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### Submission by Human Rights Watch to the National People's Congress Standing Committee's Legislative Affairs Commission on the second draft of the Foreign Non-Governmental Organizations Management Law

Human Rights Watch is an international non-governmental organization that monitors and reports on human rights in about 90 countries around the world. We welcome the opportunity to provide comments on the second draft of the Foreign Non-Governmental Organizations (NGOs) Management Law ("the draft law"), which was published by the National People's Congress Standing Committee Legislative Affairs Commission on its website on May 5, 2015.<sup>1</sup> Human Rights Watch advocates compliance with international human rights law globally, including the rights to freedom of association, expression, and peaceful assembly that are at the heart of the draft law.

Human Rights Watch has examined the draft law in detail and urges the Chinese government to withdraw the measure because it fails to meet basic international standards. One of China's great reform era success stories is the growth of civil society, ranging from groups that alleviate poverty to networks of people who press for greater environmental protections. These organizations operate within the confines of the law, and seek to peacefully address pressing economic, educational, legal, and social challenges. To adopt this law will be to reverse those gains.

<sup>1</sup> Foreign Non-Governmental Organizations (NGOs) Management Law (second draft), 境外非政府组织管理法（草案二次审议稿）全文, Website of the National People's Congress, [http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2015-05/05/content\\_1935666.htm](http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2015-05/05/content_1935666.htm) (accessed May 27, 2015). An English translation of the draft law can be found at <http://chinalawtranslate.com/en/foreign-ngo-draft-2/>.

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In recent years the government has demonstrated growing hostility toward independent voices, and if adopted as currently drafted the law will severely and arbitrarily restrict the ability of civil society organizations in China to access resources from and cooperate with international organizations. In addition, it would place vague and overly broad restrictions on foreign organizations, including business associations, universities, and museums, that wish to carry out valuable activities in China.

Governments have a legitimate regulatory interest in providing benefits to organizations that become legal entities and preventing criminal conduct. But such regulations should not be used as a cover to undermine rights to freedom of association, expression, and assembly, which are protected under the Chinese constitution and are fundamental principles of international human rights law.

The ability of organizations to receive and use funding for lawful activities is an integral part of the right to freedom of association, which is protected under China's Constitution, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights, to which China is a signatory.<sup>2</sup> Such rights should be protected regardless of the entity's registration status, and regardless of the nature of lawful funding sources.<sup>3</sup> While international law allows restrictions on freedom of association, such restrictions must be in pursuit of a legitimate aim and be strictly necessary in a democratic society.<sup>4</sup> Even in these situations, the measures must be nondiscriminatory, narrowly designed, and proportionate to the aim being pursued.<sup>5</sup> This means that the law cannot "target all civil society associations indiscriminately or arbitrarily" or limit funding to civil society organizations in general terms under the justification of national security.<sup>6</sup>

It is unclear why the government considers the current regulations on foreign NGOs to be inadequate. The Provisional Regulations on Control of Foreign Boards of Commerce (外国

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<sup>2</sup> See Constitution of the People's Republic of China, art. 35; Universal Declaration of Human Rights, art. 20 (widely accepted as reflective of customary international law); and International Covenant on Civil and Political Rights (ICCPR), art. 22 (as a signatory to the ICCPR, China is prohibited from taking any action that would defeat the treaty's object and purpose. See Vienna Convention on the Law of Treaties, art. 18). Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, April 24, 2013, A/HRC/23/39, para. 16 ("[F]undraising activities are protected under article 22 of the [ICCPR], and funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with article 22.")

<sup>3</sup> Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, paras. 17 and 56 ("The Special Rapporteur underlines that the right to freedom of association equally protects associations that are not registered.... Individuals involved in unregistered associations should indeed be free to carry out any activities, including the right to hold and participate in peaceful assemblies, and should not be subject to criminal sanctions.")

<sup>4</sup> See, for example, ICCPR, art. 22.

<sup>5</sup> Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, April 24, 2013, A/HRC/23/39, para. 19.

<sup>6</sup> Factsheet: Civil Society's ability to access resources, Special Rapporteur Maina Kiai's report to the Human Rights Council, June 2013, A/HRC/23/39.

商会管理暂行规定) and Regulations for the Management of Foundations (基金会管理条例) already stipulate the registration, management, accounting, and reporting requirements of foreign business associations and foundations that want to establish a representative office in China. The latter requires foreign foundations to seek “double registration.” First, they must receive the approval of an appropriate government agency or government-appointed body to act as its Professional Supervisory Unit (业务主管单位, PSU). Then they must receive the approval of the Ministry of Civil Affairs (MCA) or its offices at the provincial, autonomous region, or municipality levels. Only then can their representative offices be legally registered in China. Some foreign NGOs that operate in China are already registered under this legal framework, while others register as businesses or business associations, which have fewer stringent registration requirements, or do not register at all.<sup>7</sup> China’s Criminal Law already addresses fraud and other economic crimes.

**Our specific concerns about the draft law, particularly as they reflect recent efforts to significantly limit human rights, include:**

### **1. Broad and Vague Limitations on Foreign Organizations**

Foreign NGOs operating permanently or temporarily in China would need to comply with vaguely defined provisions in the draft law that do not make it clear what activities do and do not require official permission before conducting activities. Because the relevant provisions are not clear, foreign NGOs with representative offices would not know to what extent they could conduct activities that were not incorporated into the annual activity plan for which government approval is required (art. 24). Those groups without representative offices, as detailed below, would need official consent for temporary activities, though for which activities and on what basis consent would be given is not stated (arts. 18-22). The uncertainty over these provisions places unnecessary restrictions on the work of foreign NGOs. Since the law does not define what the term “activity” means, institutions from universities to charities may be required to obtain advanced government approval for “activities” involving anything from publicizing scholarships to aiding earthquake victims.

The uncertainty about which foreign NGO activities require official approval magnifies the risk to Chinese activists assisting such groups. The Chinese government has long abused overly broad and vaguely defined laws and legal provisions to punish activities protected by the rights to expression, association, and assembly. The Law on Guarding State Secrets, for example, applies far beyond the scope of national security to include economic, social, and political matters such as “secrets in national economic and social development,” as

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<sup>7</sup> Wu Shan, “Caijing Exclusive: Establish Rules on Foreign NGOs (《财经》独家|立规境外 NGO),” May 25, 2015, *Caijing*, [http://www.mycaijing.com/top/2015/05/25/193135\\_1\\_7.html](http://www.mycaijing.com/top/2015/05/25/193135_1_7.html) (accessed June 1, 2015).

well as other matters “affecting social stability.” The courts have convicted and handed down prison terms to a number of writers under this law, including most recently veteran journalist Gao Yu, who allegedly leaked an internal Chinese Communist Party document ordering tightened restrictions of civil liberties to a foreign news website.<sup>8</sup> In the last two years, the Chinese government has increasingly used vague public order charges such as “creating disturbances” or “gathering crowds to disrupt public order” to prosecute human rights defenders, such as in the jailing of legal scholar Xu Zhiyong, who headed the public policy organization Gongmeng.<sup>9</sup> If adopted, the draft law will force foreign NGOs and their staff to operate under a comparably arbitrary framework.

## 2. Onerous Supervisory Framework

The draft law extends a “double registration” supervisory framework, as described above that is similar to the one currently governing a limited number of foreign foundations seeking to establish representative offices to the entire population of foreign nonprofits, regardless of their mode of operations in China. This system is known to be one of the highest barriers to their ability to operate effectively.<sup>10</sup>

However, the draft law imposes significantly more reporting requirements and restrictions. According to the draft law, groups trying to establish a permanent presence in China are required to set up a representative office and renew their double registration every five years (arts. 6, 10, and 15). In addition to submitting annual reports on the activities and staffing changes as part of their evaluation, they will also have to submit work plans and funding allocations for the upcoming year for prior approval (arts. 24 and 37). The current regulations on foreign foundations do not cover groups that operate only temporarily in China, but the draft law will require those groups to obtain double registration before commencing any activity and to report to the government within 30 days of completing the activity (arts. 6, 18-22, and 36).

Because of the extra workload and risks involved in supervising NGOs, most government bodies are unwilling to do so, making registration very difficult if not impossible. Many

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<sup>8</sup> Human Rights Watch, *Release Veteran Journalist Gao Yu*, November 19, 2014, <https://www.hrw.org/news/2014/11/19/china-release-veteran-journalist-gao-yu>

<sup>9</sup> Verna Yu, “How China is using criminal detention in place of re-education through labour,” *South China Morning Post*, April 21, 2014, <http://www.scmp.com/news/china/article/1492192/china-using-criminal-detention-place-re-education-through-labour> (accessed June 1, 2015).

<sup>10</sup> The State Council, Regulations on the Registration and Management of Social Organizations (社会团体登记管理条例), effective September 25, 1998. In December 2013, the Chinese government allowed four types of domestic organizations—professional associations, science and technology organizations, charitable organizations, and those which provide services to rural communities—to register directly with the MCA. See Xinhua, “国务院机构改革和职能转变方案,” March 14, 2015, [http://www.gov.cn/2013lh/content\\_2354443.htm](http://www.gov.cn/2013lh/content_2354443.htm) (accessed June 1, 2015); see also, Wang Ling, “Ministry of Civil Affairs: a national pilot of four categories of direct registration of social organizations” “民政部：四类社会组织全国试点直接登记,” December 6, 2012, <http://news.sina.com.cn/c/2013-12-06/025428898717.shtml> (accessed June 1, 2015).

choose to register in other ways because it is less burdensome. There are a number of documented cases of civil society organizations which either have been denied registration by the MCA, or have had their registration stripped because their Professional Supervisory Unit no longer wishes to support them due to their activism or their affiliation with foreign supporters. In February 2014, for example, a lesbian, gay, bisexual, and transgender rights group in Hunan Province was denied registration by the provincial Department of Civil Affairs because “homosexuality is against the spiritual and cultural traditions of our country.”<sup>11</sup> In March 2010, after Peking University stopped supporting the Center for Women’s Law Studies and Legal Services of Peking University, the organization changed its name and registered as a business instead.<sup>12</sup>

### 3. The Role of the Police

The Ministry of Civil Affairs currently supervises domestic organizations and foreign foundations, but the draft law empowers the Ministry of Public Security (MPS) to approve registration and supervise all foreign NGOs. This “supervision” can entail police entering the premises of the foreign NGO at any point, questioning its staff, and copying or seizing any document, without the organization being suspected of any crime or being involved in a criminal investigation (arts. 47 and 49).

Human Rights Watch has long documented the multiple and long-standing human rights violations committed by the police, which includes the harassment and persecution of human rights defenders and members of China’s civil society. In the past year, police have stepped up arbitrary detentions and intimidation of outspoken NGOs and activists. In March 2015, Beijing police arbitrarily detained five women’s rights activists for over a month for planning to raise public awareness against sexual harassment on International Women’s Day.<sup>13</sup> The women were released after an international outcry, but they remain criminal suspects under police surveillance and can still be prosecuted. In late November 2014, police also detained for a month Liu Jianshu, the former deputy director-general of the NGO Liren Rural Libraries. In the past year, police twice raided the offices of anti-discrimination organization Yirenping in Zhengzhou and Beijing. In these cases police arbitrarily detained, ill-treated in detention, or denied access to lawyers or family members.

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<sup>11</sup> Ping Shu, “Hunan Department of Civil Affairs Sued for Refusing to Register Gay Group (拒批同性恋组织注册 湖南民政厅成被告),” *BBC*, February 20, 2014, [http://www.bbc.co.uk/zhongwen/simp/china/2014/02/140220\\_hunan\\_gay\\_lawsuit](http://www.bbc.co.uk/zhongwen/simp/china/2014/02/140220_hunan_gay_lawsuit) (accessed June 1, 2015).

<sup>12</sup> Wu Xiaolei, “Peking University Cannot Accommodate Guo Jianmei (北大容不下郭建梅),” *the Time Weekly*, April 15, 2010, <http://business.sohu.com/20100415/n271520491.shtml> (accessed June 1, 2015).

<sup>13</sup> Maya Wang, “China’s chilling message to women,” *CNN*, April 13, 2015, <https://www.hrw.org/news/2015/04/13/chinas-chilling-message-women> (accessed June 1, 2015).

It is unclear why supervisory responsibility will be transferred to the Ministry of Public Security. This change implies that the government believes that NGOs are inherently suspected of involvement in criminal activity. In a country with thousands of NGOs that play a valuable role delivering services, advising government entities, and holding officials accountable, transferring the power to “supervise” non-profits to the police not only sends the wrong message to NGOs and their donors but is likely to lead to even more rights abuses.

#### **4. Restrictions on Staffing and Operations**

The draft law places detailed restrictions on foreign organizations’ operations, staffing decisions, and service locations that go much further than those in the existing regulations on foreign foundations. It prohibits foreign organizations from establishing branch offices, raising funds, or accepting donations in-country, with the exceptions of those with the State Council’s approval (arts. 23 and 26). It also prohibits foreign organizations from recruiting members (art. 33). While they can recruit staff and volunteers, they can only do so indirectly through “foreign affairs service units” (art. 32), which are government agencies that handle academic and other interactions between foreign and Chinese people, or other government designated bodies. The law also caps the ratio of foreign to domestic staff in foreign NGOs’ representative offices at 50 percent (art. 35). Most of these restrictions are new, but restrictions abruptly imposed by Chinese authorities on Oxfam Hong Kong’s volunteer program in 2010, which recruited university students for internships to help vulnerable communities advocate for their rights, raise concerns about how these new rules will be implemented. In that case, the Chinese Communist Party issued a notice to university administrators warning against cooperating with Oxfam, to prevent “penetration” by “those with bad intentions” who are the “backbone of opposition forces.”<sup>14</sup>

#### **5. Punishments for Vaguely Defined Activities**

The draft law sets out punishments for foreign organizations that are suspected of engaging in other ill-defined conduct (art. 59). It prohibits them from “subverting state power,” “inciting resistance against enforcement of state law or administrative regulation,” “undermining ethnic harmony or engaging in separatism,” “being involved in or funding political activities,” and “being illegally involved in or funding religious activities.” These are all charges that have commonly been brought against peaceful activists and critics of the government, including 2010 Nobel Peace Prize winner Liu Xiaobo and prominent

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<sup>14</sup> “Oxfam Stopped Cooperation with the Mainland After Being Called ‘Backbone of Oppositional Forces,’ (被指「反對派骨幹」樂施會停內地合作),” Stheadlines.com (頭條日報), February 24, 2010, [http://news.stheadline.com/dailynews/content\\_hk/2010/02/24/103229.asp](http://news.stheadline.com/dailynews/content_hk/2010/02/24/103229.asp) (accessed June 1, 2015).

human rights lawyer Pu Zhiqiang, who will soon face trial on charges of “inciting ethnic hatred” and “picking quarrels and provoking troubles.”

Violations of these and other provisions of the law would leave organizational representatives in China liable to punishments including fines, canceling of the organization’s registration, 15-day detention, and criminal liability (arts. 55 and 58). Foreign staff members who violate the law are subject to deportation (art. 62).

The Chinese government has a long history of using vague criminal charges against those who run or are affiliated with outspoken domestic NGOs for organizing peaceful activities that are within their constitutional rights. For example, on April 2, 2015, the Beijing procuratorate formally indicted Guo Yushan, head of the Beijing think tank Transition Institute, and the organization’s administrative manager, He Zhengjun, on charges of “operating an illegal business.” According to the indictment, their alleged crimes stem from their use of funds from foreign funders (including German foundations Heinrich Boell Foundation and Friedrich Naumann Foundation for Freedom, the US-based Center for International Private Enterprise Development Institute, the Canada-based think tank Probe International, and the US government) to research and “publish and distribute books illegally” on topics including China’s tax system, educational equality, legal reforms, and social and livelihood issues.<sup>15</sup>

Thank you for your attention to this important matter and we look forward to hearing from you.

Sincerely,



Sophie Richardson  
China Director  
Human Rights Watch

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<sup>15</sup> “Indictment against Guo Yushan and Liu Zhengjun, Suspected of ‘Operating an Illegal Business’ (郭玉闪、何正军涉嫌“非法经营罪”起诉书),” *Canyu*, April 24, 2015, <http://www.canyu.org/n97483c6.aspx> (accessed June 1, 2015).

