III. Development of the Rule of Law

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Findings

• The coronavirus disease 2019 (COVID–19) outbreak was a pivotal event for Chinese civil society. The civil society response revealed Chinese citizens’ capacity for grassroots organizing and voicing dissent even while Chinese government policies continued to centralize control and suppress information challenging official narratives. During the coronavirus outbreak, large numbers of Chinese citizens worked collectively through civil society organizations and grassroots volunteer efforts to assist vulnerable and impacted groups, as well as to disseminate and archive information about the epidemic. Informal volunteer groups were especially responsive to regions, groups, and issues that were overlooked or de-prioritized in the official response. After the death of COVID–19 whistleblower Dr. Li Wenliang, Chinese citizens expressed anger on a massive public scale at the government’s handling of the epidemic.

• The official response to grassroots civil society efforts has varied widely throughout the course of the epidemic. Chinese government authorities initially attempted to commandeer aid distribution, resulting in bottlenecks and controversies that generated significant public criticism. Later, government actions showed that grassroots aid from both registered charities and unregistered informal groups was necessary to the epidemic relief effort. At the same time, public security was used to target religious groups engaged in grassroots actions, emergency service volunteers suspected of having potentially compromising information about fatality rates, and those challenging government censorship or critical of the government’s epidemic response. Overall, government decisionmaking during the epidemic was dominated by political concerns and geared toward centralizing control.

• Chinese citizens have participated in diverse forms of collective organization for mutual and public interest that include popular protest, issue-based grassroots advocacy, and professionalized charities and social enterprises with varying degrees of independence from state management. Even those involved in successful campaigns or projects can face government warnings, harassment, and sometimes detention. In recent years, rights advocates working on a broad range of issues, from gender equality to labor to disability rights, have been targets of government repression and exclusion. For example, several rights advocates who gathered informally to discuss civil society developments in December 2019 were detained and charged with “inciting subversion of state power.”

• Organizations aligned with official priorities have become integral to providing public services. In recent years, the Chinese government has emphasized that it needs to lean more heavily on providing services through civil society in order to modernize governance. This means a broader scope of operation for
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some organizations, while more independent, advocacy-based groups have increasingly been driven underground.
- Chinese government authorities restricted and censored the activities of LGBTQ organizations—as they have with other civil society organizations—and reports of discrimination against and harassment of LGBTQ individuals continued.

There is no law that criminalizes same-sex relationships among adults, and acceptance of LGBTQ persons is increasing in China, including steps taken in the past year by some government officials in two municipalities to provide legal rights to same-sex couples. Nevertheless, new rules restricting “negative content” harming “social mores” were issued last year that could also bar LGBTQ content on television and the internet.

Despite ongoing restrictions and censorship, advocacy organizations remain active in their public outreach, pushing for reforms to protect the rights of members of the LGBTQ community.

Recommendations

Members of the U.S. Congress and Administration officials are encouraged to:

○ Call on the Chinese government to cease harassment and arbitrary detention of civil society advocates and non-governmental organization (NGO) workers and provide adequate procedural due process for those individuals subject to criminal investigation and trial. In particular, call on the Chinese government to release Cheng Yuan, Liu Yongze, and Wu Gejianxiong, who were criminally detained while working for Changsha Funeng, an NGO conducting policy and legal advocacy for disadvantaged groups. Also call on the Chinese government to release rights advocates Ding Jiaxi and Xu Zhiyong and lift charges against Dai Zhenya, Li Yingjun, and Zhang Zhongshun, all of whom were detained after gathering informally to discuss civil society developments in December 2019. Finally, also call on the Chinese government to release Chen Mei, Cai Wei, and Xiaotang, who were detained in connection with an online anti-censorship archiving project that included information related to the COVID–19 outbreak.

○ Call on the Chinese government to stop censoring and shutting down social media accounts and internet-based platforms of civil society organizations working on rights advocacy.

○ Urge the Chinese government to revise or repeal the PRC Law on the Management of Overseas Non-Governmental Organizations’ Activities in Mainland China and revise the PRC Charity Law to reflect the principles of the International Covenant on Civil and Political Rights, especially with regard to the rights to freedom of association, assembly, and expression.

○ Integrate civil society issues into bilateral discussions and agreements with Chinese officials to promote reciprocity in the approach and implementation of civil society exchanges between the United States and China.
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- Continue to fund, monitor, and evaluate foreign assistance programs in China that support democracy promotion, the rule of law, and human rights advocacy.
- Facilitate the participation of Chinese civil society advocates in relevant international conferences and forums and support international training to build their leadership capacity in nonprofit management, public policy advocacy, and media relations.
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Introduction

Chinese citizens participate in diverse forms of collective organization for mutual and public interest, and people engaging in this spectrum of activities seek and sometimes do achieve just compensation and policy change. Even those involved in successful campaigns or projects can face government warnings, harassment, and sometimes detention. In recent years, independent rights advocates have been targets for government repression and exclusion, while organizations aligned with official priorities have become integral to providing public services. The lesbian, gay, bisexual, transgender, and questioning (LGBTQ) community faces ambivalent government rhetoric and policy.

The COVID–19 outbreak was a pivotal event for Chinese civil society. Chinese people expressed a lack of faith in government on a massive public scale when mourning the death of whistleblower Dr. Li Wenliang, and they demonstrated solidarity through a grassroots mobilization of material aid and support services. Some grassroots efforts were incorporated into local government responses, but a number of volunteers were interrogated or detained because of their involvement.

Popular Protest: In-Person and Online

In recent years, Chinese citizens have participated in acts of popular resistance that scholars estimate number in the tens of thousands every year. Although data is hard to gather, scholars find that most in-person protests are small and localized, with fewer than 100 participants demonstrating over specific, local grievances. Common reasons for protests occurring all across China include migrant worker labor issues, property issues such as land expropriations, forced evictions, malfeasance by property developers, and hospital bills. Environmental protests tend to be larger and to draw participants from a greater cross-section of society. These protests are often aimed at preventing the construction of chemical plants or incinerators nearby—like the week-long protests against a waste disposal plant in July 2019 in Wuhan municipality, Hubei province, or against the construction of a crematorium near a water supply in Wenlou township, Huazhou city, Maoming municipality, Guangdong province, in November 2019. In both instances, local governments used police to disperse and detain participants but also announced the suspension of construction plans.

As Chinese social media platforms have developed into viable, if still restricted, spaces for citizens to share information, organize, and demand changes from government, Chinese citizens have taken to protest online in ways that resemble in-person “mass incidents.” In recent years, online activism has become increasingly decentralized, with internet users spontaneously mobilizing in response to critical events without clear leaders or fixed platforms—an adaptation to reduce the risk of repression. During the 2020 reporting year, one significant example of online mass protest occurred after the death of coronavirus whistleblower Dr. Li Wenliang—posts and hashtags mourning his death and mistreat-
Rights Advocacy and Independent Civil Society Groups: Repression and Adaptation

Rights advocacy and independent civil society groups have been targeted by successive government crackdowns and restrictions. Organizations have been shuttered, while individual advocates face harassment, surveillance, detention, and arrest. As of January 2020, nearly 40 labor rights advocates were still missing or detained following their participation in unionization protests in July 2018, and as of June 2020, three labor advocates were still being held without trial since being detained in March 2019 for supporting migrant workers with occupational lung disease. Cheng Yuan, Liu Yongze, and Wu Gejianxiong—three staff members of Changsha Funeng, one of a few remaining anti-discrimination advocacy organizations—were detained incommunicado and charged with “subverting state power” in August 2019. The targeting of rights defense lawyers and other rights advocates also continued, with Ding Jiaxi, Xu Zhiyong, Dai Zhenya, Li Yingjun, and Zhang Zhongshun detained after a private gathering in December 2019.

Rights advocates expressed that such pressures have isolated them from one another and the communities they serve and have also seriously diminished their capacity for advocacy. To adjust, remaining organizations have shifted to less politically sensitive work, such as community development, and individual organizers have been forced to scale back and reduce in-person activities due to elevated risk. Some have adapted by pursuing lower-profile, decentralized activities such as providing support for individual victims of rights violations and also by relying heavily on online networks and mobilization. Young Chinese people living overseas have also made significant contributions to advocacy. Even in the face of increasing harassment and pressure from authorities, some groups such as those engaging in feminist and LGBTQ advocacy were still able to mobilize large-scale advocacy campaigns. Environmental advocacy has also progressed through environmental public interest litigation authorized under the PRC Environmental Protection Law revised in 2014.

Registered Organizations: Increased Government Funding and Scrutiny

In contrast to rights advocates and independent groups, registered social organizations complementing official policy priorities are being given more resources and latitude for development. In recent years, top Chinese government policy has called for government and society to share responsibility for “administering to society,” and local governments have come to rely increasingly on contracted social organizations to provide social services. Government contracts have become a major force shaping civil society—one researcher observes that organizations have a tendency to shift their focus to providing services that meet government procurement needs (e.g., poverty alleviation, education, disability services).
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in order to access government funding. Further intensifying this trend is Chinese corporate giving, which closely tracks government priorities, and the decline of foreign funding due to increased restrictions and China’s improving economic conditions. At the same time, organizations are also developing their own more independent funding sources through means legalized by the PRC Charity Law passed in 2016.

Registered social organizations face burdensome reporting requirements about their operations, and the government personnel administering social organizations are now evaluated according to their deference to central Chinese Communist Party authority and demonstrations of political reliability following policy changes in June 2019. After the passage of the PRC Law on the Management of Overseas Non-Governmental Organizations’ Activities in Mainland China (Overseas NGOs’ Activities Law) in 2016, foreign NGOs and funding have been effectively shut out of sectors such as labor, LGBTQ issues, and rights advocacy, and an increasing number of foreign NGOs have de-registered; one researcher expects the civil society environment to become even more hostile to international NGOs over time. Asia Catalyst, an international NGO that works with local partners on public health issues, among others, closed its China office early in 2020 not long after the Ministry of Foreign Affairs confirmed that authorities in Beijing municipality planned to administratively discipline the organization for alleged violations that took place in 2018. According to civil society experts, the disciplinary sanctions marked the first case in which the government publicly acknowledged the use of the Overseas NGOs’ Activities Law against an international NGO.

**Chinese Civil Society Responses to COVID–19**

During the coronavirus outbreak, large numbers of Chinese citizens worked collectively to assist vulnerable and impacted groups, as well as to disseminate and archive information about the epidemic. Chinese government authorities initially attempted to commandeer aid distribution, but grassroots organizations and informal volunteer groups persisted in organizing, in some cases at great personal cost, and demonstrated that their efforts were crucial to addressing the epidemic.

**GOVERNMENT COORDINATION OF COVID–19 AID: CENTRALIZING CONTROL**

As quarantine restrictions were imposed in Wuhan municipality, provincial and municipal government officials originally sought to control the collection and distribution of all charitable donations for epidemic relief. The Hubei and Wuhan “COVID–19 command centers” coordinating the epidemic response together designated five state-managed charities as the sole recipients of all donations; their orders were reinforced at the national level by the Ministry of Civil Affairs (MCA). This policy created severe delays and gave rise to accusations of mismanagement. This prompted individual donors to seek ways around donating to the state-managed charities,
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giving instead to informal groups connected to frontline doctors and overwhelming smaller registered charities.

CIVIL SOCIETY MOBILIZATION DURING COVID–19 OUTBREAK

Such charities and informal groups of grassroots volunteers provided critical support during the outbreak, alleviating capacity limitations and bottlenecks in the implementation of the government response. Unregistered, informal groups collected donations and sourced supplies and services without official approval. One network of individual volunteers and civil society organizations managed to raise money for and deliver around 3,000 oxygen concentrators to infected individuals in their own homes. Within Wuhan, after officials shut down public transit, more than a thousand volunteer drivers organized to provide transportation for medical workers, patients, and medical supplies.

Informal volunteer groups were especially responsive to regions, groups, and issues that were overlooked or de-prioritized in the official response. For example, volunteers organized direct donations to hospitals in smaller municipalities in Hubei province experiencing acute shortages. Some volunteer groups focused on the needs of vulnerable groups, such as pregnant women, the hearing impaired, sanitation workers, and those with HIV/AIDS. One China policy expert observed that these volunteer networks were characterized by a “bottom-up and decentralized approach” and high levels of trust, and that social media platforms, particularly WeChat, were important to the organization and effectiveness of these volunteer networks.

Other informal grassroots networks addressed issues of information accessibility, transparency, and censorship during the outbreak. Some online volunteer groups provided a direct interface for people with questions about the virus and quarantine measures—an important conduit of information because, as one volunteer pointed out, the government’s top-down method of information sharing made it difficult for local residents to communicate with the government about their individual circumstances. Online volunteer networks shared fact-checked information and advice about the virus, providing direct assistance at a time when public services were overwhelmed; one group of 2,000 online volunteers responded to more than 20,000 requests. Journalism students at Nanjing University in Jiangsu province monitored and reported on discrepancies in health officials’ statements about the virus, and other groups of volunteers systematically archived social media posts and reporting related to the virus while such content was being quickly censored.

GOVERNMENT RESPONSE TO CIVIL SOCIETY MOBILIZATION

Some government actions showed that grassroots aid was necessary to the epidemic relief effort: the MCA modified its rule to encourage all registered “charity organizations” to directly collect and deliver donations and to cooperate with unregistered groups in fundraising. Also, some local officials incorporated grassroots volunteers into their relief efforts: in Wuhan some officials relied on volunteer drivers to ferry protective equipment to hospitals and the government of Huanggang municipality, Hubei province,
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worked with online volunteers to provide psychological and medical advice to local residents. Despite such instances, experts noted that overall government decisionmaking was dominated by political concerns. During the outbreak, government interaction with civil society was geared toward centralizing control, from the initial orders directing all public donations to five designated state charities to prohibitions on medical supply manufacturers selling to buyers other than government procurement—thus forcing out grassroots groups supplying hospitals. Officials also obstructed volunteer efforts and took over control of donated supplies. The aid efforts of Protestant house churches—considered politically sensitive by authorities—were viewed with suspicion, and several church leaders in Beijing municipality were ordered to halt their activities after their congregations shipped donated supplies to Wuhan. Volunteers operating an emergency hotline locating open hospital beds for Wuhan residents during the outbreak were questioned by public security about whether they had passed on information about fatalities to U.S. intelligence. Three young people in Beijing associated with a GitHub account archiving censored reporting and essays, Chen Mei and Cai Wei, along with Cai Wei’s partner “Xiaotang” (nickname), were held incommunicado on suspicion of “picking quarrels and provoking trouble.”

Other targets included a group of Wuhan residents seeking legal action against local officials for the delayed public notification about the outbreak; the group was monitored by authorities, who pressured their attorneys to drop the action. In Yingcheng municipality, Hubei province, around 100 people joined collective protests against price gouging on government-controlled food supplies during the lockdown; local authorities responded by criminally detaining a protest leader.

Acts of Discrimination, Censorship, and Other Abuses Against the LGBTQ Community

Chinese government authorities restricted and censored the activities of organizations supporting lesbian, gay, bisexual, transgender, and questioning (LGBTQ) individuals—as they have with other civil society organizations—and reports of discrimination against and harassment of members of the LGBTQ community continued. There is no law that criminalizes same-sex relationships among adults, and acceptance of LGBTQ persons is increasing in China, including steps taken in the past year by some government officials in two municipalities to provide legal rights to same-sex couples. Nevertheless, new rules restricting “negative content” harming “social mores” were issued last year that could bar LGBTQ content on television and the internet. Despite ongoing restrictions and censorship, advocacy organizations remain active in their public outreach, pushing for reforms to protect the rights of members of the LGBTQ community.
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As with others active in rights advocacy, grassroots LGBTQ advocates faced increasing harassment and pressure from authorities, including being required to meet with officials.\(^7^9\) For example, less than half of college LGBTQ student groups were able to register with their universities, and students reported that they were summoned for meetings with Party-affiliated school authorities for their advocacy.\(^8^0\) Many LGBTQ advocacy groups have gone “underground,” organizing lower profile, smaller-scale events and gatherings.\(^8^1\)

Grassroots organizations and individuals continued to engage in advocacy campaigns on issues such as the removal of negative portrayals of members of the LGBTQ community in school textbooks.\(^8^2\) The level of support for members of the LGBTQ community within the mental health profession has also reportedly increased due to the outreach and advocacy of grassroots LGBTQ activists, scholars, and supportive practitioners.\(^8^3\)

In January 2020, a Beijing court ruled in favor of an individual who underwent sex reassignment surgery in a wrongful termination lawsuit against the individual’s employer following the surgery. The court found the employer’s actions constituted gender discrimination.\(^8^4\) In December 2019, the Binjiang District People’s Court in Hangzhou municipality, Zhejiang province, heard a lawsuit alleging employment discrimination due to a transgender employee’s gender identity.\(^8^5\) Existing legal provisions allow for gender recognition\(^8^6\) and sex reassignment surgery,\(^8^7\) though barriers exist to the latter, as transgender persons are required to gain familial consent\(^8^8\) regardless of age and to meet other non-medical conditions such as being unmarried and without a criminal record,\(^8^9\) all of which may constitute arbitrary interference with privacy.\(^9^0\)

Domestic Violence Laws Lack Clear Legal Protection for Members of the LGBTQ Community

A UN Development Programme survey found that domestic and other forms of physical violence are a “reality” for members of the LGBTQ community in China.\(^9^1\) A Chinese official indicated in 2015 that the PRC Anti-Domestic Violence Law would likely not cover those in same-sex relationships\(^9^2\) even as a provision in the law states that the law applies to domestic violence between cohabitating persons without family ties.\(^9^3\) Notary public offices in Nanjing\(^9^4\) and Beijing\(^9^5\) municipalities in July 2019 and August 2019, respectively, posted announcements publicizing the approval of same-sex couples’ mutual guardianship agreements, which grant power of attorney, inheritance rights, and other rights and responsibilities overlapping with those conferred by marriage.\(^9^6\) Although both announcements were later deleted, reporting indicated that guardianship agreements granted to same-sex couples remained valid.\(^9^7\) As of July 2020, it is unclear whether the Anti-Domestic Violence Law applies to individuals with such agreements.
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Acts of Discrimination, Censorship, and Other Abuses Against the LGBTQ Community—Continued

Censorship of LGBTQ Content

Censorship rules and negative public portrayals reinforce stigma against members of the LGBTQ community. Since 2016, authorities have banned depictions of “abnormal sexual relationships” on television and film, prohibiting same-sex relationships alongside other topics “exaggerating the dark side of society,” and vague rules to restrict illegal or “negative content” were released in December 2019. This follows last year’s social media crackdown on discussions of LGBTQ-related topics and 10- and 4-year criminal sentences for two writers who wrote popular homoerotic stories. Such official pressure has reportedly led to self-censorship by platforms and users about LGBTQ topics.

Chinese Government Compliance With UN Recommendations on LGBTQ Issues

The Chinese government has not followed a UN Committee against Torture recommendation made specifically to China to ban its particular practice of “‘conversion therapy’ and other forced, involuntary or otherwise coercive or abusive treatments.” Conversion therapy, as practiced in Chinese medical facilities, does not meet the medical standard of “free and informed consent,” according to Human Rights Watch. A Chinese court stated in 2014 that a clinic had violated the PRC Mental Health Law by administering conversion therapy, stating that homosexuality was not a mental disorder; the Chinese Psychiatric Association declassified homosexuality as a mental disorder in 2001. LGBTQ advocacy groups reported that they knew of only four jurisdictions that had taken action against institutions reported for offering conversion therapy between 2017 and 2018, but the punishments were based on a lack of appropriate credentials. The Commission did not observe efforts to seek accountability for other improper or illegal medical practices in connection with conversion therapy or for offering the therapy under coercive or involuntary conditions.

As of July 2020, the Commission had not observed the Chinese government acting on last year’s UN Human Rights Council’s Universal Periodic Review recommendations, which the Chinese government accepted and supported, to prohibit discrimination against members of the LGBTQ community, who lack specific legal protections against discrimination, which is widespread and exacerbates the difficulties faced by transgender individuals accessing healthcare and education in China.
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5 Ibid., 3.


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81 Ibid., 29, 31.
87 Ibid., 27–31.
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103 UN Committee against Torture, Concluding Observations on the Fifth Periodic Report of China, adopted by the Committee at its 1391st and 1392nd Meetings (2–3 December 2015), CAT/C/CHN/CO/5, February 3, 2016, para. 56(a).


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