

BACKGROUND BRIEF COALITION FOR PEACE & ETHICS



NO. 2/6 (JUNE 2015) PUBLIC COMMENTARY ON CHINA'S DRAFT FOREIGN NGO MANAGEMENT LAW

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ABSTRACT: In 2015, Chinese authorities recently unveiled a Second Draft of the People's Republic of China Foreign Non-Governmental Organizations Management Law (Draft) (Second Reviewed Draft) (中华人民共和国境外非政府组织管理法(草案)(二次审议稿)). State authorities invited public commentary. This Background provides a critical summary of commentary submitted and analysis undertaken of the Draft Chinese Foreign NGO Management Law.



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Public Commentary on the Draft Foreign NGO Management Law

1. Suggestions and Comments from NGOs

1) Legal Center for NGO¹

Articles that should be revised are following:

- Article 3: Foreign NGOs in fields such as economics, education, science and technology, health, culture, sports, environmental protection and charity may conduct activities beneficial to the development of the social welfare in accordance with law.

Suggestion: Delete “beneficial to the development of the social welfare”

Reason: NGOs include both NGOs that are beneficial to the development of social welfare and NGOs that are beneficial to other aspects of a society, such as business association.

- Article 5: Foreign NGOs carrying out activities within mainland China shall abide by Chinese laws; must not endanger China's national unity, security, or ethnic unity; must not harm China's national interests, society's public interest, or other groups' and citizens' lawful rights; and must not violate public order and customs.
Foreign NGOs must not engage in or fund for-profit activities or political activities, and must not illegally engage in religious activities or illegally fund religious activities.

Suggestion: Change “Foreign NGOs must not engage in or fund for-profit activities or political activities, and must not illegally engage in religious activities or illegally fund religious activities” to “Foreign NGOs must not be profit organizations, and must not engage in or fund illegal religious activities or illegal political activities.”

¹上海复恩社会组织法律中心. Legal Center for NGO provides professional legal services to NGOs in China.

See <http://www.chinadevelopmentbrief.org.cn/news-17516.html>

Reason: (1) NGOs must not be profit organizations, but that doesn't mean they cannot engage in profit activities. Besides, the rule of "engage in or fund for-profit activities" is so wide that might exclude a lot of normal NGO activities. (2) Political activities can be divided into legal activities and illegal activities. Foreign NGOs' legal political activities, such as, to promote rule of law, or to strengthen the protection of basic human rights, should be allowed and encouraged.

- Article 7: The State Council Public Security Department and the provincial level public security organs are the registration and management organs for foreign NGOs carrying out activities within mainland China.

Suggestion: Consider "the department of civil affairs" as the registration and management organs for foreign NGOs carrying out activities.

Reason: (1) From the perspective of the function and duties of the two departments, public security department is in charge of national security and public security, while civil affairs department is in charge of civil and social affair, which obviously is functionally closer to the registration and management of foreign NGOs' activities. (2) From the perspective of practical work, civil affairs department has been the registration and management organ for so many years and has gained a lot of useful experience. It would be maintain the certainty and predictability of the management of foreign NGOs.

- Article 11: Foreign NGOs applying to establish a representative office require the consent of a professional supervisory unit.

Suggestion: There should be further statements about the process of requiring the consent of a professional supervisory unit, for example application documents, review standards, application period, reconsideration procedure and such.

Reason: Further statement would make this article more operational.

- Article 12: Foreign NGOs shall apply to register the establishment of a representative office with the registration management organs within 30 days of obtaining the consent of the professional supervisory unit. Applications to register a representative office shall submit the following documents and materials to the registration management organs:
 - (1) The written application;
 - (2) Supporting documents and materials as provided for in the first paragraph of Article 10 of this Law;

- (3) Proof of identity, resume and materials showing proof of no criminal record for the proposed chief representative;
- (4) Materials showing the proposed residence for the representative office;
- (5) Materials showing the sources of capital;
- (6) Documents of consent from the professional supervisory unit;
- (7) Other documents and materials provided for by law or administrative regulations.

Registration management organs reviewing the applications of foreign NGOs to set up representative offices may organize experts to conduct assessments as needed.

Registration management organs shall issue a decision to authorize or not authorize within 60 days of receiving an application.

Suggestion: (1) Delete "Registration management organs reviewing the applications of foreign NGOs to set up representative offices may organize experts to conduct assessments as needed." (2) Shorten the period for the registration management organs to issue a decision.

Reason: Once a foreign NGO has gotten the consent of a professional supervisory unit, the registration management organ just needs to review the decision to authorize made by the professional supervisory unit and other basic materials. There is no need for more substantial review, otherwise it is just a burden on both foreign NGOs and registration management organs.

- Article 18: Where foreign NGOs that have not established representative offices within mainland China seek to carry out temporary activities in mainland China, they shall first secure temporary activity permits. The duration of a temporary activity must not exceed one year.

Foreign NGOs seeking to carry out temporary activities within mainland China must cooperate with one of the following organizations (hereinafter "Chinese Partner Units"): state organs, mass organizations, public institutions, or social organizations.

Suggestion: (1) Change "they shall first secure temporary activity permits" to "they shall follow the relevant laws, regulations, or other rules." (2) Delete "Foreign NGOs seeking to carry out temporary activities within mainland China must cooperate with one of the following organizations (hereinafter "Chinese Partner Units"): state organs, mass organizations, public institutions, or social organizations."

Reason: (1) There are already a lot of regulations and rule governing temporary activities according to different activity characteristics. It is not

necessary to secure extra temporary activity permits. What more, it is not easy for registration management organs to review all kinds of different activities. (2) Currently, the demand of the development and communication of domestic and foreign NGOs is growing. There are more and more activities. The requirement of a temporary activity permit will hamper the development of the NGOs and also will increase the intensity of registration and management work.

- Article 32: Foreign NGOs' representative offices hiring personnel or recruiting volunteers within mainland China, shall entrust local foreign affairs service units, or other units designated by the Chinese government, to handle it.
Foreign NGOs' representative offices shall report personnel information to the professional supervisory unit and registration management organs.
Foreign NGOs carrying out temporary activities must not directly recruit volunteers, and where truly needing volunteers, shall have the Chinese partner unit recruit.

Suggestion: Delete the restriction of hiring personnel or recruiting volunteers within mainland China or when carrying out temporary activities.

Reason: When a foreign NGO has passed the double review from the registration management organs and the professional supervisory unit, it should have more autonomy on the daily operation as long as they are not against relevant laws, regulations or rules. Besides, this rule will seriously harm the work efficiency of foreign NGOs, especially under some special circumstances, for example earthquake and other natural disasters.

- Article 33: Foreign NGOs' representative offices and foreign NGOs carrying out temporary activities must not develop, or covertly develop, membership within mainland China;

Suggestion: Delete "or covertly develop".

Reason: The definition of "covertly developing" is not clear so that it might cause misunderstanding and excessive law enforcement.

- Article 35: The proportion of foreign personnel at foreign NGOs' representative offices must not exceed 50% of total staff numbers.
Foreign NGOs' representative offices' personnel must not simultaneously hold positions at other foreign NGOs' representative offices.

Suggestion: Delete the restriction of number and positions for foreign personnel at foreign NGOs' representative offices.

Reason: Compared with the rules on the same issue for international corporation, it is unfair and unnecessary to restrict it for foreign NGOs. And it is not good for individuals to join in more than one social welfare project.

- Article 38: Individuals, legal persons, and other organizations within mainland China must not be retained or receive funding, or represent, or covertly represent, foreign NGOs carrying out activities that have not registered a representative office or acquired a temporary activities permit.

Suggestion: Delete "or covertly represent".

Reason: The definition of "covertly representing" is not clear. It can just adopt "represent" in the Civil Law.

- Article 52: Foreign NGOs seeking to independently or collaboratively establish foundations or private social institutions must apply for registration in accordance with this law, and all other relevant Chinese laws and administrative regulations. Consult the relevant provisions in Chapter 2 of this law for registration methods.
- Article 65: "Private civic institutions" as used in this Law refers to lawfully registered social organizations, organized by social forces and engaging in social service activities.

Suggestion: (1) Change "foundations or private social institutions" in Article 52 to "social organizations". (2) Change "Consult the relevant provisions in Chapter 2 of this law for registration methods" to "The State Council shall formulate another registration regulation." (3) Delete Article 65.

Reason: (1) The definition of "social organization" is a universal concept covering all social association, private non-enterprise units, and foundations. (2) Chapter 2 of this Draft holds a higher standard of setting up representative offices than the current rules of independently or collaboratively establishing social organizations. From the prospective of promoting global communication, the legislation shall encourage foreign NGOs to come to China carry out activities. It wont help with our national image to improve the registration requirements.

2) International Service For Human rights²

A draft Chinese law would further restrict the independence of non-governmental organisations in the country and significantly impede their ability to provide critical social services and undertake activities to promote human rights and the rule of law, ISHR said today.

An amended draft of the Foreign NGO Management Law, released publicly on 5 May, retains the most problematic provisions of an earlier version of the law and fails to adequately take into account serious concerns raised by both domestic and international civil society and by major governments.

Civil society organisations play a key role in China, complementing efforts by government and mass organisations and extending access to public goods like education and healthcare. They also play a key role in providing disaster relief to vulnerable communities, particularly those deep in China's hinterland. In recent years, NGOs have collaborated effectively, including with all levels of government, to respond to displacement following natural disasters or to improve educational outcomes for the children of internal migrants. In light of the nascent Chinese philanthropic community, and the ongoing evolution and capacity-building of domestic grassroots organisations, external partners have become lifelines for many local and even national NGOs. The draft law would fundamentally undermine these relationships, and in so doing call into question the very survival of independent civil society.

According to some international NGOs, this may be exactly the point. Human Rights Watch notes that, 'this law is clearly part and parcel of a larger effort to limit, not facilitate, the work of independent organizations'.

The new draft contains a range of problematic provisions that would constrain the independence of civil society organisations: from arduous and opaque approval processes for registration and project activities; to incursions on private property and information under the guise of 'supervision' by public security authorities; to extensive sanctions ranging from fines, to deregistration, to detention.

ISHR is particularly concerned with the vagueness and breadth of provisions which can give rise to the imposition of sanctions, including 'political' or 'religious' activities, 'subversion of state power' and 'spreading rumors'. Similarly vague provisions have long been used to stifle and criminalise the work and activities of human rights defenders in the country and there is little

² <http://www.ishr.ch/news/china-amend-draft-law-foreign-ngo-management-and-ensure-space-independent-civil-society>

reason to believe that the Chinese government will exercise more restraint in levying these ambiguous provisions against foreign NGOs.

One change to the second draft, touted as a positive move by Chinese media, enhances the ability of foreign NGOs to establish branch offices. In the initial draft, a foreign NGO was only allowed to establish one representative office, or to conduct 'temporary activities' in partnership with a limited set of (government-approved) Chinese partners in lieu of representation. The second draft allows for some exceptions to this rule, at the discretion of the State Council. The China Daily reports that this change came in response to concerns by some localities with a stake in facilitating the continued work of foreign NGOs in high-priority areas – namely, science and technology.

However, other concerns raised publicly and privately by Chinese experts and human rights organisations, as well as foreign governments, appear to have gone unheeded.

According to the US State Department: 'We consistently emphasize [that] respect for rule of law, independent judiciary, free flow of information, and robust civil society are really critical... that's a message we give [the Chinese government] constantly.' Similarly, UN Special Rapporteur on Freedom of Association and Assembly, Maina Kiai, as early as 2011, noted significant concerns with the ability of Chinese defenders and organisations to engage in peaceful demonstrations or to associate freely without facing harassment or intimidation.

The Chinese government must meet its obligations under international law to protect and promote human rights. As regards the role of civil society, it has further commitments, particularly as a member of the Human Rights Council, which adopted a resolution on protecting civil society space by consensus in September 2014. That resolution specifically applauded the role of civil society in contributing positively to economic, social and cultural development, reaffirmed the importance of respecting the right of civil society organisations to access resources, and emphasised the need more broadly for an enabling environment free from hindrance and insecurity.

Rather than seeing civil society as an enabling partner in this endeavor, however, China consistently acts to undermine the independence of civil society organisations. The restrictions on foreign NGO engagement in China have the potential to eviscerate the increasingly diverse and impactful local NGO community. They also contribute to a worrying global narrative that vilifies the influence of 'foreign agents' and seeks to narrow the role of civil society to furthering vaguely defined national interests.

The international community must support the calls from within and outside China for a substantive revision of this law that would be in line with international human rights norms. All stakeholders, including governments, civil society, religious organisations – and even multinational corporations who conduct charitable work and community outreach in China – must make clear that onerous and restrictive regulations contained in the draft law have no place in a country that seeks to be a credible partner in social and economic development on the global stage.

3) Open Society Foundation³

George Soros, the founder of the Open Society Foundations, discusses China with Orville Schell at the Asia Society in New York and explains why his organization has not been active there, even before the current tightening of legal restrictions.

See the video here: <http://chinadigitaltimes.net/2015/05/draft-law-says-foreign-ngos-can-open-offices-with-approval/>

4) Human Rights in China

HRIC Law Note: Draft Law on Foreign NGOs Undermines Chinese Civil Society and China's International Engagement⁴

On May 5, 2015, the Chinese government released for public comment the Foreign/ Overseas Non-Governmental Organizations Management Law of the People's Republic of China (Draft) (Second Review Draft) (《境外非政府组织管理法（草案二次审议稿）全文》” FNGO draft law”). If enacted and implemented in its current form, both Chinese civil society and international engagement with it will be considerably degraded. The stated purpose of the FNGO draft law is to “standardize and guide the activities carried out by foreign NGOs within China, protect their lawful rights and interests, and promote exchange and cooperation” (Art. 1). However, the draft law would require foreign NGOs to accept a high level of state oversight and control over all their activities by public security authorities and Chinese professional supervisory units. The proposed regime threatens to harm China's interests by cutting off significant resources, expertise, and civil society support necessary to address the complex environmental, social, and development challenges facing the country. The draft law further undermines China's

³ <http://chinadigitaltimes.net/2015/05/draft-law-says-foreign-ngos-can-open-offices-with-approval/>

⁴ <http://www.hrichina.org/en/legal-resources/hric-law-note-draft-law-foreign-ngos-undermines-chinese-civil-society-and-chinas>

efforts to be perceived as a constructive and participatory member of the international community.

The spirit and substantive provisions of the draft are consistent with the intensifying trend of broadened crackdowns on domestic civil society since President Xi Jinping assumed power in 2013. As numerous China law experts and commentators have pointed out, elements of the proposed law create serious obstacles for a functioning civil society and impede future engagement by foreign NGOs in China.⁵ For instance, the lack of clarity of key terms (e.g., what constitutes a “foreign NGO,” and what “activities” fall within the law’s purview) fails to provide guidance to enforcement authorities, leaving the law vulnerable to corrupt or politicized implementation. The vesting of broad supervisory power in the public security departments under China’s State Council, as opposed to the Ministry of Civil Affairs which oversees domestic NGOs, further sends a chilling message and opens the way for abuse and criminalization of activities deemed unacceptable by the authorities.

Beyond these domestic considerations, the FNGO draft law violates China’s human rights obligations by flouting international standards related to freedom of association, including access to resources, the prohibition against restrictive and discriminatory regulatory regimes, and the creation of an enabling environment for civil society. As a sitting member of the Human Rights Council and an active participant in international human rights mechanisms and processes, China should be exercising leadership.⁶ Instead, the proposed law would not only blatantly disregard China’s own obligations, but also contribute to eroding standards around civil society. To uphold China’s commitments, a revised FNGO draft law should reflect greater coherence with and respect for these international standards.

China’s International Obligations

As a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁷ and as a UN member state,⁸ China

⁵ See resources list to the right of this document for excellent further commentary and analyses.

⁶ According to the resolution that established the Human Rights Council, members “shall uphold the highest standards in the promotion and protection of human rights.” As a sitting member, China falls within this expectation. See A/RES/60/251 para.9, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf

⁷ China signed and ratified CEDAW in 1980. Article 7 of the Convention requires that states “eliminate discrimination against women in the political

is obligated to ensure freedom of association⁹ for its citizens. The Special Rapporteur on the situation of human rights defenders has stated that "[a]ccess to funding, the ability of human rights organizations to solicit, receive and use funding, is an inherent element of the right to freedom of association."¹⁰ The Special Rapporteur on the rights to freedom of peaceful assembly and of association has further stated that governments must "avoid measures that disproportionately target or burden civil society organizations, such as imposing onerous vetting rules, procedures or other CSO-specific requirements not applied to the corporate sector writ large [emphasis added]."¹¹

and public life of the country," including participation in "non-governmental organizations and associations concerned with the public and political life of the country." Available at:

<http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

⁸ See the Universal Declaration on Human Rights, unanimously approved by the General Assembly in 1948 and considered by many to constitute customary international law, Article 20(1), which states: "Everyone has the right to freedom of peaceful assembly and association." Available at: <http://www.un.org/en/documents/udhr/>. See also the Declaration on Human Rights Defenders, adopted by consensus by the General Assembly in 1998, Article 5, which states: "For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organizations, associations or groups;
- (c) To communicate with non-governmental or intergovernmental organizations."

Available at:

<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Translation.aspx>

⁹ The Special Representative of the Secretary-General on human rights defenders defined freedom of association as involving "the right of individuals to interact and organize among themselves to collectively express, promote, pursue, and defend common interests." See A/59/401, para. 46, available at: http://www.hrichina.org/sites/default/files/human_rights_defenders_note_by_secretary_general.pdf

¹⁰ See A/64/226 para.91, available at:

http://www.hrichina.org/sites/default/files/human_rights_defenders_note_by_secretary_general_2009.pdf

¹¹ See A/HRC/23/39, para.24, available at:

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/39

In addition to these standards regarding the right to freedom of association, the Human Rights Council passed a resolution in 2014 aimed at supporting an enabling environment for civil society. The resolution expressed concern regarding regulation efforts similar to the FNGO draft law, noting that, “in some instances, domestic legal and administrative provisions, such as national security and counter-terrorism legislation, and other measures such as provisions on funding to civil society, have sought to or have been misused to hinder the work and endanger the safety of civil society in a manner contrary to international law[.]” In light of this, the resolution called upon “States to ensure that provisions on funding to civil society actors are in compliance with their international human rights obligations and commitments and are not misused to hinder the work or endanger the safety of civil society actors, and underline[d] the importance of the ability to solicit, receive and utilize resources for their work [emphasis added].”¹²

The FNGO draft law clearly contravenes these standards by (1) placing burdensome restrictions on civil society’s access to funding, (2) targeting the NGO sector in a discriminatory manner, and (3) exposing civil society to harm under the banner of national security. These issues are discussed in greater detail below.

Restrictions on access to funding

Though the draft law formally regulates foreign NGOs, its provisions will result in restrictions on domestic civil society groups’ access to resources in two important ways.

First, the draft law would restrict the number of FNGOs able to register and therefore legally support Chinese civil society organizations. Second, the provisions in the draft in effect limit the domestic individuals and groups registered FNGOs may work with or provide funding to.

As noted by experts of varied backgrounds in the resources provided to the right, under the draft provisions, international support for and cooperation with Chinese civil society would be limited to groups that are approved by the authorities (Arts. 6-7) and both willing and able to adhere to the substantial registration (Arts. 10-20) and reporting, banking, accounting, and staff hiring requirements (see Arts. 23-38).

Even groups that are willing to comply with these considerable requirements and have activities that are permissible under the draft law may nonetheless

¹² See A/HRC/27/L.24, pp. 2-3, available at:
http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/27/L.24

be unable to secure the sponsoring supervisory units necessary for registration (Art. 11). This is because professional units eligible to serve this function have no clear incentive to assume responsibility for overseas organizations. Also, as a practical matter, the onerous monitoring responsibilities imposed by the draft law may limit the number of overseas organizations they can feasibly supervise.

In addition to these challenging registration requirements, once registered, FNGOs can only hire personnel on the mainland that have been processed by an officially designated local unit (Art. 32) and must submit annual activity plans for inspection and approval by their supervisory units and public security authorities (Art. 24).

In aggregate, these provisions threaten to cut independent Chinese NGOs off from financial resources entirely and could dramatically reduce the resources available even to state-sanctioned groups.

Discriminatory targeting of NGOs

In addition to reducing access to funding, the FNGO draft law places higher burdens on foreign NGOs than on foreign businesses. For example, while Article 1 states that the purpose is to protect the rights and interests of foreign NGOs, Article 13 states that the FNGO representative office does not have the status of a legal person. Therefore, unlike business corporations that do have legal status and limited legal liability, the chief representative and staff may be exposed to personal liability. Under the international standards outlined above, this constitutes impermissible discrimination against the civil society sector.

Many NGOs come to China specifically to help deal with the inequalities, and social and environment impacts created by unsustainable development policies and practices. By discriminating against this sector, the draft law would curtail activities that are not only lawful, but necessary to solving China's complex problems.

Exposure to misuse by public security authorities

Lastly, the current oversight authority, monitoring powers, and vague prohibitions present in the FNGO draft law open the way for its misuse in the name of national security and public order. As noted above, the draft law vests oversight authority in the public security departments of the State Council and provincial-level public security authorities (Arts. 7, 45-47). Given that domestic NGOs are regulated by the Ministry of Civil Affairs, the oversight structure of the FNGO draft law suggests that this regulation is considered a

national security measure directly supervised by public security departments. This security characterization is concerning given the weakened procedural protections and transparency in cases related to national security.

This concern is exacerbated by provisions in the draft law that grant public security authorities the power to enter the property of registered NGOs to conduct on-site investigations, question staff, seize property, and copy documents, seemingly without any associated criminal procedural requirements (Art. 49). The law furthermore permits authorities to detain NGO staff for up to 15 days where violations do not constitute a criminal offense (Art. 59).

These powers can be invoked in a range of circumstances echoing concerns of national security and public order. For instance, NGOs are prohibited from endangering China's "national unity," "ethnic cohesion," or "public order and morality" (Art. 5). More specific sanctions follow when FNGO conduct is seen as encouraging resistance to state law, promoting "rumors" damaging to state interest, gathering state secrets, or any number of other circumstances that are damaging to the state or public interest (Art. 59).

While national security and public order are legitimate state interests, as demonstrated by the Human Rights Council's 2014 resolution mentioned above, regulations seeking to advance these aims must be drafted so as to avoid harm resulting from the misuse of vague or overbroad provisions. As currently formulated, the FNGO draft law fails to meet this requirement.

HRIC Suggestions for Revisions to the Draft Law

To meet China's international obligations, the current draft law should be revised to:

Clarify the definition of FNGO, nature of the activities that are covered, and criteria by which applicant organizations will be evaluated;

Create a registration regime of notification rather than approval, and remove onerous requirements such as sponsorship and intrusive monitoring of project activities and finances;¹³

Ensure that formal and informal associations can seek, receive and use funding and other resources, whether domestic, foreign, or international, without prior authorization or other undue impediments; and

¹³ See the SR on Assembly and Association's recommendation to states for such a framework: A/HRC/23/39, para. 82, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf

Ensure that oversight of civil society regulation is consistent and appropriate for international and domestic groups, and not placed under the authority of police or security organs.

Finally, in order to promote greater transparency in the legislative process, the Chinese government should make public the substance of the comments received.

2. Commentary at Conferences

1) Overseas NGO Management Law discussed at Shanghai seminar ¹⁴

A seminar was held at Shanghai Jiaotong University on May 21st to discuss the second draft of the Overseas NGO Management Law. More than 50 legal experts and scholars came from all over the country to discuss the draft legislation. The event was co-organized by Jiaotong University and The Center for NPOs law of Peking University.

An article in the Shanghai Education News detailed the event, saying that as China has developed its interaction with overseas NGOs has increased. Operating in areas such as education, science, environmental protection, and public health, the different concepts, management methods and operational systems of overseas NGOs have contributed to the development of China's own NGOs.

At the same time, the article writes that the lack of legislative support has caused these organizations to face problems. The topics discussed at the seminar included the aims, scope, legal terms, contents, and registration management procedures that were outlined in the draft legislation.

2) Hong Kong NPOs' informal discussion¹⁵

In May of 2015, on the basis of a thorough and meticulous study of the draft, more than ten non-profit organizations (NPOs) from Hong Kong that run projects in mainland China organized an informal discussion of the details of the draft. Below is a summary of feedback selected from the Hong Kong NPOs' informal discussion.

¹⁴ <http://chinadevelopmentbrief.cn/news/overseas-ngo-management-law-discussed-at-shanghai-seminar/>

¹⁵ <http://www.ngocn.net/home/news/article/id/363620>

See Attached 1 or the website <http://chinadevelopmentbrief.cn/wp-content/uploads/2014/08/OverseasNGODraftLaw-Feedback-and-Suggestion-English-version-Final-Draft.pdf>

3) The China Association for NGO Cooperation Seminar¹⁶

The China Association for NGO Cooperation (CANGO) also held a seminar on the newly released draft on May 12th. Below are some of the concerns and suggestions raised at the seminar held by CANGO and mentioned in the Philanthropy Time's article:

I. Terminology

There are several terms and phrases that still need to be clarified. The first problem is, of course, the definition of “overseas organization (境外非政府组织)”. Many representatives participated in the seminar thought the term was too vague, and many countries don't have this term in their laws and regulations. Another term in question is “activity (活动)”, which is included in many articles of the draft and has no clear meaning. Some representatives also have problem about terms and phrases such as “must not disrupt public order and morality (不得违反公序良俗)” and “political activities (政治活动)”.

II. Is it operational?

First, lots of representatives mentioned the difficulties of applying for registration and temporary activity permits during times of emergency. For example, according to the draft, it can take 60 days for an NGO to apply for a temporary activity permit, which is obviously too long when it comes to emergency work such as earthquake relief. Secondly, another concern is how to find a “professional supervisory unit” in article 40. The draft also says overseas NGOs need the consent of a professional supervisory unit to set up a representative office in China, some organizations in the seminar pose questions about the meaning of “consent”. Thirdly, article 13 of the draft stipulates: “The representative office of an overseas NGO does not have the status of a legal person”, which is also problematic because only legal persons can sign contracts and bear legal responsibilities.

III. Exchange and communication between China and the international community

¹⁶ <http://chinadevelopmentbrief.cn/news/china-philanthropy-times-the-overseas-ngo-management-law-affects-more-than-just-ngos/>

According to article 26 of the draft, overseas NGOs and their representative offices in China must not conduct fundraising activities or accept donations in China unless otherwise approved by the State Council. Several organizations that attended CANGO's meeting thought that it's not fair that overseas NGOs can't raise money in China. "If the draft is strictly implemented it will not just be addressing national security issues, it'll impact society and the public interest sector in China as well as the openness and economic development of the country", said Jia Xijin, Associate Professor at the School of Public Policy and Management of Tsinghua University. Huang Haoming also stressed that, "We truly hope we can keep communicating and maintain a good relationship with public security departments, professional supervisory units, departments of civil affairs, and other relevant departments to build a better legal system together in the future."

4) Council on Foundations and the International Center for Non-for-Profit Law

Conference Summary: China's Draft Law on Management of NGOs and Foundations: Impact on U.S. Funders.¹⁷

See the recording at Attached 2 or on <http://www.cof.org/content/call-summary-chinas-draft-law-management-ngos-and-foundations>

On May 27, the Council on Foundations and the International Center for Not-for-Profit Law (ICNL) hosted a conference call on China's Draft Law on Management of Overseas NGOs and its potential impact on U.S. funders and other organizations working in and with China.

More than 130 participants registered to join the conversation, which discussed a range of possible concerns with the proposed Chinese legislation. The call featured non-profit law experts and a funder working in China, as well as Council staff who described the Council's planned submission of comments on the draft legislation.

When analyzing the draft legislation, several aspects of the law make it difficult to understand exactly how foreign NGOs operating in China will be affected once the law is implemented. The law as currently written applies to any non-mainland Chinese organization working on nonprofit or charitable activities in China – including foundations, universities, and other types of non-profits – and defines "activities" only fairly generally. Several specific

¹⁷ <http://www.cof.org/content/call-summary-chinas-draft-law-management-ngos-and-foundations>

concerns with the draft legislation were discussed, including requirements that:

Foreign NGOs will be required to register with the Chinese public security authorities before they may conduct activities in China.

NGOs must be sponsored by professional supervisory organizations, which are either ministries, agencies or other branches of the Chinese national or provincial governments or organizations authorized by the government to serve this function.

The law gives Chinese public security authorities a wide range of tools and wide discretion to manage and supervise NGOs, in order to ensure compliance with a number of reporting requirements for the activities of the NGOs.

Throughout the law, it is unclear how specific elements will be implemented, which leaves considerable discretion in public securities authorities at central and provincial levels.

The law does not discuss regulation for disaster response activities, and the requirements for annual workplans and advance agreement on activities with Chinese authorities could make it difficult for foundations and NGOs to be responsive to situations like natural disasters.

The proposed regulation of foreign organizations could therefore make it more time-consuming and complex for NGOs, foundations and other organizations, including potentially universities, to fund partners, run programs, and or collaborate on projects in China.

In the past, there have been a number of channels through which foreign NGOs, foundations, universities and other entities have undertaken activities in China, either through registration or through more informal means. The proposed law will centralize control of this process under the Ministry of Public Security. China is also currently working to finalize a new domestic Charity Law, which is not of as much concern to Chinese organizations and takes into account some of the reforms in Chinese domestic charity governance in recent years.

This second draft of the Law on the Management of Overseas NGOs is open for public comment until June 4, 2015. The law may be passed as early as next month, or later in the year, with implementation likely to occur starting in 2016. There have been a significant amount of comments submitted to Chinese authorities to date, and many more are expected before June 4.

Comments are useful because they may influence final changes to the draft legislation and/or its implementation once passed.

The Council on Foundations is finalizing comments on the draft legislation, which will be shared with members of the Council for their input before submission. Both ICNL and the Council will be tracking this law moving forward, including conducting extensive research and developing reports about the law and its implementation. Before changing their procedures and/or programs, foundations and other NGOs are encouraged to “wait and see” the final law and the implementation regulations in order to best understand how they may be impacted.

3. Commentary from Mainland Scholars or Practitioners

1) 贾西津 Jia, Xijin ¹⁸

The focus on foreign NGOs in China happened under the context of national security. The “Color Revolutions” in the early 2000s is the reason that foreign NGOs started to become a concern of the state governments, as well as set up a basic tone for this concept. Indian Foreign Contribution Regulation Act that was revised in 2010 states more restrictive rules to limit NGOs from accepting foreign funding. In 2012, Russia issued a law to govern NGOs who accept foreign funding and participate in political activities, which also caught the attention of the Chinese government.

Just two days after the release of the second draft of “Foreign NGO management law”, the second draft of “National security law” was released for public comment. It is hard to say that it is just a coincidence of timing. In fact, the “Foreign NGO management law” is drafted under the context of national security, which is just one part of measures that the current government sets up national security committee and strengthens national security legislation. The legislative intention and perspective decide how will the “Foreign NGO management law” explain the concept of foreign NGOs and how it will set up the rules.

However, there is a very important problem here, which is the concept of foreign NGOs in this legislation is a wide category, while the principle of the rules holds a narrow perspective of national security. This leads to the result that foreign NGOs in all fields will all be managed under the perspective of national security. However, in western countries, incorporate life is main part

¹⁸ Jia Xijin is the Deputy Director of the NGO Research Center at Tsinghua University. Her thought here is from an interview. See, http://news.ifeng.com/a/20150511/43732232_0.shtml/

of social life and public career. Governing NGOs from the perspective of national security is no other than managing international relations in the way of national security. Under the background of the interaction of global economy, social communication and open Internet, the influence of this principle is comprehensive.

There are two points to understand this legislative background. The first point is that the government would prefer to limit foreign NGOs that play positive roles rather than miss any possibility that NGOs might harm national security, because it needs more space for potential executive power. The second point is that our recognition of NGOs is not good enough and we start paying attention to foreign NGOs in light of an event involving national security. This defined the concept of foreign NGOs and formed a conditioned reflex between foreign NGOs and foreign hostile power, political evolution, as well as national security.

The basic problem of this Draft is the legislative orientation. This Draft is a law governing both organizations and activities. What more, the activities include both formal organizational activities and temporary activities. This covers almost all kinds of activities any kind of NGOs in western countries, including activities in education, medical treatment, physical training, public service, environment, and such, for example, the Red Cross, all most of all the "Ivy League Schools", and other cultural organization, business organization and medical organizations.

In the meanwhile, the definition of activities is very wide too. Under this circumstance, any visiting activities of these foreign organs and any activities involving China actually will be included. In another world, we are treating international relations from the perspective of national security. Nevertheless, this perspective is a very limited baseline. Beyond this baseline, there are more public governing affairs.

Another problem is that it is impossible to enforce the law universally, because it requires ten times more current staff and finance to achieve enforcement. Accordingly, it will only be enforced sporadically and selectively.

The third problem is that the definition of foreign NGOs is also very controversial. Under Chinese current legal system, instead of a uniformed official definition of NGO, there are only definition of three different types of NGOs—Social Association, Private Non-Enterprise Units, and Foundation. Therefore, there is no definition of foreign NGOs, which means it will require a new and independent system to explain it. In that way, the power of legal interpretation will become significantly.

Generally, all of these problems will cause the following consequences. First of all, the scope that this law can govern is unlimited. Secondly, the power of legal interpretation will be expanded. Thirdly, law-executors will have great discretion and subjective choice space. This legislative orientation put large numbers of organizations and activities under potential risks against the law.

It will impact on not only NGOs but also the whole Chinese society and even the economy to enforce this Draft. Of course, the premise is that the Draft will be enforced universally. If this Draft was enforced strictly, a lot of organizations and activities would be blocked or kicked out of China. That would be a great shock to Chinese social and public utilities. Society and economy is very linked in an open society. For example, if the communication of science and education is stagnated, the social vitality will be stagnated, and then economic benefits will be impacted.

Therefore, it is not a simple problem that can be fixed by revising or adjusting several articles in this Draft, but a problem of the legislative purpose. The legislative purpose of this Draft contains to identify, monitor and limit foreign financial resource, power and behaviors.

2) 滕彪 Teng Biao:¹⁹

The aspect of the draft Law on the Management of Foreign NGOs that merits the most attention is that it replaces the Ministry of Civil Affairs with the public security apparatus, as the government body in charge of registering foreign NGOs. As article 7 of the draft explains: "The Public Security departments of the State Council and provincial level public security authorities are in charge of the registration and management of overseas NGOs that conduct activities in China."

Not only does the draft bill give the police power, it also crudely enlarges that power to encompass supervision of every aspect of foreign NGOs' work, from registration, permitting, annual inspections, and investigations to seizing data, sealing offices, and freezing assets, and this is on top of the public security organs' existing power to investigate, detain, etc. One can imagine what a disaster this will be for foreign NGOs. It's also an embodiment of the way the authorities seem to be reverting to class struggle as the lens through which they view civil society. From this perspective any non-governmental organization becomes an anti-government organization, an instrument of West's hostility and determination to subjugate us, a tool for fomenting Color Revolution.

¹⁹ <http://www.chinafile.com/conversation/future-ngos-china>

Despite the critical reaction the draft law's naked agenda has sparked, there should be little suspense about whether it will pass. The attitudes it espouses and projects are not an aberration.

The authorities have never let down their guard toward NGOs, whether they're foreign or domestic. When it comes to registering, receiving funding, and carrying out their work, NGOs in China have always faced layer upon layer of obstruction. Many of the leading Chinese NGOs were never able to register officially with the Ministry of Civil Affairs and instead have been forced to set themselves up as businesses. Many more exist only thanks to gray areas in the law. And many foreign NGOs don't know where to turn either.

Moreover, authorities treat NGOs whose work relates to human rights, the rule of law and politics differently from groups whose work isn't political. During the period before Xi Jinping came to power, NGOs and think tanks that worked on issues such as poverty alleviation, education, environmental protection, and other non politically-"sensitive" issues, were able to operate and grow, within certain limits. Groups whose work addressed AIDS, occupational diseases, women's rights, LGBT issues, and labor rights, as well as rural libraries, were able to carry out their work despite restriction and harassment. The Open Constitution Initiative, an organization on the forefront of rights protection, on the other hand, was shut down, fined a huge sum and saw its founder Xu Zhiyong locked up.

After Xi Jinping came to power, repression of civil society increased markedly. A large number of leading figures in rights were arrested, a number of directives emerged calling for stricter control of ideology, and controls over the Internet intensified further, all of which made it a bad time to be an NGO. The Aizhixing Institute (an AIDS group), the Transition Institute, and the Liren network of rural libraries, as well as a few women's and LGBT rights organizations that had up to that point maintained the space in which to operate, met with disaster one after another: shutdowns, arrests, imprisonment. The strategy of remaining apolitical ceased to offer effective protection. The authorities position on civil society and the human rights movement had shifted from restriction and control to outright repression. The draft bill under discussion isn't surprising given this context.

But, it's not hard to see how the fearsome face of the regime, for all its apparent ferocity, covers a weak and paranoid mind.

3) 周丹 **Zhou Dan** ²⁰

²⁰ <http://www.chinafile.com/conversation/future-ngos-china>

Over the past decade, in addition to being an openly gay Chinese lawyer working on legal issues related to sexual orientation and HIV/AIDS, I have been an activist persevering in the tumultuous uncharted waters of civil society, where major players are international foundations, domestic charities, and Chinese governmental authorities such as Civil Affairs bureaus and the security apparatus. In China's politics, the third sector, another name for civil society, is the "third rail." It is no secret that activists are monitored, and advocacy groups are under surveillance by security authorities, if not closed down (yet). What's worse, in recent years, a staggering number of activists and advocates have been criminally arrested and sentenced. Of those, a few were, in part or in whole, funded by foreign foundations and other nonprofit institutions.

Now the Leviathan in a murky and stormy sea is aggressively marking a boundary and setting a code of conduct for foreign nongovernmental organizations ("NGOs").

Legislation is an act of making a political statement. The draft bill (the "Bill") designed to regulate foreign NGOs is an unwelcome message to its target audience. It sounds grudging, presumably because much of the impetus for the intended codification emanates from obsession with national security. In addition to the tone of the Bill, the rules as currently drafted are excessively prescriptive, confusing, and cumbersome.

The Bill sends a harsh message. Although the stated purpose of the Bill is "to normalize and guide activities of foreign NGOs within the territories of China, protect their legal rights and interests, and promote exchange and cooperation," it seems to be conveying a contrary signal on two "push/pull" fronts. First, the Bill provides for a "push disincentive" process by which foreign NGOs shall obtain prior approval from designated Chinese sponsors if they plan to carry out any permanent or temporary activity in mainland China. Second, the Bill proposes a "pull disincentive" process: public security departments are not only registration authorities, but also charged with supervisory, investigative and enforcement authorities and functions specifically targeting foreign NGOs. The proposed approval, registration, and enforcement regime stands in stark contrast to the recently improved system applicable to certain domestic NGOs and foreign chambers of commerce, by virtue of which registration authorities are Civil Affairs bureaus, and no sponsorship is required unless under exceptional circumstances.

The Bill also causes profound confusion and uncertainty. Key concepts in the draft law are fatally ambiguous and vague. For instance, the Bill presents a definition of "NGOs" featuring two substantive aspects—nonprofit and

nongovernmental, which can be broadly read to cover all entities registered outside Mainland China as non-for-profit, tax-exempt nongovernmental institutions. Meanwhile, the Bill fails to define essential words and phrases such as “activity” (huodong), “public order and good morals” (gongxu liangsu). The poorly defined and vaguely worded text breeds ambiguity and perplexity, thereby hindering, rather than helping, international exchange and cooperation.

Moreover, the Bill imposes undue financial, administrative, and operational burdens. The proposed complex review, reporting, filing, and approval procedures will lead to a sharp rise in administrative and operating costs. These factors will strain the abilities of foreign nonprofits to engage in activities conducive to “public welfare” (gongyi shiye), and hamper efficient responses to civil society needs in China.

4) 黄建雯 Huang Jianwen²¹

Highlights of the Foreign NGO Management Law (Second Draft)

Although China has experienced rapid growth in the numbers of foreign non-governmental organizations (“NGOs”) carrying out activities within its borders in the past 10 years, foreign NGOs have remained loosely and ambiguously regulated in China. For example, as for the establishment of representative offices by foreign NGOs in China, currently only the Regulation for the Administration of Foundations provides the legal basis for foreign foundations to establish representative offices in China. There are no unified laws and regulations at the national level governing the establishment of representative offices or carrying out activities by the other foreign NGOs except for foreign foundations. This brings doubt and difficulty for many foreign NGOs carrying out activities in China.

The latest draft of the Foreign NGO Management Law (Second Draft) (the “Foreign NGO Draft Law”) can be seen as a preliminary attempt by PRC regulators to introduce more transparency and regulatory oversight to the often nebulous world of international NGOs operating in China. The Legal Affairs Committee of the Standing Committee of the National People's Congress opened the Foreign NGO Draft Law to public comments, including those from foreign NGOs, on May 5, 2015.

²¹ A lawyer of King & Wood Mallesons. See <http://www.chinalawinsight.com/2015/05/articles/corporate/foreign-investment/highlights-of-the-foreign-ngo-management-law-second-draft/>

Although the Foreign NGO Draft Law has not been officially promulgated, is not a binding legal document, and may be subject to further amendments, it provides insight into how PRC regulators will manage foreign NGOs in the future and in its final form, it may be a landmark piece of legislation governing the operations of foreign NGOs in China. As such, those that are part of, or are looking to be a part of, the foreign NGO community in China would be well-advised to keep close track of any developments related to the Foreign NGO Draft Law.

This article provides a basic introduction to the Foreign NGO Draft Law and outlines some of its major provisions. Foreign NGOs with activities in China or that are looking to initiate activities in China should consult with the appropriate legal counsel on the ramifications of the Foreign NGO Draft Law.

Purpose and governing scope of the Foreign NGO Draft Law

Article 1 of the Foreign NGO Draft Law states that it “is designed to standardize and guide all activities carried out by foreign NGOs within China and to protect their rights and interests while promoting exchange and cooperation.” The Foreign NGO Draft Law shall apply to all foreign NGOs (i.e. non-profit and non-governmental social organizations legally established outside of the territory of China) carrying out activities in China. Based on the above, the Foreign NGO Draft Law provides the legal basis for various kinds of foreign NGOs to carry out activities in China.

Moreover, the Foreign Draft Law states that PRC regulators should facilitate foreign NGOs in their efforts to carry out activities in China (Art. 39), however, such activities should not:

- violate Chinese law;
- threaten China's national security;
- harm China's national interests or the legal rights of other groups and citizens; disrupt public order and morality; conduct or fund for-profit activities or political activities; and illegally conduct or fund religious activities (Art. 5).

Operation of Foreign NGOs in China

I. Representative offices and temporary activity permits

The Foreign NGO Draft Law specifies in Article 6 that there are only two ways for foreign NGOs to operate in China. Foreign NGOs may operate:

- through representative offices (“ROs”) registered in China (a foreign NGO may only establish one RO in China); or

- if no RO is registered, by obtaining a temporary activity permit (temporary activity permits can only be issued for activities whose duration does not exceed one year) (“Temporary Activity Permit”).

If a foreign NGO has established an RO in China, all of the activities of the foreign NGO must be run and managed through the RO (Art. 23). The duration of residence of the ROs shall not exceed five years. If an RO wishes to continue conducting activities upon expiration, it must reapply with the registration administration authority for registration with the professional supervisory unit's consent 60 days before the expiration date of the existing duration of residence.

Oversight of foreign NGOs

Similar with the regulating mode for domestic NGOs, the Foreign NGO Draft Law primarily remains the “double approval system” for foreign NGOs conducting activities in China. The Foreign NGO Draft Law mandates that foreign NGOs carrying out activities in China be under the oversight of professional supervisory units (“PSUs”) and registration administrative authorities, i.e. the public security authorities (“PSAs”).

I. Responsibilities of PSUs (Art. 46)

- Foreign NGOs shall be under the oversight of PSUs that are presumably a government agency or another government-approved institution in the same field as the foreign NGO (Art. 45). PSUs shall be responsible for the following:
 - providing advice on setting up an RO, changing registration status, carrying out temporary activities, and implementing new projects;
 - providing advice on the annual inspections of the ROs of foreign NGOs;
 - guiding and providing oversight to the ROs of foreign NGOs and foreign NGOs with Temporary Activity Permits to ensure that they carry out such activities legally; and
 - assisting the PSAs (defined below) and other departments in investigating and punishing illegal activities by foreign NGOs and their ROs (Art. 46).

II. Responsibilities of PSAs (Art. 47)

Foreign NGOs shall also be under the oversight of public security authorities which have the following supervisory and management responsibilities:

- registering the ROs of foreign NGOs;
- issuing Temporary Activity Permits to foreign NGOs;

- carrying out annual inspections of the ROs of foreign NGOs; and
- overseeing activities carried out by foreign NGOs and their ROs and investigating and punishing illegal activities (Art. 47).

As alluded to above, before a foreign NGO can establish an RO, it must first obtain consents from both the relevant PSU and the PSAs. Moreover, the foreign NGOs must first consult with the relevant PSU before it can receive a Temporary Activity Permit from the PSAs.

Foreign NGO and RO reporting requirements

The ROs of foreign NGOs under the Foreign NGO Draft Law are subject to an annual inspection regime which has been adopted for representative offices of foreign foundations according to the Regulation for the Administration of Foundations and the relevant laws and regulations. Moreover, foreign NGOs or their ROs are also subject to the following additional reporting requirements outside of the annual inspection (Art. 24):

- ROs of foreign NGOs must report their activity plans for next year (including program implementation and the uses of funding) to the PSU (defined below) before November 30 of each year, and file their activity plans with the registration management authorities within 10 days after the PSU approves such activity plan; and
- foreign NGOs must file their registration certificates, their temporary activity permissions, and their activity descriptions with the PSAs (defined below) at the municipal level or above who are in charge of the district in which the project will be carried out.

Deregistration of ROs

Although ROs can be established under the Foreign NGO Draft Law, they can also be deregistered under certain circumstances. The following five circumstances may trigger deregistration of an RO of a foreign NGO (Art. 17):

- the overseas NGO closes its RO in China;
- the overseas NGO is terminated;
- the duration of residence of the RO expires and the RO fails to go through the reregistration procedure;
- the RO has its registration certificate cancelled or revoked according to law; or
- the RO is terminated for other reasons.

After an RO has been deregistered, any related outstanding issues and legal liabilities shall be borne by the foreign NGO.

RO personnel issues

The Foreign NGO Draft Law regulates a foreign NGO RO's number of representatives, its recruitment of domestic employees, its number of foreign staff members, and the filing of information about its foreign staff members with the relevant government authorities.

Each RO must have one chief representative and up to three representatives (depending on the needs of the business) (Art. 34). Moreover, an RO must entrust a local foreign affairs service unit or other unit designated by the government to recruit staff members or volunteers in China (Art. 32). Foreign staff members must not exceed 50% of an RO's total staff members and foreign staff members cannot concurrently work for an RO of another foreign NGO (Art. 35). An RO of a foreign NGO must also file information about its staff and personnel arrangements to its PSU and the registration management authorities (Art. 32).

Financial governance

The Foreign NGO Draft Law stipulates that foreign NGOs and their ROs shall not conduct fundraising activities or accept donations in China, unless otherwise directed by the State Council (Art. 26).

Funding for activities carried out by foreign NGOs include:

- overseas funding from legitimate sources;
- interest on deposits gained in Chinese bank accounts; and
- other funding legally acquired within China. Overseas NGOs shall not acquire or use funds other than those described above for their activities in China (Art. 26).

Moreover, an RO of a foreign NGO must use the bank account it filed with the registration management authorities to manage the funds it intends to use in China. Overseas NGOs that run temporary activities in China shall use their Chinese partner organization's bank account to handle funds in China. An independent account record should be kept, and the money used as agreed upon (Art. 27). An overseas NGO with an RO in China must not receive or pay funds via other bank accounts. The use of funds is limited to the RO's registered business scope (Art. 28).

An RO of an overseas NGO must also adopt Chinese accounting conventions and engage accountants legally certified in China to conduct financial accounting (Art. 29). The financial statements need to be audited by a Chinese accounting firm and made available to the public (Art. 29).

Penalties for violating the Foreign NGO Draft Law

Violations of the Foreign NGO Draft Law may incur penalties which include banning the RO, confiscating illegal assets and income, cancelling registrations, giving warnings, ordering to cease activities, etc. (Art. 56).

I. Common violations and penalties

Some of the ways that a foreign NGO can violate the Foreign NGO Draft Law include: carrying out activities in the name of foreign NGOs or the ROs of foreign NGOs without the requisite registrations or obtaining Temporary Activity Permits; continuing to carry out activities when the requisite registration certificates have expired, been suspended, or cancelled; continuing to carry out activities in China after the Temporary Activity Permit is no longer valid; and carrying out activities in the name of the branch offices of foreign NGOs in violation of the law (Art. 57).

II. Personality liability

Moreover, the Foreign NGO Draft Law imputes personal liability to the person directly responsible for violating its provisions. Such personal penalties may include warnings, detention for a period of less than 10 days, and a monetary fine whose value is determined by the type and severity of the violation (Art. 57 and Art. 58).

Conclusion

It is important that foreign NGOs with operations in China, or looking to initiate operations in China, pay close attention to developments in the Foreign NGO Draft Law. If the Foreign NGO Draft Law is officially promulgated, the primary administrative and supervisory authority for foreign NGOs will shift from the Ministry of Civil Affairs to the relevant PSA. One possible ramification of this change is that foreign NGOs that are already operating in China (i.e. representative offices of foreign foundations registered in accordance with the Regulation for the Administration of Foundations) may need to reapply with the relevant PSA for a new registration certificate or initiate other changes.

Furthermore, since the Foreign NGO Draft Law expands the scope of penalties (i.e. penalties can be administered on both a corporate and personal level for some violations) and increases the costs of noncompliance, foreign NGOs will need to remain in strict compliance with all of the provisions of the Foreign NGO Draft Law, in particular the requirements regarding information filing/reporting, personnel issues and financial governance. For example,

foreign NGOs are well-advised to conduct a self-assessment of their financial affairs to ensure that they are in compliance with the Foreign NGO Draft Law's many finance-related provisions. Care needs to be taken so that foreign NGO bank accounts are established and used properly and that foreign NGOs are not engaging in fundraising activities, accepting donations, or involved in other prohibited activities in China.

5) 王玛雅 **Maya Wang**²²

China's new foreign NGO law will help silence critics

What's at stake in the Chinese Government's proposed new restrictions on independent organisations?

These groups work on issues affecting millions that are often the responsibility of governments in other countries: from domestic violence (which affects one in four women in China) to the welfare of migrant workers' children, to environmental pollution. These organisations have developed the kind of flexibility and creativity needed to address overwhelming societal challenges and, until recently, the latitude to urge the state to change policies and practices.

It has never been easy to run an independent organisation in China. Regulations are stringent and the risks of being arbitrarily shut down or harassed are high, as shown by the arrest on 8 March and ongoing detention of five women's rights activists and a 24 March raid on an NGO that supports their work in Beijing.

At the same time, the lack of a national law governing these organisations, coupled with differences in attitudes towards NGOs by regional leaders, have afforded some leeway for those with creative strategies. It has been common for 'sensitive' NGOs – ones that actively campaign, or work on human rights or civil liberties – to register as a business to bypass the wary eyes of the state, or not register at all. And over the years, some international funding to these organisations in China, and the running of certain foreign organisations, has been tolerated.

²² Maya Wang is a China researcher at Human Rights Watch. Maya is an expert on human rights defenders, civil society, women's rights, disability rights and criminal justice in China.
See <http://www.lowyinterpreter.org/post/2015/04/08/Chinas-new-foreign-NGO-law-will-help-silence-critics.aspx?COLLCC=2259017214&COLLCC=4207177839&>

Many of China's civil society organisations have long relied on outside funding. It has been especially valuable for sensitive NGOs. It is nearly impossible for them to access the few domestic funding sources available when they are not legally registered as a nonprofit, and when these sources tend to stay away to stave off official harassment. But with the dawn of the long-debated Foreign NGOs Administration Law, likely to be adopted this year, the funding lifeline that allowed more outspoken NGOs to operate will rapidly dry up.

Although the draft law has not yet been made public, a copy reviewed by Human Rights Watch suggests it will significantly tighten the Government's control over civil society if adopted as currently written. As Beijing becomes increasingly paranoid, claiming that civil society has helped topple governments in 'color revolutions' around the world, it has opted for a management model that maximises state control.

The draft is consistent with a larger effort to curb civil society and crack down on already restricted civil liberties and their defenders since President Xi Jinping came to power.

If approved, the Ministry of Public Security (not the Ministry of Civil Affairs) will now have the power to supervise and approve registration of foreign NGOs. That 'supervision' can entail entering the premises of the foreign NGO at any point, questioning its staff, and copying or seizing any document, all tactics more commonly reserved for a criminal investigation. Foreign NGOs will have to submit for approval annual work plans and funding allocations, and will be prohibited from engaging in a range of peaceful activities, from raising funds or accepting donations in-country to recruiting volunteers or trying to recruit members 'directly or indirectly.'

Violations mean that an NGO's representative in China (the draft law now requires foreign NGO to establish a representative office) would be liable to punishments, including a 15-day detention.

The draft law is another step towards the Chinese Government's 'differentiated management' model of NGOs, in which domestic groups working on issues approved by the state, such as charities for people with disabilities, can register easily and are considered for increased state funding and support. But those engaged on rights or lobbying are stifled. The draft explicitly prohibits activities that 'endanger...national security, unity and solidarity' or that 'go against China's social morality'. These are vague terms, but ones frequently used to silence peaceful government critics and activists.

Governments that publicly support civil society worldwide should vigorously object to the law and redouble their efforts to condemn attacks on civil society

activists being swept up in the current crackdown. Absent strong voices from other governments and respect for domestic activists, China will prevail in its insistence on authoritarian activism. Only those who echo the Government's wishes will prosper, while organisations which push the Government to address urgent social problems will languish and could disappear entirely.

6) 宋志标 **Song Zhibiao**²³

Pounding Mentors to Death: China's Draft Law on Foreign NGO Management²⁴

Among draft laws currently under a second reading in China's National Congress of People's Representative is the People's Republic of China Foreign Non-Governmental Organizations Management Law (a bilingual version). What's the merit of this law? Chinese legal professionals specializing in the public interest have given their verdict: Very Bad. Since in China law is not made to be your "shield" [1] of protection, such dissent is unlikely to be heeded by those who govern the country. Foreign NGOs have even less of a say in this, because naturally this is an "internal affair" that foreigners should not interfere with.

The purpose of the draft law is crystal clear: to set up a system to review and approve foreign NGOs' work in China. It does not pretend to hide its political motivation, and, in key provisions, it reflects what the authorities have been doing already. The heart of the matter is to cut off foreign NGOs' financial support for grassroots Chinese civil groups. Also, the government entities entrusted to regulate foreign NGOs' activities are expanded to include all agencies with national security responsibilities.

In terms of legislative positioning, the draft law tucks punches in a defensive appearance. Chinese grassroots public interest groups and individuals, whose livelihoods are associated with foreign NGOs, are too humble to be written into the provisions, but they are clearly targeted. We can foresee that the overseas resources for their line of work will continue to dry up and become further drained.

²³ Song Zhibiao (宋志标) was a commentator with the Southern Metropolis Daily in Guangzhou and well received for his commentaries on current affairs in China until May 2011. He was suspended that month for his article commemorating the third anniversary of the Wenchuan earthquake. Last year he was fired again from another state media outlet in Guangzhou for writing for a Hong Kong media outlet. He has been a media watcher and public commentator on WeChat.

²⁴ <http://chinachange.org/2015/05/17/pounding-mentors-to-death-chinas-draft-law-on-foreign-ngo-management/>

Looking back at the past 30 years, foreign NGOs helped the emergence of NGO public service in China, such as the early environmental groups, and are instrumental in creating diverse types of public interest work as well as the eco-system in which the work has been done. In addition, the methods and models supplied by foreign NGOs have helped shape Chinese domestic NGOs and expanded them over the last 20 years. Foreign NGOs have been our mentors. Period.

The most distinguished contribution of the foreign NGOs is that they have successfully helped built China's grassroots NGOs. Because of the support of the foreign NGOs, these public interest groups, lacking proper legal identity and unable to obtain resources from the government, have been able to survive on half a breath. Not surprisingly, members of these grassroots NGOs have become the driving force of China's public service NGOs. There is no denying that foreign NGOs have been their tutors.

As the nascent Chinese NGOs received assistance and tutelage from foreign NGOs, the former have gradually built capacities over the last decade to tap domestic resources. In the last few years, the native NGOs have shown signs of maturity and strength, developing in parallel with foreign NGOs. As a result of the rapid transformation of the native NGOs, a trend has emerged in which government-sponsored NGOs and private NGOs have been competing but also cooperating with each other.

The growth and evolution of Chinese native NGOs can be looked at from many angles. It should be noted though that it has become a rule of thumb among native NGOs to depoliticize themselves and stay away from the red line of "sensitive issues." In so positioning themselves, they have indeed been able to garner resources and make strides in their professional fields, but this self-limitation has also aggravated the ecological imbalance of Chinese NGOs with rights advocacy NGOs being singularly endangered.

Foreign NGOs end up being the ones who have persevered to do work in areas where domestic NGOs wouldn't dare or are unwilling to do. The Chinese NGOs' tendency to stay away from politically risky programs made foreign NGO funding in these areas stand out. To stop this tendency, the Chinese government has continuously pressured and encouraged domestic NGOs to stay away from sensitive issues so as to minimize the scale of demand and supply. With this new law though, the government is out to debilitate the source of funding altogether through legislation.

Against such a backdrop, the political intent of China's draft law of Foreign NGO Management, now in its second reading, is conspicuous. It seeks to

legally limit foreign NGO's activities and programs by putting clamps on them and by directing their resources elsewhere. In this, the Chinese government's design is equally conspicuous. That's why this draft law is a product of utility at the expense of legislative quality.

When it comes to the specific application of this law, it is less about reducing the activities, or the number, of foreign NGOs in China, and more about forcing them to withdraw, even more quickly than before, from supporting civil society groups working on rights advocacy. Since it is very difficult, if not altogether impossible, for these Chinese advocacy NGOs, who have hitherto depended on foreign NGOs for funding, to find other sources of funding inside China, the domestic NGO scene will further deteriorate and have less diversity. That means it will be easier for the government to exert tighter control.

The Chinese domestic NGOs are not ready to take up the baton from the foreign NGOs. In particular, the capacity for serving public interest is still far short of where it needs to be, and the gap left by the foreign NGOs' absence cannot be filled, not because there is a shortage of money but because there is a shortage of courage. Overall, the existing imbalance of China's public interest NGOs will become much worse.

Foreign NGOs have in the past 30 years provided mainland China with two things – the values and the methods – as they poured in resources. The former has indeed grown and spread, while the latter has been remade with Chinese characteristics. In the long term, the draft law will ultimately stem the import of values, making them ill-fitting and out of place in native NGOs. That is where the law ultimately is heading to, beyond cutting the funding supply.

4. Commentary from the West

1) Isabel Hilton²⁵

Unless there is a radical, and, at this point, unlikely change of heart in Beijing, this year will see the passage of a draconian new law to govern the activities of foreign NGO's in China. If the draft currently in circulation becomes law, it will have the capacity to impact a wide variety of organizations and activities, Chinese as well as foreign.

Operating in China has never been straightforward: a majority of Chinese social organizations operate in a grey zone because the requirements of legal registration are too onerous. Some register as businesses; others simply operate without a license, relying on the goodwill of local officials. Many

²⁵ <http://www.chinafile.com/conversation/future-ngos-china>

depend on grants and donations that come from overseas, but are unable to open and operate official bank accounts. This sector is likely to be hard hit as the foreign organizations that have supported and worked with them find themselves squeezed out.

The government has long had an ambivalent view of the non governmental sector: it recognizes that civil society organizations, be they development, educational, environmental or health charities, philanthropic foundations, policy, technical or scientific entities, have contributed immeasurably to China's development in the past thirty years, through the sharing of expertise, knowledge transfer, training and funding.

At the same time, at least some elements of the Party-State appear concerned that organizations not directly under the Party-State's control offer an actual or potential challenge to its authority. Despite decades of trust building and solid achievement, foreign NGO's now find themselves at risk of being seen as a herd of Trojan horses: they may look benign, in this view, but they are suspected of infiltrating Western values and ideas into China, and of giving support to those Chinese citizens who may seek the transformation of the Chinese state into a more open and accountable model.

Even given that these concerns are not new—and appear to be shared by both Vladimir Putin and Narendra Modi—the draft law is unfriendly to a whole range of activities and to the future of independent civil society. Chinese NGOs are regulated by the Ministry of Civil Affairs; should their foreign counterparts, who are often also their partners in joint projects, wish to register legally in China, they will come under the authority of the public security authorities. In addition, they will require the approval of two official sponsors who would be expected to exercise a continuing supervision of their activities.

If a foreign entity does not wish to register, but only to carry out activities—educational or training workshops for example, either alone or in partnership with a Chinese organization—it will require a permit in advance from the public security authorities.

It will no longer be legal for Chinese individuals or organizations to receive funding from non-Chinese NGOs, unless the foreign entity is registered in China. Even if registered, a non Chinese NGO would not be permitted to recruit volunteers or set up branch offices. It would be obliged to submit its plans and budgets for the year ahead, both to the security authorities and to its legal sponsors. No activities outside the plan would be permitted.

Even with this high degree of supervision, the draft law gives the security authorities the right to enter premises, interrogate individuals and seize materials, without offering firm safeguards against the abuse of these powers. For Chinese entities that have worked with foreign counterparts, the burden of bureaucracy and potential risk is now much higher. Many organizations already report that longstanding partners are cancelling plans, and once flourishing relationships are cooling off. The impact of the law may well be that organizations that have worked in China for many years decide to pull out, not because they have any ulterior purpose, but because the burden of compliance is too high. The impact on grass roots Chinese organizations that have benefitted from foreign funding could be dramatic.

The draft law manifests a suspicion of the activity of foreign organizations that many will find troubling at this stage of China's development. How the law will be applied and what kind of organizations it is aimed at is hard to guess.

If the trend of current policy on domestic civil society is a reliable guide, organizations that focus on service delivery in uncontroversial areas—child welfare, for example, or care of the elderly—may find their work continues as before. Those that are active in policy, however, even where that policy is not directly concerned with such issues as rule of law or human rights, risk finding themselves in a cold climate indeed. If that is the result, both sides will be the poorer.

2) Carl Minzner²⁶

In recent years, Beijing has become increasingly concerned about the perceived “infiltration” of “foreign” values and organizations deemed detrimental to interests of the one-Party state. Official pressure on domestic and foreign civil society organizations has increased as a result. The new draft law is but the next logical step in escalating this pressure.

Those who work on China issues will naturally think of the potential implications of this law on the work of established foreign and domestic NGOs who do work in China on a range of legal, environmental, or societal issues. Many are justifiably concerned that this will lead to a further closing of space for such groups to operate in China.

But there is also a much broader range of foreign organizations that could potentially be implicated by the draft law and have not even considered it.

Here are some examples:

²⁶ <http://www.chinafile.com/conversation/future-ngos-china>

- a) The non-profit college alumni organization that organizes educational tours on the Yangtze for its members.
- b) The international scientific association that wants to rent out a resort in Hainan for their annual conference.
- c) The American high school band group that plans to go to Guangzhou next year to conduct a performance.
- d) The volunteer medical group that sends individual doctors into China to conduct small training sessions for nurses.

Under the draft law, all of these would be required to either:

- a) have a sponsor organization (just as if they were seeking to register in China)

—or—

- b) have a Chinese partner willing to go through the temporary permit process to obtain advance approval. Currently, many of these groups rely on Chinese individuals, companies, or associations to provide required letters of invitation for visas (such as the F or M visa) or they simply provide travel booking information and obtain a tourist visa. Both of these are quite different from the quasi-sponsorship requirement envisaged under the draft law (i.e. the temporary registration process).

One of the major risks here is that some foreign individuals and organizations may just decide that it is too much trouble to carry out their activities in China, and simply move to another country instead. That American high school band group, for example, might find locating a partner organization willing to go through the approval process with public security authorities too complicated. Instead, it might decide to go to France or Vietnam instead. Play such trends out far enough into the future, and people-to-people contacts—one of the core elements that have contributed to building positive, healthy relationships between China and the rest of the world in the reform era—could be seriously damaged."

3) Nick Young ²⁷

²⁷ <http://www.chinafile.com/conversation/future-ngos-china>

Making public security authorities formally responsible for registration and oversight of NGOs, as opposed to merely spying on them, is an unfortunate development. This, and several, vivid references to “investigating and punishing illegal activities” certainly makes the intent appear repressive (although it is the implementation, not the letter, of Chinese law that most matters.) The most able NGO managers might be able to enlighten and turn their security ‘supervisors’ into allies but this would, at best, require a lot of patience, time and effort—and the overall tenor of the draft document points to an atmosphere of suspicion and control in which it would not be easy to build constructive relationships. It will therefore be harder for international NGOs to make a positive contribution to China’s development.

However, it is wrong to romanticize international NGOs, wrong to elide or equate NGOs with ‘civil society,’ and very wrong indeed to get carried away with the dream of civil society bringing progressive, democratic government to China in some great surge of citizen power.

I have worked in, around, on and for NGOs for well over two decades, in China and elsewhere, and my experience is that while some do great work, others achieve rather little of note. (Brand, ‘mission’ and ‘values’ make relatively little difference: it’s the individuals running things who really count.) And some, I think, do more harm than good. In this category I would include a handful of (predominantly American) NGOs and foundations that, during my years in China (1996-2007), made a virtue of operating ‘under the radar,’ eschewing any links with government and looking for Chinese and Tibetan ‘human rights defenders’ and democracy activists to support at the adversarial ‘cutting edge.’

This was the time of ‘color revolutions’ elsewhere, which prompted Chinese state security to look more closely at the international NGO sector. From my various discussions with security officials at that time—who saw me as both a key informant and an object of suspicion—I concluded that the cloak and dagger antics of some foreign groups directly empowered the most conservative and xenophobic forces within the security apparatus (which is doubtless the most conservative and xenophobic arm of the Chinese state.)

I have not been in China since 2007, so have no insight into how things may have changed on the ground, but I can see that certain castles have continued to hover in the air. I recall, for example, that the 2011 Arab Spring brought the retiring U.S. Ambassador to China out onto the streets of Wangfujing, to see if the revolution was starting there too. This kind of thing, and all the talk about, for example, “whether environmental NGOs in China might be harbingers of wider political change” (as Elizabeth Economy wondered aloud in her book, *The River Runs Black*) suggests to me that as long as the West continues to

dream this way (despite the lack of evidence that NGOs have ever catalyzed a successful and democratic social revolution anywhere), the Government of China will treat international NGOs with suspicion.

And that's a shame because there's so much really interesting and useful joint work that Chinese and international organizations can do on issues ranging from agroforestry to social policy and service delivery for older people.

4) Malin Oud ²⁸

I never thought I would look back at the early 2000s as a relatively open and “easy” period for international cooperation on rule of law and human rights with China. Work in this area has never been easy nor straightforward, but the government used to recognize that China could benefit from learning about international standards and from other “developed countries”. The legal grey zone described by Isabel Hilton above allowed for creative tensions between established GONGOs (that is, Government Organized Non Governmental Organizations) and grassroots NGOs, for Chinese policy entrepreneurs, and civil society organizations to emerge, and for international collaboration addressing social, environmental, and legal issues. This landscape has changed dramatically since Xi Jinping came to power. With the new law on foreign NGOs, China seems to be reverting back to the days when the Communist Party deemed any Western organization as suspicious, and saw “non-governmental” as akin to “anti-government”.

Teng Biao is right to point out this is not really an aberration from the CCP's overall attitude towards civil society. What is new, however, is that the previous cycles of increased restriction—followed by periods of relative relaxation—have turned into a permanent and comprehensive drive to isolate and marginalize dissenting voices and independent NGOs. This drive has been underway for several years. China is much less inclined to take advice or criticism from the outside than it was a decade ago, and international criticism of China's human rights record has been toned down in step with China's growing commercial importance.

Deng Xiaoping once said of economic reform that when you open the window, you also have to let a few flies in. The new law on foreign NGOs would shut out both flies and fresh air. It also fits badly with government efforts to address the root causes of social unrest through increased public participation and transparency. Public protests—against land grabs, house evictions, environmental degradation, and factory lay-offs—are increasing in China because citizens lack legal and legitimate channels to seek redress and

²⁸ <http://www.chinafile.com/conversation/future-ngos-china>

participate in public decision-making. The ever-increasing costs for domestic security to maintain “stability” has prompted a debate in China about the need to find more effective ways to resolve social conflicts. New guidelines call for improved stakeholder dialogue and increased public participation.

Recent years also have seen a policy shift in Chinese overseas investment, requiring Chinese enterprises to respect local communities and fulfil social and environmental responsibilities. Some Chinese companies are beginning to see the value of stakeholder engagement and collaboration with international NGOs as a way to address social and environmental issues. China also would like Chinese GONGOs to play a bigger role in international humanitarian assistance. The new law on foreign NGOs doesn't sit well with these international ambitions, nor with Premier Li Keqiang's pro-innovation, anti-bureacracy rhetoric. Even if the CCP does not believe in the intrinsic values of freedom of association, it should be able to see the long-term instrumental value of public participation and international collaboration for a more sustainable and innovative Chinese economic development model.

5) Taisu Zhang ²⁹

I wonder whether this draft legislation really represents a serious deterioration in the legal status of foreign NGOs. A bit of Googling on the pre-existing state of the law quickly yields a number of studies that argue, essentially, that the specter of arbitrary police interference and highly ambiguous administrative review has always hung over foreign NGOs—including both politically sensitive ones and the more “innocuous” ones that Carl identifies. See, for example, the summary provided in this 2009 paper from the “Washington University Global Law Review”: Even before the current draft legislation was circulated, “without legally registered representative offices, foreign NGOs were not allowed to admit members or raise funds in China.” Moreover, registration processes were highly ambiguous in the absence of formal legislation, and few NGOs, apart from those with senior government connections, were shielded from police oversight and interference.

This new draft legislation would eliminate some of the ambiguity surrounding issues such as registration, and does not seem to either add or subtract significantly from the amount of power wielded by public security organs. Seen from that perspective, it arguably lowers, rather than increases, the administrative costs of conducting operations in China, insofar as it provides a somewhat clearer roadmap of the legal and administrative hurdles that one must overcome. The differential treatment of politically sensitive NGOs and

²⁹ <http://www.chinafile.com/conversation/future-ngos-china>

more “friendly”/“non-threatening” NGOs under the previous legal regime can also be expected to continue under this new (draft) regime: A university seeking academic collaboration will likely have a fairly painless experience, whereas a rights-advocacy organization will probably not—but this has, again, always been the case. All things considered, it may actually be possible to argue that this draft is a moderate improvement upon current legal institutions.

Even so, the draft, if formally approved, could still have the social chilling effect that the previous discussants have raised. It draws greater public attention to the costs and risks of operating an NGO in China, and may deter some entities that previously had a more optimistic (but inaccurate) view of things. I would like to believe that such blind optimism has driven only a small portion of foreign activity in China—and therefore that the chilling effect will be minimal—but this may be blind optimism on my part.

6) Elizabeth M. Lynch ³⁰

Elizabeth, founder of China Law & Policy, is an attorney who focuses on legal development and reform in China. She has posted several articles on the website of China Law & Policy about her comments on the Draft.

A Slow Death? China's Draft Foreign NGO Management Law³¹

Last Monday, the Chinese government finally published the second draft of the Foreign NGO Management Law, a law that could completely alter the way foreign NGOs operate in China. With the proposed layers of government control and final oversight by the China's Public Security Bureaus (“PSB”), NGO work will become extremely difficult if the law is enacted in its current form. While foreign NGOs will feel the initial pinch, the true victims will be the Chinese people.

Currently in China, Chinese NGOs – grassroots groups that seek to alleviate poverty, eliminate discrimination and conduct other activities that benefit the average citizen – are largely funded by foreign NGOs, especially those groups whose issue is considered “too political.” And even where foreign NGOs do not offer funding, they provide essential training, informal advice and moral support that helps grow China's nascent civil society. Unfortunately though, the current draft Foreign NGO Management Law will result in fewer foreign

³⁰ Elizabeth, founder of China Law & Policy, is an attorney who focuses on legal development and reform in China

³¹ <http://chinalawandpolicy.com/2015/05/10/a-slow-death-chinas-draft-foreign-ngo-management-law/>

NGOs able to work in China and as a result, will set the Chinese people back in their ability to vindicate their own rights.

Why would the Chinese government seek to squash civil society at this juncture? Many of the government's own social reform agenda items – ending corruption, ending re-education through labor, reforming the hukou system – have come from these civil society groups. So why now would the Chinese government look to pass a law that could severely limit the growth of civil society?

Make No Mistake, This Law is Not About Greater Transparency

Foreign NGOs have largely remained unregulated in China and there is something to be said about a law

Foreign NGO Management Law

Foreign NGO Management Law – a show of force by China's PSB (Photo by TPG/Getty Images)

that adds greater transparency to the sector. For groups that are lobbying government officials or seeking to change the law, knowing the source of funding – even if the funder does not meddle in the organizations daily affairs – is something we deem important to know. The Chinese government is no exception nor should it be. Only months ago were Americans shocked to learn that foreign governments donate money to many U.S. think tanks, with the implication being that this source of funding impacts the organization's research direction. It is why many Americans despise the Citizens United decision – it hides who is donating to a politician, with the inference being that the money sets the politician's agenda.

But transparency is not what this law is about. If it was, foreign NGOs could easily continue to be regulated by the Ministry of Civil Affairs. But the Ministry of Civil Affairs is nowhere to be found in the draft law itself. Instead, it has largely been replaced by China's public security apparatus. It is the PSB that has ultimate say if the foreign NGO can establish a representative office or conduct temporary activities in China (see Art. 47). The PSB can, on its own volition, conduct on-site inspections of the China office, question individuals involved with the "matter being investigated," copy or "seal" documents and when the PSB determines necessary, "seal" the venue related to the "matters being investigated" (see Art. 49). The law is silent on what would give the PSB cause to disrupt the work of a foreign NGO, allowing for potential harassment.

Increasing Strength of the Domestic Security Apparatus Within the Chinese Government

The role of the security apparatus should not come as a surprise. Since April 2013, with the drafting of Document No. 9, an internal Chinese Communist Party (CCP) communiqué highlighting what the CCP leadership perceived at the greatest security threats to its rule, civil society has been one of “seven perils” to the CCP’s power. In November 2013, Xi Jinping, China’s new president, announced the formation of a National Security Commission, answering directly to him and that would handle both foreign and domestic security threats. In April 2014, the National Security Commission held its first meeting. A “penetrating review of foreign NGOs” was on the agenda. In December 2014, Yang Huanning, the Vice Minister of Public Security, introduced the initial draft Foreign NGO law to the Standing Committee of the National People’s Congress. Although circulated among Chinese who would be effected, the first draft was never officially circulated to the foreign NGOs who would be impacted.

Public security’s larger role in society is likely its way to justify its ever ballooning budget. In 2013, spending on domestic security outstripped the government’s spending on the People’s Liberation Army. Since that milestone and the attention that fact received in the foreign press, the Chinese government no longer publishes the full domestic security figure. But it likely still continues to rival the amount spent on foreign security. The Ministry of Public Security, and now the National Security Commission, must find ways to justify that spending, and arguably part of that justification is the threat of “Western agents” acting through foreign NGOs. The Foreign NGO Management Law embodies that paranoia.

Will Foreign NGOs Even Have the Resources to Follow the New Law?

The law itself does not shut down foreign NGOs in China or prevent foreign NGOs from hosting events in China. Instead, through an onerous, supervisory structure, it makes getting anything done in China time-consuming and expensive. Survival of the fittest will dictate which NGOs go and which stay.

Under the draft law, foreign NGOs that want to establish a representative office in China must first have the consent

Will this cooperation be allowed to continue?

Will this cooperation be allowed to continue?

of a Professional Supervisory Unit (PSU) (see Art. 11), presumably a government agency or government-approved organization in the foreign NGO’s field. A legal-oriented foreign NGO would seek to establish a relationship with the Ministry of Justice as its PSU. Only after it receives this consent can the foreign NGO apply for approval with the PSB (see Art. 12(6)).

But here is the rub, how many foreign NGOs can one government organization sponsor? Would the Ministry of Justice establish a relationship with every legal-oriented foreign NGO seeking to establish an office or would it pick one, two, or maybe a handful? It's not their business to sponsor foreign NGOs and presumably, these government agencies have limited capacity to do so. Even if a foreign NGO can partner with a quasi-government organization, there are still not enough of these to cover the number of foreign NGOs with offices in China. By one estimate, there are close to 1,000 foreign NGOs in China. As a result, some will inevitably be forced to leave China because of their failure to establish a relationship with a Chinese PSU.

But the relationship with the PSU does not end with registration. Every year, the foreign NGO will have to submit two documents: (1) an activity plan that delineates the implementation details for the following year's projects (see Art. 24) and (2) an annual work report which must include financial accounting and audit reports (see Art. 37). For smaller foreign NGOs with limited resources, hiring someone to handle this paper work might not be the best use of its funding. Even if a foreign NGO can establish a relationship with a Chinese PSU, at some point it will become debatable if it is even worth it economically.

And if that is enough to discourage a foreign NGO from establishing a representative office, the procedures are required to be repeated every five years. (see Art. 15).

Even Academic Exchanges are Not Exempt from This Law

Harvard University President Drew Faust Meets China's President Xi Jinping on a recent trip to China

Harvard University President Drew Faust Meets China's President Xi Jinping on a recent trip to China

Those foreign NGOs that think working from abroad will be less onerous will have a rude awakening. Under the draft law, they must also establish a relationship with a PSU before applying for a "temporary activity permit" from the public security bureau. (see Art. 20(3)). Again, it will be interesting to see how many eligible PSUs will establish relationships with foreign NGOs.

As the law stands now, foreign universities are not exempt from the draft law. What foreign NGO is covered by the law is unclear and the vagueness means that anything that is a not-for-profit abroad is covered by the law. Even the state-run Global Times highlighted the negative impact the first draft of the law could have on academic exchanges. It appears those issues remain in the second draft as well.

Where Will All The Funding Go?

Any argument that the draft Foreign NGO Management Law will lead to necessary transparency is belied by the rigorous regulations that will make it impossible for many foreign NGOs to legally do work in China. For many that will mean a decision to leave China. But, as Thomas Carothers and Saskia Breechenmacher highlighted in their prescient report, *Closing Space: Democracy and Human Rights Support Under Fire*, some organizations committed to staying in a country with increasing harsh laws against foreign NGO funding, might implement a policy of “distancing.” Distancing is essentially the opposite of transparency – trying to hide the source of funding through various offshore means.

But this avenue, with its greater risks to the foreign NGO and in particular to its partners in China, will be used by very few. The ultimate result of the draft Foreign NGO Management Law is that a large number of grass-roots Chinese NGOs that are doing essential work in China will close.

The Future is Already Present? How the Draft Foreign NGO Management Law Could Be Applied³²

For anyone who still doubts that the draft Foreign NGO Management Law is about the Public Security's Bureau's ability to control foreign NGOs and their domestic partners, recent events – namely the detention of five feminist activists, the indictment of the head of the Chinese think tank, the Transition Institute, and the expulsion of foreign aid workers – should make clear that the draft law is primarily a security document.

The recent month-long detention of five female activists for planning a small, anti-sexual harassment demonstration was less about feminism than it was about the spirit of the draft Foreign NGO Management Law. According to a person with knowledge of the March 2015 interrogations of the five women, the police's questions centered on the five women's work with various foreign NGOs as well as their work with Yirenping, a successful Chinese public health NGO that often cooperates with foreign NGOs. The subject of the women's planned demonstrations were a secondary issue for the police.

Similarly, the recent Recommendation for Prosecution of Guo Yushan and He Zhengjun, founders of the liberal think tank, the Transition Institute of Social and Economic Research, highlighted the Institute's overseas funding and

³² <http://chinalawandpolicy.com/2015/05/11/the-future-is-already-present-how-the-draft-foreign-ngo-management-law-could-be-applied/>

named various foreign NGOs (Heinrich Böll Stiftung (Germany), the Friedrich Naumann Stiftung (Germany), the Center for International Private Enterprise (U.S.), and Probe International (Canada)) as supporting the Institute's "illegal business activities."

The draft Foreign NGO Management Law, if passed in its current form, will make harassment of Chinese NGOs even easier than what we see now. No longer will the police need to twist the criminal law to suit its objectives or will it be stymied by an earnest prosecutor's office. Article 38 of the draft Foreign NGO Management Law forbids Chinese individuals from receiving foreign funds from an NGO without an office in China, much like the Transition Institute allegedly did. Further, under Article 58(4), cooperating with an unregistered and unapproved foreign NGOs could lead to administrative detention of five days and a fine of 50,000 RMB (approximately \$8,050).

Administrative detention is a form of punishment in China instituted at the behest of the local public security bureauadmin dete with no judicial oversight.³³ It has long been criticized for violation of the arbitrary detention prohibition of the International Covenant on Civil and Political Rights (ICCPR) and, with little way to challenge it, is ripe for abuse including torture. For those considered "personnel" of the foreign NGO, administrative detention could up to 10 days (Article 57) or 15 days (Article 59). With these expansive provisions, the public security bureaus will have a new tool to harass grassroots NGOs the police believe are "troublesome," like it currently has deemed Yirenping.

Foreigners are not exempt from the draft law. The administrative penalties make little distinction between foreigners and Chinese citizens in terms of detention and fines. In addition, Article 62 gives the public security apparatus complete authority to deport a foreigner it deems in violation of the Foreign NGO Management Law. This provision should not come as a surprise given the recent expulsion of two foreign NGO workers – Tim Millar of the Rights Practice and Jérémie Béja of China Development Brief – on visa technicalities. Given the vagueness of the draft law, it will be very easy for the PSB to point to a provision of the Foreign NGO Management Law as a basis for deportation.

These provisions, which give expansive, unchecked powers to the PSB, will have a chilling effect on both foreign and domestic NGOs if they are allowed to

³³ As China Law Translate notes in its informative Cheat Sheet for Understanding the Foreign NGO Management Law, "[t]here is a mechanism for court review and compensation for those wrongfully given administrative detention, but the remedy often follows punishment if at all."

remain in the final law. Additionally, the inclusion of administrative detention puts China that much further from being able to ratify the ICCPR and be in-line with international standards. But this draft has yet to become law and if there is a silver lining in all of this, it is the fact that the National People's Congress (NPC) has opened the draft to comment, even comments from the object of the law itself: foreign NGOs.

One Love: How Foreign NGOs & Governments Should Respond to China's Draft Foreign NGO Law³⁴

More than a week has passed since the Chinese government published its draft Foreign NGO Management Law. But yet the world largely remains silent – no word publicly from the foreign NGO community in China, the foreign universities that do work in the Mainland or the foreign governments who often fund NGOs working there. But in light of the draft law's potentially disastrous effects, is silence really a good strategy?

We're One, But We're Not the Same? Which Foreign NGOs Will Be Covered by the Draft Law

The draft Foreign NGO Management Law is anything but an example of clarity. But there are two things we know for sure from the current version: foreign NGOs that have an office in China are covered and foreign NGOs without offices in China that seek to conduct activities there are also covered. (Art. 6). We also know that the ultimate authority over all foreign NGOs, whether setting up an office in China or merely conducting activities there, is the Public Security Bureau (PSB) (Arts. 7, 12, 20 & 47).

As China Law Translate notes in its Cheat Sheet for Understanding the Foreign NGO Law, what is a foreign NGO is defined expansively as any “not-for-profit, non-governmental social organization.” (Art. 2). Such a broad definition can “include universities, international professional associations and interest groups, artistic groups and athletic associations” in addition to what we view as traditional NGOs like the Red Cross.

Similarly, the term “activity” is left undefined, allowing it to encompass anything. However, even those foreign NGOs without an office in China will be required to establish a relationship with a Chinese partner in order to obtain a temporary activity permit to perform any work in China. (Arts. 18-20). The entire process can take 60 days or more, depending how easy it is to establish a relationship with a Chinese partner. (Art. 20 & 22). Will Doctors

³⁴ <http://chinalawandpolicy.com/2015/05/12/one-love-how-foreign-ngos-governments-should-respond-to-chinas-draft-foreign-ngo-law/>

Without Borders have to apply for a temporary activity permit before responding to a medical emergency in China? Under the current, vague draft, yes.

Universities are also covered under the current draft law. It is that fact that has alarmed many Chinese scholars who realize that academic exchanges will be negatively impacted by the current, vague draft.

Ultimately, under the proposed draft Foreign NGO Management Law these terms will all be defined by the PSB. And changed as the PSB sees politically expedient.

Well We Hurt Each Other Then We Do it Again? Universities and Foreign NGOs Need to Stand Together.

As Thomas Carothers and Saskia Brechenmacher highlight in their report *Closing Space: Democracy and Human Rights Support Under Fire*, governments seeking to limit foreign NGOs are “skillful at dividing and conquering the international aid community.” Is the Chinese government hoping that some foreign aid organizations will not oppose the draft law, eager to curry favor so that they can continue their work in China?

But with the amorphous definition of a foreign NGO under the draft law, that is a dangerous strategy for any foreign NGO with either offices in China or that just conducts activities there. Almost all NGOs are covered under the current definition and that is why it is important that the foreign NGO community, including universities, stand as one in commenting and opposing the current draft.

Universities and major non-profits have an even greater responsibility to publicly comment on the proposed draft law. In the current environment in China, not all foreign NGOs are equal. The Rights Practice, which just had one of its staff members deported from China, likely does not have the same credibility before the current Chinese regime as the Gates Foundation, NRDC, or Save the Children, which in January hosted President Xi Jinping at one of its spaces in Yunnan. These are organizations that have long supported Chinese civil society actors in benefiting the Chinese people. It is important that these major NGOs continue to support civil society in its entirety, not just those sectors that the PSB presently approves. Further, these major NGO's do not know when their own work will imperil them with the PSB and thus, could find themselves subject to the harsh, vague provisions of the current draft Foreign NGO Management Law. Five years ago, who would have thought that a group of individuals with hepatitis seeking to end discrimination would be considered a threat. But that is where Yirenping finds itself today.

U.S. and European universities have the best footing to comment on the draft Foreign NGO Management Law. save the children These universities likely have thousands of academic exchanges – covering law, science, engineering, medicine – exchanges where the Chinese university likely derives tremendous benefit. Even with the growing police state, the Chinese government probably does not want to risk losing even some of these beneficial relationships.

It is imperative that these major foreign NGOs and universities stand with those foreign NGOs that are the current target of the law and openly comment on the draft law. Is the Gates Foundation really going to be kicked out of China? Is UC Berkeley's Engineering School?

You Give Me Nothing Now It's All I Got: Where is the White House on All of This?

Last Friday, U.S. President Barack Obama recognized that if the we don't write the rules, China will. Unfortunately, for the non-profit world, Obama limited that rule-writing to trade issues and support for his Trans-Pacific Partnership.

It is time that the White House recognize that with China, there are more rules out there than those that directly govern trade. The Obama Administration has allowed too many non-trade issues – U.S. journalist visas, now foreign NGOs – to receive scant attention as a U.S.-China policy matter. With the U.S. abandoning these issues, China is writing the rules in these important areas, and these will be rules that other countries will copy.

But the Administration is not without recourse. It too can submit comments on the draft law and should. When U.S. technology companies appeared to be negatively impacted by China's draft Counter-Terrorism Law published late last year, Obama made his displeasure publicly known. There is no reason to why he cannot do the same with the draft Foreign NGO Management Law. And comments from the Administration can no longer be relegated to a State Department spokesperson. If there is anything to be learned from the handling of the U.S. journalist visa issue with the Chinese government, a State Department spokesperson is not going to cut it when dealing with the world's second largest economy. It wasn't until Vice President Joseph Biden visited China in December 2013 and publicly raised the U.S. journalist visa hold-up, did China start taking the issue seriously. Soon after, U.S. journalists' visas were renewed.

Although the Obama Administration should oppose the draft Foreign NGO Management Law on the grounds that its radical clampdown on civil society is anathema to the interest of the Chinese people, opposition can also be tied to

trade. Chinese domestic civil society groups often deal with the flipside of free trade – environmental degradation, workplace justice, product safety. And these are issues that are increasingly coming to our shores: air pollution from China now reaches California; unsafe products made in China are sold in the United States. Chinese NGOs seek to enforce environmental regulation and product safety laws. Although their goal is to protect the Chinese people from the harms of unregulated capitalism, a side benefit of Chinese NGOs' success accrues to the American people. California becomes cleaner and U.S. citizens fear Chinese goods less. But if the draft Foreign NGO Management Law is passed in its current form, an important lifeline of Chinese civil society – the foreign NGO – will potentially be cut off. To ensure a balanced trade relationship with China, the Obama Administration must comment on the current draft law. One opportunity is right around the corner: the annual U.S.-China Strategic and Economic Dialogue to be held this June in Washington, D.C.. The draft Foreign NGO Management Law, and the important role civil society plays in a free trade world should be on the agenda.

Finally, the increasingly unbridled power of the public security apparatus, evident in the draft Foreign NGO Management Law as well as the draft National Security Law, which was published only days after the NGO law, should frighten any entity that deals with China – be it a not-for-profit, a business or the U.S. government. To ignore that development and to believe that the supremacy of the PSB is somehow limited to civil society issues is to do so at the peril of all of the United States' interests in Asia, including business and military interests.

China's Draft Foreign NGO Law's Impact on a New World Order³⁵

It's not only the South China Sea that is witnessing China's differing interpretation of international law and its commitments under various treaties. With its draft Foreign NGO Management Law, China is also turning up its nose to various international human rights treaties and bodies. But while the United States sends surveillance planes to bait the Chinese into a skirmish over islands that are not clearly China's and not clearly the Philippines or Vietnam's, it remains noticeably silent on the draft Foreign NGO Management Law. (For an interesting take on how to solve the South China Seas issue without resorting to a U.S.-China conflict, see Prof. Jerome Cohen's analysis here).

As Human Rights in China (HRIC) pointed out in a recent analysis, ignoring the draft Foreign NGO Law's impact on China's international human rights

³⁵ <http://chinalawandpolicy.com/2015/05/26/chinas-draft-foreign-ngo-laws-impact-on-a-new-world-order/>

commitments comes at a dangerous cost. China is a sitting member of the U.N.'s Human Rights Council, a Council that less than a year ago issued a resolution calling on its members to create an environment where civil society can flourish and admonishing those states that passed laws similar to what China has proposed in the current legislation. China's draft law will do precisely the opposite of creating a flourishing domestic NGO sphere; it will create a vacuum in funding and in knowledge for China's smaller domestic NGOs that do important work benefiting some of China's most vulnerable – those left behind by the country's economic development. The Chinese government has yet to state whether it intends to fill that void with money from its own coffers. But probably not.

In its analysis, HRIC goes on to highlight China's other violations of various human rights treaties. But its most important impact is noting that these transgressions cannot be ignored. China is not some poor player that struts and frets its hour upon the stage and then is heard no more. It is the world's second largest economy with influential positions in the United Nations. What it does, and how it interprets its human rights commitments, will inevitably impact the rest of the world. Countries that might not have clamped down on their own civil society for fear of international reprisals, now have cover to do so. With the world's silence, it becomes all the more apparent that international human rights treaties play second fiddle – if even that – to military interests over a bunch of rocks that might or might not contain large oil and natural gas reserves.

Where Have All the Flowers Gone? Still Time to Respond to China's Draft Foreign NGO Law³⁶

Less than a week is left for the public, including foreign entities, to submit comments on China's draft Foreign NGO Management Law, a law that will completely alter the ability of foreign NGOs to work in China. But it will be China's own grassroots NGOs that will feel the blow of this law the most. Many of China's grassroots NGOs, in particular those that assist society's most vulnerable, receive funding as well as capacity-building support, from these foreign NGOs.

Aside from human rights groups, little has been said about the law from the foreign entities that will be covered by it. As Prof. Jia Xijin, an expert on NGO management in China, has made clear, the current draft law covers almost every non-profit that wants to do anything in China. A non-profit that wants to set up an office in China will be covered. But even more than that, any non-profit that just wants to do an event in China or an exchange, that behavior will also be covered even if the organization or its event is not particularly

³⁶ <http://chinalawandpolicy.com/author/admin/>

China-focused. A dance troupe that wants to perform in China, covered. A museum that wants to do an exchange in China, covered. Doctors Without Borders responding to an emergency in China, covered. Universities in particular, with their myriad educational, scientific and other exchanges with Chinese counterparts, will likely be the first victims of the law if it is passed as it is currently written.

Other fields – the arts, bar associations, business associations, medical non-profits – should be taking a page from academia's playbook and submit joint comments. If this law is passed as it is currently drafted, it will cover these fields as well and, because there is a limited number of Chinese partners that will be willing to work with a foreign NGO, could squash the ability of many of these non-profits to continue their work and exchanges with China. That would ultimately hurt the Chinese people. And the American people. Average American's understanding of China sometimes come from these changes, creating feelings which have largely been positive to U.S.-China relations.

Even businesses and corporate lawyers should be paying attention to this draft Foreign NGO Management Law. Foreign businesses and corporate law firms are the few entities not covered by the current draft. But foreign corporations doing business in China should be frightened by this law and its sister – the draft National Security Law. Both are extremely vague – almost definitional-less – and overly-broad in the entities and conduct covered. Both show the current power of the security apparatus in crafting China's laws. This type of legal drafting might currently be limited to civil society-like laws, but it may reflect a larger mindset – that law should serve the Chinese Communist Party – that will inevitably be felt in the business world as well, if it hasn't already.

5. Relevant News

A Trial of Foreign NGO Management Law in Beijing Local Government³⁷

The Beijing local government released a State Council-approved plan for pilot projects to open-up the city's service industry on May 21, 2015. The plan includes the trial registration for Overseas NGOs.

According to the three year plan Beijing will develop the areas of science and technology, information, culture and education, finance, commercial affairs, tourism, and health. For Overseas NGOs – which have been in the spotlight recently since the Overseas NGO Management Law (second draft) was

³⁷ <http://chinadevelopmentbrief.cn/news/zhongguancun-to-start-trial-registration-for-three-types-of-overseas-ngos/>

released for public consultation – the new plan stated that Overseas NGOs (境外非政府组织) working in the areas of science and technology, education, and economics (经济类) can set up representative offices in Zhongguancun (中关村, a high-tech zone in the Haidian District of Beijing). The Beijing government will also start trial registration for private non-enterprise units (民办非企业单位) set up by Overseas organizations and individuals in the areas of science, and technology and economics (经济类).

As pointed out by Professor Deng Guosheng, Director of the Center for Innovation and Social Responsibility at Tsinghua University, currently the only legal documents that relate to the management of Overseas NGOs in China are the Interim Provisions for the Administration of Foreign Chambers of Commerce in China (外国商会管理暂行规定) and the Regulation on the Administration of Foundations (基金会管理条例). Overseas NGOs in China that are not foundations, are therefore currently forced to operate in a gray area. According to Deng, those Overseas NGOs that manage to meet the requirements of the Beijing local government's pilot program will have legal status in the future.

6. Other Comments or reports on Medias

1) How Does China's Foreign NGO Management Law Curb the Development of Civil Society?

By Oiwan Lam May 10, 2015

<http://globalvoicesonline.org/2015/05/10/how-does-chinas-foreign-ngo-management-law-curb-the-development-of-civil-society/>

2) Enemies of the State: Beijing Targets NGOs

By ANDREW BROWNE May 26, 2015

<http://www.wsj.com/articles/enemies-of-the-state-beijing-targets-ngos-1432622054>

3) Foreign NGOs Under Increasing Pressure in China

By DIDI KIRSTEN TATLOW APRIL 29

http://sinosphere.blogs.nytimes.com/2015/04/29/foreign-ngos-under-increasing-pressure-in-china/?_r=0

4) In China, NGOs tread lightly over new law

By Lean Alfred Santos May 26, 2015

<https://www.devex.com/news/in-china-ngos-tread-lightly-over-new-law-86230>

5) For Whom the Bell Tolls: One Chinese NGO's Alleged Crime of "Illegal Business Operation"

By Wan Yanhai May 13, 2015

<http://chinachange.org/2015/05/13/to-whom-the-bell-tolls-one-chinese-ngos-alleged-crime-of-illegal-business-operation/>

6) Lawrence Solomon: The worldwide crackdown on NGOs

Lawrence Solomon May 18, 2015

http://business.financialpost.com/fp-comment/lawrence-solomon-the-worldwide-crackdown-on-ngos#_federated=1

7) Guo Yushan and the Predicament of NGOs in China

<http://journal.probeinternational.org/2015/05/21/guo-yushan-and-the-predicament-of-ngos-in-china/>

7. Similar Situation in Russia and India

1) New Law Allows Russia to Ban 'Undesirable' Human Rights Groups and Other NGOs

By Matthieu Jublin May 25, 2015

<https://news.vice.com/article/new-law-allows-russia-to-ban-undesirable-human-rights-groups-and-other-ngos>

2) Germany raps Russia over law against 'undesirable' NGOs

http://article.wn.com/view/2015/05/28/Germany_raps_Russia_over_law_against_undesirable_NGOs/

3) Russia: Government against Rights Groups

Battle Chronicle MAY 20, 2015

<http://www.hrw.org/news/2015/05/20/russia-government-against-rights-groups>

4) RSS questions US defence of Ford Foundation, Greepeace

http://articles.economictimes.indiatimes.com/2015-05-10/news/62001467_1_rss-mouthpiece-ngos-foreign-contribution

5) Home ministry assures Gates Foundation its funding of Indian NGOs not being probed

Bharti Jain, TNN May 10, 2015

<http://timesofindia.indiatimes.com/india/Home-ministry-assures-Gates-Foundation-its-funding-of-Indian-NGOs-not-being-probed/articleshow/47218942.cms>