



## Will There Be a Civil Society in the Xi Jinping Era?

Advocacy and Non-Profit Organising in the New Regime

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*There is currently much discussion about the future of civil society in China. Pessimists point to a rash of organisational closures and arrests of civil society workers, as an indication of the most serious crackdown on advocacy since 1989. More optimistic observers described a mutually beneficial relationship between the non-profit sector and the Chinese authorities. They argue that the incidence of repression is relatively small compared to the size of this sector. In this context, this essay surveys a number of ways that advocacy continues to be done in authoritarian China.*

Xi Jinping. PC: UN Geneva (CC).

Assessments of the current state of civil society in China elicit a range of perceptions. Some raise alarms about the most ‘stringent crackdown since 1989’ (Howell 2019) and ‘a dark time for Chinese civil society’ (Dai and Spires 2018). Others, though clearly recognising police actions and tighter restrictions, emphasise that the activities of civil society have always occurred in a negotiated relationship between China’s authoritarian state and a mobilised voluntary sector (Gao and Teets 2021; Hsu 2020; Fu and Distelhorst 2018).

It is important to recognise, as Salmenkari (2017) points out, that civil society in China encompasses a multitude of kinds of organisations, and each of these elicits different kinds of reactions and attention from Chinese authorities. Second, the Chinese state itself is not a monolith, but rather consists of many departments and actors, operates across a vast geographic area, and is made up of diverse components that may have conflicting or even competing interests in their interactions with civil society (Hsu and Teets 2016; Newland 2018). Finally, it is important to note that the concept of civil society itself does not have a settled definition. Even in the West, where the term originated, its meaning and implications are constantly debated (Edwards 2013; Arneil 2006; Seligman 2002). Varying conceptions of civil society can lead to misplaced expectations of how the Chinese voluntary sector might configure itself. These misconceptions may also lead to a failure to recognise the significance of what the nonstate sector in China is actually achieving.

## Repression

Recent anxieties about Chinese civil society date from the beginnings of the ‘Xi Jinping era’. In April 2013, in a climate of crackdown on corruption within the Chinese Communist Party (CCP), the leadership of the Party circulated an internal document entitled ‘Communiqué on the Current State of the Ideological Sphere’ (ChinaFile 2013). This was the ninth such circular that year and so became known as Document Nine. The communiqué stated that the CCP was in an ‘intense struggle’ with Western liberal values. Along with constitutionalism, market economics, universal values, freedom of the press on the internet, and reassessments of China’s history, the circular named ‘civil society’ (公民社会) as one of the seven concepts threatening the country. Civil society was depicted as

a socio-political theory ... adopted by anti-China forces ... who claim that building a civil society ... is a precondition for ... the realisation of constitutional democracy.

Advocates ... want to squeeze the Party out of leadership of the masses ... [and] their advocacy is becoming a serious form of political opposition.

Document Nine further stated: ‘Western embassies, consulates, media operations, and NGOs [nongovernmental organisations] operating inside China under various covers are ... cultivating ... anti-government forces’ (ChinaFile 2013).

The extent to which civil society may have posed a threat to the Chinese state was, of course, questionable. However, it is accurate to say the United States, Canada, and other countries did promote civil society in China with the stated expectation that its strengthening would be a catalyst for democratisation (Encarnacion 2013).

Shortly after the release of Document Nine, a rash of preemptive arrests began. More than 200 civil rights lawyers were apprehended, at least 23 labour organisers across Guangdong Province were arrested, and a network of feminist activists campaigning against sexual harassment was detained. Five of the feminists were held for 37 days, which generated a worldwide outcry (Fu and Distelhorst 2018). Although most activists were later released, some received harsh sentences, ranging up to seven years in prison (Yuen 2015). During the same period, some relatively innocuous voluntary organisations were closed: one sponsored children’s libraries in rural areas (Piao 2014); another was a health awareness program that happened to provide communications support for the ‘Feminist Five’ (Fu and Distelhorst 2018). These arrests sent a chill through non-profit organisations (NPOs) and caused many to recalibrate their work in light of what appeared to be new limits on permissible activity.

Further concerns were raised in 2016, when China enacted the Overseas NGO Management Law. After many years of undefined status in China, international NGOs (INGOs) could now obtain formal recognition. The new law, however, provided for registration not with the Ministry of Civil Affairs, as was the case with domestic NGOs, but with the Ministry of Public Security (MPS). The MPS has a police function, and the new law appeared to cast INGOs as a risk to national secu-

riety (Howell 2019). The Overseas NGO Management Law also required INGOs to register with a supervisory agency. This provision had been lifted for some domestic NGOs but was now applied to international groups. These two features created fear that the government was attempting to restrict, or even drive away, foreign NGOs. Without international funders, some Chinese NPOs were anxious for their survival.

A third cause of concern for civil society was the enactment in 2016 of China's first Charity Law (China Development Brief 2016). At first glance, this law appeared to remove some constraints on civil society. It left open the possibility of ending the requirement for certain types of domestic NPOs to have a supervisory agency (although realising this in practice would require the revision of supplemental administrative regulations) and it enabled some NPOs (after obtaining charitable accreditation) to fundraise from the public for the first time (Snape 2017).

Concerns with the legislation, however, lay in its terminology. The Charity Law allowed for accreditation of 'charitable organisations' (慈善组织). Previous legislation recognised three legal forms: foundations (基金会), social groups (社会团体), and civic-run non-enterprise units (民办非企业单位) (renamed in the law as 'social service organisations', 社会服务机构). All were recognised under the broader term of social organisations (SOs) (社会组织) (Snape and Simon 2017). The use of 'charitable organisations', however, added a new term to the lexicon of SOs and created a new tier of accreditation.

Tensions around this new designation are illustrated in research by Dai and Spires (2018). They held focus groups with more than 50 organisations to gauge their reactions to the Charity Law. A consistent concern among the groups was expressed by one NPO leader, who asked: 'What is a charity? Isn't that like rich people going to a temple and giving away rice for free?' (Spires 2020: 578). Another remarked: 'Charity isn't something we do. That's what rich people do. We don't have any money to give away' (Spires 2020: 578). Putting the question in another way, NPO groups asked: 'What about advocacy?' (Spires 2020: 578).

Although the law recognised work to 'prevent and alleviate pollution' and 'other public interests' (China Development Brief 2016: 2), LGBTQ rights groups, HIV/AIDS activists, and others who build public awareness but do not provide direct services wondered whether the law would benefit them. A labour leader stated: 'That policy wasn't made to include us' (Spires 2020: 577).

The Charity Law also contained multiple warnings that social organisations should not 'violate social morality' (China Development Brief 2016: 3–7). The law did not define either 'violation' or 'social morality'. Feminists, LGBTQ activists, and HIV/AIDS advocates wondered whether, by their very identities, they might be deemed 'violators'. In Dai and Spires' (2018) study, many groups decided they would maintain their registration as businesses (though technically and legally they do not fit this category) and many others said they would simply not register.

In assessing repressive actions, Fu and Distelhorst (2018) argue that the state targeted 'boundary pushers'. They see an escalation—from harassment of civil society groups to criminalisation, from *post facto* repression to preemptive strikes. They see a reframing of offences from challenges to social stability to threats to national security.

## An End to Advocacy?

While there is certainly increased tension among social groups, this has not meant an end to NPO activity. Hsu (2018) points out that, as of 2016, there were nearly 700,000 social organisations officially registered with the Ministry of Civil Affairs. Researchers estimate there were 2–8 million unregistered organisations. Hsu and Teets (2016: 3–4) argue that 'even if we assume that for every reported incident [of repression], another dozen is hidden from journalistic view, the Chinese state is certainly not going to eliminate the NGO sector with such scattered and infrequent attacks'.

These authors see repression as a strategic move in a chess game in which the government wishes to limit the risks posed by a vibrant and

semi-independent civil society, but also seeks to maximise the advantages these groups provide to government through their specialised expertise and services. It may be argued that this kind of negotiated interaction has been occurring since the ‘heyday’ of civil society in the late 1990s and early 2000s (White et al. 1996; Unger 2008). This structured state-led control over voluntary organisations caused Unger (2008) and others to reject the term ‘civil society’ for the nonstate sector in China. At that time, the use of supervisory agencies and a provision that only one organisation of a particular type could legally operate in a given region led Unger to prefer the term ‘corporatism’. To these observers, voluntary organisations in China did not appear to properly fit Walzer’s commonly cited definition that: ‘Civil society is the sphere of uncoerced human association between the individual and the state, in which people undertake collective action for normative and substantive purposes, relatively independent of government and the market’ (cited in Edwards 2013: 4).

Salmenkari (2017) has argued that China’s nonstate sector also does not strictly fit the model of corporatism. This is even more the case now that many restrictions have been eased under the new Charity Law. Jessica Teets (2014) has described the state voluntary sector as ‘consultative authoritarianism’. While the state retains its authoritarian role, it seeks the specialisation and services of social organisations.

Dai and Spires (2018), Hsu (2020), Teets (2014), and Newland (2018) show that across China’s vast array of government departments and local jurisdictions there is a diversity of responses to voluntary organisations. Government officials are interested in gaining credit in their performance evaluations for innovative solutions to social problems. They are open to experimentation, but at the same time are wary of potential failures. NPOs, by contrast, have latitude in their mandates for innovation. They can deploy initiatives and fine tune them until they are effective. In this way, NGOs function as ‘unofficial research and development’ units for local governments (Hsu 2020). Once interventions prove effective, government is able to cut and paste these approaches into their

portfolios, local officials take credit for effective problem-solving, and NPOs are able to see their limited initiatives scaled up to reach large local populations.

To be accepted in this process as collaborators, NPOs have learned that the tone of their advocacy must be tempered. Little can be achieved through denunciation of flawed policy or through criticism of negligent policymakers (Dai and Spires 2018). Advocates have obtained a hearing from those in power by adopting roles as concerned citizens engaged with government in working towards common goals of social and economic development. Problems are framed as commonly agreed on development objectives for which NPOs offer insights and possibly prototypical programming. This approach is sometimes construed as compromise. It appears to run counter to many Western expectations that to engage in advocacy is to name the failure of those in power to meet their obligations towards the disenfranchised (O’Brien and Li 2006). NPOs who use a collaborative approach believe that sharing credit with government is an appropriate price to pay for achieving worthwhile ends.

Part of the approach to gaining a voice for advocacy in China is to build a reputation for expertise. Gao and Teets (2021) describe Green Zhejiang, an NPO founded by two university professors with expertise in environmental protection. The group registered as the environmental unit of the Zhejiang Provincial Youth League. Over several years, they developed a wide and diverse network of volunteers and a reputation for expertise in environmental management.

When in 2013, in Rui’an City, a private entrepreneur offered a prize of 200,000 yuan (around US\$30,000) to the Environmental Protection Bureau chief to swim in a polluted river, Green Zhejiang was able to launch a full campaign to follow up on the stunt. The organisation collaborated with a satellite TV station and created a series called *Find the Swimmable Rivers*. The episodes highlighted instances of pollution and poor water governance, but also featured examples of proper water management. The program attracted local citizens and student volunteers



Chinese Lawyers artwork, PC: Amnesty.org (CC).

from middle schools up to universities. The volunteers began exploring water sites and reporting on pollution across the province. Green Zhejiang documented the identities of polluters and highlighted practices of proper water governance. The TV program ran for 136 episodes and resulted in significant government action to remedy environmental violations.

Advocates in China have also been able to utilise China's freedom-of-information laws. In 2008, the Hu Jintao administration passed the Regulations on Open Government Information (Fu and Distelhorst 2018). A study at the University of Hong Kong found that, by 2015, the number of disclosures of information had exceeded that in all previous years (Fu and Distelhorst 2018).

Advocates are also increasingly using litigation. In prior years, the State Council significantly reduced court fees for civil cases (Hsu 2020). In 2015, the government implemented new docketing procedures to prevent courts from screening out controversial cases. That same year, administrative

lawsuits—colloquially known as ‘folks-suing-officials’ cases (民告官案件)—increased to a per capita level 50 per cent higher than in any previous year (Fu and Distelhorst 2018).

While it is true the state arrested a number of civil rights lawyers in 2015, Hsu (2020) and Fu (2018) show that this repression was selective. Fu (2018) shows that civil rights activism in China among legal practitioners falls along a continuum. At one end are those who are critical of the system and work to expand the authority of the law, but work within the courts to do so. At the opposite end are radicals who ‘regularly shout at prosecutors and argue fiercely with judges’. They consider it a ‘badge of honour to be expelled by the court’ (quoted in Hsu 2020: 37). Fu (2018) shows that lawyers on the radical end of the spectrum—many concentrated in one law firm in Beijing—were the ones repressed in 2015. According to the *People's Daily* (人民日报), lawyers from the Fengrui law firm in Beijing had not only taken on the legal case of an individual shot by police in a train station,

but also mobilised public support on social media. As the outcry grew on the internet, the lawyers organised rallies and street protests in front of the train station where the shooting took place and the police station at the centre of the case. According to the *People's Daily*, the lawyers were arrested for ‘spreading false rumours’ and allegedly paying demonstrators to attend protests (Fu 2018). In contrast, lawyers who work within the court system appear able to continue without interference.

Dai and Spires (2018) show that much advocacy also occurs through official channels, including petitions (信访), government office visiting days (接访日), administrative appeals (行政复议), and administrative litigation (行政诉讼). China’s Environmental Protection Law solicits public participation and entitles NGOs to file public interest litigation. Local governments across China have been required to create internet portals such as the ‘Mayor’s Mailbox’ to hear citizens’ complaints and to respond to concerns. Fu and Distelhorst (2018: 114) cite figures from the National Administration of Letters and Visits—a body with a mandate to ‘resolve conflicts, improve policy, [and hear about] complaints and dissatisfaction of the public’. They indicate that roughly 10 million petitions or complaints were made in 2009, which is roughly one for every 133 people in China. This level has not declined under Xi Jinping.

Hsu (2020) argues that the Chinese state has evolved an ideology of *suzhi* (素质), which can be translated as ‘all-round (human) cultivation’. The state relies on a perception of increasing *suzhi* to maintain its legitimacy. She argues that NPOs can use this ideology to gain leverage over government. Citizens with high levels of *suzhi* are meant to be ‘well educated, well off, well mannered, sophisticated, and cosmopolitan. They wear suits and live in cities’ (Hsu 2020: 27). It is the responsibility of government to create the circumstances—such as good education, professional jobs, and appropriate infrastructure—that allow for people to develop ‘good all-round cultivation’. Civil society can use this ideology to bring to the government’s attention areas where policies are not creating such cultivation. Citizens can add new dimensions to the concept such as a clean environ-

ment, well-nourished rural children, or improved health care. Citizens can organise on their own to solve problems and to create better conditions for all-round cultivation. Corrupt practices and flawed public programs trigger public outrage over the harm these do to *suzhi*. Citizens use social media to demand remediation. While the internet is censored, articles can be seen before censors remove them. Journalists who need to sell content will cover scandal in their publications. Public outrage can spread simply by word of mouth.

## Research Findings

The perspective developed in this paper is informed partly by 13 years of research and participant observation with a social work NPO in China. The group worked to benefit China’s internal migrant worker population and their wider communities both inside and on the peripheries of a large city. It started around two decades ago as a small informal group and, later, unlike many groups with similar origins, was able to register as a non-profit with a bureau of civil affairs. While attaining government-approved status was crucial to its development, enabling it to maintain stable funding, take on government purchased services, and develop workable relationships with different government agencies, the NPO also guarded its ability to retain some independence and saw this as vital to its capacity to offer policy recommendations that would benefit its community. Though it may not be representative of NPOs working with migrant workers—it positions itself as a social work organisation rather than a labour group—it offers an important perspective on what can be achieved within the limited space shaped by the restrictive policy environment and repression touched on above.

In interviews spanning a decade, the NPO stated that they tried to be careful not to ‘criticise government as dysfunctional’. Rather, they would raise concerns by saying ‘because of the changing circumstances of social development, the government’s older ways of doing things are no longer effective’.

Their advocacy used five overlapping methods. First, their involvement in social issues was always grounded in thorough research. Some of this was journalistic; some was more standard systematic study. They typically trained migrant workers themselves to conduct research in their own communities. One notable case was in the 2008 Global Financial Crisis when the economic slowdown hit migrant workers particularly hard. Migrants conducted surveys and interviews with fellow workers, some of whom returned to farming because of the disappearance of jobs in cities. This research attracted attention from China's State Council, which adopted it as a reference document.

A second approach was to provide opportunities for migrants to directly address government officials. They held a conference in which migrants were invited to speak about industrial accidents and the lack of safety measures in workplaces. At first, the government was opposed to migrants speaking in case their presentations became too agitated, but the NPO responded that inclusion of migrants was imperative and the conference would go ahead whether or not the government participated. The group also encouraged migrants to perform street drama. At first, these plays simply provided worker education. Later, government officials, corporate board members, and large public audiences attended the presentations and they moved from the street to a large public theatre. The dramas depicted migrant workers' dreams for a better life in the city.

A third approach was simply to provide services, which included medical assistance, enhanced education for migrant children, visitation of elderly people, and legal protection for those injured or improperly dismissed from work. The NPO documented these services in books, exhibitions, pamphlets, and videos. The aim was 'to push' (推动) government and the public for better policies and treatment of migrants.

A fourth approach invited privileged members of society to volunteer in migrant communities. Large technology firms encouraged their staff to express corporate responsibility through volunteer days. The NPO created a network of more than 80 medical professionals who provided *pro bono* health examinations to migrant children. Senior-

level Chinese officials were regularly invited to NPO activities. A very high-level central government official often volunteered on weekends to teach English to migrant children.

A fifth approach was to encourage migrant participation in all possible forums for public decision-making. These included locally elected neighbourhood committees and district-level public policy consultations.

The author interviewed this NPO again in April 2021. The health checkups for migrant children had expanded to include health exams for their mothers. They continued their training of fledgling NPOs. They had now begun long-term training of migrants to become certified social workers in their communities. Their most recent research, in 2017, suggested the government policy of extending health care to all children was not being effectively implemented.

Most recently, in the context of a campaign to 'crack down on and rectify illegal social organisations' that took place in the spring of 2021, the group was asked their perceptions on the implications for NPOs. Their view was that the curtailment was directed mainly at groups whose service delivery was ineffective or whose finances were poorly managed. Some, they said, might be shut down because they treated social service as a kind of commodity that they tried to sell to government. They believed that groups who were genuinely committed to meeting the needs of vulnerable people were not under threat in the current environment. But what this may fail to account for is the large number of organisations that do not have government-approved status. As the focus of the current crackdown is on space and not on individual organisations, regardless of what government intentions may be, such organisations may stand to lose the space to survive.

## A Uniquely Chinese Form of Civil Society?

While it is undeniable that repression of Chinese NPOs has increased under the current regime, it is also clear that Chinese citizens continue to

form organisations, and to pursue a multiplicity of objectives through non-profit structures. Such groups have 'normative and substantive objectives' (Edwards 2013: 4). The Chinese Government has signalled new limits on the tone and style of advocacy. It has not, however, ended organised efforts to work for change. While formalising control of international groups, the state has also eased restrictions on service-oriented domestic NPOs. Whether the state-constrained voluntary sector qualifies to be described as civil society, or whether another term is more applicable, is still a matter of debate. It is clear, however, that Chinese citizens continue to work to influence public affairs. Perhaps this is a uniquely Chinese form of civil society. ■

This text is taken from *Made in China Journal: Volume 6, Issue 1, 2021*,  
edited by Ivan Franceschini and Nicholas Loubere, published 2021 by ANU Press,  
The Australian National University, Canberra, Australia.

[doi.org/10.22459/MIC.06.01.2021.16](https://doi.org/10.22459/MIC.06.01.2021.16)