Association. International funding therefore goes mainly to larger, established (and often government affiliated) groups.\(^83\)

But another problem is that even when funds go directly to grassroots NGOs, most donor support comes in the form of project support rather than as core support or funding for organisational development, planning and evaluations. Many projects therefore lack in local ownership, with Chinese grassroots NGOs acting largely as implementing organisations for projects which international donors and government-affiliated organisations wish to pursue. The lack of long-term funding further makes it difficult to attract and maintain qualified staff, which also has implications for accountability and transparency, as many NGOs cannot afford to employ qualified accountants and conduct audits. This all makes it difficult for grassroots NGOs to thrive and evolve, and most organisations have fewer than ten staff and operate only at the local level.

6. Conclusion and policy recommendations for the EU

This paper has discussed the growing role and impact of Chinese civil society organisations on policy-making and reform in China. During the past two decades, and since the 2000s in particular, a civil society sector has emerged in China, made up of hundreds of thousands of informal and non-registered non-governmental organisations (NGOs), which co-exist with government-organised NGOs (GONGOs) and registered social organisations in a negotiated public space. The examples and cases discussed in the paper illustrate how civil society and the public are increasingly important actors in policy-making processes in China, on issues ranging from dam-building and pollution to discrimination and civil rights. These new dynamics require new analytical frameworks and modalities for EU dialogue and cooperation with China. State-NGO relations in China today are complex and multi-facetted, but knowledge and understanding of these important aspects of Chinese development and policy-making is generally lacking outside of particular focus divisions and functions in the EU.

NGOs are pressing for change, but they do so under great structural restraints and in a fundamentally unequal relationship with the government. Parallel with recent government policies emphasising more sustainable development, rule of law and the important role of social organisations, the government is cracking down on NGOs and activists which are perceived to challenge the current system. There has been a backlash against international norms in recent years, and while China’s new regulations on NGOs are a step in the right direction in many ways, they should also be seen in the light of a wider government effort to strengthen regulation and bring unregistered NGOs under better control. The Party has an instrumental view of civil society, in similar ways to its position on the rule of law. The legal empowerment agenda which underpins civil society law in international development policy is very different from the legal reform agenda which the Party is rolling out.

A greater number of registered NGOs does not in itself imply a growing role and impact of civil society, just like the existence of courts does not signify the rule of law, and elections do not constitute a democracy. In order to understand the role and function of civil society in
China today, it is necessary to move beyond conventional concepts and ideal-type models of civil society and do a deeper analysis of political, social and economic contexts and power structures. In Spires' words, “neither expectations of a democratic revolution nor a corporatist framework illuminate the experience of China’s emerging civil society”.\textsuperscript{84} A model of consultative authoritarianism has emerged, combining an expansion of civil society with the development of more indirect and sophisticated tools of state control, and the state and grassroots NGOs live in a relationship of mutual suspicion and mutual need. Survival and advancement in this restrictive environment takes skilful manoeuvring embedded in local networks and structures.

One aspect of this manoeuvring and negotiation for space is for Chinese NGOs to give “political face” to political structures and government officials, framing and articulating their agendas in relation to the state, and emphasising that their activities help the government implement policies and laws and safeguard harmony and stability. This type of legitimising, non-confrontational discourse is a central element of NGO advocacy and activism in China, and does not imply the co-optation of NGOs by the state. To paraphrase Gallagher, civil society is shaped both from above by the state and from below by its citizens, and involves elements both of co-option and empowerment.\textsuperscript{85}

As this paper has aimed to illustrate, there is definitely something which deserves to be called a civil society in China today, and NGOs are able to occupy spaces from which they can articulate their issues, press for change and have an impact on policy. On the other hand, the emergence of civil society is not a sign that the Chinese Communist Party is liberalising or democratising; instead it may extend the current regime of authoritarian adaptation and responsiveness. While ICT and social media have been instrumental for mobilisation and information-sharing among civil society actors, these tools are also used by the authorities to gauge public opinion and try to influence it. In this way, the internet can give a false sense of empowerment and be used by the government as a sounding board which strengthens rather than weakens the Party-system. Protests and “civil society incidents” hailed in

\begin{itemize}
\item \textsuperscript{84} Spires supra note 11
\item \textsuperscript{85} Gallagher supra note 30
\end{itemize}
Western media as turning points can often just as well be read as examples of the Party’s adaptive capacity and more sophisticated, but equally authoritarian, approach to handling protest. The Party’s rule of law agenda can serve to reduce claims rather than grant rights, and the notion of civil society organisations as service providers also fits well with this agenda.

Superficial knowledge and mistaken assumptions about civil society and China’s policy-making process lead to misguided strategies for EU-China dialogues and cooperation on fundamental questions and challenges like human rights and democracy. For example, as Geall and Hilton point out, it is a common misunderstanding to assume that China’s political structures facilitate effective policy implementation. “In reality, power in the People’s Republic is highly negotiated: policies, laws and regulations are not only weakened through protracted bargaining among bureaucratic elites, but also frequently ignored further down the system.” 86 In the early 1990s, the notion of the government reversing a decision as a result of civil society activism and opposition at the local level would be unthinkable. Today, there is ample evidence of NGOs which make use of the cracks and spaces in China’s fragmented political system and press for changes which go beyond the Party-state’s intentions and control.

This new and dynamic situation calls for a strategic re-think by European actors, who have focused most of their resources on dialogue and collaboration with the government and government-affiliated organisations, in particular if the purpose of dialogue and collaboration is to promote more inclusive and sustainable development. State-society relations and policy-making processes in China are changing, and EU-China relations and collaboration need to evolve in step with these developments. A continued predominant focus on state-led reforms and top-down approaches means a missed opportunity to engage and support more innovative, inclusive and participatory initiatives and approaches to development. As Kellogg points out, an emphasis on, for instance, supporting the

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government to revise laws and regulations on NGOs ignores the fact that legal change often follows, rather than leads, changes to the situation on the ground in China.\textsuperscript{87}

China’s growing environmental crisis and the rise in social conflicts and distrust illustrate the need for new, more participatory and transparent approaches to solving problems and addressing the sources of conflicts. China suffers from a “culture of official secrecy”, which hampers effective environmental governance.\textsuperscript{88} Censorship and stability maintenance are a double-edged sword for the government – they prevent radical NGOs from linking up, but can also work to keep Party leaders ignorant of local realities.\textsuperscript{89} Increased budgetary allocations have created a vested interest in stability maintenance, leading public security agencies to exaggerate threats to stability rather than assist in developing alternative methods for conflict prevention. The failure of formal and legal channels to hear complaints and deliver justice push people to take more radical action such as violent protests. But street protests will not change China’s “failing system”.\textsuperscript{90} One key challenge is to improve and institutionalise public participation, dispute mediation and mechanisms which would allow the knowledge and experience of the public and civil society organisations to feed back into the policy process. These types of systemic reforms require respect for fundamental human rights like freedom of association and freedom of expression.

The EU and its member states can support more pluralistic, inclusive and sustainable development in China by supporting greater public participation through China’s civil society organisations, and by upholding these and other basic human rights principles in all cooperation and dialogue with China, rather than reserving these issues for special human rights dialogues. International funding and support has played an important role for the development of the civil society sector in China, and will remain an important source of support for grassroots NGOs also as Chinese private and government funding for social

\begin{footnotes}
\item[87] Kellogg supra note 83
\item[88] Geall & Hilton supra note 86
\item[89] Spires supra note 11
\item[90] Tang H 2013 China’s street protests won’t change a failing system Chinadialogue 30 January 2013 at \
\end{footnotes}
organisations is becoming more available. The EU should also invest resources in building knowledge and capacity in Europe, by supporting European civil society organisations to collaborate with Chinese partners, and by supporting the continued work of experienced and resourceful organisations like Chinadialogue and China Development Brief.