



Electoral Administrative Framework for China

中国选举管理框架



**Electoral Administrative Framework for China
Conducting Local Elections**

中国基层选举之选举框架

Georgetown University
乔治城 大学

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Conducting Local Elections

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The Center for Democracy and Civil Society at Georgetown University

乔治城大学-民主与市民社会中心

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*Georgetown University, Department of Government
December 2011*

乔治城大学，政府学院
二〇一一年 十二月



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Democracy and Governance Studies

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Background

A recent political development in China has been the emergence of independent candidates, that is, candidates not affiliated with the Communist Party of China (Party or CPC), announcing their candidacies for local people's congress seats. Direct elections are conducted for village leaders and people's congresses. Although the Xinhua News Agency reported that "independent candidates" are not recognized by law, independent candidates have not been banned *per se* and their campaigning has continued on social networking sites such as *Weibo*. Nearly 100 individuals have announced such candidacies thus far. There are apparently different points of view on the issue within the Party leadership on the issue. In an editorial by some Party officials, a defense of independent candidates was put forward, saying that restriction on independent candidates was a "serious violation of socialist democratic principles." These individuals can be distinguished from "pro-democracy" groups in that their intent is not to defy the Party but simply to exercise their constitutional rights through independent candidacies.

Nevertheless, the candidate confirmation process is complex and requires potential candidates to demonstrate the support of at least ten other voters. The government has the authority to invalidate candidacies and does so regularly. But, independent political competition may be a new feature of Chinese elections, which were first conducted on the village level in 1978 by then-Party leader Deng Xiaoping. The next round of local elections is scheduled to occur from July to December 2012. If political competition is not regulated, the elections can become conflictive, can be arbitrarily conducted, and the value of elections can be diminished or destroyed. However, if an electoral framework is developed which provides established rules, impartial administrators, and results in fair contestation, then the presence of independent candidates can be managed as a mainstream element of Chinese political life.

Electoral Administrative Framework for China

Electoral reform has not been ignored by the Party. In 2010, the Standing Committee of the National People's Congress (NPC) adopted amendments to the Electoral Law intended to "perfect" existing direct elections at the local level. These amendments include obligating the local election committees to hold meetings for voters to pose questions to candidates. The existing legal framework for sub-national elections also includes Article 111 of the 1982 Constitution which stipulates direct election of village committees. In 1987, the Organizational Law of Village Committees was passed by the NPC. This law was amended in 1998 to improve the nomination process and to transfer nomination authority to villagers themselves.

The objective of the Electoral Administrative Framework for China group project is threefold: 1) to assemble the documentation and analysis of the legal framework and history on electoral policy and practice in China; 2) to describe the institutions, capacities, policies and practices required for Chinese civil servants to conduct multi-candidate, competitive elections; and 3) establish a set of evaluation criteria for this context to judge the freeness and fairness of the electoral process.

This report is divided into eight sections, each one focusing on a different aspect of the village level elections in China and examining the current condition of independent candidates. Section 1 looks at the current electoral legal framework regarding the local elections and analyzes possible gaps. Section 2 examines candidate eligibility, certification, and funding. Section 3 explores the development of election management bodies. The definition of electorates in the different districts is outlined in Section 4. Section 5 explores possible threats to electoral integrity while Section 6 outlines the importance of electoral dispute resolution mechanisms at the local level. Section 7 details the participation of the international community in election observation. Finally, Section 8 outlines how closely the Chinese election experience conforms to international election standards.

History of Electoral Practice and Current Legal Framework

Direct elections have been used to elect village councils and the local people's congress in China since the 1970s. Economic reforms during this decade contributed to changes in rural life and impelled the government to consider the possibility of lower level elections. Peasants began to own land and the old governmental structures were neither adequately representing the people nor providing the necessary attention to roads, security, or irrigation. Township representatives also had a difficult time fulfilling birth control quotas or collecting taxes. Thus, the concept of direct election was first explored by Deng

Xiaoping in 1978. Beginning in the early 1980s, villages began holding free elections to elect chiefs. Competition is currently not limited to Communist Party members; rather it is now open to any candidates regardless of political affiliation. Elections are held every three years and determined by a first-past-the-post system.

600,000 villages have moved toward a system of more competitive elections since 1988, allowing 75 percent of the country's 1.3 billion people to elect their own local leaders. The Carter Center has been instrumental in promoting the standardization of election procedures and fostering improved governance. The organization has promoted voter education programs, as well as better election procedures, and improved access to information. Community development has also been a focus for the Carter Center as it works in rural villages to expand civic participation and to promote volunteer activities.¹ The remainder of this section explores the current legal framework that makes these elections possible. Due to the nature of the elections and the vague national laws, relevant regulations are found in the Chinese Constitution, the Organic Law for Villagers Committees (Experimental), and provincial or regional legislation.²

Laws from the Chinese Constitution

The Chinese Constitution includes several articles relevant to the elections and the local people's congresses. The Constitution was adopted during the Fifth National People's Congress and went into effect on December 4, 1982. According to the Chinese government's official web portal, the Constitution has been amended four times since its initial ratification: 1988, 1993, 1999, and 2004. The Preamble to the Constitution reflects on the economic and social changes of the past decades and explains that:

People of all ethnic groups will continue to adhere to the people's democratic dictatorship and the socialist road, persevere in reform and opening to the outside world, steadily improve socialist institutions, develop the socialist market economy, develop socialist democracy, improve the socialist legal system, work hard and self-reliantly to modernize the country's industry, agriculture, national defense and science and technology step by step, and promote a coordinated development of material, political and spiritual civilizations to turn China into a socialist country that is prosperous, powerful, democratic and culturally advanced.³

Keeping with this Chinese democratic spirit, the Constitution includes references to the local people's congresses and the roles of the local bodies. Article 3 states that the "National People's Congress and the local people's congresses at various levels are constituted through democratic elections" and operate under a system of democratic centralism.⁴ According to Article 34, citizens must be at least eighteen years old to vote.

Articles 95 through 99 specifically address the local people’s congresses and the local governments. Article 95 states that congresses are established in the Chinese provinces or municipalities and represent the local government entities, including counties, cities, municipal districts, townships, ethnic townships, and towns. Article 96 notes that the local people’s congresses represent the state power at the local level.

Article 97 explains why these local congresses are important in Chinese government. Representatives in the lower level people’s congresses select the representatives to serve at the provincial and municipal level if those municipalities are directly under the central government’s jurisdiction. In addition, cities that are divided into different districts have their local people’s congress representatives elected by the body directly below it in the hierarchy. Conversely, the people in cities that are not delimited into districts directly elect their representatives. Representatives in municipal districts, townships, and ethnic townships and towns are likewise directly elected.⁵ Table 1 summarizes this information:

Table 1: How representatives to the Local People’s Congresses are elected at different levels of government:

Direct election of representatives: <i>These bodies also elect people to the higher levels, shown on the right</i> • Cities not divided into districts • Municipal districts • Townships • Ethnic townships • Towns	Indirect election of representatives by the next lowest level • Provincial level • Municipal level if directly under the jurisdiction of the central government • Cities divided into districts
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The Chinese Constitution also indicates the length of term and some of the roles of these administrative bodies. Article 99 outlines the roles of the local people’s congresses. First, these congresses ensure that constitutional laws are being following in their areas. Secondly, the congresses can write and issue local resolutions and develop plans for local economic, public service, and cultural programs “within the limits of their authority as prescribed by law.”⁶ The fact that the Constitution notes that there are limits to the authority of these congresses demonstrates that these bodies may not be able to fully implement laws or programs that are appropriate for their area. The Constitution explicitly states that local people’s congresses that are at or above the county level should “examine and approve the plans for economic and social development and the budgets of

their respective administrative areas.”⁷ It also says that congresses at or above the county level have the legal authority to change or to rescind decisions of standing committees in the area, similar to the way in which higher levels of government in the United States and other federal systems have the authority to examine laws or policies of lower levels. Lastly, Article 99 notes that in ethnic townships the people’s congresses can perform actions or pass measures that benefit their particular ethnic group; however, these activities still have to be within the limits of the law and the Constitution does not specify what actions can be taken.

From the Organic Law of the Villagers Committees

The Chinese government issued the Organic Law of the Villager Committee (Experimental) in 1988. The 21 articles were meant to be provisional, and officials left many of the specifics regarding the elections open to interpretation by the lower levels of government.⁸ By 1990, 74.6 percent of rural residents reported that their villages had elections, with 37.1 percent reporting that the elections were “semicompetitive”, meaning that there were more candidates than seats.⁹ The Organic Law was revised in 1998 and provided more provisions; however, according to some scholars, Chinese officials should still standardize procedures.

At the fifth meeting of the Standing Committee of the Ninth National People’s Congress in 1998, the Chinese government adopted the new Organic Law of the Villagers Committees. These laws were written under a more open process than in the 1980s and officials listened to the advice of foreign experts. Improvements to the candidate nomination process were made in an effort to improve accountability in village committee administration. In addition, to improve transparency within the process, the law called for all nominations to be made by villagers rather than village groups or branches of the Communist Party. These changes were made in efforts of improving transparency within the sub-national electoral process.

Of the 30 articles, seven deal specifically with election rules and procedures in the village committees. While many of these articles will be examined more closely later in the analysis, this section explains the importance and roles of the village committees as well as the specifics regarding elections and even removal from office.

The Organic Law notes the purpose of the village committees and places a formal restriction on the ability of higher levels of government to influence the committees. The committees help villagers understand the Constitution, laws, and regional policies in addition to how these regulations apply to the local context. In this way, the committees can act as a mediator between the population and the higher levels of government. In addition, as noted in Articles 6 and 7, the committees can attempt to bring people of different ethnic groups together within their jurisdiction. The Organic Law also notes that

the villagers committees can set up villagers groups, whose leaders are elected during the group meetings. This helps to bring a sense of democracy below the villagers committees. In an effort to discontinue the ability of township governments to influence candidacies in lower level elections, officials included Article 11, which states that no one can “appoint, designate, remove, or replace members of the Villagers Committees”.¹⁰ This stipulation should help independent candidates seeking election if officials at a higher level or at the villager committee level cannot lawfully appoint or designate someone.

While the law does not mention that candidates have to be from the CPC, it does include some details regarding how elections should be conducted and who is eligible to run as a candidate and vote. Article 2 notes that elections, decisions, administrative practices, and supervision should be done through “democratic means” and that they should work to “convey the villagers’ opinions and demands”.¹¹ Articles 11 through 15 address the elections. The villagers committees are responsible for handling disputes and maintaining order. The chairman, vice-chairman, and other members are elected directly and cannot be appointed for the three-year terms. Those who are 18 or over can vote in the election, as long as they have not been deprived of their political rights. There is also a village election committee, with members elected by the village assembly or villagers groups. Additionally, Article 14 addresses the new winning requirement in elections. Instead of a candidate needing “50 percent of the eligible voters of the entire village” to be elected, candidates now need to make sure that they have 50 percent of the votes cast, with 50 percent of the eligible population voting.¹² As noted below, this continues to complicate the voting process. Article 14 also mentions the importance of a secret ballot and private voting booths.

Lastly, the Organic Law addresses assemblies and the spirit of democracy in the Chinese context. As noted in Article 17, the assemblies are convened when at least a majority of villagers over the age of 18 join together or when they have at least two-thirds of the households represented. According to Article 19, village assemblies initially discuss issues such as funding, rates for subsidies, the use of profits obtained from collective activities, proposals for schools and roads, and contract questions. The assemblies share their conclusions with village committees. This measure intends to bring a stronger sense of democracy to the lower levels of government. A spirit of democracy is also expressed in Articles 23. Article 23 notes that the villagers committees should “adhere to the mass line, give full play to democracy, [and] carefully heed dissenting opinion” without using “coercion, commandism or retaliation”.¹³

Recommendations

As China continues to allow more independent candidates to run in the elections, it will be important to implement additional measures into the constitutional framework and into the Organic Law. Because the laws regarding elections are vague with many decisions

being left to sub-national authorities, there is a great deal of variation in rules and procedures and this makes it difficult to standardize Chinese elections. Tan notes that while the Ministry of Civil Affairs modified the Organic Law of Villagers Committees in 1998, a lack of full information on the quality of local elections made it difficult to know what specifically had to be changed. In 1997, a study reported that only 20 percent of towns “[had] well-written election methods”.¹⁴ Therefore, while the 1998 law did make some changes, there are still measures that the government can take to consolidate the election framework further and to make the process more fair and cost-effective.

First, candidate nomination practices should be more standardized, perhaps starting at the provincial level. For example, possible candidate selection reforms are demonstrated by the Fujian case; village assembly representatives hold a primary election whereby citizens vote via secret ballot and select final candidates. This procedure would eliminate the need for all citizens to vote twice in the elections, but would allow the process to be more transparent and democratic.

Secondly, the Villagers Committee Law does not include a framework for campaigns. While Tan notes that a campaign framework may not have been as important in the past since people knew the candidates personally, it would be prudent for the provincial governments to coordinate lower-level regulations since more people are running as independents.¹⁵

Thirdly, although the winning rule is an improvement over the 1988 law it should still be modified. Currently, candidates need to have 50 percent of the votes cast, with 50 percent of the eligible voters participating. This rule gives election officials an incentive to use so-called roving boxes (portable election stations) and proxy voting to increase the voter turnout; however, these roving boxes can increase the number of electoral irregularities, and proxy voting undermines the idea of a secret ballot and the principle of one person-one vote. By implementing a plurality rule, officials would be less likely to use these tactics to increase voter turnout, there would be fewer irregularities on election day, and independent candidates especially would be more confident that the process was conducted fairly.¹⁶

Fourth, Tan asserts that despite the changes to the Organic Law regarding the villagers committees, Chinese officials need to further standardize policies and synchronize tactics to allow democratic principles to be more present in the elections.¹⁷ Standardized policies would clarify the rules regarding independent candidates throughout the country. Tan suggests that election principles be explicitly stated in national standards and in legislation for villagers committees while specific rules should be standardized within individual provinces.

Fifth, provincial and regional officials should coordinate election dates so that local governments can manage them more efficiently and can provide more centralized civic education and election training. This would also allow the voters to become accustomed to voting during a certain time of the year, further ingraining an election culture in the country.¹⁸

Lastly, Yawei Liu, the director of the China Program at the Carter Center, notes that the government should increase the ability of deputies to fully exert their authority, whether at the town, county, municipal, provincial, or national level. This would allow independent representatives to be more autonomous. To accomplish this, the CPC would need to “cede lower level control” to allow compliance with the laws.¹⁹ Essentially, without standardization of electoral policies at the sub-national level, the benefits of direct elections will not be fully realized. China’s electoral system can be changed dramatically if practices at the local level are re-evaluated. Norms established and enforced at the sub-national level could effectively impact issues of CPC dominance at the national level as a result. Additionally, the exertion of power and authority by officials at the local level could also lead to an erosion of the CPC’s ability to dominate national elections. While allowing free elections at the local level is a sign of liberalization, it is not sufficient in providing for competitiveness and a demand for popular legitimacy.

Candidate Eligibility, Certification, and Funding

Candidate Eligibility

When discussing the rules that govern candidate eligibility, certification, and funding in China, it is first necessary to refer to Article 79 of the Chinese Constitution which states, “Citizens of the People's Republic of China who have the right to vote and to stand for election and who have reached the age of 45 are eligible for election as President or Vice President of the People's Republic of China.”²⁰ However, as in many political systems, electoral eligibility, as presented on a constitutional level, should not be taken at face value. Often times, individuals aspiring to become presidential candidates must progressively rise through a country’s ranks of governance. To comprehend the notion of candidate eligibility within the Chinese government, it is essential to examine the roots of the country’s political system: the National People’s Congress and local council governments.

The President and the Vice President of the Republic of China are selected by the National People’s Congress. Members of the National People’s Congress are elected by the country’s 22 provincial councils, five autonomous regions, and four provinces-municipalities, all of which constitute the highest of level of local city governance in

China.²¹ To qualify for a position on a provincial council, a candidate must first emerge victorious on each of the three preceding levels of local council governance. The first level of local council governance is constituted by local town councils. Elections for representatives on local town councils offer the sole opportunity for the Chinese public to directly vote for political representatives. Once an individual obtains a seat on a local town council, he/she may then run for a seat on a city or municipal council if nominated by fellow town council members. If elected to a municipal council, candidates can then run for a position on the regional and provincial levels respectively, and eventually become candidates for the National People's Congress. The key factor here is that any candidate who attempts to rise through the ranks of the Chinese parliament must do so with the aid of fellow council members. Thus, a candidate that shares ideologies, policies, and beliefs with fellow councilmen is more likely to achieve political success.

In 1979, the Chinese government passed "The Election Law of the National People's Congress and Local People's Congress of the Republic of China" in order to systematize the country's governmental structure. This election law, amended in both 1982 and 1986, details a variety of subjects that pertain to election logistics. Specifically, Chapter VII Article 26 of the election law discusses the necessary requirements that any political candidate must possess. According to Article 26:

Candidates for deputies to the national and local people's congresses shall be nominated on the basis of electoral districts or electoral units. Political parties and people's organizations may either jointly or separately recommend candidates for deputies. A joint group of at least ten voters or deputies may also recommend candidates. Those who submit recommendations shall inform the election committee or the presidium of the congress of their candidates' backgrounds.²²

Article 26 of the Chinese electoral law permits candidate eligibility through two mediums. First, any official recognized political party or social organization may nominate candidates to run for local council governments. Aside from the dominant Communist Party of China, there are eight officially recognized political parties that hold a subservient status to the CPC. Prominent social organizations that can nominate candidates include the All-China Youth Foundation, the All-China Women's Foundation, the All-China Federation of Trade Unions, and the All-China Federation of Industry and Commerce.

A candidate can also become eligible for a position on a local city council through social endorsement as an independent candidate. Article 26 of the Chinese electoral law includes a clause which states that any individual who has reached the age of 18 and is registered to vote is legally permitted to run for a seat on a local city council if that

person has received signatures from ten registered voters supporting the candidate's eligibility. Additionally, every electoral candidate must acquire the permission of the presiding local city council in order to be officially listed as a candidate in the elections.

Certification and Challenges

While the Chinese Constitution and electoral law dictate a relatively straightforward set of criteria regarding candidate eligibility, the reigning Communist Party of China has drastically convoluted the idea of candidate certification. This reality has not developed through the establishment of legal precedent, but rather through the unethical behavior of the presiding political party. Town council representatives are the only individuals that are directly elected by constituents, and a vast majority of elected local council officials are filled with members of the eight certified political parties and the CPC. Although the candidates may vary in regard to their official political affiliation, every party ultimately remains inferior to the CPC. For example, if both the CPC and an alternative political party endorse different candidates who are competing for the same position, then the CPC's candidate will emerge victorious because the second political party must defer to the CPC's decision. In other words, any election involving candidates that are not directly elected by the public is in essence predetermined.

The one loophole in China's seemingly impenetrable political system is the opportunity for independent candidates to participate in town council elections. If enough independent candidates can emerge victorious in these elections, perhaps they will be able to elect a representative to the next highest governing body. Throughout China's 2011 election year, numerous independent candidates have publicly announced their intentions to participate in local town elections. The recent emergence of independent candidates has become a widespread phenomenon that has swept across the entire country.

Only a handful of independent candidates have ever been elected to positions on local city councils, as it is nearly impossible for independent candidates to obtain certification from presiding local city councils. Local city councils have refused independent candidates a spot on local city council ballots despite the fulfillment of all necessary legal requirements. In one instance in October 2011, Chinese supermodel Cheng Yuting reached the necessary threshold of signatures required to participate in her local town election when she presented eleven signatures to the presiding local city council. However, Yuting was refused a spot on the ballot on the grounds that the signees failed to sign their names in front of the presiding local city council (a regulation that does not appear to exist).²³ As there is no rule stipulating a precise quota of government seats in China reserved for women, some argue that the local city council rejected Yuting on the basis of chauvinistic bias. This position seems highly unlikely as the number of women that have participated and have won seats in the National People's Congress has

increased over the past few decades. Currently the National People's Congress is composed of 21 percent female members.

The Chinese government has also attempted to reduce the number of independent candidates running in local town council elections by prohibiting them from printing campaign posters or giving public speeches, and by refusing to inform them when elections will be conducted. Many independent candidates have turned to internet websites, such as Facebook and Twitter, to announce their candidacy and to advertise their political positions, but even these websites have been censored by the Chinese government. One famous independent candidate, charismatic ex-sports journalist Li Chengpeng, stated, "I'm worried that if I leave town for a couple weeks, they'll hold the elections when I'm gone. Everything I do, every call I make, is known by the authorities."²⁴

Beyond prohibiting independent candidates from campaigning and failing to inform them of election dates, the Chinese government has also taken a hands-on approach to reduce the number of independents running for local city councils by performing intense background checks, arresting candidates, and even kidnapping those who fail to comply with the government's demands. The Chinese government has conducted extremely elaborate background checks on all independent candidates in order to find any infraction that either warrants arrest or could prevent candidates from participating in local town council elections. Yao Lifa, a Chinese school teacher and a former independent parliamentary delegate, was taken into custody by Chinese authorities without due cause upon announcing his election campaign. Another famous independent candidate, property tycoon and billionaire Cao Tian, has mysteriously disappeared after he announced his intention to run for mayor of Zhengzhou and to end corruption in the Henan Province.²⁵

In spite of the immense obstacles faced by Chinese independent candidates, a select few have managed to prevail. Guo Huojia, 60, and Li Youzhou, 37, of Foshan, emerged victorious in China's southern Guangdong province as their campaigns appealed to the province's dominant agricultural sector.²⁶ Due to his victory, Huojia was placed under house arrest and has been detained at home ever since. Despite the hardships and limited opportunities faced by independent candidates when participating in local council elections, the minimal success achieved by independents has delivered a tiny beacon of hope for future political triumph.

Finance Regulations

China's official political parties, including the presiding CPC, receive financial grants from the National Treasury. While membership dues and contributions from individuals and businesses do allocate resources to the political parties, the bulk of funding comes

directly from the National Treasury. There are currently no procedures for legal supervision of such grants and proposals for reformation have been consistently put aside untouched. Conversely, independent candidates receive no public financing and must rely on personal assets or individual contributions when campaigning. The lack of legal statutes stipulating financial regulations has served as a major impediment to independent candidates seeking to advertise their campaigns to the general public.

Election Management Bodies (EMBs)

Conceptual Overview

The ACE Project describes an Election Management Body (EMB) as “an organization or body which has been founded for the purpose of, and is legally responsible for, managing one or more of the elements that are essential for the conduct of elections, and of direct democracy”.²⁷ These organizations can vary widely in their institutional arrangement, the range of responsibilities they are required to undertake, their composition, and the scope of their powers. Responsibilities for conducting a range of electoral tasks are carried out not only by the management body at the national level but also by a range of “local-level commissions, regional branches, government departments or local authorities”.²⁸ To operate transparently, professionally, and efficiently, it is fundamental to the broader credibility of elections that EMBs are considered impartial, independent from partisan influence, and accountable.

The nature of the Chinese EMBs in the Township People’s Congress and Village Committee elections will be examined from the perspective of their structure and appointment processes, and their operational and civic responsibilities. Case studies will be used to illuminate the in-practice nature of the EMBs. The direct elections currently being pursued in China have led to progress in establishing management structures to uphold the democratic values that underpin elections; however, there are areas for improvement that must be addressed to maintain the credibility and standards of these elections. Recommendations to improve upon current performance will be provided at the close of the section.

Structure and Appointment Processes

The structure of EMBs in China and their subcommittees varies by election type and province; however, both have decentralized government-managed EMBs, a style similar to that of the United States, United Kingdom, and Switzerland. The Department of Basic Level Governance in the Ministry of Civil Affairs was established in 1988 to provide an oversight role to the electoral process; however, its intervention in the Township People’s Congress and Village Committee elections has been relatively limited to date, conferring

large amounts of authority and functional independence upon the provincial and local management bodies.²⁹

Village Committee Elections

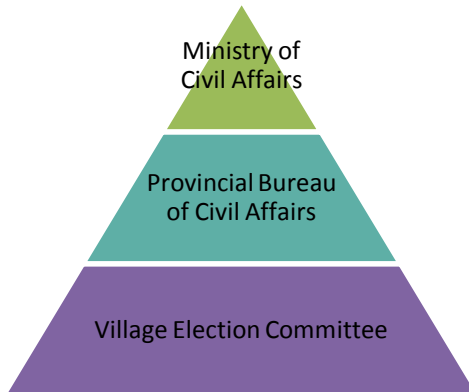


Figure 1: Structure of Village Council EMB

In the Village Committee elections the provincial Bureau of Civil Affairs appoints county level officers to help in the electoral preparations. Village Election Committees (VECs) are appointed to conduct registration and the election itself. Article 13 of the 1998 Village Election Law stated that VECs should be chosen by the village assembly or small village groups rather than the Party branch.³⁰ In practice there are cases of self-appointment or appointment by township officials.

Furthermore, while the law symbolically articulates a separation of the Party from the process, VEC members are predominantly Party secretaries of the village.³¹ The integrity of the VECs is also jeopardized in some cases due to the appointment of election candidates to its ranks.³² This is a sign that conflict of interest is not accounted for, or policed, in the appointment system.

Township People's Congress Elections

The election management structure for the Township People's Congress elections can vary widely in its complexity. Therefore, this assessment is based on the case study of Jiangsu Province.³³ In Jiangsu, the District Election Committee reports to the Ministry of Civil Affairs.³⁴ It has responsibility for drawing electoral boundaries³⁵ and determining the number of seats per electorate.³⁶ Their power to draw boundaries to include particular interests is noteworthy. For example, a small temple can become an electorate to ensure religious representation.³⁷

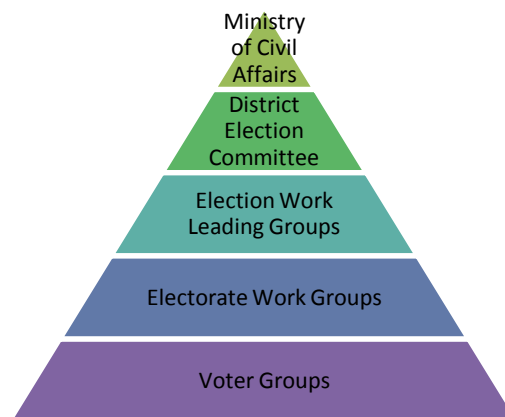


Figure 2: Structure of Township People's Congress EMB

A significant amount of election administration is delegated by the District Election Committee to the electoral units.³⁸ One of the electoral units in the Jiangsu case study was Nanjing University. At the electoral unit level, an Election Work Leading Group is

formed and these groups have the authority to determine the number and size of electorates *within* their unit. Once decided, Electorate Work Groups and, under them, Voter Groups are formed, which are responsible for organizing voter activities, nominating candidates, and participating in drawing up short-lists. In the Jiangsu case study, the average size of a Voter Group in the Nanjing University unit was 26.7 and 520 Voter Groups were established.³⁹ As with Village Committees, Party members take leading roles in both the district and unit committees.⁴⁰ For example, of the eight Chairmen of the Electorate Work Groups established in Jiangsu province, five worked in the Party.⁴¹

Experience has shown that the composition of the EMBs and how they are appointed is crucial to electoral integrity. When village elections were first established in China, local administrators hostile to the initiative used the relative lack of local knowledge to “monopolize nominations, conduct snap elections, demand party members vote for hand-picked nominees, ban unapproved candidates and annul elections if the ‘wrong’ candidates won.”⁴² If electoral laws are not clear and comprehensive, or not followed in practice, the appointment process is left open to abuse. Interestingly there is currently no requirement for a member of the judiciary to be a member of an EMB at either a village or township level.

Operational Responsibilities of EMBs

Conducting the Ballot

The Organic Law of the Local People's Congresses and Local People's Governments of the People's Republic of China (1979, 1982, 1986, and 1995) sets out the legislative arrangements for the ballot. Article 23 stipulates that there should be four voting choices: endorse a candidate, oppose a candidate, write in the name of any voter, or abstain. This is corroborated by the Election Law (1979, 1982, 1986, and 2010), in which Article 34 states that voters have four choices when marking their ballot.

An example of a ballot for a Township Election and one from a Village Election - demonstrating the practice of ‘negative voting’ - can be found in the Annex. In ‘negative voting’, voters must mark an ‘O’ by the candidate they wish to vote for and an ‘X’ by the candidate they wish to vote against. Voters have the option of adding in the name of an extra candidate if they choose; however, this practice can cause confusion as ballots can become invalidated if voters forget to indicate who they wish to vote against.⁴³ Conversely, changing a balloting system that has become accepted over time can also create the possibility that ballots are invalidated if voters do not have a clear understanding of the new system.⁴⁴ As the ballot changes from province to province it is the responsibility of each of the local EMBs to determine the most appropriate ballot;

however, common features are the use of a paper ballot and the printing of step-by-step instructions on the ballot itself to guide voters through the process. Pictures are provided in some cases but are not a consistent feature of the ballot.

Article 14 of the Organic Law of Village Committees (1987, amended 1998) stipulates that private voting booths, secret balloting, and open counting should be adopted. Article 23 of the Organic Law of the Local People's Congresses and Local People's Governments of the People's Republic of China (1979, 1982, 1986, and 1995) also emphasizes the use of a secret ballot; however, imprecision of the laws and a lack of understanding of, or appreciation for, electoral values and their importance has led to different local voting methods and frequent reported violations of the secret ballot principle. For example, in some areas, voting via a show of raised hands is commonplace and not all polling stations have enclosed areas for voters to mark their ballots.⁴⁵ Others do have enclosed areas; for example, in the small village of Qiuban, an empty classroom with a curtained-off desk became a secret ballot booth. The exception was that 'scribes', or teachers from outside the village, were available to complete the ballots for illiterate or handicapped voters.⁴⁶ The village of Xiwangping, which is west of Beijing, used a similar practice whereby officials were available to help voters complete their ballots. This election was open to foreign journalists for observation, and this suggests that it was representative of best practice; however, journalists did express concern at the potential for this practice to be abused if not regulated.⁴⁷

Proxy voting is a common feature in most village and township elections with only Fujian province prohibiting its use.⁴⁸ Voters are allowed to cast the vote of up to three people. This is intended to be a way to include those who are sick, elderly, and travelling during the election to boost voter turnout; however, if this practice becomes too mainstream it risks undermining electoral values that emphasize the sanctity of one person one vote and could lead to an entrenchment of family voting.

Finally, the roving ballot box is another element of balloting found in both the township and village elections. According to one report, in some villages more than 90 percent of the votes were cast in roving boxes rather than at polling stations.⁴⁹ This creates electoral integrity problems as the secrecy of the vote can be easily undermined due to the ballot being taken out of the controlled environment of the polling station. In addition, the potential for family voting increases because it is more likely that the male vote choice will be the vote of the family with the roving ballot box. Thirdly, this practice has been argued to "reduce the sense of civic obligation that comes with going to the polling station," particularly important in an environment where voting remains relatively new.⁵⁰ Measures have been instituted in some areas to avoid abuse of the practice. For example, in the IRI observation report on the villages of Tupu and Gongqiao in Fujian province, those wishing to vote through the roving boxes were required to be approved in advance.⁵¹

Poll Workers

Problems regarding the secrecy of the ballot and the credibility of other voting methods can stem from poor poll worker training, inexperience, and even an unawareness of electoral principles and their importance, rather than simply intentional electoral malpractice. In the case of village elections in Fujian province, it was observed that in one village the balloting was conducted in a “structured and rigidly enforced” manner in contrast to a neighboring village where there was “crowd[ing] around the ballot issuing table” with poll workers unable to re-establish order.⁵² In this case, poll worker training by the EMB could have reduced potential infringements on the integrity of the vote; however, poll worker training is not systematically addressed and built in to election preparations. Thus, training can be inferred to be ad hoc and dependent on the village EMB, with more emphasis placed on the accumulation of practice and experience.

Vote Tabulation

The ACE project’s “Guiding Principles of Vote Counting” detail eight important principles of vote counting: transparency, security, professionalism, accuracy, secrecy, timeliness, accountability, and equity.⁵³ These are all areas that require the attention of the EMB. How the EMBs manage voting tabulation, the precautionary measures they take, and the manner by which they report the results all have implications for the integrity of the elections.

As a step towards enshrining these values, the 1998 law does in fact require “open counting” and the immediate announcement of results.⁵⁴ Promisingly, the provisions of the law appear to be carried through in practice. It has been reported that tabulation is completed quickly, openly (often in full view of the community), and with judgment on the validity of ballots being dealt with by election committee members on the spot.⁵⁵ Vote tallies have reportedly been recorded on instruments ranging from abacuses to blackboards.⁵⁶ It is common practice to complete the counting and announce the results the same day as the election.

Civic Responsibilities

There are no national requirements or legislative provisions for voter and/or civic education, and it is not a consistent responsibility of EMBs in China. Although, cases of townships and villages conducting some form of voter and/or civic education using print media, radio, and television do exist.⁵⁷ Some areas hold town meetings explaining the voting process, while some polling stations post instructions on the walls, as in a recent case observed by foreign journalists in the village of Xiwangping.⁵⁸ In the village elections witnessed by IRI in 2003 in the province of Fujian, sample ballots, financial audits, and village representative assembly performance evaluations were displayed on the walls of the voting area.

These programs and practices are ad hoc with no centralized program. The consequences are reflected in the cases of violation of electoral integrity and the reported problems in convincing citizens in cities and the countryside that voting has significance. One of the challenges is illiteracy among voting populations, particularly at a village level, making face-to-face interactions valuable, but more administratively demanding.

Accountability

The literature does not provide significant details regarding the processes by which EMBs review procedures or have their performance reviewed. There is little discussion of the publication of budgets, activities undertaken, or successes. This is an important omission because without accountability and open reporting, EMBs risk undermining their credibility and open themselves up to attacks from electoral stakeholders. Some practices that can aid in this area include the auditing of EMBs and peer reviews of the functioning of the EMB. Alternatively, EMBs can take preventative measures to safeguard their accountability by implementing staff training programs and internal quality controls, ensuring minimum qualifications for staff, and testing ballot materials and polling day practices ahead of time.⁵⁹

Recommendations

It is important to address the issues of how current EMB structures and the electoral practices can be improved to aid in the implementation of free and fair multi-candidate and competitive elections. The discussion in this section has highlighted three key points that must be addressed to ensure the credibility and democratic integrity of the direct elections in China.

EMB Structure

It is important that the composition of the EMBs be made more representative as more competition enters the system and the stakes are raised. As detailed, the presence of Party officials within the EMBs is commonplace and risks undermining their functional independence. Including members of the judiciary or respected societal members and/or applying quota limits for Party officials could lead to greater representation. A conflict of interest provision in the law governing EMBs may also be a way in which to ensure that the appointment process is transparent and would avoid candidates being able to manage their own election.

Conducting Balloting

It is essential to improve the fairness and quality of the vote. While regulations on secret balloting exist, it is now important that civic education programs and poll worker training ensure that the secret ballot is respected in practice. For example, poll worker training should become compulsory and private poll booth designs standardized. Finally, stricter vetting of voters and targeted poll worker training should be carried out to ensure that roving balloting and proxy voting are reserved for those in acute need of these services and that they are carried out in a manner that upholds fundamental electoral values.

Voter and Civic Education

Many of the operational discrepancies between the in-law and in-practice conduct of Township and Village elections in China appear frequently to be more a consequence of a lack of awareness and understanding of electoral values and what is required rather than a conscious attempt to undermine the electoral practices and its standards. Therefore, there is a substantial need for more active engagement on issues of civic and voter education, which should be spearheaded by the local EMBs. In particular, programs should focus on why voting is important, how to vote, what the values of the electoral process entail, and how these values manifest themselves. There should be an emphasis on starting this education prior to polling day to avoid the risk of compromising values of ballot secrecy to help people understand how to vote.

Defining the Chinese Electorate

Legal context

The election committees at all levels are responsible for constituency demarcation and they determine the number of deputies in each district. They are also responsible for voter registration.

Article 3 of the election law states that “All citizens of the People's Republic of China who have reached the age of 18 shall have the right to vote and stand for election, regardless of ethnic status, race, sex, occupation, family background, religious belief, education, property status or length of residence. Persons who have been deprived of political rights according to the law shall not have the right to vote and stand for election.”⁶⁰ According to the article, the election committee should update the voter list to include citizens who have recently obtained registration cards. Second, it should add persons whose political rights have been restored to the list. Third, it should manage the list of people who have changed districts or died.

Announcement of Voter Registration Procedure

Voters should be informed of registration practices. In China several channels are currently used to announce registration. First, the election committee posts public announcements and distribute broadcasts at least one month before the election to inform voters of the schedule, voter registration procedures, and polling instructions. Second, the election committee checks local resident lists and other data in order to notify eligible unregistered citizens.

Some citizens have complained that they have never been informed about registration and voting. Most people who were born in the 1980s should have been eligible to vote in at least one election by now; however, many have indicated they have never obtained voter registration cards.

A recent online opinion poll about China's elections launched by Sina Weibo (Chinese twitter) revealed several serious problems. By November 11, 2011, 807 internet users participated in the poll. 85 percent indicated that they have not seen any candidate before the election and 11 percent did not identify their experience. 1 percent said that they knew candidates' political proposals and promises before the election. 44 percent reported that they had been told for whom they should vote. Only 9 percent indicated that they voted for candidates not on the list. Finally, 20 percent reported that they did not vote despite having a voter registration card.⁶¹

In another online survey, 43 percent of young people born after 1980 said they have never seen a ballot before. In addition, many claimed that they have never heard that they have voting rights. Since people who can get access to internet are relatively better informed than others, the real percentage might be even higher.⁶²

Often in practice, the announcement of voter registration is more of a formal procedure with little concrete information and instructions. An announcement should at least include the following content: registration location and times, documents required for registration, election location and dates, and the procedures for voting.⁶³ Some studies have suggested that voter registration should be announced through various channels. In addition to community posts and village broadcasts, informative brochures sent to each household and advertisements through mass media would improve the reach of the announcement. In Shanghai's Minxing district, the election committees at each level have held voter conferences and delivered brochures to mobilize voters. While these events and advertisements can directly mobilize people, the attendees can also encourage others to register and vote.

There are two ways to conduct voter registration in China: circulating registration and registration with fixed stations. For circulating registration, more eligible citizens can be registered as voters because this method expands the reach of the registration process to those who are not well-organized or informed by their working units, local communities, and residence committees. On the other hand, it contributes to a strong passive reliance on the convenient service. In the long run, voters might not be active in following the elections and pursuing their political rights. Actually going to fixed registration stations and finishing the necessary steps allows voters to become familiar with the voting process and attracts attention to the election; however, since people are not always well-informed or do not want to go through the process, the fixed station method has its problems as well. A more productive process would be to combine elements of the two methods. More local fixed registration stations should be set up with a wide coverage within the head office of each constituency. Proximity and convenient transportation will encourage voters to register. For local fixed registration stations, it is necessary to establish a central scrutiny mechanism in the head office to verify voter eligibility. Lastly, a circulating registration system should target social minorities and disadvantaged groups rather than geographic areas. For example, migrant workers are less likely to register because of the complexity of the process and this diminishes their political rights. Women and disabled groups could also be less likely to register and a circulating registration system could encourage them to complete the process.

Voter Identification

The procedure of voter registration under the election law has changed three times. In 1953, the first election law declared that the election committees of villages, town districts of cities, and cities with no district should register voters and issue voter registration cards. Voters who move should obtain certification from the election committee of his or her previous residence and the person's name should be updated to the voter list that matches the new address.

In 1979, a new regulation stated that voter registration should be done by constituencies. The voter list should be publically announced and the voter registration cards should be issued at least 30 days before the election.

In 1986, the amended law simplified the voter registration procedure. It announced that once a voter is registered, their voter status has long-term validity. That means that before every election, only citizens who have recently turned 18 years old need to obtain registration cards; re-enfranchised citizens also have to register to vote.⁶⁴

Now the legal context is the following:

Article 26: The registration of voters shall be conducted on the basis of electoral districts, and the voters' qualifications confirmed through registration shall have long-term validity. Prior to each election, voters who have reached the age of 18 since the last registration of voters or who have had their political rights restored

after a period of deprivation of political rights has expired, shall be registered. Voters who have moved out of the electoral districts where they originally registered shall be included in the roll of voters in the electoral districts to which they have newly moved; those who are deceased or have been deprived of political rights according to law shall be removed from the roll.

Citizens who suffer from mental illness and are incapable of exercising their electoral rights shall, upon determination by the election committee, not be included in the roll of voters.

Article 27: The roll of voters shall be made public 20 days prior to the date of election. And voter registration cards shall be issued. Where voters take part in elections and cast their votes on the strength of their voter registration cards, they shall be issued voter registration cards.

In practice, voters are not fully informed of required documents to certify their eligibility. Sometimes, they simply cannot provide documents on time. For example, in one community, potential voters are supposed to provide an original copy of his or her property deed to certify residency; however, if it is a mortgaged house and the original copy is not available, the person will not be able to register in that community. This might cause voters to miss the registration deadline.

There are three stages to announcing the voter list. The second and the third lists are revised by adding and deleting voters based on their eligibility. During this period, people who discover that they are not on the list can appeal to the court; however, in many cases it is difficult to be added onto the list. Some places announce the third or even the first voter list only one day before the election, which makes it impossible for citizens to check whether they appear on the list. This practice also limits the ability of candidates to target and organize their campaign since they do not know who makes up the constituency.

Moreover, the current registration system only addresses those who recently became eligible to vote. Since many potential voters have previously registered, they are not fully informed that they can participate in the upcoming election. Therefore, the system does not effectively encourage old voters to follow the progress of the elections.

Migrant Population

China has a large and expanding migrant population. In Xuhui District of Shanghai, approximately 35.03 percent of the population did have a local household registration in 2003. In Beijing, migrants make up 82 percent of the population in some neighborhoods. In some cities, more than half of the people report a difference between their household registration and their work location. During an election season, these citizens need to decide where to register. It is unrealistic for all of them to vote in their original location. On the other hand, the election committee of their current location may refuse to register them as local residents for various reasons. For example, they might be denied registration if they cannot offer certificates of their original voter qualification or their current working information. This means that they are disenfranchised.

The difficulties that EMBs face are numerous with regard to migrant populations. First, they cannot verify whether the voter has voted in his original location already. Second, it is hard to evaluate voter eligibility. Third, migrants are not as involved in the society and are generally less enthusiastic to participate in an election. Fourth, local people and government officials are indifferent to migrant populations. Fifth, since the migrant population frequently exceeds the local population in the larger cities, local people are reluctant to include migrant populations on the voter lists; however, since the migrant population has increased and has contributed to the society, they should be given reasonable channels to participate in political decision-making processes.

Yiwu Case Study

Yiwu is a city located in Zhejiang Province. It contains a large number of migrant workers and businessmen who are an important part of the city's population. They are also deeply influenced by local policies and regulations. Therefore, whether they can vote has a profound impact on both the city's development and their own interests. The original election regulation in Zhejiang Province allows migrants to vote if they have registered as a voter in their original residential election committee and have stayed in Yiwu for more than one year. The national election law does not include a requirement regarding the length of stay in the current residence. The one year requirement is partly reasonable because it means that new migrants will be more closely related to the city if they stay longer; however, some critics claim that the regulation hurts the new migrants who actually compose a larger portion of the total migrants. In Dachen Town, further changes concern the demarcation of districts and the rights to be elected. Since migrants make up more than 52 percent of the population in this region, the election committee has designed separate constituencies for them. In these constituencies, migrants are eligible to vote and to run in an election. It facilitates the ability of the migrants to be represented.⁶⁵ It is important to note that many locals and employers do not welcome these changes as their ability to influence local policies could diminish.

Military Voting System

The military uses a separate voting system. In the People's Liberation Army (PLA), the administrative units of the armed forces at or above the regimental level should set up an election committee. The PLA election committee is responsible for managing sub-level committees. All military officers and soldiers should vote through this system. In addition, other staffs and military families may vote through this system if they had difficulties registering in local elections. Military deputies who are working outside of the military should vote in local elections. The voter eligibility requirements are the same as those referenced earlier. Lastly, similar to the ordinary election, in the military there are two ways to be candidates. People can be recommended by an organization and recommended by more than 10 voters.

The PLA election committee should be comprised of nine to fifteen members, in which there is one chairman and one to three vice chairmen. Sub-PLA election committees should be made up of five to eleven members, with one chairman and one or two vice chairmen. Their tasks include checking the deputies' qualifications, setting election dates, announcing the candidate list, and organizing the polls. The Standing Committee of the National People's Congress decides the number of PLA deputies in the People's Congress. The sub-national standing committees of the National People's Congress follow the same structure. The sub-national standing committees should negotiate with local military to decide details of the elections.

The constituencies for PLA elections should be demarcated according to the military's regional distribution. Every constituency should have one to three deputies elected; the number depends on the district size. The elected PLA deputies make up a PLA deputy commission that elects deputies to the National People's Congress.

Dispute Resolution

Article 28: Anyone who has an objection to the roll of voters may appeal to the election committee. The election committee shall make a decision on the appeal within three days. If the appellant is not satisfied with the decision, he may bring a suit in the people's court at least five days prior to the date of election, and the people's court shall make a judgment before the date of election. The judgment of the people's court shall be final.

The shortcoming of such an arrangement is that the election committee is the same group that made the original decision to exclude a potential voter. If they intentionally disenfranchise someone, they are not likely to resolve the dispute in a just way. In addition, there is a power sharing arrangement of judges and election committee members. Therefore, it is unknown whether making an appeal can lead to positive results for the voter.

Demarcation of Constituency Boundaries

Currently, every level of constituent demarcation should be done by the next highest election committee. The constituency should be demarcated based on the ratio of representatives to total voters. The district can be based on work units or residency. Some other limits may apply regarding the representation of the ethnic minorities.

Legal Setting

Article 24: The number of deputies to the people's congresses in cities not divided into districts, municipal districts, counties, autonomous counties, townships, nationality townships, and towns shall be allocated to the electoral districts, and elections shall be held in the electoral districts. The zoning of electoral districts may be decided according to the voters' residence or on the basis of production units, institutions and work units.

The zoning of electoral districts shall be decided on the basis of one to three deputies to be elected from each electoral district.

In the most recent version of election law, some adjustments have been made to equalize the voting power of urban residents and rural residents. In the new law, Article 25 states that “the number of people represented by each deputy from an urban electoral district shall be generally the same. The number of people represented by each deputy from a rural electoral district shall be generally the same.”

Residency Based or Job Based?

Confusion still exists regarding whether the constituency should be defined by the working organizations or residency. In the past, most citizens in cities were hired by either the government or state owned enterprises. Therefore, only rural areas and villages had a bond with residency; this meant that it was easier to choose between the two systems of constituency demarcation. As more private companies and other forms of working units have emerged, the confusion between the two systems has become more prevalent. This confusion has also increased the possibility of gerrymandering.

In urban areas, the constituency has been mainly demarcated based on working units. The advantages to this system include that the election is relatively easy to organize, voters' political and economic interests are similar, and voters are more likely to know for whom they are voting. Some scholars have suggested constituency should be gradually shifted to residency-based regulations. They argue that voting within the work units can lead to negative effects. For example, the employees may be more likely to obey the order of the leaders and vote for a particular candidate. On the other hand, this loyalty relationship between staff members and leadership is less likely to result in resident communities. In addition, people living in the same resident community have similar interests regarding living environments and public goods. Voting for residency-based candidates could help to address these issues.⁶⁶

Size of Current Constituencies

The size of the constituency is mainly based on population. According to the new election law amended in 2010, elected delegates in rural or urban areas should represent approximately the same number of people. The voting power between urban and rural populations should be equal. In the past, four units of rural citizens could elect the same

number of delegates as one unit of an urban population. In practice the delegate- to-population ratios vary from one constituency to another. In a county level city of Guangdong, every 200 voters in the smallest district have one delegate; however, in the largest district, every 5000 voters have one delegate.⁶⁷ In another city of Guangdong, Nanhai, the two constituencies under the city's government have even larger differences in delegate-to-population ratios a difference of approximately 143 times. The same situation applies to other provinces. While defining the constituency according to working units rather than population can improve voting organization, it can also contribute to some of these dilemmas.⁶⁸

In addition, currently most of the districts are large and there are usually three deputies per district. As mentioned earlier, many voters are not familiar with candidates. Even though a major cause of low familiarity is a lack of campaigning, the district size also contributes. Voters do not know the candidates and candidates do not have the time and resources to meet voters in large districts. To enhance the quality of representation, the district size should be lower.

Minority Issues

According to the law, every ethnic minority group should have at least one delegate in local People's Congress. Ethnic minority groups with more than 30 percent of the local population should be represented by their own delegates in a proportion that is equal to their presence in the population. For ethnic groups that share less than 15 percent of the local population, the ratio of their delegates over the total delegates can be less than their population ratio; however, it should be more than half of the ratio. For groups whose population comprises between 15 percent and 30 percent, the ratio of minority delegates to the total delegates can be less than the population ratio and equal no more than 30 percent.

Ethnic minorities in a particular region should have their own separate constituency; however, in many cases, they do not make up an absolute majority in one region. Some research has suggested that in a region with at least two ethnic groups, the constituencies would be better defined through working units.

Social Transformation Brings Changes to the Current Situation

Currently, China is experiencing social transformation as millions of peasant workers are moving to urban area to seek temporary jobs. They usually have to vote in their hometown. This raises questions regarding how to count the population in a constituency. In addition, many educated people have moved to other cities for work. These changes occur often as people frequently change jobs and working units; thus the government needs to complete significant redistricting before each election.

Eliminating Voters' Interests

Fair elections should allow voters to have the possibility and the will to defend their interests; however, due to current demarcation practices, there are two major concerns for election management that lead to a distortion of the system. First, officials are very concerned with how easy it is to organize an election or create districts. This emphasis contributes to the development of constituencies that are usually work unit-based and too large. As mentioned earlier, such design can marginalize the interests of individuals as they might vote in accordance with how their superiors vote. Moreover, large constituencies give voters fewer chances to be represented effectively. Second, according to law, the delegate-population ratio should be a certain value, and some of the local governments further set a voter turnout target. To comply with the law, some constituencies are demarcated by merging some of the voters in a large district into another. Those new voters might have few overlapping interests with voters in the new district. To achieve high turnout, the local governments set more specific targets for communities and work units. Therefore, people are forced in some cases to vote. Both targets are set with good intentions, but might lead to unexpected results in practice. These results further discourage voters from expressing their true interests.⁶⁹

External Electorate

In the law, Chinese citizens living abroad can only vote if they return to China. They can either vote in the city of their most recent residence or in their hometown district. Unlike many other countries, China has not set up mechanisms for out-of-country voting.

Registration Financing

Election financing for the National People's Congress and local People's Congress elections should come from the national treasury. Currently some districts, especially those in counties and villages, have difficulties financing elections. For places that cannot afford the expenditure, the higher-level government should provide proper financial subsidies.⁷⁰ Government-provided election financing should include three components: organizing funds, campaign funds, and voting funds. This scenario would allow voters and candidates to engage on a level playing field; thus, the election result would not depend on the amount of funding.⁷¹ It is important to note that the official regulation stresses the importance of supervising the use of funds during the election; however, it does not clarify any specific mechanism or procedure to implement the policy.

Even though the government officially affords the campaign funding, it has been observed in many rural areas that candidates use their own money to buy votes. In rural areas, even small amounts of money could be attractive to voters.

Recommendations

1. Voter registration periods and procedures should be announced through more channels. A single method cannot reach all of the citizens. To ensure that more people are aware of the procedures, the government can distribute brochures to every household, post information on the internet, advertise on local television stations, and hold voter meetings.
2. The information provided in the registration announcements should be more detailed. The government should at least indicate when and where to register and clarify what documents are required for different types of voters.
3. The circulation of documentation regarding registration should be more targeted to disadvantaged groups.
4. The registration procedure should be re-evaluated. Longer registration periods would allow people to appeal if they do not appear on the list. The appeal process should be simplified to one day. Penalties should be designed to punish those who impede the registration process unreasonably. In addition, as long as privacy is ensured, it would be more efficient if individual registration information and voter lists could be updated online.
5. Migrant workers should be given voting rights in their place of current residence. Local election committees should set regulations to clarify the requirements of their registration and simplify the process. A national voter registration database network is necessary. This would prevent migrants from needing to obtain documentation from their original place of residence to complete new registration forms.
6. The demarcation of constituencies should be further considered. The traditional job-based constituencies might not be as effective in representing voters' interests. In urban areas, it should be gradually shifted to residence-based. A more rigorous standard of constituency size should be implemented to guarantee election fairness. For cities having large migrant populations, it is worth considering the demarcation of special districts to serve them. Lastly, demarcation should take into account individual interests. The government should issue laws to prevent the practice of gerrymandering and random demarcation.
7. China's government should allow citizens living abroad to vote in foreign embassies.
8. Registration funding should be more transparent for public monitoring.

Electoral Integrity – Electoral Crimes and Conflict

Generally understood as the series of democratic standards and principles used to identify and protect free and fair elections, electoral integrity is a central component of democratic governance⁷². Dependent upon clear standards, a comprehensible legal framework with firm means of enforcement, institutions and mechanisms supporting oversight and transparency, electoral integrity should be the goal of all bodies in pursuit of democratic governance. Only upon its firm foundation can legitimate elections be built and in its absence voters can have little trust in their representatives or government.

Unfortunately electoral integrity cannot be built on good will alone, and however much a government may support the principles of democracy in theory, firm action is necessary to defend the legitimacy of elections from threats. These threats to electoral integrity can range from physical threats of violence to socio-cultural and political repression but they bear a commonality in their ability to delegitimize elections and potentially government. Defense of electoral integrity hinges upon the support of government and the vigilance of citizens, in nations beginning to engage in democracy a focus on enforcement of the rules and societal norms underlying electoral integrity is particularly critical. This section will explore the most salient potential threats to the integrity of China's local elections and offer potential suggestions on how best to address them.

Current and Potential Developments in Illicit Practices and Electoral Crime

Political Repression

Broadly political repression is a central issue in the People's Republic of China, from internet censorship to the eviction and detainment of activists and political candidates some of these challenges must be addressed nationally before there can be much potential for legitimate local representation or democratic development. Local village elections are the core example of competitive elections in the state and there is hope for development in this area though much variation exists from region to region in how heavy of a hand the party plays in the selection of candidates.⁷³ The subject of repression is particularly important as the political economy tied to China's local elections develops. There are more independent candidates running in local elections than ever before and given the change in political economy the nature of electoral threats shifts as well.

Independent candidates are regularly detained either officially or through some extrajudicial means by local officials. Though there has been some reform on a national level regarding corruption and regulations on open government and transparency, few of these changes have reached local governance. Since it is these local bodies that have the most to win or lose through repression of the populace the lack of national oversight on these elections is a deep problem. In many ways this is actually not an issue of the Chinese legal system but of flagrant violation of the rules by local officials.⁷⁴ There is a sizable volume of evidence of widespread repression of candidates and the electorate

through both physical and social means. For candidates there exists great danger in campaigning for office, as doing so draws not only public support but the attention of local officials.

Typically this repression makes use of state resources, such as the local police, force to pursue candidates and political dissidents based on theoretically unrelated criminal charges. Here there is evidence of the states' flawed rule of law as the laws which exist in this sphere are unequally applied and abused to target specific groups and individuals. Given the high risk of repression and punishment, combined with the low likelihood of actual election, independent candidates are pushed out of the political arena and those who would elect them are repressed from doing so.

Bribery and Pay to Play Politics

Another issue influenced by the change in the political economy behind China's local elections: bribery, vote buying and pay to play politics are increasingly developing as threats to China's electoral system. Given the disparity of resources in the nation there is the constant danger of this becoming more of an issue in China's more rural regions. Election into village committees has developed into another recognized route to wealth and status directly at the expense of the local population. In part this challenge is one of the reasons for the party to promote legitimate democratic development and electoral integrity in local elections, theoretically if people are able to vote for themselves and properly educated those politicians who abuse power and resources can be expected not to remain in office.

The role of China's entrepreneurial elite in elections is increasingly developing as a subject of concern as these elites are effectively the only independents able to afford the ever increasing price of votes in China.⁷⁵ Through vote-buying these elites efficiently transfer economic resources into political ones ensuring further future gain while consuming local resources. Further these elites are desired by the state in positions of local governance due theoretically to the belief that the same knowledge and skills that led to their wealth might lead to the development and success of the village.⁷⁶

Vote buying has been a challenge in China's local elections since their inception.⁷⁷ Clearly, the lack of voter education is partly to blame for this reality, but the culture surrounding economic success may also be pointed to as a contributor and both must be addressed for the sake of future electoral integrity.

The Role of Guanxi in Chinese Politics

A concept familiar to people around the world but at the same time unique in its role in Chinese society is that of *guanxi*, or broadly the sphere of influence in one's personal networks. The concept is central in understanding politics and economics with the state and the benefits reasonably expected to be gained through one's social network. Though all societies possess similar concepts, the engrained nature of *guanxi* in society and the expectation that one cultivates and uses their networks is somewhat unique.

The primary challenge presented in guanxi's role in Chinese politics is the ever present and almost built-in threat of clientelism. The system of guanxi lies outside of either law or bureaucratic rules and presents a deep challenge to rule of law which is essential in developing democratic legitimacy. In economics this system can result in corrupt business practices, but in politics the threats of nepotism and client-patron relationships are potentially much more far-reaching.⁷⁸

Areas to focus on in illicit practices and electoral crimes in coming elections

Officials would do well to pay particular heed to the influence of economics in local elections. China's economic elite have become increasingly involved in politics and though there are certainly benefits to economic knowledge in politics there is the threat of consolidation and abuse of power through local elections. This challenge is closely related to the primary area which should be focused on in future elections. Localized repression of political candidates and voters in China is a problem which undermines any legitimacy the elections might be able to have.

History of Governance and Corruption

Issues of Democratic Development as a Destabilizing Force

Throughout contemporary history of the People's Republic of China, stability and management of the nation's immense population have been concerns of central importance in governance. Through a platform of national "harmony" the government has pursued a path of managing potential sources of popular discontent ranging from ethnic and religious tensions to concerns over the nation's economic trajectory. In this context, the development of democratic participation and electoral processes in China is an impressive feat. Despite the positive impacts of local elections, there is ongoing concern for the potentially destabilizing influence of democratic change in China. Whether in dissidents and opposition candidates being unreasonably persecuted or in constant diplomatic tangles over the nature of democracy and the state of human rights, the concern is evident and should be addressed for the good of China's future.

Confrontational Interactions with Foreign Powers

The deeply involved nations of China and the United States of America bear a complicated and all too often confrontational relationship. In the spheres of economics and geo-political influence the nations are in constant competition with one another and too often subjects which are ultimately uninvolved are drawn into this competition.

Governance and human rights rank quite high in that field, with both nations regularly accusing each other of abuses and inequality.

Fortunately confrontations between the United States and China are largely rooted in competition rather than animosity or past conflict. As China continually develops more influence as a world power the two nations come to disagree on more and more issues of politics and regional influence. There is of course lingering tension between the nations given the history of the Cold War, but given the current state of government and economic systems in China the nation's history of Communism is clearly a thing of the past. Unfortunately, the historic conflict between China and neighboring Japan is very different than the confrontations with the United States. The two nations have a long history of violent conflict and both have during different periods struggled for control over the region. Where the conflict with the United States is at its core a struggle over resources, the conflict with Japan is rooted in history not soon to be forgotten.

Japan is one example of China's regional conflicts with democratically ruled states, though certainly not the only one. All of these conflicts present additional reasons for the government to be wary of democracy promotion efforts, particularly those rooted in NGOs funded by the outside world. These conflicts also however present a reason for China to develop its democratic systems more deeply, presenting the nation as another viable democratic state in the area rather than one of the sole powers supporting regional authoritarianism.

As democratically governed states around the world put pressure on China's government to reform based upon complaints over human rights, governance and inequality the government pushes back and entrenchment in the current systems of governance results. In part this challenge explains flaws in the nation's electoral framework and acceptance of some non-democratic behaviours and attacks on electoral integrity. Particularly in light of the region's economic reforms changes in the workings of governance currently appear inevitable yet external pressures to reform potentially delegitimize internal pressure from domestic democracy advocates.

Political Issues in China's past

Identification of Historic Political Conflicts in China

In context, concerns over stability and security within China make a great deal of sense. The 20th century saw a number of deep conflicts in Chinese politics, some of which left lasting scars upon the nation. From the turn of the century and the fall of the Qing dynasty, the rise of the Kuomintang and the early development of the CCP, China spent most of the 20th century embroiled in political, economic and ideological struggle.

Internally the transition from Qing to Sun Yat Sen to Chiang Kai-shek to Mao Zedong represented sharp contrasts in the goals of the Chinese state. The dark histories of the great leap forward and the Cultural Revolution leave indelible marks on the nation's history and culture and while the tragedies of Tiananmen Square state clearly the dangers of instability in a culture of repression. More recently the rapid development of China's economy is creating an ever broadening gap between the nation's elite and those impoverished, presenting great risk in any potential democratic development.

Identification of Lasting Impacts of these Challenges

China's 20th century past has left a number of lingering political impacts on the shape of the nation. Cementing a culture of government oversight, events tied to the Cultural Revolution can reasonably be linked to ongoing challenges of censorship and suppression. These challenges tie directly to some of the threats to the legitimacy of local elections in China and greatly damage their value as a means of representative governance.

The nation's history in Communism, and the present reality of the party as the primary viable means to political influence, limits the party's legitimacy at the same time that it potentially supports electoral crime and malpractice. In this way the party is potentially one of the largest threats to local elections legitimacy regardless of the stance that the administration's leadership may have regarding the subject. The decentralized nature of the local elections limits government's ability to oversee them and enforce standards that might limit political capture. This is compounded by the nature of China's economic transition and the broad difference in access to economic and political resources among the citizenry.

Reasons Historic and Current Challenge Should Not Limit China's Political Progress

Democratic Development Need not Equate Westernization

The time when democracy was an inherently "Western" practice is long past and the identity of the Chinese state is firmly rooted in its lengthy history and cultural traditions. Nations around the world have pursued transitions into representative, democratic governance and starting with the exploration into local elections China has been among them since the 1980s. The assertion that development of democratic principles is a push toward westernization is thus flawed from its foundations. More importantly the state's democratic development has thus far been uniquely Chinese in nature, and a continued commitment to that development by the administration assures that it continues to be so.

Officials past and present have noted the challenges brought about by the nation's exploration into capitalism, however few would argue against the successes of China's economy in recent decades. Given the nation's communist history this transition to a capitalist model of economics should potentially have been much more difficult particularly in the context of the changes in our global economy. Management of the

Chinese transition into capitalism could very well have prepared a viable framework for transition into democracy. Concerns over political capture are equally as valid as those over economic capture and seem equally within the administration's ability to mitigate.

The question at the moment is not over whether or not China will pursue local democratic elections but whether or not those elections will be legitimate. There is nothing innately Chinese in lacking electoral integrity and it would be to the benefit of both the citizenry and the government to address weaknesses in China's electoral systems immediately. Though standards presented on transparency and accountability may have developed into a framework within Western societies those standards are as relevant in China as anywhere else. The aim of elections in China, as elsewhere, is fair representation; a measure of electoral integrity is required to ensure that representation.

Elected Officials Potentially Better Represent the Needs of Municipalities

One of the core reasons for the existence of local elections in China is that elected officials are more directly accountable to the populace.⁷⁹ Where administrators from the state government might appear less aware of the specific challenges facing localities, locally elected officials have both a stake in being reelected and a more immediate hand in the needs of those they represent.⁸⁰ As concerns over lacking government accountability, appropriation of resources and disconnection from the populace build there is benefit both locally and to the state in supporting local elections and public representation in governance.

The benefit of local elections and public representation is bolstered by conducting credible, transparent and accountable elections. The capture of political power through electoral misconduct, crime or fraud undermines the benefit elections provide to both the state and individual citizens. Officials chosen via free and fair elections are more directly accountable to the people who elect them as well as the central government and the institutions which oversee electoral integrity.

Presentation of Changing China

In recent decades China has displayed astounding ability for rapid change and development, developing an impressive infrastructure and massive, powerful economy in a handful of years. Unfortunately throughout this period as China's economy has changed dramatically, its system of governance has remained in large part stagnant. Regular assurances from party officials of the nation's development of representative governance and concern for popular sentiment over this time has become increasingly hollow and the appearance of a CCP focused solely on maintaining political power casts a negative light on the nation's decades of development.

China's sound economy should be backed by an equally sound and representative government able to attend the needs of its populace.

Recommendations and Solutions

Development of Civil Understanding of Elections

Understanding some of the conflicts and difficulties of local elections in China might best begin by assessing the nation's public perceptions and understanding of democracy. A term often manipulated politically by governments around the world to represent a number of contrasting and complimentary ideals, democracy at its core is a system of governance rooted in public representation and accountability. The Chinese system of democracy, as expressed through local elections, is a legitimate approach to democratic governance, however functioning democracies require a populace educated on the nature of government and their role within it.

Broader concerns exist, such as those addressed elsewhere in this project, yet these problems even if addressed lack the measure of innate accountability produced by an educated populace. The Chinese public has exhibited a strong degree of engagement with government when allowed, and if educated on the role of democracy in society the public could reasonably contribute to holding those who govern them accountable. Though stronger measures of accountability and transparency should be taken in developing democratic principles in local elections, the education of the public serves an essential foundation for these other measures to be built upon.

Educating those who participate in local elections presents an effective foundation for the development of civil organizations focused on transparency and accountability in government. Further, an educated electorate presents a minimal level of checks and balance against personal interests in capturing government resources and influence. At present misconduct by local government officials is an issue difficult to define for the electorate and misappropriation of resources even more so. Educating the populace on the responsibilities of local governance makes it possible for those who are most regularly exposed to local corruption to recognize it and inform the proper authorities.

The process of voter education might be successfully pursued either by the central government or by local administration. Though either level of engagement would work, a national program of voter education could serve a valuable role in displaying the Chinese authority's support of democratic principles as well as establishing important national standards on the subject. China's government has been successful in rapid development of a modern economy, thus there is every reason to expect that the government might be equally successful in centralized development of democratic principles.

Development of Electoral Practices with “Chinese characteristics”

Tied closely to the importance of electoral education is the value of developing a central set of rules and standards on local governance in China. An assortment of problems from misinformation and flawed education of the electorate to lacking accountability can be tied in part to the absence of central electoral standards. The lack of these standards across the country also inhibits the development of a unique plan of democracy with Chinese characteristics.

The nation’s 12th five-year plan, released in March 2011 expressed a move toward expansion of socialist democratic politics. Also in the past year officials touched on a push toward increased democratic decision-making, management and supervision according to the nation’s legal system.⁸¹ While this commitment is admirable, the roots of China’s commitment to democracy must be backed by development within the legal system. Many of the threats existent in China’s local elections exist at least in part as a result of lack of state oversight. As elections are left in the hands of local officials, theirs are the interests most directly served.

There would be both immediate and long-term benefit in defining China’s approach to democracy. Local elections would benefit from a set of unified and clear rules on democratic practices while the broader Chinese populace would have an understanding of the longer-term trajectory of the nation. Officials have long expressed the aim of social democratic transition, by setting clear local electoral practices and policies the general framework for that transition becomes more transparent while some threats to the legitimacy of local elections are addressed.

Engrained in these electoral practices and policies must be a clear commitment to electoral integrity. Such a commitment would serve to reinforce both official and social norms regarding acceptable conduct and the importance of defending legitimate elections. At present many threats to the integrity of China’s local elections might be attributed to the culture surrounding elections and the recent recognition of them as a means to capture power rather than a means to serve the public.

Presentation of Administration’s Concern for Free and Fair Elections to Bolster Public Support

Members of the nation’s government bodies have thus far shown firm commitment to pursuit of democratic principles. Though progress has been slow, the managed nature of

China's economic system and past statements from administration officials suggest that this gradual transition is both intended and appreciated. Given the state's focus on stability during its period of development the commitment to gradual change is likely wise as there are assorted risks associated with rapid transition during such a period of economic upheaval.

All of this being said however, public perception of the government's commitment to this change is as important as the change itself. Press conferences on the subject of change are not enough in the process of development, particularly given national crises regarding concentration of economic and political influence. As the concentration of wealth in China grows more intense a commitment to democracy presents a means for public engagement and assistance in the direction of China's future, which might otherwise appear absent.

There is a clear need for official commitment to and enforcement of electoral integrity.

Importance of Rule of Law and Prosecution of Criminals

Electoral practice, culture and proper enforcement of the laws (through official and social channels) are only part of the scope of electoral integrity. Problematic practices such as corruption and social pressure in voter choice can escalate to physical crimes and violent conflict, including harassment of candidates and voters, arrests, disappearances, riots, and protests. Even if civic education reduces societal pressure and bribery decreases, the potential for physical crimes and conflict can occur in a strong state. This section will focus on what crimes and their consequences are as defined by Chinese law. Historical incidents will be reviewed before turning to the evaluation of the most likely sources of violent crime and conflict surrounding the upcoming village council elections.

Physical crimes and violent conflict have two primary effects on electoral integrity. First, crimes and overly harsh punishment delegitimize the election and the government. It demonstrates that the authorities did not have confidence in the election results. Second, riots and protests can destabilize the government and cause further violence. If the anger and frustration of a large group of people does not have appropriate outlet, the situation can quickly spiral out of control. The international community does not approve of elections which contain substantial amounts of crime and conflict. It likewise does not set a good precedent for future elections.

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Historical Incidents of Physical Election Crime

Election crime is defined in the Organic Law of Village Committees. Article 15 states: “If a person, by threatening, bribing, forging ballots or other illegitimate means, interferes with the villagers in the exercise of their rights to elect and to stand for election, thus disrupting the election of a villagers committee, the villagers shall have the right to report against him to the people’s congress, the people’s government of the township, nationality township or town, or to the standing committee of the people’s congress and the people’s government at the county level or the competent department under the latter, which shall be responsible for investigating the matter and handling it in accordance with law. If a person is elected by threatening, bribing, forging ballots or other illegitimate means, his election shall be invalid.”⁸²

Additional crimes exist under the legal canon such as confessions obtained under torture are inadmissible, and persons should be charged with a crime in the time period stipulated by law. China has a criminal procedure code as well as a civil procedure code. Inciting separatism and ethnic conflict are also illegal under Chinese law. The Chinese legal canon is based on statutory law, not case precedent.⁸³

Under the criminal procedure code “filing a case” is both a symbolic and practical step. The act of filing provides some official acknowledgement that a crime has been committed. The practical significance is that only after a case is filed are investigators permitted to use the investigative techniques set out in the criminal procedure code, which include detention of the suspect.⁸⁴ The code was recently revised to make disappearances by security forces easier and more acceptable. “The government has compounded its use of black jails with a wave of unlawful disappearances of lawyers, civil society activists, artists, and bloggers since early 2011. The government targeted over 30 of its most unspoken critics and held them in unknown locations for weeks...

That impression has been solidified by proposed revisions to the Criminal Procedure Law, announced on August 30, which will effectively “legalize” enforced disappearances. The proposed revisions would empower China’s security agencies to detain certain criminal suspects secretly for up to six months in undisclosed locations in cases the police deem to involve state security, terrorism, or serious instances of corruption. The revisions would permit law enforcement authorities to keep this detention secret if they believed notifying relatives or a lawyer could “hinder the investigation.” The proposed legislation could also lead to a formalization of house arrest “soft detention” in police parlance, which is routinely imposed on activists and dissidents without trial⁸⁵ The legalization of these practices is troubling to the population of China as well as the international community. Removal of potential electoral candidates violates the integrity of the election.

As Chinese law is based on the statutory rules, the primary problem in regards to international opinion and standards is that the laws are not equally enforced. In Western parlance, this is referred to as a problem with the rule of law. Particularly, there are numerous reported cases of lawyers, activists, dissidents and candidates for the Village Organizations who are held or arrested without ever being charged or having their case brought to court.

The two legal avenues for the Chinese government and security forces to take against criminals are arrest or reeducation through labor.

Common Crimes

The three most prominent crimes associated with village elections are harassment of candidates, arrests and physical disappearances. In each of these cases, the victims are candidates for election, their employers and/or their supporters. The perpetrators of these actions are the local governmental bureaucracy, the election oversight committees, the police, the security forces and the incumbent members of the Chinese Communist Party.

Harassment includes verbal taunting, pressuring an individual or their employer with financial or economic consequences, threatening physical violence, and unjustified disruptions in services such as telephone, electricity, and internet. In the context of village council elections, members of the establishment have been accused of harassment, such as tax officials, police, electoral committees and others in positions of power. The government has not done enough to prevent and discourage these actions. They continue though the government is aware of the problems.

Arrests include both arrests into known prisons and house arrests. Independent candidates have reported being arrested or detained in their houses or hospitals for varying periods of time. Reports range from a few days to months without being charged with a crime or having a case filed. For those that do have cases filed against them, the charges do not directly relate to their candidacy, but rather to business and tax dealings. For example, in June, Cao Tian, a candidate for Mayor in Zhengzhou, used Weibo and blogs to announce his candidacy and campaign. He later reported on Weibo, that “as a result, he has

received “attention” from many of the local government bureaus. The local police bureau, land resources office, and tax office organized a team to fully investigate the company. A week later, Cao Tian disappeared for the first time.”⁸⁶

Disappearances can be temporary or ongoing/permanent. In many ways, disappearances can appear as the precursor to an arrest. The candidate may simply not return home one day, or arrive at work. They may be held in any manner of locations including hospitals. One candidate reported on through her social media channels that she was disappeared until after the local election. Her electricity was cut off and she was held without any communication with a lawyer or family. This made it impossible for her to campaign in the critical final week before the vote.⁸⁷

The existence of “black” or informal prisons has been rumored for years, but in 2009, a Chinese media outlet, as well as Western journalists, confirmed these illegal detention centers. The prisons are usually located in state-run hospitals, nursing homes, or state-owned hotels and apartment buildings. Prisoners are taken off the street or from their homes without being told what crime they are charged with, both of which are illegal under Chinese law. Those who have escaped or were released report being beaten, denied access to medical attention, raped, and tortured.⁸⁸ Some detainees are released quickly, such as after the local election takes place and the candidate was successfully prevented from campaigning or winning. Others, however, are still missing. Cao Tian, an independent candidate for mayor of Zhengzhou in the Henan province was reported missing in June, less than two weeks after he announced his candidacy online.⁸⁹ His campaign continued through supporters and this case received the attention of human rights activists, election observers and even news media. Cao Tian received attention due to his personal wealth and media connections; many others simply disappear. Disappearances are illegal under Chinese law and a violation of international human rights principles.

Historical Incidents of Physical Conflict

Chinese law has three approaches for dealing with violent conflict. Reasons for filing a case can include disturbing the peace or unlawful meetings and rallies. Groups can also be charged with inciting separatism or ethnic divides. Finally, and most seriously, ethno-nationalist groups in Tibet and Xinjiang have been included in a list of terrorist organizations by the Chinese government. In conflicts associated with those groups, people can be treated under the laws and provisions dealing with terrorism, which do not always require official arrests, trials or other criminal procedures.

Punishment for conflict and crime in China depends upon the type of charge brought against an individual. For crimes such as intentionally harming another person, the maximum prison sentence is three years. If the victim is severely injured, the penalty can increase to ten years, and if it results in death, a prison sentence is supposed to be at least ten years long, similar to intentional homicide.⁹⁰

For less violent crimes, Article 246 states: “Whoever, by violence or other methods, publicly humiliates another person or invents stories to defame him, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights.”⁹¹

Crimes related to ethnic violence carry prison sentences of three to ten years for discrimination, inciting national enmity or humiliating an ethnic group. Alternate or additional punishments can include public surveillance or deprivation of political rights.

Recent Examples of Conflict

In the past five years, China has experienced instances of domestic conflict. Some of these conflicts are well-known to the international community, which watches for large expressions of mass discontent. Elections can be an opportunity for activists, the government or election candidates to accentuate divisions within the Chinese population, for example ethnic divisions. Ethnicity has potential to be a sharp social cleavage, does perceived class inequality, regardless of the size of the locality. If these differences are exploited, the election has the potential to become violent and highly contentious. Two large, violent conflicts that centered around ethnic social cleavages were the riots in Xinjiang in 2009 and in Dalian in 2011.

In July 2009, violence erupted between groups of Uighur and Han Chinese in Urumqi, Xinjiang following protest demonstrations. The final official count tallied 197 people dead on the primary day of conflict, mostly of Han Chinese ethnicity. According to unofficial sources, “many more Uighurs were killed on 5 July and in the following days... Even in Urumqi, violent attacks were reported throughout the week, most notably on 6-7 July when Han Chinese carried out retaliatory attacks on Uighurs and on 13 July when the police shot two Uighurs.”⁹² Reports of police violence include beatings, arbitrary arrests and shootings to disperse peaceful protesters and the unnecessary or excessive use of force, including lethal force, in the process of restoring order. Violence between ethnic groups has potential to occur again, particularly in districts with increased migration.

In 2011, leaders in Dalian, a northeastern port city, agreed to shut down a chemical plant after thousands of protesters demanded that it be closed because of safety concerns. “The prompt announcement in Dalian may reflect the growing influence of the Internet. It has become much easier for people to communicate and to rally opposition to government policies through the use of microblogging sites like Sina Weibo, although heavy censorship was imposed by Sunday evening, with postings disappearing and some search terms related to the Dalian protest not working within China. Numerous photographs posted on Sina Weibo showed large, peaceful crowds outside a municipal government building on Sunday, with rows of helmeted police officers in green uniforms blocking their path. Local protests in China are frequently more violent.”⁹³

While the Dalian protests were not an instance of electoral contestation, they demonstrate the potential social and organizing power of Weibo. Candidates for local elections have also used Weibo to connect to potential voters. On July 14, candidate Xu Yan of the Zhejiang province posted on Weibo an update of his plans for an offline meet-and-greet with local voters:

【调整第一阶段选民集中拜访的安排】原计划7月16日起开始进行的选民集中拜访安排，调整为电话、邮件、微博私信等方式约定拜访时间、拜访方式后进行“一对一”拜访。详见下图，

Translation: “The first meet and greet with voters has been rescheduled. The gathering originally scheduled for July 16 for me to meet with voters has been changed. It will now take place through telephone calls, e-mails and private direct messages on Sina Weibo at the original time. Step two after this will be one-on-one meetings.”⁹⁴

The advent of online social networking and microblogging is a new outlet for campaigns, but is also a potential source of networking for illegal and violent purposes.

Potential Areas for Crimes and Conflict during the 2012 Local Elections

The potential areas for crime in the upcoming 2012 local elections are directed towards candidates who use Weibo to challenge the incumbent power structure. Those who are already at the top of the local power structures will likely resent potential newcomers, especially those outside of the Communist Party. Steps by police, fiscal authorities, utilities providers, and bureaucrats to suppress new potential candidates may come very close to the line between legal and illegal activities. As China is a statutory state, no one is above the law. Harassment and disappearing candidates are very likely, particularly in districts with economic potential.

The two most likely areas for conflict in the upcoming 2012 local elections are in the Xinjiang province and in Tibet. Economic and ethnic tensions have been high in these two areas for many years. The elections provide a stage for continued ethnic conflict and even separatist factions to co-opt the dialogue for their own purposes. In the wake of the ethnic and separatist dimensions to potential conflict, it is highly likely that other opposition figures, who do not have ethnic or separatist platforms, will be labeled and lumped together with the separatists, subjecting them to laws against terrorism and separatism, which are far more harsh than those for simply disturbing the peace or for graft.

Recommendations and Solutions

Recommendations to prevent election crime and conflict and solve potential problems are broken into two groups: physical crimes and violent conflict. In each category, there are

three target groups: electoral candidates, Communist party officials and councils, and security forces (police and army).

First, to avert crimes before they occur, candidates should follow the following three points. Candidates should pay attention to all national and local regulation and laws. Awareness of the laws, and subsequent compliance with them, will lessen the reasons for authorities to target candidates. Candidates may need to take responsibility for educating themselves and their supporters about electoral offenses. Candidates should make their friends and family aware of their location and actions. Disappearances and arrests will be more difficult to carry-out and easier for others to notice with good communication. Candidates should also acquaint themselves with laws, both local and national, regarding arrests, torture, and the legal process. Citizens should know their rights and avail themselves of all legal rights and processes.

Second, the Chinese Communist Party, its officials, and the local councils need to act in a certain prescribed manner to avert crimes and to improve handling of criminal cases. Local councils should not arbitrarily change or add regulations. Instead, they should allow candidates and citizens of the district a reasonable amount of time to review and comply with requirements. The Party, its officials and the councils should not pressure candidates in any way- to run or to withdraw. Additionally, the councils should observe all regulations and laws regarding election procedure. If regulations are not followed, the election will be illegitimate. Party officials should coordinate with neighboring villages, districts and provinces to unify election rules and regulations. Officials should implement programs to educate voters about electoral integrity and potential offenses. While officials may feel temptation to block potential competitors, they should not fear competition. The councils should be composed of the chosen representatives of the people. The Party, its officials and the local councils should encourage peaceful citizen participation, the complete expression of their egalitarian civic rights.

Third, the police and security forces have an active role in ensuring the safety and legitimacy of the entire electoral process. Laws should be applied to all citizens equally. Police should follow the correct legal procedures for investigations, arrests and criminal prosecution. Security forces should respect all candidates and the expression of the will of the community.

Violent physical conflict requires different recommendations for the three categories of involved Chinese citizens. For candidates, it is essential that no individual agitate or provoke conflict with officials or security forces. Provocation and agitation are common tools of the Communist revolution, but in this case, should be avoided. Candidates need to respect the personhood and rights of their competitive candidates. In particular, candidates should avoid using ethnicity or nationality as an issue to unify supporters or to divide the local community. It is the responsibility of all citizens to be respectful and preserve the peace.

Next, members of the Chinese Communist Party and local councils should treat all candidates equally and apply the electoral rules to all. They should not arbitrarily create

or enforce regulations. Officials and councils should allow candidates to hold peaceful campaigns and rallies. Most importantly, the Communist Party should not provoke conflict among Chinese citizens. Ethnic and religious differences should not be emphasized; all Chinese citizens should be equal under the law.

Finally, security forces, which include the police, the army, and militia units, have an important role in elections. The role of the security forces is to protect the law. Therefore, the police and army should avoid becoming involved in any physical conflict as a perpetrator. They should not provoke violence, particularly between ethnic groups or different types of workers. Peaceful, lawful demonstrations and campaign gatherings should be allowed, and protected. The international community will be watching how China handles these elections, particularly how the police and military behave. The army should avoid shooting into crowds of people, and the police should be careful when confronting unlawful rallies. Security forces should guarantee the choice and competition of the local elections, not favoring any candidate over another and maintaining a peaceful approach.

Electoral Dispute Resolution (EDR) Mechanisms

What is dispute resolution?

The Ace Project defines the system for the resolution of electoral disputes as “the system of appeals through which every electoral action or procedure can be legally challenged”.

According to the project, appeals can be made to either judicial or political entities. The goal of the system is to ensure protection and enforcement of “political rights to elect and be elected”. In order to do that is necessary to ensure to all that the voter's decisions will prevail. “The whole system is based on a capital principle: the judicial agents in charge of sorting out electoral controversies must be independent, impartial and proficient from a technical point of view in order to ensure constitutional resolutions.” The needed conditions for the fulfillment of that principle are legality, certainty, objectivity, impartiality, authenticity, clarity and justice. The Carter Center notes that “Election related disputes are an intrinsic part of the electoral process and the credibility of that process is determined to a large degree by the capacity of the State to effectively resolve these disputes. As noted by authors on the subject, challenges to election results, or the conduct of elections, should not be considered a weakness of the electoral system, but a sign of its resilience.”⁹⁵ The types of electoral dispute mechanisms may vary greatly from

country to country, so it is important to understand, on one hand, local dynamics, and on the other, international principles. We will outline next relevant criteria for analysis of dispute resolution systems.

Criteria for analysis

Several studies have been undertaken on this topic and there is no definitive model. That absence, however, should not mean that there cannot be found internationally recognized criteria to address different systems. For our specific case, it is worth mentioning a couple points listed by the Carter Center in its 2009 paper on dispute resolution. First, it stresses competence: “The tribunal must be competent and the powers and responsibilities of various bodies involved in resolution of disputes (including electoral disputes) should be clearly laid out in law.”⁹⁶ Then, it states the importance of independence: “A tribunal must be independent of the executive and legislative branches of the government or enjoy judicial independence in deciding legal matters that are judicial in nature⁹⁷”. These two items are of utmost importance in thinking about the fairness of the Chinese system.

In order to go further on this discussion, we note that the International Foundation for Electoral Systems (IFES), which has worked extensively with electoral dispute resolution, has summarized and aggregated seven international complaint adjudication standards to address irregularities⁹⁸ that provide a good and detailed method of analysis. They are:

1. “The existence of a transparent right of redress for election irregularities. Providing the public with a clear legal mechanism to obtain a remedy for election irregularities is essential to a well-functioning EDR system”;
2. “Appropriate administrative and legislative measures [shall] be taken in order to adequately implement the right to periodic, free and fair elections. These measures must be clearly written and accessible, providing adequate notice and process to individuals, political parties, and civil society. (...) Changes in standards and procedures must be made carefully so as to avoid frequent or erratic alterations that confuse both the electors and the officials charged with conducting free and fair elections.”
3. “Every EDR mechanism should ensure that the arbiter be both impartial and informed. (...) The appointment and removal process, length and security of tenure and fair remuneration of the judges or arbiters are elements that support the goal of an impartial EDR mechanism.”
4. Dispute proceedings must take place “within a reasonable time” and “without undue delay”.
5. “Sensible standards of evidence and burdens of proof.” “In general, an EDR body should employ a heightened standard of evidence such as “clear and convincing” in order to discourage frivolous complaints while still allowing challengers a reasonable chance of proving their case. Other standards such as “beyond a

- reasonable doubt" or "preponderance of the evidence" should be used only in unusual circumstances.”
6. “Effective, timely and enforceable remedies that offer true redress to an injured party”
 7. “All actors who take part in an election should participate in implementing these international standards in the EDR process”

Current scenario

There are two things to note about the current scenario of electoral dispute resolution in China:

1. On the formal side, there is no permanent independent or separate body to deal with challenges to the elections, resulting in conflicting instances and unclear jurisdiction;
2. On the practical side, there seems to be a tendency to deal with disputes at the local (village) level, which brings problems due to lack of enforcement powers of local bodies.

While there are many studies about the Chinese Justice system, a very limited body of literature has been dedicated to the theme of electoral dispute resolution. In broad terms, the Constitution (article 127) states that the Supreme People's Court is the highest judicial organ in the country, and it “supervises the administration of justice by the local people's courts at different levels and by the special people's courts; people's courts at higher levels supervise the administration of justice by those at lower levels.” It should be understood for the purpose of this paper that if local people's courts are faced with electoral complaints (which, as will be demonstrated, is possible), that procedure would be dealt with in a system ultimately answerable to the Supreme People's Court. However, for village elections, the most often quoted legal source is the “Organic Law of the Villagers Committees of the People's Republic of China.”⁹⁹ Even though the village committees are not part of the State apparatus and thus have no official coercive powers, the Organic Law deals generally with possible avenues for addressing complaints in articles 13 and 15, as follows:

Article 13 says that “election of a villagers committee shall be presided over by a village election committee. Members of the election committee shall be elected by the village assembly or by all the villagers groups”.

Article 15 states that “irregularities can be denounced to the People's Congress, people's government of the township, nationality township or town, or to the standing committee of the peoples congress and the people's government at the county level or the competent department under the latter, which shall be responsible for investigating the matter and dealing with it in accordance with law”.

Many electoral observation reports mention that specific election committees had the responsibility of dealing with complaints about electoral registration, procedures and others. In this regard, different regions and provinces generally come up with their own regulations. The website “China Elections and Governance”, organized by the Carter Center, described¹⁰⁰ the adjudication system of the Zhejiang Province as “a ‘two-tier’ verification mechanism, i.e. in addition to the original dispute resolution mechanism where the village election leadership group takes up all the responsibilities, those who dispute with the decisions made by the village election leadership group can now appeal to the township election leadership committee”. In another example, the Hainan Province enacted in 2001 the Village Committee Election Measures:¹⁰¹

At the time of Village Committee elections, cities, counties, autonomous counties, municipal districts, and townships, nationality townships and town governments separately establish small groups for election work guidance, and organize guidance of Village Committee term election work within the respective jurisdictional areas”. Amongst the duties of such small groups, number 3 specifically mentions appeals: “Accept and handle relevant election reports, appeals, and receive letters and visitors.”

A roundtable by the US Congress in 2002 also suggested that “urban communities are holding elections using laws that are based on and almost identical to the Village Committee Organic Law. (...) Like village committees, urban residents committees are not officially part of the State structure and thus they lack formal coercive power. However, they do provide many services that are important to residents. The social and political surveillance functions of the committees have greatly declined in importance as the State has retreated from micro-managing private life. Functions of the communities now include elderly care, job retraining, day care for children, sanitation, dispute resolution, literacy classes, landscaping and environmental improvements, and public safety and security, and may also include managing local neighborhood enterprises.”¹⁰²

Basically, the practice of dealing with disputes at the committees gave rise to local regulations about electoral adjudication.

The website China Elections and Governance, when describing amended rules in Zhejiang, also says that “the new regulations tighten up the time in dealing with voter eligibility disputes: the village election leadership group should resolve the dispute within three business days after receiving the complaint. If the dispute is not resolved, the voters can appeal to the township election leadership committee at least ten days prior to the actual election date, and the latter should, in accordance with relevant laws and regulations, resolve the disputes at least five days prior to the actual election.”

If other villages have different timing that does not diminishes the importance of noting that there are rules about how long electoral disputes can take before a decision. It can be inferred that those are available in various forms around the country. This description can be loosely applied to every village election, considering how well it fits with what is stated at the Organic Law.

Where problems might arise

There are a number of problems with the current scenario, which can be described as confusing and filled with overlapping jurisdictions. That presents a considerable challenge in itself. But the problem goes deeper with the rise of independent candidacies. The difficulty is understandable. In many levels, the Chinese system is still in the process of adapting itself to village committees, a level of administration that is outside of the State pyramid. That adaptation has simply not extended itself yet to the existence of political candidates that are not part of the Communist Party of China. Within its borders, the CPC has established rules, however problematic, to discipline and control its members and deal with fraud and complaints. But the party has not had to deal very often with politicians outside of their umbrella. And since they are not recognized by law, independents do not have a set of rules in place. Electoral dispute resolution is a part of elections that cannot exist in the absence of clear rules and laws. The seven points listed by IFES to be used as criteria for putting an EDR body together and evaluating its mechanisms all require not only clear rules, but also transparency of those rules and effective communication to make sure all interested parties are well informed.

The most problematic aspects of the current scenario can be summarized as follows:

1: Where to file complaints:

- A. Village election committee
- B. People's Government of the township, the nationality township or the town
- C. People's Government at the county level or competent department under it.
- D. People's Congress

E. Civil affairs offices

Many problems arise from this loose format. The first one is the confusion about who has the power to investigate complaints and what is the first instance for filing them.

The website “China Elections and Governance”, by the Carter Center, addresses the problem of “dividing responsibilities of investigating illegal election activities” as follows: “The old version of the regulations stated that villagers have the right to report any illegal election activities to the township people’s congress or government, or county people’s congress standing committee or government and its branches. Correspondent authorities are responsible for investigating and resolving the issues in accordance with the law. “In practice, however, *since there is no definite regulation as to which government agencies are in charge*, it is often easy to pass the buck.”

“The amended regulations make clear that there are two different sets of procedures that apply to the election period and otherwise, in which different agencies are in charge of relevant investigations and decision-making. During the election period, the township governments and its election leadership committee or the county government and its election leadership commission are responsible for taking up the investigation; at any time outside this period, only the township government or the civil affairs bureau of the county government is responsible.”

Even though there are initial attempts to deal with this problem, it still must be said that the first criteria mentioned by IFES “the existence of a transparent right of redress for election irregularities (...), providing the public with a clear legal mechanism to obtain a remedy for election irregularities is essential to a well-functioning EDR system” - remains compromised in China.

2: How to make decisions

Since it is not clear who will decide matters of EDR, it is also not clear what is the base for those decisions. Which law or regulation should be followed? That will depend, first, on who the arbiters will be, and second, on how informed they are. IFES' criteria n.3 for EDR analysis states that ““Every EDR mechanism should ensure that the arbiter be both impartial and informed (...).” At this point, there is no guarantee that the arbiter is sufficiently informed to make decisions, particularly considering the absence of rules regarding independent candidacies. If the arbiter is someone chosen from within the village committee with no prior experience in adjudication or judicial matters, the difficulty increases.

3: How to enforce decisions

Even if it was decided that village election committees are the primary avenue for EDR, the situation would remain problematic, since they lack judicial power to enforce the result of adjudication. According to the Carter Center, in addition to election committees, local civil affairs offices are also a possible avenue for filing complaints. But those also lack judiciary powers and have very few enforceable mechanisms. The Center stated in a review of village elections in 2009 that “part of the criminal law in China regulates illicit acts in elections of people’s congresses, but not in village elections.”¹⁰³ “We have seen many cases in which local courts refused to accept cases involving irregular electoral behavior. As a result, village conflicts were exacerbated and chaos deepened.”

4: Impartiality

The next problem is one of impartiality, especially with the growth in the number of independent candidacies. If the village election committee is the one who sets the rules for the voting process. If a rule is challenged and the committee itself has to adjudicate that case, the same body that made a decision would be responsible to judge a complaint about that decision. It is a fair assumption that the committee would not be impartial.

At the same time, if local people's courts are the chosen avenue for complaints, there could also be impartiality problems. China’s legal system remains under the complete control of the Communist Party. As has been demonstrated, the CPC does not have rules in place for independents, nor are they recognized by law. Since complaints are either filed at state/party institutions, or can be supervised by them, how will challenges coming from independent candidates be dealt with? How can independents, for example, appeal the rejection of a candidacy? Those questions remain unanswered.

5: Different rules for party candidacies and independent ones

A complementary problem is that there are different set of criteria for candidates depending on their membership status to the CPC. “There is a legal and administrative vacuum in regulating” independents” (idem). While party members must follow CPC rules and are subjective to being punished by its Discipline Inspection Committee, independents do not fall under the same codes. “Since village committees are self-governments and not a level of state administration, [independents] do not fall into the regulation of the Supervision Department (jiancha bumen), which checks the ill behavior

of government officials. Therefore, unless the [independents] commit crimes (then they may be prosecuted (...) through legal procedures), they can avoid punishment.”

In sum, there are no clear rules, jurisdiction is in a gray area, and there are very few legal guarantees that complaints will be heard or dealt with in a timely manner.

Overall Recommendations

The basic recommendation regarding electoral dispute resolution in China is that the instances that deal with challenges be clearly defined, including where a first complaint should be filed, and that predetermined criteria be established for dealing with any problems that might arise with the voting.

It would be in the best interest of villagers to empower village election committees to carry those functions fully, including with enforceable powers. It will be necessary that the CPC recognizes the jurisdiction of the committees to deal with complaints (at least) at the first instance. The village committee should designate a small group to deal only with complaints and nothing else -its members should not be the same ones to formulate general voting procedures, put together voters lists or accept or reject candidacies. In that way, a minimum of impartiality would be guaranteed.

It would be useful to note a simple set of minimum rules of electoral adjudication mechanisms as listed by IDEA. What must be defined is:

- Type of first instance
- Type of last instance
- Who may file a complaint?
- Is there a filing fee?
- Is there a deposit fee?
- Filing/deposit fee amount (local currency)
- Maximum complaint time since incident
- Maximum complaint time since announcement
- Maximum adjudication time

- Number of levels of adjudication

Fees, deposits, their amounts and even adjudication time could be defined by each village committee depending on local circumstances. However, having the election committee as the first instance and where to appeal after it should be a standardized norm. As seen, these items and the others in the IFES list are not clearly defined in China.

Given the nature of the Chinese State and the control of the CCP, the IFES' criteria two and seven are probably not to be expected, but the others are both desirable and achievable.

In terms of specific challenges to independent candidates, it is imperative to have direct channels to deal with rejection of candidacies. The Electoral Law stipulates that candidates for lawmakers at the county- and township- levels should be first nominated as "deputy candidate" and then confirmed as "official deputy candidate" in due legal procedures, according to statements made by an official of the National People's Congress (NPC) to the media. That rule still seems to be under dispute as this paper was being elaborated. Given the sensitive nature of the issue within the CPC, the village election committees should be empowered to deal with first complaints and at least an initial appeal process. Only in the context of serious crimes should the common judiciary structure be brought into the dispute.

It is also important to have better definition of responsibilities for dealing with complaints outside of the CPC in order to ensure independent and party candidates go through the same channels and are judged in the same manner in regard to challenges aside from candidacy rejection. This does not preclude any further actions by the CPC Discipline Inspection Committee.

For the longer term, the creation of a separate, permanent body to handle election disputes should be recommended.

Election Observation and Reporting

Electoral integrity and political participation in election processes are paramount to the democratic process. Not only does transparency confer public confidence, but establishing electoral monitoring and reporting capabilities also provide valuable safeguards for the conduct of fair elections. As such, both domestic and international organizations are emerging to help ensure transparency at the voting booth and in the reporting of election results. As stated in the introduction, China has recently allowed independent candidates to run for seats in Congress, which introduces both challenges and promises to China's electoral observation and reporting framework. This section will

outline a brief history of electoral observation in China, what role both domestic and international organizations have in observing and reporting, and recommendations for upcoming elections.

Developing international observation legal frameworks

The Declaration of Principles for International Election Observation (2005) and the Code of Conduct for International Election Observers began as a collaborative effort between the National Democratic Institute (NDI) and the United Nations Electoral Assistance Division (UNEAD). These documents were the first to hold observers to an international standard by setting forth the importance of elections and the electoral process as an “expression of sovereignty” necessitating peaceful competition, while at the same time recognizing the importance of the political, cultural and historical contexts in which elections take place. As stated in the preamble of the Declaration, elections cannot be achieved if human rights and fundamental freedoms are being infringed upon. Echoing the precepts established in other international documents, such as the Universal Declaration of Human Rights (UNDHR), this Declaration seeks to protect genuine democratic elections and expresses them as a concern not only for international organizations, but also for national institutions, political competitors, citizens and their civic organizations.¹⁰⁴

As the Declaration states, “international election observation is an expression of the respect for human rights and the rule of law.”¹⁰⁵ Observation teams are encouraged to expose any type of irregularity or fraud, as well as provide recommendations for improving the electoral process. This both promotes public confidence in the electoral process and it also provides countries with “accurate and impartial assessments” necessitating “credible methodologies and [full] cooperation with national authorities... [and] domestic election monitoring organizations.”¹⁰⁶ The principle guidelines include but are not limited to: respect for elections as an expression of sovereignty; the right for citizens to participate in the electoral process; use of the highest standards for accuracy of information and impartiality of analysis; work in collaboration with domestic observers to provide recommendations for improving the integrity and effectiveness of the electoral process; and evaluate pre-election, election-day and post-election periods with honesty and impartiality. The host country is also guided by a set of principles: issue an invitation for elections to be observed in a timely manner; grant access for each observer to all stages of the election process and all election technologies; grant unimpeded access to all persons concerned with the electoral process, including electoral officials, legislative representatives, political stakeholders and news media personnel; guarantee that observers have freedom of movement and do not face interference of government officials; and guarantee that the government will in no way influence, pressure or threaten observers. (See Annex II – Pledge to Accompany the Code of Conduct for International Election Observer.)

Developing Domestic Observation Legal Frameworks

Though the Chinese Constitution upholds elections as the primary source of power at the national and local levels, electoral processes are still relatively new. Consequently, election observation standards are not yet systematic or institutionalized. This section will assess the observation of Chinese elections in a few different ways. First, it will explore the source of popular sovereignty in the Chinese Constitution. Second, it will evaluate the Ministry of Civil Affairs (MoCA) as the electoral management body and what role they have in safeguarding and observing elections. Third, it will explore the nature of local elections using observations and reports conducted by non-governmental organizations, such as NDI, IRI and the Carter Center. Fourth, based on the assessment of national and local elections, it will make recommendations for how election observation can be improved.

The Chinese Constitution protects the right for citizen oversight in the electoral process. The constitution is guided by Marxist-Leninist and Maoist thought which establish China as a “democratic dictatorship” led by the working class people through regular elections. The preamble of the constitution states that “...the Chinese people of all nationalities will continue to adhere to the people’s democratic dictatorship and the socialist road... to turn China into a socialist country that is prosperous, powerful, democratic and culturally advanced.”¹⁰⁷ Article III of the constitution guarantees citizen oversight of said elections, stating that the National People’s Congress (NPC) and the local people’s congresses are constituted through democratic elections subject to citizen review and supervision. Additionally, Article CI gives local people’s congresses the power to recall governors and deputy governors, allowing for self-governing autonomous regions.

Despite constitutional protection of citizen oversight, electoral practice remains somewhat nebulous due in part to the decentralized nature of local elections. Larry Diamond helps to clarify stating, “Elections are only democratic if they are truly free and fair. This requires the freedom to advocate, associate, contest, and campaign. It also requires a fair and neutral electoral administration, a widely credible system of dispute resolution, balanced access to mass media, and independent vote monitoring.”¹⁰⁸ China’s fledgling democracy lacks almost all of the institutions necessary to protect the electoral process, and yet the government remains insistent on invoking democracy and democratic principles to legitimize NPC rule. As evaluated below, the body responsible for fair and neutral elections has a modest role within the electoral system, particularly at the local level.

Despite progress made in the sophistication of domestic monitoring techniques over the past few decades, which could help to systematize local election observation, China is still lagging behind. The MoCA is tasked with overseeing elections at both the national and local levels, but they neither collect data nor publish any documents regarding the conduct of elections, anomalies in the process, or electoral fraud, eliminating all

possibilities for reliable reporting of election results.¹⁰⁹ Furthermore, the MoCA is not independent of the NPC nor does it adhere to international election and observation standards. More interestingly, their capacity at the local level is virtually non-existent: elections are overseen by village councils, relegating the role of the MoCA to that of a distant relative that checks in once or twice a year to make sure the house is in order.

Regardless of the small role the MoCA plays in observing electoral processes, local elections do provide unique insight into democracy as it is practiced in China.

When the Minister of Civil Affairs reluctantly admitted that he didn't know if village elections were conducted according to the election laws, this revealed two important truths.¹¹⁰ First, that village sovereignty over the conduct of elections left open a gap that governmental and non-governmental organizations could fill. Second, it demonstrated the lack of regard towards the systematic practice of elections as being truly representative, transparent, free and fair. Considering China's inexperience with democratic practices, the government should have taken the lead role in ensuring that elections were held in accordance to the law.

There are no institutionalized or standardized guidelines directing the conduct of local elections. Nonetheless, there are a few trends worthy of scholarly inquiry. Local election management is overseen by a village election committee (VEC), whose members usually township officials appointed by the village assembly. As both the Carter Center observed and Robert Pastor and Qingshan Tan reported, in almost all cases VEC members were NCP party members.¹¹¹ Additionally, with each successive election rural officials gained incremental experience about the electoral process, meaning the practice of village elections may be capable of restructuring the way democracy is practiced nationally.¹¹²

Therefore, understanding how elections are conducted at the local level may help to inform policy recommendations moving forward. Pastor and Tan highlight three ways voting is conducted in Chinese villages: mass voting, individual voting, and proxy/absentee or "roving box" voting.¹¹³ Mass voting describes a scenario where all the voters go to the same place, cast their ballot by raising their hand and remain there until all votes are counted. For a country unfamiliar with democratic practices, Pastor and Tan highlight that mass voting works to educate the entire village regarding democratic practices and electoral procedures all at the same time. Additionally, because the electorate is present and visible, vote counting is a relatively easy and transparent process. The caveat is that mass voting fails to provide even a modicum of secrecy.

Individual voting describes the one man, one vote rule and is practiced in the Fujian region. Pastor and Tan report:

The township election chair led the meeting in a very organized and precise way: the people brought chairs and sat in their village small groups; their leaders announced their attendance; monitors were approved; the candidates gave brief presentations; the process of voting was explained; ballot boxes were opened so that the voters could see that no one had yet voted; the citizens presented their voter identification cards at one of four to eight polling stations and then voted in one of 24 or 36 polling booths, which were desks joined together but also divided by cardboard so that the villagers could vote privately; then the votes were counted, and the results were announced.¹¹⁴

The IRI echoed the success of elections in Fujian stating that this region holds the most credible and best managed village elections in all of China.¹¹⁵ Though there may have been anomalies, such as using cardboard boxes as dividers, the Fujian case provides a framework for how observation can be implemented in a systematic way at the national level.

Proxy and roving box voting may pose the greatest challenges to the idea of free and fair elections in China. Proxy voting allows for one Chinese citizen to cast a vote for up to three people. This process is legal in every region except Fujian. The roving box is a box carried around the village to allow people incapable of traveling to the election booth a chance to vote. The argument for their use is that more than 50 percent of the voting population must participate in order for the elections to be considered legitimate. Since most people work full-time and may be unable to make it to the polls to vote, roving box voting is seen as the best way to meet the 50 percent requirement. Pastor and Tan report that in some regions, proxy and roving box voting accounted for more than 90 percent of the votes cast during an election,¹¹⁶ signaling for the need of either a policy change to excuse citizens from their jobs to vote or make Election Day a national holiday. Nonetheless, both proxy and roving box voting threaten the electoral integrity by severely constraining observers to oversee vote counting and should therefore be eliminated. Not to mention the logistical nightmare behind trying to orchestrate such a task.

Following the interest of Pastor and Tan's study regarding local elections, the MoCA conducted its own study and noted the substantial variations between provinces on the quality and the results of elections. Another report conducted by the Chinese Academy of Social Sciences noted that only 20 percent of towns conducting elections have well-written regulations.¹¹⁷ In this report, Wang Zhenya, former director of the MoCA, states "The elections have hatched a new elite with firm roots in local society, which may be able to play an active role in the democratization of Chinese society? (*sic*) The system of

democratic self-government is being established in the rural areas of China.”¹¹⁸ This further demonstrates the capacity for local election officials to be the instigators for election reform in China at the national level.

The Role of the International Community

The international community’s role in Chinese elections has been turbulent, but has also provided a unique insight into local election practices. Previously, international observation missions were permitted to report on elections. IRI was the first international team invited to observe elections (1993, 1997, 2000 and 2003) and they found “striking anomalies” in the way that the results were tabulated and reported.¹¹⁹ Following their first assessment, IRI made twelve recommendations for improving elections and during subsequent missions noted substantial improvements. IRI was even permitted to train China’s first-ever group of independent election monitors. Each participant hailed from all parts of China and successfully collaborated in drafting a charter, which explicitly prohibited them from observing elections in their home province to illustrate the importance of conflicts of interest. Shortly after the revolutions in Eastern Europe and fearful of the same fate, the MoCA stopped processing applications for NGO registration at the behest of the NPC, effectively banning this group from continuing any electoral activities. More disturbing, however, was the fact that two of IRI’s local program partners were violently attacked and reportedly sanctioned by government officials, signaling a marked shift in the political climate and concomitantly the end of international presence in Chinese elections.¹²⁰

The Carter Center was also invited by the Chinese government to advise on local elections. Robert Pastor and Qingshan Tan led the missions and noted results similar to those reported by IRI and made 14 recommendations, such as: standardizing rules, synchronizing village elections within a county to take advantage of county-wise civic education programs, use of proper “roving boxes”, opening up the nomination process, making electoral machinery impartial, punishing violators of electoral law, encouraging campaigning and eliminating proxy voting.¹²¹ Echoing Pastor and Tan’s assessment, elections not only produce better leaders and policy, but also social peace, which would be in line with the values upheld in the Chinese Constitution. The Carter Center even set up a website for Chinese citizens enhance their knowledge of the new rights to information (<http://www.chinatransparency.org/>). They also set up a webpage for updating information regarding villager self-government, which facilitates a global exchange of information on grassroots democracy (<http://www.chinarural.org/>). Despite the success of international missions, however, after 2004 the Chinese government halted international programs. Short lived as the international presence was, there were still important procedures for observing and reporting imparted to village administrations.

Recommendations

As Tan reported, village elections have come a long way in trying to conform to democratic election principles. In 1998, President Jiang Zemin is reported to have said, “Expanding basic-level democracy and guaranteeing the democratic rights of the peasants

are not only the most extensive realization of socialist democracy in the countryside but also the utmost important policy that would return the initiative to the peasants [and] ensure them long-term prosperity and security.”¹²² In keeping with that ideal, this section seeks to provide recommendations on how local elections can be improved thereby strengthening the socialist democracy China intends to bolster.

First, one man, one vote should be a nationwide requirement if Chinese officials want elections to meet international standards. This is the minimum requirement for democratically held elections. Moreover, election candidates and civil society should be present to oversee that voters are guaranteed a level of privacy as they cast their ballots. In fact, civil society organizations can play a vital role in improving legal frameworks for elections by advocating impartiality for provisions that can serve the public interest. CSO inclusion can work to increase citizen participation, educate the electorate about laws governing elections and boost voter confidence in the electoral process. Moreover, CSOs could be trained to collect election and report data to the government. This would transfer skills to the CSO and in turn could lend more credibility to the ruling regime. Once a system is in place for data collecting, perhaps through CSOs an electronic database can be made available.

Second, if the purpose of village elections is to reinforce the idea of popular sovereignty and to ensure long-term prosperity, it is incumbent upon the ruling party to provide for each village with election monitor training programs. This will ensure uniformity in electoral observation and will provide the NPC with the opportunity to guide village elections towards the socialist democracy it envisions. Moreover, a uniform and regulated monitoring system will prevent the electorate from being intimidated and coerced, and prevent other illegal activities that may interfere with the voting process. Third, though each village is given the right to conduct its own election, the MoCA should boost its involvement to oversee that elections are being conducted within the framework of the Organic Law. Included in Annex III are sample election monitoring forms provided by the National Democratic Institute (NDI). As recommended by NDI, every monitoring operation should have forms on which poll watchers can record election observations. These forms enhance the uniformity of the information and can even provide quantifiable data. In conjunction with using these forms, the MoCA should develop a database to collect election data which will help them identify trends and irregularities in future elections.

Furthermore, the MoCA can assess the provinces with the most successfully held elections and use those examples as models for a national election framework. This leads into the fourth recommendation; the MoCA should begin collecting information from each province and create a database aggregating trends in electoral participation, observation and reporting mechanisms. Mobile technologies have advanced to the point

that citizens can report incidents of electoral fraud or voter intimidation by using their mobile phones, before, during and after the elections. Together with citizen's reports, official reports will help to build a stronger platform for ensuring transparency. Ushahidi, for example, is an open source media organization dedicated to providing platforms and databases for election observation (<http://community.usahidi.com/>). The platform was used in conjunction with local and international observers and all data was made public.

The standardization of election requirements, an increased role for the MoCA, greater participation for civil society organizations and training and development programs geared towards using innovative mobile technologies can all work to support China's socialist democracy by providing accurate observation and improved reporting techniques.

International Electoral Standards and this Framework

Compliance with International Standards

This section of the framework details seven international treaties or standards and assesses how well Chinese election law and procedures follow them. Relevant provisions of each document are listed and assessed with regards to China's compliance.

China is a signatory to a number of international instruments that set standards for either political rights or elections. The first and most prominent is the Universal Declaration of Human Rights (UDHR). On October 5, 1998, China also signed (but did not ratify) the International Covenant on Civil and Political Rights (ICCPR), which is legally binding on all ratifying countries. In addition to these agreements, China has signed numerous universal treaties, which provide standards for the conduct of elections, including the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Standards	Year of ratification	Is China a signatory?
UDHR	1948	Yes
ICCPR	1966	Yes
CEDAW	1979	Yes
CPRW	1952	No
CRPD	2006	Yes

Universal Declaration of Human Rights (UDHR) (1948)

For the most part, Chinese local elections meet the criteria defined by the Universal Declaration of Human Rights and the ICCPR. There are several areas, however, where local elections can be interpreted as falling short of the declaration. Article 20 of the UDHR states that no one may be compelled to belong to an association. While Communist Party membership is not mandatory, current de facto restrictions mean those who do not belong face unfair barriers to full political rights. Also, Article 21 of the UDHR and Article 25 of the ICCPR state that elections should be periodic and equivalent. The disparity in election dates and procedures across regions does not constitute a violation of this article, but China would benefit from instituting uniform election laws and a national Election Day.

International Covenant on Civil and Political Rights (ICCPR) (1966)

General Comment 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25) (1996)

There are a number of criteria in the ICCPR that Chinese election law fails to meet. Article 17 clearly states that membership in a party should not be a requirement for elected office. As discussed with regards to the UDHR and ICCPR, Communist Party membership is almost a de facto, although not legally mandatory, requirement for office. There have been some promising signs to improve this, however, notably in some villages experimenting with elections to the local Communist Party leadership.¹²³ Chinese law also falls notably short of Article 20, which stipulates the need for an independent election management body. As discussed in previous sections of this paper, China's election law allows for nominally independent electoral management bodies, although they are often controlled by the national Communist Party.

The process of voter registration should also be improved to comply with Article 11. The current law only states that a list of registered voters is posted in the province. Voter registries should be made available online for residents who are working outside their local voting location.

Regardless of its written law, it is clear that China is not adequately fulfilling Article 20, which requires the use of a secret ballot. Incidents where communities vote by hand in open rooms, or where no secret ballot box exists, fail to meet international standards. Furthermore, Article 20 states: *Waiver of these rights is incompatible with article 25 of the Covenant*. This means that individual communities should not use the excuse of local customs to skirt best practices. This practice also reflects a failure of Article 11, which states the necessity of conducting voter education campaigns and ensuring the population has an adequate understanding of the voting process. China should take further steps to inform voters the importance of keeping their vote secret. Observations by the Carter Center describe voters as appearing unfazed by voting in public.¹²⁴ China should inform its citizens how a lack of secrecy of any citizen's vote can hurt the entire election.

Convention on the Rights of Persons with Disabilities (CRPD) (2006)

Chinese electoral law makes some admirable attempts to address voting for those with disabilities. Provisions are included to assist those with limited mobility in casting a ballot. However, Chinese laws contain several provisions that could deprive those with mental disabilities from enjoying their political rights.

Article 34 of the Chinese Constitution states:

“All citizens of the People's Republic of China who have reached the age of 18 have the right to vote and stand for election, regardless of nationality, race, sex, occupation, family background, religious belief, education, property status, or length of residence, except persons deprived of political rights according to law.”

Notably absent is any mention of persons with disabilities. Furthermore, there are numerous provisions that discriminate against those with mental disabilities. Article 10 of the 1998 Guangdong Province Measures for the Election of Villager Committees states:

"Those with mental illness who have no way to carry out their right to vote and be elected, and those dull-witted persons who have no way to manifest their intent shall, after confirmation by the village election committee, not be included in the voter list."

Article 26 of the 1995 election law includes a passage, which states:

“After it is verified by electoral committees, mental patients incapable of exercising the right to vote shall be excluded from the name lists of voters.”

Finally, Article 10 of the 1999 Yunnan Province Measures for the Election of Villager Committees states:

“A villager with mental illness certified by a hospital, and confirmed by the villager election committee as not being able to exercise their right to vote, shall not be included on the list of voters.”

Combined, these provisions constitute a real threat to inclusion of many citizens who should not have their rights revoked. The issue of denying rights to those with mental disabilities is by no means settled in the international arena. Many states, including European democracies, bar voting for citizens believed to be mentally incapable of voting. This can be either assessed through a mental health professional, or by denying the right to vote to those under legal guardianship. Despite this, there has been a clear trend in recent years to push back against these laws and China could set a strong example by taking a lead on this issue. In 2003, a Netherlands Court ruled that Article 54 (2) of their Constitution, which prohibited those under custodial care from voting, was in violation of the International Covenant on Civil and Political Rights. The United Kingdom overturned similar laws in 2006 and Italy in 2009. In 2010, the European Court of Human Rights ruled against the Hungarian government in *Alajos Kiss v. Hungary*.¹²⁵ The court ruled in favor of Mr. Kiss, who was denied inclusion on the voter registry due to being diagnosed with manic depression. The opening of the CRPD, which China is a signatory, guarantees rights to “Persons with disabilities [, which] include those who have long-term physical, mental, intellectual or sensory impairments.”

Furthermore, by denying the right to vote for those with a mental disability, the state is de facto reserving the right to judge any citizen mentally incapable of voting. Could it be possible that a local government official would push to have an individual labeled as mentally disabled for political reasons? What if the quality and quantity of medical professionals varies widely from region to region? Would one individual be assessed as capable of voting in one town, but not in another? All of these questions reveal why China should take efforts to strike these provisions from its laws. In other aspects of disabled rights, however, China has taken admirable steps.

Article 36 of the 1995 election law states: *A voter who is illiterate or disabled and cannot write on his ballot may entrust someone to write for them.* Article 20 states:

“If a voter is illiterate or unable to independently fill out a ballot, the writing stations or a person other than a candidate may be authorized to fill out the ballot. The authorized writer may not vote against the will of the voter.”

Further relevant provisions include:

“If necessary, roving ballot boxes may be used. (Article 19, 1999: Zhejiang Province Measures for the Election of Villager Committees)

“A ballot shall be filled out by the voter himself. For those voters who are illiterate or handicapped and cannot fill out their ballots by themselves, they may authorize a person other than a candidate to fill out their ballots [. . .] When filling out the ballot, those authorized to write in the ballots and designated proxies may not contravene the wishes of the voter.” (Article 20, 1999: Zhejiang Province Measures for the Election of Villager Committees)

“If necessary, roving ballot boxes may be used.” (Article 19, 1999: Zhejiang Province Measures for the Election of Villager Committees)

“The old, weak, sick, or disabled who cannot go to the election meeting or the polling stations may cast votes into roving ballot boxes.” (Article 18, 1999 Yunnan Province Measures for the Election of Villager Committees)

Combined, these provisions make real efforts to address those with disabilities, although many fall short of what would be considered international best practices. For example, while China should be commended for including provisions requiring roving ballot boxes, although this method can still potentially exclude many voters who the government is unaware of. It would be more beneficial to require that every polling station is accessible to those with mobility impairments, as well as require that no person be more than a certain distance from a polling station. Similarly, Braille and tactile ballots should be provided to those who are blind. Providing this option would allow those voters to cast a true secret ballot in a way not possible by having an authorized assistant.

International Standards Related to the Rights of Women: The CPRW and CEDAW and General Recommendation 23 on Political and Public Life

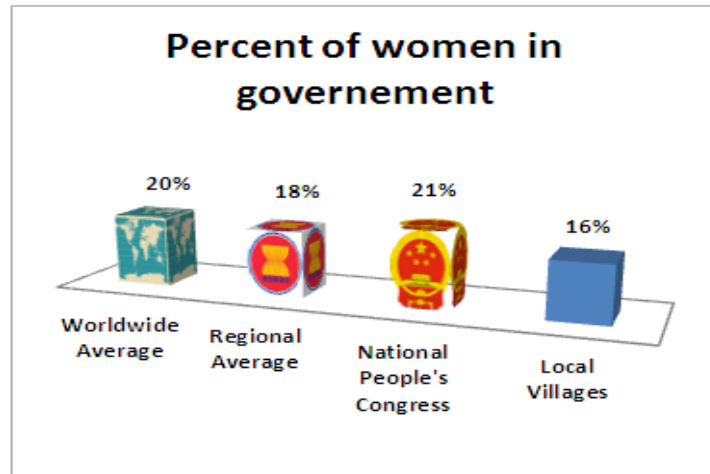
Convention on the Political Rights of Women (CPRW) (1952)

While the Chinese government has taken notable steps to increase the representation of women in local elections, there is room for improvement in order to fully comply with

international standards. The CCP, and many provinces, have shown a genuine interest in promoting gender equality. However, vague and inconsistent laws, coupled with several gaps, leave women underrepresented at the village level. Overall, Chinese law fully complies with the CPRW, as well as Articles 4 and 7 of the CEDAW, which mandates that women enjoy access to political and social life without any barriers. There are some gaps, however, when it comes to CEDAW's General Recommendation 23 on Political and Public Life.

The Organic Law of the Villagers Committees states: "The members of a villagers committee shall include an appropriate number of women." While the inclusion of this provision should be lauded, as it is written, it is vague and unenforceable. There is no description of what the "appropriate number of women" is and numerous assessments indicate that women are underrepresented in Village Committees. Available data suggests that as of 2006, women make up only 1% of village committee chairs and 16 percent of village committee members.¹²⁶

These low numbers are not the result of historically weak participation from women. Citing Joan Maloney's research, Jude Howell notes that in the 1970s, women often comprised up to 50 percent of local level cadre leadership in some areas.¹²⁷ Furthermore, women in China currently comprise 21.33 percent of the National People's Conference.¹²⁸ While this number could be improved, it is higher than the worldwide average of 19.6 percent and the regional average for Asia at 18.3 percent.¹²⁹



Furthermore, China could take steps to further comply with Article 7, Section B, which guarantees women, on equal terms as men, the right "To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government." (Article 7, B) The low number of women on the village committees, coupled with the fact that most of them are assigned Family Planning roles, means that most are not given positions where they can take part in many of the policy debates that their male counterparts do. An increased number of female members would improve women's influence on a greater number of issues that local village committees face.

Women's representation also suffers from the method of approving candidates. As detailed earlier in this framework, local party leadership plays a large role in selecting

and approving candidates. As local Party branches are comprised almost entirely by men, it becomes much harder for women to push through another hurdle.

Local methods of approving candidates may also discriminate against women, who are less likely to meet qualifications such as literacy, education, or demonstrated success in business.¹³⁰ This falls short of Article 23 of General Recommendation 23 on Political and Public Life, which notes that:

“...limiting the right to vote to persons who have a specified level of education, who possess a minimum property qualification or who are literate is not only unreasonable, it may violate the universal guarantee of human rights. It is also likely to have a disproportionate impact on women, thereby contravening the provisions of the Convention.”

In order to avoid this de facto marginalization of some women, China should institute a universal standard for candidate qualifications that do not disproportionately affect women.

China should be commended for the All-China Women’s Federation (ACWF), a women’s advocacy civil society organization that helps meet compliance with CEDAW, Article 7, which requires the ability to participate in civil society organizations.

In order to comply with best practices and international standards, the vague gender quota in the Organic Law should be strengthened and made more specific. While Howell notes that provinces such as Shandong and Hunan have decided to interpret the law as requiring at least one woman on the councils, this is the exception to the rule.¹³¹ The method of electing members to the Villagers Committees resembles a multi, non-transferable voting system which, absent parties, is unfavourable to female or minority candidates. Article 22 of the *General Recommendation 23 on Political and Public Life* notes that states should consider designing systems that produce favorable conditions for gender equality. To fulfil this, it is recommended that China adopt a uniform stipulation that ensures greater gender equity in local elections. One such method would be to require that every committee have at least one female. The women with the highest number of votes would fill this seat. In order to ensure a choice, this would require the selection committee to nominate more than one female, so to avoid them essentially choosing the winner of that one seat. Another method would be to institute a cumulative voting system where electors are allowed to not only cast multiple votes, but cast multiple votes for one candidate. This would allow women to give more weight to female candidates if they choose to do so.

China has made real efforts to comply with international covenants that it has signed. However, as international standards for best practices and inclusivity evolve, China needs to improve several aspects of its electoral law. Most notably, the decentralized model of elections leaves compliance with international standards in the hands of local leaders. This creates an inconsistent dynamic where residents in some areas may have more de facto rights than others. The practice of some provinces, for example, to not use a secret

ballot system deprives voters in those areas of their basic rights. While a decentralized model is not inherently unworkable, stronger national guidelines need to be enforced.

China should also offer greater space for independent candidates to run in local elections. While the legal framework for such candidacies is mostly in place, the reality of what it takes to win is much different. The freedom to win races on candidacies not affiliated with the state party will help China achieve compliance with the ICCPR. Article 27 of General Comment 25 states that the ability to participate in political life should not be limited to those with membership in specific parties. While the ability to self-nominate with ten signatures is a welcome step, the barriers that exist for candidates beyond that stage mean China is not fully compliant with international standards for elections.

China should also establish a uniform set of laws to further comply with international standards regarding inclusion. This includes increasing the participation of both women and persons with disabilities. While not explicitly violating any agreement, the design and management of local elections creates obstacles to equal participation and representation. In order to keep pace with increasingly progressive international standards and expectations, China should examine ways to make voting more accessible, while increasing the number of women elected to local government.

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Annex I

Township Congress Election Ballot

番禺区洛浦街江居委选区选举
番禺区第十六届人民代表大会代表选票
(2011年9月4日)

符号	×	×
候选人姓名	龙 滨	戴 小红

另选他人姓名	梁树新
--------	-----

说明:

1. 本选区应选举番禺区第十六届人民代表大会代表1名。赞成票(包括另选他人)等于或少于应选人数的有效,多于应选人数的无效。

2. 选票所列候选人以姓名笔划为序,赞成的请在候选人上方的符号栏内画“○”或“√”,反对的请在候选人上方的符号栏内画“×”,弃权的画任何符号;如果另选其他选民,请在另选他人姓名内填写被选举人的姓名。

3. 写选票时,请用钢笔或圆珠笔,字迹工整,符号清楚。所画的符号不得模糊或无法辨认。

Village Election Ballot:

峡山村第八届村民委员会选举选票
2011年8月29日(公章)

职务	主任正式候选人 (应选1人)		委员正式候选人 (应选2人)			
姓名	汪秀华	胡正旺	邵从贵	吴顺生	张金华	另选他人
符号	○	×	○	×	×	○

说明:

1. 应选主任1人,委员2人;

2. 同意的请在候选人姓名下方符号栏内划“○”,不同意的划“×”,不同意选票上的候选人可在姓名空格栏内另选其他选民,并在符号栏内划“○”;

3. 等于或少于应选名额的选票有效,多于应选名额的选票无效,任何符号不划的为弃权票,胡写乱画无法辨认的选票为废票;

4. 不允许同一候选人担任两种职务,如果划同一候选人两种职位,该选票作废,其他划对的职位视为有效;

Annex II

PLEDGE TO ACCOMPANY THE CODE OF CONDUCT FOR INTERNATIONAL ELECTION OBSERVER

I have read and understand the Code of Conduct for International Election Observers that was

provided to me by the international election observation mission. I hereby pledge that I will follow the Code of Conduct and that all of my activities as an election observer will be conducted completely in accordance with it. I have no conflicts of interest, political, economic nor other, that will interfere with my ability to be an impartial election observer and to follow the Code of Conduct.

I will maintain strict political impartiality at all times. I will make my judgments based on the

highest standards for accuracy of information and impartiality of analysis, distinguishing subjective factors from objective evidence, and I will base all of my conclusions on factual and verifiable evidence.

I will not obstruct the election process. I will respect national laws and the authority of election

officials and will maintain a respectful attitude toward electoral and other national authorities. I will respect and promote the human rights and fundamental freedoms of the people of the country. I will maintain proper personal behavior and respect others, including exhibiting sensitivity for host-country cultures and customs, exercise sound judgment in personal interactions and observe the highest level of professional conduct at all times, including leisure time.

I will protect the integrity of the international election observation mission and will follow the

instructions of the observation mission. I will attend all briefings, trainings and debriefings required by the election observation mission and will cooperate in the production of its statements and reports as requested. I will refrain from making personal comments, observations or conclusions to the news media or the public before the election observation mission makes a statement, unless specifically instructed otherwise by the observation mission's leadership.

Signed

Print Name

Date

SET OF ELECTION-DAY REPORT FORMS

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Points for group leaders/poll-watchers

1. For purposes of your special attention divide the polling stations in your constituency according to whether they are (a) sensitive, (b) partially sensitive, (c) normal.
2. Assign the members of your group so that each has three to four specified stations to watch.
3. Keep yourself and three or four other members free to move around so as to act as a coordinator between all the stations and also to keep an eye on the stations that have not been assigned to anyone.
4. Assign responsibility to some members of the group for the filling of form numbers 2-A and 2-B. Have them completed if possible before polling day. Please give source for every information you record (whether from personal inquiries, published material, candidate's claim, some citizen's report, etc).
5. Please have watchers familiarise themselves before hand with the log-book they will be required to fill on polling day.
6. Remember, the watcher's job is not to supervise or monitor election but to watch it closely so that in the light of his observations, conclusions and recommendations can afterwards be compiled.
7. The watchers should be courteous and cooperative with the election staff. They should feel assured that the watcher's purpose is not to interfere with their work but to attest to their performance later on.
8. The candidates and their supporters should also feel assured that the watcher is strictly non-partisan, that his only concern is the safeguarding of human rights and the democratic process, and that his involvement is only to the benefit of all the parties.
9. All the members of your group should strictly refrain from giving any public statement to the press or any other person. Such statement if necessary will only be issued by the HRCP central office.
10. Assign at least one person to the office of the returning officer after the polling ends for all information from that end.

Communication

1. Identify all points in your area (PCO, friend's home etc) from where contacts can be made. All group members should know of these points and their numbers.
2. Make sure that every watcher has all the other necessary contact numbers in his log book.
3. It is not necessary for poll-watchers to interrupt their watch for minor reports. Only serious incidents should be conveyed.
4. After the end of the polling the group leader should give an interim report (specimen in log-book) to the provincial or Lahore office of HRCP either by phone or fax.
5. Both the provincial and head office of HRCP will remain open for your communications from October 6 evening to October 7 evening and October 9 to Oct. 10 evening.

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Poll day check-list**Basic details**

Observer's name _____	Constituency No. _____
Polling station No. _____	Polling booth No. _____
Observer's arrival time _____	Observer's departure time _____

Polling officer's name _____	Military officer's name _____
Polling agents' name and party _____	
Time the polling started _____	Time the polling ended _____
No. of ballot boxes used _____	

	<u>Muslim</u>	<u>Non-Muslim</u>
- No. of ballot books	_____	_____
Their serial Nos.	_____	_____
- No. of ballots cast	_____	_____
- No. of ballots destroyed	_____	_____
- No. of challenge votes	_____	_____
- No. of tender votes	_____	_____
- No. of unused ballots	_____	_____

Check list**1. Before polling**

	<u>Yes</u>	<u>No</u>
- Does the presiding officer have all the material?	_____	_____
- Is the polling staff exactly the same as previously notified?	_____	_____
- Is the polling station within 3 km of all voters of the station?	_____	_____
- Are polling agents of all the candidates present?	_____	_____
- Was the ballot box shown to be empty before start of polling?	_____	_____
- Was the ballot box sealed after it was shown to be empty?	_____	_____

SET OF ELECTION-DAY REPORT FORMS

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2. During polling	Yes	No
- Did the polling start at appointed time?		
- Does the place for ballot marking fulfil secrecy requirement?		
- Is the voters' list exactly the same as earlier notified?		
- Is the voters' queue orderly?		
- Are the voters' identity cards being appropriately checked?		
- Is every identity card being punched?		
- Is the voter's name scored off after his identity has been checked?		
- Is every voter's thumb marked with indelible ink?		
- Is the ink indelible enough?		
- Does the presiding officer stamp and sign the back of the ballot paper before giving it to the voter?		
- Does he make the necessary entry on the counterfoil of the ballot paper?		
- Does every voter put the ballot paper in the ballot box after marking?		
- Is the presiding officer's stamp and initials on the back of the ballot paper visible as it is dropped in the box?		
- Is the ballot box within everyone's sight all the time?		
- Is the voter allowed to cast tender or challenge vote when necessary?		
- Is the polling staff fair in responding to complaints?		
- Is the polling staff impartial?		
- Is the military official on duty impartial?		
- Are the party camps at proper distance from the station?		
- Is the prohibition on campaigning within polling premises being observed?		
- Is the whole process being carried out in an orderly and peaceful atmosphere?		

Log Book for Poll-watchers
Human Rights Commission of Pakistan
Pakistan

SET OF ELECTION-DAY REPORT FORMS

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3. After the polling	Yes	No
- Did the polling end at appointed time?		
- Is the seal on the ballot boxes intact?		
- Is the ballot box within everyone's sight?		
- Are only the authorised people present at the counting?		
- Is the counting of both Muslim and non-Muslim votes being done in the prescribed way?		
- Is the counting being done in the presence of the polling agents and poll-watchers?		
- Is the decision on doubtful ballots fair in all cases?		
- Are the destroyed, tender and challenge ballots sealed separately?		
- Do all polling agents attest the statement of the count?		
- Does the presiding officer publicly paste up the statement of the count?		
- Does the presiding officer take the result directly to the returning officer?		
- Is the returning officer's announcement in conformity with presiding officer's count?		

Explanation

- If your answers to any of the questions above is 'no' please give details here.

SET OF ELECTION-DAY REPORT FORMS

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Observer's interim report constituency-wise

1. Constituency no. _____
2. Total votes cast _____
3. No. of polling stations
visited by the observers _____
4. Candidate elected
His party _____
His no. of votes _____
5. Next losing candidate
His party _____
His no. of votes _____
6. Time of completion of result _____
7. If delayed, why? _____
8. No. of polling stations where
voting suspended? _____
for how long? _____
why? _____
9. Were polling agents of all
candidates present? _____
If not why? _____
10. Was polling generally peaceful? _____
11. Was the process impartial and
transparent? _____
12. Any objection raised by the
losing candidate? _____
13. How many persons were penalised?
for bogus voting? _____
for causing disturbance? _____
14. Any impediments raised in your work? _____

Annex IV

Universal Declaration of Human Rights (UDHR) (1948)

- *Article 19 Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*
- *Article 20 Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association.*
- *Article 21 Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. Everyone has the right of equal access to public service in his country. The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.*

International Covenant on Civil and Political Rights (ICCPR) (1966)

- *Article 25 Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2, and without unreasonable restrictions:*
 - (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;*
 - (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;*
 - (c) To have access, on general terms of equality, to public service in his country.*

General Comment 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25) (1996)

10. The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements. Party membership should not be a condition of eligibility to vote, nor a ground of disqualification.

11. States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote. Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced. Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community. Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice.

16. Conditions relating to nomination dates, fees or deposits should be reasonable and not discriminatory. If there are reasonable grounds for regarding certain elective offices as incompatible with tenure of specific positions (e.g. the judiciary, high-ranking military office, public service), measures to avoid any conflicts of interest should not unduly limit the rights protected by paragraph

(b). The grounds for the removal of elected office holders should be established by laws based on objective and reasonable criteria and incorporating fair procedures.

17. The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy. Without prejudice to paragraph (1) of article 5 of the Covenant, political opinion may not be used as a ground to deprive any person of the right to stand for election.

20. An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant. States should take measures to guarantee the requirement of the secrecy of the vote during elections, including absentee voting, where such a system exists. This implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process. Waiver of these rights is incompatible with article 25 of the Covenant. The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have

confidence in the security of the ballot and the counting of the votes. Assistance provided to the disabled, blind or illiterate should be independent. Electors should be fully informed of these guarantees.

Convention on the Rights of Persons with Disabilities (CRPD) (2006)

Article 21 Freedom of expression and opinion, and access to information

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- *Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;*
- *Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;*
- *Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;*
- *Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;*
- *Recognizing and promoting the use of sign languages.*

Article 29 Participation in political and public life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

(a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government,

facilitating the use of assistive and new technologies where appropriate;

(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) To promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

International Standards Related to the Rights of Women: The CPRW and CEDAW and General Recommendation 23 on Political and Public Life

Convention on the Political Rights of Women (CPRW) (1952)

Article 1

Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.

Article 2

Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination.

Article 3

Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.

Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (1979)

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;*
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;*
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.*

General Recommendation 23 on Political and Public Life (1997)¹³²

5. Article 7 obliges States parties to take all appropriate measures to eliminate discrimination against women in political and public life and to ensure that they enjoy equality with men in political and public life. The obligation specified in article 7 extends to all areas of public and political life and is not limited to those areas specified in subparagraphs (a), (b) and (c). The political and public life of a country is a broad concept. It refers to the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers. The term covers all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. The concept also includes many aspects of civil society, including public boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life.

6. The Convention envisages that, to be effective, this equality must be achieved within the framework of a political system in which each citizen enjoys the right to vote and be elected at genuine periodic elections held on the basis of universal

suffrage and by secret ballot, in such a way as to guarantee the free expression of the will of the electorate.

18. The Convention obliges States parties in constitutions or legislation to take appropriate steps to ensure that women, on the basis of equality with men, enjoy the right to vote in all elections and referendums, and to be elected. These rights must be enjoyed both de jure and de facto.

22. The system of balloting, the distribution of seats in Parliament, the choice of district, all have a significant impact on the proportion of women elected to Parliament. Political parties must embrace the principles of equal opportunity and democracy and endeavour to balance the number of male and female candidates.

23. The enjoyment of the right to vote by women should not be subject to restrictions or conditions that do not apply to men or that have a disproportionate impact on women. For example, limiting the right to vote to persons who have a specified level of education, who possess a minimum property qualification or who are literate is not only unreasonable, it may violate the universal guarantee of human rights. It is also likely to have a disproportionate impact on women, thereby contravening the provisions of the Convention.

28. While States parties generally hold the power to appoint women to senior cabinet and administrative positions, political parties also have a responsibility to ensure that women are included in party lists and nominated for election in areas where they have a likelihood of electoral success.

32. As political parties are an important vehicle in decision-making roles, Governments should encourage political parties to examine the extent to which women are full and equal participants in their activities and, where this is not the case, should identify the reasons for this. Political parties should be encouraged to adopt effective measures, including the provision of information, financial and other resources, to overcome obstacles to women's full participation and representation and ensure that women have an equal opportunity in practice to serve as party officials and to be nominated as candidates for election.

34. Other organizations such as trade unions and political parties have an obligation to demonstrate their commitment to the principle of gender equality in their constitutions, in the application of those rules and in the composition of their memberships with gender-balanced representation on their executive boards so that these bodies may benefit from the full and equal participation of all sectors of society and from contributions made by both sexes.

Recommendations

42. *States parties are under an obligation to take all appropriate measures, including the enactment of appropriate legislation that complies with their Constitution, to ensure that organizations such as political parties and trade unions, which may not be subject directly to obligations under the Convention, do not discriminate against women and respect the principles contained in articles 7 and 8.*

43. *States parties should identify and implement temporary special measures to ensure the equal representation of women in all fields covered by articles 7 and 8.*

45. *Measures that should be identified, implemented and monitored for effectiveness include, under article 7, paragraph (a), those designed to:*

- (a) Achieve a balance between women and men holding publicly elected positions;*
- (b) Ensure that women understand their right to vote, the importance of this right and how to exercise it;*
- (c) Ensure that barriers to equality are overcome, including those resulting from illiteracy, language, poverty and impediments to women's freedom of movement;*
- (d) Assist women experiencing such disadvantages to exercise their right to vote and to be elected.*

46. *Under article 7, paragraph (b), such measures include those designed to ensure:*

- (a) Equality of representation of women in the formulation of government policy;*
- (b) Women's enjoyment in practice of the equal right to hold public office;*
- (c) Recruiting processes directed at women that are open and subject to appeal.*

47. *Under article 7, paragraph (c), such measures include those designed to:*

- (a) Ensure that effective legislation is enacted prohibiting discrimination against women;*
- (b) Encourage non-governmental organizations and public and political associations to adopt strategies that encourage women's representation and participation in their work.*

