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Creating a Harmonious Society

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# China's Civil Society: Controls, Limits and Role in a "Harmonious Society"

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The rise of civil society organisations is a global phenomenon that started after the end of the Cold War, and China also has recently seen an increase of these organisations that work on a diverse range of issues inside the country. This article provides an overview of domestic regulations that govern the work of these organisations in China, and discusses how these regulations and measures used to control their operations affect the development of a genuine open and transparent civil society space in China.

The rise of the global civil society in the 1990s and the emergence of an increasingly global economy reflect a new system of power distribution in the international political order. "Civil society organisations" (CSOs) are organisations that originate outside the state apparatus and business, and include those that are more widely known as non-governmental organisations (NGOs). In 1996, the United Nations outlined its formal association with civil society organisations in an Economic and Social Council (ECOSOC) resolution by establishing accreditation procedures through the Committee on Non-Governmental Organisations. <sup>(2)</sup> Today, non-governmental organisations can apply for general consultative status and be accredited to take active part in UN conferences and summits. While only 714 organisations were accredited to ECOSOC in 1992, <sup>(3)</sup> today the number stands at 3,051. <sup>(4)</sup>

## China's regulatory framework for CSOs

Mirroring the global scene, there has been a proliferation of CSOs, including NGOs, charities, foundations, advocacy groups and professional associations, in China within the past decade. <sup>(5)</sup> Official Chinese figures from 1989 in the early days of its statistical record keeping on these organisations placed the number at slightly over 200,000, <sup>(6)</sup> while the 2006 statistics counted 354,000 CSOs. <sup>(7)</sup> However, due to restrictive registration policies, scholars estimate that the number of CSOs in 2006 actually exceeded 3 million. <sup>(8)</sup>

This wide gap between official and unofficial numbers stems in part from the fact that China lacks a clear regulatory framework governing the definition and operation of CSOs. For instance, terminologies on how various CSOs are officially classified versus how they are commonly referred to are confusing and, at times, overlapping. In addition, the term "non-profit organisation" (NPO) has recently become another common and more favourable reference for civil society in China, given the non-profit nature of CSOs that is required by law. However, both terms NGO and NPO, though often colloquially used to refer to China's civil society, lack official definitions and are outside China's regulatory regime.

This article provides an overview of domestic civil society organisations in China and the regulations that govern and af-

1. This article was prepared by Human Rights in China (HRIC) staff: Bonny Ling, Senior Researcher; Wing Lam, independent research consultant and former HRIC Research Program Officer; Elisabeth Wickeri, Law Program Director; and Tina Tan, Law Program Officer. HRIC acknowledges the invaluable assistance provided by interns V.H. and M.P. in 2007. The development of civil society in China is a key thematic focus of HRIC's research and advocacy programme ([www.hrchina.org](http://www.hrchina.org)).
2. United Nations Economic and Social Council (ECOSOC) Resolution 1996/31, "Consultative Relationship between the United Nations and Non-Governmental Organisations," 25 July 1996, [http://www.un.org/esa/coordination/ngo/Resolution\\_1996\\_31/index.htm](http://www.un.org/esa/coordination/ngo/Resolution_1996_31/index.htm).
3. Jens Martens, "The Future of NGO Participation at the United Nations after the 2005 World Summit," Global Policy Forum Europe, 2006, 2, <http://www.globalpolicy.org/eu/en/publ/briefingpaper-ngoandun01-2006.pdf>.
4. "NGO Related Frequently Asked Questions," Economic and Social Council Committee on Non-Governmental Organisations, accessed on 17 October 2007, <http://www.un.org/esa/coordination/ngo/>.

fect their work. It examines the various layers of regulatory control that are used to limit the activities of Chinese CSOs beyond government-sanctioned activities. As a whole, these imposed tactics obstruct the development of civil society as a meaningful venue for participatory and inclusive political and social dialogue that could mediate tensions and address grievances in society, and in so doing, contribute to a genuine harmonious society in China.

## Overview of Civil Society in China

In China, the fundamental aspects of CSOs, literally translated as *Minjian zuzhi* 民間組織 are not well understood, given the complex and often repressive regulatory regime that restricts their work. Several key regulations issued since 1998 have attempted to officially classify all CSOs into the three main categories of social organisations, foundations and popular non-enterprise work units (PNEWUs).<sup>(9)</sup> The legal definitions for these categories are:

- Social organisations or SOs (*Shehui tuanti* 社會團體社團, *She tuan* 社團)—“voluntary groups formed by Chinese citizens in order to realise a shared objective, according to their rules and to develop non-profit-making activities.”<sup>(10)</sup>
- Foundations (*Jijinhui* 基金會)—“non-profit legal entities established in accordance with these regulations that employ assets donated by actual persons, legal entities or other organisations for the purpose of engaging in some public benefit enterprise.”<sup>(11)</sup>
- Popular non-enterprise work units or PNEWUs (*minban feiqiye danwei* 民辦非企業單位 or private and non-commercial entities)—“social organisations carrying out social service activities of a non-profit nature, run by enterprises and institutional work units, social groups and other social forces, and also individual citizens using non-state assets.”<sup>(12)</sup>

Different English translations exist for the type of organisations known as popular non-enterprise work units (*minban feiqiye danwei* 民辦非企業單位), such as “popular non-enterprise work units,” “private non-enterprise work units,” “private NPOs” and “non-governmental, non-commercial enterprises”—thus adding another layer of confusion when discussing civil society in China. This article uses the translation “popular non-enterprise work units,” as it more closely reflects the original terminology in Chinese.

As of the end of 2006, there were approximately 354,000 registered CSOs throughout China. Of those, approximately 192,000 were social organisations; 1,144 were foundations; and about 161,000 were PNEWUs.<sup>(13)</sup>

## What is an NGO in China?

In addition to these various definitions of the different categories, some fundamental conceptual problems remain. There is still a lack of clarity on NGOs in China because the terminology is referenced in neither legal nor official documents. For example, what are seen as home-grown Chinese NGOs are usually registered as social organisations. Some of these organisations have management structures that are appointed by the government, leading them to be labelled as GONGOs, a somewhat contradictory term

5. Wu Zongzhi, “NGOs—Providing A Link,” *Beijing Review*, 26 May 2005, <http://www.bjreview.com.cn/En-2005/05-26-e/china-1.htm>. See also Lin Lihong, *Minjian zuzhi dengji zhi falu wenti yanjiu* (A Study of Legal Issues on the Registration of Civil Society Organisations), *Hubei Social Sciences*, no. 2, 2005, available at [http://www.chinahexie.org/Article\\_Show.asp?ArticleID=2923](http://www.chinahexie.org/Article_Show.asp?ArticleID=2923) and [http://www.chinahexie.org/Article\\_Show.asp?ArticleID=2924](http://www.chinahexie.org/Article_Show.asp?ArticleID=2924).
6. Li Xiaoyun *et al.*, “Operation and Accountability of the CSOs in China,” Action Aid China Office, 6, 2006, <http://www.governancelink.org/IssueNo1Apr07/CSOaccountabilityChina.pdf>. This 1989 number, however, only refers to social organisations, and it is not clear whether the two other CSO categories of foundations and popular non-enterprise work units are also included in this count due to the ambiguity in the classification system as discussed in the article.
7. *2006 nian minzheng shiye fazhan tongji baogao* (The 2006 Report on Civil Affairs Development and Statistics), Ministry of Civil Affairs of the People's Republic of China, 2006, <http://www.mca.gov.cn/news/content/recent/2007523122309.htm>. This figure, however, is a rounded number. The precise number of registered civil society organisations in China in 2006 is 354,393, according to *2006 niandu minjian zuzhi tongji shujie* (Summary of Statistics of Civil Society Organisations in 2006), China Civil Society Organisations Website hosted by the Bureau of NGO Administration under the Ministry of Civil Affairs, <http://www.chinanpo.gov.cn/web/showBulletin.do?id=27550&dictionary=2201>.
8. Li Xiaoyun *et al.*, *op. cit.*
9. *Shehui tuanti dengji guanli tiaoli* (Regulations for the Registration and Management of Social Organisations, hereinafter Social Organisations Regulations), 1998; *Jijinhui guanli tiaoli* (Regulations for the Management of Foundations, hereinafter Foundations Regulations), 2004; and *Minban feiqiye danwei dengji guanli zanxing tiaoli* (Provisional Regulations for the Registration and Management of Popular Non-Enterprise Work Units, hereinafter Popular Non-Enterprise Work Units Provisional Regulations), 1998.
10. Social Organisations Regulations, art. 2. An unofficial English translation of the regulations is available on the website of the China Development Brief, <http://www.chinadevelopmentbrief.com/node/298>.
11. Foundations Regulations, art. 2. An unofficial English translation of the regulations is available on the website of the China Development Brief, <http://www.chinadevelopmentbrief.com/node/301>.
12. Popular Non-Enterprise Work Units Provisional Regulations, art. 2. An unofficial English translation of the provisional regulations is available on the website of the China Development Brief, <http://www.chinadevelopmentbrief.com/node/300>.
13. “The 2006 Report on Civil Affairs Development and Statistics,” *op. cit.* The precise number for registered social organisations is 191,946 in 2006, while it stands at 161,303 for registered PNEWUs, according to “Summary of Statistics of Civil Society Organisations in 2006,” *op. cit.*

meaning “government organised non-governmental organisations.” Organisations that do not register are considered to be operating illegally and risk being closed down by the authorities. Some critics have even argued that home-grown NGOs do not exist in China, due to the fact that such organisations must be first registered and sponsored by a relevant government department or authority that oversees the organisations’ activities—thus making all NGOs virtually dependent on government for their registration and continued survival.

Nevertheless, the term NGO is used by the media, academia and people who work with such organisations in China as a loose and generic reference to all the different types of social organisations in China. However, the government and some NGOs often prefer to use the broader designation of CSOs to deflect attention away from their supposedly “non-government” nature and skirt the sensitive question of their funding.<sup>(14)</sup> The label of NGOs is, therefore, used alongside the three official designations and often is meant to include both registered and unregistered organisations that are not captured by official statistics.

### Overlaps and ambiguities

Despite these classifications, in practice there is a considerable amount of overlap between the different types of organisations. The government sometimes uses these terms distinctly, while at other times assigns certain organisations to more than one classification. For example, according to the Provisional Regulations for the Registration and Management of Popular Non-Enterprise Work Units, a social organisation is also a sub-group of PNEWU,<sup>(15)</sup> despite the fact that there are two separate regulations governing their registration. The regulatory framework also lacks a clear, official explanation of all the different categories. All these factors, along with the ambiguous definitions and application of classifications, contribute to the confusing nature of the topic of civil society in China. These factors all hinder an accurate discussion on how these organisations are controlled by the authorities through a variety of regulatory barriers to limit their effectiveness.

### Controls and Limits

There are a number of functional barriers to limit the entry and operation of CSOs in China. The overall effect of such policies is that the civil space where these organisations can carry out their work can be arbitrarily curtailed by the gov-

ernment. These barriers, therefore, serve as overall control on the emergence of the civil society that could challenge state policies.

### Control of entry

The first level of control is exercised at the entry level. To achieve legal status, China’s CSOs must first acquire approval and sponsorship from a Party or government department or state-affiliated organisation that works on a related subject. The group must then apply for registration to the Ministry of Civil Affairs (MOCA),<sup>(16)</sup> which only allows one social organisation with the same mandate in each administrative area.<sup>(17)</sup> In this way, not all groups manage to secure sponsorship, especially those that advocate issues that are deemed too politically sensitive by the government.

The registration requirement is an opportunity for the Chinese bureaucracy to prevent the establishment of problematic groups. A prominent local HIV/AIDS-awareness group called the Beijing Aizhixing Institute of Health Education (*Beijing Aizhixing Jiankang Jiaoyu Yanjiusuo* 北京愛知行健康教育研究所) was ordered to change its name when it applied to register as a social organisation with the MOCA.<sup>(18)</sup> The order followed the release of a report by the Aizhixing Institute critical of the ways that the Chinese government was proposing to use foreign funding for HIV/AIDS programmes.<sup>(19)</sup> However, the organisation was officially told that the name had been taken so it should choose a new one or close down operations. This demonstrates how the Chinese bureaucracy often functions in such a way as to prevent groups that it dislikes from operating legally as a registered CSO. In the end, the organisation renamed itself the Beijing Zhiaixing Information and Counselling Centre.<sup>(20)</sup> Many CSOs choose to avoid the bureaucracy all together by

14. See also Andreas Edele, “Report: Non-Governmental Organisations in China,” Center for Applied Studies in International Negotiations, May 2005, <http://www.casin.ch/web/pdf/chinafinal.pdf>.

15. Popular Non-Enterprise Work Units Provisional Regulations, art. 2.

16. Social Organisations Regulations, art. 6, Foundation Regulations, art. 6, and Popular Non-enterprise Work Units Provisional Regulations, art. 5.

17. Social Organisations Regulations, art. 13.

18. “Aids Group Told to Change Name or Close,” *South China Morning Post*, 24 March 2005. When the group attempted to obtain a business registration with the State Administration for Industry and Commerce, they were also told that “Health Education” from its title was not the name of an industry and thus not in line with the naming regulation.

19. “Chinese Authorities Threaten to Shut NGO After it Releases Report Criticising AIDS Projects (updated 3/30),” Congressional-Executive Commission on China, 5 April 2005, <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=9217>.

20. *Ibid.*

operating under non-CSO status or even without registration. Some register themselves as businesses, even though this obliges them to pay corporate taxes. According to the NGO Research Centre at Tsinghua University, it is estimated that as many as 150,000 groups are registered as companies or as research institutes, so as to avoid the bureaucracy of finding government sponsors for CSOs.<sup>(21)</sup> Other CSOs may opt to operate without registration despite the fact that local MOCA branches have the authority to close down CSOs found to be operating without the proper registration licence in their localities. In addition, without legal status, the organisation cannot borrow money from the bank or enter into contracts. "Because we can't have a bank account, it becomes very difficult to raise funds," said one Mr. Ren, who tried to form an outreach group in Xian for HIV positive patients, when he failed to find a local government department to sponsor the organisation.<sup>(22)</sup> In this way, the registration requirement represents another operational hurdle for those organisations that choose to work outside the strict regulatory framework and in the grey zone of technical illegality.

### Control through annual reviews

CSOs that have been accredited must face MOCA's annual renewal process. All CSOs must submit a report to their sponsor organisation for annual review, and such reports will then be sent to MOCA. Officials from the sponsoring government organisation and MOCA may conduct the annual review in person and may request additional information if necessary. As a result of the annual review, MOCA may renew, suspend or revoke a CSO's registration licence.<sup>(23)</sup> There are also additional specific measures on the annual review process for the different types of CSOs. For example, foundations must post their approved annual review reports at officially designated media outlets and are further subject to monitoring and questions from members of the general public.<sup>(24)</sup>

### Control of operational independence

Chinese CSOs are urged by the Chinese government to establish internal Party organisations (*Ying jianli dang zuzhi* 應建立黨組織) if three or more of its employees are CPC members.<sup>(25)</sup> This allows for Party influence and intervention in the daily operation and activities of the organisation. By 2006, out of the total number of registered CSOs in China that were required to establish internal Party organ-

isations, about half had already done so. The breakdown of those organisations that have established internal Party organisations in the three different CSO categories is as follows: 49.7% of SOs, 66.7% of foundations and 50.6% of PNEWUs.<sup>(26)</sup>

Many CSOs, especially development CSOs, do have close relations with the government, which enables them to receive international aid more easily or to have more international cooperation in their areas of work. This is particularly because there are many restrictions on CSOs' ability to raise funds from private sources. The new law on anti-money laundering promulgated in October 2006 has put up additional barriers that prevent small, grassroots CSOs from receiving funds domestically and abroad.<sup>(27)</sup> According to the law, financial institutions are required to report any large amount transaction of 200,000 yuan or above to anti-money laundering authorities.<sup>(28)</sup> Different kinds of CSOs also have different funding

21. "Helping Hands," *Time*, 1 March 2004, [http://www.time.com/time/asia/2004/china\\_reform/china\\_socialwork.html](http://www.time.com/time/asia/2004/china_reform/china_socialwork.html).
22. Howard W. French, "Citizens' Groups Take Root Across China," *New York Times*, 15 February 2007.
23. See Ministry of Civil Affairs, *Shehui tuanti niandu jiancha zanxing banfa* (Provisional Measures on Annual Review for Social Organisations), 2005; Ministry of Civil Affairs, *Jijinhui niandu jiancha banfa* (Measures on Annual Review for Foundations), 2005; and Ministry of Civil Affairs, *Minban feiqiye danwei niandu jiancha banfa* (Measures on Annual Review for Popular Non-Enterprises Work Units Organisations), 2005.
24. Measures on Annual Review for Foundations, art. 12.
25. Communist Party of China and the Ministry of Civil Affairs, *Zhonggong zhongyang zuzhibu, minzhengbu guanyu zai shehui tuanti zhong jianli dangzuzhi youguan wenti de tongzhi* (Notice Regarding Establishing Party Organisation in Social Organisations), 1998. Full text in Chinese is available at <http://www.mca.gov.cn/wjylzx/detail.asp?id=3230&keyword>. Although no such specific notices separately exist for foundations and PNEWUs, some reports appear to interpret that PNEWUs fall under the ambit of the Notice Regarding Establishing Party Organisation in Social Organisations. See *Zai minjian zuzhi zhong yao jianli dang de zuzhi, jieshou dang de lingdao. Dan ruguo moxie minban feiqiye danwei zhong dangyuan renshu buzuo san ren zenme ban?* (Civil Society Organisations Need to Establish Internal Party Organisations and Accept Party Leadership; But What Can be Done if Some Popular Non-Enterprise Work Units do not Meet the Minimum Three Party Member Requirement?), website of the Ninghai County Government ([www.nh.gov.cn](http://www.nh.gov.cn)), 2 September 2003 (re-posted on 17 July 2006), <http://www.nh.gov.cn/005/001/012/003/1011524.html>. This reiterates the observation made in the article that the categorisations of the different CSOs in China often overlap and, therefore, contribute to ambiguity and confusion as to how these organisations are regulated by the government.
26. Percentages are calculated from the numbers contained in "Summary of Statistics of Civil Society Organisations in 2006," *op. cit.* For social organisations, 25,384 out of 51,037 (49.7%) have internal party organisations; for foundations, 303 out of 454 (66.7%); and for PNEWUs, 14,877 out of 29,412 (50.6%). The total percentage was calculated as 50.1% (40,564 out of 80,903).
27. *Zhonghua Renmin Gongheguo fan xi qian fa* (Anti-Money Laundering Law of the People's Republic of China), adopted on 31 October 2006 and came into effect on 1 January 2007. Full text in Chinese is available at [http://www.gov.cn/jrzq/2006-10/31/content\\_429245.htm](http://www.gov.cn/jrzq/2006-10/31/content_429245.htm).
28. "Jinrongye jiti fengshe xihuiqian geren zunkuan ershi wan keneng bei jilu" ("Financial Institutions Required to Report Cash Deposit over 200,000 Yuan As Government Beefs up Anti-Money Laundering Efforts"), Xinhuanet, 30 December 2006, [http://news.xinhuanet.com/fortune/2006-12/30/content\\_5549547.htm](http://news.xinhuanet.com/fortune/2006-12/30/content_5549547.htm).

In recent years, many of China's civil society organisations focusing on environmental protection have been able to expand their work, due to widespread concerns on the state of China's environment as result of its rapid economic development.

requirements for operating at the national and local levels.<sup>(29)</sup> Although a 1999 law makes charitable donations tax deductible, the law is vague and difficult to implement.<sup>(30)</sup>

### Control of information and advocacy

Much of the information that CSOs seek and need for their work comes within the scope of state secrets laws and regulations, which are poorly defined and overly broad. Information as diverse as the total number of laid-off workers in state-owned enterprises; statistics on unusual deaths in prisons, juvenile detention facilities and re-education-through-labour facilities; and data on water and solid waste are classified as state secrets. The system then allows for those individuals in possession of this information to be charged with state secrets crimes. China's state secrets system, therefore, provides the government with an effective tool to control information and prohibit individuals and groups from working on sensitive issues by allowing the very information that CSOs often deal with to be labelled as state secrets.<sup>(31)</sup>

For example, in August 2002, Wan Yanhai 萬延海, a doctor and HIV/AIDS activist, was detained on suspicion of "leaking state secrets" for publishing a document on the internet detailing deaths from AIDS in Henan Province as result of government-sanctioned blood-selling centres.<sup>(32)</sup> More recently, in October 2005, Tan Kai 譚凱, founder of the grassroots environmental group *Green Watch* based in Hangzhou, was detained together with five other founding members by local authorities. Their detention was believed to be in relation to their monitoring of the situation in Huashui Town in Dongyang City, Zhejiang Province in April 2005 following local complaints that pollution from a chemical factory was destroying crops and causing birth defects. In May 2006, Tan Kai was sentenced to 18 months' imprisonment for "illegally obtaining state secrets."<sup>(33)</sup>

Various state secrets regulations also indicate which social groups the Chinese authorities are concerned about and, correspondingly, to what extent they are willing to utilise state secrets protection to suppress them. Independent political groups, illegal religious activities, illegal publications and the activities of illegal organisations are at the heart of official preoccupation with potential dissent. These groups include "domestic and international hostile organisations or movements," "minority splittist organisations," "hostile religious organisations" and "reactionary sects."<sup>(34)</sup>

The open dissemination and publication of information is a critical tool for lawyers, journalists, human rights defenders and other civil society actors to spread awareness, educate



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the public and advocate issues that affect them. The impact of the state secrets system in China is to undercut that openness and participation and discourage the transfer of, or access to, information and ideas. Many of these citizen advocates have been detained and harassed by authorities because they raise issues that are considered sensitive by the government.

29. See Social Organisations Regulations, Art. 10(5) and Foundations Regulations, art. 8(2). Although the Popular Non-Enterprise Work Units Provisional Regulations do not have a similar general provision on operation funding requirements, sector-specific funding requirements do apply. For example, a PNEWU in the science/technology category must have at least 10,000 yuan to be registered as an individual PNEWU, 30,000 yuan as a partnership, or 50,000 yuan as a legal entity. See Ministry of Science Technology and Ministry of Civil Affairs, *Kejilei minban feiqiye danwei dengji shencha yu guanli zaxing banfa* (Measures on Registration and Management on Science/Technology-Related Popular Non-Enterprises Work Units), 2005.
30. *Zhonghua Renmin Gongheguo gongyi shiye juanzeng fa* (Public Welfare Law of the People's Republic of China), adopted on 28 June 1999 and came into effect on 1 September 1999. Full text in Chinese is available at [http://www.gov.cn/ziliao/fffg/2005-10/01/content\\_74087.htm](http://www.gov.cn/ziliao/fffg/2005-10/01/content_74087.htm).
31. For more information on China's state secrets system, please see "State Secrets: China's Legal Labyrinth," Human Rights in China, June 2007, <http://hrchina.org/public/contents/41421>.
32. "State Control of the Internet in China," Amnesty International, November 2002, <http://web.amnesty.org/library/Index/ENGASA170072002?open&of=ENG-CHN>.
33. *Huanbao renshi Tan Kai bei pan yinian ban xingqi* (Environmentalist Tan Kai Sentenced to 1.5 Years' Imprisonment), Radio Free Asia, 11 August 2006, <http://www.rfa.org/mandarin/shenrubao/dao/2006/08/11/huanbao/>.
34. *Gongan gongzuo zhong guojia mimi ji qi miji juti fanwei de guiding* (Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Public Security Work), adopted on 28 March 1995 and came into effect on 1 May 1995, art. 2 (A)(7). Full text in Chinese and English is available in "State Secrets: China's Legal Labyrinth," *op. cit.*

## The Limits of Current Reforms

In May 2005, MOCA revealed that a draft amendment of the Regulations on Registration and Administration of Social Organisations had been submitted to the State Council for approval, but, as of early September 2007, this amendment has not been made public. According to domestic reports in 2005, the "dual management system" of China's civil society organisations, referring to these organisations' registration requirements with MOCA and oversight by the sponsoring government departments, would remain unchanged.<sup>(35)</sup> To this effect, state publications noted that "there are no fundamental changes in the draft revision[s]" or in the sponsor organisation requirement.<sup>(36)</sup>

At the same time, Chinese authorities have supported limited reforms to the status of domestic civil society organisations, with particular emphasis on measures that would encourage private donations to China's CSOs. Reportedly, the draft amendment relaxes the funding requirements on social organisations, especially those at the grassroots level. However, the proposed revised Regulations will continue to disallow membership-based organisations from taking hold in China. Some news reports also suggest that the planned revisions would allow the authorities discretion to register multiple civil society organisations of the same type in the same administrative area, so as to allow competition amongst the different functional CSOs.<sup>(37)</sup>

Significantly for foreign civil society organisations that work in China, it is reported that the management of these organisations will form a separate chapter in the revised Regulations. Right now, other than the Interim Regulations on Foreign Commercial Chambers (1989), there is no specific regulation or law that regulates the activities of foreign civil society organisations in China. All branch offices of MOCA, therefore, normally take the "three-nos" policy (*Sanbu zhengce* "三不政策")—"no contact, no acknowledgement and no cancellation" (*Bu jiechu, bu chengren, bu qudi* "不接觸, 不承認, 不取締")—toward foreign civil society organisations.<sup>(38)</sup> Because there is currently no official recognition of foreign CSOs that work in China, many foreign organisations instead register as for-profit businesses and pay corporate taxes or work under an approved and registered domestic organisation. The revisions will allow foreign organisations that operate in China to register. However, similar to domestic CSOs, they will fall under the dual management mechanism for their registration and operation, meaning that they will also be required to have approved sponsor organisations.<sup>(39)</sup>

## Shuttering of the Civil Society Space

Due to the registration requirement and intense oversight from the government, the amount of civil space available to these organisations remains uneven, arbitrary and dependent on current political circumstances, timing, and the level of sensitivity of their advocacy issues. Despite President Hu Jintao's calls for a harmonious society that "can only be accomplished with the participation of the masses"<sup>(40)</sup> and seeks to balance the interests between different social groups by featuring democracy, the rule of law, equity, justice, sincerity, amity and vitality,<sup>(41)</sup> various layers of control in China limit the activities of Chinese civil society organisations. This obstructs their overall development as a meaningful venue for participatory and inclusive political dialogue between diverse sectors of society and the government. The problem is most acute among marginalised social groups, especially ethnic minority groups that struggle for greater autonomy rights and minority protection through exercising their fundamental right of freedom of association.

For example, while there are officially 354,000 CSOs registered with the Chinese government, there is little information on the existence of organisations that advocate ethnic minority rights.<sup>(42)</sup> Most minority-related organisations in China focus on cultural, not political, aspects of minorities, such as folk dancing or language study. Very few domestic programmes examine human rights training or political participation for ethnic minorities, due to the sensitivity of these

35. *Wo guo niannei chutai xin shetuan tiaoli, minjian zuzhi jiang huoshidu guli* (China to Issue New Social Organisations Regulations That Will Open Spaces for Civil Society Organisations), *Nanfang Weekend*, 19 May 2005, <http://www.nanfangdaily.com.cn/zm/20050519/xw/szxw2/200505190006.asp>.

36. "Beijing Review Profiles Development, Social Role of NGOs in China," *Beijing Review*, 1 July 2005. Information cited in the "2006 Annual Report, Chapter VII on the Development of the Rule of Law and Institutions of Democratic Governance," Congressional-Executive Commission on China, <http://www.cecc.gov/pages/annualRpt/annualRpt06/CivilSociety.php>.

37. "China to Issue New Social Organisations Regulations That Will Open Spaces for Civil Society Organisations," *op. cit.*

38. *Minzhengbu buzhang Li Xueju: shewai minjian zuzhi shouci nihe fa dengji* ("Head of the Ministry of Civil Affairs Li Xueju Says Foreign Civil Society Organisations Will Be Allowed to Legally Register for the First Time"), *People's Daily*, 13 March 2007, available at <http://gov.people.com.cn/GB/46737/5465695.html>.

39. "China to Issue New Social Organisations Regulations That Will Open Spaces for Civil Society Organisations," *op. cit.*

40. "Top Chinese Leaders Join Panel Discussions," Xinhua News Agency, 7 March 2007, available at <http://english.mofcom.gov.cn/aarticle/subject/lhsessions/lanmud/200703/20070304446278.html>.

41. "Building Harmonious Society CPC's Top Task," *China Daily*, 20 February 2005, [http://www.chinadaily.com.cn/english/doc/2005-02/20/content\\_417718.htm](http://www.chinadaily.com.cn/english/doc/2005-02/20/content_417718.htm).

42. "The 2006 Report on Civil Affairs Development and Statistics," *op. cit.*



Bicyclists between the two characters meaning “the people” in Chengdu: Civil society is still far from being well established.

issues. Instead, organisations that do work with minorities in China with funding from foreign development agencies and organisations are often low-key and frame their activities around the programmatic themes of livelihood, capacity-building and gender without invoking the language of rights. This lack of domestic organisations that predominantly focus their work on minority rights in China prevents civil society from effectively reflecting and advocating minorities' concerns at the grassroots level. This contributes to the lack of real participation of ethnic minorities in the policy-making structure of the government and undermines the ability of CSOs to mediate tensions that may arise as result of public disagreements with government policies.

### **Role in China's “Harmonious Society”**

So far, the government's reaction to the growth in number of civil society organisations in China has been mixed. On one hand, it has especially recognised the strengths that such or-

ganisations focusing on poverty alleviation have in reaching disadvantaged groups more effectively than official programmes. For example, the government has started to subcontract some of its poverty relief work to organisations through a bidding process in Jiangxi, leading an official with the Asian Development Bank in Beijing to proclaim, “[This new procedure] suggests that terms like ‘building a harmonious society’ and ‘government role transformation’ are not merely rhetoric but are being at least cautiously explored and pushed ahead.”<sup>(43)</sup>

At the same time, the government is clearly wary of organisations that stray too far into what it considers politically sensitive issues, especially those that link their work to the international human rights framework and call for greater political plurality and transparency. This is demonstrated by the fact that when organisations properly affiliate themselves with a government sponsor and do not engage in overtly po-

43. Jason Subler, “NGOs Gain Currency in Rural Areas as Beijing Aims to Share Wealth,” *South China Morning Post*, 10 April 2007.



litical activities, they are praised for providing crucial assistance in detecting and combating corruption, labour abuses and violations of environmental laws.<sup>(44)</sup> However, this official assessment could change if organisations begin to adopt an increasingly rights-oriented approach to their work. For example, if civic groups start to educate individuals on their rights and assist them in seeking concrete legal redress, Chinese officials can criticise those organisations for contributing to a surge in social unrest.<sup>(45)</sup>

In recent years, China's concerns about its growing civil society have been driven by the prospect of civil society organising mass movements and what President Hu Jintao has warned as the possible emergence of another "colour revolution" in China. These fears have underscored increasing governmental supervision and scrutiny of civil society. In July 2007, Beijing authorities controversially shut down the widely-read *China Development Brief*, a non-profit online and print publication that reported on China's social development.

Responding to news of the shut down, Reporters Without Borders commented: "The closure of websites like *China Development Brief* shows that the spectre of Chinese censorship is much broader and affects news about Chinese society which is not in the interests of the Communist Party."<sup>(46)</sup> The decision to shut down this publication clearly demonstrates the vulnerability of any space that foreign or domestic CSOs are allowed to operate in China. If this "civil space" operates at the whim of the authorities, then it is not truly an independent space where processes are transparent and accountable.

Genuine flourishing of civil society organisations in China not only allows the broader public interest to be reflected in official decision-making, resulting in more effective policies that suit local circumstances. It also serves as an important mediator of societal tension by channelling popular grievances into legal and peaceful forms of protest and seeking redress. Seen in this light, individuals must be given opportunities to participate in the creation of an open and dynamic civil society without fears of retaliation when their advocacy crosses the invisible line of what is officially tolerated. While some CSOs have been able to expand their work in recent years, particularly in the areas of health and the environment, even these activists can be arbitrarily caught under state secrets charges when they cross this invisible line. For example, in October 2006, Snow Lotus (*Xue Lianhua* 雪蓮花), a student-led HIV/AIDS education group in the Xinjiang Uyghur Autonomous Region, was banned by local authorities, and its volunteers were subjected to police ha-

arrassment, reportedly for exposing a case in which 19 Hepatitis-B positive students were expelled from a local school.<sup>(47)</sup>

Individuals who attempt to organise outside of state control have been harshly dealt with by the Chinese government. A notable example is Hu Shigen 胡石根, who helped to establish the China Freedom and Democracy Party and the China Free Trade Union, and was charged with counterrevolutionary propaganda and organising a counterrevolutionary group in December 1994. He was sentenced to 20 years' imprisonment and five years' subsequent deprivation of political rights. Hu later received a seven-month sentence reduction in December 2005, but his detention was found to be arbitrary by the UN Working Group on Arbitrary Detention in the same year. Official crackdown on independent citizen associations limits the options available to Chinese citizens who seek legitimate ways to protect their interests, and these types of crackdown serve as a strong warning and deterrent to other organisers not to advocate similar causes. The wave of control and repression that we currently see in China against its journalists, human rights defenders and petitioners has wider implications on its civil society by installing a sense of self-censorship and fear of operating—leading many to question the commitment of the government to a harmonious society based on diversity and the tolerance of different voices. Fundamentally, harmony in society cannot exist without the freedom of opinion and expression, freedom of information, and the right to challenge government authority and seek legal redress—all of which are crucial for the work of civil society. The Chinese government's current method of addressing the symptoms of unrest, rather than the problems themselves, as seen in its tight regulatory framework to control the work of civil society organisations, will only heighten tensions and accumulate grievances. Therefore, the promotion of a genuine flourishing of an independent civil society must be central to the building of a peaceful, genuinely harmonious society in China. •

44. Joseph Kahn, "China Shuts Down Western-Run Newsletter," *New York Times*, 11 July 2007.

45. *Ibid.*

46. Reporters Without Borders, "Ban on China Development Brief seen as part of growing censorship of socio-economic news," 12 July 2007.

47. "China Closes Down HIV/AIDS Group," Agence France-Presse, 19 October 2006, available at [http://news.yahoo.com/s/afp/20061019/hl\\_afp/healthchinaaidsrights\\_061019182924](http://news.yahoo.com/s/afp/20061019/hl_afp/healthchinaaidsrights_061019182924).