CASE STUDY SIXTEEN

Campaign-style and investigative research and reporting is no longer possible, despite having had positive policy impacts previously

A key objective of this Ford Foundation-funded research project is to monitor and evaluate the state of implementation of China’s Overseas NGO Law by documenting the intended and unintended consequences of the new law for European non-profit organisations and their Chinese partners. This case study is based on an in-depth interview conducted after the enactment of the law. It has been anonymised to protect the identity of both the organisation and interviewee(s).

Short version

Past

This organisation is an international environmental NGO with headquarters in the Netherlands and has been working in China for about fifteen years through an office in Beijing. It has been successfully working on a range of topics relating to environment, climate change, sustainable development, industrial pollution and protection of endangered species. In this wide field of environmental protection and sustainability, the main impact have been achieved through activities of policy advocacy and campaigning.

This INGO has, so far, not been able to find a supervisory unit and, therefore, is not yet registered. Having said this, the organisation was able to register several temporary activity permits, as of August 2018, in total eight temporary activities have been registered, two from last year (2017), six from this year (2018). The Chinese partners are Shanghai Institution of International Studies (SIIS), Tsinghua University and China Association for NGO Cooperation (CANGO). These three permits are about projects on climate change, air pollution and human health, and protecting the Antarctic.
Present

Under the new framework of the Overseas NGO Law (henceforth: the law), this INGO has shifted its activities to environmental education, awareness raising, capacity building, or technical research with academic partners. Under the law there is no opportunity for advocacy work. Previous campaign-style and investigative research and reporting which included naming and shaming of big polluters and emitters, in some cases powerful state-owned enterprises, is not possible any longer – although this work in the past received attention by Minister Xie Zhenhua and contributed to policy changes with direct positive impacts on the ground. Similarly, work on heavy metal pollution of old industrial sites, which included taking samples of contaminated soil and water in specific sites, is not longer possible. Furthermore, helping local communities against pollution not possible.

The overall relationship with the Chinese partners since the implementation of the law continues to be good. After 2017 the INGO had to secure one key Chinese partnership to help apply for the temporary permit, deal with supervisory departments and carry out the activities. This is quite a new experience and change in operations for the INGO. Before 2017 the INGO mainly implemented the projects through their own staff. Now the INGO has to invest additional resources to look and find for Chinese partners, get approval from their supervisory unit and file the project records with the police.

It is not an easy process to find a Chinese partner to work with the INGO throughout the whole process. It is even more challenging for the supervisory unit of our Chinese partner, usually a government department or big research institution, to approve the projects because they have to take responsibilities for the foreign CSO and the outcomes of the projects.

Future

Despite the difficulties faced so far, the INGO has decided to continue working in China and to respect the law. It will continue to focus on the output of the projects and how to make the environment better. The INGO will discuss with Chinese partners and the supervisory units of the various temporary activities about the approaches and different framing if the need arises.

At the time of writing it is too early to say which direction the activities and engagement will take. The CSO has not retreated on any particular topic, but the way and methods the various environmental topics are approached has changed as a result. Most importantly, the environmental watchdog function of INGOs is not possible anymore. So far, there are no red lines which have been crossed and repositioning was not required. The INGO has decided to stay and continue its work and try to push for opening civic space in the future. The international head office has been very supportive and intends to keep the Beijing representation.

It would not be possible to do the work from an office elsewhere outside of China, even from a Hong Kong office. To make a difference it is necessary to have local representation, use the temporary activities to prove to the authorities that the INGO is a good organisation which brings benefits for environmental governance and sustainable development. High level politicians see the INGO not as a threat, but as a useful actor to push for green transformations. But many ministries see INGOs as additional burden and potential risk (ministries as supervisory cannot take any fees from the INGO). They have a lack of staff and capacity, there is no benefit for the ministries to act as supervisory organisations.
EU-China relations beyond aid

The INGO has not been directly involved in high-level EU-China People-to-People Dialogues or bilateral sectoral dialogues. Having said this, due to its international reach, the Chinese colleagues have frequent exchanges with European colleagues. They also participate in international events and conferences, for instance the annual climate change negotiations of the UNFCCC.

The INGO believes that attention by other governments such as the EU member states and external push on Chinese government can help INGOs gain registration - from previous experience the diplomatic engagement with China on the INGO registration has proven to be useful. There is hope that the European Union can raise the issue to China at some high-level political dialogues. It is important to provide names of some key INGOs in the conversation and make it explicit which INGOs requires support to complete registration.

Full version

Past

This organisation is an international environmental NGO with headquarters in the Netherlands and has been working in China for about 15 years through an office in Beijing. It has been successfully working on a range of topics relating to environment, climate change, sustainable development, industrial pollution and protection of endangered species. In this wide field of environmental protection and sustainability, the main impact have been achieved through activities of policy advocacy and campaigning. The INGO has, so far, not been able to find a supervisory unit and, therefore, is not yet registered. Having said this, the organisation was able to register several temporary activity permits, as of August 2018, in total eight temporary activities have been registered, two from last year (2017), six from this year (2018). The Chinese partners are Shanghai Institution of International Studies (SIIS), Tsinghua University and China Association for NGO Cooperation (CANGO). These three permits are about projects on climate change, air pollution and human health, and protecting the Antarctic.

The temporary activities last for only for one year, then they can be extended for one additional year, after two years the organisations needs to apply for new one. The administration workload to do the paperwork for temporary activities is very high, as the organisation needs to negotiate cooperation contracts with the Chinese partners as well as the supervisory organisation/unit. Every organisation has different interpretation of how to implement the temporary activity regulation, there is no streamlined procedure. If the supervisory unit does not agree to the cooperation agreement between the international CSO and the local partner, one needs to find new partner. For one of the temporary permits, it needed negotiations with six partner organisations to be able to satisfy the supervisory unit. The temporary activity regulation is not necessarily a bad thing, as it gives the INGO a legal basis for operating in China. Within the temporary activity permit there even exists some flexibility, e.g. for start time of project implementation. In comparison to the full registration, the temporary activity only concerns one project, so when being registered and submitting annual work plans for approval, one project could hold up the whole approval process of other projects. However, there is some uncertainty how long the temporary activity permit regulation will be applied, therefore the goal is to complete the registration as soon as possible.
State of China-related activities. While operating on the basis of the temporary activity permits, at the same time the organisation has been talking to various ministries and government departments about registering as a representative office in China, including the Ministry of Environment (MEP) and the State Forest Protection Agency (SEPA). The State Forest Administration accepted a range of international environmental CSOs and animal protection organisations (it has accepted more international INGOs than has the MEP), but refused to become the PSU for this INGO on the grounds that the INGO is doing too little work on forests.

Both government departments acknowledged the INGO doing important work in China and globally, but they also said many of the organisations projects and campaigns fall outside of their responsibility so that they advised to find some other PSU. The issue of finding a suitable PSU is also made more difficult as the contact departments in the different ministries—in this case the international cooperation departments—in many cases do not have time to meet with the INGO representatives to discuss the registration and supervision. The process to register is ongoing and will possibly even extend into next year as the CSO is still relying on temporary activities. The administration of temporary activities is resource and time intensive, especially the approval processes by the supervisory units. One temporary activity required approval signatures by nine different officials.

Under the new framework of the law, the INGO has shifted its activities to environmental education, awareness raising, capacity building, or technical research with academic partners. Under the law there is no opportunity for advocacy work. Previous campaign-style and investigative research and reporting which included naming and shaming of big polluters and emitters, in some cases powerful state-owned enterprises, is not possible anylonger – although this work in the past received attention by Minister Xie Zhenhua and contributed to policy changes with direct positive impacts on the ground. Similarly, work on heavy metal pollution of old industrial sites, which included taking samples of contaminated soil and water in specific sites, is not longer possible. Furthermore, helping local communities against pollution is not possible.

Overall, the current situation regarding the registration seems to be deadlocked. The main issue is how can a foreign INGO working not only in China but internationally, can tailor their work and adjust their structures to the Chinese government ministry system?

The INGO has the hope that the new Ministry of Ecological Environment with China’s new focus on and hardening pollution standards and enforcement could become the PSU for for the INGO. The reason why the former Ministry of Environmental Protection previously could not accept the INGO was because the scope of work too broad for the remit of the MEP, the INGO work also included climate change which was in the domain of China’s National Development and Reform Commission (NDRC).

Since the implementation of the new law, the Ministry of Public Security has become a new major organisation involved in managing foreign INGOs. In each province an office has oopened the Foreign NGO Management Office. These new offices and staff are more open to INGOs and have more resources than other ministries. The INGO has been dealing with these local Foreign NGO Management Offices in various provinces to register the temporary activities with the local police.
The law has been mainly drafted by the Ministry of Public Security, which received significant funds and set up a new supervisory agency for the implementation. One suggestion of the INGO would be that the public security department can also act as supervisory organisation as well as doing the registration. This would address the current bottleneck as ministries or local government organisations cannot be requested to be supervisory organisations for NGOs. These other ministries would need more staff resources to become supervisory organisations, more resources should be allocated to organisations with experience in international NGOs, people-to-people exchanges and international cooperation projects.

Most of the INGO’s temporary activities act as funding projects to organise activities and workshops, etc. as the law does not specify what constitutes an activity. In the current situation, public security can now intervene any time when they see a problem with a specific project. Already many issues have been managed by the public security bureau, e.g. public education events. Public security has added a lot of public safety concerns as reasons to intervene. Other problems includes social media control, visa issues, etc. For example, any project that involves non-Chinese citizens makes it all more difficult. INGO foreign staff exchanges have become more complicated as only the INGO directors can get work permits for China.

**Impact of the law on Chinese partners.** The overall relationship with Chinese partners since the implementation of the law continues to be good. After 2017 the INGO had to secure one key Chinese partnership to help apply for the temporary permit, deal with supervisory departments and carry out the activities. This is quite a new experience and change in operations for the INGO. Before 2017 the INGO mainly implemented the projects through their own staff. Now the INGO has to invest additional resources to look and find for Chinese partners, get approval from their supervisory unit and file the project records with the police.

It is not an easy process to find a Chinese partner to work with the INGO throughout the whole process. It is even more challenging for the supervisory unit of our Chinese partner, usually a government department or big research institution, to approve the projects because they have to take responsibilities for the foreign INGO and the outcomes of the projects.

At the time of writing, it is still early to say what the long term impact of the law will be. What can be said already at this stage is that the quality of the work done by INGOS and their local CSO partners has been impacted by the law. The INGO has continued cooperation with many local Chinese CSOs, but the new law also stopped cooperation with some local CSOs. The reason is that many local NGOs do not have strong supervisory body, secondly, the new law requires to make project funding flows transparent.

Previously direct funding to local CSOs is not possible anymore, it now needs to go through the partner organisation. The new Chinese partners act as a filter between the foreign INGO and supervisory organisation. This situation is good for GONGOs and research institutes to act as intermediaries between INGOs and government. For local CSOs, the situation is less positive, although they can register directly with Ministry of Civil Affairs (MOCA), but MOCA does not take responsibility for the local CSO’s activities.
Future

Despite the difficulties faced so far, the INGO has decided to continue working in China and respect the law. The INGO will continue to focus on the output of the projects and how to make the environment better. The INGO will discuss with our Chinese partners and the supervisory units of the various temporary activities about the approaches and different framing, if the need arises.

At the time of writing it is too early to say which direction the activities and engagement will take. The INGo has not retreated on any particular topic, but the way and methods the various environmental topics are approached has changed as a result. Most importantly, the environmental watchdog function of INGOs are not possible anymore.

So far there are no red lines which have been crossed and repositioning was not required. The INGO has decided to stay and continue the work and try to push for opening civic space in the future. The international head office has been very supportive and intends to keep the Beijing representation.

It would not be possible to do the work from an office elsewhere outside of China, even from a Hong Kong office. To make a difference it is necessary to have local representation, use the temporary activities to prove to the authorities that the INGO is a good organisation which brings benefits for environmental governance and sustainable development. High level politicians see the INGO not as a threat, but as a useful actor to push for green transformations. But many ministries see INGOs as additional burden and potential risk (ministries as supervisory cannot take any fees from INGOs). They have a lack of staff and capacity, there is no benefit for the ministries to act as supervisory organisations.

EU-China relations beyond aid

The INGO has not been directly involved in high-level EU-China People-to-People Dialogues or bilateral sectoral dialogues. Having said this, due to its international reach, the Chinese colleagues have frequent exchanges with European colleagues. They also participate in international events and conferences, for instance the annual climate change negotiations of the UNFCCC.

The INGO believes that attention by other governments such as the EU member states and external push on Chinese government can help INGOs gain registration - from previous experience the diplomatic engagement with China on the INGO registration has proven to be useful. There is hope that the European Union can raise the issue to China at some high-level political dialogues. It is important to provide names of some key INGOs in the conversation and make it explicit which INGOs requires support to complete registration.

Project team (in alphabetical order)

Dr Horst Fabian, Dr Andreas Fulda (PI), Ms Nicola Macbean, Dr Patrick Schroeder, Mr Martin Thorley
Disclaimer

This publication has been produced with the assistance of the Ford Foundation. The contents of this publication are the sole responsibility of the University of Nottingham and can in no way be taken to reflect the views of the Ford Foundation.

This work is licensed under the Creative Commons Attribution 4.0 International License. To view a copy of the license, visit http://creativecommons.org/licenses/by/4.0/