

Foreign Support for Democratisation and Legal Reform in China

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In the last three decades, foreign capital and technology and foreign assistance in the social and legal infrastructure have been important to aiding China's development. Over US\$50 million has been deployed to infrastructure in the last decade alone. Despite the benefits, such cooperation has become much more sophisticated, and at times problematic. While it is agreed that such cooperation is positive and useful, there is far less agreement on how, and where, it is best done.

IT IS NOT just foreign investment that China has been increasingly open in the last 30 years. There have also been increasing numbers of Non Government Organisations (NGOs), academic institutes and individuals who have been allowed to conduct work, usually in partnership with local organisations, in China. This article looks at the area that falls under support for democratisation, legal reform and civil society, three of the most important, but sensitive areas for foreign involvement. It looks at developments in these areas in the last few years, where things now stand, the views towards these partnerships, and their prospects.

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Defining the Need

Chinese leaders were clear from the early days of the reform and opening process that certain political and social changes are needed for the economic reforms introduced from 1978 to be effective. This was the motivation behind the Organic Village Election Law, formally passed in 1988 and revised in 1998. Ad hoc elections were held in areas of Gansu and Guizhou in the early 1980s. Lawlessness, lack of accountability and credibility for Party operatives and the need to restore some form of good governance in China's vast rural areas led to the support for larger numbers of elections in villages. Secret ballots, a range of candidates for specific village committee positions and the chance to elect non-Party members were all new initiatives. Village level elections were expanded in the late 1980s and rolled out nationally by the time of the revised Organic Village Election Law in the 1990s.

Village democracy has been one of the great experiments in democratisation in modern times. As of 2009, over a million such elections had been held in over 650,000 Chinese villages, allowing 3.5 million officials, 20% of them non-Communist Party members, to be elected to public positions, either as Village Committee leaders, or as one of their assistants. The involvement of foreign NGOs, many of them funded partly by foreign government aid programmes, like the Carter Center, the Ford Foundation and the Asia Foundation, have all been recognised by Chinese officials and academic observers as crucial for the relative success of this enormous campaign. In surveys of this process by the Chinese Academy of Social Sciences since 2005, something like half have been regarded as being successful, delivering improvements in the quality of governance at village level, public participation in decision making and the restoral of stability and credibility to local officials. For the rest, there were issues with the conduct of the elections, the enfranchisement of minorities and women, and the potential abuse of these new democratic powers by local elites, either in terms of business elites, or entrenched tribal elites.

Alongside village elections there has also been a concurrent process of setting up a proper legal infrastructure and allowing the dramatic expansion of civil society. In both of these areas, foreign assistance has been critical. For legal reform, studies in the 1980s of Germany civil law were instrumental to creating similar processes within China. These studies were expanded to examining Japanese, European and American law with the result that China has at least some of the best written, if not so well implemented, legal statutes in the world today. Chinese leaders have admitted that the creation, almost from scratch in 1979, of a rule of law system has been a huge work in progress. Courts have been set up, at provincial and national level, with lawyers trained in criminal and commercial law. Judges have been sent abroad to look at the systems in the UK, France, Germany, Japan and the US, along with a range of other countries. China in its current constitution maintains the need to construct a society based on the rule of law. In its major Employment Law introduced in January 2008, it consulted with over eight million people through various forums, online and at the National People's Congress and local congresses.

Closely associated with legal reform, and with village elections, is the appearance of

an increasingly diverse civil society, with an estimated 250,000 different groups including local chambers of commerce and trade associations now dealing with issues from the environment to poverty alleviation in cities and countryside. The importance of these to Chinese society now is shown by the fact that Shanghai Municipal Government has, in recent years, outsourced the provision of key social services like care for the elderly, disabled and young to NGO groups, who have had to follow an intricate bidding process. This has now been rolled out to some of China's other municipalities.

Foreign Support, and its Pros and Cons

For each of these areas, foreign support, in terms of finance, and knowledge, has been important. No one that I talked to, either from the Chinese government, from Chinese NGOs who had worked with foreign partners, or from the academia, while in Beijing and Shanghai in the summer of 2009 researching this issue disputed this. But there was a lack of consensus on exactly how and where foreign support had been optimal. Even more importantly, there was a clear lack of agreement on where foreign support would be welcomed in the future.

For elections, the largest programme of support had, in the early days, been through the Carter Center and Ford Foundation. Both had supplied election monitors since 1994 to give feedback on the conduct of elections and helped with the administration of specific elections. They had also supplied input into election laws, leading partly to the revised Organic Village Election Law in 1998. In terms of dollar support, however, the EU China Village Programme has been the single largest, using over 10 million Euros from 2000 to 2006. This programme in particular focussed on capacity building in areas with high proportions of national minorities (Yunnan, for instance) and where there were problems in enfranchising women and other excluded groups. On its own assessment, the EU programme was engaged with a wide number of village officials from some of the most isolated and deprived areas of China. The programme allowed access to a large number of foreign experts on electoral practice, most of them from the EU. In that sense, it had continued the huge educational function of the whole village election process. But critics of the scheme said that it had been hidebound by its partnership not with local government, but with the national Ministry of Civil Affairs, and that there was little accountability on the part of the Chinese partner on how money had been spent. There was some scepticism on the part of the Chinese partners about the exposure to foreign expertise, where much of the advice was considered too sophisticated to deal with the often mundane issues that election officials were encountering in holding elections in rural China.

Foreign partners were also frustrated by the lack of progress in rolling out the elections to higher levels of government, and mainstreaming lessons learnt through them. Despite tentative steps to introduce elections at township level in the early 2000s, these had largely been put on hold. The cautiousness of the central government was blamed for this. A respondent said: 'We have done as much as we can now, and there is little more we can valuably do until the government takes the next step, and rolls these elections out.' There was also a strong feeling that until elections were introduced in some

meaningful way into the lower levels of the Communist Party, the suspicion would never be dispelled that the people being elected in villages were not those who would be vested with significant power – this, largely, lays in the hands of the village Party Branch Secretary, who has a parallel structure of accountability and management.

Legal Reform

On the surface, foreign support in the area of legal reform promises to be less contentious. After all, Chinese officials had admitted that foreign legal models were crucial in the early 1980s, as important as the technical know-how that had come through foreign capital and joint ventures. Once more, the EU had been a major partner, supporting the training of lawyers, judges and court officials, both in the EU and back in China. The US too had been a supporter, through institutes like universities, endowments and government funded scholarships.

The fact that in 2008 alone 50 lawyers had had their licences to practise law suspended because they were dealing with sensitive cases, however, indicated the downside. One commentator referred to the statement of the then Politburo member Luo Gan, in the Party magazine ‘Seeking Truth’ (*Qiu Shi*) in 2006 that the CCP would not allow lawyers to threaten the legitimacy of the Party and its right to exercise power as it thought best. Notions therefore of a wholly independent judiciary were seen as being very controversial, and something that the decision making elite had set their face against. The closure of the ‘Open Constitution’ (*Gong Meng*) site in July 2009 only underlined this. Part of the problem here, it seemed, was that some of the funding for the site had come from foreign partners. One Chinese respondent referred to the range of studies academics and think tanks in China had undertaken from 2005 on the various Colour Revolutions in Eastern Europe and the former Soviet Union. The outcomes of these had all been judged as detrimental by the Party. In particular, lawyers and civil society groups had been accused of being the chief carriers of unwelcome ‘socially destabilising’ viruses. Unsurprisingly, therefore, since 2006 the work of lawyers and NGOs in China has become tougher. So too has the support from foreign partners. ‘We welcome the involvement of foreign partners in these projects’ said one Chinese government official, ‘but they must not carry ulterior motives.’ Proving that there were no hidden agendas was a major challenge for lawyers and NGOs in this area wishing to continue their work in China.

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Non Government Organisations and Civil Society

Legal reform also touched on the legal status of NGOs and their ability to function in China. In the last two decades, a whole social space has clearly opened up for civil society. But the specific status of many of these groups, with no properly articulated charity or NGO law (although these laws are currently being discussed), meant they worked in an environment of constant anxiety, where it was never clear what they might be able to do and not do, and what sort of taxes they were subject to and registration documents they needed. Open Constitution, referred to earlier, was indicted in the formal papers issued by the Beijing Municipal Authority for non payment of taxes on its foreign funding. But one Chinese NGO activist in Beijing stated that there were no clear rules for which taxes needed paying, and who needed to pay them.

Running against the legal issue, NGOs were also fighting battles over their funding, their own governance and trying to gain public support. Foreign partners working in these areas, therefore, had become very risk averse, with one of the largest making clear that without a formal government link, they did not wish to get involved with any NGOs, and another simply stating that they had to go through an exhaustive investigation before being able to support any new projects. The importance of personal links between Chinese NGOs and foreign partners was clear. Some of the most successful ongoing projects were built on long term personal relations.

In this area, Chinese organisations saw the value of foreign partners. Beyond their specialist expertise, foreign partners gave them some level of credibility with their own government. “Often the Chinese government won’t take much notice of us if we don’t have an external partner,” complained one. There were downsides too. One Chinese NGO said that partners and funders outside China should not overestimate the capacity of NGOs, which is still often very limited, and not to assume that NGOs are always right and government wrong in China, which sometimes happened. Judging these two areas wrongly sometimes caused frustration. Another said that a key unmet need within the NGO community was in understanding transparency and accountability, things which had a recent history in Chinese civil society life, but were crucial for its long term sustainability. Outside partners need to understand that the recent changes in China had been dramatic and very rapid in this area, and that they therefore need to keep abreast with this development and be responsible in their activities, in what is often a very confusing, dynamic situation.

Where Things Stand

With over two decades of experience on both sides of foreign partnership in village elections, legal reform and civil society, there is now plenty of data to start making some generalisations. It is also clear that, as a result of some not so harmonious co-operations, there are now clearer indications on where foreign partners can expect trouble.

The perfect arrangement would run something like this: a small, low profile project, focussed on an area with a clear mandate from central and local government, with a mixture of governmental and non-governmental partners, and in an area where the benefits are clear, is unlikely to experience problems. Foreign support, for instance, for

schools for the children of migrant workers and AIDS projects has become largely non contentious. A successful training programme in human rights for policemen has also been successful.

Things become more difficult when looking at programmes that deal with environmental protection, however much these might have entered the mainstream in the last five years. They still have the capacity to cut into local and national vested official and business interests. The most problematic were projects which dealt with ethnic minority rights. These needed the most sensitive handling and the greatest communication. And even then, a number of them had been aborted, or were stalled. There was little that could stop the suspicion that they were harbouring a hidden intent.

Is Foreign Aid in Democratisation and Civil Society Still Needed?

The message is not, however, that China has now learnt all it needs, and that further cooperation is no longer necessary. There is still a strong awareness of the problems of capacity building in some areas of civil society, and the legal sector. Were the political decision made to extend village elections upwards then there would be immediate need for expertise in how to conduct these. What is clear is that requirements on both sides have become more sophisticated. This follows the experience of inward investment into China, where the need has long moved on from just capital, to value added: technology, know how and management skills. Partnership in this area is now much more about identifying very specific areas where both sides have a clear understanding of what needs to be done, and how to go about achieving it. One area which is particularly important, for instance, is the introduction of anti-discriminatory legislation, which one academic institute in Beijing is working on. Another area, which one of the main NGOs is keen to concentrate on, is greater public feedback in the provision of government services. And, following on from the introduction of Open Government Information legislation in 2008, there is work now on allowing citizens access to budgetary and other information.

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Prospects: Where is the Unmet Need?

The Chinese government needs to deliver good and efficient governance to the world's largest single population, and one of the most complex. This ranges from wealthy coastal residents, the aspiring new middle class in cities like Shanghai and Guangdong, who have sophisticated demands on their living environment and on the services provided to them, to people living in poor and undeveloped areas who just want basic social infrastructure.

One area where there is increasing interest on the part of authorities in China now is understanding what people think of the services they get. Connectivity via the internet means that, in theory at least, citizens can respond to surveys about their level of satisfaction with public services. This is one area where some of the main foreign support is happening.

The other is to look at the far more ambitious issue of the quality of governance itself. This was the guiding inspiration behind the move to introduce village elections over 20 years ago. It was understood, even then, that at least some level of elections would mean accountability, and would help to improve the quality of the village officials who attained office. Part of the success of this strategy can be seen in the CCP seeking

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to recruit to its ranks non party members who were successful at winning local elections. Greater accountability at different levels of government is now seen as having at least addressing the wide public discontent at corruption, government inefficiency and bureaucratism. But clear parameters are set on this. Accountability does not mean, at the moment, any form of votes for officials within the Party, although it does mean that there are now increasingly sophisticated ways of assessing and seeking feedback on the performance of officials. Delivering efficient, cost effective and good quality governance is therefore a clear priority for the central and local government. And like anywhere else in the world, good ideas in this area, and ones which have been tried out elsewhere, are usually welcomed.

One thing that will become increasingly important in the next five years is a much clearer sense, from central government, of where the main priority areas are for cooperation in the areas of governance, legal reform and civil society. Consensus needs to be reached amongst the various stakeholders in the authorities and then communicated to those involved in these areas who are not part of government to avoid the constant glitches that have occurred in the past. An official White Paper of some sort might be a good beginning, setting out the accepted policy and then clarifying where the government sees as the main areas of joint work. This might be considered a step too far towards transparency for officials in national and local level that like to hold their cards close to their chest. In long term, however, it will translate into maximum benefit for funds spent in China. At the moment, because of the lack of clarity and uncertainty, there is a real danger that foreign partners will simply regard the task as too problematic and look at working elsewhere. ■