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Creating Space for Civil Society Participation in Yunnan

An overview of the registration options available to
community-based service organizations

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Abbreviations

CBSO	community-based social organization
CDC	Center for Disease Control and Prevention
CSO	civil society organization
GMR-C	Greater Mekong Region and China
HPI	Health Policy Initiative
ICAB	Industry and Commerce Administration Bureau
MARP	most-at-risk population
MSM	men who have sex with men
NGO	nongovernmental organization
PLHIV	people living with HIV
USAID	U.S. Agency for International Development

Executive Summary

The 17th Plenary Session of the Chinese Communist Party Congress, held in October 2007, acknowledged the importance of the development and management of civil society organizations (CSOs) and this, in turn, has paved the way for provincial governments to address the registration of CSOs. In response to this high-level policy initiative, on 24 September 2008, the Yunnan Provincial Civil Affairs Bureau launched a new policy, titled Yunnan Provincial Civil Affairs Guidance on Construction and Management of Community-based Social Organizations (hereafter referred to as the Guidance), governing the registration of CSOs. This Guidance is designed to complement the two existing national policies for registration: Regulations on Registration and Administration of Social Associations, 1998, and Regulations on Registration and Administration of Civilian-Run Non-Enterprise Units, 1998.

Previously, CSOs in Yunnan have sought registration under these two national policies, or opted for commercial registration through the Industry and Commerce Administration Bureau (ICAB). In addition, many groups have elected to become formally constituted as a managed group with a sponsoring partner. The new Yunnan Guidance does not replace the two national policies or the options of commercial registration and becoming a “managed group” but adds a fifth option (see text box).

The Guidance has been developed to be more user-friendly and, therefore, may result in increased community mobilization. The Yunnan Civil Affairs Bureau is to be congratulated for their leadership in developing this new Guidance.

In Yunnan, the term Community-based Social Organization (CBSO) is used as an umbrella term for civil society—including local nongovernment, community-based, and grassroots organizations. Throughout this report, we use the term CBSO when referring to civil society. The Guidance does not cover the registration of international nongovernmental organizations (NGOs) and this report only addresses registration for indigenous organizations.

Five Options for Registration and/or being Formally Constituted in Yunnan

National registration through

1. Regulations on Registration and Administration of Social Associations, 1998
2. Regulations on Registration and Administration of Civilian-Run Non-Enterprise Units, 1998

Commercial registration through

3. Regulations on Registration and Administration of Commercial and Industrial Corporations

Yunnan registration through

4. Yunnan Provincial Civil Affairs Guidance on Construction and Management of Community-based Social Organizations, 2008
 - o Full registration
 - o File-for-record
5. Managed group with a sponsoring partner

This report was commissioned by the Health Policy Initiative/Greater Mekong Region–China (HPI/GMR-C) to analyze the potential of the new provincial Guidance to support the development of the CBSO sector and particularly those organizations working with most-at-risk populations (MARPs) in the context of HIV. This report also discusses the advantages and disadvantages of all five options open to CBSOs for registration and/or to be formally constituted. The Guidance was only ratified on 24 September 2008 and consequently, there is little experience with its effectiveness to date. As this report shows, the options for registration remain complex and CBSOs need to carefully weigh the advantages and disadvantages of all options before they proceed. *A case-by-case approach is strongly recommended.* The report includes specific recommendations, as follows:

- Support operationalization of the Guidance and clarify procedures
- Support the growing partnership between government and CBSOs
- Strengthen CBSO capacity and organizational development
- Document and disseminate models of successful registration
- Facilitate additional technical assistance to further explore commercial registration.

Background

The U.S. Agency for International Development’s (USAID’s) HPI/GMR-C project aims to improve the enabling environment for HIV prevention, care, and treatment in the Greater Mekong Region and China, specifically Yunnan and Guangxi, by ensuring that

- National and local HIV policies, plans, and programs based on international best practice are adopted and implemented;
- Effective public sector and civil society champions and networks are developed, strengthened, and supported to assume leadership in the policy process; and
- Timely and accurate data are used for evidence-based decision making.

Within this mandate, a key component of HPI/GMR-C’s work plan is to strengthen the capacity of civil society and community advocates to participate in the HIV response in Yunnan and to support community mobilization. An independent and robust civil society sector is a core element of a supportive environment for HIV prevention, treatment, and care services. Central to this approach is the need to support the development of community-based organizations that can independently advocate for their needs and represent the interest of their communities. This is challenging in the context of China because civil society is still in the early stages of development and there are not many models of independently run organizations. It is particularly challenging in the context of HIV as many groups are comprised of and work with people from MARPs and/or people living with HIV (PLHIV). However,

new policy developments, increased funding opportunities, and a more open climate suggest that there is increasing support for civil society development.

Until recently, registration of CBSOs and/or the formal constitution of groups in Yunnan had been complicated and difficult to navigate.

There are two national policies that govern the registration of CBSOs.

1. Regulations on Registration and Administration of Social Associations, 1998; and
2. Regulations on Registration and Administration of Civilian-Run Non-Enterprise Units, 1998.

Both of these policies are administered by the Civil Affairs Bureau and the relevant government department responsible for approving technical supervisory departments. The registration requirements under these national policies have been onerous for small and developing CBSOs for reasons that are discussed in this report.

Due to the complicated and lengthy process of registration under the two national policies mentioned above, some civil society groups have elected to register as commercial entities under the Regulations on Registration and Administration of Commercial and Industrial Corporations. Technically, this policy is specific to business entities and is administered by ICABs. In reality, commercial registration has provided a viable option for many civil society groups. However, there are some risks inherent in this approach and these are discussed later in this report.

However, some groups have found both the national regulations and commercial registration too difficult. These groups have elected to become a managed group with a sponsoring partner. This option does not give the group formal registration but it does enable them to function legally and therefore, they are considered to be formally constituted. The sponsoring partner acts as the parent and is legally responsible for the operations of the managed group. This option has been utilized by a large number of HIV-related CBSOs in Yunnan and, in many cases, works well. However, as with each option, there are advantages and disadvantages and these are explored in this report.

The ratification of the Yunnan Provincial Civil Affairs Guidance on Construction and Management of Community-based Social Organizations in September 2008 by the Yunnan Provincial Civil Affairs Bureau provides a fifth option for registration. As drafted, the new Guidance shows improvement compared to the two national regulations and specifically, with regard to simplified and cheaper registration requirements.

In addition to the five options outlined above, there are some HIV-related groups that have elected to run as self-managed groups and these are not registered or formally constituted with a permanent sponsoring partner. These groups are generally small and function somewhat independently. However, they do not have an organizational bank account. When they wish to apply for

funds they approach a potential sponsoring partner or supervisory unit and ask if they are prepared to host the grant, but this is not a permanent management relationship. Generally, these groups are very proactive and have formed strong relationships with the Health Bureau or the STI/HIV Associations. At this stage, it is unclear if these groups will seek full registration or file-for-record under the Guidance or any of the other options discussed in this report.

Methodology and Context

A desk review of the relevant documents was conducted and stakeholder meetings were held with local and international informants from the government and civil society sectors. The review was conducted over a 12-day period in October and November 2008. Five interviews were conducted with staff members from four CBSOs and one international NGO working in Yunnan. The consultant also consulted with three registration officials at relevant service counters.

Additionally, in the lead up to this assessment, HPI/GMR-C and the International HIV/AIDS Alliance co-funded the Yunnan Civil Affairs Bureau to host a workshop to discuss the new Guidance with interested community representatives. This workshop, known as the Forum on Promotion of Community-based Social Organization Development, was held on 9 September 2008 and was attended by 48 representatives from the general CBSO sector, government officials, and academia. Two reports—the workshop report, titled *Promotion of CBSO Development Forum Report*, and the *Interpretations on the Guidance on Registration and Administration of community-Based Social Organizations* report¹—were also used to inform this assessment. The workshop was a positive step in facilitating communication among stakeholders and helped to pave the way for this assessment.

However, it must be noted that this assessment was conducted within 2 months of the promulgation of the Guidance. The Guidance is in the early stages of implementation and as a result, the Provincial Civil Affairs Bureau had just commenced introducing the Guidance to its subordinate departments and the CBSOs at the time of this assessment. This meant that some stakeholders were uninformed or poorly informed about the Guidance; thus, the findings in this report reflect the situation from September to November 2008. At the time of finalizing this report, we were unable to determine if any CBSOs had been registered under the new Guidance. Ongoing monitoring of the implementation of the Guidance will be important.

Analysis

Overview of the Yunnan Provincial Civil Affairs Guidance on Construction and Management of Community-based Social Organizations and Comparison with the Other Existing Options

The Guidance is significant because it provides another option for registration. CBSOs that qualify for registration under the national acts (Regulations on Registration and Administration of Social Associations and the Regulations on Registration and Administration of Civilian-Run Non-Enterprise Units) may still do so, but CBSOs that do not qualify to register under these national regulations may now do so under the Guidance. Table 1 outlines the advantages and disadvantages of registration under the Guidance.

Table 1: Overview of Advantages and Disadvantages of Registration under the Yunnan Provincial Civil Affairs Guidance on the Construction and Management of Community-based Social Organizations

Registration Option	Advantages	Disadvantages
Full Registration	<ul style="list-style-type: none"> • Low registration fund/fee—only RMB1,000 • Only 10 or more members are required, no requirement for an annual check • Registration certificate and bank account granted 	<ul style="list-style-type: none"> • Need to identify a supervisory unit
File-for-record	<ul style="list-style-type: none"> • Granted legal status • No registration fund/fee required • Only five or more members required • Simplified application procedures • Not required to have a supervisory unit 	<ul style="list-style-type: none"> • No registration certificate granted • Unable to open an organizational bank account and this may limit potential funding sources

According to a Civil Affairs Bureau staff member, the new Guidance contains several “breakthroughs” that distinguish it from the previous acts² governing the registration and administration of CBSOs (see text box below). The Guidance provides CBSOs with two options for registration, as discussed below.

Two Options for Registration under the Guidance

Full registration

Under the Guidance, CBSOs may seek full registration that entitles them to a registration certificate and gives them the ability to open an organizational bank account. They must still identify and have approval from a supervisory unit. The role of supervisory units is discussed later in this report.

Breakthroughs in the Guidance

Two options for registration

1. Full registration
2. File-for-record

Simplified criteria for registration and application

1. Requirement of registration fund lowered
2. Requirement of number of members reduced
3. New supervisory unit identified
4. Procedures simplified

Removal of Annual Checks

1. Workloads of both administrative departments and NGOs reduced

The following are the changes in full registration under the new Guidance.

Simplified criteria for registration and application

The selection criteria, cost, and lengthy application process have been repeatedly indentified as barriers to registration. For example, under the Regulations on Registration and Administration of Social Associations, 1998, the following is required: a registration fund (assets) of 30,000 yuan, a minimum of 50 members, a fixed office abode, and a designated supervisory unit to oversee management. There is also a 6-month preparation period during which applicants must finalize their charter, elect their leaders, and submit all the documentation for registration—but no activity beyond preparation is allowed.

By comparison, if a CBSO seeks full registration under the Guidance, they are only required to have a 1,000 yuan registration fund and 10 members. Also, township governments (Street Affairs Offices) are designated to serve as supervisory units (unless there are requirements established by the departments of health, education, and labor training, in which case those requirements would apply). The Guidance has also removed the lengthy preparation period.

Annual checks removed

Under the national Regulations on Registration and Administration of Social Associations, 1998, a time-intensive comprehensive annual check is required.³ CBSOs registered under the Guidance are not required to undergo annual checks. Instead, CBSOs are only required to submit an annual work report to their registering departments. The intention is to reduce the workload of CBSOs and government departments and this is a welcome change.

File-for-record

However, CBSOs that do not meet the criteria for full registration under the Guidance may still obtain legal status by completing the straightforward file-for-record⁴ option. CBSOs wishing to register under this option are required to have a name for their organization, five or more members, a staff member designated to legally represent the group, and a work venue or service location. The advantage of this option is that a supervisory unit is not required plus there is no registration fee or annual check required. The file-for-record option still requires approval by the Community Residents Committee and township government/Street Affairs Offices, after which applications are sent to the county (or district/municipal) Civil Affairs Bureau for approval. Once granted legal status, the CBSO reports to the relevant community- or municipal-level Civil Affairs Bureaus.

However, a major limitation is that the CBSO is not issued with a registration certificate and it is not allowed to open an organizational bank account. The lack of an organizational bank account may make these groups ineligible for some funding.

Some scholars have looked positively upon the file-for-record option and see it as a strategy to tackle the criticized high entry threshold for registration of CBSOs and to encourage more organizations to register.⁵ However, it is too early to determine if the file-for-record will act as an entry point for CBSOs and if over time, with capacity building, the organizations will mature and eventually be able to seek full registration under the Guidance or national policies.

Relationship between the Guidance and National Regulations

While the Guidance promises some major breakthroughs in registration for CBSOs operating at the community level, registration through the existing two national acts—Regulations on Registration and Supervision of Social Associations, 1998, and Regulations on Registration and Administration of Civilian-Run Non-Enterprise Units, 1998—are still viable options for local CBSOs. This is also made clear in the Guidance and experience from the field suggests that many CBSOs still consider these options. For example, a number of local CBSOs in Yunnan have successfully registered in this way, including HomeAIDS and Ruili Women and Children's Development Center. As this report outlines, all five registration options are viable and CBSOs need to consider all options.

Commercial Registration

Registration through the ICAB

During the assessment, the option of registering through the ICAB was raised several times and many CBSOs have opted for this route. One CBSO interviewed went through nearly all the key stages of ICAB registration but stopped short of registration because one of its partners withdrew funding and

the CBSO could not meet the 30,000 yuan registration fund requirement. During the interview, the consultant also learned that, in addition to the lack of funds, the CBSO was also concerned about the tax burden and the time and human resources they would have to invest under this option. According to the interviewee, the funding available to the CBSOs was already limited and if they had to pay corporate tax, it would be hard for the organization to remain sustainable. It was also suggested that it would be difficult for the CBSO to convince donors to accept the fact that extra taxation would have to be deducted from their grants.

Another interviewee shared that, on the recommendation from other CBSOs, they inquired about the possibility of ICAB registration. The CBSO reported that they found the process to be quite complex, involving taxation issues that potentially pose a great burden to organizations with limited funds. As a result, the CBSO stopped trying to register through the ICAB. They are now hoping to gain legal status through the Guidance.

In reality, despite the risk of taxation, registration through the ICAB is a viable alternative for many CBSOs, and a significant number have chosen this option. Interestingly, some scholars argue that seeking commercial registration will distort the development of civil organizations and may not be the best option for the long run.⁶

The major advantage of registration through ICAB is that CBSOs are not required to identify or obtain approval from a supervisory unit, a relief for many CBSOs. However, for the ICAB option, issues such as funds required for initial fees and the preferential arrangement of taxation with tax bureaus need to be addressed.

Enterprises are supposed to pay corporate taxes for their incomes. As a special case, in 2004, the State Tax Bureau granted tax-free status to a number of international NGOs, foundations, and business associations that are registered as Business Representative Offices.⁷ The consultant was advised by some of the CBSOs mentioned above that an annual negotiation process takes place between them and the local tax bureau to arrange for an exemption of annual corporate and operational taxes. However, the uncertainty involved in negotiating for a tax exemption can adversely affect the smooth operation of CBSOs registered through ICAB.

Another disadvantage of ICAB registration is the significant amount of time and human resources required to complete the process. To set aside staff time and resources to prepare for the ICAB registration is burdensome for local CBSOs with limited staffing and funding.

Registration through ICAB also raises the issue of fundraising. CBSOs cannot collect membership fees as some membership-based social associations do and thus are dependent on donor funding, particularly from foreign donors.⁸ Table 2 lists the advantages and disadvantages of registration through the ICAB.

Table 2: Overview of the Advantages and Disadvantages of Registration under the Regulations on Registration and Administration of Commercial and Industrial Corporations

Option	Advantages	Disadvantages
Regulations on Registration and Administration of Commercial and Industrial Corporations	<ul style="list-style-type: none"> • Not required to have a supervisory unit • Bank accounts and registration certificate granted • Many examples of successful registration under this model 	<ul style="list-style-type: none"> • High requirement for registration fund/fee (RMB30,000) • May be subject to taxation • Fundraising is not permitted • Requires significant time and resources to achieve resources; may not suit small organizations • Annual review process required

A number of well-known CBSOs that have registered as enterprises, including Beijing Globe Village, an environmental organization; Rural Women, a rural women’s empowerment organization; Beijing Xing Xing Yu Education Research Institute⁹; Can Yu Shi Information Center (also known as Community Participatory Action) in Beijing¹⁰; Beijing Ai Zhi Xing; and Beijing Gender Research Institute. These CBSOs are not for profit, despite their registered status as enterprises.

AIDS Care China and the Chengdu Gay Community Care Organization are two well-established and respected MARP-specific organizations. Despite the difficulties in seeking commercial registration and the taxation issue, it may be that on balance, commercial registration is the most viable for MARP-related groups because it gives them autonomy.

Being Constituted as a Managed Group with a Sponsoring Partner

To date, many CBSOs in Yunnan have opted to be a managed group with a sponsoring partner organization. This means that the group is formally constituted under the legal umbrella of a sponsoring partner. The group does not have formal registration in its own right. Funding is channeled through the sponsoring partner organization as the legal entity and they normally take a percentage as a management fee. The sponsoring partner is responsible for program design, monitoring and evaluation, financial management, and staff management.

There are various models of managed groups in Yunnan. For example, some groups are managed by the commercially registered AIDS Care China group or locally registered NGOs, such as DAYTOP or Kunming Red Cross. Others are managed by government partners, such as the local Center for Disease Control and Prevention (CDC).

Many CBSOs report that this option works well for them because they are protected by their sponsoring partner and provided with capacity-building and technical support and coordination with other government departments. Accordingly, they may opt to stay with this option and not seek registration under the Guidance or any of the other existing options. However, some CBSOs may wish to gain greater independence and may want to explore other options for registration. It is not clear how smoothly this transition would be for all groups. Some sponsoring partner organizations may be reluctant to let go of their managed group for fear that they will lose resources and access to international funding. Table 3 highlights the advantages and disadvantages of being in a managed group with a sponsoring partner.

Table 3: Overview of Advantages and Disadvantages of being Managed Group with Sponsoring Partner

Option	Advantages	Disadvantages
Managed group with a sponsoring partner	<ul style="list-style-type: none"> • Easier coordination with government • Close supervision and technical guidance 	<ul style="list-style-type: none"> • No autonomy

Policy to Practice—Barriers to Implementation

The following section explores the operational barriers that have emerged in the early stages of the implementation of the Guidance.

Policy to Practice—Barriers to Implementation

1. Time lag and lack of coordination in disseminating the Guidance
2. Difficulty in identifying supervisory units
3. Sensitivities for groups working with MARPs and PLHIVs
4. Potential limits of geographical coverage of services

Dissemination of the Guidance: time lags and the need for departmental coordination

Although the Guidance came into effect on 24 September 2008, CBSOs who inquired about registering through the Guidance found that Civil Affairs Bureau staff at the Kunming Citizen Convenience Service Center were unaware of the Guidance.¹¹ Staff at the Wuhua District Civil Affairs bureau also indicated that they were unaware of the Guidance.¹² One interviewee indicated that the local Street Affairs Office and Community Residents Committees were not aware of and did not understand the Guidance. When a local Gejiu CBSO went to the Street Affairs Office for a consultation, they were told that the office was unaware of the policy, and therefore, they did not have relevant materials and application forms. When the consultant went to the Community Construction Office in Wuhua District, the staff also said that they did not know about the Guidance. They explained that when a new policy is implemented, there is usually training for staff, but this had not yet

occurred. They recommended that the consultant go to the Wuhua District Civil Affairs Bureau Office at the District Convenience Service Center. At the time of this report, the Guidance was not yet available on either the Yunnan Provincial Civil Affairs Bureau Web site or on the Yunnan Provincial Government's public information Web site.¹³

These experiences show that there was a time lag between the ratification of the Guidance and its dissemination and implementation. In part, the time lag is caused by the need to disseminate the policy within the Civil Affairs Bureau and across multilevel government departments and agencies. There is a need for stronger cross-departmental coordination and communication and preparatory training to support policy implementation.

One interviewee suggested that the reason for this time lag may be that the Civil Affairs Bureau issued the Guidance independent of other levels of government. The consultant was not able to interview the Civil Affairs Bureau, but members of the Civil Affairs Bureau from the Social Organization Administration Bureau have expressed a concern about this action elsewhere. During the Forum on Promotion of Community-based Social Organization Development, it was said that "whether grassroots government agencies would take a proactive stance to cooperate in the registration and file-for-record as stipulated in the Guidance involves not only the local government agencies but also the authority and effectiveness of different levels of government. The consistent practice of Civil Affairs Bureau is to take initiatives first and then seek cooperation from others."¹⁴ It was said that the Civil Affairs Bureau cooperated with other levels of government when designing the Guidance, but independently released the policy, and then sought cooperation from other relevant departments, as it has often done in the past.

Policy implementation in China has long been a hotly debated issue. Problems include conflicts of interest, selective implementation, and locally produced coping strategies to counter the effectiveness of the policy designed and promoted by a higher-level authority.¹⁵ Therefore, the concern over the translation of policy into practice, particularly in the cases involving multiple and cross-departmental coordination, is not unfounded.

Identification and approval of supervisory unit

During the interviews, the crucial role of supervisory units was consistently raised. A supervisory unit is required for registration under both national policies and in order to obtain full registration under the Guidance.

Historically, identifying and obtaining the approval of supervisory units has been identified as the key barrier to CBSO registration.¹⁶ One interviewee emphatically stated that identifying and securing a supervisory unit remains the "biggest obstacle" to CBSO registration for local MARP-driven NGOs.

As discussed earlier, the positive aspects of the Guidance is the lower entry threshold (both the registration fund and minimum numbers of members) plus the inclusion of township government/Street Affairs Offices as potential

supervisory units. In theory, this should make identifying a supervisory unit easier, but some interviewees said that they doubted whether the township government/Street Affairs Office would be willing and/or able to support the CBSO as supervisory units.

One CBSO interviewee shared that they had tried to register as a civilian-run non-enterprise unit through the Civil Affairs Bureau and approached the Health Department to ask if the department would be willing to be the supervisory unit. The Health Department answered no. The CBSO then contacted a local science and technology promotion association, but that attempt failed too. Some CBSOs said that from their previous registration experience, many departments, associations, and organizations are simply not willing to serve as a supervisory unit.

When asked about the reasons behind the unwillingness, an interviewee shared two reasons. Firstly, he said, the Health Department may be worried that the registered CBSOs working on HIV prevention and treatment may become competitors for international donor funding. Secondly, some department leaders may be concerned that the management responsibility of being a supervisory unit could have negative impacts on their performance if problems emerged within the CBSO. Some scholars suggest that there may be some misunderstanding of the role of CBSOs or some negative attitudes toward civil society groups. Another issue related to the supervisory unit touches on the coordination between departments. One interviewee shared his organization's experience in the attempt to get registered. The organization had long been an executing body of HIV prevention and treatment programs of a local CDC. After learning about the promulgation of the Guidance, the organization attempted to secure another government department as its supervisory unit, which brought about some reservations from the CDC partner. Some departments may be unwilling to serve as the supervisory unit because they are unwilling to let go of the partnership forged with local CBSOs.

Under the Guidance, township government/Street Affairs Offices are identified as appropriate supervisory units. However, some interviewees reflected that if the Health Department and other organizations were unwilling to be supervisory units for CBSOs, it would be unrealistic for anyone to expect that the local government agencies, such as the township government/Street Affairs Office, would be willing to step in. This is most likely to be the case for HIV because the issues are seen as sensitive and taking on the role of the supervisory unit may be seen to be risky. The issue of identifying appropriate supervisory units needs further examination.

Sensitivities for groups working with MARPs and PLHIV

HIV is a particularly sensitive area and the groups seeking registration or formal constitution are most likely to be working with sex workers, men who have sex with men (MSM), injecting drugs users, and PLHIV.

The Guidance explicitly requires applicant organizations to approach their township government/Street Affairs Office to consult on registration and, linked to this, the applicant must list the service area or give an “indication” of service area in their organizational title. It is too early to assess how the Guidance will address groups working with sensitive populations, some of whom are or could be seen to be engaged in illegal activities.

For groups working with MSM and PLHIV, the requirement to list their service area may expose the sexual orientation, sexual and drug use behaviors, and/or HIV status of staff and clients. HIV-related stigma and discrimination is still very prevalent, particularly at the local community level, and exposing one’s identity or HIV status may result in serious harm.¹⁷ Such concern may prevent MARP-related and PLHIV groups from approaching local government agencies for consultation on registration matters. Similarly, it may be extremely difficult to find neighborhood committees willing to support the group’s formation. The Guidance was not designed specifically for HIV organizations and the sensitivities surrounding HIV are not highlighted.

This is not surprising given the Guidance was designed to target all community-based organizations regardless of whether they were working with the elderly, sports associations, or HIV groups.

Further work needs to be done with the Civil Affairs Bureau to ensure that the implementation of the Guidance takes into account the challenges facing CBSOs in having to disclose sensitive and confidential information related to their individual HIV status and sexual and drug use behaviors.

Potential limits on the geographical coverage of services

Under the Guidance, CBSOs are required to identify the specific administrative area, including administrative area names (district, county, and city) and community name, where they propose to work. Some interviewees expressed concern about this. They are unsure if this requirement means that, once registered under the Guidance, the organization would only be able to operate and provide services in the named geographical and administrative areas. Many CBSOs provide training and conduct awareness-raising activities across large jurisdictions and they are concerned that they may have to be registered in multiple jurisdictions. Recently, similar Guidance on the CBSO registration issued by Fujian Provincial Civil Affairs Bureau set precedent by allowing CBSOs to apply to be registered across multiple jurisdictions.¹⁸ The Yunnan Guidance is not clear on this issue and operational procedures will assist with clarifying this ambiguity.

Summary and Recommendations

Although there are now five options for registration and/or being formally constituted for CBSOs in Yunnan, the process is not straightforward. Despite the many positive aspects of the Guidance, it is too soon to assess its impact

and whether the existing managed groups will seek to change their status and become registered in their own right. Nonetheless, the CBSOs consulted showed considerable enthusiasm for the Guidance and for the possibility of gaining legal status via this method. A number of operational barriers remain and the Guidance is not specific on some selection criteria. It will take the Civil Affairs Bureau some time to disseminate the Guidance and support its implementation with training and promotion activities. However, it is an opportune time for the Civil Affairs Bureaus and the CBSOs to work together to support the dissemination of the Guidance and for the CBSOs to provide feedback on their experience of the Guidance, particularly at the local level.

When it comes to the question of the most appropriate option for registration or formal constitution, each CBSO needs to assess its circumstances and resources and make an informed decision. Given that the Guidance is still in the first phase of implementation and the debate about the role of civil society in China and Yunnan continues to evolve, a case-by-case approach is strongly recommended. CBSOs should seek advice, especially from organizations that have succeeded, before they commence the registration process.

This report, in addition to providing recommendations for further actions also serves as a baseline for future assessments on the registration of CBSOs in Yunnan. It is also hoped that this report will further policy dialogue between the Yunnan Provincial Civil Affairs Bureaus and concerned CBSOs.

Our recommendations are as follows:

Recommendation 1: Support the Operationalization of the Guidance and Clarify Procedures

It is recommended that HPI/GMR-C continue to build its relationship with the Civil Affairs Bureau and provide advice on the operational policy issues related to the implementation of the Guidance. In particular, clarification is needed about what information CBSOs will have to disclose and to which agency in order to be registered. Additionally, the Civil Affairs Bureau needs to clarify whether CBSOs can register for work across multiple jurisdictions. HPI/GMR-C is well-placed to take a leadership role in collecting feedback from local CBSOs about their experiences with the Guidance and sharing this information with the relevant Civil Affairs Bureaus. In this way, HPI /GMR-C can contribute to the improvement of the Guidance's design and implementation.

Recommendation 2: Support the Growing Partnership between Government and CBSOs

The Civil Affairs Bureau-hosted forum in September 2008 (co-funded by HPI/GMR-C and the International HIV AIDS Alliance) was an important step in bringing together the government and civil society sector. It is recommended that a similar forum or workshop be hosted to assist with dissemination of the Guidance and as a venue for providing interested CBSOs

with technical assistance on how to become registered. The forum can encourage multistakeholder participation, foster mutual understanding, facilitate support for CBSO registration, and improve the partnership between government and civil society. It would be advantageous to invite officials in charge of these departments to speak about relevant policies and functions of their departments, and follow this with a question-and-answer session. Representatives from recently registered CBSOs can be invited to share their experiences. The workshop can also be an occasion for some organizations to start preparations to register. The September 2008 forum has opened up the communication channel, and more efforts should be made to maintain the momentum. By doing so, the gap between the knowledge, attitude, and behaviors among the government organizations and NGOs can be gradually closed.

Recommendation 3: Strengthen CBSO Capacity and Organizational Development

HPI/GMR-C, working in collaboration with other international and national organizations, should consider supporting capacity building of both the civil society sector and government on the important role CBSOs can play in the HIV response. This is an interesting time in China because there are indications that support for civil society development is increasing. HPI/GMR-C can assist with helping to remove stereotypes about CBSOs while enhancing these organizations' capacities to work with not only their community members, but also government officials. Similarly, MARP-driven CBSOs also need to increase their understanding of government administration processes and be supported to build a partnership with the government. Fledgling CBSOs, particularly those that work with MARPs, need to build capacity in advocacy, organizational development, and project implementation. Chinese scholars, researchers, and consultants who specialize in this field can be considered as resource persons.

Recommendation 4: Document and Disseminate Models of Successful Registration and/or Formal Constitution

As stated previously, all five options are viable and a case-by-case approach is recommended for CBSOs looking to register. HPI/GMR-C is well-placed to document the successful registration experiences and lessons learned and distribute this information for both advocacy and awareness-raising purposes. The documentation should consider all five options for registration and successful case studies should be highlighted. It should also be packaged in a user-friendly manner to increase understanding of the processes and procedures. This information should also be shared within the civil society sector in China.

Recommendation 5: Facilitate Additional Technical Assistance to Further Explore Registration through the ICAB

Despite the disadvantages of seeking commercial registration through ICAB, this option is still favored by many CBSOs and may be most suitable for MARP- and PLHIV-related groups because it allows the groups to have autonomy and has no requirement related to HIV sensitivities. However, taxation and the high entry fee are barriers and it was reported that some Beijing CBSOs are now opting to exit from ICAB and are considering re-registering as civil associations or civilian-run non-enterprise units.

HPI/GMR-C should consider seeking technical assistance from a local commercial law firm (or professional ICAB registration consulting firm) to further investigate the viability of this option and to determine how vulnerable CBSOs may be to taxation, as well as what procedures need to be put in place to seek tax exemption. This will decrease the human resource pressure on local CBSOs that are considering this option.

References

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- ¹ Zhang Ruilin, *Interpretations on the Guidance on Registration and Administration of Community-Based Social Organizations* (Yunnan Provincial Social Organization Administration Bureau, Yunnan Provincial Civil Affairs Bureau, 2008).
- ² For an overview of the policy environment for civil society in China, please see the articles in Yu Keping, *Institutional Environment of China's Civil Society* [in Chinese, with one English article] (Beijing: Peking University Press, 2006).
- ³ Annual checks are a monitoring mechanism required for any registered entity. An annual check includes an assessment to ensure that the organization has abided by laws and regulations and has carried out its activities within its approved scope. It also assesses any changes within the organization's structure, its staffing, and financial situation. Organizations are required to submit a full financial audited report by an accredited accounting firm, an annual report, and a work plan for the coming year, plus a budget and a copy of its registration certificate.
- ⁴ In Chinese, this is referred as *Beian* meaning "put on record."
- ⁵ Liu Peifeng, *Freedom of Association and Its Limits* [in Chinese] (Beijing: Social Science Academic Press, 2007), 300–302; China (Hainan) Reform and Development Research Institute, general introduction to *International Symposium on Development of Civil Society Organizations and Building-up of a Harmonious Society* [in Chinese] (Beijing: China Economic Press, 2005); Chu Songyan, *Systematic Comparison on Administration of NGOs in China and Foreign Countries* [in Chinese] (Beijing: State Administration Institute Press, 2008), 251; Ma Qingyu, *How to Develop and Regulate Chinese Non-Governmental Organizations* (Beijing: State Administration Institute Press, 2007).
- ⁶ Yu Keping, *Institutional Environment of China's Civil Society* [in Chinese with one English article] (Beijing: Peking University Press, 2006), 40.
- ⁷ Deng Guo Sheng et al., *NGOs Evaluation: Theory, Methods and Indicator System* [in Chinese] (Beijing: Peking University Press, 2007), 19.
- ⁸ Zhou Hongyun, "Research Report on Institutional Environment for Civil Society in China," in Yu Keping, *Institutional Environment of China's Civil Society* [in Chinese with one English article] (Beijing: Peking University Press, 2006), 257.
- ⁹ Deng Guo Sheng et al., *NGOs Evaluation: Theory, Methods and Indicator System* [in Chinese] (Beijing: Peking University Press, 2007), 19.
- ¹⁰ Zhou Hongyun, "Research Report on Institutional Environment for Civil Society in China," in Yu Keping, *Institutional Environment of China's Civil Society* [in Chinese] (Beijing: Peking University Press, 2006), 255–56.
- ¹¹ Interviewees reported that the Civil Affairs Bureau staff responded in a friendly manner but said they were unable to give an immediate response to the enquiry because the Guidance had not yet been disseminated. Later the consultant went back to the same office and inquired about registration. The Civil Affairs Bureau staff informed the consultant that more information should be available from a Street Affairs Office because the Guidance states that grassroots government agencies should serve as the supervisory units. Interestingly, he said he did not have the Guidance but he had read about it in the newspaper.
- ¹² An HPI staff member accompanied a member of staff of one local unregistered CBSO to inquire about registration matters at the Wu Hua District BCA office, where they were told that the Guidance had not been distributed to them. They went with a printed version of the Guidance.
- ¹³ See <http://xxgk.yn.gov.cn> and www.ynmz.gov.cn (accessed on 2 December 2008).

¹⁴ Zhang Ruilin, *Interpretations on the Guidance on Registration and Administration of Community-Based Social Organizations* (Yunnan Provincial Social Organization Administration Bureau, Yunnan Provincial Civil Affairs Bureau, 2008).

¹⁵ XinHua Net News, “Chinese Government’s Efforts in Tackling ‘Discounted Implementation’ of Policies,” http://news.xinhuanet.com/misc/2007-03/11/content_5829159 (accessed November 29, 2008); Huang Xing Sheng, “Research on Alleviating the Policy Implementation of Local Government Policies in China,” <http://www.cqvip.com/onlineread/onlineread.asp?ID=23358337>, 2006 (accessed on November 30, 2008); “Problems in Implementation of Public Policies,” <http://people.rednet.cn/peopleshow.asp?ID=186686> (accessed November 30, 2008).

¹⁶ China (Hainan) Reform and Development Research Institute, “General Introduction,” *International Symposium on Development of Civil Society Organizations and Building-up of a Harmonious Society* (Beijing: China Economic Press, 2005); Liu Peifeng, *Freedom of Association and Its Limits* [in Chinese] (Beijing: Social Science Academic Press, 2007), 300–302; Zhou Hongyun, “Research Report on Institutional Environment for Civil Society in China,” in Yu Keping, *Institutional Environment of China’s Civil Society* [Chinese version with one English article] (Beijing: Peking University Press, 2006), 263.

¹⁷ See Tong Ge. *Research Report on Sex and Self-identity of MSM in China*. Internal publication of the Beijing Gender Health Education Institute, (December 2005), 105–6. Another article titled “Around 440,000 Chinese Are Not Aware of Their HIV Status,” published on the *People’s Net*, points out that that “people are afraid of discrimination and dared not test for HIV or expose their own statuses” (<http://news.sina.com.cn/2008-12-01/032216755942.shtml>, accessed December 1, 2008).

¹⁸ See <http://mjj.mca.gov.cn/article/xzglxw/200809/20080900020217.shtml> (accessed on 25 February 2009).