

# FUNDING THE RULE OF LAW AND CIVIL SOCIETY

This HRIC Issues Paper examines the role of foreign actors in developing China's legal reform and civil society. A review of publicly available information suggests that the policy goals of these programs may be hampered by questionable assumptions, limited transparency and accountability, and the willingness of funders to work within an officially proscribed space.<sup>1</sup>

Beginning in 1978, the People's Republic of China (PRC) embarked on an economic policy of 'reform and opening' and later a 'socialist market economy' approach that simultaneously emphasizes privatization and continuing state regulation. The progressive and uneven development of the Chinese legal system has also proceeded since the late 1970s, when China began the arduous work of recovering from the social chaos and 'rule by man' lawlessness of the Cultural Revolution. Today, the normative vision of a China governed by a 'rule of law' is accepted not only by the Chinese government, but is also promulgated by the enthusiastic spending of dozens of donor and foreign aid organizations that fund legal reform and exchange and civil society projects throughout China.

This paper examines the role of some of the key foreign funders who initiate and support these reforms in Chinese society, as sifted through the framework of legal reform projects and related implications for developing civil society. In conducting a broad survey of legal reform efforts in China, we identify the implicit and explicit assumptions that drive them, the general construction of these projects, as well as policy and programmatic questions and issues for future examination.

In opening its doors to economic reform, acceding to multilateral agreements and pressure from multilateral lenders, China has progressively adopted Western models of marketization, capital liberalization and privatization, although the PRC government rhetorically maintains that its project remains reform "with Chinese characteristics." Upon the normalization of relations between China and the U.S. in 1979, American

donor organizations also re-established ties with Chinese institutions and began actively developing projects to reconstruct the decimated legal system and expand Chinese research capacity and expertise in order to better address emerging issues in the transitional economy. The role of foreign actors in economic and legal reform steadily expanded during the 1980s and increased markedly in the late 1990s, with the emphasis on "rule of law" becoming more prominent after the 1997 Presidential summit between Jiang Zemin and Bill Clinton.

Today, the universe of foreign funders includes multilateral lenders and agencies, individual governments and private organizations and foundations. In addition to dozens of multilaterals and governments, over 500 international NGOs and foundations give more than \$100 million each year for projects in China.<sup>2</sup> In 2000, foreign organizations with operations in-country included at least 700 grant-making foundations, 70 advocacy groups, 200 humanitarian organizations and 150 faith-based charitable organizations.<sup>3</sup> As a result of this diversity in reform work, an initial analytical obstacle is the varied terminology used by foreign funders to describe their project goals, which are subsumed under interrelated and overlapping categories of 'good governance,' 'law and justice,' 'technical assistance' or 'human rights.' Despite the lack of complete consistency and clarity of terminology, the idea that legal reform is integral to China's future is now widely reflected in this proliferation of programs funded by multilaterals, governments and private donor organizations that feature roles for the development of rule of law and civil society.<sup>4</sup>

In recent years, foreign funders in China have been increasingly expanding their focus from rule of law projects, which consist of the foundational elements of legal training and education, lawmaking and institution building, to supporting the growth of civil society, which in broad terms involves assisting the development of independent and non-governmental organizations (NGOs). Just as the rule of law projects attracted international interest and became something of a funding cottage industry, civil society actors in China are now receiving a similar boost in order to get plugged into the global "associational revolution."<sup>5</sup> Between 1965 and 1996, the number of national social organizations grew from 100 to 1800 while local associations mushroomed from 6,000 to 200,000.<sup>6</sup> However, whether and how these

statistics reflect the expansion of independent civil space are more complex inquiries.

The first section of this paper reviews the state of legal reform in China today. It is followed by a discussion on defining rule of law and how it has become important to policymakers' conceptions of reform in China. How rule of law is defined also has important implications for Section III, which examines many of the key explicit and implicit assumptions held by foreign funders and reflected in their legal reform and civil society programs. Section IV presents a survey of these law program approaches, and Section V poses some policy questions and programmatic suggestions aimed at increasing the transparency, accountability and effectiveness of these programs as foreign funders race to jumpstart civil society.

### I. The state of legal reform in China today

In the face of enormous challenges, significant progress been made in the area of legal reform over the past 25 years. Policymakers and academics tracking the development of the Chinese legal system believe the PRC government is now committed to establishing a modern system of legal rules that promote and support its emerging market economy. Correspondingly, China has focused on developing its legal institutions to accommodate its commercial and economic needs, and is now enhancing its administrative law capacity. Certain partial indicators of successful reform are showcased by both the PRC government and foreign funders as important parameters in "perhaps one of the largest social infrastructural project in the history of mankind."<sup>7</sup> For example, China now has more than 150,000 lawyers and a few thousand law schools, a leap from a generation ago when there were only a few thousand lawyers and two law schools nationwide. The number of civil and economic suits brought annually in the Chinese legal system has risen from 2.4 million in 1990 to almost six million in 1997, reflecting a greater willingness among many Chinese to bring their disputes to formal adjudication rather than settle them informally.<sup>8</sup> Among policymakers, one of the most heavily publicized developments on this front has been the 1989 Administrative Litigation Law, followed by the 1994 State Compensation Law and the 1996 Administrative Penalties Law, which allows citizens to sue administrative agencies in Chinese courts.<sup>9</sup> The PRC government has passed thousands of laws, regulations and policy directives since 1979, and it must abolish or retool thousands more to bring its domestic laws into compliance with its WTO obligations.<sup>10</sup>

However, these same developments belie how an overemphasis on statistical indicators can obscure some of the important uncertainties and broader policy questions about legal reform. For example, essential issues, such as the relationship between law and the promotion of value shifts in a culture, or how individual rights are being conceived and developed, are qualitative or conceptual inquiries that are acknowledged for their importance but frequently underplayed in the publicly available reports on reform efforts. At the same time, the gap between law on the books and law in practice also reflects ongoing challenges to structural reform. For example, the implementation of WTO reforms has been plagued by problems

such as "lack of effective and consistent implementation at the national and sub-national levels, lack of transparency, lack of coordination among Chinese government agencies with legal interpretive powers, and non-compliance with many specific commitments."<sup>11</sup>

At present, one of the most trenchant obstacles to a credible, functioning legal system is not China's historically and culturally specific ambivalence to the supremacy of law in general, but the difficulty of achieving political reform against the reality of pervasive corruption, local protectionism, and continued Party control over courts, police and prosecutors.<sup>12</sup> The Supreme People's Court is only one of many government organs attempting to address issues of continuing corruption and local political interference, not least because they threaten China's prospects for greater economic strength and stability.<sup>13</sup> Although the Chinese legal system has been formally re-assembled with components that allow it to function, in practice its efficacy and influence is severely compromised by party interference, arbitrariness and the lack of an independent judiciary. As Professor Stanley Lubman observes, "Chinese progress toward the regularity in making and applying rules that is associated in the West with the notion of the rule of law is sure to be slow and not necessarily steady."<sup>14</sup>

### II. Defining rule of law

The normative centerpiece of legal reform in China, invoked by the PRC government and foreign funders alike, is rule of law. In the West, rule of law has achieved a virtually undisputed pre-eminence as a foundational concept vested with supreme moral and practical legitimacy. However, it is also a contested concept, and has been variously described as an ideological slogan, an empty vessel, and a neutral crowd-pleaser. At its most basic level, rule of law is realized when the law achieves a higher status than the governments executing it. It is more common to conceptualize rule of law through its core components or elements.<sup>15</sup> The body of foreign scholarship on the rule of law in China has focused on a central dichotomy that is described in various forms: normative and political theories versus instrumental theories, "rule by law" versus "rule of law", and thin and thick theories. The liberal democratic version of a normative rule of law incorporates "free-market capitalism with legitimate regulation, multiparty democracy at all levels of government, and a liberal interpretation of human rights that prioritizes civil and political rights over economic, social, or cultural rights."<sup>16</sup>

Chinese scholars have also viewed rule of law as a positive development for China.<sup>17</sup> On a basic level, they are concerned with the limits of practical power: they posit rule of law as requiring a system of uniform and regular application that imposes meaningful restraints on the state and members of the ruling elite, and includes mechanisms for enforcing individual rights.

In China, rule of law has valuable currency as a "legal export" and transplantation idea. Foreign funders have latched onto rule of law as a policy springboard for their work in China, and its wide circulation has made it especially difficult to pin down a common, workable definition. Indeed, this

ambiguity may be making rule of law a more supple and popular concept, investing legal reform projects with a certain political flexibility.<sup>18</sup> Although this type of flexibility may be advantageous in the Chinese context, where reforms are proceeding incrementally and inconsistently, and where real power dynamics are constantly evolving and shifting, the embedded assumptions are nevertheless strikingly similar across the board. The normative basis of rule of law anchors reform to its ideological roots, and it forms the basis from which foreign funders operate.<sup>19</sup> Thus, rule of law is both practiced as a normative exercise and designated as a programmatic category of aid. Its multiple applications and manifestations suggest the importance of critically examining not only what definitions are used, but the assumptions driving how people arrive at these definitions, however unconsciously or haphazardly, in order to understand the real effects legal reform are having in China.

### **III. Implicit and explicit assumptions in foreign-funded Chinese rule of law and civil society programs**

Despite the limitations in publicly available information comprehensive enough to support an empirical analysis of the funding universe and the impact of foreign funders in China, it is possible to describe and summarize some of the key features of the legal reform funding and policy framework. Funders' own explicit and implicit assumptions about rule of law and the path it illuminates for legal reform are central to their actual policy formulations and funding programs. These assumptions drive and support the design and implementation of these projects, as well as raising questions and concerns about funding decisions on a macro-level. In addition, the nascent and growing civil society in China faces many of the same challenges as legal reform efforts because it derives its normative support from the same basic assumptions.

A review of information about funders' legal reform projects suggests that their explicit assumptions converge with the implicit assumptions discussed in rule of law scholarship and commentary. All funders have demonstrably adopted the basic prescriptive assumptions, aspirations and programmatic functions that support a liberal democratic rule of law system. However, some funders have chosen to express their visions in more cautionary or precise terms.<sup>20</sup>

Perhaps the most powerful baseline assumption driving reform policies in China is faith in the power of law. Funders have fashioned multiple constructions of meaning, progress and morality on the potentiality that far off into the future, rule of law will replace rule by man. This belief persists despite the contemporary Chinese reality, where most reform is extremely difficult without the requisite political will on the part of the PRC government to place limits on itself. Even participants in the growing Chinese NGO research and advocacy community, who acknowledge and must negotiate political and legal constraints, continue to argue that a better enabling legal and regulatory framework for NGOs is necessary in order for civil society to truly grow.<sup>21</sup>

Foreign funders and governments also point to reformist elements within the government as forces for furthering reform. This belief persists in spite of the persecution of

reform-minded party members and government officials who have been targeted as "overly" outspoken. A corollary of this assumption, with considerable support inside China, is that the CCP is the only force powerful enough to carry out reform, and without it China would descend into chaos and fractious power struggles. At the same time, the Party is no longer viewed so monolithically, as recent exposés of internal debates and power struggles suggest.<sup>22</sup>

Other guiding assumptions reflected in foreign funding policies and programs include:

*The rule of law is essential to a successful market economy.*

Put simply, China is the foremost example of law as an instrument of economic development. Although the relationship between rule of law and economic development was partially discredited in the "law and development" movement of the 1970s, it is now a linkage that is empirically validated and aggressively pursued, but with more utilitarian and market-oriented goals.<sup>23</sup> Foreign funders' strong adherence to this principal assumption is evident in the language of certain donors' policy assertions:

- A well-functioning legal system plays an important role in advancing broad-based development.<sup>24</sup> (Asia Foundation)
- Sound legal frameworks are prerequisites for economic growth and social development.<sup>25</sup> (World Bank)
- Without laying a political foundation that incorporates rule of law, pluralism and democratic participation, China will jeopardize both its economic development and long-term social stability.<sup>26</sup> (Carnegie Endowment for International Peace)

*The rule of law requires a transparent and autonomous legal system, and cannot function without an independent judiciary.*

The development of legal institutional differentiation and autonomy is a building block of a normative rule of law that supports a political theory of limited government.<sup>27</sup> In addition to a well-trained, impartial judiciary, the procuracy and professional bar should also meet the basic threshold of demonstrating adequate training and sufficient capacity, and exhibiting impartiality and fairness. Laws should be passed and enforced in a predictable and open legal framework. Funders' explicit assumptions highlight the importance of the separation of powers and a transparent legal system, as endowed in an independent judiciary, as prominent themes:

- The process through which laws and regulations are conceptualized, drafted, enacted, publicized and enforced is the foundation of a society governed by the rule of law.<sup>28</sup> (World Bank)
- Good governance involves the "existence of a sound, predictable legal framework with a reliable and independent judiciary."<sup>29</sup> (CIDA)
- Just how far China has come, and how far it still must go, in building a legal system that can serve the needs of a rapidly changing society is illustrated by the state of its judiciary.<sup>30</sup> (Ford Foundation)
- No human rights can be guaranteed without a strong, accessible and independent judiciary.<sup>31</sup> (World Bank)

*Assumptions about the normative basis of rule of law are often intertwined with other political ideals.*

One of the prominent “combinations” is rule of law and democracy. Modern (read: Western) democracy is typically conceived of as a formal check on state authority through the separation of powers, where citizens exercise their right to choose representatives from multiple parties at some or all levels of government. The approach to infusing democratic principles in reform efforts is mixed—while most funders promote more democratic forms of governance, some boldly proclaim democracy to be the normatively superior and preferred ideal. The following examples reveal the spectrum of approaches:

- A strong democratic society will be marked by respect for human rights and will be characterized by a strong and vibrant civil society, an active, independent media, an independent judiciary and a high level of public understanding of and participation in the political process.<sup>32</sup> (CIDA)
- Law-based strategies serve as an important tool of Ford grantees for advancing human rights, equitable and sustainable development, civic participation and government accountability.<sup>33</sup> (Ford Foundation)
- USAID’s Rule of Law Program, administered under the Democracy, Conflict, and Humanitarian Assistance Bureau, run from the Office of Democracy and Governance, states plainly: “Democratic governments are more likely to advocate and observe international laws, protect civil and human rights, avoid external conflicts, and pursue free market economies essential to international trade and prosperity.”<sup>34</sup>

*Legal reform will engender the inevitable transformation of the legal system over time, leading to the eventual achievement of a rule of law.*

Policymakers have subscribed, with varying enthusiasm and in both direct and indirect ways, to a set of validating assumptions about the scope of legal reform. According to their predictions, commercial and economic reform will allow for the emergence of a middle class increasingly vigilant in protecting its property and contract rights. In turn, these newly empowered social forces will promote the construction of an effective and independent judiciary, which will ignite similar changes in other legal fields and institutions.

Most recently, China’s entry into the WTO has been widely trumpeted as an important entry point: buzzwords such as transparency, predictability, uniformity and independent review have been transformed into binding commitments. As China implements its obligations as set forth in its accession protocols, it is argued that the WTO can serve as a lever for China to accelerate the development of its legal system and enact political reforms. Ultimately, legal reform, even motivated by and limited to economic issues, “plants the seeds” for civil society and democracy to take root, and the PRC government will not be able to control the resulting reforms.

This expectation has been tempered by acknowledgement of the entrenched difficulties and complexities in reforming and constructing a viable legal system given China’s unique

historical and cultural legacy. However, as a formative assumption this idea still holds great sway, simply because it has been actively circulating for so long and because all reform efforts are directed towards establishing the practical realities of this goal, i.e. institutions that resemble those in a liberal democracy. Foreign actors continue to echo this logic:

- As changes in the economic arena often have served as an impetus for changes in other aspects of Chinese society, achieving WTO compliance may also have repercussions for legal change and reform beyond the commercial sphere.<sup>35</sup> (National Committee on United States–China Relations)
- “What we do believe... is that the decisions China has made ever since 1978 and especially with the accession to WTO, to commit itself to legally binding obligations that require fundamental transformations of the way in which the State operates within the economy and thus within the society, make very positive auguries for the evolution of a more economically and socially diversified system in China, and with it the expansion of the realm of law.” (Statement of Robert Kapp, US-China Business Council)<sup>36</sup>

*In developing the rule of law, it is important to promote a “culture of law” in China. By raising awareness of legal rights and the potential utility of China’s legal system for protecting individual citizens, it is possible to quantify and improve public legal consciousness and thus influence Chinese culture. These cultural shifts would have desirable consequences for broader reform, and the establishment of a strong legal culture would also affect those sensitive areas of the legal system over which the Chinese government wants to maintain strict political control.*

For example, the UN has taken on a commitment to “raise awareness on the concept of the rule of law as a value system and both a right and a duty for every citizen” and believes that “the concept of the rule of law should be publicized more widely, including its value as a means to protect individuals.”<sup>37</sup>

*The influences behind civil society are the normative equivalent of assumptions driving rule of law reforms.*

The debate surrounding the meaning of civil society in China has been elevated to the volume and level of a discourse, and is beyond the scope of this paper.<sup>38</sup> However, to date the development of the “third sector” — a term that already triangulates civil society in orbit with government and business sectors — has emerged under the rubric of a liberal democratic rule of law. This is evident despite policymakers’ admonitions that civil society in China has and will take shape as a force far more closely bound and directed by the one-party government than has been traditionally conceived in the past few decades. For example, an officer of the Asia Foundation describes the “institutional core” of civil society as “a combination of political and socioeconomic arrangements, including a government which is limited and accountable, and operates under the rule of law; a market economy; an array of free, voluntary associations; and a sphere of free public debate. Civil society is characterized by pluralism, tolerance of differing views and opinions, and procedural arrangements for the settlement of disputes without force.”<sup>39</sup> In sum, civil

society is to become a means for achieving reforms on multiple fronts:

- “Recognizing that citizen participation is fundamental to good governance, the Foundation has long seen support to non-governmental and business associations as a key element of social, economic, political, and legal reform.”<sup>40</sup> (Asia Foundation)
- The Ford Foundation’s civil society program works to “increase the impact of citizens’ groups working for peace and social justice, strengthen the philanthropic community that supports them, and encourage citizen oversight of the public and private sectors. We believe in the value of associational life and see the nurturing of strong, independent and democratic civil societies as a goal in and of itself.”<sup>41</sup>

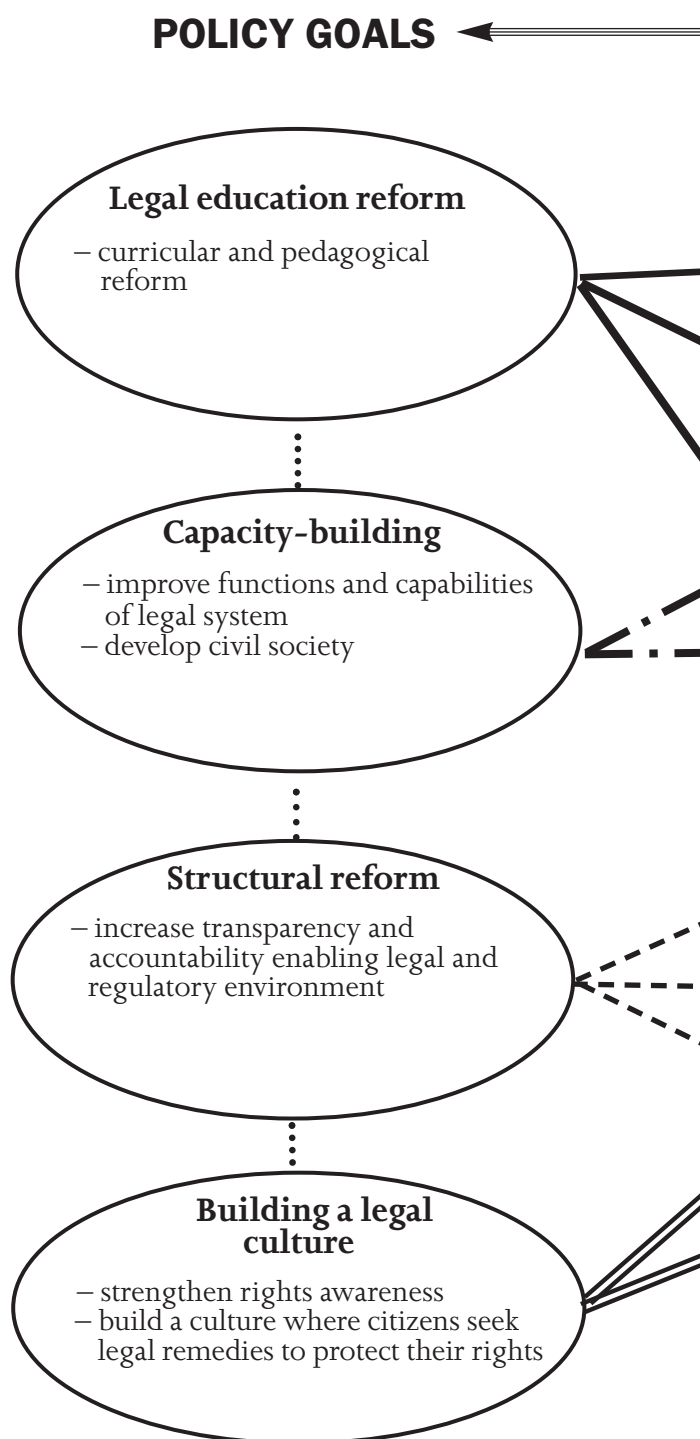
As foreign funders seek to promote the growth of civil society in China, they should not ignore the position of the PRC government towards independent NGOs in the international arena. While the PRC government has begun to take more seriously its reporting obligations to various UN human rights bodies, and to request UN technical assistance and training programs, it has also led efforts to limit the role of NGOs and the UN and at other international non-governmental meetings. China’s efforts to extend its control and censorship of independent NGO voices beyond its domestic boundaries underscore the importance of critically monitoring China’s human rights situation and must be included in formulating effective funding policies and strategies.

#### IV. Survey of rule of law program approaches

In addition to the panoply of meaning associated with the rule of law, the concrete implementation of rule of law-based visions for social change has been equally unruly, with programs reaching into areas of economic development, civil society and democracy-building.

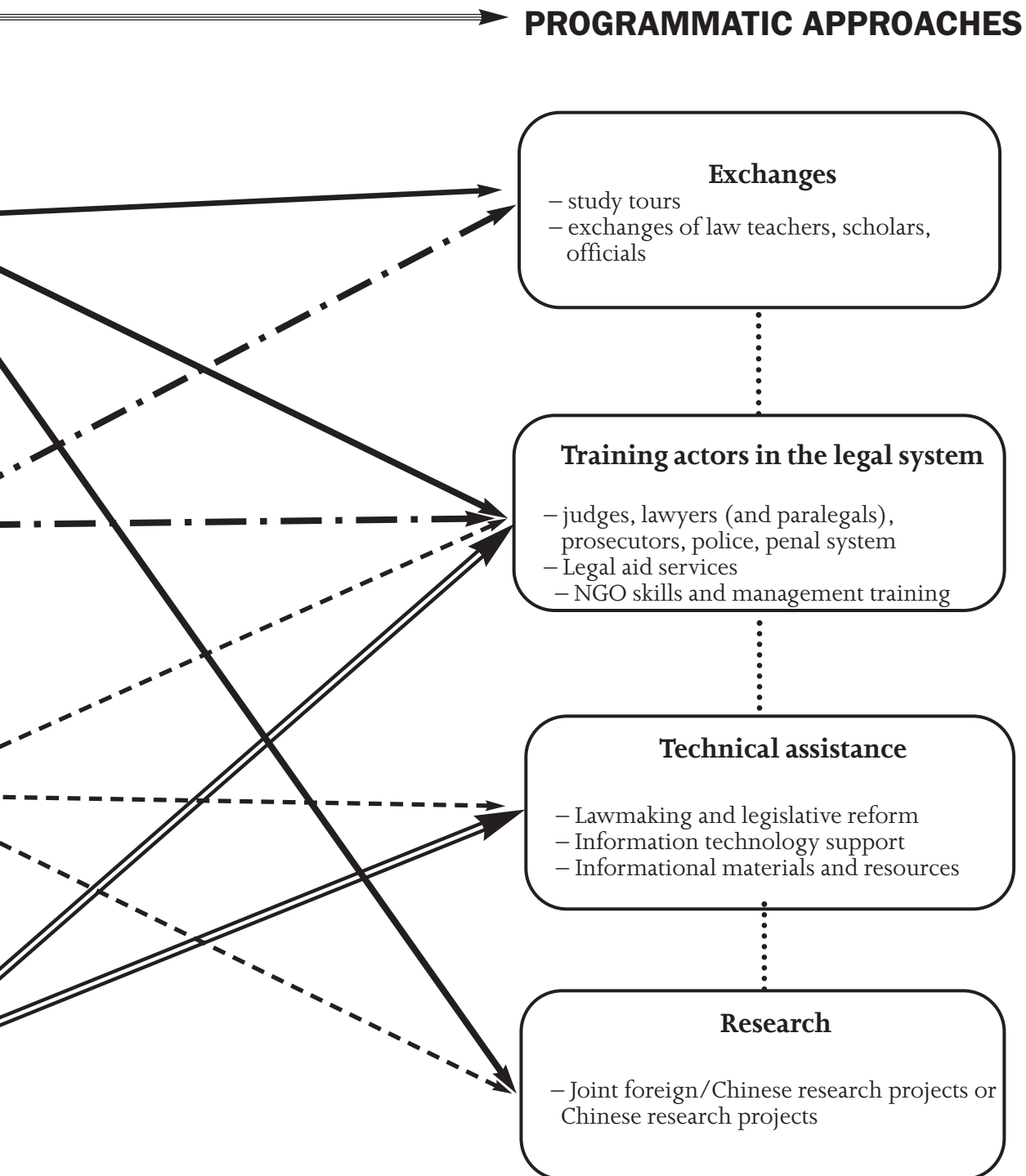
The key foreign actors involved in funding rule of law and civil society programs include:

- **Multilaterals:** The Asia Development Bank’s recent or ongoing law-related programs, which are heavily concentrated on commercial law, amount to over \$5 million in combined spending.
- **Governments:** Although the United States government has been ambivalent about providing direct assistance to China, it has authorized the Secretaries of Commerce, Labor and State to establish training and assistance “rule of law” programs. In 2003, the State Department allocated \$10 million to the development of the legal system and civil society in China. Under the mantle of technical assistance, the Technical Corporation of the German government (GTZ) has committed over \$10 million for its many multi-year legislation implementation and legal awareness programs.
- **Private organizations and foundations:** As one of the most visible private foundations operating in China, the Ford Foundation is perceived by policymakers to be nearly as instrumental as the Chinese government in the development of legal reform in China, which it has been



# CHART A.

This chart presents an overview of the complex and increasingly sophisticated structures of foreign funded legal reform and civil society programs in China. Each broad policy goal is addressed through a variety of programmatic approaches, with significant overlap and inter-relationships. This chart is intended to illustrate the general structure of these programs, rather than exhaustively comprehensive.



actively funding since 1979. In all its program areas, from 1988 to 2001, Ford made grants totaling about \$128 million. Ford allocates about \$5 million annually to its “human rights” (law) and civil society programs, while the Asia Foundation allocates about \$1 million annually towards legal reform, governance, civil society and women’s rights.

The following is a sampling of funding and activities relating to legal reform and developing civil society. While no consensus in terms of language has been outlined or elaborated between foreign funders themselves, legal reform initiatives and programs are interrelated and often complementary, making it difficult to place them in definite and concise categories. Legal reform projects can be loosely categorized according to four goals: promoting legal education reform, capacity-building, structural reform and building a legal culture. The various approaches to achieving these goals include exchanges, training actors in the legal system, technical assistance and research.

#### Exchanges of students, scholars and teachers

Exchanges sponsored by government and individual institutions include study tours and exchanges of visiting students, scholars and teachers. All funders of note include at least one of this type of project, and a number of funders feature training programs as their primary mission.

One key foundation training and exchange initiative is the U.S.-China Committee for Legal Education Exchange (CLEEC) initiated and funded by the Ford Foundation. From 1983 to 1997, following the lead of a PRC government policy decision to give elite institutions priority access to limited resources, CLEEC focused on building law faculties at elite government-designated universities and institutes of political science and law (*zhong dian yuan xiao*). CLEEC was involved in training more than 250 young Chinese teachers and scholars in the PRC and the U.S., and was also the venue for promoting many other forms of scholarly exchange between some of the most elite lawyers, professors and government specialists in both the PRC and the U.S.<sup>42</sup>

Although many of the Chinese law students and professors who pursued foreign legal education and research with CLEEC support did not return to China, those who did return subsequently moved into significant leadership positions, including serving as law school deans, associate deans or judges. Apart from the costs shared by American host law schools, the Ford Foundation provided more than \$4 million in grants to support these activities. In addition, the Henry Luce Foundation shared funding responsibility for providing legal information in print and electronic forms to leading Chinese law faculties, academies and institutions.

Beginning in the mid-1980s, CLEEC also organized more than a dozen intensive summer training programs under the auspices of the China Center for the Study of American Law. The short intensive courses focused initially on introductions to the American legal system, followed by administrative law, and in the final years, on law in a market economy. U.S. law teachers and scholars served as unsalaried instructors in China, incorporating experiential clinical teaching methods for law

faculty, students, government lawyers and officials. These programs involved the largest number of direct beneficiaries of CLEEC and were funded by the United States Information Agency, which is now part of the State Department.

An example of a government initiative is the European Union, whose four-year, \$12.5 million project is the largest legal and judicial cooperation program in the country, training 17 lawyers annually at European legal and judicial institutions, which includes short study visits to Europe for legal professionals.<sup>43</sup> The bilateral “technical cooperation” projects between China and the Australian government (through its development agency AusAID) scheduled for implementation in 2002 consisted primarily of study visits to Australia for Chinese officials on issues relating to China’s criminal justice system, including Chinese prison officers.<sup>44</sup>

#### Training actors in the Chinese legal system

Building upon the first stages of legal education reform, which included the training of law teachers and scholars, legal reform efforts expanded to train judges, procuracy, police and penal system officials in law enforcement and judicial administration. Some illustrative examples include:

##### Training of judges, procuracy, police and penal system officials:

While funders have traditionally focused the bulk of their efforts on judicial reform, organizations have branched out to programs aimed at strengthening the capacity, professionalism and expertise of the procuracy and, more potentially troubling, police and penal system officials. For example, the United Nations Office of the High Commissioner for Human Rights (OHCHR) negotiated a Memorandum of Understanding (MOU) with the Ministry of Foreign Affairs in November 2000 on technical cooperation in human rights.<sup>45</sup> In 2001, under the umbrellas of administration of justice, legislative reform and human rights education, the OHCHR began holding workshops and roundtables on human rights and the police, the punishment of minor crimes and human rights education. Included among the usual target actors, including senior government officials, academics, judges and lawyers, were members of the procuracy and the police. While the training of enforcement and police personnel might contribute to more professional and legal behavior, the separation of technical assistance and human rights monitoring arms in OHCHR presents concerns about the possibility that training is occurring in one room while torture is being conducted in another.

##### Strengthening China’s judicial system:

Since its Judicial Reform Initiative was launched in 1995, the Ford Foundation has provided more than \$4 million in funding to projects aimed at strengthening China’s judicial system. These projects range from simulated mock trials demonstrating how foreign courts operate to in-depth studies on theories of judicial power. The Initiative’s work follows a four-pronged strategy: applied research to better understand how Chinese courts function, exploring ideas for reform at Chinese courts, developing innovative approaches to judicial training and cultivating judges as a professional class.

Access to legal aid services:

Projects in this category aim at developing legal aid centers and include the support of professional groups and bar-to-bar relationships. Not all funders have engaged in projects of this kind. Some examples include the following:

- From 1999 to 2001, through its partner agency, the China International Center for Economic Aid and Technical Exchanges (CICETE), the United Nations Development Program (UNDP) recently concluded a legal aid project that included training courses for legal aid practitioners, the research and publication of Chinese language handbooks and training materials, and developing a comprehensive and interactive national legal aid Web site through the Ministry of Justice's Legal Aid Center.
- International Bridges to Justice (IBJ) is building on these efforts in the area of criminal defense through its development of a legal aid practice manual on criminal investigation and defense and "hands on" criminal defense skills training, support for technological tools such as online networks and national Web sites, and the development and support of provincial legal aid centers.<sup>46</sup> IBJ is one of the rare private organizations empowered by its own MOU with the Chinese Ministry of Justice, which aims for mutual cooperation in implementing the PRC government's "commitment to the promotion and protection of human rights as evidence by the signing of the ICCPR" and the safeguarding of basic citizen rights.

Curricular and pedagogical reform

These efforts include the development of new law school curricula, clinical legal education and support for experimentation with experiential teaching methodologies and pedagogies. Some projects support applied research that can be applied towards experimentation in courts. Beginning in 2000, the Ford Foundation has supported the research and implementation of legal education experiments at ten Chinese universities, including Wuhan University, Peking University, Zhongshan University, Fudan University and Sichuan University. From 2001 to 2002, the Ford Foundation allocated nearly \$500,000 to fund university-based legal aid centers in China, in addition to individual grants made to universities such as Sichuan University and South Central University of Economics and Law to develop their clinical legal education curriculum. University-based clinics supported by Ford are beginning to develop a diversity of approaches and methods, from specializing in certain areas of expertise, such as legislative aid (Northwest University of Political Science and Law) and criminal justice (Sichuan University), to experimentation with public interest litigation.<sup>47</sup>

In addition to questions regarding the sustainability of these heavily foreign-funded subsidies (clearly recognized by the Chinese clinicians themselves), these developing clinical programs must address a number of institution-building obstacles, such as building broader institutional support and legitimacy, working within limited resources, and navigating the tensions between public service and pedagogical goals in

training lawyers with more practical skills and a greater awareness of professional ethical obligations.

Building a legal culture

The strategies of supporting legal aid services and building a legal consciousness by changing how people think about the law and its role in their lives are often intertwined. For example, the Ford Foundation's Law-in-Action program supports organizations that provide legal services and/or raise legal awareness and rights consciousness.<sup>48</sup> Along with CIDA, UNDP and the Asia Foundation, Ford has supported the development of a nationwide legal aid system, utilizing both government agencies (China Centre for Legal Aid of the Ministry of Justice) and nongovernmental groups such as the Wuhan Centre. The Asia Foundation also provides support to the national legal aid center for a national media-based legal awareness program.

Technical assistanceLawmaking and legislative reform

Projects include legal research, the translation of foreign bodies of law and drafting targeted laws and administrative regulations. Court procedure and personnel management regulations are included. Most funders reviewed allocate funding for projects of this type. Some examples include the following:

- The Asian Development Bank's technical assistance programs have developed to include an ongoing legal reform focus, with more than \$5 million invested in revising and adjusting substantive commercial, foreign trade, investment and bankruptcy laws and regulations.<sup>49</sup>
- After co-sponsoring an international conference on China's WTO membership and the implications for administrative law, the Asia Foundation funded the China Administrative Research Group (CARG) for research, symposia and drafting of an Administrative Procedure Law. The foundation claims it is the only foreign organization to have been approached by Chinese authorities to provide technical assistance in this "sensitive and high profile project."<sup>50</sup> In addition to its support of CARG in drafting an Administrative Procedure Law, the Asia Foundation is providing training for legal staffers who will be drafting and directing WTO compliance measures at the local and provincial level, which it considers "absolutely essential for China's successful entry into the WTO."<sup>51</sup>

Supporting NGOs to develop civil society:

Many funders have been increasingly enthusiastic about funding civil society initiatives, which support the greater participation of citizens, NGOs and civic organizations. Recognizing the increasing importance of civil society in China, projects are focused on creating an enabling legal and regulatory framework for non-governmental and community organizations and improving public understanding of the roles civil society participants can play. Legal reform is also cited as an important building block for supporting the greater social change that will be generated by civil society actors:

"Viewed through this lens, law is a tool not only for the vital goals of bringing concrete benefits to

marginalized groups, advancing their human rights, and promoting their development, but for raising their capacities to generate, participate in, and sustain social change on their own. Some change occurs on the formal level of laws, regulations, and policies, but takes on added value when it flows from the contributions of affected groups previously excluded from involvement in such decisionmaking.”<sup>52</sup>

The Asia Foundation, Ford Foundation, Himalayan Foundation and UNDP have also funded the establishment of university centers focused on civil society research and development. The China NPO Network, also foundation-supported, conducts a monthly NGO forum to promote collaboration between organizations.

While it is possible to track the general trends in legal reform and civil society development in China, it is difficult for outsiders to fully understand the internal processes of these evolutions and the contexts in which these social and structural shifts occur. Furthermore, in a context where the complexities and difficulties in advancing legal reform are widely acknowledged, understanding how foreign funders negotiate these relationships is instructive for policy discussions across all levels of participation.

HRIC gathered the information for this paper from sources that are all publicly available in order to highlight gaps in knowledge that may have an impact on the reform process. The limited information publicly available made it difficult to definitively map anything beyond basic project descriptions. Typically, annual reports and organizational Web sites provide big-picture information about funding streams, financial reports, overall program objectives and strategies, and broad sketches of individual projects, all logically placed within the schematic vision of the organization. Although funding amounts and more detailed synopses are frequently available for individual projects, information detailing feedback from local partners, relationships between grantees, the availability of independent expert reviews and other critical evaluative tools are not provided in these reports.

The following section identifies a series of questions and suggestions aimed at engendering further examination of the roles that foreign funders can play and the development of future approaches that address not only their policy mandates, but also approaches that would more fully exploit the special opportunities for intervention that they possess.

## V. Concluding questions and suggestions

As China moves forward and funders consider their long-term goals and visions for reform, it is important that they explicitly and transparently examine the policy and programmatic investments they have already made. The evolution, progress and impact of these foreign funded initiatives are significant, not least because funders are actively pursuing the inside track of engagement with China as part of a simultaneous inside-outside human rights strategy for China.<sup>53</sup> In a country where the state remains at the center of most important social and political institutions, foreign funders as originating actors in their own right have a special role. As outside players with outside

leverage, foreign funders come to China and deliver not only the content of their programs, but also bring with them the resources and a distinct legitimacy that domestic players often lack and outside players are denied through the PRC government’s aggressive criticism and censure. Ultimately, through their legal reform and civil society strategies, foreign funders can have a major impact on legitimating or undermining human rights strategies approached from outside as well as from within Chinese society.

## Transparency and accountability

As a tenet of instituting structural reform, one of foreign funders’ main objectives, the value of transparency cannot be underemphasized. As a normative principle it is a central plank of nearly every reform endeavor. As a call to consistency, it should remind funders and other actors of their own accountability to the processes they champion. Transparency is also an important implementation tool, for those who practice it can help to provide models and best practices for future projects.

- While concerns about protecting sensitive projects that may benefit from less public scrutiny are certainly valid, greater transparency about funder practices would be useful for mapping out future directions and implementing more effective programs. The centrality of these programs to the development of rule of law and civil society suggests clearer and fuller knowledge about funders’ project design, their standards and criteria for selection of partners and program participants, methodologies deployed in the implementation of projects, and assessments by participants and outside experts would be valuable for human rights work both inside and outside China.
- Greater inclusion of concerned stakeholders and the opening of donor policy meetings would also be useful steps to increase the transparency and effectiveness of decisionmaking processes.
- Human rights considerations need to be ‘mainstreamed’ into the design, implementation and assessment of all legal reform and civil society projects.

## Reexamining assumptions

There is a need for an enhanced understanding of how foreign funders arrive at their assumptions, and whether their visions of change for China are a product of top-down or more organic processes structured from identifying local needs. Funders who either do not scrutinize or rely too much on their own inherent assumptions may be missing opportunities for creative action or coming to wrong conclusions about reforms.

- *Western paradigms and local visions*: Despite the ongoing emphasis on reform with Chinese characteristics, in most respects funders seem to be championing Western paradigms. The need to contextualize reform efforts and apply deeper, more nuanced understandings of the unique qualities of Chinese culture and society continues to be widely acknowledged. However, funders fall prey to a contradiction when they stress the need to work closely with local constituencies to build a more relevant vision for change, but nevertheless import the building

blocks of a liberal democratic system. This is the danger inherent in the malleability of the rule of law, which as an “empty vacuum” can absorb or embody a full normative canon without articulating a sufficiently specific vision. Some specific questions that might be explored include: what are the relationships between Chinese articulations of reform priorities and possibilities and foreign actors’ roles in achieving their hopes for transformation in China; what are the influences of foreign paradigms on domestic programs; and how to measure and critically assess the impact of foreign funding in altering dynamics or creating new incentives for change in these program areas.

- *Looking towards reformist forces within the Party:* To some extent the PRC government has been successful in co-opting reform to serve its official agenda of privileging national security and social control. The U.S.-China Security Review Commission cautions that “while rule of law initiatives could help foster legal reform, they may not necessarily lead to democratic change or even political liberalization. As long as the CCP remains above the law, legal reform could be used merely to advance the Party’s interests, such as building up China’s economic power while controlling dissent.”<sup>54</sup> In the face of a repressive and recalcitrant Chinese government that either will not or cannot absorb the impact of various reforms, how should donors interact with their Chinese counterparts? The significant and serious challenges involved with working in-country are widely acknowledged. Funders may eventually confront disillusionment and deflated momentum from their Chinese partners when their influence cannot defeat or obscure the challenges of achieving real change without the requisite governmental acquiescence or support.<sup>55</sup>
- *Rule of law in the service of a market reforms:* Reform goals that support a growing market economy, including a transparent, accountable and predictable legal system and a more independent judiciary, are also central to advancing human rights protections. The PRC policy of bifurcating economic from political reform raises serious questions about whether a ‘well-functioning legal system’ is possible without also incorporating enforceable protections for basic human rights, and implementing more fundamental political reforms. As documented by HRIC and other NGOs and international bodies, the government remains politically repressive and continues crackdowns against, and executions and detentions of, religious leaders, Internet activists and individuals who peacefully voice their criticisms of the government or advocate democratic reforms. Even defense attorneys who take on sensitive cases have found themselves the targets of prosecution and harassment.

#### Independent program reviews

Reports commissioned by funders important to the reform process tend to focus on presenting a descriptive, anecdotal picture of programs, and lack rigorous empirical evaluations and critical analyses.<sup>56</sup> The donor community and the human

rights community outside China would also benefit from attention to development and application of clearer standards and benchmarks in evaluating these programs. Although the design of such benchmarks present theoretical and methodological challenges, critical assessment tools can contribute to ensuring the most effective use of limited resources as well as linking intention and results. Problematic areas, such as training police to implement improved criminal enforcement procedures, pose a particularly strong need for monitoring and benchmarks, not only for assessing whether human rights are incorporated into the trainings, but also to ensure that these programs do not end up masking implementation problems or exacerbating human rights violations or abuses.

#### Pushing the envelope of change

Some funders explicitly articulate their roles as agents for social change. The potential for “civil society” to push forward sweeping reforms was first realized in Eastern European communist bloc countries such as Czechoslovakia and Poland at the end of the Cold War. In that context civil society actors were organized in direct opposition to their governments, while in China most NGOs are legally and institutionally bound to the government. Funders and their Chinese partners anticipate that NGOs and civil society actors in China will participate and engage the government in distinctly different ways. However, in addition to the requirements imposed by Chinese partners and their terms of reference, maintaining access to China is an imperative for foreign funders and scholars, leading many to shy away from sensitive areas. Thus, while they still imagine the potential for civil society in terms of a more open and democratic society, in order to preserve access or in-country presence, they appear willing to accept government-imposed limitations on nascent organizations while pursuing ‘constructive engagement.’

#### CONCLUSION

According to an officer at a major foreign funder in China, the “flood of assistance to China is a clear acknowledgement of China’s position in the world economy and the desire of donors to encourage China toward predictability and transparency, and, at the same time, address human rights concerns.”<sup>57</sup> This summation captures many of the ongoing issues concerning engagement inside China. As the chief engineers of this flood, foreign funders naturally gravitate towards funding areas where they will have the greatest impact, but may not be subject to public scrutiny. What is needed is a broader and more rigorous assessment of the successes and failures of these projects, to allow for the improvement of existing and future projects. Governments and multilaterals who call for greater transparency and accountability from the Chinese government should also strive to comply with these norms and principles in regards to their own activities in China. Donor organizations that are privately managed and financed should be accountable in the same way as quasi-public institutions because of the significant amount of funding involved, their wide-reaching impact and the continuing importance of their role in engagement for human rights

strategies undertaken both inside and outside of China.

It is important to monitor and understand these opaque processes, because funders' influence may be disproportionately enhanced in China's social and political environment. The Chinese government is currently financing a significant share of its reform and capacity-building initiatives with outside support and expertise. Increasingly, Chinese NGOs and civil society actors are the 'social forces' relegated to a 'band-aid' approach, with foreign monetary support, by filling gaps in those areas where the government is unable or unwilling to act. At the same time, foreign funders are constantly negotiating a fine line in defining permissible relationships with domestic organizations and permissible activities.

Despite paying normative deference to human rights, some foreign funders seem to believe that it is advantageous or even necessary to de-link or de-emphasize human rights in the practical administration of legal reform or civil society programming in order not to jeopardize their in-country presence. In doing so, they imply that it is possible to substitute or conflate human rights with 'rule of law' or 'democratization' without sacrificing normative legitimacy or consistency.<sup>58</sup>

In reality, when legal reform or civil society become imperfect or partial proxies for human rights, funders devalue the real power they have in the engagement process and risk sacrificing the significant opportunity that they uniquely possess and other legitimate human rights organizations are denied — namely, a powerful domestic voice for leveraging their resources and legitimacy into more expansive gains for their Chinese partners and society at large. An acquiescence to operating within a government-proscribed arena necessarily limits the real possibilities for creating an independent civil space. More ominously, funders' self-censorship may unintentionally transmit the message that lawful and meaningful acts outside of what the PRC government is willing to tolerate are in fact not legitimate.

The challenges of promoting the advancement and protection of human rights in China are enormous and complex. China is changing rapidly and in major ways that simultaneously create conditions for further progress and exacerbate the growing inequalities and violations of basic human rights and freedoms for the vast majority of Chinese citizens. It is not clear whether foreign funders acknowledge and actively support the idea that civil society cannot by definition be created, controlled and ultimately limited by the government.<sup>59</sup> While the Chinese people continue to negotiate these limits, foreign funders should act as true agents for change by pushing the envelope to enlarge an independent civil space.

1. Stephanie Wang was the primary researcher and drafter of this paper. Erika Evasdotir contributed to the initial research.
2. Statement of Nancy Yuan, "To Serve the People: NGOs and the Development of Civil Society in China", Roundtable before the Congressional-Executive Commission on China (March 24, 2003) at 40, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_house\\_hearings&docid=f:86861.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_house_hearings&docid=f:86861.pdf).
3. Id.

4. For a general overview of foreign-funded legal reform projects, see *Law and Rights Project Digest*, China Development Brief 4, no. 3 (Winter 2001/2002).
5. Zhao Liqing, *An Historical First Step: The International Conference on Non-Profit Sector (NPO) and Development* (July 26-28, 1999) at 4, [http://www.asiafoundation.org/pdf/zhao\\_liqing.pdf](http://www.asiafoundation.org/pdf/zhao_liqing.pdf)
6. Id. at 5.
7. Wang Zhenmin, "The Developing Rule of Law in China," *Harvard Asia Quarterly* 4, No. 4 (Autumn 2000), <http://www.fas.harvard.edu/~asiactr/haq/200004/0004a007.htm>.
8. Stanley Lubman, *Bird in a Cage: Chinese Law Reform After Twenty Years*, 20 *Nw. J. Int'l L. & Bus.* 383, 387 (Spring 2000).
9. "The National Security Implications of the Economic Relationship Between the United States and China", Report to Congress of the U.S.-China Security Review Commission (July 2002), ch. 4 at 2, [http://www.uscc.gov/ch4\\_02.htm](http://www.uscc.gov/ch4_02.htm). See also Mei-Ying Hung, "China's WTO Commitment on Independent Review: An Opportunity for Political Reform," *Carnegie Endowment for International Peace Working Papers* (November 2002), 3.
10. USCC, *supra* note 9.
11. Sharon Hom, "China and the WTO: Year One," *China Rights Forum* 1 (2003) at 15.
12. Id. at 16. See also Hung, *supra* note 9, and USCC, note 9.
13. Hung, *supra* note 9, at 5.
14. Lubman, *supra* note 8, at 410.
15. See Barry Hager, "The Rule of Law: A Lexicon for Policy Makers" (Mansfield Center for Pacific Affairs 2000), [http://www.mansfieldfdn.org/programs/program\\_pdfs/lexicon.pdf](http://www.mansfieldfdn.org/programs/program_pdfs/lexicon.pdf). Hager identifies the core components of rule of law as: constitutionalism, law governs the governments, an independent judiciary, law must be fairly and consistently applied, law is transparent and accessible to all, application of the law is efficient and timely, property and economic rights are protected, human and intellectual rights are protected, law can be changed by an established process which is transparent and accessible to all.
16. Eric W. Orts, *The Rule of Law in China*, 34 *Vand. J. Transnat'l L.* 43 (January 2001); Randall Peerenboom, *Let One Hundred Flowers Bloom, One Hundred Schools Contend: Debating the Rule of Law in China*, 23 *Mich. J. Int'l L.* 471 (Spring 2002). Thin theories for "rule by law" operate along formal or instrumental aspects of law that are required for a functioning legal system. Lon Fuller set forth eight widely-cited criteria for laws: they must be general, public, prospective, clear, consistent, capable of being followed, stable, and enforced. According to Peerenboom, thick theories for "rule of law" along any normative of political conception must first meet the threshold criteria of a thin theory. Thick theories are inflected with elements of political morality, including economic arrangements, forms of government, and conceptions of human rights.
17. Albert H.Y. Chen, *Toward a Legal Enlightenment: Discussions in Contemporary China on the Rule of Law*, 17 *UCLA Pac. Basin L.J.* 125, 138 (Fall 1999/Spring 2000). See also "Up Front with Wang Yu," 2 *China Rights Forum* 2 (2003) at 79, and Stanley Lubman, *Bird in a Cage: Chinese Law Reform After Twenty Years* (Stanford University Press 1999), 124-126.
18. Matthew C. Stephenson, *A Trojan Horse Behind Chinese Walls? Problems and Prospects of U.S.-Sponsored 'Rule of Law' Reform Projects in the People's Republic of China*, 18 *UCLA Pac. Basin L.J.* 64, 74 (Fall 2000).
19. Hager, *supra* note 15 at 1 (According to Hager, "adherence to the rule of law is firmly entrenched in the mix of policy recommendations which are the catechism of the United States government, international financial institutions and European nations, all of whom offer help and advice on achieving democracy and healthy economics.")
20. The World Bank Group, *Legal and Judicial Reform*, <http://www4.worldbank.org/legal/leglr/index.html>. The World Bank claims that "effective and coherent legal reform requires a comprehensive and sustainable

- approach that avoids importing 'models' inconsistent with national legal and socioeconomic norms." See also Aubrey McCutcheon, "Contributing to Legal Reform in China," in *Many Roads to Justice: The Law Related Work of Ford Foundation Grantees Around the World*, ed. Mary McClymont and Stephen Golub (2000), 163 (where a review of Chinese legal reform commissioned by the Ford Foundation cautioned that the variety of factors affecting legal reforms makes it "difficult to assess approaches and isolate contributions, and it is often inappropriate to attribute direct causation to a specific program, project, or approach.")
21. Zhao, *supra* note 5. See also Yuan, *supra* note 2.
  22. See, e.g., *The Tiananmen Papers*, comp. Zhang Liang, ed. Andrew J. Nathan and Perry Link (Public Affairs 2001).
  23. Hager, *supra* note, 15 at 40.
  24. The Asia Foundation Programs by Subject, <http://www.asiafoundation.org/programs/program-area-stat.html#civil>.
  25. World Bank, *supra* note 20.
  26. China Program Overview, Carnegie Endowment for International Peace, [http://www.ceip.org/files/pdf/china\\_03.pdf](http://www.ceip.org/files/pdf/china_03.pdf).
  27. Orts, *supra* note 16.
  28. World Bank, *supra* note 20.
  29. *Government of Canada Policy of CIDA on Human Rights, Democratization and Good Governance 22*, available at <http://www.acdi-cida.gc.ca>.
  30. McCutcheon, *supra* note 21, at 163.
  31. *Development and Human Rights: The Role of the World Bank* (1998), 15.
  32. CIDA, *supra* note 30, at 21.
  33. McCutcheon, *supra* note 20, at 5.
  34. Office of Democracy and Governance, USAID, [http://www.usaid.gov/pubs/cbj2003/cent\\_prog/dcha/dg.html](http://www.usaid.gov/pubs/cbj2003/cent_prog/dcha/dg.html).
  35. *National Committee on United States-China Relations Annual Report 2001*, [http://www.ncuscr.org/Publications/NC\\_AN\\_2001.pdf](http://www.ncuscr.org/Publications/NC_AN_2001.pdf).
  36. *Promoting the Rule of Law in China*, Roundtable before the Congressional-Executive Commission on China (May 24, 2002), 8, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_house\\_hearings&docid=f:80531.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f:80531.pdf).
  37. Objective 10: Rule of Law, Goals and Objectives, UN China, [http://www.unchina.org/goals/html/obj10\\_law.shtml](http://www.unchina.org/goals/html/obj10_law.shtml).
  38. See Nick Young, "Searching for Civil Society," 250 Chinese NGOs: Civil Society in the Making (August 2001), 9 ("As with other, fundamentally normative, social and political concepts (such as 'social justice', 'democracy' or 'sustainable development'), there is more widespread agreement that this is a good thing than agreement about what exactly it is, or should be."). See generally Jude Howell and Jenny Pearce, *Civil Society and Development: A Critical Exploration* (Rienner 2001); *Civic Discourse, Civil Society, and Chinese Communities*, ed. Randy Kluver and John Powers (Greenwood Publishing Group 1999).
  39. Barnett F. Baron, "Funding Civil Society in Asia: Philanthropy and Public-Private Partnerships," Working Paper no. 3, The Asia Foundation Working Paper Series (July 1997), 29, <http://www.asiafoundation.org/pdf/WorkPap3.pdf>.
  40. *Asia Foundation Annual Report 2002 4*, [http://www.asiafoundation.org/pdf/TAF2002\\_AR.pdf](http://www.asiafoundation.org/pdf/TAF2002_AR.pdf).
  41. See [www.fordfound.org](http://www.fordfound.org).
  42. Statement of James Feinerman, Hearing on Human Rights in the Context of Rule of Law before the Congressional-Executive Commission on China (February 7, 2002), <http://www.cecc.gov/pages/hearings/020702/feinerman.php>.
  43. Programme Overview, The EU-China Legal and Judicial Co-Operation Programme, <http://www.legaljudicial.org/EN/programme.htm>.
  44. Australia-China Human Rights Technical Cooperation Program, AusAid: Publications, [http://www.usaid.gov.au/publications/pubout.cfm?id=87\\_9423\\_32\\_87\\_2420\\_3651](http://www.usaid.gov.au/publications/pubout.cfm?id=87_9423_32_87_2420_3651).
  45. China: Technical Cooperation in the field of Human Rights, National Projects, Office of the High Commissioner for Human Rights, <http://www.unhcr.ch/html/menu2/aschi.htm>. See, e.g., Advisory Services and Technical Cooperation in the Field of Human Rights, Written Statement of Human Rights Watch, Commission on Human Rights, 57th Sess., U.N. Doc. E/CN.4/2001/NGO/36 (2001).
  46. Memorandum of Understanding between China's National Legal Aid Center, Ministry of Justice for China, and International Bridges to Justice, [http://www.ibj.org/memorandum\\_of\\_understanding.htm](http://www.ibj.org/memorandum_of_understanding.htm).
  47. "Legal Clinics in China," Clinical Legal Education Research Institute and Clinical Legal Education Committee (July 2002).
  48. McCutcheon, *supra* note 20, at 179.
  49. China Development Brief, *supra* note 4.
  50. "Legal Reform in China: Ensuring WTO Compliance," The Asia Foundation (August 2001), <http://www.asiafoundation.org/pdf/1pgr.china.wto.compliance.pdf>.
  51. Id.
  52. *Many Roads to Justice: The Law-Related Work of Ford Foundation Grantees Around the World 6* (Stephen Golub & Mary McClymont eds., 2000)
  53. Harold Hongju Koh, *A United States Human Rights Policy for the 21st Century*, 46 St. Louis U. L.J. 293 (Spring 2000).
  54. USSC, *supra* note 9.
  55. Thomas Carothers, *The Rule of Law Revival*, *Foreign Affairs* 77, no. 2 (1998) (Rule of law programs have been subject to the same limitations. According to Carothers, a senior officer of the Carnegie Endowment for International Peace, "Western nations and private donors have poured hundreds of millions of dollars into rule-of-law reform, but outside aid is no substitute for the will to reform, which must come from within.")
  56. *Supra* note 52 at vii-viii and 2-3. The Ford Foundation's Global Law Programs Learning Initiative (GLPLI), which set out to document and describe how law-based strategies have played out in various countries and contexts, aimed by intention to be "more a studied appreciation than a critical analysis of their efforts" and explicitly disclaimed a strongly evaluative focus: "these consultants were not requested to conduct an evaluation of objective scientific study, or to precisely measure the impact of law-related work. See also Jerome A. Cohen and Nicholas H. Howson, *Assisting Legal Education and Research in China: A Report Prepared for the Ford Foundation* (October 30, 1991).
  57. Statement of Nancy Yuan, "Promoting the Rule of Law in China," Roundtable before the Congressional-Executive Commission on China (May 24, 2002), 34, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_house\\_hearings&docid=f:80531.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_house_hearings&docid=f:80531.pdf).
  58. See Statement of William Alford, Hearing on Human Rights in the Context of Rule of Law before the Congressional-Executive Commission on China (February 7, 2002), (stating that "legal development is necessary for the realization of internationally recognized standards of human rights in China, but is not a substitute for that vital end. Some here and in China may find it tempting to accentuate the former rather than the latter on the grounds that it is less likely to come across as confrontational. That would be a mistake.")
  59. *Supra* note 2 at 5 (Chinese scholar Ma Qiusha contends that "...the condition of the Chinese government's policy to promote NGOs is that the Chinese government believes the state has the ultimate control over NGOs).

# CHART B. FOREIGN INITIATIVES FUNDING FLOWS

This chart maps the flow of funding streams in foreign-funded initiatives. It does not aim to present a static summary of a multilayered and complex universe, but to serve as a broad conceptual mapping of funding flows between some of the key funders and Chinese counterparts.

