Cultivate Aridity and Deprive Them of Air

Altering the Approach to Non-State-Approved Social Organisations

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Small, unregistered nongovernmental organisations (NGOs) have often been able to survive in China despite government regulations meant to achieve the contrary. This essay looks at how recent government policy attempts to change this long-established norm. New policy, combined with a crack-down campaign, has taken a different approach to that of the past, relying on a multi-departmental Chinese Communist Party and government effort combined with cooperation from social and market entities to eliminate all remaining space for such NGOs to exist.

If the organisations and individuals involved in the Six Must Nots consciously resist illegal social organisations, illegal social organisations are sure to gradually die off through a lack of oxygen.

— Ministry of Civil Affairs Comrade in Charge (2021)

‘Grey space’ and ‘tacit approval’ are concepts familiar to people working in or studying China’s organised civil society (Snape 2019). But a new policy, introduced in March 2021,

to ‘crack down on and rectify illegal social organisations’ attempts to wipe these concepts clean from our lexicon. This policy seeks to cultivate arid land in place of vibrant grey space by prevailing on the Chinese Communist Party (CCP), the state, and an array of other organisations to ‘cut off all sources of nourishment’ (MCA Comrade in Charge 2021) and ‘remove the breeding ground’ (MCA 2021e) for non-state-approved social organisations. The aim, as the policy puts it, is to ‘cleanse the social organisation ecological space’ (MCA 2021e).

A Norm of the Past: Space Despite ‘Illegality’

For decades after Mao Zedong’s death, in the 1980s and particularly the 1990s and 2000s, nongovernmental organisations (NGOs) of different hues—some with strong state backing, others without—burgeoned in a wide range of fields. The official position—captured in rounds of regulations and topped off by measures in 2000 (MCA 2000)—was that a ‘citizens’ organisation’ (民间组织) had to register or face the possibility of being ‘banned’. All but a handful of exempted groups—those with sufficient political backing to object to registering with the Ministry of Civil Affairs (MCA) (Chen 2013: 132)—needed the state’s permission to exist. This was not about supplemental rights like eligibility to fundraise; it was about the right to be. To exist legally, an NGO had to register—and, to register under the notorious ‘dual management system’ (双重管理体制) (Wang 2010: 114) before it could even apply, it had to find an approved supervising agency in its line of work willing to accept responsibility for its activities. This was a hurdle that, for many, was too high, and unregistered organisations proliferated.

Yet, aside from erratic campaign-style crack-downs to ‘clear them up’ (Wu 2018: 200), on the state’s part, a mix of non-implementation and selective implementation was the norm. As Deng Guosheng (2010: 190) put it, the state’s policy was ‘no recognition, no banning, no intervention’. Small, independent NGOs, rural civic groups, and

internet-based organisations (Wu 2018: 195) were among those unable to register, but they found ways around the problems and precarity this created.

One common strategy was to become attached (挂靠) to a public institution (事业单位) like a university or a social organisation with legal status, which allowed them to demonstrate their legitimacy (Zhou 2010: 114). This sometimes gave access to resources such as office and meeting space and the social capital of the organisation under which they were nestled (Xu et al. 2012: 41). Another strategy was to register with a bureau of commerce but operate as a non-profit organisation (Simon 2013: 213); and a third was to remain unregistered. Some developed close ties with patrons in the local state, embedding themselves as a strategy not only to survive but also to exert influence (Hildebrandt 2013: E1784). They found important sources of legitimacy through ‘attachment to official departments, media reporting, appearances by officials, and endorsement from prominent personalities’ (Wang and Liu 2007: 129). These organisations could survive and operate but were only tacitly tolerated and always on the cusp of being called out for their ‘illegality’.

Studies in the 2000s found vast numbers of unregistered citizens’ organisations. Xie Haiding (2004: 20) found that in Shenzhen and parts of Anhui Province, registered organisations accounted for only 8–13 per cent of all citizens’ organisations. Xie also highlighted the disparities created through the conditions placed on eligibility. For ‘people in poor rural regions, migrant workers in cities, and laid-off urban labourers, regulatory stipulations on minimum required funds stripped the vast majority of the right to establish a citizens’ organisation legally’ (Xie 2004: 27). Wang Shaoguang and He Jianyu (2004: 75) estimated there were upwards of eight million unregistered groups, and Yu Keping (2006: 120) gave a ‘conservative estimate’ of 2–2.7 million unregistered or registered with bureaus of commerce. More recently, Wu Yuzhang (2018: 195) reviewed such estimates and, with no up-to-date approximations to go by, concluded that the scale of unregistered organisations had ‘exceeded these numbers’.

PC: *Cishan Fa*, the new Charity Law passed in May 2016 (Canyu.org).

The Charity Law is Unveiled and, On Registration, Proves to be a Damp Squib

The Charity Law, which came into force in 2016, ‘needed to respond to the issue of the legality of grassroots organisations’ (Zheng 2016: 45). Zheng Gongcheng, Professor of Social Welfare at Renmin University, led an influential National Social Science Fund research project during the legislating process. His team submitted its recommendations—including 16 research reports—directly to the Charity Law’s drafting task force. In a book released as the law went into force, Zheng (2016: 45–46) wrote: ‘There was a large number of organisations that had not registered but that were engaging in charitable activities, and the expectation was that this legislation would address the issue of their legality.’

For years before the Charity Law’s promulgation, experiments were conducted around the country to test different versions of ‘direct registration’ in

fields given preferential treatment. The point was to resolve the legality issue by exempting organisations from the supervising agency requirement and thereby lower the bar to registration. These experiments applied to the public benefit and charity sector, industry associations and chambers of commerce, and science, technology, and community service organisations. But they benefited some over others, with industry associations faring well (Yu et al. 2014) while, for others, ‘reforms wavered, and in some sectors dual management seems to be further entrenched or even turning into triple management’ (Liu 2018: 38).

When it came to the Charity Law, as legal scholar Ma Jianyin (2019) points out, despite the ‘explicit aim during the legislating process’ of cementing in law the best practices derived from direct registration piloting, this was left unrealised. Pointing to Article 9, which sets out criteria that a charity must meet, Ma (2019) writes: ‘[T]here’s a clause that lets the cat out of the bag, reading: “other conditions stipulated by laws and administrative regulations.” In other words, it empowers the State Council to formulate administrative regulations that create additional conditions for registration.’

Today, be it for charities or social organisations working in other favoured categories, direct registration is not a given, but a matter for application to be vetted and granted on a case-by-case basis. A top-level guiding document released in tandem with the Charity Law going into force (General Office of the Central Committee and General Office of the State Council 2016a) created further hurdles to direct registration. The document states that ‘civil affairs departments, when reviewing applications for direct registration, shall ... as needed, solicit the opinions of relevant departments or organise experts to carry out evaluations’. When this plays out in practice, establishing eligibility is far from simple (Yang 2015; Ren et al. 2017) and, given discretion over whether to grant direct registration, those responsible sometimes err on the side of caution and reject applications (Interview 2021). For the would-be legal entities who slip at this hurdle and for the many others who never even get that far, the unattainable threshold remains very much intact (Liu 2016). Survival, for them, relies on the continued presence of ‘grey space’.

Targeting Space and Mobilising Widely to Cut off Oxygen

This brings us to a new policy, introduced in March 2021 and launched with a complementary campaign, against ‘illegal social organisations’ (ISOs, 非法社会组织). The campaign is ‘directed at those that have not registered’, including those ‘registered in Hong Kong, Macau, Taiwan, and other countries and regions’, which operate in the name of social organisations (MCA 2021a).

Two aspects that, working in concert, distinguish this approach from that of the past, are pivotal to its potential impact. Foremost, it targets not only organisations but also the space and conditions they need to survive. It seeks to erase every physical and virtual space, dislodge every affiliation, cut off every interaction, remove every source of social, political, and cultural capital, and hamstring every service on which an ISO might rely to survive

and operate. This transforms the elephantine task of thwarting every last unregistered organisation that pops up—an approach acknowledged to be impossible to implement, as ‘prairie fires can’t consume them completely, a spring breeze blows and again they rise [野火烧不尽, 春风吹又生]’ (MCA Comrade in Charge 2021)—into a clear-eyed, systematic, and comprehensive approach that targets their ecosystem. Second, it prevails on every organisation, individual, and mechanism available—Party, state, societal, and market—to implement and obey.

The new approach began with a notice and video conference on 20 March 2021. Notices (通知) are a type of official document used by higher-level agencies to communicate policy demands to lower-level counterparts for implementation. This one, titled ‘Notice on Removing the Breeding Ground for Illegal Social Organisations and Cleansing the Ecological Space of Social Organisations’—made available in English by *China Law Translate* (MCA 2021e)—was issued not by one or two government ministries, but by 22 ministries and CCP departments. The notice itself is imposing, complete with all 22 seals of those that signed off on it, beginning with the MCA seal’s state emblem and followed by the five hammer and sickles of the CCP’s Central Commission of Discipline Inspection, Organisation Department, Propaganda Department, Commission for Politics and Law, and Central Network Security and Informatisation Commission, as well as the seals of the other 16 ministries and bodies (MCA 2021b).

While not unheard of in Chinese policymaking, the sheer number of issuing bodies, the breadth of involvement, and the complementarity of the Party-State’s functions covered—state supervisory commissions and CCP discipline inspection and organisation departments, for example, can press for implementation—give the policy particular clout. Past campaigns were run by civil affairs and public security (see, for example, MCA and MPS 2018), leaving implementation reliant on limited resources and the willingness of other departments to cooperate. Now, across all 22 systems—education, science and technology, industry and information technology, public security, state security, justice, finance, housing, and urban—rural

development, foreign exchange, and more—orders have come directly from their respective national-level bodies. This creates a multidimensional, multisectoral, and mutually reinforcing Party and state-strong force for implementation.

The notice also makes demands of a broad range of social and market actors. It states penalties for noncompliance, for instance, not only for social organisations but also for their supervising agencies (this spreads the task of implementation even further, incentivising supervising agencies from across the Party-State to prod their supervisees into compliance). Its ‘Six Must Nots’ (六不得) form the basic skeleton of the policy, each directed at a different group of Party, state, social, and market entities:

1. Enterprises, public institutions, and social organisations must not have any connections to ISOs.
2. Party member cadres must not participate in ISO activities.
3. News media must not publicise or report on ISO activities.
4. Public service facilities and venues must not provide convenience for ISOs.
5. Internet companies must not provide convenience for ISOs’ online activities.
6. Financial institutions must not provide convenience for ISO activities.

Alongside the breadth of entities and individuals involved in implementation, note the target: not organisations per se, but the space and sustenance they need to survive. Past campaigns typically focused narrowly on organisations themselves. This meant that, during implementation, the targets were typically those committing fraud and other offences as opposed to ‘informally legitimate’ (Yu 2006: 112) but unregistered organisations. The focus of the new policy on space and sustenance means that, irrespective of Party-State intentions, it is likely to have a much deeper, wider, and more lasting effect. While those ‘cracked down on’ and paraded across the pages of official WeChat public accounts will be obvious to the outside observer, those who have their sources of sustenance cut may slip away silently.

Considered alongside the survival strategies of unregistered organisations, the mirror effect is striking. Take the first ‘Must Not’, for example: enterprises, public institutions, and social organisations must not ‘collude with or offer convenience for’ ISOs, ‘accept them as branches or affiliated organisations’, or ‘offer them use of their bank accounts or otherwise facilitate them’ (MCA 2021e). These align precisely with the strategies long resorted to by unregistered organisations. The policy directly calls out the practice of ‘ISOs seeking a cloak of legality as protection, thinking up ways to “attach under” legal organisations’ and of legal social organisations facilitating them. Compare ‘Must Not’ numbers one, two, and three with the channels through which unregistered organisations find legitimacy—such as attachment to others, media reporting, appearances by officials, and endorsement by personalities (Wang and Liu 2007: 129)—and through which they collaborate as agents of local state patrons (Hildebrandt 2013: E1728), and the pattern becomes even clearer.

A video conference on the day of the policy’s issuance brought together leaders from national Party and state agencies and provincial departments to put further meat on its bones (MCA 2021a). The conference and the notice should be read together to understand the new policy’s implications. Complete with a ‘mobilising speech’ from the Minister of Civil Affairs—a common ritual used to drum up support for a new task—the conference launched a 14-week (MCA Comrade in Charge 2021) campaign to begin the policy’s enforcement. The campaign adopts and enriches the policy’s blend of legal and political discourse, combining the language of ‘illegality’ (非法) and ‘rule of law’ (法治) with accusations of ISOs’ polluting effect (污染) (MCA 2021a, 2021b), and badness (邪气) (MCA 2021a). Unlike the policy itself, the campaign meeting readout explicitly states the target as unregistered organisations. It highlights five types of ISO, among which are ‘ISOs carrying out activities in collusion with ... legally registered social organisations’ (MCA 2021a).

In the days and weeks that followed, to relay specific instructions and prompt pledges of allegiance to the campaign, MCA leaders convened a series of meetings with big business associations

(MCA SMB 2021a), internet companies and platform providers (MCA 2021c), high-profile venue providers (MCA 2021b), social organisation supervisory agencies (MCA 2021d), and the MCA's own nationwide network of social organisation registration and management officials (MCA SMB 2021b). The MCA Social Organisation Management Bureau (MCA SMB 2021c) added its weight to the campaign with a detailed policy specifying penalties for national social organisations 'colluding' with ISOs. Authorities will, it warns, alter a social organisation's annual reports, cancel eligibility for preferential tax treatment, and—in what is essentially a 'one item veto rule' (Heberer and Trappel 2013: 1052) for those wanting to take on government service contracts—downgrade their evaluation-based rankings (overriding evaluators' judgements).

The call to reject, refuse to facilitate, and even turn in ISOs, and the promise of penalties for not doing so, could spell the beginning of the end of an important dynamic of contemporary China's civil society. Anthony Spires (2011: 12) once found that 'the state tolerates "illegal" grassroots social organisations 'as long as particular state agents can claim credit for any good work while avoiding blame for any problems'. Similarly, Timothy Hildebrandt (2013: E1889) found that in some fields and localities there is 'clear incentive for local governments to put aside concerns of registration status and work in coordination with unregistered social organisations'. But this would clearly contravene the new policy.

It is useful to understand this in the broader context of a top-down push in recent years to make Party and state leaders govern their respective fields according to 'rule of law thinking and methods'. The new ISO policy may well harness the incentives and disincentives that this push is developing. In late 2016, the general offices of the CCP Central Committee and the State Council (2016b) jointly issued rules laying the groundwork for creating a leaders' responsibility system for 'rule-of-law building' (which includes adherence to both state law and Party rules). The rules, which apply not only to heads of jurisdictions but also to functional department heads (General Office of the Central Committee and General Office of the State

Council 2016b: Art. 10), require the incorporation of rule-of-law-building into performance assessment indicators and the use of this information as grounds for deciding on promotions and demotions. In 2017, provincial-level authorities followed with detailed implementation measures and, while the system still has its weaknesses (Yi and Cao 2019), the trend is important to note. These rules are designed to compel Party and government leaders from the county level up to 'govern according to law', even when doing so conflicts with how they conceive of their capacity to deliver 'achievements' (政绩) (Jiang 2017). Civil affairs bureaus have already begun including ISO enforcement in their annual rule-of-law-building reports (see, for example, Beijing Civil Affairs Bureau 2021; Tianjin Civil Affairs Bureau 2020). This trend, driven by such changes to Party responsibility and incentive systems and state reporting systems, will likely alter the political opportunity structures for unregistered social organisations (Hildebrandt 2013), the potential for 'fragile and contingent' (Spires 2011: 12) relationships with 'local government officials ... ignor[ing] their illegality', the possibility that 'registration is not always in the best interests of local government officials' (Hildebrandt 2013: E1872), and the 'barriers to entry' that allow participation in policy processes due to 'fragmentation' (Mertha 2009: 1012).

For decades, the 'institutional space' delineated by the Party-State's regulatory framework has been much smaller than the 'actual space' in which citizens' organisations exist (Yu 2006: 119). The present campaign, and the policy it pursues, attempts to change this. While it may succeed in sucking away the oxygen for non-state-approved organisations, what will come when the 'spring breeze blows and again [something] rises' is yet to be seen. What is certain is that this new approach merits attention, as it promises to change the rules of the game for many at the margins of organised civil society. ■

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