

THE LATEST DEVELOPMENT OF ENVIRONMENTAL NGOS IN CHINA

CAI SHOUQIU* and WEN LIZHAO#

Abstract

Environmental NGOs are growing quickly in China and playing an increasingly large part in environmental protection and the development of environmental law. In this short paper, the general development of environmental NGOs is reviewed, two powerful environmental NGOs are introduced and the barriers to the development are analyzed, with suggestions for improvement provided.

Introduction

In contrast with NGO formation in most States, most Chinese environmental NGOs are established from the top down. By 2008, there were 3,539 environmental NGOs in China, but they represent only a small fraction of the total number of NGOs in China: 310,000 NGOs with 3 million employees.¹ 1309 of the environmental NGOs were founded and sponsored by government; 1382 organized by college student environmental protection clubs;² 508 organized by citizens; and the remaining 90 were established by international environmental NGO. As most colleges are affiliated with central or local governments in China, these statistics indicate that 76% of Chinese environmental NGOs are in some way linked to government, only a small fraction are grassroots organizations. This is in part because few members of the ordinary public are aware of either environmental NGOs or indeed environmental problems. The future of grassroots NGOs in China is therefore in some doubt. At the same time, the government sponsored NGOs suffer from bureaucracy and so may not be as effective as more independent NGOs.

Two Most Influential Environmental NGOs

Despite these issues there have been some very successful environmental NGOs in China.

* Professor of Law, School of Law, Wuhan University; President of China Environmental and Resources Law Society, Email: fxycsq@whu.edu.cn.

PhD Candidate, School of Law, Wuhan University, Email: wen_lizhao@live.cn.

¹ See the second chapter "The General Situation of Chinese Environmental NGOs" of the book *China's Environmental Non-governmental Organization Development Status (2008 Environment Blue Book)*, which is investigated and edited by All-China Environment Federation in 2008.

² These environmental NGOs are affiliated to the colleges, their activity must be approved by the college, and their funding comes principally from the college.

The two most notable are the All-China Environment Federation (ACEF) and China Environmental and Resources Law Society (CERLS).

All-China Environment Federation (ACEF)

The ACEF formed in 2005. It was approved by the State Council of the Peoples Republic of China (PRC), registered in the Ministry of Civil affairs and administrated by the Ministry of Environmental Protection. Between 2009 and 2012, ACEF filed 6 environmental public interest litigation cases as plaintiff against polluters or governments. These cases covered both civil public interest litigation and administrative public interest litigation. Its actions opened the door to Chinese environmental public interest litigation, as ACEF was the first environmental NGO to successfully file environmental public interest litigation in China. It also prompted Guiyang People's Congress to pass legislation providing for public interest litigation in that province: *Guiyang Improving Ecology Civilization Construction Regulation* March, 2010. This has been followed by similar provisions being adopted by the Supreme People's Court and in, for example, Wuxi, Kunming, Yuxi and Hainan Provinces. These new rights to public interest litigation change the rules on standing in China.³ Many of the new provisions not only allow the public prosecutor, administrative departments and nature reserve management institutions to bring actions, but also allow legal persons, NGOs and citizens who engaged in environmental protection and social public welfare to do so.

China Environmental and Resources Law Society (CERLS)

CERLS concentrates on environmental law research, education, advocacy and academic exchange with worldwide specialists, it was registered by the Ministry of Civil affairs of the PRC in June, 2012. Its predecessor, Environmental and Resources Law of China Law Society, was established in 1999.⁴ CERLS has more than 700 members, of which 150 are environmental law associate professors and 80 are environmental law professors. One of its successes is in the promotion of environmental courts in China.

Due to the increasing number of environmental disputes and the complex nature of environmental cases, CERLS proposed the construction of an environmental court specialized in hearing environmental disputes (including resources and ecology disputes.) Their work first led to the establishment of two environmental courts in Guiyang (a city of

³ Formerly only parties who had a direct-interest in a case could start legal proceedings in China.

⁴ Environmental and Resources Law of China Law Society established formally in the conference of Sustainable Environmental and Resources Law held in Wuhan University in November 20 to 22, 1999, its moto was "Sustainable Development: Cross-century Reflection and Exploration of Environmental and Resources Law".

Guizhou province) on November 20, 2007. One was in a basic court of Qingzhen (a county-level city of Guiyang) People's Court, the other was in Guiyang Intermediate People's Court (a higher level above Qingzhen). These are the first environmental courts in China which specialize in environmental disputes. Four of the six environmental public interest litigation cases started by ACEF were heard in these two environmental courts. Subsequently more than one hundred environmental courts have been established in China. While practice has yet to fully develop, it is clear that the establishment of these courts is likely to provide both environmental and socio-economic benefits.⁵

Suggestions for Increasing the Number of Environmental NGOs

While ACEF and CERLS have had notable successes there is still a need to address the low number of environmental NGOs in China. This next section contains three suggestions for further improvement.

Reform the Registration System

A key barrier to their establishment is that to be formally recognized NGOs must comply with certain legal requirements. First, a corresponding authority of government must approve them in advance and, second, they must have more than 50 individual members or over 30 institutional members.⁶ These requirements prove difficult to meet in practice, therefore, environmental NGOs have to search for other ways to obtain legal personality. One option is to attach to an existing NGO, for example, Friends of Nature⁷ was attached to the Academy of Chinese Culture.⁸ An alternative is to register as a company. Registering as a company, however, means that they are treated as for profit organizations and must pay tax unless they can apply for a tax reduction or exemption. A third option, which some environmental NGOs have used, is to practice without any legal status. This however, tends to result in a number of issues: the organizational structure tends to be unstable, there tends to be lower recognition from society, fund raising can be problematic and it can make involvement in environmental protection projects difficult.

It is suggested that the requirements for registration are now rather dated and that the

⁵ Wang Shuyi, 'The Analysis of Necessity and Feasibility on Environmental Courts in China', First Symposium on Environmental Judiciary, June, 2011.

⁶ See *Social Groups Register and Management Regulations* issued by the State Council in Oct, 1998 and *Non-government Institutions Management Provisional Regulations* issued by the State Council in Oct, 1998.

⁷ It is the first environmental NGO in China, receiving government approval in 1994.

⁸ A civilian organization of academic research and teaching initiated by some well-known Chinese scholars in 1984.

Chinese government should reform the law to safeguard the development of NGOs. Reforms should embody the following aspects: firstly, legislation should be enacted by the National People's Congress and its standing committee which favours the development of NGOs. Secondly, registration requirements should be simplified, the requirement for government approval and for a minimum number of members should be removed. Thirdly, the government should offer financial support to environmental NGOs through both subsidies and tax relief. Finally, the collection and use of financial donations should be regulated in order to ensure NGOs are using donations reasonably and to ensure that they retain independence from contributors.

Remove the Link to Government

The second barrier to the development of environmental NGOs is that most environmental NGOs are dependent on government. This relationship has its roots in the era of the planned economy in China. At that point national power touched every aspect of society. In the 21st century the power structure is changing, as the famous jurist Mr. Jiang Ping said: the power of society should be liberated from the state.⁹ The key reform is therefore to relocate the relationship between environmental NGOs and government, making environmental NGOs more independent. This requires both that government hand power to the NGOs and that environmental NGOs are active in fighting for self-governance.

NGO Self-improvement

As indicated earlier, one of the problems with some independent NGOs is that they lack a coherent structure. In addition there may be some questions raised about their financial probity. The final reform suggested is that environmental NGOs engage in self-improvement. That is, they should improve their internal structures, financial reporting systems, and the quality and professional skills of staff. More specifically, the environmental NGOs must ensure that their purpose, and development plan are clear; that they have sound human resources management policies and structures and that they have strong and transparent financial management to prevent corruption. By so doing the NGOs will improve their credibility and so attract more members and financial support.

⁹ Jiang Ping, 'Social Power and Social Harmony', 2005(4) Chinese Academy of Social Sciences Graduate School Journal, 30.