

In March 16, 2016 China's national lawmakers passed its first law specific on charity, The Charity Law (慈善法), with 2,636 votes in favor, 92.5% of the total. This new law will take effect in September of this same year. The law is going through the public opinion solicitation process until June 4.

### **Constitutional Framework**

Under The Constitution of the People's Republic of China (1982, as amended) 12 relevant provisions, which relate to the nonprofit, charitable and philanthropic sector are included. I will highlight the 3 articles that summarize these provisions:

#### Article 1

[...] *Disruption* of the socialist system by any *organization* or individual is prohibited.

#### Article 2

All power in the People's Republic of China belongs to the people. [...] The people *administer* state affairs and manage [...] *social affairs* through various channels and in various ways in accordance with the law.

#### Article 5

[...] All [...] *public organizations* and all enterprises and institutions must *abide by the Constitution* and the law.

## **Law and regulations affecting the sector**

Several regulatory documents have been promulgated and enacted since the late 1980s. They regulate a spectrum of legally-registered non-profit organizations which are called 社会组织 or “social organizations”. Indeed we are talking about civil society organizations (or CSOs) that comprise three major categories: nonprofit, foundations and philanthropic and other social organizations. 民办非企业 are civil non-enterprise institution, the equivalent of nonprofit service providers; 基金会 are foundations; and 社会团体 are membership associations that encompass many trade and professional associations. Foundations are actually the kind of organization that receives more funds (36,67% of the total) followed by the China Charity Federation system (29,7%).

Yu Keping, a Chinese scholar specialized on civil society identifies that CSOs in China cover an space much larger than the institutional one allowed by formal laws and regulations. Some of them are as recent as the Measures for the Administration of Donations for Disaster Relief (issued April 28, 2008), the Notice of the Ministry of Finance and the State Administration of Taxation on the Policies and Relevant Management Issues Concerning the Pre-Tax Deduction of Public Welfare Relief Donations (promulgated January 18, 2007) or the Accounting System for Nonprofit Organizations (issued by the Ministry of Finance September 2004). These laws and regulations (some of them currently in revision) reflect the efforts of the government to revise the legal framework in order to improve its regulatory capacity, trying to keep up with a sector that has changed a lot in the past decade.

According to PC spokesperson Fu Ying, annual donations to registered charities went from 10 billion yuan in 2004 to 100 billion yuan in 2014. Furthermore, a greater number of social organizations are being created every year. In 1999, there were 140,000 and last year this number went up to 657,000. According to the China Charity Information Center, Ministry of Civil Affairs, charity represented 0,16% of China's GDP in 2014. Due to China's steady economic growth this data will probably keep growing bigger too. This shows how civil society and its accompanying legal framework have become –and keep becoming- considerably more complicated. CSOs have expanded their fields of activity rapidly, even with partnerships with the government and business sectors.

Sadly, a number of scandals related to corruption and mismanagement in the sector have tarnished its image and consequently both the public and authorities are leery of charities. According to Li Jianguo, vice chairman of the NPC Standing Committee the sector as a whole “has not developed a self-discipline mechanism”.

The Charity Law must be understood as a way to coordinate the Chinese's government efforts with the CSOs actions, seeking not only the development of the latter but also synergy between the two.

### **Social management innovation**

The Chinese government made “social management innovation” (社会管理创新) one of the 12<sup>th</sup> Five Year Plan (2011-2015) focal points. A series of experiments were carried at a local government level in order to inform national legislation. Questing for the best way to coordinate with CSO, local government from one side to the other

of China took different approaches: lowering barriers to registration, contracting social services to them, building programs and platforms to coordinate, support and incubate CSOs and, of course, working on regulations and standards to direct the growth and development of this sector. Xi Jinping's administration's reaffirmation of these reforms took place in the November 2013 Third Plenum Decision of the 18<sup>th</sup> Central Committee. In order to emphasize the state's partnership instead of management of CSOs, the Decision used the term "social governance" (社会治理).

As Li Jianguo said when introducing the Charity Law to the NPC Standing Committee "Charitable programs are indispensable for the fight against poverty. Formulating a charity law helps nongovernmental sources work together in taking targeted measures to eliminate poverty and contribute to achieving the goal of building a moderately prosperous society". China aims to make 55.75 million rural Chinese live above the poverty line by 2020.

### **The Charity Law in a nutshell**

This law tries to guide the CSOs by providing stipulations on how they should be registered and giving charities legally-registered that have been operating for at least two years more freedom to operate than now. Once these CSOs apply to the civil affairs department they could be allowed to raise funds from the general public. This puts an end to the dual registration with both the civil affairs department and a relevant government department, reducing the red tape and simplifying the entry procedure. Only a few organizations are allowed to raise money from anyone, although others are restricted to specific groups of donors.

Furthermore, charitable activities will be tax-deductible. Organizations, legal and natural persons that donate for charitable activities are eligible for tax benefits. Donations exceeding the amount deductible from income tax that year can be deducted from taxable income over the following two years. In accordance with the law, overseas donations are also eligible for a reduction or exemption from import duties and import value tax. The new will bill hence eases the current restriction: the government waives corporate income tax on donations companies make from their profits, but the waivers only apply to the companies that donate 12% of their profits or less. We should bear in mind that in China a great share of the donations come from businesses (69,23% versus 11,1% from individuals) and a law that encourages them to donate more is really important. According to data from 2014, private enterprises take the first place with 40,43% of donations by businesses, followed by foreign enterprises with 35,98% and State-owned enterprises with 20,99%.

In return, charities should minimize their operational costs (keeping them under 15% of the total amount of donations raised) and must publish their articles of association and information on their executives and supervisory bodies. In addition to this they will have to complete annual reports including financial statements, the details of their launched projects and staff and benefits. In order to prevent Internet fundraising fraud, the bill requires charities to post clear information either on government-designated websites or on their own. Raising funds without a license can be fined with up to 100,000 yuan in some cases and the donation will always have to be returned.

In accordance with the Constitutional framework aforementioned, if a CSO engages or sponsors an activity deemed by the Chinese government to undermine public interests or even state security their registrations will be revoked.

This law also broadens the definition of “charity” from helping disadvantaged groups (as the poor, elderly, women and disabled) and providing disaster relief to also promoting education, environmental protection, culture, health care and sports. This has a great impact, since according to the Giving China Report 2014 37% of donations went to health care, 27,6% to education (mainly higher education), 15,7% to “others” and 3,6% to environmental protection. This sums a total that goes from 68,2% to 83,9% of the donations. On the other hand, only 10,7% of the donations when to poverty alleviation and 5,4% to disaster relief. Taking into consideration that luckily not every year a major disaster happens, the Charity Law legislates in order to effectively adapt to an ever-changing sector and broaden not just the definition of charity but the legal framework necessary for CSOs to be regulated.

### **International praise**

Even foreign media -usually really critical with the Chinese government- pointed out the many advantages of the Charity Law. As The Diplomat reported “The new law addresses most of CAF’s (Charities Aid Foundation) key recommendations for governments around the world: it clarifies the regulations governing non-profits; makes it easier and more desirable for people to donate; ensures transparency in charitable organizations; and encourages charitable giving.”

Edward Cunningham, a Harvard University scholar who is currently running a study on Chinese philanthropy also finds a great thing about this law: “it does not limit the number of nonprofit groups that can work in any one area — a tactic some governments use to keep civil society fragmented.”

## **Grey areas: individuals appealing for aid**

Kan Ke, former deputy director of the NPC Standing Committee's Commission of Legislative Affairs and person involved in drafting this law can give us some insight:

"The bill does not forbid citizens from asking for help online nor does it encourage it [...] it will be up to individuals whether to make such appeals or donate to people who make such appeals [...] The legislature would prefer to see people turn to charities to do kind deeds, rather than going directly to a certain beneficiary, for it will be easier to supervise a small number of organizations than watch a huge number of individuals, we should let the professionals do the job."

Wang Ming, professor at Tsinghua University and member of the 12th National Committee of the Chinese People's Political Consultative Conference who participated in the drafting process also stated that the behavior of individuals raising money for the poor or the sick and who give money to beggars falls under the umbrella of "help-seeking behavior" and hence is not subject to the Charity Law and, therefore, is not illegal nor banned.

The head of the China Philanthropy Research Institute under Beijing Normal University, Wang Zhenyao, explains that fundraising activities by individuals were ruled out in the Charity Law because they often lack transparency and proper means of supervision, and are therefore vulnerable to manipulation by fraud.

Two recent cases can better illustrate this risk. The first one is Yang Cailan's, a 19-year-old who claimed that his father went missing after the deadly Tianjing blast and raising 95,567 yuan. The second one is that of a man Anhui province who fabricated a story about his girlfriend being injured while trying to save a girl from dogs and was

able to raise 8000,000 yuan. In both cases the police determined it was a fraud and detained the authors. Scams such as these two are probably the reason why honest individuals appealing for aid could “pay for the sins of others”.

However, Chu Ying, a professor with South China Normal University, defends that while fundraising is not in line with the direction of future development, it is still needed by contemporary Chinese society. Liao Huage, delegate of National People's Congress, feels that the law is “too strict on personal fundraising, the flexibility of which is more suited to the needs of those with personal difficulties, despite its shortcomings.”

This is without a doubt one of the bill's more controversial articles, since it states that "charity groups and individuals without qualification are banned from raising money publicly." However, the lack of a definition for "qualified individual" has led to various legal interpretations, as Liu Youping, deputy head at the China Charity and Donation Information Center pointed out.

### **Grey Areas: foreign individuals & organizations**

Overseas donations accounted for nearly 10% of the 84.5 billion yuan that charities based in China received in 2011, according to a report from the Ministry of Civil Affairs' China Charity Information Center (CCIC). This percentage has grown smaller with the years but even though they are a small part of China's philanthropy sector, many foreign charities have introduced advanced management ideas and their experience and expertise in the field to China. However, the ways in which the Charity Law will affect their work are still unclear according to many experts since the law does not provide regulation for activities by foreign individuals,



organizations, companies and government bodies. According to Liu Youping, “Foreign individuals or organizations will benefit from the more transparent and ordered environment that the law may create, which may encourage more people to donate money as they will know for sure that their donations will be spent on a good cause.” Elizabeth Knup, representative of Ford Foundation in China (which invests in the work of domestic charitable organizations) agrees "I do believe that the law will provide a better overall environment that is positive for everyone working in the charitable sector in China, including foreign foundations [...]"The law doesn't have much impact on us as it mainly oversees the activity of domestic bodies".

Nevertheless, this law “does not change a 2004 regulation on foreign charities that ban them from directly collecting and receiving donations in China if they are not cooperating with domestic foundations or directly transfer money and goods to project implementers” as reported by Junhe Law Firm. Despite this, New York-based professor on public administration He Lijun puts foreign organizations in a “grey area” if “they act independently without cooperating with any domestic parties, because the law does not mention the legal standing of foreign NGOS.”

This could be clarified with the passing of the Foreign NGO Management Law, which is still being debated. As Fu Ying, a spokeswoman for the National People’s Congress, stated “We need to clearly specify which activities are illegal [...] Mostly, we are trying to provide a more standardized legal environment, not trying to restrict foreign NGOs from conducting beneficial activities in China.”

Some Chinese commentators have suggested simply extending the Charity Law to foreign NGOs but all seems to indicate this will not be the case. Others actually see in the controversial Article 15, which states that charitable organizations “must not accept contributions that have conditions attached which violate laws, regulations or social morals” an excuse to exclude foreign donors arbitrarily.

Li Jianguo answered this criticism by pointing out how many poverty-stricken areas in China are inhabited by ethnic and/or religious minority groups and some foreign organizations have tried to disturb social order in those regions using as an excuse poverty elimination and this will not be tolerated.

### **Existing criticism**

Criticism to this law comes from different parties inside of the sector. We will not mention again the foreign organizations because we already covered that and we considered more of a “grey area” that can be revised later on. We will also omit the criticism focused on aspects that are ultimately linked to this law’s Constitutional framework since this is actually criticism directed to the Chinese Constitution and is hence not relevant to the present essay.

Regarding the fast growth and changes in the sector, some grassroots organizations have shown their concern about the fact that the law is not clear on new forms of fundraising such as crowdfunding.

The fundraising aspect of the Charity Law -as we mentioned earlier- separates all social organization into two classes: fundraising through public channels and non-

public fundraising (to be specific, by accepting private gifts and donations). This dual class system effectively creates two tiers: the one with a privileged status and the one that needs to wait for a two-year period in order to prove their credentials.

Chapter Seven has a great impact on smaller organizations (that represent the majority of domestic CSOs) since in order to seek more transparency a higher level of reporting will be required. These small organizations, that often lack staff, resources, and expertise will surely find difficulties carrying all the paperwork needed out. Notwithstanding the fact that this is a common situation in other jurisdictions this (coupled with the two-tiered system that stems from the fundraising aspect) will most probably help larger domestic CSOs to survive in detriment of smaller ones. Hence, this law is being criticized by smaller organizations because it makes the sector more hostile to them.

On the other hand, some commenters see this as positive to the sector as a whole, since it will incentivize the consolidation of resources to larger CSOs, who are able to use their economies of scale in a more efficient way. This could be indeed a great opportunity to larger domestic organizations whose goal is eventually going abroad. Some pioneering Chinese NGOs already have presence in Southeast Asia and Africa. A bigger concentration of resources could slowly make this more common. But, in that case, how could they help the Chinese government meet their 2020 goal to eliminate poverty?

On a different note, scholars such as the aforementioned Edward Cunningham worry more about this law's implementation. Some local government officials could show

resistance since they do not understand and/or appreciate the charitable sector or are afraid that working with this sector could have a negative impact. As Cunningham states: "There's this assumption these days," said Cunningham, "that when there are intimate partnerships between private wealth and local government, there necessarily must be something nefarious going on." He worries that 11 years of hard work could not translate into effective legislation all across China and foresees the extra efforts that the central government will need to put in order to reassure officials at lower levels.

## **Conclusion**

After studying the Charity Law using both Chinese and international sources we consider that in spite of the grey areas that aforementioned and some constructive criticism that could be integrated later on to keep up with the changes in this sector this is a well-thought law that is necessary to bring both governmental and nongovernmental together and create synergies that benefit Chinese society.

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