

**Foundation for Law and International Affairs Comments
on the Charity Law of the People's Republic of China
(Second Draft)**

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The Foundation for Law and International Affairs ('FLIA') is pleased to release to the public its comments on the Charity Law of the People's Republic of China (Second Draft), as these comments have been offered to the National People's Congress.

In commenting on the Second Draft, we took into consideration the broader goal of facilitating the development of the non-profit, non-government sector of the economy, of which charities are an important component. This goal can better be achieved by clearly defining what a charitable organization is; what charitable activities are; who can conduct charitable activities, and how these activities should be conducted.

More importantly, the non-profit sector of the economy must grow coherently with two main obligations, as these befall cadres and state officials. First, in enforcing the Charity Law, cadres and state officials have to remain true to the overall line of the CCP. Second, they have to remain faithful to state policies, as these policies embody goals set by the CCP.

Paragraph 9 of the General Program of the Constitution of the Chinese Communist Party states:

“In building socialism, the basic task is to further release and develop the productive forces and achieve socialist modernization step by step by carrying out reform in those aspects and links of the production relations and the superstructure that do not conform to the development of the productive forces.”

This means that the country must reform those sectors of the economy that lag behind the “development of the productive forces.” Paragraph 9 also states that:

“The Party must respect work, knowledge, talent and creation and ensure that development is for the people, by the people and with the people sharing in its fruits.”

This goal to be achieved through a multi-pronged strategy that allows simultaneous progress in economy, culture, society, politics, and the environment “in accordance with the overall plan for the cause of socialism with Chinese characteristics.”

In this respect, we noticed how the Second Draft has made several improvements. Generally

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speaking, a more proactive approach to legislation has been adopted. Then, the Second Draft has included some of the suggestions that were raised by commentators in China and abroad. Broadening the definition of charitable activities, allowing the public to make donations via the internet, introducing stricter rules on transparency are some of them.

The present comment reviews the changes introduced in the Second Draft, and further discusses them, as these changes relate to: the enforceability of provisions made in the Second Draft; the internal coherence of the Second Draft; consistency between the Second Draft, the legal framework on the non-profit, non-government sector of the economy, as well as other relevant policies, laws and regulations.

We believe our comments will be useful to the community of legal scholars, policy makers, practitioners, academics, as well as journalists, and China scholars. We stand ready to further exchange views with relevant authorities, and all interested parties, and we welcome their feedback and comments.

Chapter I General Provisions

1. Article 1 states the purposes of the Charity Law.

A first purpose is to “share developmental accomplishments.” This is largely a programmatic norm therefore, neither this draft nor any other law specify how developmental accomplishments should be shared in practice. Sharing developmental accomplishments is an important part of the policy of Reform and Opening Up to the Outside World but, no relevant policies exist yet for the charity sector. China’s registered charities are mostly managed or owned by the state, and rules on information openness and transparency are still being introduced, with the result that some charities have been hit by corruption scandals. While programmatic norms are necessary and important, it is equally important that legislation poses goals that can concretely be achieved. Given how the rationale behind the drafting of the Charity Law was, in part, the need to curb corruption in the charity industry, “preventing corruption in the charity sector” would be a more practical purpose of this Law.

A second purpose, as stated by the Law, is that the Charity Law should protect the legal rights and interests of charitable organizations, donors, volunteers, beneficiaries and other charity participants. According to the current reality of charity in China, charity stakeholders far outnumber the protected parties. Therefore, it should be further clarified that the Law also protects other charity participants’ interests, including the interests of corporations, religious groups, foreign NGOs and local non-government communities.

2. The amendment to Article 2 usefully centralizes the regulation of all charitable organizations. Some efforts might be made to ensure that relevant rules do not conflict or overlap. Socialist rule of law is not advanced where, in the rush to legislate, no links exist among relevant laws and regulations, creating chaos rather than order. Article 6 is a partial but quite useful step in that direction.

3. The Second Draft of the Charity Law has amended the definition of what charitable activities are, by including public health incidents and poverty alleviation among the goals of charitable organizations, and by introducing the notion of 'other public interest activities' (Article 3, paragraph 5) among other activities with a charitable goal. An element common to suggestions raised by Western commentators was a call for broadening the definition of charitable activities, to include non-profit, business economic activities carried out to fulfil a charitable goal, as well as other activities that may have responded to needs the First Draft did not envisage. It seems that the amendment to paragraph 3 enables the Charity Law to address future needs *ex ante*, rather than merely responding to the needs that already exist in Chinese society.

It might however be useful to consider the introduction of mechanisms designed to protect charities against local officials who fail to adequately respond to public health incidents, or to alleviate poverty. A stronger link between the Charity Law, and regulations of the Central Commission for Discipline Inspection may be the most appropriate response.

The concept of 'public interest' activities is much broader than the idea of 'societal public interest'. 'Societal public interest' (社会公共利益) includes only the needs of Chinese society, as these needs present themselves in a domestic context. The notion of 'public interest' (公益) in the

Second Draft is not qualified by the adjective 'societal'. Therefore, it can easily extend to China's cooperation partners.

4. A notable feature of earlier drafts of the Charity Law was the lack of mention of any of the values and principles that shape Chinese law. The inclusion of the Socialist Core Values, and the traditional virtues of the Chinese people brings the Charity Law in line with the existing value system (Article 5).

Article 5 is a very useful provision. It is to be assumed that socialist core values are not static but, they evolve accordingly to the concrete needs of economic development. In this sense, the values stated by article 5 should provide the backdrop against which the 'public interest' mentioned by article 3 ought to be understood.

One of ways in which 'public interest' can be understood relates to the party-state's objective to promote economic development. It is not clear that this goal can be achieved, if charitable activities are defined too narrowly, and volunteer workers are moreover required to labor for free. There are no reasons that justify the very narrow definition of charitable enterprises as organized on a voluntary basis, and there is no indication of the reason why free labor is coherent with the CCP line, and the goal to stimulate China's internal demand.

5. Aside from this, Article 3 intends to apply the broader notion of “charity”, which is a strong sign that the legislative body aims to promote charity development. Consequently, we believe that the Draft should also apply the broader notion of charitable entities, which include charity organizations as well as other charity participants, such as corporations, and religious groups that engage in charitable work out of social responsibility, even though their main purpose is not carrying out charitable activities. Meanwhile, foreign NGOs’ charitable work should also be governed by this Law, since foreign NGOs have indeed participated in many charitable activities in China. It won’t be positive for China’s charity development if foreign NGOs were completely managed by organs responsible for maintaining public order, as the Draft of Foreign NGO Management Law suggested. While we agree that a measure of control from these organs is necessary and legitimate - and in fact restrictions on foreign NGOs exist in various legal systems - we think that there should be a separate chapter regarding the legal rights, obligations and potential benefits of these charitable entities, rather than just one chapter on Charitable Organizations.
6. The legislative framework on the non-profit sector has been evolving over the past 30 years. Therefore, the lack of links between the Charity Law, and the Foreign NGOs Management Law is entirely normal. The mention of administrative organs' duty to follow the Charity Law and 'other relevant laws' to complete efforts on charities (Article 6) remedies to this problem. The duty to follow relevant laws on civil society organizations is a general, unqualified and duty. This duty pertains to all administrative departments, without exceptions. This duty, however, needs to be qualified in light of the functions different administrative departments have. Therefore, a separate chapter concerning the legal rights, obligations, and benefits of foreign charities could take into account also the concrete needs of public order.
7. Article 7 designates “China Charity Day.” The “China Charity Day” may be a good occasion for charities and officials to report on their efforts to put forward the goals of the Second Draft.

Chapter II Charitable Organizations

1. The First Draft adopted three criteria to define charitable organizations:

- (a) the existence of lawful registration;
- (b) the existence of a charitable purpose as the main purpose;
- (c) a not-for profit nature.

Article 8 of the First Draft did not offer a clear definition of charities, and it did not clarify whether registered NGOs should have registered again as a charities. Clarifying this point was essential. The First Draft on one hand mandated the registration of charitable organizations. On the other, it allowed non-governmental organizations to fulfil their registration requirements *ex post* (Table of Technical Comments, p. 7) introducing an element of confusion.

Under the Second Draft, the existence of lawful registration is no longer a necessary feature of charitable organizations. It suffices that a charitable organization be 'established according to law' (依法成立). Article 8 mentions trusts, social groups, social service organizations and other typologies of NGOs. This specification was not strictly speaking necessary but, it is very useful as it introduces more solid links between the Charity Law and the other parts of the legislative frameworks on civil society organizations.

Read in conjunction with article 10, article 8 allows a greater organizational flexibility, as civil society organizations that already exist can apply to be registered as charities, provided they meet each one of the requirements that will be set by the Charity Law. FLIA made observations along very similar lines, in its comment to article 10 of the First Draft.

2. The notion of charitable organizations in Article 8 could be made even more consistent with currently effective regulations. The three kinds of NGOs that exist in China are social associations (社会团体 *shehui tuanti*), private non-enterprise units (民办非企业单位 *minban fei qiye danwei*), and foundations (基金会 *jijinhui*). The social service organizations in Article 8 are not been mentioned in any current regulations.
3. One of the most important factors that prevents China's charitable work from developing is that the threshold to set up a charity is too high, and the cost of setting up a charity is unaffordable. The Law has to consider not only reducing this requirement, but also offering benefits to citizens or legal persons who wish to set up charitable organizations. Article 9 is not clear about what "necessary assets" means, which will possibly kill a lot of great charitable ideas.
4. Another factor that could potentially limit the development of the charitable sector is the "dual management system", in which NGOs have to find a professional supervising organ before they can register with the Ministry of Civil Affairs. Article 10 intends to abolish this system. However, article 9 states that charitable organizations shall comply with other requirements provided for by laws and administrative regulations. In other administrative regulations, such as:

- (1) The Regulation on Registration and Administration of Social Organizations (社会团体登记条例 *shehui tuanti dengji tiaoli*);
- (2) The Regulations on the Registration and Administration of Private Non-enterprise Units (民办非企业单位登记管理条例 *minban feiqiye danwei dengji tiaoli*);
- (3) The Regulation on Foundation Administration (基金会管理条例 *jijinhui guanli tiaoli*)

the “dual management system” still applies. So, if Article 10 leaves the possibility of conflict between the Law and other effective regulations, it will cause difficulties with interpretation, which in turn will obstacle the implementation of the Law.

The “dual management system” not only makes it difficult to set up a NGO, but also makes it almost impossible for NGOs to be operationally independent. The second Draft fails to change the situation where government agencies have absolute controlling power over charitable organizations.

For example, in article 56, the annual expenditures of the charitable organizations should be decided by the system of market economy and the actual capability of organizations themselves, rather than by the government. And article 23 states that fundraising information shall be published on unified charitable information platforms, or on platforms designed by civil affairs departments. This will definitely reduce the transmission of information about fundraising, and it will further reduce growth in the amount of funds raised. The nature and advantage of internet is that of disseminating information as broadly as possible. Fundraising information should be disseminated through the internet freely as long as information is truthful and complete.

5. Article 10 provides some discretion in extending the time to review charities applications for registration from 30 to 60 days. Civil affairs departments may consider introducing an internal mechanism (*zhidu*) to ensure that their obligations are carried out.
6. Article 13 has been amended, to provide that charitable organizations carry out their work in accordance with their charters. It is not clear who will enforce this provision, or how this provision will be enforced. It may be useful to allow members of charities, stakeholders, or the public the right to seek enforcement from the civil affairs department, should a charitable organization fail to act in accordance with its charter. Civil affairs department could be endowed with the administrative power to receive relevant complaints, and investigate them.
7. Article 17 of the First Draft has been moved to Chapter Six of the Second Draft, becoming article 56. This article has been significantly revised. Under the First Draft, the proportion of expenditures charitable organizations could spend on charitable activities could be determined under a donation agreement. FLIA commented that:

“the National People's Congress may wish to consider that, in other jurisdictions, the percentage of donations that can be used to cover administrative costs is decided by a central authority, and that charitable organizations are ranked by rating agencies” (Technical Comment, p. 12).

Article 56 of the Second Draft sets a rule whereby the standards for the annual expenditures of charitable organizations will be set by the civil affairs department of the State Council, if

donation agreements do not stipulate the proportion of expenditures, and the management costs, to be used on charitable activities.

8. Provisions on the termination of charitable organizations were made by article 22 of the First Draft. These were rather generic, stating that registration had to be effected where charitable organizations were terminated. A new paragraph has been added to article 18, stipulating that the withdrawal of registration shall be announced to the public by civil affairs departments. This is a necessary measure to enhance transparency. Article 18 does not specify for how long this information will remain public. The Ministry of Civil Society may wish to consider establishing a public registry of charitable organizations that have been liquidated. The registry may be useful to avoid fraudulent activities, either by charities that have already been liquidated, or by persons that misrepresent themselves as members of a charity that either does not exist, or that has had its registration cancelled.

Chapter III Charitable Fundraising

1. In its comment, FLIA raised a several issues about article 26 of the First Draft. It was observed how article 26 could be easily circumvented; how it was unfair to charities which complied with registration requirements, as it allowed non-registered charities to raise funds; how it was unfair to individuals, as they were not allowed to raise funds for charitable purposes (Technical Comments, page 26). Article 26 has been substantially amended, and it has become article 21 of the Second Draft. The most controversial provisions have been removed, and a final paragraph has been added.

Specification of the scope of donations, their period, the goal of fundraising and the usage of funds make sense. However, article 21 does not say whether these specifications can be made verbally, or whether they should be part of a fund-raising agreement.

2. Limitations on fundraising set by article 23 in the First Draft were out of tune with the reality of the charity sector in China, therefore FLIA suggested to lift these limitations, while at the same time regulating public fundraising via the internet (Technical Comments, p. 16).

Article 23 allows funds to be raised via the internet.

The addition of a new paragraph mandating the disclosure of fundraising information satisfies transparency requirements, achieving a balance between government supervision, and the objective needs of the charity sector. Article 33 posed even stricter limitations to fund-raising by urban and rural community organizations. These limitations, too, have been lifted.

Article 33, now article 105, allows these entities to conduct 'mass mutual assistance and aid activities'. Mass mutual assistance activities are activities related to the public in general, without any kind of geographical limitation.

It is not yet clear whether 'urban and rural community organizations' should be lawfully registered as charitable organizations, or not. Urban and rural community organizations have always existed in the People's Republic of China. But, they are not included under the legal forms charitable organizations can take under article 8. Therefore, fundraising by them would be in contradiction with the broader spirit of the Charity law.

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Chapter IV

Charitable Donations

1. Chapter IV, on Charitable Donations, makes no provisions as to international fundraising and international donations, which have been quite common in practice. To bring legislation in line with current practices, *international funding of Chinese charities should in the first instance be encouraged*. As a global economic entity, China has been playing a more and more important role in the global community, and international donations serve as a measure of China's growing importance in the world. If China needs international donations to further develop the charity sector, the world needs China's NGOs and charitable organizations to improve global governance. International funding of Chinese charities will open the door to China's funding of charitable works elsewhere. The opportunity for China's charitable organizations and enterprises to donate, or offer charitable services to other countries, regions or international organizations should not be missed. Chinese efforts to fund charitable causes outside China, especially in Africa, are a model to be studied scrupulously. Mutuality in these efforts is important. With respect to these funding efforts, careful disclosure and supervision of Chinese charities ought to be enough.

We agree that foreign funding may be more sensitive. Donations that come from foreign governments, public international organizations *et cetera* represent funding of a distinct character, and touch on issues of national sovereignty and respect for the principle of self-determination. Funding of Chinese charities by foreign public bodies might be controlled and supervised more carefully and in some instances, according to law, restricted.

Funding of Chinese charities by the international public should be allowed.

2. Likewise, the *direct operation of foreign-funded charities in China should instance be encouraged*. Foreign charities that are strictly supervised in accordance with the provisions of the Second Draft for example, will contribute to the growth of the charity sector, and the entire economic system. The Charity law itself provides the basis on which some types of foreign charities can be most usefully managed. Many foreign charitable organizations already serve the interests of China well even as they meet their own charitable objectives. That compatibility of purpose serves as the best reassurance of benefit. If well supervised by officials who act strictly but fairly and avoid corruption or personal aggrandizement, this compatibility will ensure sound operation. It is agreed that charities fully operated or funded by foreign governments might require stricter supervision. Charities that are funded by foreign governments only in part do require strict monitoring, but as long as their activities remain within the limits set by the Second Draft, they might still be useful. A precise definition of the activities that may be encouraged and those that might be prohibited is needed. This definition should be consistent with relevant policy priorities, and it should be understandable to foreign citizens.
3. Requiring charitable organizations to donate material goods that comply with safety, health, and environmental standard is necessary to protect the lawful rights of citizens. Article 33 however places an excessive burden on subjects as urban and rural community organizations,

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and generally speaking small charities. Not all of them may have the means to verify whether the material objects collected from the public and donated by their organizations comply with safety, health, and environmental protection standards, particularly if material objects are collected and donated during a natural disaster or any other state of emergency. Providing certificates of product approval, or product quality inspection may be easier for an enterprise, than for a community organization.

4. Article 33 could specify whether enterprises are allowed to publicize their service by making charitable donations, or whether charitable donations and advertising have entirely distinct goals.
5. Commenting on the earlier version of article 36 (article 42 in the First Draft), FLIA noticed how the obligation to conclude a written donor agreement existed only in the case of 'comparatively large donations', and suggested to set a threshold, or to clarify what 'comparatively large donations' meant.

The words 'comparatively large donations' have been deleted from the Second Draft, and replaced by the condition that a donor requests a written agreement. The right to request a donor agreement is a useful mean to protect one's lawful rights and interests, therefore, this right should not only be a prerogative of donors, but it should be extended to charitable organizations as well.

6. Article 37 (Article 43 in the First Draft) is useful in protecting the goals of charitable activities. The ban on using charitable activities to publicize tobacco products could be extended to other products that scientific studies have proved to be highly addictive. Sugar-laden soft drinks would be the most obvious example.
7. Article 56 has standardized rules for reporting the financial activities of charities, and mandated a greater cooperation among ministries. These are important improvements. But, coordination among state organs is only half the issue. Unless rules on reporting, and the principles that regulate cooperation among ministries are communicated to charities in a uniform and simple way, the standards themselves may become an obstacle to the work of charities, and may be easily bended to serve the dark forces of corruption. This is even more true if these standards will conflict. It is therefore useful to consider the means by which rules on reporting, and on inter-ministerial coordination might be clearly and completely distributed. Distribution might extend not just to stakeholders, but involve the public as well, so that the public may better participate to social governance.

Chapter V

Charitable Trusts

1. Article 40 introduces two typologies of trusts: charitable trusts, and public interest trusts, but provides the same definition for both of them. So both charitable trusts and public interest trusts are:

'trustors lawfully entrusting their assets to a trustee for charitable purposes, and the trustee, in accordance with the wishes fo the trustors, and in the name of the trust, managing and disposing of assets in order to carry out charitable activities'

The Charity Law has specified what a charitable activity is (Second Draft, Article 3) but a definition of what the public interest (公益) is, or public interest activities are, is not in the law. There seems to be no legal basis for a public interest trust, unless article 40 is amended to include 'public interest purposes' and 'public interest' activities' among the purposes and the activities that characterize a public interest trust.

Chapter VII

Charitable Services

1. A core element of socialist modernization is shared prosperity. Shared prosperity must be built on respect for and the dignity of labor. This presents two issues. The first, with which the Second Draft deals with in a sensitive and very useful way concerns those who in their free time contribute to the “great national project of socialist modernization” through charitable works. The Second Draft recognizes their activities as a worthy and patriotic exercise that should be protected.
2. But, there is another more important aspect, one the Second Draft lamentably overlooks. For some people, charitable work may present the only means of employment, or else the main way that they may be socially useful. For those people, charitable organizations serve *two important purposes*.

The first purpose is recognized by Article 3, where the Second Draft mentions the notion of benefiting people and social institutions outside of the charity field. The second purpose of charitable organizations is provide for poverty alleviation, socialization and other productive work. That is, charities are legal persons that provide work opportunities for those who decide to work in the charity sector. “Charity” therefore can be understood in a very broad sense, as including all those activities that produce wealth. It is thus possible to say that a core role of charitable organizations is to produce wealth not only for society, but for charity workers as well. This second purpose is an important element of economic development, that is furthermore consistent with the political goals of developing productive forces, and using charitable organizations for the strengthening of a solid path toward socialist economy, socialist harmonious society, and socialist culture. This second purpose is entirely absent from the Second Draft. An unnecessary limitation on the concept and meaning of charity, of the importance of reducing labor exploitation and of providing a means for advancing socialist goals will also hold back the CCP's leadership objectives.

3. It is therefore suggested that the principle of “voluntariness only” built into the Second Draft be reconsidered. The principle of voluntariness as a central element of charitable efforts should remain in the Draft. But, it should be recognized that charity, in the sense outlined above, not only fulfils external objectives as poverty alleviation. Charity has also important objectives tht are internal, and relate to the reasonable compensation of work. Accordingly, Chapter VII has placed a strong emphasis on 'volunteers', and 'volunteer service'.
4. Volunteers are the cornerstone of the charitable sector, and more generally speaking of the non-profit sector.

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From charities' point of view, volunteer work, that is work performed without pay, is often essential to implement projects, raise funds, and publicize the charity's goals and activities. Without the unremunerated work of volunteers, charities would exist on paper only.

As seen from beneficiaries' perspective, volunteer work is essential to the delivery of much needed goods and services, particularly at times of emergency, or during natural disasters.

From a volunteer's point of view, volunteer work means committing the time one could have used to engage in paid work, to perform free labour. Volunteering can allow one to gain valuable experience and insights. Apart from ethical considerations, these are the main reasons that drive young persons to lend their work to charities and other not-for-profit entities.

From the party-state's point of view, volunteer work, if not properly managed, may result in inconsistencies between practice, and principles of human development posed in the Socialist Core Values. Socialist Core Values prohibit the exploitation of labor, so the exploitation of people should be abhorred, as a form of exploitation of labor. The Charity Law could be structured toward reducing exploitation as such exploitation may occur within the charitable sector. Work reasonably compensated can serve as a better example of the value of the Socialist path because it is the most direct way to “help people help themselves”, and “improve the welfare of the people”. Also the Charity Law could further reduce opportunities for exploitation by specifying how recruitment of volunteers from an 'organization with service expertise' (article 57) should not involve any payments from the organization that requires volunteers, to the organization that provides them.

5. Chapter VII is coherent with the Social Core Values, because it poses an obligation to respect the dignity and privacy of volunteers (Article 58), to arrange work appropriate to a volunteer's age, and physical condition (Article 67), to purchase personal injury insurance for volunteers (Article 64), and it acknowledges the value of a volunteer's experience by mandating that charities issue a proof of volunteer service records (Article 61). On their part, volunteers must agree to various obligations (Article 60), as undergoing training (Article 59) and abiding by management (Article 63).

The obligation to undergo training will likely to increase the amount of time a volunteer commits unpaid work well beyond the time strictly required to deliver her services. At minimum, a charitable organization should reimburse volunteers for the time they spend receiving training, and for the expenditures they sustain while providing their services.

It should be kept in mind how performing volunteer services after natural disasters as floods and earthquakes, or during emergencies as mines and building collapses, does not only expose volunteers to physical risks. Volunteers performing work in areas hit by natural disasters or by emergencies expose themselves to the risk of psychological trauma. Trauma takes very little time to occur, but can require a considerable amount of time to heal. The Charity Law should take this risk into account, and:

- (a) require health organs to provide free psychological counseling to volunteers who have experienced trauma, or
- (b) mandate that the cost of psychological counseling needed by a volunteer who has suffered trauma during her work be subdized in full by those who engaged her services.

6. Article 57 states, “[c]haritable services refer to volunteer services and other non-profit services provided to others or to the society by charitable organizations and *other organizations* as well as individuals based on charitable purposes.” However, there are no articles stating how other organizations can offer charitable services. For example, under what circumstances can corporations and religious groups provide charitable services, and must they comply with the same rules as charitable organizations?

Chapter VIII

Information Disclosure

1. The chapter on information disclosure has undergone minor amendments. Most of the transparency duties of charitable organizations have remained the same as in the First Draft. Transparency, and information disclosure should be the soul of this Law. Without a transparent disclosure of information, the goal of societal supervision cannot be achieved. Without supervision by society, charitable work will fall victim to corruption. The charitable sector is still very young in China, and recent scandals have undermined the public's trust in charities. Transparency is essential to rebuild trust in the charitable sector, minimize the risk of fraud, and allow the public to make better informed choices. The transparency duties posed by the Second Draft can never be sufficiently strict. A duty of information disclosure should be borne not only by charity organizations, but also by governments, corporations, religious groups, as well as other organizations and communities who carry out charitable activities, or receive donations for charitable purposes.

Besides the strictness of these duties, what is equally important is the enforceability of mechanisms that aim to guarantee that charities disclose as much information as possible about their goals, activities, use of donations *etc.*. In this sense, article 66 further strains the already heavy burden place on people's government, as it requires them to establish a “release system of charity information.” The system of charity information perhaps should be established and managed by civil affairs department, because of the reason that they will be the departments responsible for releasing charity information to the public. Article 66 places the duty to release charity information on charitable organizations. This is the most logical and only possible choice. Article 95 stipulates a range of sanctions for charities that fail to comply with this duty but, it would be useful to specify the time-limits within which charities are allowed to correct false, misleading or imprecise information, as well as the duration of an order to suspend their activities.

A timely disclosure of information about charitable organizations is essential, and article 67 lists information which, once disclosed, will allow the public to form their own judgment about the trustworthiness of charitable organizations. Article 67 does not specify the time-frame within which information should be disclosed. The absence of this specification is reasonable: establishing an information disclosure system, which will most likely be available on-line, will need time, and perhaps conducting a census of charities that already exist in China. Stated differently, article 67 poses a 'provisional rule' on information disclosure. Once this transitional period has elapsed, information disclosed under article 67 could be released no later than seven days after a charitable organization has received its registration certificate. Some of the information to be disclosed to the public will be gathered by civil affairs departments, as they

are the departments responsible for registering charities. Other information, will however have to be disclosed by charitable organizations themselves (article 68). Information about a charity's governance structure, work, accounting, fundraising etc. can, according to article 68, be disclosed on a charity's website. This arrangement will likely make it more difficult for the public to obtain precise information about charities, as relevant information would be available on two different websites: the charity's website, and a platform maintained by civil affairs department. Centralizing all public information about charities would obviate this problem.

2. While it is necessary to inform donors of how funds are managed and used (Article 70), charities should have an equal obligation towards the public, and beneficiaries. In practice, donors often require charities to acknowledge their donations in a variety of ways, as printing the donor's logo on products delivered to beneficiaries etc. This is a valuable practice, in that it can let beneficiaries and the public know how charities are managing and using donations, and thereby guarantee an equal access to information by all parties.

Chapter IX

Promotion Measures

1. Chapter IX has classified promotion measures under two different categories:

(a) programmatic measures aimed at promoting the development of the charity field

(b) fiscal exemptions, and other preferential policies as governmental purchase of services provided by charitable organizations, educational policies and so on.

Some of these measures could potentially create newer opportunities to commit economic crimes. Others would just introduce inconsistencies. For instance, it is not clear why the state would tax contributions that are made to charitable organizations. It is even less clear why the state would tax income received by charitable organizations, provided such income is applied to charitable purposes. It might be worthwhile to consider whether a better rule would be a strict disclosure of all income and all expenditures, and a strict application of the rule that all income must be used for charitable purposes—a rule already written into the Second Draft.

2. Tax law might help prevent corruption. Corruption might be manifested in at least three distinct forms. First, the directors a charity might divert fund to their own personal benefit. Second, the charity itself might make illicit payments to officials, to obtain favors or special treatment. Third, officials may transfer the proceedings of corruption crimes to charitable organizations. It would be useful for the civil authorities— and the Central Commission for Discipline Inspection —to monitor expenditures, and donations. Tax accounting and reporting might be an efficient way to to that. Also, to reduce opportunities for fiscal evasion and money laundering, a cap could be set on the percentage of the income natural or legal persons can donate to charitable organizations.

Chapter X

1. Article 93 represents a greater improvement in the Second Draft. The ability to establish charity organization standards that ought to be followed by all charitable organizations, domestic and international, is coherent with the policy goals of the charitable sector. To ensure an even greater coherence, it is suggested that such industry standards be developed by taking into account developmental priorities as these have been defined by the CCP.
2. In addition to this, industry standards might usefully be widely distributed among the people so that the CCP and state organs might make better use of mechanism that allow the Chinese public to participate in social governance. These mechanism can play a key role in supervising both domestic and international organizations, and in developing the productive forces they represent.

Chapter XI

Legal Responsibility

1. While provisions of Chapter 7 suggest the scope of volunteer services, with all the unnecessary limits of that approach, Chapter XI defines the liability of volunteers or of charities themselves for damages or harm that might be caused by them in the provision of charitable services.
2. How does the law fairly apportion responsibility for harm caused by the work? It may not be fair to impose liability of volunteers for the harms they cause in carrying out charity work. That would impose a double burden on individuals—first working without pay and then paying as if they were working for an enterprise. At the same time it may not be fair to impose obligations on a charity where a volunteer deliberately or maliciously produced harm. As a general rule, though, it might be fairer to impose obligations for harms on the charity itself.
3. Another alternative would be to limit the liability of charities and their workers for any harm caused by their work. Exceptions might be made for acts that are intentional or malicious or thoroughly reckless. But such a limitation on obligation might be necessary to encourage charity work. And the issue of the responsibility of the charitable organization for the welfare of its volunteers might also extend to harms suffered while the volunteers are on the job.
4. The rules elaborated in Chapter XI “Legal Responsibility” suggest no special treatment in the event of harm. Article 102 provides a simple negligence standard for liability by charitable organization to others. It also provides that charitable organizations may recover from a volunteer under an intention or gross negligence standard. Lastly it provides compensation to volunteers on a simple negligence standard as well. This is a fair standard, though it puts the burden on those who suffer injury to go to the further expense and trouble of seeking to recover for that harm.
5. It might be useful, however, for the state to consider the creation of insurance measures to aid charities. Charities might contribute to a national insurance pool that might pay claims based

on the negligent conduct of charities and because risk is pooled the overall cost to any one charity would be reduced—freeing more money toward useful charitable work.

6. Some of the provisions under chapter XI introduce overlaps and confusion between the Charity Law on one hand, and the Security Administration Punishment Law, the Criminal Law, and Party discipline legislation on the other. Reforms in criminal legislation as well as in Party discipline legislation are attempting to draw a clear divide between conducts punishable under the Criminal Law, conducts punishable under the Security Administration Punishment Law, and conducts that violate Party discipline. Chapter XI does not revert this trend but, its provisions could be brought more in line with existing administrative, criminal and disciplinary legislation.