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**On the Second Draft of the People's Republic  
of China Foreign Non-Governmental  
Organizations Management Law (Draft)  
(Second Reviewed Draft)**

**关于中华人民共和国境外非政府组织管理法  
(草案二次审议稿) 的评论**

This commentary considers the Second Draft of the People's Republic of China Foreign Non-Governmental Organizations Management Law (Draft) (Second Reviewed Draft NGO Law or Draft NGO Law) for its compatibility with the Basic Line of the Chinese Communist Party (CCP). In summary, while the general thrust of the Draft NGO Law is consistent with the CCP line, it is not clear that it avoids the possibility of contradiction with the CCP's fundamental line of modernization. The Draft NGO Law can be improved to meet this fundamental obligation in the following ways.

In the course of the Third Plenum of the 18th Central Committee of the CCP (November 2013), a decision was adopted on issues concerning "Comprehensively Deepening Reform." Included among the items considered was the role of service organizations.

Kindling the vigor of social organizations. We will correctly handle the relationship between the government and society, intensify efforts to separate government administration and social organizations, encourage the social organizations to clarify their rights and obligations, and enforce self-management and play their role in accordance with the law. Social organizations should be commissioned to provide public services that they are apt to

本评论探讨了《中华人民共和国境外非政府组织管理法（草案二次审议稿）》（以下简称《草案》）与中国共产党基本路线的兼容性。认为制定《草案》的根本意向虽然与党的路线方针基本一致，但在细节上却可能与中共提出的现代化路线相矛盾。本文所探讨的内容或许有益于《草案》的进一步完善，从而促进中国共产党履行其对中国社会的基本责任。

中国共产党第十八届三中全会通过的《中共中央关于全面深化改革若干重大问题的决定》提出要发展服务性组织。

激发社会组织活力。正确处理政府和社会关系，加快实施政社分开，推进社会组织明确权责、依法自治、发挥作用。适合由社会组织提供的公共服务和解决的事项，交由社会组织承担。支持和发展志愿服务组织。限期实现行业协会商会与行政机关真正脱钩，重点培育和优先发展行业协会商会类、科技类、公益慈善类、城乡社区服务类社会组织，成立时直接依法

supply and tackle matters that they are able to tackle. We will support and develop volunteer service organizations. We will achieve a true disconnection of trade associations and chambers of commerce from administrative departments, prioritize fostering and development of such social organizations as trade associations and chambers of commerce, scientific and technological associations, charity and philanthropic organizations, and urban and rural community service organizations. These organizations can directly apply for registration in accordance with the law when they are established. We will strengthen the management of social organizations and foreign NGOs in China, and guide them to carry out their activities in accordance with the law. (Decision of the CCCPC on Some Major Issues Concerning Comprehensively Deepening the Reform, Adopted at the Third Plenary Session of the 18th Central Committee of the Communist Party of China on November 12, 2013).

A year later, the Fourth Plenum of the 18th Central Committee declared its intention to “Strengthen the management of foreign non-governmental organizations operating in China, guide and supervise their deploying activities according to the law.” This decision was made in the context of a consideration of the larger issue of managing and restraining non-CCP social organizations, including issues relating to their organization and control to:

Give rein to the positive functions of people’s organizations and social organization in the construction of a rule of law society. Establish and complete mechanisms and institutional channels for social organizations to participate in social affairs, safeguard the public interests, assist masses in need, help particular groups, and prevent law-breaking and crime. Support sector associations and commercial

申请登记。加强对社会组织和在华境外非政府组织的管理，引导它们依法开展活动。（《中共中央关于全面深化改革若干重大问题的决定》，2013年11月12日中国共产党第十八届中央委员会第三次全体会议通过）

一年之后中共十八届四中全会指出要“加强在华境外非政府组织管理，引导和监督其依法开展活动”。这一决定是在考虑如何管理和控制非党社会组织的问题背景下制定的：

发挥人民团体和社会组织在法治社会建设中的积极作用。建立健全社会组织参与社会事务、维护公共利益、救助困难群众、帮教特殊人群、预防违法犯罪的机制和制度化渠道。支持行业协会商会类社会组织发挥行业自律和专业服务功能。

association-type social organizations in playing a rule in self-discipline and specialist services.

In 2015, Chinese authorities recently unveiled a Second Draft of the People's Republic of China Foreign Non-Governmental Organizations Management Law (Draft) (Second Reviewed Draft). The Draft NGO Law has raised substantial criticism in the West. These focus on issues of ambiguity, impediment of relations among academic institutions, and the characterization of relations between China and NGOs as principally issues of state security. These criticisms suggest the scope and tenor of reactions to the Draft NGO Law by institutions and states with the authority to convert their criticisms into state policy among states with which China interacts in important respects—socially, economically and otherwise. For that reason alone, it is useful for Chinese authorities to understand these criticisms and factor them in to their deliberations about the political effect of the Draft NGO Law.

But the Draft NGO Law also represents both a challenge and an opportunity for China. The challenge is to avoid contradiction with the fundamental line of the Chinese Communist Party. The opportunity is to harmonize and better fulfill socialist modernization that comprehensively builds a moderately prosperous society, comprehensively deepens reform, comprehensively implements the rule of law, and comprehensively strengthens Party discipline.

The Constitution of the Chinese Communist Party comprehensively sets out the substantive framework within which the CCP exercises its vanguard political role. In particular, the General Program of the CCP Constitution provides:

2015年,《中华人民共和国境外非政府组织管理法(草案二次审议稿)》发布。该《草案》引起了西方国家的强烈批评。这些批评主要集中在《草案》中大量的模糊概念,对学术机构之间正常交流的阻碍,以及将国家与非政府组织间的关系“一刀切”、统一归纳为国家安全问题。这些批评反映了西方政府和权威机构对《草案》高度关注。与此同时,这些批评也在一定程度上反映了中国社会、经济及其他重要方面在国际上扮演越来越重要的角色。就这个意义而言,中国当局十分必要去聆听这些批评的声音,并深切思考该《草案》可能产生的政治影响。

从《草案》本身来看,它既是一个挑战,也是一个机遇。挑战在于制定《草案》必须避免与党的基本路线冲突;而《草案》所带来的机遇在于帮助实现社会主义现代化,全面建设小康社会,深化社会改革推动社会深入发展,落实依法治国战略,以及加强党风党纪建设。

中国共产党党章全面规定了党如何发挥其政治先锋队领导作用的实质性框架。总纲指出:

Reform and opening up are the path to a stronger China. Only reform and opening up can enable China, socialism and Marxism to develop themselves. The Party must carry out fundamental reform of the economic structure that hampers the development of the productive forces, and keep to and improve the socialist market economy; it must also carry out corresponding political restructuring and reform in other fields. The Party must adhere to the basic state policy of opening up and assimilate and exploit the achievements of all other cultures. It must be bold in making explorations and breaking new ground in reform and opening up, make its reform decisions more scientific, better coordinate its reform measures and blaze new trails in practice.

([http://www.chinatoday.com/org/cpc/china\\_communist\\_party\\_constitution.htm](http://www.chinatoday.com/org/cpc/china_communist_party_constitution.htm))

Simultaneously, the CCP emphasizes the premises within which the CCP advances its vanguard role in the context of China's place in the world:

The Communist Party of China adheres to an independent foreign policy of peace, follows the path of peaceful development and a win-win strategy of opening up, takes both the domestic and international situations into consideration, and vigorously develops relations with other countries in order to bring about a favorable international environment for China's reform, opening up and modernization. In international affairs, it safeguards China's independence and sovereignty, opposes hegemonism and power politics, defends world peace, promotes human progress, and pushes for the building of a harmonious world of lasting peace and common prosperity. It develops relations between China and other countries on the basis

坚持改革开放，是我们的强国之路。只有改革开放，才能发展中国、发展社会主义、发展马克思主义。要从根本上改革束缚生产力发展的经济体制，坚持和完善社会主义市场经济体制；与此相适应，要进行政治体制改革和其他领域的改革。要坚持对外开放的基本国策，吸收和借鉴人类社会创造的一切文明成果。改革开放应当大胆探索，勇于开拓，提高改革决策的科学性，增强改革措施的协调性，在实践中开创新路。（宪法，总纲）

同时，中共强调了在中国所处的世界大环境下其应如何发挥先锋领导作用：

中国共产党坚持独立自主的和平外交政策，坚持和平发展道路，坚持互利共赢的开放战略，统筹国内国际两个大局，积极发展对外关系，努力为我国的改革开放和现代化建设争取有利的国际环境。在国际事务中，维护我国的独立和主权，反对霸权主义和强权政治，维护世界和平，促进人类进步，努力推动建设持久和平、共同繁荣的和谐世界。在互相尊重主权和领土完整、互不侵犯、互不干涉内政、平等互利、和平共处五项原则的基础上，发展我国同世界各国的关系。（宪法，总纲）

of the five principles of mutual respect for sovereignty and territorial integrity, mutual nonaggression, noninterference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence. ([http://www.chinatoday.com/org/cpc/china\\_ommunist\\_party\\_constitution.htm](http://www.chinatoday.com/org/cpc/china_ommunist_party_constitution.htm))

Considered from the perspective of the CCP line, the Draft NGO Law offers both challenge and opportunity. Yet it requires refinement to minimize the challenges and increase opportunities in line with the CCP's Basic Line. Approaching a review of the Draft NGO Law from the four essential requirements for building the CCP—adhering to the CCP's basic line; persevering in emancipating the mind, seeking truth from facts, keeping up with the times, and being realistic and pragmatic, persevering in serving the people wholeheartedly; and upholding democratic centralism—suggests room for improvement. These are suggested below. In summary, while the general thrust of the Draft NGO Law is consistent with the CCP line, it is not clear that it avoids the possibility of contradiction with the CCP's fundamental line of modernization.

The CCP's General Program requires that the CCP “must meet the requirements of reform, opening up and socialist modernization, persist in scientific, democratic and law-based governance, and strengthen and improve its leadership.” The Draft NGO Law can be improved to meet this fundamental obligation in the following ways.

1. The “Go Out” policy has presented the CCP with the problem of harmonization of rules—should the rules applied to organizations within China be the same as those which must be followed by organizations when they operate outside of China. For the

因此，从中共基本路线的角度来看，《草案》同时提供了挑战和机遇。然而，要在与中共基本路线相一致的情况下而减少挑战增加机遇，《草案》的内容细节仍有待改进。本文从党的建设的四项基本要求——坚持党的基本路线，坚持解放思想、实事求是、与时俱进，坚持全心全意为人民服务，坚持民主集中制——的角度审查《草案》，并提出改进的余地。总而言之，《草案》的总体意旨虽然与党的路线方针基本一致，然而其内容却并未十分有效地避免与中国共产党提出的现代化路线存在矛盾的可能性。

党章在总纲中指出，“党要适应改革开放和社会主义现代化建设的要求，坚持科学执政、民主执政、依法执政，加强和改善党的领导。”《草案》可以通过以下几个方面实现这一要求。

1.“走出去战略”向中共提出了规则适用一致性的问题。适用于中国境内组织的规则同样应适用于建立在中国境外的中国组织。在大多数情况下，中国当局选择了一种恰当的迎合了中国当前发展阶段的“折中办法”来处理这个问题，即在海外运营的中国企业和组织必须（1）遵

most part, Chinese authorities, and quite correctly at this stage of the development of China, have chosen a “middle way”—to acknowledge that Chinese enterprises and organizations operating abroad must (1) follow local law and ought to comply with international norms as applied in the locality of operation, and (2) be treated like other enterprises in those states in which they operate, (3) must adapt these to Chinese conditions, and (4) must follow national law under the leadership of the CCP in their operations within China. That is a sound basis not just for structuring law and policy applicable for Chinese enterprises and organizations operating broad, but for foreign NGOs operating within China. This balances the principles of non-interference with those of equality and mutual benefit. It is not clear that the Draft NGOP Law fulfills that obligation. At a minimum, the foundational strategy of an NGO Law should be to treat all NGOs under the same law—not one law for foreigners and one for Chinese. And then, to the extent of differences arising from the distinct conditions affecting foreign NGOs, clearly identified, special provisions can be written for them. That avoids hegemonism and the creation of “unequal treatment” which China’s own history suggests is the cause of disharmony and instability. And, indeed, meeting the 3rd Plenum of the 18th Congress’ goal of “Kindling the vigor of social organizations” can be best achieved through a united front action that treats all social organizations in the same way, with appropriate special rules where the characteristics of such organizations require it.

2. The basis for the regulation and management of social organizations should be focused on their aims and operation, rather than on their “citizenship” or global connections. The CCP has made it clear that social organizations serve an important role of socialist modernization. The objective of

守当地法律以及适用于当地的国际规范；（2）获得与当地企业的同等待遇；（3）与中国的基本国情相协调；（4）遵守中共领导下的中国法律。这是一个良好的基础，在这个基础上构建的法律和政策不仅适用于在海外运行的中国企业和组织，同样适用于在中国境内运行的海外企和组织，并且使得互不干涉和平等互利原则得到平衡。《草案》并未明确发挥这方面的作用。至少，《草案》的基本原则应当是使所有的非政府组织受同一部法律的规范，而非境外非政府组织适用一部法，境内非政府组织适用另一部法。在此基础上，可以根据对境外NGO的不同影响因素及其不同程度而作出特别规定。这样可以避免霸权主义和不平等待遇。而霸权主义和不平等待遇正是被中国自己的历史所证明的不和谐与不稳定的原因。事实上，这也是满足十八届三中全会所要求的“激发社会活力”的最佳方式，即以相同的法律规范对所有社会组织一视同仁，以特别的法律条款对特殊的社会组织特别规范。

2. 对社会组织的规范和管理的基础应该在于其意图和运行，而非其书面上的“国籍”和国际关系。中共已经很明确地指出社会组织是社会主义现代化建设的重要力量。依法管理社会组织的目标必须是在中共领导下开展进一步的社会主义现代化建设。“不管黄猫黑猫，只要捉住老鼠就是好猫。”重点强调被管理组织的实

managing social organization in accordance with law must be undertaken to further socialist modernization under the leadership of the CCP. To that end it should not matter whether the cat is black or white as long as it catches mice. Focusing on regulation by objective rather than citizenship is more efficient and produces clearer regulation. To do otherwise is to present the potential for contradiction that neither serves the state nor the project of socialist modernization and the realization of China's dream. The Draft NGO Law works well as a regulatory device, but it works less well as a means of mobilizing productive capacity. In that respect it suffers from an inadvertent bureaucratism—the Draft NGL Law appears more worried about the formalities of organization than the development and management of productive forces to serve society. Indeed, what is least clear in the Draft NGO Law are precisely those activities and efforts that are to be encouraged for social organizations, irrespective of their origins. An NGO Law applicable to all social organization would be a first step toward better realizing socialist modernization. A secondary focus on the special characteristics of foreign social organizations may then be more rationally constructed in the spirit of China's useful premises developed in its Go Out policies.

3. Article 3 of the Draft NGO Law provides a healthy start to the task of developing the productive forces of NGOs, even foreign NGOs. The use of NGOs to further China's economics, education, science and technology, health, culture, sports, environmental protection and charity points the Draft NGO Law in the right direction. Yet there is no reason to suppose that these activities will be conducted any differently by social organizations operating within China merely because they have been established by or through NGOs formed outside of mainland China (Art. 2). Indeed to suggest

实际意图而非书面身份能够使得法律规范更加有效和明确。相反，不这样做既不利于服务于社会主义现代化建设，也不利于中国梦的全面实现。目前的《草案》可能成为一个有效的监管机器，但是却会阻碍社会组织的正常运行，使它们无法有效发挥其推动社会发展的正面作用。作为一个监管机器，《草案》相对容易沦为官僚主义的牺牲品——拘泥于组织手续，而无暇顾及如何服务于有效推动社会发展与管理。实际上，《草案》并没有对明确说明非政府组织的哪些活动和努力是被鼓励和倡导的。一部可以适用于所有社会组织的NGO管理法将会是更好地是现实社会主义现代化建设的第一步。在此基础上，境外组织的特殊特征可能得以在中国走出去战略的发展精神中得到更合理的构建，这一点应当是《草案》的第二个关注点。

3. 《草案》第3条对非政府组织发展任务的规定是一个有益的起点，即便其仅局限于境外非政府组织。利用非政府组织推动中国经济、教育、科技、卫生、文化、体育、环保、慈善等领域的发展是制定《草案》的准确导向。然而，没有理由认为，这些活动会仅仅因为他们是由或者通过中国大陆之外的非政府组织在中国境内开展实施的（参照第2条）而有所不同。认为其有所不同的实际上又引起了与社会主义现代化建设的性质的另一个矛盾，即社会主义现代化建设仅能够被一群特定人的所实现，而不能通过科学发展而实现。如果是这样，可以使非政府组织服务于社会主义现代化建设和法

otherwise constructs yet another contradiction about the nature of socialist modernization, one that suggests that it is incapable of scientific development, and may only be attained not through the attainment of scientifically developed objectives and projects but through the efforts of specific people or organs. Indeed the missed opportunities for consolidating and harmonizing the services of NGOs toward socialist modernization and rule of law activity is apparent in Article 8 that establishes a valuable NGO management information system but appears to limit it to foreign NGOs. The same applies to Article 9 that establishes a segregated system for rewarding the good works of foreign NGOs. That sort of segregation and isolation limits the utility of well managed foreign NGOs—including educational institutions and scientific and technological efforts, to the detriment of the state.

4. If China is to make the greatest use of social organizations for socialist modernization, then it appears that the characterization of the work of foreign NGOs as touching principally matters of internal security appears to further augment the contradiction inherent in the organization of the Draft NGO Law. It is for that reason that the administrative focus of the Draft NGO Law appears to run counter to the spirit of socialist modernization. It is important to pay attention to the quite reasonable warnings of Shangli Lin (林尚立, 两种社会建构:中国共产党与非政府组织, 中国社会科学(英文版) Lin Shangli, CCP and NGO—Two Social Constructions) that foreign organizations might challenge the CCP. However, it is not clear that well regulated foreign NGOs, like well regulated domestic NGOs, fully dedicated to the objectives of developing productive forces along substantive lines specified under the leadership of the CCP ever challenge the CCP. Rather, like for profit enterprises, if properly managed, they can enhance the vanguard role of the CCP in

治活动的巩固与协调的机会就被错失掉了。比如第8条, 该条规定要建立非政府组织管理信息系统, 但该管理系统仅被应用于境外非政府组织。再比如第9条, 要奖励境外非政府组织的杰出工作, 但这种奖励仍只被应用于境外非政府组织。这种区别对待的体系不仅局限了运行良好的境外非政府组织(包括教育机构、科技组织等)所能产生的积极效益, 而且实际上损害了国家利益。

4. 《草案》将安全问题界定为境外非政府组织的最重要特征, 这种界定使其与社会主义现代化建设相矛盾, 因为中国应当最大程度地利用社会组织进行社会主义现代化建设, 从这一点来看, 《草案》有悖于社会主义现代化建设精神。林尚立教授有一个合理的提醒, 认为境外组织可能会对中共的执政造成挑战。但很难说如果境外非政府组织能够像本土非政府组织一样管理良好, 跟随党的领导和路线方针, 致力于发展社会生产力的目标, 也会对党造成任何挑战。实际上, 如果能够管理适当, 境外非政府组织是可以像企业一样帮助中共在带领中国实现中国梦的过程中增强先锋领导力作用。无视境外非政府组织可能作出的贡献其实是另一种自相矛盾的想法, 这种自相矛盾体现在两个方面。一方面, 它暗示中共没有能力摆脱它所面临挑战, 这部《草案》是一种打折扣的应对挑战的方式。但是这种说法是荒谬的。另一方面, 它暗指非政府组织并不会给国家和人民带来任何积极作用, 他们始终需要被盯着, 因为他们本质上是敌对势力。这种想法暗指中共的弱点, 认为《草案》试图修正自1989年以来在中国进行社会主义现代化建设过程中所犯下

working toward China's Dream. To ignore that productive capacity is to instill another contradiction. On the one hand it would suggest that the CCP is incapable of ridding the state of challenges to its authority, it is reduced to managing a challenge to its authority through the Draft NGP Law. But that is a preposterous declaration. On the other hand it suggests that NGOs bring no positive benefit to the state and the people, and must be watched carefully because they are inherently subversive. Yet that also suggests the weakness of the CCP and the possibility that the course of socialist modernization since 1989 at least, has produced substantial error that the Draft NGO Law acknowledges. This might appear to be another preposterous declaration. Still, the imposition of an oversight architecture based in the State Council Public Security Department (art. 7 et seq.) can lead to the conclusion that those who created the Draft NGL Law held one of these two preposterous declaration. It might have been more auspicious for the Draft NGO Law to consider vesting authority for the management of all NGOs in the Ministry of Civil Affairs under a traditional multi-level management system (分级管理, fenji guanli). To that end, the technical regulations for organization (Articles 10 et seq.) represent an administrative exercise rather than one best served by burdening security services. In this respect, perhaps Wencheng Zhang might have a better approach (张文成, 关于我国执政党与民间组织关系的思考, 当代世界与社会主义 Zhang Wenwu, Thought on the Relationship between the Ruling Party and Social Organizations). And indeed, burdening the security services with such administrative burdens might reduce the efficiency of these important operations by diverting focus and resources from protecting the state against security breaches, to tending to the minutiae of administrative regulation.

的错误。这也是一种荒谬的论断。然而, 从由公安部门建立起来的监督架构(第7条)可以看出, 《草案》的起草者必定持有以上两种谬论中的一种。《草案》如果保留了原有的民政部治理下的分级管理体制可能会使得此法更加有可执行性和有效性。为此, 第10条所规定的操作细则实际更符合行政化管理职能, 而非安全管理职能。在这方面, 张文成所论述的方法可能更好。(张文成, 关于我国执政党与民间组织关系的思考, 当代世界与社会主义。)而且事实上, 这些行政程序实际上降低了公安部门的工作效率, 迫使公安部门不得不将大量本应用于国家安全保护的精力和资源转移到行政手续这些细枝末节上。

5. Yet it is also clear that security and the preservation of the Chinese path are of central importance to the vanguard role of the CCP and the protection of the state. There can be no argument with that proposition as a matter of the CCP basic line and the normal and customary objectives of a government protective of the nation. Yet the constraints on foreign NGOs are no different than those that ought to apply to domestic NGOs. But the security concerns should not produce contradiction. There should be a sensitivity to aligning what Wang Ming has identified as the three important policy orientation of the regulation of the social organization sector (irrespective of the origin of the organization (王名, 走向公民社会——我国社会组织发展的历史及趋势, 吉林大学社会科学学报 Wang Ming, History, Development and Trends of Social Organization in China). There is no reason, for example that Article 5 (“Foreign NGOs carrying out activities within mainland China shall abide by Chinese laws; must not endanger China's national unity, security, or ethnic unity; must not harm China's national interests, society's public interest, or other groups' and citizens' lawful rights; and must not violate public order and customs”) should not apply to all NGOs thorough well crafted laws clear and easy to understand and apply. Yet even Article 5 contains ambiguities—the provision forbids illegal for-profit, political, or religious activities, but that seems to suggest that some of these activities might be legal—though they are not specified. But security concerns, concerns that affect all NGOs operating in China, become needlessly complicated when distinct rules exist for managing domestic and foreign NGOs. There is no reason that regulations cannot be developed that specify activities that are forbidden and that provide safe harbor rules so that any NGO can be assured that if they follow the rules they will be acting within the law.

5. 当然, 安全以及对对中国道路的保护对于中共的先锋领导角色和对国家的保护是极其重要的。中共的基本路线和政府对国家利益的惯常性保护都是毋庸置疑的。然而, 对境外非政府组织的限制从原则上并不应该有别于本土非政府组织。不应利用安全问题制造没有必要的矛盾, 也不应把非政府组织“一刀切”地当作国家安全问题来处理。无论这些非政府组织来自于境内还是境外, 王明教授所主张的社会组织规则的三种发展假设应当向得到重视。(王名, 走向公民社会——我国社会组织发展的历史及趋势, 吉林大学社会科学学报)以第5条为例, 该条的内容应该通过一项更为清楚和容易理解的法律使其得以适用于所有非政府组织。然而即便是这一条也包含了歧义。该条禁止非法的营利性、政治性和宗教性活动, 似乎暗示有的营利性、政治性或宗教性活动是合法的, 但是却没有明确指出哪些是合法的。安全问题会影响到在中国境内的所有非政府组织, 所以区分境外和本土反而显得没有必要了。为什么不制定一部法律, 既能够说明有的行为是被禁止的, 同时也提供安全港规则, 使得任何非政府组织都能够确信如果他们遵守这些规则, 他们就是在法律范围内行事。

6. There is another contradiction to changing the focus of foreign NGO management from civil administrators to security services. NGOs that must worry at every step about whether they satisfy security concerns will tend to devote less resources to the good work for which they are formed. Where the allocation of resources become unreasonable—likely under a regulatory scheme that focuses on security rather than socialist modernization within the Chinese political context—then productive forces that might be used to advance the economic resources of the nation will be misallocated. And indeed, a regulatory system that becomes administratively burdensome, that makes the costs of complying with administrative rules excessive produces two distinct threats. The first is misallocation of economic or productive forces, dissipated in compliance issues. The second, and one that produces a deep contradiction, is that it increases the possibility of corruption. The later would produce a direct contradiction with the core CCP anti-corruption line and the application of mass line principles to the internal operation of both administrative state and CCP. These issues are particularly acute with respect to the “Temporary Activities” Rules (Articles 18-22). These create substantial administrative burdens with little evidence of benefit to the state. It might have been easier to permit Chinese institutions, including enterprises, NGOs, and state organs, to develop a system of temporary sponsorship, and to place the administrative burden on those institutions who seek to bring foreign NGOs to China on a temporary basis. This applies with equal force to collaborative efforts among educational institutions and to aid efforts in the face of natural catastrophes (earthquakes, storms and the like). The current Draft NGL Law suggests bureaucratism and bourgeois obstructionism that has been rejected in the CCP Line. It is not clear that

6.还有另外一种矛盾是由将《草案》的关注点从民政机构转向安全部门所引起的。非政府组织会因为过于担心安全问题而减少投入。当《草案》过分关注安全问题而非社会主义现代化建设时，资源分配就会变得不合理，能被用于提高国家经济资源的生产力就会被错误分配。事实上，一个行政负担过重、并需要极大的花费匹配其行政规则的监管系统，可能产生两种后果。第一个是经济资源或生产力资源分配不当，大量资源被消耗在应对合规问题上。第二个是滋生腐败，这一点更为糟糕，它与中共在党和国家内部实施的反腐政策和贯彻群众路线的基本原则直接矛盾。这些问题在“临时活动”（第18条至第22条）这一章体现得尤其严重。关切于国家的极其微小利益的事项却会造成极大的行政负担。允许中国本土组织，包括企业、非政府组织和国家机关，建立一个临时赞助系统，使其承担其引进境外非政府组织的行政责任，可能会相对容易一些。这一点也可适用于教育机构间的合作，以及突发自然灾害（比如地震、洪水等）时的紧急救援。《草案》隐含着中共基本路线所反对的官僚主义和资本主义式的阻碍手段。而《草案》第六章（监督管理）是否能有效避免这些问题还不得而知。

Chapter VI (Supervision and Management) avoids these errors.

7. The regulation of Conduct Provisions (articles 23-38 suggest a suspicion of foreign elements that cannot be managed through law in the ordinary course. That itself suggests a weakness of the Chinese political and administrative structures that are belied by the reality of the current state of Chinese political stability and advanced administrative systems. A few examples suggest the difficulty. Article 26 on funding unnecessarily constrains foreign NGOs from raising or using funds. The law could reach the same result by requiring substantial and real time disclosure of funding sources, rather than by micro-regulation of funding activities. Of course, the state is free to specify a list of forbidden sources (terrorist organizations, criminal enterprises etc.). But all state do that and such laws should apply equally to Chinese as well as foreign NGOs. Beyond that, precise disclosure rules serve the state more efficiently, reduce the possibility of corruption and law breaking, and enhance the productive forces of NGO activity. Similarly, Article 32-38 appear to create a contradiction with the CCP basic line (“The Party must adhere to the basic state policy of opening up and assimilate and exploit the achievements of all other cultures. It must be bold in making explorations and breaking new ground in reform and opening up, make its reform decisions more scientific, better coordinate its reform measures and blaze new trails in practice”). It also suggests ethnic and national chauvinism detrimental to the scientific advancement of Chinese economic, social and cultural life. These provisions build a wall around the people when, under the direction of the CCP, the vanguard obligation appears to direct that these walls be refashioned to protect but not to prohibit advancement through the acquisition of knowledge from all sources. Rather than the complex rules, difficult

7.第四章行为规范暗示了当前的普通性法律规范并不能实现对境外因素的有效监控。而这也恰恰暗示出中国政治和行政体制的弱点实际上被政治的稳定性和先进的管理系统所掩饰了。几个例子可以说明这一点。第26条对境外非政府组织募集和使用资金进行了不必要的限制。《草案》本可以通过要求披露资金来源和限定时间来达到此目的，而不是通过微观的活动监管。当然，国家也可以自由制定禁止性资金来源清单（如恐怖组织、犯罪集团等）。但是这样的条款应当同等适用于境内外非政府组织。除此之外，准确的信息披露能够更有效地服务于国家，减少腐败和违法的可能性，提高非政府组织活动的推动力。同样地，第32条至第38条也有违于党的基本路线：“要坚持对外开放的基本国策，吸收和借鉴人类社会创造的一切文明成果。改革开放应当大胆探索，勇于开拓，提高改革决策的科学性，增强改革措施的协调性，在实践中开创新路。”这也说明种族主义和民族主义不利于中国经济、社会和文化的科学发展。这些条款在人们周围树起了高墙，而根据中共的发展目标，其先锋义务意味着这些被翻新的高墙应当用于实施保护而不是用于禁止从不同的资源获取知识。《草案》的起草者应当认真学习《宪法》总纲，并在此背景下考虑推行“中国共产党党组条例（试行）”的效用 ([http://news.xinhuanet.com/politics/2015-05/29/c\\_1115455011.htm](http://news.xinhuanet.com/politics/2015-05/29/c_1115455011.htm))（该条例规定在社会组织中设立党组），而非仅适用复杂而难以执行的规则。

to enforce in context, the writers of the Draft NGO Law might study with greater care the General Program of the Chinese Communist Party Constitution and in that context to consider the utility of using “Regulation of Leading Party Members' Groups of CCP” (Trial Implementation) 中国共产党党组工作条例 (试行)

([http://news.xinhuanet.com/politics/2015-05/29/c\\_1115455011.htm](http://news.xinhuanet.com/politics/2015-05/29/c_1115455011.htm)). (Specifying rules for the inclusion of Leading Party Members' Groups in organizations).

8. It is not clear how certain provisions of the Draft NGO Law meet the basic requirements of the Four Comprehensives (Four-pronged Comprehensive Strategy), especially to comprehensively deepen reform and to comprehensively govern the country according to law. For example, Articles 57 and 58 quite correctly provide for strictness in preventing violation of law. Yet unfortunately they appear to vest the public security organs with power to confiscate property and detain individuals without the intervention of either the procuratorate or the courts. Moreover, the extent of administrative discretion in the control of the activities of foreign NGOs weakens the ability of NGOs to conform to law or to constrain officials within a cage of rules. For example, Articles 3 and 5 delineate activities that NGOs may engage in and those that are forbidden. Yet these provisions are subject to the discretionary power of public security department because these two articles closely related to the regulatory power (registration approval and inspection approval) of the public security department that empowered by this bill. But it is precisely that discretion that increases the possibility of corruption and reduces the power of law to provide rules for enterprises seeking to act lawfully. Indeed, in order to fully appreciate acceptable and unacceptable conduct prescribed by the authority in article 3

8. 《草案》中的一些条款是否能满足“四个全面战略布局”仍是未知，尤其是《关于全面深化改革若干重大问题的决定》和《全面推进依法治国若干重大问题的决定》。例如，第57条和58条作出了非常严格的预防违反此法的规定。然而不幸地是，他们在赋予公安机关没收财产和拘留的权力时，却未有检察院或法院的参与。此外，管理境外非政府组织的行政自由裁量权将非政府组织锁进了规则的笼子里，大大地削弱了非政府组织的活动能力。例如，第3条和第5条规定了非政府组织可以从事以及禁止从事的活动范围。然而这些条款都受制于公安部门的自由裁量权，因为这两个条款与公安部门所拥有的监管权（注册审批和检查审计）紧密相关。正是这种自由裁量权容易滋生腐败和损害法律权威。实际上，要充分理解第3条规定的许可和第5条规定的禁止，必须结合第14条（不予登记），45条（应接受监督管理）46条（业务主管单位），47条（公安机关），59条(导致吊销登记、取消注册以及构成犯罪的行为)来看。

(permitted) and 5 (forbidden), these must be read with the article 14 (illegibility for registration), article 45 (acceptance of supervision and management), article 46 (Competent operation entities' authority), and article 47 (Public security operation entities authority), and article 59 (detailed conducts result cancelation or revoke of registration and even criminal liability).

9. Lastly, the Draft NGO Law does not appear to consider pragmatism and the international position of China to the extent that might be useful. Hu Jintao, in his report to the 18th CCP Congress 2012 emphasized (Part XI) of the need to foster “equality, mutual trust, inclusiveness, mutual learning and mutually beneficial cooperation in international relations and making joint efforts to uphold international fairness and justice. . . . A country should accommodate the legitimate concerns of others when pursuing its own interests; and it should promote common development of all countries when advancing its own development. Countries should establish a new type of global development partnership that is more equitable and balanced, stick together in times of difficulty, both share rights and shoulder obligations, and boost the common interests of mankind.” The Draft NGO Law suggests a contradiction here. In a sense, it is structured to deliver a message that China mistrusts foreign organizations. That is unfortunate for two reasons related to the CCP’s vanguard obligations. First, as noted earlier, that approach runs counter to the essence of socialist modernization and the structures of opening up. But it is also neither pragmatic nor helpful to China’s efforts to “actively participate in multilateral affairs, support the United Nations, G20, the Shanghai Cooperation Organization, BRICS and other multilateral organizations in playing an active role in international affairs, and work to make the international order and system more just

9. 最后，《草案》并不务实也没有考虑对中国的国际地位可能产生的影响。2012年，时任国家主席胡锦涛在中共第十八次全国代表大会上强调，要促进“平等互信、包容互鉴、合作共赢的精神，共同维护国际公平正义……合作共赢，就是要倡导人类命运共同体意识，在追求本国利益时兼顾他国合理关切，在谋求本国发展中促进各国共同发展，建立更加平等均衡的新型全球发展伙伴关系，同舟共济，权责共担，增进人类共同利益。”《草案》却在此引发了一个矛盾。在某种意义上，《草案》所释放的信息是对外国组织的不信任。考虑到中共所承担的先鋒义务，这种不信任是不幸的。原因有两个。一方面，正如前面所提到的，这种不信任有违于社会主义现代化建设和改革开放的精神实质。它既不务实，也不有利于中国在“积极参与多边事务，支持联合国、二十国集团、上海合作组织、金砖国家等发挥积极作用，推动国际秩序和国际体系朝着公正合理的方向发展”（胡锦涛在中共第十八次全国代表大会上所做的报告，第十一部分）方面所作出的努力。目前的《草案》很可能会对中国在大陆之外开展的非政府组织项目的视角和态度产生不利影响。它会招致更多的对中国所致力于的多边努力的批评——例如对孔子学院和其他组织的援助，从而损害中国的国际话语权。希望中共高层能够在制定长期政策和战略时，更广泛地考虑这些重要的因素，并在最终确定用以规范境内外非政府组织的规范时采纳它们。

and equitable” (Hu Jintao, Report to 18th CCP Congress 2012, Part XI). This Draft NGO Law is likely to detrimentally affect China’s efforts to project its own views and perspectives through Chinese NGOs operating outside of the Mainland. It invites foreign states to view more critically Chinese efforts to engage in multilateral efforts—everything from the Confucius Institutes to other organized efforts for aid and education. It is hoped that senior CCP officials will consider these broader and important elements of long term Chinese policy and engagement as it finalizes the forms that its necessary regulation of NGOs, foreign and domestic, will take.