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China's Proposed Non-Governmental Organization Law: Cooperation or Coercion?

The language of the Overseas NGO Management Law must be amended to protect freedom of expression and association.

By Jared Genser and Julia Kuperminc

It is no secret that thousands of people in China are currently imprisoned for their political or religious beliefs. Many have voiced unfavorable opinions in a peaceful manner and found themselves charged with subverting state power. Others have publicly discussed pertinent national issues and saw their words relabeled as treason, spying, or defamation. Non-governmental organizations (NGOs) and their personnel operating in China already face harassment and intimidation.

A proposed Overseas NGO Management Law threatens to provide the Chinese government with a new toolkit for state control and open a new front of persecution against civil society in China.

China already spends more than \$130 billion annually on its domestic security budget. The draft of the new NGO law is part of a wave of proposed legislation, which also includes a new counter-espionage law and counter-terrorism law, intended to give a veneer of legality over China's increasing and arbitrary repression of its own population in the name of national security.

The NGO law purports to standardize the activities of foreign NGOs "while promoting exchange and cooperation." But what is permissible and what is prohibited is opaque. For example, NGOs are prohibited from engaging in "political activities," which in a Chinese context could mean virtually anything the Chinese government, without definition or standard, does not like. Additionally, when the draft law was recently made public, there were particular concerns raised that it would not only impede what one might usually consider NGO activity, such

as protecting the environment, but it could also authorize widespread police supervision and oversight of the activities of foreign universities operating in China, such as NYU Shanghai, which are also NGOs.

Governments, NGOs, and even businesses have demanded that China throw out this proposal or change the draft almost entirely. Sophie Richardson, Human Rights Watch's China Director, summed up the concerns of the international community in saying "[i]n the past two years, Chinese authorities have shown increasing hostility toward civil society, and this draft law is nothing more than a means to block the activities of groups Beijing doesn't like."

With this law, the Chinese government has taken another page out of the dictator's playbook. In Cambodia, the government can arbitrarily and subjectively shut down or penalize an NGO that is "jeopardiz[ing] peace, stability and public order." In Bangladesh, the same holds true for activities that are "illegal or harmful for the country." And in Pakistan, it's as elusive as anything "dubious in nature." Russia has made the news more recently as foreign-funded NGOs were relabeled "foreign agents" while state treason was redefined to encompass any deed considered "damaging to state security."

This isn't to say that a law regulating NGOs is either inappropriate or even a bad idea. All countries where the rule of law prevails have requirements for licensing and overseeing the activities of businesses, including NGOs. The problem here is there is a substantial difference between licensing NGOs as compared to managing the activities of NGOs to benefit "the development of Chinese public welfare."

NGOs are outlets of expression and association. If a recognized organization and its personnel are intimidated and harassed or even prosecuted criminally for their activities, there is little hope of preserving and protecting these individual rights. The United Nations Human Rights Committee and Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association Maina Kiai have both emphasized that any limit on rights to association and expression must strictly conform to the standards of necessity and proportionality, be applicable to the purpose it was originally devised to serve, and be directly related to that stated need.

Rather than fear foreign NGOs as dangerous influences and use a new law to provide arbitrary ways to constrain their work, the Chinese government must instead design a registration and oversight system that guarantees the rights provided in the Chinese Constitution and under international law will be

scrupulously protected. To this end, the draft law must be scrapped or substantially rewritten in five key ways:

- **Amend the registration process to be easier.** As written, the draft contains excessive restrictions that will discourage foreign NGOs from registering. A foreign NGO must secure approval from local government prior to even beginning its application, and then must complete the registration process. The extra step to secure prior approval is both cumbersome and complicated, let alone bureaucratically challenging. The Special Rapporteur has said that a mere notification process is more compliant with human-rights law than requiring registration and prior approval.
- **Eliminate vague language.** Important terms are not clearly defined, which leaves the law ripe for abuse by authorities. An NGO's application must show its activities will benefit the development of public welfare, but there is no objective definition of how that is defined. Additionally, there are several, vague ways in which registered NGOs might violate the law, including subversion, disseminating harmful information, and other activities deemed harmful to state security, national interests, or societal public interests. These general and potentially limitless categories are by their very nature arbitrary and must be replaced with narrow and clear definitions of impermissible conduct.
- **Create a mechanism for challenging decisions.** Although there is a 60-day timeframe for the government to issue a decision on NGO registration, the law does not provide redress for late, absent, adverse, or arbitrary decisions. Without any recourse for appealing adverse decisions, a rejected NGO cannot challenge an arbitrarily decision or learn how to succeed in future registration attempts. As a result, an NGO will wait in limbo or become too discouraged from previous failures to continue trying. There must be a mechanism for NGOs to challenge adverse or absent decisions, which would require the government to explain its decision clearly and in accordance with the criteria for registration established in the NGO law.
- **Limit the supervisory role of police.** The draft law authorizes the police to supervise foreign NGOs, allowing broad discretion of enforcement actions to be taken including freezing assets or entering offices of NGOs at any time. The fear of constant hands-on police interventions will discourage NGOs from registering and repress expression and association. Any actions to be taken against NGOs should oversight of courts. And there should be clear channels to address misconduct of state officials in enforcing the NGO law.

- **Ensure that penalties are proportionate and clearly defined.** If an NGO violates the draft law, it can have its registration revoked and relevant personnel could be imprisoned for up to 15 days. But there is no clarity as what constitutes impermissible activities that would lead to a violation. The importance of clear, proportionate penalties cannot be overstated if China is genuinely interested in functional NGO regulation.

In short, the adoption of the draft law in its current form would be an affront to international human-rights principles. While there may be little reason to expect that China will change course given that these constructive ambiguities are intentional and not accidental, the international community must nevertheless press change. The stakes are huge – without dramatic changes being made to the draft law, many foreign NGOs will go underground and any groups engaged in real or imagined affronts to the Chinese government will be at great risk.

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