

Policy Analysis on China's Civil Society Organizations First Quarter of 2018

Summary

Civil society organizations (CSOs) in China faced increasingly grim circumstances in the first quarter of 2018. Whether looking at the direct impact of the Law on the Management of Foreign Non-Governmental Organizations' Activities (FNGO Law)(《境外非政府组织境内管理法》) or the Charity Law(慈善法), control and even suppression of CSOs grew on the concrete, operational level.

In the first quarter, the negative effect of the relevant laws, regulations, and policies on CSOs is as clear as day. For example, the fates of FNGOs in the wake of the FNGO Law has varied widely. Small-scale grassroots organizations in China whose long-term funders have not yet been registered are unable to continue their funded activities, bringing them to an impasse. At the same time, Jiangsu became the first province in the country to enact local regulations on the Charity Law. This local regulation has constrained individual fundraising due to lack of clarity from the central government. In addition, there has been much talk of preferential tax policies for charitable organizations, but no substantial progress on this front. The Religious Affairs Regulations(《宗教事务条例》) went into effect on February 1, unequivocally separating religious and charitable activities; on January 24 the Ministry of Civil Affairs issued the Law on the Management of Civil Society Credit and Information(《社会组织信用信息管理办法》), while the CSO “black list” system is set to launch nationwide.

Looking at first quarter (Q1), it is clear that the pressure on CSOs, from the central authorities down to local governments, has not abated. There have been attacks on “illegal CSOs”; the shuttering of the Weibo and WeChat public accounts of the popular Feminist Voices (女权之声); and the end of six months of “residential

surveillance at a designated location” (指定居所监视居住) for Human Rights Campaign in China head Zhen Jianghua, followed by his formal arrest.

Judging from the trends in the first quarter, whether legal or practical, the winter of Chinese civil society will not relent in 2018. The space for CSO activities will shrink even more this year.

Impact of Laws and Policies on CSOs

At the legal level, the Chinese government is continuously strengthening its supervision and control of CSOs. A series of laws and regulations related to CSOs, including the FNGO Law, the Charity Law, the Religious Affairs Regulations, and the Law on the Management of Civil Society Credit and Information, is having an increasingly negative impact on Chinese CSOs.

1. Under Government Leadership, Organizations Hit by “Fire and Ice” of FNGO Law(《境外法》)

Once the arrival of the Law on the Management of Foreign Non-Governmental Organizations’ Activities (FNGO Law) was an established fact, those in the civil society profession focused most on the degree to which this law would be strictly enforced and whether foreign NGOs of different types and purviews would be able to carry out activities in China. Last year, the BBC reported that some FNGOs were unable to carry out activities in China or to subsidize projects, and that they were having difficulty registering.^[1] These obstacles seem to have carried into this year. At the same time, a portion of FNGOs have come under the official management of the Ministry of Public Security through the registration process. Overall, in Q1 the fates of FNGOs in the wake of the FNGO Law have varied widely, putting small-scale grassroots organizations in a tight spot. Under the government’s leadership, different organizations have been battered by the “fire and ice” brought by the FNGO Law.

The Chinese authorities have been actively promoting the FNGO Law through propaganda and specialized training, making the general public ever more aware of the law and successfully leading some FNGOs to comply. At the beginning of the

year, the provinces and autonomous regions of Heilongjiang, Jiangsu, Shandong, Guangxi, Hainan, and Ningxia rolled public-facing materials to promote the FNGO Law^[2]; while municipalities with a relatively high concentration of registered FNGOs, such as Beijing and Shanghai, held trainings on the annual reporting process. Also at the beginning of the year, the offices of FNGO management at the Ministry of Public Security (公安部境外非政府组织管理办公室) and the Beijing Municipal Public Security Bureau jointly convened a forum for representatives from a portion of FNGOs.^[3] The vast majority of participants showed approval of the guidance and assistance provided during the public security registration process, for example thanking public security for helping them find an organization to be in charge of the FNGO's operations. Some of the organizations made suggestions as to the standardization and convenience of the law, recommending more supporting policies and services, clear deadlines on approval of annual plans and reports, and so on.

In contrast to the enthusiasm cultivated by the government, some FNGOs have not yet been able to register and have suspended their activities in China, threatening the existence of small, grassroots organizations that depend on foreign aid to stay afloat. At the aforementioned forum, the American Heart Association's Asia representative said the group has had difficulty finding an organization in charge of operations; a Ford Foundation representative proposed helping more small FNGOs complete the registration process. This indicates the stringency of the FNGO Law.

Case study: Suspending financial support -- the direct effect of the FNGO Law on local grassroots organization

The Jiangsu Tongtian Working Group, founded on April 1, 2002, is a nonprofit volunteer organization serving the gay community of Nanjing through a variety of programs including community and culture building, health intervention, and mental health support. Professor Zhang Beichuan of the Qingdao School of Medicine provides support and advise to the organization, which receives financial assistance from the Martin Trust via Qingdao's "Friends Exchange" program(《朋友通信》). Jiangsu Tongtian's funder, Barry & Martin's Trust, was

created by the British philanthropist Martin Gordon. The trust awards an annual prize to a healthcare worker or medical treatment facility in recognition of extraordinary contributions to addressing AIDS in China through education, prevention, treatment, and care. This year, the Martin Trust suspended its support for Jiangsu Tongtian. Mr. Martin himself wrote to Jiangsu Tongtian, “You may be aware that the Law on Foreign NGO’s came into effect at the beginning of this year, and this limits our ability to make grants in China, and we have to go through various formalities.” Soon after, Jiangsu Tongtian issued a statement on WeChat about its loss of funding, explaining that they are currently unable to pay their rent and are in danger of folding. They also posted a screenshot showing that the organization only has RMB 3761.69 in spare cash. Jiangsu Tongtian has tried to find a way out of its predicament through crowdfunding and activity fees.

II. Local Regulations on Charity Law(《慈善法》) Constrain Individual Fundraising, Tax Preferences for Charities Still Unclear

After the Charity Law went into effect on September 1, 2016, Jiangsu became the first—and thus far, only—province to treat the Charity Law as local regulation. On December 2, 2017, at the 33rd congress of the 12th Jiangsu Provincial People’s Congress Standing Committee, the Jiangsu Charity Ordinance (Ordinance) (《江苏省慈善条例》) was passed into law. The Ordinance went into effect on March 1, 2018. At a press conference, leading cadres stated that the province would lead the country in legislating restrictions in individual fundraising (Ordinance Article 19).^[4]

Aside from defining the scope of individual fundraising and guiding the target of individual solicitation toward philanthropic organizations, the individual’s workplace, and the local community (as opposed to indiscriminate solicitation of the public), an explanatory document further points out that the Ordinance “stipulates that individual fundraisers must take responsibility for the truthfulness of the information they disseminate and must not fabricate or exaggerate their circumstances in order to defraud donors. Radio stations, television channels, print publications, Internet service providers, and mobile carriers are obligated to provide warnings of the risks posed by

individual fundraising campaigns. Mobile carriers which allow individuals to post messages soliciting donations must provide a warning to remind recipients of the message that it is an individual fundraising campaign and not a public donation drive. At the same time, the Ordinance further stipulates that the above mentioned services must assist individual fundraisers through broadcast messages, and must verify those messages which it broadcasts on behalf of the individual.”^[5]

Whether individual fundraising is charitable fundraising, and whether the former should be regulated by the Charity Law, is one of the most controversial elements of the legislation. Regarding the Ordinance’s standards for individual fundraising, Zhang Gaorong, research director and assistant to the dean at the Beijing Normal University China Philanthropy Research Institute, believes that “this has created conflicts between local and national charity legislation.”^[4] There are scholars who endorse the regulation of individual fundraising, such as Jin Jinping, associate professor at the Peking University Law School. She writes that there are numerous extant cases of natural persons “soliciting donations” and that individual fundraising has already turned into public donation campaigning, leading to marked misallocation of resources, lack of clarity as to who has ownership rights of donations, difficulty guaranteeing the goal for which contributions will be used, and challenges to screening false information. Since the Charity Law clearly states that it makes no adjustments to individual fundraising, it must be regulated through other applicable laws. This has created difficulties for regulating individual fundraising.^[6]

Once the first step toward regulating individual fundraising is taken at the provincial level, other parts of the Charity Law in need of standardization or clarification could be addressed at the municipal level. Among them, a major point that has yet to reach a substantial breakthrough is the issue of tax preferences. At the 2018 Two Sessions, some National People’s Congress representatives proposed clarifying charitable tax preferences and quickly bringing to completion supporting policies in order to facilitate implementation in municipalities, emphasizing the effect of tax preference levers on the growth of charitable organizations.^[7] In the People’s Daily, China Association of Social Security president and Renmin University

professor Zheng Gongcheng also called for enhancing the operability of tax exemptions for charitable organizations.^[8]

In sum, individual fundraising and the tax preference system are the hot-button issues concerning the Charity Law in the beginning of 2018. Local governments are guiding individuals to seek funding from charitable organizations and not directly from the public. This will help charitable organizations to grow, but a public fundraising culture has yet to be formed, and trust in charities themselves has yet to be established. Local policy is not enough to resolve these issues. Alternatively, if tax preferences can be quickly enacted in municipalities, they will spur the positive growth of charitable organizations, and more enthusiastic members of the public will invest in philanthropic undertakings.

III. Religious Affairs Regulations(《宗教事务条例》), Law on the Management of Civil Society Credit and Information(《社会组织信用信息管理办法》) Augment Regulation of NGO and Charitable Activity

The Religious Affairs Regulations are in effect as of February 1, 2018. The Regulations limit the scope of religious activities and the conditions under which religious organizations may accept contributions, while also requiring the strict separation of public welfare activities and religious activities. In particular, the Regulations stipulate:

Non-religious groups, non-religious schools, non-religious activity sites, or non-designated temporary activity sites must not hold religious activities, must not accept religious donations. Non-religious groups, non-religious schools, and non-religious activity sites, must not carry out religious training and must not organize citizens leaving the country to participate in religious training, meetings, activities and so forth. (Article 41)

Public interest charitable activities must not be used to proselytize by any organization or individual. (Article 56)

Religious groups, religious schools, and religious activity sites must not accept donations from foreign organizations or individuals that have conditions attached, and where the amount donated exceeds 100,000 RMB; it shall be reported to the religious affairs department of the people's governments at the county level or above for review and approval. (Article 57)

With the CSO “black list” management law active nationwide, CSOs that violate the law or break promises will come under strict supervision. From 2016, the civil affairs bureaus in Shenzhen, Guangzhou, and Shenyang have rolled out measures to manage CSO suspect directories and lists of organizations in violation of law or agreement. On January 24, 2018, the Ministry of Civil Affairs officially promulgated the Law on the Management of Civil Society Credit and Information, stipulating three consequences for CSOs listed as serious violators of the law or agreement: (1) no access to incentives, such as the government purchasing service program; (2) the organization and its leaders will be subject to close scrutiny; (3) the organization will face a number of legal punishments. As of the end of Q1, three organizations have been placed on the list of serious violators of the law or agreement, including the Western Returned Scholars Association, the Haicang Charity Foundation, and the Chinese Association for the Art of the Fan. Among them, the Ministry of Civil Affairs subject the Western Returned Scholars Association to a three-month suspension of activities as punishment for irregularities with regards to stated goals and professional scope in fundraising, accepting donations, and utilizing property.^[9]

Finally, in Q1 unregistered, unauthorized activities carried out under the name of CSOs were still suspected of being illegal CSOs and came under attack. On February 6, 2018, the Ministry of Civil Affairs released a list of 179 suspect organizations.^[10] This round of investigation targeted activities carried out by organizations with “Chinese” and “national” in their names, such as those posing as “Belt and Road” strategic organizations. There is no information yet showing that this has affected the ability of grassroots public welfare organizations to register under the existing laws.

Impact on Specific CSOs and Activists

In addition to the repercussions of laws and policies on CSOs, the relevant authorities have not stopped targeting specific CSOs and activists. Whether legal, regulatory, or operational, these actions once again demonstrate that the pressure CSOs face is not unidirectional. Possible restrictions and pressures include: the inability to register, punishment for violating the law, being added to the “black list,” having one’s WeChat and Weibo accounts shut down, and activists being slandered, detained, arrested, or even convicted and sentenced.

This quarter, the public watched as the Weibo and WeChat public accounts of the popular group Feminist Voices were shut down one after the other. The shutdowns happened the day after International Women’s Day. Weibo and WeChat said the shutdowns were for “spreading sensitive and non-regulation content” and “in accordance with the relevant laws, regulations, and policies.” Feminist Voices rejected this vague explanation and issued a statement emphasizing that they had never posted any content in violation of the law and regulations, and announcing that they would pursue legal means to recover their accounts. In an interview, Li Sipan who is a feminist said the shutdowns did not appear to be the work of one company, since their accounts on multiple platforms had been wiped out.^[11] After the incident, “Coollabs.cn” called Feminist Voices “running dogs of the West who have betrayed China for their own benefit” because they had received funding from the Ford Foundation (which at the time had already registered in accordance with the FNGO Law). A lawyer for Feminist Voices issued a warning to Coollabs.cn.

The reputations and human rights of individual civil society activists are also under threat. In 2015, the Feminist Five (女权五姐妹) were detained for over 30 days on suspicion of “picking quarrels and provoking troubles.” The procuratorate rejected the case and did not authorize any arrests, on the grounds of insufficient evidence. The case of the Feminist Five was widely viewed as a case of political pressure applied to the feminist movement and to civil society. Yet in the middle of March 2018, one of the Five who had been detained, Zheng Churan, was publicly shamed online. One of the arguments against her was the legal fact that she had been

criminally detained but had not mentioned that the evidence was insufficient. This shows that public slander has become yet another tool to put political pressure on social activists. In the current political environment, there is no guarantee of the personal safety of activists. March 29, 2018 marked three months since Zhen Jianghua, head of the FNGO Human Rights Campaign in China and a former social worker “in the system,” had been placed under “residential surveillance at a designated location.” He was soon formally arrested for “inciting subversion of state power.” Zhen has not been able to see his lawyer for over six months. The lawyer has gone to the detention center multiple times asking to see Zhen, but was told no such person was there.

Conclusion

Whether one looks at the FNGO Law and the Charity Law, or at the drafting and implementation of the Religious Affairs Regulations and the Civil Society Credit and Information Law, one can see that the Chinese government is working through regulations step-by-step to totally and “precisely” manage and control CSOs and the public welfare and charitable actions run by NGOs, as well as to legally limit the scope of public welfare and charitable actions. A massive amount of these actions are now extremely constrained, to the point that any CSO activity may be labeled “illegal.” At the level of practice, the suppression of CSOs is nothing new. Whether it is the shutdown of Feminist Voices or the slandering and arrest of activists, this is certainly not the first quarter in which such attacks have occurred. However, judging from the trends in Q1, the winter of Chinese civil society will not relent in 2018, and CSOs will face increasing difficulties.

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China-Europe Association for Civil Rights

China Europe Association for Civil Rights is a nonprofit organization. The association's mission is to promote the realization and protection of civil and political rights in the Greater China Region.

Website: www.ceacr.org

Contact: ceacr.fr@gmail.com