Non-Profit Frontier Dialogue

*China’s Overseas NGO Legislation*

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**Editor’s Notes**

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The Overseas NGO Management Law of the People’s Republic of China (Second Review Draft) was deliberated and adopted at the 14th meeting of the 12th NPC Standing Committee, and published at npc.gov.cn from May 5 to June 4, 2015 to solicit opinions from the general public. This is the first time China has introduced legislation on Oversea NGOs. Before this new legislation, the legal framework for regulating social organizations in China is mainly comprised of the Regulations on the Registration and Administration of Social Groups, the Provisional Regulations on the Registration and Administration of Civilian Non-enterprise Units, and the Regulations on the Administration of Foundations. Of them, only the Regulations on the Administration of Foundations provide that international foundations can establish representative offices in China. Ever since the Regulations were issued, 26 international foundations have set up representative offices in China. Except that, there are no provisions about the legal status of Overseas NGOs in China. The Provisional Regulations on the Administration of Foreign Chambers of Commerce introduced in 1989 were targeted at chambers of commerce established in China by foreign commercial organizations or foreigners, rather than international chambers of commerce. In reality, the Chinese government has maintained an attitude characterized by inaction and prudence towards the development of Overseas NGOs in China since the policy of reform and opening up was introduced. Although Overseas NGOs have been watched, the government has agreed tacitly not to recognize or ban Overseas NGOs or interfere in their activities. The Central National Security Commission gave the order to conduct a survey of Overseas NGOs across the country in mid-2014. The ongoing legislation process is also proceeding apace. Apparently, there is a shift towards law-based management of Overseas NGOs, regulating them and holding them legally accountable.
There are five focuses in the discussion about the draft law. First, the concept of NGO. What organizations will be counted as NGOs if NGO is broadly defined as “a non-governmental, non-profit social organization?” Second, how to define “temporary activities.” What activities will be banned in China or not allowed to be introduced to China? Will all activities be subject to a stricter approval process? Third, how to find the competent authorities. How should Overseas NGOs operate under the supervision of relevant Chinese government authorities? Fourth, public security authorities are responsible for registering and managing Overseas NGOs while civil affairs authorities are responsible for registering and managing social organizations. What influences will these authorities exert on Overseas NGOs and Domestic NGOs? Fifth, a series of prohibitive or restrictive regulations. Overseas NGOs can only establish one representative office but no branches in China; they must organize activities and recruit staff members or volunteers with the approval of relevant Chinese authorities.

On the one hand, it was proposed in the Report to the 18th CPC National Congress that “we should quicken the pace of building a system of modern social organizations in which functions of the government are separated from those of social organizations, rights and responsibilities are clearly established, and social organizations exercise autonomy in accordance with the law”; it was put forth at the Third Plenary Session of the 18th CPC Central Committee that innovating the social governance system and modernizing social governance should be part of the efforts to “modernize China’s governance system and capacity for governance,” and at the Four Plenary Session of the 18th CPC Central Committee that “rule of law” should be considered the theme of China’s development agenda. On the other hand, the State Council’s plan for the reform of its organizational structure following the 18th CPC National Congress changed the classification of social organizations, listed four types of social organizations for direct registration including trade associations and chambers of commerce, Sci-Tech social organizations, philanthropic and charitable social organizations, and urban and rural community service organizations, and made clear that social organizations engaged in political, legal, and religious activities and Overseas NGOs were subject to the management of both competent authorities and civil affairs authorities. The Decision of the CPC Central Committee on Some Major Issues Concerning Comprehensively Deepening the Reform, adopted at the Third Plenary Session of the 18th CPC Central Committee, proposed “strengthening the management of social organizations and Overseas NGOs in China and guiding them on organizing activities in accordance with the law.” How should we understand China’s first ever