

Is China's New Overseas NGO Management Law Sounding the Death Knell for Civil Society? Maybe Not.

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Summary

In May 2015, a draft of China's new Overseas NGO Management Law was leaked to the media. International journalists and NGOs declared that this law was evidence of the Xi Jinping regime's political repression and a "crackdown" on civil society. In this paper, we argue that the goal of the Chinese government is not to destroy the NGO sector and civil society, but instead a tactical move in a long term strategy so that the state can gain as much benefit (and minimize as much risk) from the NGO sector as possible. Moreover, the Chinese NGO sector is not a passive victim of oppression, but a dynamic actor that pushes back to serve its own interests. The second half of this paper examines the experiences of overseas NGOs in Yunnan, which have been operating under similar regulations since 2010. In Yunnan, similar policies did not result in the elimination or even diminishment of overseas NGOs. Instead, foreign NGOs were constrained in some aspects even as they benefited in other ways.

Keywords: Overseas NGO Management Law, civil society, NGO, OVERSEAS NGO, law

INTRODUCTION

In May 2015, a draft of China's new Overseas NGO Management Law (境外非政府组织管理法) was leaked to the media. The proposed new regulations tighten state control over international non-government organizations ("overseas NGOs") working in China. Under the new law, overseas NGOs would come under the authority of the Ministry of Public Security and

would be required to have a Chinese "supervisory agency." According to the draft:

Overseas NGOs that conduct activities in China shall operate according to Chinese laws; not threaten China security or national and ethnic unity; must not harm China's national interests, societal public interest, or the legal rights of other groups and citizens; and must not disrupt public order and morality. Furthermore overseas NGOs must not conduct or fund for-profit activities or political activities. They also must not illegally conduct or fund religious activities (China Development Brief 2015).

Many China watchers and journalists interpreted this proposed law as yet another example of the Chinese government's intensifying "crackdown" on NGOs and civil society in the PRC. However, Shawn Shieh, whose former position at Hong Kong's China Development and current work at China Labour Bulletin Brief has allowed him one of the best views of the Chinese NGO sector over the last few years, argues that describing such state actions as "crackdowns" is misleading. The metaphor erroneously "magnifies the power of the state" by suggesting that the government is able to suppress Chinese civil society and NGO activity (Shieh 2015). Shieh asserts that the Chinese party-state is not attempting to eliminate civil society as much as it is trying to exert pressure so that flourishing NGO sector better

allies with state interests. A better analogy for state actions, such as the publication of this proposed law, would be that each is a chess move in a long-lasting game where both parties are attempting to improve their position. Moreover, the "crackdown" metaphor is faulty because it assumes the Chinese party-state is a monolithic institution with a single purpose, when in reality it is a conglomeration of actors with sometimes competing or even conflicting purposes when it comes to Chinese NGOs.

In this paper, we offer two additional criticisms of the "crackdown" metaphor for the draft of the Overseas NGO Management Law. First, the metaphor depicts China's NGOs and activists as passive victims of state actions, rather than dynamic actors, co-creating the relationship between state and society in the PRC. Even in China, drafts of laws are rewritten because of pushback from civil society. Second, it also ignores the possibility that restricting certain segments of the NGO sector (such as overseas NGOs from abroad) might benefit other sectors (such as grassroots NGOs). A law constraining international NGOs may actually protect the domestic NGO sector, whether by design or as an unintentional side effect.

In this paper, we will examine the proposed law from multiple angles, examining the actors involved in more detail as well as the history of similar cases. The second half of this paper focuses on the most useful case of all – that of overseas Chinese NGOs in Yunnan Province after 2010. Yunnan adopted sections of the proposed new law in that year, so analysis of this local experiment provides clues to the future of overseas NGOs in China. In the case of Yunnan, although we find that the regulations imposed some important constraints, we also find ways in which it may have created expanded opportunities for the growth of civil society.

THE CONTENT OF THE DRAFT LAW

The draft of the Overseas NGO Management Law proposes that organizations register with both the Public Security Bureau and a supervisory agency (业务主管单位), and also receive permission from the supervisory agency to open a branch office (article 11) or conduct activities (article 12, section 6). Articles 36 and 37 require reports submitted annually and after the completion of each project to both the supervisory agency and Public Security Bureau. Other NGOs are overseen by the Bureau of Civil Affairs (BCA). It explicitly gives the Public Security Bureau authority to conduct inspections of NGOs, access and copy documents, and close down organizations. Putting overseas NGOs under the Public Security Bureau sends the message that their work is more an issue of law and order and social stability than of civil affairs.

The draft also contains contradictory statements about legal status, as well as onerous restrictions on recruiting employees and volunteers, and requirements for "civil conduct" of leaders. For example, it is difficult to understand how organizations may have a legal status for things like bank accounts and work permits when article 13 stipulates that "The representative office of an overseas NGO does not have the status of a legal person," and only "legal persons" may sign contracts and bear legal responsibilities. Article 32 places restrictions on the recruiting of volunteers and staff, and requires the services of the Foreign Affairs Bureau to conduct recruiting activities. Article 34 has a strange requirement that seems designed to encourage more "compliant" chief representatives, stipulating that they must have "capacity for civil conduct." It is unclear what is meant by this, but this terminology seems to suggest that overseas NGO leaders may not engage in activities that criticize the government or cause social unrest.

These restrictions create less space and autonomy for overseas NGOs in China, namely the restrictions on autonomous hiring and recruiting volunteers, limits on money transfers from

abroad and funding grassroots groups, and the requirement to register with the Public Security Bureau instead of BCA, and to register with and work under a supervisory agency. Most of these provisions seem designed to increase surveillance from the state and restrict the freedom of these groups to interact and build relationships with Chinese citizens and domestic NGOs.

Not surprisingly, many members of international NGOs working in China reacted with concern when the draft of the Overseas NGO Management Law was first disseminated. At one discussion comprised of staff from Hong Kong NGOs, people complained about the draft's vague (and vaguely threatening) language (China Development Brief 2015). International journalists and commentators declared that this law would be a potential blow to Chinese civil society. The Observatory for the Protection of Human Rights Defenders argued that it would "inevitably shrink the space for Chinese civil society and severely restrict freedom of association and expression in the country." According to a researcher at a US think tank, Julia Famularo, the draft law revealed the CCP's paranoia: "Chinese leaders argue that the ultimate goal of Western governments is to use their NGOs to orchestrate the collapse of the Chinese Communist Party." Furthermore, "leaders in Beijing and Moscow will do whatever it takes to prevent potential color revolutions [initiated by overseas NGOs] from undermining social stability and threatening regime longevity" (Denyer 2015).

More chillingly, the draft of the Overseas NGO Management Law could be interpreted as part of a larger push by the Chinese state to suppress civil society in recent years. An article in the South China Morning Post (Yu 2016) listed evidence of a "crackdown on civil society," including:

- In 2013, the Transition Institute, a think

tank, was shut down, and its founder taken into custody.

- In September, 2014, an NGO that ran rural libraries close down, citing government pressure.
- In June, 2015, an NGO, Beijing Yirenping, was raided, and two of its activists were detained.
- In January, 2016, Chinese state media accused the Hong Kong-based Urgent Action Working Group of carrying out activities that "endanger state security." Peter Dahlin, a Swedish NGO worker, was detained.

The same article described fears about the draft of the Overseas NGO Management Law, that "if enacted, would drive out many groups operating on the mainland and harm domestic non-government organizations that rely on them for funding and help" (Yu 2016).

SIMPLE ENMITY OR COMPLEX INTERACTIONS?

Despite these ominous stories, we argue that there are good reasons to pause before succumbing to panic, both about the Overseas NGO Management Law and the overall environment for NGOs in China. Although every incident of political suppression is certainly disturbing, in reality we have accounts of maybe a dozen actions over several years – a drop in the bucket compared to the huge number of NGOs operating in China. By 2013, there were almost 550,000 social organizations officially registered with the Ministry of Civil Affairs, and researchers estimated that the number of unofficial organizations was in the millions.¹ Even if we assume that for every reported incident, another dozen is hidden from journalistic view, the Chinese state is certainly not going to eliminate the NGO sector with such scattered and infrequent attacks.

Instead, this looks more like a strategy of "killing

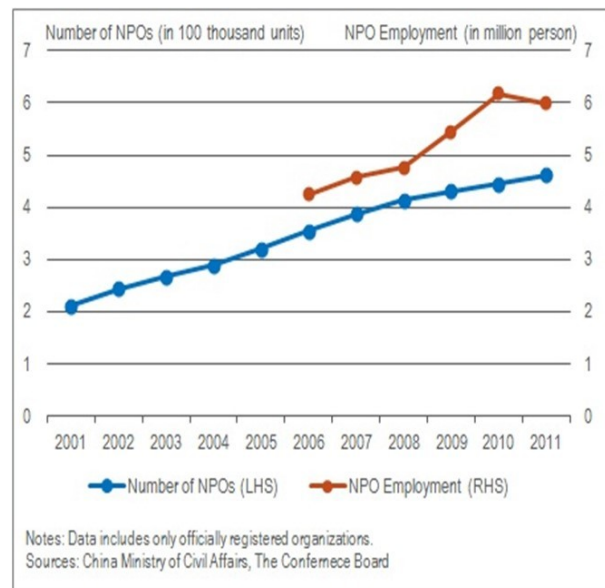
the chicken to frighten the monkey" (杀鸡儆猴), a Chinese idiom for punishing the few in order to frighten the many into obedience. In other words, the state's goal is not likely to be a violent, Tiananmen-style "crackdown" with the purpose of destroying a movement completely, but more likely to be a tactical move in a long term game to seek an advantage. If that is the case, who are the players, and what are their goals?

In terms of the players, the "crackdown" metaphor assumes a monolithic state, on one hand, and Chinese civil society activists and NGOs as passive victims, on the other hand. Neither image matches the empirical findings about Chinese activists. Although there is an undeniable and substantial power differential between activists and China's party-state, this does not mean that the former are powerless. Instead, they have shown themselves to be innovative and ingenious in finding ways to make the Chinese NGO sector flourish despite unsupportive and even hostile legal conditions.

For the last several decades, there has been a substantial gap between laws on the books and practices on the ground when it comes to civil society in China. Under both the 1998 and 2004 regulations, all Chinese social organizations were required to register with the government, but this registration process was confusing and almost impossible to accomplish. Legally, all domestic NGO finances were to be regularly audited, but no system existed to implement this (Simon 2013). As a result, most Chinese NGOs operated in a legal gray area at risk of state sanction (Hildebrandt 2011, 970; Yang and Alpermann 2014, 311-337). The law for overseas NGOs was even less clear, so that they were even more vulnerable. Those who criticize the draft law because it permits the state to shut down foreign NGOs seem to forget that the Chinese party-state has always had the power to punish and disband overseas NGOs.

Yet in the early 1990s, there were almost no

NGOs in China (Howell 1996, 202-215), while now there are hundreds of thousands of legally registered organizations, and millions of unregistered ones. (See chart below.) We should not interpret this gap as unique to this situation, or to China, given that the disconnect between written policy and actual practices has been well-documented in the West in the study of institutions and organizations (Meyer and Rowan 1991, 41-62). However, the size of the disconnect between the hostile legal environment and the stupendous growth of the NGO sector is impressive.



Number of Registered NGOs and NGO Employment (2001-2011)

During this same time period, Chinese NGOs not only flourished numerically, but also increased in influence. Environmental NGOs, for example, helped to create a sense of crisis about air pollution with campaigns such as Green Beagle's "I Monitor the Air for My Country," which gave out free compact pollution monitors to ordinary urban residents, and then posted their data on a website (Zhang and Barr 2013: Chapter 3). By 2013, almost half of Chinese respondents agreed that air pollution was "a very big problem" in the PRC, compared to less than a third just five years prior

(<http://www.pewglobal.org/2013/09/19/environmental-concerns-on-the-rise-in-china/>). Chinese NGOs also submitted proposals and even laws to the government, such as the Nature Reserve Law (Zhang 2013).

The fact that most NGOs were legally noncompliant did not stop them from building productive partnerships with government officials and departments. This brings us to discussion of the second player in the chess game. It is important to understand that the Chinese state is not a monolithic actor, but a conglomeration of departments and officials with competing and sometimes conflicting agendas at central, regional and local levels. Even if certain segments of the party-state bureaucracy want to constrain the NGO sector in general, other agencies have reasons to build temporary or long-term relationships with particular NGOs. For example, in an era of government downsizing, departments were under pressure to generate lists of accomplishments that helped the party-state to look effective. However, the bureaucratic nature of the government made it difficult for cadres to come up with innovative programs. NGOs could sometimes help out, by essentially acting as unofficial research-and-development offices, testing creative solutions to social problems until one was sufficiently refined that the government department could adopt it. The NGO benefitted in that its innovation would be used to serve a much larger population than it could directly access and it would be paid for with state resources, while the state department could demonstrate its accomplishments to higher-ups (Hsu and Jiang 2015, 100-122). Political officials had an incentive to protect their NGO allies against state interference, even if those NGOs were operating in a legal gray area.

These close relationships with state actors permitted some NGOs to influence state policy (Teets 2014). The nature of this influence is a product of the closed nature of the Chinese system of policymaking, where citizens are not

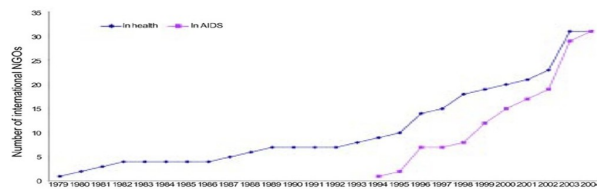
intended to participate in policymaking except in the aggregate through the transmission-belt role of mass organizations. Legal restrictions on lobbying and other interest group activity means that citizens lack direct access to policymakers; however, when NGOs partner with state agencies they are able to access policymakers through this relationship and may use research and pilot projects to influence policy.

Government departments not only built partnerships with domestic NGOs, but also with foreign ones. Overseas NGOs are attractive project partners for cash-strapped local governments because they often have good connections with international funding sources and because their priorities under certain circumstances may coincide with those of local and national governments. By building partnerships with overseas NGOs, the Chinese government can access international expertise and tap foreign money to pay for initiatives in expensive areas like environmental protection and HIV/AIDS. According to one source, at the turn of the century, as much as 80% of the Chinese state's environmental funding was coming from foreign sources (Economy 2010, 199). In 1996 alone, China received US\$565 million in environmental aid, about 20% of the global total (AidData.org). The biggest funders were the World Bank, the Asian Development Fund, and the Japanese government. Although some of this money is given directly to the state, a portion is channeled through NGOs. For example, the US government phased out funding state environmental efforts in the PRC in 2012 for political reasons, but still allows its money to go to environmental NGOs working in China (Congressional Research Service 2013). Sim

Similarly, international sources poured funding into HIV/AIDS work, relieving the Chinese government of bearing much of the cost of this expensive disease and related social issues.

ATTEMPTING TO CONTROL CHINA'S NGO

SECTOR



Number of International NGOs (health-related and AIDS-related)

Because a significant portion of the party state hierarchy benefits from (and is even dependent upon) relationships with both domestic and foreign NGOs, it is unrealistic to imagine that the Chinese Communist Party seeks a wholesale demolition of the NGO sector through the Overseas NGO Management Law. For many government officials, it is not in their interest to destroy the NGO sector which is helping the state to deal with social problems. Instead, it is beneficial for them to create conditions where the risk to the CCP is minimized and the partnerships favor the state as much as possible. We can see this in previous policies, such as when the Communist Party in Shanghai created NGO incubators to both build connections with existing NGOs and to create new NGOs, or "PONGOs" – Party-organized NGOs (Thornton 2013, 1-18). The goal was clearly not to eradicate Shanghai NGOs, but instead to exert more control over them so that their efforts would support Party goals.

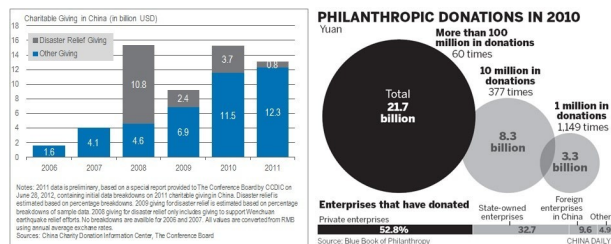
If the Chinese Communist Party's mission is to exert as much control as possible over overseas NGOs without making them flee, this might explain why a draft of the law was promulgated in advance of the actual law. By putting out a draft of the law and gauging the backlash, the CCP would be able to determine how hard it could push foreign NGOs before they fled the country altogether, taking their valuable expertise and financial resources with them. In recent history, the Chinese party-state has taken law drafts that provoked criticism and revised them to be more supportive of civil society.

For example, the 2012 draft of China's Environmental Protection Law drew the ire of environmental activists, scientists, and NGOs for failing to draw on their expertise. As a result, the pro-economic development faction of the government that had written the draft was removed from responsibility over the law. Two years later, when the actual law was published, it contained much more stringent restrictions favorable to environmental protection, for example requiring environmental impact assessments for all state plans and policies, erasing maximum limits for environmental fines, and charting a path for public-interest environmental litigation (Wubbeke 2014). Furthermore, the new law gave most NGOs the authority to file environmental lawsuits against violators, whereas before only a few organizations, with high-level government connections had this right (Wang and Feng 2014, 191). More recently, when a draft of the Counterterrorism Law first appeared in 2014, it was criticized by civil society groups, businesses, and the international community. The final version of the law removed some of the most controversial portions, including ones related to cybersecurity that drew the ire of international technology companies (Shieh 2016). From these examples, we would expect some of the most controversial aspects of the draft to be removed from the final version of the Overseas NGO Management Law.

Although activists in the media have focused on the negative possibilities of the Overseas NGO Management Law, there are certain portions of the draft that could actually be beneficial to foreign NGOs operating in China. The very existence of a law could be seen as a step forward. Up until this moment, the regulations on overseas NGOs in China have been ambiguous to nonexistent, forcing overseas NGOs to operate in a legal gray area. Although one could argue that such ambiguity can enable space for diverse activities including political action, many overseas NGOs prefer the safety of

a legal status to the uncertainty of a legal limbo (Simon, 2013).

The proposed law also specifies certain legal rights to overseas NGOs that were previously unavailable, including the ability to have a Chinese bank account for the organization, issue work permits, and receive tax benefits where donors would deduct contributions and all donations would be tax exempt. This change allows overseas NGOs to access funds raised in China, a source which has been steadily increasing since the 2008 Wenchuan earthquake, especially from private corporations which are the largest donors in China today. (See chart below.) These portions of the law seem to indicate that the Chinese state wants overseas NGOs to succeed in the PRC, even if they must do so under increased government scrutiny.



Charitable Giving in China (by year and donor)

DOMESTIC NGOS VERSUS OVERSEAS NGOS

It is possible that the Overseas NGO Management Law is a part of a strategy by the Chinese state to benefit the domestic Chinese NGO sector at the expense of overseas NGOs. Restrictions on overseas NGO activities and fiscal transfers may benefit Chinese civil society development by privileging the activities, advocacy, and domestic sources of funding available to domestic NGOs. Many of those concerned about the draft of the Overseas NGO Management Law assume that the activities of international NGOs would be an unalloyed benefit to civil society in the PRC. In fact, scholarship indicates that the impact of well-funded overseas NGOs on a developing country's civil society can be mixed. Wealthy

foreign NGOs can outcompete domestic NGOs in terms of both gathering resources and supplying services, thereby suppressing growth of grassroots civil society. Overseas NGOs are often the "second-best actors," displacing grassroots NGOs or local governments that would be a better choice for solving social problems (Rubenstein 2015). For example, in countries where international environmental NGOs began to operate before the domestic environmental NGO sector emerged, the growth of grassroots organizations lagged behind their international counterparts and never caught up (Longhofer and Schofer 2010, 505-533). The explosive growth of China's domestic NGO sector over the past couple of decades may have been aided by the fact that the country has not been a friendly environment for foreign organizations.

Alternatively, overseas NGOs can inject resources into a developing country's civil society. However, those resources can cause domestic NGOs to suffer from goal displacement as they contort themselves to fit the agendas of foreign donors who may not understand the local conditions very well. For example, Chinese NGOs, at least in the first generation, often resembled government agencies in terms of their organizational structure (Hsu and Jiang 2015, 100-122). By contrast, North American foundations tend to be highly corporate and businesslike in structure and culture, and tend to fund organizations that resemble themselves (Brulle and Jenkins 2005, 151-173). Although these foundations claimed to promote democracy in their mission statements, in practice they favored organizations that are run by a hierarchy of professional staff rather than through member participation, and ones that based their decision-making on scientific expertise rather than democratic consensus (Murphy 2005, 353-374). In China, Western foundations ran training programs for Chinese NGO members to teach them "best practices," by which they mean their own practices. For example, one North American group used a handbook created by studying

"excellent" NGOs in Canada (Spires 2012, 125-146: p,130). As the following quote suggests, consultants were often unaware of their cultural biases: "They didn't want it to be only an American model. But, honestly, we saw that, while some countries were doing great things with nonprofit issues, the US is really setting the benchmarks on most of these things" (Ibid. p, 133)

Many of the Chinese trainees in these programs felt that Western foundations were out of touch with conditions in China. One Chinese NGO activist complained, "I've been to many training programs, but more and more I feel they don't meet my needs. It's like they were helping people fulfill their training duties! ...We are being developed by funders who don't care about our situation" (Spires 2012, 125-146: Page 130). The Western foundations wanted NGOs to have boards of directors, but failed to realize how difficult this was. As one Chinese NGO leader explained, a number of government officials supported his organization, but they refused to join the board. If either the NGO or the official were ever accused of a political mistake, it would be disastrous for both. In order to meet foundation requirements, Chinese NGOs resorted to filling their boards with friends and acquaintances who would serve as figureheads. As one activist put it, "For many years, I've been subjected to training on ideas like democracy, transparency, and so on. These ideas are great. At the same time, though, we are a very poor grassroots NGO, and we're moving further and further away from our first goal of serving people with AIDS, moving towards I don't know what" (p, 142).

Seen in this light, the effects of the Overseas NGO Management Law, far from suppressing Chinese civil society in general, may be encouraging domestic NGOs to develop by taking them out of the shadow of overseas NGOs. In recent years, the legal environment for domestic Chinese NGOs has actually become

more favorable and less restrictive. After two decades where unfriendly regulations made it almost impossible for most Chinese NGOs to be compliant with the law, in 2013, the Chinese state established regulations that made it much easier for Chinese NGOs to register legally (Simon 2013). Two years later, the Environmental Protection Law gave environmental NGOs more power (Wubbeke 2014). Currently, a draft law on domestic charities seeks to ease registration by dropping the need for a supervisory agency and only requiring direct registration with the Bureau of Civil Affairs, and also encourages more private donations and government funding through grants and contracting. Whether curbing the strong presence of international NGOs is to increase the space for domestic civil society or simply part of a broad anti-foreign policy in line with Xi Jinping's overall agenda is hard to determine at this point, but Chinese domestic NGOs may benefit either way.

analysis of the overseas NGO law adopted in Yunnan province

We have one source that provides empirical evidence about the possible effects of this new law. The draft Overseas NGO Management Law shares some provisions with a local regulation governing overseas NGOs passed in Yunnan province and implemented in 2010, such as dual management registration and restrictions on certain operations like hiring and recruiting volunteers. Analyzing the effects of this law after 2010 provides insight into how the proposed draft law might impact overseas NGOs. So far, the evidence indicates that overseas NGOs can continue to function and even prosper under this type of regulation. This provides more evidence that the purpose of the law is not to destroy the international NGO sector but to shape the situation so that their work is more beneficial (and less risky) to the state (in this case, the Yunnan provincial government).

The original Yunnan model of civil society

management implemented in the mid-1990s had two main characteristics: heavy reliance on overseas NGO resources, and project-based collaboration between autonomous groups and government agencies (Cooper 2006, 109-136; Ho 2001, 893). Many overseas NGOs and grassroots groups collaborated with provincial and local state agencies as a practical strategy for accessing the policy process, normally closed to public and particularly international participation. For example, collaboration allowed these groups to access policy makers in the Health Bureau to indirectly advocate changes in Yunnan's policy toward HIV/AIDS. While not all overseas NGOs in Yunnan enjoyed the same level of success—as seen, for example, with clashes between both international and domestic environmental groups and the local government over proposed hydroelectric projects on the Nu River—a clear model of civil society management emerged by the mid-2000s that depended on overseas NGO funding and collaboration (Mertha 2010; Buesgen 2008, 160-171). This more autonomous model facilitated the development of civil society, with 140 overseas NGOs operating in Yunnan province by 2009.

However, by that time, the original Yunnan model faced two types of challenge—first, an increased conflict between NGOs and state actors, and second, an influx of groups over which the local government had little control or knowledge (Teets 2015, 158-175). There were more clashes between environmental conservation groups and local officials, particularly over hydroelectric development projects such as the Nu River dams (Mertha 2010). Although environmentalists got a few state agencies to side with them in their opposition to the dams, interviews reveal that the majority of local government agencies favored these dam projects because hydroelectricity output was one of the largest sectors in the Yunnan economy. Dam revenue helped the local government increase development in the region, and also offset revenue lost first to the recentralization of

taxes in 1994 and then to raising the income-tax floor as part of the New Socialist Countryside Policy in 2005. While blocking the construction of the dam projects was a policy success for the environmental groups, it undermined their relationships with state actors and gave ammunition to those local officials who suspected that NGOs were the source of social unrest.

Second, beginning in the early 2000s, Yunnan experienced a rapid influx of international resources for HIV/AIDS projects from organizations such as China/UK AIDS Project, AusAID, USAID, Gates Foundation, and Global Fund. A few years later, the Wenchuan earthquake in 2008 inspired a surge in youth volunteers for civic projects in Sichuan and across the country, leading to the rapid expansion of the civil society sector that some called the "NGO Spring" ["NGO 春天"]. This sudden increase in resources caused an explosion of grassroots community-based organization formation and activity that the government felt ill-equipped to regulate. In addition to the growing size and dynamism of this grassroots sector, many groups were dealing with politically or socially sensitive issues that the government felt warranted supervision, such as sex work. For example, 16 different prefectures in Yunnan operate MSM (Men who have Sex with Men) working groups initiated through a single grant from the Global Fund to Fight AIDS, Tuberculosis and Malaria.

In response in 2009, the central government passed a new regulation controlling international fundraising - on "Issues Concerning the Administration of Foreign Exchange Donated to or by Domestic Institutions" 国家外汇管理局关于境内机构捐赠外汇管理有关问题的通知- which was implemented in March 2010 nationwide. While this policy affected the ability of overseas NGOs in Yunnan to fund grassroots groups, the more onerous regulation was a new local regulation for overseas NGO supervision that

was passed in 2009 and implemented in January 2010: the "Provisional Regulation for Standardizing Overseas NGO Activities in Yunnan Province" (云南省规范境外非政府组织活动暂行规定). According to communication between the Civil Affairs Bureau that was responsible for this new policy and overseas NGOs in Yunnan, the government's objective was to regulate civil society activity to balance the benefits from international resources with the risks posed by groups with perceived unknown intentions. As one overseas NGO employee explained, "The goal of the January 2010 government regulations is for the provinces to better facilitate cooperation between governmental organizations and overseas NGOs. China anticipates further international cooperation and more overseas NGOs entering the country."

The 2010 Yunnan policy is similar to the proposed Overseas NGO Management draft law in that it requires overseas NGOs to be incorporated into the dual registration system requiring both the approval of a government agency and the sponsorship of a supervisory unit. The difference was that the Yunnan regulation directs overseas NGOs to register with Civil Affairs, while the draft of the Overseas NGO Management Law requires that they register with the Public Security Bureau. In addition, the proposed draft law is more onerous in several other ways: overseas NGOs are required to share more information with their supervisory agency and work through the Public Security Bureau or Foreign Affairs Bureau to conduct normal business, like hiring. In other ways, however, the Yunnan policy overlaps substantially with the draft of the Overseas NGO Management Law. Besides dual registration, the 2010 Yunnan regulation has the following requirements: when overseas NGOs or international donors sign a memorandum of understanding (MOUs) with domestic groups, they must submit a copy to the supervisory unit, the Civil Affairs Bureau's technical office, and the

Foreign Affairs Bureau. Additionally, overseas NGOs are responsible for submitting annual (or semi-annual) reports to the Civil Affairs Bureau, and re-registering every two years. All overseas NGO projects and activities must be registered with the Civil Affairs Bureau and Foreign Affairs Bureau, and any activities not previously registered and approved are considered illegal.

What were the effects of the 2010 regulations in Yunnan? It did not lead to a crackdown on overseas NGOs or decimate civil society in the province. Based on interviews conducted within the civil society community in Yunnan in 2011, the majority of both overseas NGOs and grassroots organizations were able to register with the government and were not significantly impacted in their ability to obtain funding or collaborate with other groups or agencies. (A few did experience paperwork delays with the Foreign Affairs Bureau.) For example, many groups participating in HIV/AIDS work registered with the Health Bureau, and those active with the environment found university and other research centers as sponsors. From January to August 2010, thirteen overseas NGOs were investigated and their activities registered, and by December 2010, a total of 140 overseas NGOs registered activities and projects with the Civil Affairs Bureau in Yunnan. Registered overseas NGOs include The Nature Conservancy, Oxfam Hong Kong, Orbis International, CBM Society, China California Heart Watch, MSI Professional Services, Health Unlimited, Humana People to People, International AIDS Alliance, Operation Smile China, SIL, and Sowers Action and Voluntary Service Overseas UK. In general, government agencies in Yunnan seemed willing to work with overseas NGOs. For example, one overseas NGO employee stated that the Foreign Affairs Bureau and Civil Affairs Bureau mostly acted as rubber stamps as long as the local group's supervisory agency agreed and the paperwork process was followed; he had heard of no groups that had projects turned down since the new regulations

were implemented.

Although most overseas and domestic NGOs in Yunnan were not adversely affected by the 2010 regulations, a handful were. The new regulations linked funding with registration and forced many small community-based organizations with sensitive memberships or issue areas to close, such as Men who have Sex with Men groups. Many of these smaller domestic groups were not registered and therefore had been operating in a legal gray area prior to the new policy. But there were some registered groups that were viewed as potentially sensitive that had a difficult time receiving approval of memoranda of understanding through Foreign Affairs. As one overseas NGO employee explained, Foreign Affairs officials would not directly reject the project plans, but rather let them sit on their desks for six months or more until the projects were no longer viable. Previously international funding allowed many groups to operate informally, but linking funding to registration closed off this grey space. Even for registered groups, the government effectively controlled the spigot of funding from overseas NGOs and foundations, allowing officials to restrict the development of groups dealing with politically or socially sensitive topics such as minority rights, drug addiction, and sex workers. In response, some groups chose to leave the province. For example, NGO CN, a civil society advocacy group similar to the China Development Brief, relocated from Yunnan to Guangzhou, which it considers to be more welcoming to grassroots groups. When NGO CN was unable to register in Yunnan, its primary source of funding, Oxfam, refused to continue to fund the group unless it registered.

IMPLICATIONS

Although we readily admit to not having a crystal ball to see the future, based on the experiences of civil society groups in Yunnan after the 2010 regulations, we believe that most of

the large overseas NGOs will still be able to operate fairly easily in China. The groups most impacted by the proposed regulations will likely be the smaller groups, both domestic and overseas, and those operating in more sensitive areas. The fact that most overseas NGOs were able to register and function under the regulations in Yunnan indicates that the new law may not be designed to deny registration, but rather to allow the government to have more information about overseas organizations and their intentions. In Yunnan after the new regulations were implemented, most overseas NGOs quickly found supervisory agencies and registered, and were able to fund most projects. Of course the law could be used to shut down overseas NGOs, but the Chinese government has always had the authority to close down these organizations.

One benefit evidenced in the Yunnan case is that overseas NGOs became legal entities with more clearly outlined "rules of the game," which might make investing in longer term projects in China more sustainable. Karla Simon suggests that this dual-management registration process might strengthen overseas NGOs by allowing them to obtain a "quasi-legal status where the groups gain legal recognition for activities even though they are denied faren (legal person) status" (Simon 2013). Although these regulations effectively closed off the grey area in which many grassroots groups operated, it potentially provides a stronger legal framework for registered groups to undertake more extensive projects and funding responsibilities.

In short, the Yunnan government appears to desire continued overseas NGO presence and collaboration, as illustrated by the quick registration of all overseas NGOs working in Yunnan, but it also imposes more state control, even if only to gather information about group activities. In fact, despite initial concerns, many of the interviewed groups in Yunnan contend that the new regulations did not significantly

affect civil society in Yunnan except for introducing some temporary uncertainty about future funding and projects, especially among international donors. The caveat to this is groups that are unable to register with a government sponsor but have received international funding, as we discussed above.

If the national outcomes under the proposed overseas NGO law are similar to Yunnan's experience, we might expect that larger organizations that already work with registered or umbrella organizations will not see dramatic changes in their ability to operate in China, except for an additional layer of government approvals for collaborating with domestic groups, hiring, and recruiting volunteers. Of course, Public Security Bureau and Foreign Affairs Bureau officials have discretion to act as a rubber stamp for overseas NGO plans or to play an active interventionist role. The latter would obviously directly impact how these organizations function. In Yunnan, the Foreign Affairs Bureau seems to still want to encourage the development of the overseas NGO sector, but it is unclear if the Public Security Bureau will play a similar role or attempt to use its approval power to constrain these organizations. Smaller organizations or those that work with unregistered grassroots groups will be more likely to encounter difficulty in locating a supervisory agency, and even if they do find one, will face increased supervision from the Public Security Bureau. However, most local governments have continued to hold charity fairs and outsource service provision to NGOs. As laws pertaining to NGOs need to be implemented at the local level, we expect that the dynamics will still encourage the continuing collaboration between local state and NGOs in the absence of direct central sanctions against NGOs.

In addition, one possible consequence of both the draft overseas NGO law and the charities law might be increasing difficulty for groups to find

funding for administrative costs. If the government restricts the portion of grants that can be used for administrative costs, and if new transparency and auditing rules put social pressure on NGOs to use funds in other ways, there could be problems. However, a bigger challenge to NGO resources came in 2013 and had nothing to do with government regulations. That was the year that the Global Fund withdrew its very generous funding from China. Whether these pressures will force groups to develop diversified funding streams and more streamlined organizational structures or simply shift to operating as an arm of government agencies is difficult to know at this early stage. Currently the domestic NGO sector is mostly made up of a smaller number of large organizations and a much larger number of small and tenuous organizations. Without funding available for the build up of the "missing middle" of medium-sized organizations, it is unclear how small NGOs will build capacity and develop over the future. This is an issue that is worth keeping an eye on over the next few years.

In the meantime, however, we do not see the draft of the Overseas NGO Management Law as necessarily attempting to completely close off the space for civil society in China, but rather as a way to create a clearer legal status for these organizations, to assert more state scrutiny over the sector, and to encourage the development of an indigenous charity sector not overly reliant on international organizations.

In some ways the creation of both the 2010 regulations in Yunnan and the draft of the Overseas NGO Management Law show the success of civil society in China, in that the organizations have grown large and influential enough to develop a more standard legal status for these groups. However, these laws in combination with the new proposed draft charity law (中华人民共和国慈善事业法) currently under consideration reveal the central government's preference for a sector populated primarily by

indigenous organizations engaged in charity work versus one dominated by overseas NGOs. How overseas NGOs navigate these new rules to be successful in this new environment remains to be seen, but based on outcomes in Yunnan, this draft legislation might not significantly hinder operations. Of course, this outcome will depend on how the Public Security Bureau decides to enforce these regulations and on how these organizations build relationships with supervisory agencies.

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Notes

¹ Counting the number of NGOs in China is difficult for a number of reasons. First, the majority of organizations are not registered with the state, and researchers have only managed to compile lists through snowball samples, with the result that even the largest only contain several hundred augmentations. Second, Chinese legal categories of organizations do not necessarily map onto Western definitions of NGO, a problem magnified by the fact that many Chinese NGOs hide from state scrutiny by registering as businesses. See Hildebrandt 2011, (China Development Brief 2013, xii; Simon 2013, xxxiv).

² Civil Society Workshop, Peking University, Beijing, 14 January 2007.

³ Notice of the State Administration of Foreign Exchange (SAFE) on "Issues Concerning the Administration of Foreign Exchange Donated to or by Domestic Institutions," (No. 63 [2009] of the State Administration of Foreign Exchange (effective 3/1/2010).