

# China: Freedom of Association Regulated Away

Human Rights in China  
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## I. Introduction

The question of whether a “civil society” is emerging as a consequence of the rapid changes in China’s society and economy since the late 1970s has been the subject of much scholarly debate inside and outside the country for more than a decade. The fact that there are now close to 200,000 officially registered organizations and an unknown number of unregistered ones in the People’s Republic of China (PRC) might indicate an unequivocal affirmative answer.

However, this would be an overly simplistic assessment. Much of China’s associational life remains under controls stricter than those imposed in most other Asian countries, and all the indications are that these controls are set to be further tightened in 1999. In the same month as it signed the International Covenant on Civil and Political Rights (ICCPR) - October 1998 - the Chinese government passed two new laws governing “registration and management” of all non-profit organizations. These new laws provide for a system of compulsory registration and on-going government supervision of associations and non-governmental social service initiatives which is even more restrictive than the previous regulatory regime, enacted in the wake of the crackdown on the 1989 democracy movement. In the past two years, the Chinese government has frozen registration of all new “social groups”. It classifies policy issues relating to what kind of groups are “illegal” as “state secrets”. Furthermore, despite a relative relaxation of controls on public discussion of some previously-taboo topics since the beginning of 1998, arrest and imprisonment of individuals who have attempted to organize independently, or who take the debate beyond certain limits, have continued.

Scholars who have examined the complex reality of a country which is a study in contrasts are cautious in their appraisal of whether a civil society is being created in the PRC. They conclude variously that the “civil society” model may not be appropriate, that China is evolving a structure of state-society relations which might better be termed “corporatist”, or that what is arising is a “semi-civil society”.<sup>1</sup>

While answering this question is beyond the scope of this chapter, particularly since there is no set definition of the concept of civil society, our research aims to contribute a different perspective to the debate. It shows that while China’s current regulatory structure does not allow for any truly independent non-governmental organizations (NGOs) - a prohibition which may ultimately be enforced through the use of the state’s coercive powers - certain “social groups” are carving out autonomous space and engaging in some of the types of activities generally associated with this sector, while through their growing interaction with international NGOs the authorities are gaining experience of working with independent organizations. It thus illuminates one aspect of the continuing tension between official impulses towards reform and control.

As with civil society, there is no agreed definition of NGOs. However, like that term, it clearly does not encompass all groups which are not part of the government or participating directly in politics, but incorporates a broad spectrum of organizations which engage in the

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<sup>1</sup> The scholarly discussion on this topic, inside and outside China, is summarized in two articles: Yijiang Ding, “Corporatism and civil society in China: an overview of the debate in recent years”, and Heath Chamberlin, “Civil society with Chinese characteristics?”.

public sphere, through such activities as advocacy, social service and representation of interests. Certain types of NGO are more likely to be targets of government interference, such as those that are critical of the authorities, express unpopular points of view, engage in public advocacy and human rights monitoring and seek to hold government accountable; those working with or for the disadvantaged, promoting social justice and sustainable development; and those that fight against all forms of discrimination. The treatment of such NGOs delineates the democratic space available to all NGOs and the individuals who seek to form them.

This chapter approaches the issues of regulation, associational autonomy and the scope for the engagement of organizations in a civic “public space” from an activist perspective. Human Rights in China believes that the existence of independent non-profit organizations that can articulate a diverse range of interests and view points is not only crucial to the evolution of democratic structures but is also vital in ensuring that vulnerable groups are not excluded from the benefits of development and that human rights protections are available to all.

We examine both form and substance in our review of the work of what are known in China as “social groups.” The chapter presents a sketch of what types of organizations exist in China and what they do, as well as what they cannot do, referring also to activities which have met with state repression. It then provides an outline of the regulatory structure that applies to them, and looks at how this restricts their scope of activity. It concludes that increasing respect for freedom of association, assembly and expression could help to improve social order by creating better channels for the articulation of grievances and interests, and provides some recommendations for how this could be achieved.

As it covers so much ground, the chapter is of necessity a cursory overview. It does not even attempt to cover the situation in areas such as Tibet, Xinjiang and Inner Mongolia, where tension over the rights of indigenous groups alters the political and social landscape. While broad-ranging, its conclusions are preliminary owing to the relative scarcity of information on the role and character of social groups in China. Furthermore, a more complete study would have included information about exile organizations operating outside China, such as Human Rights in China itself, and more on Hong Kong groups that are increasingly engaged in development and aid work on the mainland, since these, too, are part of the overall picture. It would also look more closely at a critical issue: who controls the purse-strings for social groups and other associations, and where does the funding come from?

This points to a crucial problem: the divisions between groups working inside and outside China, and between those cooperating with the government and those cooperating with dissidents - both sets labeled “friendly” and “hostile” respectively by the authorities - mean that the extensive fieldwork and discussion with inside groups that might have been desirable was not possible. Even if they acknowledge that they share the same objectives, insiders generally feel that communication with the “hostile” groups is too risky and is likely to jeopardize their work. For the same reason, the consultation with other NGOs over conclusions and recommendations that participating NGOs carried out for the other studies in the Three Freedoms Project was not feasible in the case of China. However, a variety of individuals who have worked in and with Chinese social organizations provided valuable input and critiques of the report. Any errors, however, are entirely our own.

## II. Background

*China's basic social structure is: leading department - subsidiary unit - individual. Every social organization (whether it is an enterprise, a company, a school, a hospital, or a government organ) is first and foremost a*

*subsidiary unit of its 'leading department,' since only then is it a legal entity; every individual is first and foremost a member of a social organization called a 'unit,' and only then is he or she a member of society. For either individuals or social organizations, only when they have entered into a specified subordinate relation [to a unit/leading department] do they achieve legitimate social existence.<sup>2</sup>*

In the course of close to two decades of economic reform beginning in the late 1970s, China has evolved a certain degree of what could be called “pluralism by default”. While the authorities allow virtually no space for independent, public advocacy on social, political, environmental, economic and religious issues - whether conducted by NGOs or by individuals - NGO-type activities have been vital in filling the gaps in areas where the Chinese state is no longer able or willing to cope with social needs and demands, or to deal with negative consequences of the reform process. This development is also a consequence of the fracturing of interests within the Party-state: an unintended result of the introduction of a market economy has been the evolution of competing interests within all levels of the bureaucracy.

This, as with so many aspects of China today, is a study in contradictions. On the one hand, many individuals who have done nothing but peacefully express views critical of the Party-state's actions or policies, or attempted to exercise their freedom of association, even in private meetings, have been sentenced to long prison terms or detained for months or even years without the benefit of any judicial proceedings. People who have attempted to form independent labor organizations have often been subject to particularly severe reprisals. On the other, the number of what are known as “social groups” (*shehui tuanti*, or *shetuan* for short) - which encompasses everything from professional associations to consumer watchdogs and educational charities - continues to grow, and such groups play an increasingly important role in social life.<sup>3</sup>

The Chinese government has recognized a need for NGO-type activities, particularly in regulating the market and promoting science and technology and, to some extent, in providing social welfare services. As the state continues to dismantle the social safety net that used to protect urban China's residents, social groups have been called upon to plug the gaps. Furthermore, social groups are seen by the authorities as a way of organizing different elements of society towards common goals set by the Chinese Communist Party (CCP), and thus a mechanism of control, with major groups exhorted to “be vigilant in safeguarding the unified leadership of the Party and the stability and unity of society”.<sup>4</sup>

The authorities also recognize the value of permitting more “NGOs” in improving China's image overseas and in attracting funding from development agencies, government international assistance programs, corporations and international organizations. An increasing number of international development agencies are working in China, either directly involved in service provision, working with Chinese agencies or providing funding for Chinese-run projects. Hong Kong charities have raised large sums of money for projects such as construction and maintenance of school buildings, improving conditions in orphanages and disaster relief. Foreign investors, particularly from Hong Kong, are increasingly contributing large sums of money to charitable causes. Foreign governments, the United Nations and

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<sup>2</sup> From an unpublished paper by a Chinese academic.

<sup>3</sup> Such groups are legally defined as non-profit entities established by individuals or juridical persons (*faren*) which exist for a relatively long period of time. See Zeng Xiangping, Sun Shijie et al, *Textbook on the Legal System of Civil Affairs*. The new laws on non-profits somewhat change this classification, by creating a new category of “people-organized non-enterprise units” (*minban feiqiye danwei*) which are engaged in non-profit social service ventures, and restricting the use of the term “social group” to membership associations. For more on this, see section on regulatory structure, below.

<sup>4</sup> See CCP Central Committee, “Notice on Strengthening and Improving Party Leadership Over the Work of the ACFTU, the CCYL and the ACWF”.

multilateral agencies such as the World Bank fund projects seen as contributing towards poverty alleviation, economic development, legal reform and “good governance”.

At the beginning of the reform era, the Party-state exercised overwhelming control over all areas of social, political and economic life in China. A number of factors have contributed to the gradual diminution of such control in certain areas. These include the shift towards a more market-oriented economy and the concomitant increase in economic freedom and mobility; a resulting fracturing of bureaucratic and regional interests; the decision of the authorities to concentrate their forces on keeping the CCP in power; some recognition that the previous control model had failed to solve many social and economic problems; and, of course, the efforts of many individuals and groups to expand their freedoms. Thus the development of social groups in the 1980s and 1990s reflects the aspirations of Chinese people for autonomy as well as their growing engagement in social endeavors.

However, it is precisely such pressure from below that the authorities view as a negative consequence of the evolution of social groups. The Party-state prefers to view social groups as a “transmission belt” for its policies rather than as autonomous social actors that can monitor government and ensure that disadvantaged groups are not ignored. According to an authoritative view, their function is defined as: “liaising between the masses and the Communist Party and the people’s government, a channel through which people can participate in management of the state and society, as well as assisting the government”.<sup>5</sup> Furthermore, in the 1990s the Chinese authorities have repeatedly expressed concern that social groups could contribute to “peaceful evolution” (a purported international campaign to turn China away from socialism), citing the example of Solidarity in Poland as well as the contribution of independent organizations in other former Eastern Bloc countries to the fall of communism. The issue of the growing role of social groups is considered sensitive and officials will rarely comment on it publicly.

Thus while using social groups for their own purposes, at the same time the authorities have sought to maintain control over the sector, so that no Chinese organization may technically operate without being formally registered, unless it is granted a specific waiver. Such registration requires prior approval from a “sponsoring unit” that must be a government department, or a subsidiary unit specifically delegated by such a department to play this role. The bureaucracy responsible for organizations, the Ministry of Civil Affairs (MoCA) and its provincial and local divisions, are in charge of registering and monitoring the operation of groups, along with sponsors. In addition, the All-China Federation of Trade Unions (ACFTU), the State Council’s Religious Affairs Bureau and the People’s Bank of China have vast powers to control the formation and activities of labor unions, religious groups, and foundations, respectively. Any legitimate Chinese “NGO” must be connected to and controlled by an official body.

## Historical Overview

After the founding of the People’s Republic of China in 1949, the Chinese government gradually nationalized, co-opted or eliminated all independent organizations, including religious groups delivering social welfare services or running institutions like orphanages and hospitals, along with all professional associations, research institutions, labor unions and so on. The social functions of such groups were taken over by government departments at central and local levels, state universities, think-tanks, official religious bodies such as the Three Self Patriotic Church and the eight “mass organizations” - the All-China Women’s Federation (ACWF), the ACFTU, the Chinese Communist Youth League (CCYL), the Overseas Chinese Federation, the Federation of Literary and Arts Circles, the China Writers’ Association, the

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<sup>5</sup> See *Textbook on the Legal System of Civil Affairs*.

China Science Association and the All-China Federation of Industry and Commerce (ACFIC). (See section on mass organizations below.)

Prior to 1980, with the exception of a set of provisional rules promulgated by the State Council in 1950, there were virtually no regulations or laws governing the registration or other affairs of organizations. This is an indication of the fact that before the reform period, any groups independent of the CCP or the government were generally seen as unnecessary and dangerous. In the early years of the Cultural Revolution period (1966-1976), a multitude of Red Guard and other “revolutionary” groups sprung up, but these were short-lived and the “chaos” they created in carrying out Mao Zedong’s orders to “bombard the headquarters” of the Party and government are now seen as a negative example that is one justification for maintaining strict controls over independent organizing. However, some of these groups emerged quite spontaneously and even produced cogent critiques of the failings of the system. By contrast, also in the Cultural Revolution period even the mass organizations were closed down, not to be revived until the reform era. The “leading role” of the CCP has been enshrined in every one of the PRC’s four constitutions, and by the late 1970s when path-breaking economic reforms were initiated, every aspect of social and economic life was under the Party’s control.

Since that time, the number of social groups has grown quickly, with more than 180,000 registered by the end of 1997. But the rapid growth in numbers does not mean that Party efforts at control have been relaxed. Periodic crackdowns on what are labeled “illegal organizations” have occurred throughout the period, and have sometimes been a top political priority.

In the late 1970s and early 1980s, during what became known as the Democracy Wall movement, a number of autonomous organizations were formed in the first widespread, spontaneous popular push for democratization seen since 1949. Following the 1976 fall of the “Gang of Four” that brought the Cultural Revolution to an end, a relative relaxation in the political atmosphere combined with power struggles at the top to create an unprecedented space for all kinds of independent groups, ranging from literary societies to human rights groups. Many published unofficial magazines, as well as holding public meetings and putting up wall posters, with a major focus being exposing the brutality of the Cultural Revolution. This movement was not confined to Beijing, but spread around the country.

However, as soon as Deng Xiaoping had consolidated his power over rivals for the top leadership, the Party quickly ordered a crackdown to suppress all “illegal organizations and publications”. This restrictive attitude towards autonomous organizations was reflected in the Preamble to the 1982 Constitution, which provides that all Chinese citizens and their activities must adhere to the “Four Basic Principles” that include keeping to the socialist road, upholding CCP leadership, following Marxism-Leninism-Mao Zedong Thought and submitting to the people’s democratic dictatorship. The overarching nature of these requirements effectively nullify the basic freedoms granted to PRC citizens in the Constitution’s Article 35, which reads: “Citizens of the People’s Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession, and of demonstration.”

Since 1980, the State Council, the Ministry of Civil Affairs and other government ministries have issued over 50 different documents relating to social groups, a term that, until 1998 when new regulations were passed, technically included all non-profit organizations except for political parties (the CCP and eight subordinate “democratic” parties that accept the leading role of the CCP). Interestingly, the government has chosen to rely on administrative regulations to govern social groups, rather than passing a law in the National People’s

Congress (NPC).<sup>6</sup> As in a number of other potentially sensitive areas - the family planning policy and the media being notable examples - the authorities have preferred to stick to administrative rules rather than tie their hands with a law.

The major regulations which governed association from 1989 until 1998 were enacted in October 1989, in the wake of the suppression of the 1989 democracy movement. They were clearly seen as part of a broader effort to reassert control, which also extended to universities, news organizations and work places. Their enactment was followed by a series of purges in which a number of organizations were closed, as well as a campaign to reassert strict CCP control over social groups, particularly the mass organizations. A document from this campaign states, "It is strictly prohibited for any organization to express political positions contrary to those of the Party."<sup>7</sup> In 1991, a nationwide investigation of social groups was conducted and all were required to re-register. In the process, some 30,000 groups were removed from the register, and the number of applications for registration fell precipitously in subsequent years.

Despite the preference for administrative rules to govern the sector, law has also been proposed as an answer to the problem of control. The need for a law governing social groups has been the subject of internal debate for more than ten years, and various different versions have been drafted during this time by bodies including the NPC Legislative Affairs Committee. Clearly the principal motivation for the enactment of a law has been Party's fear of losing control of social groups; one of the earliest instructions on the drafting process appeared in a document in which the Party ordered a crackdown on illegal organizations. Although a draft "NGO law" has been on the legislative agenda of the MoCA for many years now, there is no likelihood of it being submitted to the NPC any time soon, particularly since the new administrative regulations were enacted in October 1998.

Preparations for the new regulations were apparently initiated in late 1996, and the drafting process was accompanied by a freeze on registration of new organizations, which was maintained in principle for close to two years. "The authorities fear people's organizations may be a source of socio-political instability," an insider told a *South China Morning Post* reporter, citing particular concern about links between research organizations and intellectuals previously labeled "bourgeois-liberals" by the authorities, as well as the possibility of connections between international networks and domestic groups like environmental organizations.

Following the suspension of registration in early 1997, central and local governments conducted a nationwide "rectification" involving a comprehensive audit of the political, financial and personnel situation of all social groups. The campaign was initiated after the October 1996 Sixth Plenum of the 14<sup>th</sup> CCP Central Committee which focused on combating "bourgeois liberalism" and building "spiritual civilization", warning against copying Western parliamentary democracy. A document entitled "Notice of the CCP Central Committee Secretariat and the State Council Secretariat on Strengthening the Work of Management of Social Groups and People-organized Non-enterprise Units" was issued soon after the plenum, but neither this nor a subsequent document from the State Council and the MoCA formally ordering the rectification have been made public. Officials said the campaign was aimed at improving the "quality" of social groups, yet according to the Guangzhou guidelines on carrying it out,<sup>8</sup> the five areas for investigation related primarily to their political stance and

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<sup>6</sup> While such regulations have the status of law, and are often referred to as such, they are not enacted through the legislative process and thus have a somewhat lower status. Furthermore, the NPC's passage of a law attracts more attention to the issue in question, both domestic and international.

<sup>7</sup> See "Notice on Strengthening and Improving Party Leadership Over the Work of the ACFTU, the CCYL and the ACWF".

<sup>8</sup> These guidelines were explicitly based on the "spirit" of the two national documents mentioned above, which we have not been able to obtain. However, it is safe to assume that the principal elements

their relationship with groups outside the country:

1. *Focuses of the investigation:*
  - i. *The situation of the [social group's] thorough implementation of Party policy and national laws and regulations, and the political and related aspects of its secretary-general and higher officials.*
  - ii. *The situation of the important professional activities of the social organization, particularly those scholarly exchanges related to such subjects as politics, economy and theory.*
  - iii. *The situation of [those social organizations] which have taken on social science research and survey projects proposed by organizations outside the borders, and which receive assistance or funding and so on from outside the borders.*
  - iv. *The situation regarding the participation [of social organizations] in international independent organizations and regarding people from outside the borders joining such organizations in our city or taking on honorary leadership positions in them and so on.*
  - v. *Financial activities and the management situation.*

As well as the civil affairs departments and the People's Bank of China, public security and state security organs were partners in the rectification campaign. After investigation, they were to decide whether social groups were to be retained, reformed, merged with others or struck from the register. Such problems as failing to file annual reports, carrying on activities outside the sphere of the group stated in its charter, chaotic management or lack of proper accounting were only to result in reform or merger. Organizations to be closed down, according to the Guangzhou Instructions, were those which: "Harm state security and the common interests of society by disseminating bourgeois liberal ideas or linking up with hostile organizations outside the borders", those which "Cause odious consequences in society by seriously violating law and discipline" and those which did not comply with orders to reform within a specified time.

The results of this campaign are hard to determine, since as mentioned above such matters may be considered "secret" and are certainly sensitive. However, a review of figures released by the MoCA shows that from 1996 to 1997, the overall number of social organizations actually declined from 186,956 to 181,318, and the total number has remained around the level of 1995. In nine out of 31 province-level administrations,<sup>9</sup> the number of social organizations deregistered during 1997 was over ten percent of the total number registered by the end of 1996, with the highest level being seen in Tianjin, with 29 percent of groups being forced to close, followed by Qinghai with 15.4 percent and Jiangsu with 13.4 percent. While overall 8,357 groups were permitted to register during 1997, the total number of groups declined as 13,995 were struck off.<sup>10</sup>

Some commentators claimed that the September 1997 15<sup>th</sup> CCP Congress adopted a platform of "small government, big society" which presaged a more tolerant approach to association.

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of the Guangzhou document are taken from the two national originators, as this is the common form for such campaigns initiated by the central authorities.

<sup>9</sup> Four cities which have the rank of provinces, Beijing, Shanghai, Tianjin and Chongqing, are included in this total, as well as the autonomous regions of Tibet, Inner Mongolia, Guangxi, Ningxia and Xinjiang.

<sup>10</sup> Some of the groups registered during the year could be new entities resulting from "mergers" as well as groups which had been approved for registration prior to the moratorium. One category of organizations listed in the yearly statistics for the number of social groups is those which have set up "preparatory organizations" and have submitted registration applications. A total of 13,976 groups were listed as being in this situation at the end of 1996, according to the China Law Yearbook statistics.

The following year saw intensive high-level diplomatic activity culminating in visits by United States President Bill Clinton and UN High Commissioner for Human Rights Mary Robinson to China, and a more politically-relaxed atmosphere in which calls for political reform combined with increased dissident activity and more media reporting of some sensitive topics. On 5 October, China signed the ICCPR, which guarantees freedom of association.

However, the optimism such developments engendered about the prospects for liberalization of the regulatory regime governing organizations was misplaced. The 1998 political thaw can be attributed mostly to the leadership “creating a good atmosphere” for the visits, as well as intellectuals and dissidents taking the opportunity to expand the political space. Immediately after signing the ICCPR, officials began to make clear that China had its own “interpretation” of the rights contained in the covenant and that, in any case, it might be some time before it ratified the treaty.

The new regulations, promulgated exactly eight years after the first comprehensive rules on association were enacted in October 1989, embody the central slogan of the 15<sup>th</sup> CCP Congress, “using law to rule the country” (*yi fa zhi guo*). This actually has little to do with what is commonly understood as constituting an impartial “rule of law” which applies to all equally, including the government. Under the former concept, depriving citizens of their fundamental rights is perfectly acceptable, provided there is a written rule permitting it. And the rules are generally drafted in such a way as to leave officials with broad scope to determine what they mean in practice. The new rules on association are a classic example of this approach, as the section on Regulatory Structure, below, makes clear.

**Table 1: Numbers of Registered Social Groups, 1992-1996<sup>11</sup>**

Year	Total Social Groups	Provincial Level Social Groups	Prefectural Level Social Groups	County Level Social Groups
1992	154,502	13,652	45,791	93,789
1993	167,506	16,314	53,085	97,725
1994	174,060	17,792	56,555	99,605
1995	180,538	19,001	59,309	102,215
1996	186,666	20,058	61,239	103,524

Source: China Law Yearbooks 1993-1997

### Types of Social Groups

*The function of social organizations are expressed principally in two ways: the first is to pass on the opinions and requests of the people of that organization to the Party and the government; the second is to engage in the pursuit of public interests in society in order to serve the development of their own trade or specialty.<sup>12</sup>*

Since the early 1980s, a range of social groups and foundations has emerged. In addition, some social service initiatives have been set up as companies to avoid the bureaucratic entanglements of the “registration and management” scheme. Despite their limitations and the restrictions under which they work, such organizations address a variety of pressing social problems. The following cannot be exhaustive, but seeks to give a balanced view of the range of activities which such groups engage in, focusing primarily on formally registered social groups while also mentioning other types of associational activity.

<sup>11</sup> Contradictions in these figures are contained in the original sources.

<sup>12</sup> Fan Baojun, MoCA vice-Minister, quoted in Ministry of Civil Affairs, *Collected Documents on Civil Affairs Work*, 1992

As can be seen from Table 1, currently available figures on the number and distribution of social groups appear contradictory: for some years, the official numbers appear to indicate that there are virtually no national-level social groups. But the most recent comprehensive MoCA figures available, based on statistics from June 1996, state that there are 1,800 national-level and inter-provincial groups and 200,000 organizations at province level and below. Since China has 31 province-level regions (this includes the major municipalities that have the same status as provinces), 334 prefecture-level regions (mainly cities directly under the administrative control of provincial governments) and 2,143 counties, the distribution of the above figures is hardly surprising. Local branches of some national-level or even provincial-level organizations may be required to have their own registration and would thus be counted separately from their national parents in these statistics.

According to a recent book, *The Work of Managing Social Groups*, produced by the MoCA, as of June 1996 the distribution of social groups by type was as follows: of national and inter-provincial groups, 38 percent were of a scholarly nature, 23 percent were trade related, 29 percent were specialist or expert and 10 percent were federations or umbrella organizations. At province level and below, 38 percent were scholarly, 20 percent trade, 25 percent specialist and 10 percent federations (no type is given for the remaining seven percent of groups). Unfortunately, no more detailed breakdown of the categories is given, nor any explanation of their scope. The same book states that as of 1996, China had around 1,000 foundations, including 70 nationwide institutions of this type.

Thus research-oriented organizations make up the largest proportion of social groups, with most of the “scholarly” and “specialist” under the MoCA’s classification system likely falling into this broad category. However, the few professional groups, such as the Lawyers’ Association and the Accountants’ Association, may also be included in the “specialist” category, as may some organizations devoted to the arts and sports. The trade groups are aimed at linking similar types of industrial enterprises, businesses, and economic sectors, thus facilitating government interaction with and control of such entities. Federations probably incorporates most of the mass organizations, as well as newer umbrella groups linking particular sectors.

Officially-published information and studies of social groups are somewhat sparse, although some books have been published in recent years that explain the regulatory structure that applies to social groups and present the official view of their role in society. Occasional reports on such matters appear in the MoCA’s newspaper, *China Society News*. According to internal regulations, advance permission is needed before the establishment of any new national organization may be reported in the mass media.

According to one Chinese scholar who has written on the subject: “To date no material on the situation of national-level social organizations has been made public, and no papers based on scholarly research have been openly published. Material on social organizations at the provincial, autonomous region and directly-governed municipality level are similarly meager,”<sup>13</sup> although there have been a handful of useful studies on county and township level social organizations. During the 1990s, a number of scholars working overseas have studied various social groups.

Some information about social groups is actually classified. According to 1995 regulations on state secrets in civil affairs work, information to be categorized “top secret” includes: “The situation of social organizations set up by relevant departments for special purposes and materials related to them.” Material to be classified “highly secret” includes: “The main information on social groups maintained internally relating to policy, regulations and illegal

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<sup>13</sup> Unpublished paper by a Chinese scholar.

organizations, or activities of social groups which are contrary to law, as well as investigation materials on illegal organizations and activities of social groups which are contrary to law.”<sup>14</sup>

The relative lack of reporting on the subject is a reflection of the government’s wariness about the development of autonomous organizations. In internal speeches reported by news media outside China, top leaders have repeatedly identified social groups as potential security risks and fronts for the democracy movement.

*The Work of Managing Social Groups* presents this concern from an official perspective:

*In constructing the socialist system, objective conditions have required that the state employ new forms to organize social activities, in order ceaselessly to raise the quality of the productive forces and thus to make progress in the building of a socialist democratic politics. If overall management and supervision is not exercised over the dispersed, mass-based organizations and their activities, the state will not be able to ensure that the operation of the whole of society is under a tight system of management. Therefore, increasing the management of social groups is a real necessity to guarantee the healthy development of the socialist political and economic system.*

As interpreted by a Chinese scholar, the real issue is maintaining the Party’s power. “The Party knows from its own experience that it is possible to start a mass movement capable of overthrowing a government from just a small group of about a dozen people,” a researcher at the Chinese Academy of Sciences told a reporter when questioned on this issue. “As such, control is vital. They feel they cannot allow any non-official group to gain ground in society for fear it will grow into a potentially threatening movement.”

Such attitudes persist despite the fact that social groups remain firmly attached to the state bureaucracy, as described below in the section on regulation, and that a large proportion, and probably the vast majority, of groups have actually been set up by the authorities, some for unspecified “special purposes”. This approach has been a principal answer to the perceived need for “NGOs”. More and more official bodies are setting up attached social groups, which have been dubbed by some observers “less-governmental organizations”. Such government-organized NGOs (GONGOs) may develop a degree of autonomy or may act as a proxy for government, either in making public statements to defend official positions domestically and internationally, as does the China Society for Human Rights Studies, for example, or in implementing government programs.

In some large organizations, local branches may function more like real NGOs while the national-level body continues to be dominated by service to Party policy. For example, in responding to the drastic impact of the economic reforms on women, some local branches of the ACWF have begun to play a role determined more by what they see as the needs of their constituency at the grassroots level, while others remain completely bureaucratic and unresponsive to social needs, or merely a conduit for rote implementation of CCP policy. A similar phenomenon can be observed in the ACFTU’s local union branches.

Most welfare-related government departments now have attached “NGOs” that can attract domestic and international funding for social programs owing to their non-profit, “non-government” status. Their activities generally supplement or replace government operations. Such groups include umbrella organizations such as the China Charities Federation, set up by the MoCA, which has been very successful in raising funds for social projects that would previously have been funded exclusively through the Ministry network, such as libraries,

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<sup>14</sup> The Chinese government grades secrets into three categories of classification in descending order of importance: “top secret” (*juemi*), “highly secret” (*jimi*) and “secret” (*mimi*).

orphanages and welfare; foundations designed to channel money into specific government programs, such as Project Hope and the Spring Buds, which both fund basic-level primary education in poor areas (the latter group is targeted at keeping girls in school); and groups involved in the “socialization” of services previously provided by government and/or work units at the local level.

The ACWF, the CCYL and the ACFTU have been among those organizations that have increasingly taken on welfare functions. Local branches of the ACWF and the ACFTU, for example, both run retraining and employment creation programs for laid-off workers and provide other services to the unemployed. Universities, too, have entered the arena of service provision, with a number establishing legal clinics through which pro-bono legal aid is provided. But purely charitable groups remain a very small proportion of the total social groups, not even meriting a special category in the MoCA’s classification system. By 1997, for example, the China Charities Federation had a total of 59 member organizations (some of which were federations of provincial-level charitable groups), despite its huge endowment and fundraising capacity: it claims to have raised 400 million *yuan* over the past few years.<sup>15</sup>

One ministry or department may establish a number of “NGOs”, institutes, associations and foundations to carry out different aspects of its work. For example, the National Environmental Protection Agency has several such groups, including the China Environmental Protection Foundation, the China Association of Environmental Protection Industry and the Chinese Society for Environmental Sciences. The MoCA has set up the China Social Group Research Society, and when ministry officials travel overseas they sometimes do so as representatives of this “NGO”. This pattern of affiliated social groups is replicated at all levels of the bureaucracy, partly accounting for the relatively large number of social groups currently registered in China.

Government agencies, universities and other entities have also set up research institutions, academic associations and foundations to channel money into specific areas of academic research. Such initiatives vary greatly in their degree of autonomy and level of social involvement. But certain academic and research initiatives, mainly informal groupings, are committed to an activist approach to the problems they study, particularly in the such areas as AIDS, women’s rights, poverty and rural development. An example of a more formal network is the Yunnan Provincial HIV/AIDS Network, a project of the Yunnan Province Society for the Promotion of Cooperation with International Non-Governmental Organizations, an institution established by the provincial government. The network publishes a newsletter and creates other opportunities for information sharing.

Such networks and research initiatives also frequently cooperate with, or are funded by, international NGOs and foundations, as well as intergovernmental agencies like the World Health Organization and the United Nations Development Programme. Particularly since China launched its first request for relief aid following the disastrous floods of 1991, an increasing number of development and humanitarian NGOs and international funding agencies have begun operating in China, including Save the Children Fund, Oxfam International, the Ford Foundation and Medecins Sans Frontières to name but a few. International NGOs working in China must attach themselves to a government department (sometimes unrelated to the issue they are working on) and gain approval from it for their programs, and such “gatekeeper” organizations often take a cut of the total budget.<sup>16</sup> International NGOs generally carry out their projects by providing funding to and cooperating

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<sup>15</sup> At the current exchange rate, US\$1 is equivalent to 8.3 *yuan*.

<sup>16</sup> For example, the Ministry of Foreign Economic Relations and Trade (MOFTEC) set up the China International Center for Economic and Technical Exchange (CICETE) which appears to do nothing but act as an intermediary for development projects, charging three percent of total project value for its services. UNDP, and a number of NGOs, have to work through CICETE. See “Controlling the flow”.

with government departments and officially-established NGOs and/or mass organizations. In order to appear more appealing to agencies seeking such cooperation, representatives of mass organizations and other official social groups now tend to avoid mentioning their role as “transmission belts” for Party policy.

Yunnan Province is an interesting case study of how a provincial government in the PRC can learn to work with international NGOs and thus, perhaps, discover something about the utility of independent organizations. Because of its high concentration of ethnic minority groups, its relative poverty and its problems of drug use and HIV infection associated primarily with its position on a drug-trafficking route out of Burma, Yunnan has been a major focus for international development and aid organizations. The provincial government has, despite difficult beginnings, now formed good relationships with some such organizations. Perhaps partly stimulated by this climate, some innovative networks and social initiatives have emerged within the province. For example, the provincial ACWF is setting up China’s first rehabilitation programs for sex trafficking victims.

However, observers report a serious lack of transparency on the part of both the Chinese authorities and many international agencies working in China. In such a climate, there is often little guarantee that funds will reach their intended targets, corruption can become routine and duplication is common. An example is the fact that this year three major donors, UNDP, the European Union and the German government, have initiated poverty alleviation projects in the same rural county in Yunnan Province, although the province has a total of 50 counties designated “poor”. A likely reason for this over-concentration is that in new arrangements requiring all government departments to assist in anti-poverty work, the county, Jinping, was assigned to the provincial Foreign Affairs Bureau.<sup>17</sup>

China’s more than 1,000 domestic foundations rely on government funding or raise money in society for charitable works, or a combination of the two. The term “foundation” connotes a rather broader range of activities than that for which the term is generally used elsewhere: a Chinese foundation is not necessarily just a funding agency, it may also be directly involved in the delivery of services. The China Youth Development Foundation, founded by the CCYL and other youth organizations, runs the highly visible “Project Hope”, which raises money in society to build schools and provide funds so that poor children can attend school. The ACWF has a similar affiliated foundation, the China Children’s Fund, which is responsible for the Spring Buds program, aimed at preventing girls from dropping out of school because their parents lack the money to pay their fees. A contrasting example is the National Social Science Foundation that receives the funds it disburses to support social science projects and prizes from the Ministry of Finance and is run by the CCP Propaganda Department.

An example of the scope of foundation activities is one of the most successful domestic entities of this type, the Amity Foundation. Established under the auspices of the official Protestant church, Amity describes itself as “probably China’s only officially registered but genuinely non-governmental social development organization”. The organization is involved in health care programs, educational initiatives for people with disabilities and rural development work, acting simultaneously as a funder for local initiatives, a project manager implementing development programs and a channel for funds for such programs from abroad, mainly from churches.

Many non-profit foundations and social groups run profit-making businesses. While such activities are officially tolerated, even encouraged - civil affairs departments themselves run businesses to make enough money to cover their welfare obligations - they can also divert attention and funds from the major focus of the organization concerned. In a number of cases, this blurring of for-profit and non-profit activities has led to corrupt practices. Some

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<sup>17</sup> Ibid.

“foundations” are really just questionable investment schemes. For example, in a case reported in May 1997, supposedly charitable foundations in Lufeng City, Guangdong Province, sponsored by the local Red Cross and the Sports Commission were reported to have embezzled several hundred million *yuan*. The foundations had acted as savings funds, promising individuals and groups a high return on their money. After collecting vast sums, the foundations then disappeared.

China has yet to establish a unified system of tax exemption for charitable activities, and customs duty generally has to be paid on donations of equipment, books or materials from abroad. Only “welfare factories” which employ people with disabilities enjoy tax abatements at present. A Donation Law is currently being drafted which would provide tax exemption or reduction to institutions or individuals giving gifts with no strings attached to a registered non-profit entity. However, according to some State Tax Bureau circulars, donations to certain specified organizations by both foreign-invested and domestic enterprises are already deductible as a “cost” of business.<sup>18</sup>

In the case of foreign funding, the situation is complicated by the suspicion with which any unsupervised links between social groups and the outside world are viewed. Since most international agencies must go through gatekeeper organizations such as those mentioned above, or through provincial governments, these are in a position to determine which social groups may receive funding from major foreign sources, and thus to fix development priorities. At the same time as the launch of the 1997-8 rectification campaign in late 1996, the government issued an order to all research institutions that any foreign funding for social science research, as well as any collaboration with foreign institutions or researchers in such studies, must not only be approved by the organization involved and its sponsor (if any) but also by the Foreign Ministry and the Public Security and State Security bureaus.

Although professional associations have been registered with the MoCA, these have not usually played a role analogous to a labor union in representing their members' interests. They are generally used primarily as a vehicle for information exchange both domestically and internationally. However, occasionally such professional bodies have taken up issues like pensions for their members, and there have been some indications that economic and professional associations are beginning to play a more active role. Under the 1996 Lawyers Law, lawyers' associations are accorded a role approaching that of bar associations in many other countries, being involved in vetting qualifications and disciplining members of the profession. Both the All-China Lawyers' Association and the All-China Journalists' Association have recently established committees to protect the rights of their members in the face of a rise in attacks sustained during the performance of their duties.

Business and trade associations provide an interesting picture of the relative autonomy of certain interest groups. Most business associations have been established on the initiative of the authorities, and the principal role of such organizations is to act as intermediaries between the sector concerned and the state, as well as to play a role in regulating the market. The Self-Employed Laborers' Association (SELA), which is supposed to represent the small vendors and entrepreneurs (*getihu*), was established by the Industry and Commerce Bureau. SELA leaders at the local level are generally appointed by the Bureau's local departments, and its cadres, who are considered state officials, mostly see their task as controlling the sector. While the Private Enterprises Association, which represents medium-sized private enterprises, is similar in character to SELA, ACFIC is able to represent the interests of the large businesses that belong to it through lobbying officials and providing services to members, and

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<sup>18</sup> According to “Written Reply to a Question Regarding the Taxable Status of Contributions for Public Welfare or Relief by Foreign Invested Enterprises”, donations to a specified list of large organizations of an official character, including the China Youth Development Foundation and the China Disabled Persons Federation, are tax deductible.

is represented in the National People's Congress. In a recent example of such assertive representation, ACFIC has made public appeals for laws to be enacted protecting the interests of private-sector businesses. Foreign chambers of commerce are similarly active; the Taiwan Businesses Association, for example, plays a very influential role in lobbying for its members' interests.

This demonstrates clearly that the status of the constituency represented, and its perceived clout and engagement in the system, is crucial to the nature of such official initiatives. It also highlights the fact that as with so many spheres of activity in China, the effectiveness and degree of independence of any social group depends in part on its leadership, and more particularly on the political connections its leaders have established. A prime example is the China Disabled Persons Federation, headed by Deng Xiaoping's eldest son, Deng Pufang, who is himself a paraplegic. The Federation, which is partially government-funded, has been extremely successful in getting disability issues onto the public and political agendas in China and in pushing for policies which give people with disabilities access to education and employment. Many people with disabilities are active in its top leadership, but at lower levels, officials in the civil affairs departments often play the role of Federation cadres. Deng Pufang's access to the highest levels of power has certainly been vital to the significant achievements of the Federation, which has managed to survive despite the closure of an affiliated company in a corruption scandal that implicated him.

The nature of China's political system, and particularly the strict controls the authorities still exercise over the reporting of politically or socially sensitive information, mean that public advocacy is not a method generally adopted by social groups. A China scholar described the principal reason for this: "Among the rules of the political game that influence Chinese intellectual life, the most important is what we might call the 'within establishment principle,' an unwritten Party requirement that publicly expressed views (in particular non-conformist views) must be made public through the proper Party state channels."<sup>19</sup> As most groups are intimately connected with government departments, they need not address the public directly, as they have internal channels through which to express their views. For the more independent groups, if they wish to have an impact on policy-making and resource allocation, they must focus on providing information to the government and engaging in internal discussions with the relevant actors, rather than enlisting the public in support of their cause.

A notable exception is the growing consumer protection network, which has sought to raise public awareness of consumer rights and shoddy products through media campaigns. While it is a creation of the government, which provided the impetus, personnel, funding and office space, the Consumers' Association and its local branches are playing a similar role to that of such groups in countries with fewer restrictions on independent organizations. The sector has been permitted this degree of flexibility because protecting the public from the serious hazards of substandard products is also a priority for governments at all levels, as accidents and deaths involving such products have caused significant public concern. According to a recent survey by the Association, 80 percent of consumers reported they had been deceived by sales people. Various other groups also concentrate on public education, particularly on subjects like environmental protection.

The more autonomous groups tend to be fairly small, and are often founded and run by one or several well-connected, determined and charismatic individuals. Such characteristics are needed to steer a nascent group through the bureaucratic maze it needs to negotiate to exist and function. Avoiding the most controversial topics is also essential to ensure survival. The more established of these groups are ones focusing on women, the environment and health issues.

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<sup>19</sup> See Edward X. Gu, "'Non-establishment' intellectuals, public space and the creation of non-governmental organizations in China: the Chen Ziming-Wang Juntao saga".

Among the most independent are some small organizations that conduct research and service provision aimed at women. All those known to Human Rights in China are located in large cities, and their activities are still on a very small scale. Organizations that focus on concerns of women were able to take advantage of the unique space opened up by the fact that Beijing was chosen as host of the 1995 Fourth World Conference on Women. Within this sector, the groups range from those affiliated with the ACWF to ones operated as independent businesses, while their activities include running telephone hotline and counseling services; producing radio programs and magazines aimed at women; research and education on women's studies; and more recently, legal advice and assistance. By registering as companies, rather than social groups, some were previously able to avoid the bureaucratic controls involved with registration and the on-going relationship with the obligatory government sponsor.

Counseling, telephone hot-lines and provision of advice of various kinds (and varying quality) has been a focus of a number of independent organizations, with target groups including youth and migrants, as well as women. Some relatively autonomous initiatives linked to AIDS education - and often associated with health departments and academic institutions - have also become a focus for the gay male community in a few large cities. While such groups lead a much more marginal existence than the women's organizations, they are at least able to operate, although several have been closed down after very short periods of formal existence. Furthermore, their initiators and/or organizers may find themselves effectively black-listed, unable to find formal employment owing to their association with this controversial topic. But at least they have stayed out of prison, although most have experienced short periods of detention.

As mentioned above, people who have attempted to set up independent groups focusing on such issues as human rights, labor, migrant workers and minority cultures have been subject to swift and harsh retribution. Hundreds, perhaps even thousands, of individuals are currently serving prison terms or administrative sentences under "Re-education Through Labor"<sup>20</sup> for attempting to organize associations relating to such issues, however informal. Even attempts to register independent organizations with the civil affairs departments have sometimes landed their authors in prison. Efforts to provide humanitarian relief to the families of political prisoners and of those killed in the 1989 Beijing Massacre have been labeled part of a "conspiracy to subvert the government". "Ringleaders" of loose associations of people formed to express grievances - such as peasant dissatisfaction at levels of taxation far in excess of the officially-mandated ceiling of five percent of annual income - have been sent to prison for their efforts to get the attention of the authorities.

Individuals participating in or leading Catholic groups loyal to the Vatican and Protestants organizing outside the officially-sanctioned Three Self Patriotic Church have often been harassed, detained and even sentenced to prison terms. Buildings and homes related to unsanctioned church activities have been ransacked and destroyed. But the most severe punishments have been reserved for those who have organized what are considered heterodox religious sects and traditional secret societies. During the 1980s, a number of leaders of such religious sects and societies were executed for "counter-revolutionary crimes".

Despite the real risks, however, informal associations have blossomed in China's large cities, taking advantage of both technological advances and loosened social controls. Growing numbers of bars, restaurants and cafés provide meeting places for singles clubs and discussion salons, as well as artists, gays and the "old third generation" - those who came of age in the Cultural Revolution. Adoptive parents, divorcees and people facing eviction from old Beijing

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<sup>20</sup> Under Re-education Through Labor, individuals can be sent to labor camps for up to three years by the police without a trial for "crimes too minor to merit prosecution"

homes meet to give each other support and share ideas about strategy. Beeper hotlines and websites now link up some such communities. However, informal groups are still sometimes subject to police interference if they are not associated with an established organization.

Although the government clearly sees some utility in social groups, the scope of their activities is highly circumscribed both by the firm connections they must maintain with official bodies and by the potential for trouble for them or their staff if they engage in activities the authorities view as inimical to maintaining their power. Some particular social groups may actually be more useful to the government than to their members or to the constituency they claim to serve. As well as types of activity like public advocacy, particular subjects are off-limits. On a number of occasions the authorities have even shut down independent providers of social services for going beyond what is deemed acceptable by government policy (some examples are given in Section V, below). The few more independent groups with foreign contacts have occasionally been put under surveillance. Some such organizations, or the individual activists within them, have been co-opted into the government system.

### III. Regulatory Structure

*Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.<sup>21</sup>*

#### Rules on Association

*Part of the tragedy of Tiananmen was that it marked a lost historical opportunity - comparable to the repression of the Czechoslovakian reforms in 1968 - to allow social organizations to operate as agents of gradual social and political democratization with a continued one-party framework. Instead of being harbingers of democracy, however, recognized social organizations were converted into another echelon of state control. The tension between state and society has increased in consequence and associational repression has given rise to increasingly pervasive outbursts of spontaneous activity - demonstrations, riots, protests, sit-ins, beatings and fights - in both urban and rural areas. The image of a boiler building up a dangerous level of steam pressure is an apt one.<sup>22</sup>*

The two new sets of regulations governing association enacted on 25 October 1998 - Regulations on the Management and Registration of Social Groups (hereafter the 1998 Social Groups Regulations) and Provisional Regulations on the Management and Registration of People-Organized Non-Enterprise Units (hereafter Non-Enterprise Units Regulations) - are part of a several-years long effort to reinforce CCP and government control over non-profit organizations. The new regulations extend the compulsory "registration and management" scheme to cover all non-profit ventures and close loopholes which had allowed some groups to develop a certain degree of autonomy.

The 1998 Social Groups Regulations replaced a set of regulations of the same name promulgated on 25 October 1989, rules which clearly reflected the politically-conservative tenor of the post-June Fourth era, yet had been drafted in a more liberal period before the suppression of the democracy movement. These replaced a set of Provisional Regulations on Registration of Social Groups promulgated in the 1950s, but were actually very similar in

<sup>21</sup> Constitution of the People's Republic of China, 1982.

<sup>22</sup> From Gordon White, Jude Howell and Shang Xiaoyuan, *In Search of Civil Society*, p.215.

character and method to those they superseded. The 1998 Non-Enterprise Units Regulations cover a newly-invented category of non-profit groups, extending the system of registration and control that was previously applicable only to social groups to all non-profit initiatives launched by Chinese people.

Article 1 of the 1998 Social Group Regulations state that they are enacted to “guarantee citizens their freedom of association and protect the legitimate rights and interests of social groups, strengthen the registration and management of social groups and promote the construction of socialist material and spiritual civilization”. Article 1 of the Non-Enterprise Unit Regulations states that they are enacted to “regularize registration and management” of such units and to “guarantee the legitimate rights and interests of people-organized non-enterprise units”. These are the only mentions of any rights in either of the documents. The remainder is almost entirely about constructing a comprehensive two-tiered mechanism of control for social groups and non-enterprise units.

Social Group Regulations Article 2 defines social groups as “non-profit social organizations carrying out activities within the scope of their charters which are voluntarily established by Chinese citizens to achieve the common aims of their members”. Thus social groups are now limited to membership organizations, which was not the case in the 1989 rules. Non-Enterprise Unit Regulations Article 2 defines what type of entities are to be included in the category of people-organized non-enterprise units as: “Social organizations (*shehui zuzhi*) set up for the purposes of conducting non-profit social service activities by enterprises, institutional units, social groups and other social forces, as well as individual citizens, using non-state assets.”

Overall, the registration scheme of the new Social Group Regulations mirrors the 1989 version, and the Non-Enterprise Units Regulations establish a virtually identical model. All groups and units are required to register with the Ministry of Civil Affairs (MoCA) or its departments above county level before they can begin operating. The presumption of the regulations is, in fact, against freedom of association, since there may be no activities of a group without registration. The regulations make very clear that any organization operating without having registered is “illegal” and subject to prosecution. For a national-level organization, the registration application must be made to the Ministry itself.

The civil affairs departments are also responsible for overall “management” of social groups and units, which means they are supposed to “supervise” them and conduct an annual audit of each one. But before a group or unit can even submit an application, it must have received prior “approval” from the relevant “professional leading departments” (Article 3 in both sets of regulations), which must be government departments or institutions to which government has explicitly delegated such authority (Social Group Regulations Article 6 and Non-Enterprise Units Regulations Article 5). In the past, the government has delegated some quasi-governmental bodies at ministerial level, like the China Association of Science and Technology, the Chinese Writers Association, the Federation of Literary and Art Circles and the Chinese Academy of Social Sciences, to perform this function. Those setting up a social group or non-enterprise unit are not necessarily able to pick and choose to find an appropriate department, since this will depend on the activities it intends to carry out, and, for a social group, the nature of its membership. In practice, permission will sometimes need to be sought from a number of different departments.

The “sponsoring unit” (*guakao danwei*), as it is commonly known, is responsible for ensuring that the subsidiary organization obeys the rules, and is responsible for the group’s actions. Social Group Regulations Article 28 and Non-Enterprise Units Regulations Article 20 spell out the extensive responsibilities of sponsors to “supervise” and “guide” the affairs of the social group or unit, and various other articles state that the sponsor’s prior approval is required for any change in the circumstances of the group or unit. The responsibilities of

sponsors include: supervising every stage of the application process; approving any change in personnel, activities, charter, address, funding sources, setting up of branch offices or representative offices, etc.; approving annual reviews of the group's or unit's activities and financial affairs; making sure that the group or unit abides by laws, regulations and government policies, and adheres to its charter; and facilitating any investigation of a group or unit which is thought to have violated the law. Since the 1989 regulations did not specify the elements of the supervisory role of sponsors, in the past some social groups were able to operate with little interference in practice. The new regulations make this highly unlikely.

As well as meeting the previous requirements for a registration application - providing the address, officers' names and details, purpose, charter and so on - according to Social Group Regulations Article 10, a proposed group must have at least 50 individual members, or 30 institutional members; have a fixed location for its operations; and have personnel who have "expertise appropriate to its activities". In addition, a national organization must have 100,000 *yuan* or more of "legitimate assets or funding sources", while a local organization must have upwards of 30,000 *yuan*. While the requirements of Non-Enterprise Units Regulations Article 8 are less stringent, they still set a high standard, requiring that the unit have an office, the unspecified "necessary" organizational structure, personnel with "expertise appropriate to its activity" and "legitimate assets suitable for its activities".

For both social groups and non-enterprise units, determining whether the assets of groups or units are "legitimate" clearly gives the government wide powers to examine their funding sources. The concept of "legitimate" is overly vague, and gives rise to concern that it may be used to justify arbitrary interference in the financial affairs of social groups. For example, under the State Security Law, receiving funds from individuals and groups inside and outside the country which are viewed by the authorities as "harmful to state security" or "hostile" may be considered an offense.<sup>23</sup>

Article 3 of the Social Groups Regulations requires that all social groups also be legal persons (*fa ren*). This new requirement, which was not in the previous version, means that social groups are directly legally liable, and may bring legal action in their own names. Some commentators claimed that this change, which was discussed prior to the promulgation of the regulations, would give groups increased legal autonomy, but effectively it will make little difference. Many social groups were already legal persons before this was made obligatory. According to the first census of "basic level units" conducted in late 1996, 44,000 of the total number of social groups already had such status. Non-enterprise units are not required to become legal persons.

Compared with the 1989 Social Group Regulations, the 1998 version increases the hurdles for social groups to register by adding an additional stage to the registration process. First, a prospective group must find a sponsor, which will prepare unspecified "documents" testifying to its support. As before, no details are given as to what this preliminary stage requires on the part of the social group or the sponsor. Along with the sponsor's approval documents, the group must also have ready an application for preparatory establishment, an auditor's report, a lease or other document attesting that the group has an office to use, information about the initiator and important officers, as well as their ID cards, and a draft charter of the organization. With these documents in hand, the social group can then apply to the civil affairs departments for the newly-created status of "preparatory establishment," and wait up to 60 days for an answer (Article 12). If the civil affairs department refuses to grant permission, it must "explain the reasons" to the group's initiator. If the group is approved, then it may begin preparatory activities *only*, and must hold its first membership congress within six months, at which its charter is to be passed (Article 14). According to Article 15, the charter

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<sup>23</sup> For more information see, Human Rights in China and Human Rights Watch/Asia, *Whose Security? "State Security" in China's New Criminal Code*, April 1997.

must include the following: name and location; objectives, professional scope and sphere of activities; qualifications for members, rights and duties of members; democratic system of organizational management and procedures for producing executive organs; conditions for responsible persons and the procedures for appointing and removing them; principles for the management and use of assets; procedures for amending the charter; procedures for dissolution and distribution of assets following dissolution; and other issues which should be specified in the charter. After these preparations are complete, the group must submit all relevant documents to the civil affairs departments and wait up to 30 days for a decision on whether the social group may be “established.” If registration is denied, the authorities are required to “notify the applicant of the decision” (Article 16).

The Non-Enterprise Unit Regulations have a simpler, if equally vague, two-stage approval process. First, approval from the sponsor, for which no specifics are given, and second, registration, for which applicants must provide the following documents: the sponsor’s approval documents, a completed application, an auditor’s report, a lease or other document attesting that the group has an office to use, “basic information” about the initiators, as well as their ID cards, and a draft charter (Article 9). The civil affairs departments have up to 60 days to approve or disapprove the application (Article 11). If registration is refused, an “explanation” must be given to the applicant(s).

There is no indication of whether the above “explanations” or “notifications” are to be provided in writing. More importantly, neither of the two laws envisage any procedure for appeals against any of the decisions civil affairs departments, sponsors or other government bodies may make regarding a social group or unit. In contrast, the previous Social Group Regulations had various articles specifying time periods and procedures for administrative appeals. A new law passed by the State Council, Regulations on Administrative Review, lists administrative acts for which review is available, and decisions of the civil affairs departments on social groups or non-enterprise units are not among them. Furthermore, there is no opportunity for judicial review, since legal challenges are only permitted under China’s Administrative Litigation Law if a law or regulation explicitly allows for them, and neither the Social Group Regulations nor the Non-Enterprise Unit Regulations do so.

Both the old and the new Social Group Regulations contain a rule which does not allow for organizations covering the same ground to exist, and a similar rule is included in the Non-Enterprise Unit Regulations. According to Social Group Regulations Article 13 and Non-Enterprise Unit Regulations Article 11, a social group or unit cannot be established “when a social group/unit covering an identical or similar professional scope already exists within the same administrative area, and it thus is not needed”. This rule gives official bodies like the All-China Women’s Federation an effective monopoly over certain kinds of activities, and allows the government to make arbitrary decisions about what is “needed”.

While the Regulations contain no clear standards for what constitutes a registrable organization, they draw the lines of what is not permissible very broadly. Article 4 of both sets of regulations enumerates an identical extensive list of prohibitions constraining the activities of social groups and units. It reads: “Social groups/units must abide by the Constitution, the laws and regulations and state policies; may not violate the basic principles established in the Constitution; may not harm national unity, state security and the solidarity of the nationalities; may not harm the interests of the state, society, other groups or individuals; and may not go against society’s morality and customs.” This is not only much stronger language than the wording in the 1989 Social Group Regulations,<sup>24</sup> it also adds the

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<sup>24</sup> Article 3 reads: “Social groups must abide by the Constitution, the laws and the regulations, and must protect the unity of the state and the solidarity of the nation. They are not permitted to harm the interests of the state, the society and the collective or the legitimate freedoms and rights of other citizens.”

key elements of “endangering state security,” adhering to “state policy” and the requirement that all social groups adhere to the “basic principles”. This latter term principally includes the Four Basic Principles in the Preamble to the 1982 Constitution, namely keeping to the socialist road, upholding CCP leadership, following Marxism-Leninism-Mao Zedong Thought and submitting to the people's democratic dictatorship. Such provisions leave groups no space at all to represent sectors of society which come into conflict with government or officials, let alone the opportunity to express unpopular or dissenting points of view. Both official and scholarly publications repeatedly stress that China's social organizations are *not* pressure groups, as their interests are “identical” to those of the authorities.

The authorities are given broad scope to forestall any attempt on the part of the social group to go against these broad ideological prohibitions. Among the circumstances listed in Social Group Regulations Article 13 and Non-Enterprise Unit Regulations Article 11 in which groups or units which are not to be registered are: “when there is grounds to prove that the objectives and the professional scope of the social group/unit applying to prepare for establishment are not in accordance with the stipulations of Article 4” (Clause 1); the above-mentioned monopoly rule (Clause 2); “when the initiator or persons in responsible positions are currently or have ever been sentenced to the criminal punishment of deprivation of political rights, or are not able to assume full civic responsibility” (Clause 3); submitting false information in an application (Clause 4); and the catch-all clause so familiar from other PRC laws and regulations: “other circumstances prohibited by law or administrative regulations” (Clause 5). Clause 1 effectively allows for a preemptive ban on the registration of an organization or unit, based on “evidence” of how it *might* act. Clause 3 allows certain individuals to be deprived *for life* of their right to form or run non-profit organizations, and appears to be particularly aimed at former political prisoners. Under the current Criminal Code, sentences of deprivation of political rights are sometimes attached to prison terms, allowing for a set term during which the person is under certain restrictions after release from jail. Article 56 states that those convicted of offenses “endangering state security” are automatically sentenced to deprivation of political rights, and thus these people may never set up or become officials in a social group or non-enterprise unit. Those “not able to assume full civic responsibility” include minors and those found mentally incapable.

As well as political controls on the leadership of associations, the Social Group Regulations specify that an individual may only act as the “designated legal representative” of one group at a time (Article 14). They allow the civil affairs departments to order that a staff member be removed (Article 33). Furthermore, they require that the salary and benefits of any professional staff of a social group be in accordance with state regulations governing staff in public institutions (Article 29).

Strict limits are placed on any attempts to organize across provincial boundaries, or to create nationwide networks. Social Group Regulations Article 19 bars social groups from establishing regional-level offices, and requires that all branches or representative offices of groups need to be approved by the sponsor and separately registered with the appropriate civil affairs departments. Non-Enterprise Unit Regulations Article 12 prohibits such units from setting up branches altogether.

The sections on punishments provide for administrative sanctions, fines and criminal penalties, and use more threatening language than the 1989 Social Group Regulations. Under Social Group Regulations Article 33 and Non-Enterprise Unit Regulations Article 25, the civil affairs departments may order a group or unit to make reforms, to suspend its operations or change responsible personnel, as well as ordering its dissolution, for the following types of actions: fraudulent use of the group's status or profit-making activities; engaging in activities outside the scope of its objectives or charter; refusing to accept “supervision”; setting up unauthorized branches; and violating unspecified state regulations on raising funds and

receiving assistance.<sup>25</sup> Fines of between one and five times the amount of funds raised through illegitimate business activities or ill-gotten gains may be levied. Social Group Regulations Article 34 and Non-Enterprise Unit Regulations Article 26 state that if a group violates “other laws and regulations” which are the responsibility of other government departments, the latter may request that the civil affairs departments close down the group or unit in question. Social Group Regulations Article 35 and Non-Enterprise Unit Regulations Article 27 are particularly vague and threatening, allowing for criminal sanctions or criminal detention<sup>26</sup> for, in the case of social groups, “those who, without having received official permission, initiate preparatory activities” and in the case of both, for social groups or units which “initiate activities without being registered, and those who continue to carry out activities in the name of a social group/unit for which registration has been revoked”. The lack of definition of “preparatory activities” is particularly troubling, since people wishing to establish a group have to do a significant amount of work to prepare all the necessary conditions for finding a sponsor and filing an application. In recent years, many individuals have been detained and sometimes sentenced to labor camp terms merely for attempting to register a social group.

Even if they are able to register despite all the hurdles put in their way, under the new regulations groups and units will have to spend a great deal of time, money and energy on fulfilling all the bureaucratic requirements for their “supervision” listed in these regulations. As well as submitting reports to their funders, organizations will have to supply annual reports to their sponsors and the civil affairs departments. They are also accountable, in some unspecified way, to the government’s financial agencies. As mentioned above, approval for even minor changes in their situation will have to be sought from the sponsor and registered with the civil affairs departments. Decisions of their governing bodies will also be subject to this approval process, which creates the possibility of government departments countermanding decisions taken by the boards of associations.

Although the Social Group Regulations and the Non-Enterprise Unit Regulations specify that neither the sponsor nor the civil affairs departments are permitted to charge for their supervision of groups or units - they are evidently allowed to levy unspecified fees for other services, including registration itself - undoubtedly negotiating the continuing bureaucratic obstacle course the regulations set up will entail greasing many palms. Increasing the red tape for social groups and extending the control scheme to non-profit units will undoubtedly lead to further bloating of the bureaucracy, and create even more opportunities for rent-seeking officials to cream off money intended for charitable purposes. The level of official interference in the day-to-day affairs of groups and units permitted by these regulations is entirely unnecessary, as well as being an unacceptable infringement of freedom of association.

Finally, Social Group Regulations Article 39 requires that all social groups must re-register in accordance with the new rules within a year of their promulgation. This will inevitably entail a significant purge of existing organizations. Non-Enterprise Unit Regulations Article 31 requires that all people-organized non-enterprise units must register in accordance with the regulations within a year of their enactment. This is also likely to mean that some non-profit initiatives are closed down or are effectively taken over by official departments.

There are particular requirements for the registration of religious groups and foundations, contained in special regulations passed by the MoCA and the Religious Affairs Bureau for the

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<sup>25</sup> Various regulations issued by different government departments cover financial matters, such as accepting contributions from abroad. Currently, any grants to a social group from overseas are supposed to go through the Ministry of Foreign Trade and Economic Cooperation.

<sup>26</sup> According to the Security Administration Punishment Act, individuals may be detained by the police for 15 days as a punishment for minor infringements.

former and the State Council for the latter. To establish a religious group, one must submit, in addition to the requirements set out in the Regulations, a religious scripture that has been recorded [the wording here is ambiguous: does it mean that it has to be a scripture that already has a prior written record within China historically? Can you reword to clarify what “recorded” means here?]and can be historically linked to a religion having existed in China, and which is consistent with the charter of the religious group seeking registration. This requirement virtually eliminates any possibility of establishing a new religion or legitimizing non-inherited religions, such as those from abroad. Foundations must be established with a minimum endowment of 100,000 *yuan* and must gain approval from the People’s Bank of China.

The MoCA and other government departments have issued a multitude of other regulations and directives governing the affairs of social groups. These include rules on financial administration, the issuing of company seals, bank accounts, personnel arrangements, membership fee scales and conditions under which non-profit groups can engage in business activities. There are plans to issue further guidance on matters such as maintaining records and activities that involve contact with foreigners or trips outside China. Undoubtedly various documents detailing how the two new sets of regulations are to be implemented, as well as clarifying what a number of their provisions will mean in practice, will soon be issued.

While the national rules apply across the PRC, some localities have also enacted local versions. These may add additional requirements for groups’ activities. For example, Shanghai regulations on social groups promulgated in 1994 add some more specific restrictions, incorporating some of the provisions of the directives mentioned above and also requiring that groups intending to hold major meetings notify their sponsors and the civil affairs departments at least 15 days in advance.

Various social groups are specifically exempted from the registration requirements of the regulations. According to Article 3, these include “people’s organizations” which participate in the Chinese People’s Political Consultative Conference (Clause 1); those that are approved to be allocated staff or managed by organs of the State Council or are exempted from registration by the State Council (Clause 2); and groups which are active only within the government organs, enterprises, groups or institutions which have approved their operations (Clause 3). As mentioned above, political parties are not categorized as social groups. Although they are considered social groups, the eight mass organizations are not required to register; they come under Clause 2 since many have staff allocations from government. Those in Clause 3 are sometimes called “second tier” organizations. If the activities and membership of the social group are entirely within the scope of the unit, it only has to gain approval from the unit itself and need not register with the civil affairs departments.

## Table 2: Basic Requirements for Registration of an Organization

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| <ul style="list-style-type: none"> <li>• A state, Party or mass organization (<i>yewu zhuguan bumen</i>) must be willing to act as sponsor and exercise routine supervision over the affairs of the group or unit;</li> <li>• The name, activities and scope of the group or unit must not “duplicate” the work of any other organization;</li> <li>• The group’s or unit’s activities must not harm “state security” or the “unity of the nation,” they must abide by the laws and “state policies” and must be in conformity with constitutional principles including the socialist road, CCP leadership, the people’s democratic dictatorship and Marxism-Leninism-Mao Zedong Thought;</li> <li>• None of the initiators or officers of the group or unit can ever have been convicted of a political offense; and</li> </ul> |
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- The group or unit must have an office and substantial funds proved to be from “legitimate sources”.

### Party and Government Influence

Many, if not most, social groups have been formed at the initiative of the authorities. Units or staff of the Party-state may not be directly responsible for establishing the group, but may, for example, have called a meeting at which the setting up of such an organization was recommended.

Generally it is expected that a number of senior officers of the sponsoring unit to which the group in question is attached should also hold important posts in, or be on the board of, the subsidiary group. In practice, this means that the staff and officers of many social groups are actually government officers doing double duty. This practice actually violates several internal directives that place restrictions on senior officials holding positions in other units concurrently and, in the case of foundations, the published regulations that forbid government functionaries from acting as officers of foundations. Interestingly, however, the new Social Group Regulations and the Non-Enterprise Unit Regulations did not incorporate such bans.

By contrast, a number of internal Party documents actually require that leaders or officers of the ACWF, the ACFTU and the CCYL concurrently act as the officers or members of the Party committees at the same level. Posts in social groups are also frequently assigned to retired cadres, sometimes as a kind of sinecure to induce them to quit their original job. Because of this, social groups are sometimes referred to as “old people’s homes”. With millions of bureaucrats being made redundant in the current restructuring of government launched by Premier Zhu Rongji in 1998, new jobs for many are being found in “NGOs”.

Another major avenue of control is the realization of the principle of Party leadership through the establishment of Party groups composed of CCP members inside social groups. According to the 1992 CCP Constitution, any unit in which more than three Party members work should establish a Party group. Every Party member must participate in a Party group no matter what position he holds. Through these rules, the CCP is able to set up a network that permeates all the institutions and organizations in the country, assisted by its 58 million members nationwide.

Thus every social group must either set up its own internal Party cell or associate itself with one, most likely through its sponsoring unit. In practice, all national-level social groups are required to have their own Party cell (*dangzu*), as will most local social groups.<sup>27</sup> This also applies to religious groups and foundations, such as the Amity Foundation, for example. For smaller and less influential organizations, their staff or members who belong to the CCP would participate in some Party group that would consider supervising the work of the social group in question as part of its remit. The Party groups within social groups are usually subordinate to and receive instructions from the Party committees in their sponsoring units. Finally, the CCP, through its committees in the departments of civil affairs at all levels, is able to ensure that social groups are kept on a tight leash and to pre-empt or punish any deviation from Party policy. In sum, no social group is immune from Party interference; even religious organizations and charitable groups are subject to Party control in some form.

<sup>27</sup> Constitution of the Chinese Communist Party, Article 46 reads in part, “Party branch committees may be established in central and local government departments, people’s groups, economic organizations, cultural groups and other non-Party leading organs. The missions of these Party branch committees are to implement the Party’s line, strategies and policies; to discuss and make decisions on major issues in their departments; to unite the masses and non-Party member cadres; to complete the tasks given to them by the Party and the government; and to direct the work of their departments and subordinate Party groups.”

The most direct and common method of exerting CCP control is by appointing leaders or officers of social groups. As mentioned above, according to the new regulations, the civil affairs departments can order a change of leadership in a particular group or unit. The CCP and its committees control the appointments of cadres at all levels. In CCP terminology the leaders or officers of some social groups are defined as “cadres” (*ganbu*), and in most cases they are directly appointed by Party committees.

## Mass Organizations

These social groups have a special status, being considered a “bridge” which links the Party with different sectors of the “masses”. A document on the relationship between the Party and the three major social groups defines their role as follows: “The ACFTU, CCYL and the ACWF are Party-led mass organizations of the working class, the vanguard of the youth and women of all minority nationalities and all walks of life, they are the bridge and the link through which the Party contacts the masses, and are an important social pillar of state power.”<sup>28</sup> Thus it is simultaneously a political, legal and historical category, which applies only to those groups established as mass organizations in the early days of the PRC.

The ACFTU and its local branches have particular responsibilities and constraints on their actions detailed in the 1994 Labor Law and the 1992 Labor Union Law. The ACFTU is designated as the sole legal representative of Chinese workers. The right to strike was removed from the Chinese Constitution in 1982, and does not appear in either of these laws. The official labor unions are designated as representatives of workers to the labor dispute arbitration committees (Labor Law, Article 80) and also head the mediation committees on labor conflicts within work units.

The 1988 ACFTU Constitution conceptualizes the organization and its branches as “voluntarily-organized workers’ groups that accept the leadership of the CCP”, and claims that they “obey the Party’s line and implement the Party’s policies and strategies” and function as a liaison between workers and the CCP. The major officers of the ACFTU are CCP members and concurrently hold positions either in the Party system or in the government, which further blurs their loyalties and responsibilities. Independent labor organizations are explicitly proscribed.

The CCYL and the ACWF are the other two major quasi-official organizations that enjoy special legal treatment. In elaboration of its relationship with the CCYL, the CCP Constitution stipulates that the CCYL is an assistant to the CCP and a supplier of potential Party members. CCP committees at all levels direct the work of CCYL groups at the same level. According to the Party’s Constitution, the secretary of a CCYL organization may attend the meetings of the Party committee and its standing committee at the same level. The CCYL Central Committee is directly under the sponsorship of the CCP Central Committee, while the principal leaders of the CCYL are full or alternate members of the Central Committee.

The ACWF is, according to an authoritative interpretation, a mass organization led by the CCP. Its major task is to implement the Party’s policy concerning women and children and to achieve women’s self-emancipation. Like the ACFTU and the CCYL, the ACWF is viewed as a transmission belt between the CCP and the masses, especially women. Performing the function of information exchange concerning women and children, transferring complaints about the government and the Party to higher levels, as well as dealing with conflicts involving women and children, constitute the routine activities of the ACWF and its branches.

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<sup>28</sup> See “Notice on Strengthening and Improving Party Leadership Over the Work of the ACFTU, the CCYL and the ACWF”.

The special status of the above three organizations is evident from the fact that they are empowered to issue quasi-legal documents jointly with the government or the CCP on matters within their sphere of competence, to be consulted by the government on policies affecting their members and to have access to information on the work of the government related to these sectors. For example, cadres of the ACWF participate in the meetings of the State Council Women and Children Work Committee and actually staff most of the institution's province-level counterparts. Personnel in the mass organizations are classified formally as state cadres.

### **Curbs on Freedom of Assembly**

Although the 1982 Constitution expressly prescribes that the citizens of the PRC enjoy freedom of assembly, in practice, as with the legal regimes relating to association and expression, the legal provisions on freedom of assembly are extremely restrictive, and independent civilian assembly is sometimes regarded by the authorities as a threat to "state security". The relevant laws on this issue are the Law on Assembly, Demonstration and Protest of the People's Republic of China (the Assembly Law), promulgated on 31 October 1989, and the Implementation Regulations of the Law on Assembly, Demonstration, and Protest of the People's Republic of China (the Assembly Law Implementation Regulations), enacted by the State Council on 12 May 1992.

According to these two laws, those planning to hold an assembly or demonstration must submit an application for approval to the local public security departments that have jurisdiction over the area in question (Assembly Law Article 8). Assemblies, demonstrations and protests are all defined as any activity expressing or showing support for certain opinions, or expressing a common demand in a public place or a location where the public may enter and exit freely or by ticket or voucher. No minimum number of individuals is set: an individual planning to hold a sit-in still needs to apply for a permit.

Under the Assembly Law, the public security departments have discretionary power to deny the application should they ascertain that the proposed assembly or demonstration is against the principles laid out in the Constitution, endangers the territorial integrity or sovereignty of the state as well as the reunification of the country, or incites national separation (Article 12). Moreover, the public security departments can refuse the application on the ground that "sufficient evidence" proves that the assembly or demonstration will "directly jeopardize public security or seriously disturb social order" (Article 12).

In general, an application for an assembly or demonstration should be submitted to the authorities five days in advance. The officials are given two days to review the application. For an urgent application, the authorities have to make a decision immediately. The public security departments have the power to change the route, timing and place of any demonstration or assembly, should the authorities consider that otherwise the event will disrupt traffic or disturb social order (Article 11). While a demonstration or assembly is in progress, the authorities have the power to order the people involved to disperse under certain circumstances, notably in situations endangering public security or disturbing social order (Article 27). Neither of these two laws define the terms "endangering public security" or "disturbing social order".

The Assembly Law strictly prohibits "non-residents" from initiating, organizing or participating in any assembly or demonstration (Article 15). According to the Implementation Rules, a "resident" refers to a person with permanent household registration in the locality where the action is to take place, or holding a temporary household registration in the area for more than half a year (Article 12). This provision reflects the fact that freedom of assembly is considered a geographical privilege for local people in a particular area.

The laws provide for a set of punishments against those violating the provisions, with the most serious available penalty being a prison term of up to five years for a peaceful protest. (Of course, provisions of the Criminal Code and the Security Administration Punishment Act - which provides for detention of up to 15 days at the discretion of police - can also be employed to punish assembly-related actions.) Decisions on penalties are appealable and may be brought before the courts. However, jurisdiction over all decisions on assembly or demonstration applications remains solely within the Public Security Bureau, and applicants may only appeal once to the higher level within the public security system when an application is denied. Interestingly, foreigners who wish to stage a demonstration or assembly can apply to do so under the same laws, but they are not allowed to participate in any demonstration or assembly organized by Chinese citizens without express permission from the authorities.

Demonstrations or assemblies organized by social groups are permitted, but prior to submitting an application to the public security departments, organizations must receive approval from their own leaders. The regulations do not make clear whether or not such approval should come from the sponsor of the group or from its own leadership.

In practice, unofficial demonstrations or assemblies are almost never approved by the authorities. To Human Rights in China's knowledge, none of the growing number of protests seen during the past year over such matters as layoffs, non-payment of wages, pensions and living allowances, fraudulent investment schemes, demolition of urban housing and land disputes have received official permission. According to an internal report on Shanghai in 1992, Chinese citizens had submitted more than 100 assembly and demonstration applications since the passage of the Assembly Law in 1989, but none of them were approved. By contrast, for example, a number of demonstrations organized in the early 1990s by foreign students from African countries, who were protesting against discriminatory treatment against them in Shanghai on the grounds of race, were approved by the authorities and proceeded without incident.

### **State Security: A Tool of Suppression**

In the name of protecting "state security" the authorities have enormous powers to restrict freedom of association and other basic human rights. The primary instrument used in the reform period to suppress freedom of expression and association has been the "counter-revolution" section of the 1979 Criminal Code, which provides the authorities with sweeping powers to suppress organizations, however inchoate or informal. Articles 98 and 99 proscribed "counter-revolutionary groups" and "superstitious sects" respectively, and these provisions have been extensively used against people who have sought to establish independent organizations and religious groups. In the new Criminal Code, revised by the National People's Congress in March 1997, the term "counter-revolution" has been replaced by the concept of "endangering state security". Articles 103, 104 and 105 of the chapter in the revised law entitled "Crimes of Endangering State Security" continue to allow for severe restrictions in this area, while the provision of the 1979 law outlawing "superstitious sects and religious extremists" has been moved in the revised version to Article 300 of the chapter on "Crimes of Disturbing Public Order". Efforts to organize independent groups for purposes not sanctioned by the authorities will continue to be punishable under the new law.

Another law affecting freedom of association is the State Security Law of the People's Republic of China, promulgated by the National People's Congress Standing Committee on 22 February 1992. The State Security Law created the crime of "endangering state security", which was further defined by Implementation Regulations for the law. According to the Implementation Regulations, people are prohibited from "endangering" state security under the "pretext" of establishing social groups. The Regulations do not specify that the

prohibition refers only to “illegal” or unregistered groups. In fact, many cases in recent years demonstrate that the actions of people who have sought to establish social groups through the proper legal channels - by applying to register an independent organization with the civil affairs departments, for example - have been categorized as threats to state security.

Moreover, the chapter of the Criminal Code on endangering state security, as well as the State Security Law and its Implementation Regulations, may be applied to overseas organizations if these conduct any activities in China. Theoretically, the laws apply to all overseas organizations, whether formed by foreigners or Chinese nationals, although they are apparently targeted primarily at Chinese dissident groups outside China. Some overseas organizations have been categorized as “hostile organizations” and are therefore banned from engaging in any activities in China. Individuals who have contacts with them can be subject to severe punishment. There is no clear-cut standard for identifying a hostile organization; the Ministries of Public Security and State Security have absolute discretion.

The term “state security”, and what constitutes harm to it, is left virtually undefined in these laws. The Criminal Code contains no definitional clause that explains the scope of the term, and while the State Security Law cites maintaining the territorial integrity and independence of the state as part of its content, it also contains a catch-all clause, as do many similar Chinese laws. Both laws clearly provide for the criminalization of peaceful acts of freedom of expression, association and assembly.

### **Regulations on Foreign NGOs**

No comprehensive regulations address the activities of international NGOs operating in China, but they are specifically exempted from the regime created by the 1989 Regulations, since these state that foreign organizations were to be dealt with by subsequent separate regulations. In practice, international NGOs are not subject to the MoCA regulations and are covered by different rules according to the nature of their work. Foreign NGOs are expected to get approval from various departments of central and local governments for their activities, and obviously, the Chinese organizations and individuals they work with will be subject to the normal constraints.

A number of pointers on official attitudes to foreign NGOs exist in the form of instructions from the MoCA in response to queries on the issue submitted to it by local governments. In the past, the authorities’ attitude towards foreign social groups was expressed in the phrase “no recognition, yet no prohibition”. A five-point policy based on experience in Shanghai and adopted by the MoCA in 1989 advised local civil affairs departments to maintain contact with foreign groups openly operating, provided their activities were confined to social communication and friendship; not to take the initiative to contact groups that were not operating openly; to tell representatives of foreign groups that inquired about registration that regulations were being drafted; to ensure that foreign groups did not interfere with official business or perform any diplomatic functions on behalf of their embassies or consulates; and to enforce the rule that Chinese citizens are not permitted to join foreign groups or participate in any of their activities without receiving permission to do so from the foreign affairs departments of their work units.

Thus the authorities have sometimes allowed foreign NGOs to engage in various types of activities without receiving explicit permission. MoCA instructions issued in 1990 proposed a policy of “differing treatment” depending on the character and activities of the group in question and stated that foreign groups should abide by the Constitution and the laws, should work to improve friendship with foreign countries and may not endanger state security, damage the interests of society or disturb social order.

In recent years, comprehensive legislation to govern registration and activities of foreign NGOs has been proposed. The authorities involved in drafting regulations governing foreign NGOs include the MoCA, the CCP's United Front Department and the Ministry of Foreign Affairs, as well as the Ministries of Public Security and State Security. However, it is still unclear when such regulations will be passed and the authorities are reportedly not in a hurry to act on this matter.

One area in which rules have already been promulgated is business associations. Foreign business associations are categorized as a special type of foreign NGO and are regulated by the Provisional Rules on the Management of Foreign Business Associations, issued by the State Council on 28 April 1989. In order to set up an association of foreign businesses, the applicant must submit information including the charter of the association, a list of its members, the address of its office and the sources of its funding. The regulations strictly prohibit such associations to be organized cross-nationally, thus outlawing the establishment of affiliates of organizations already existing outside China. As for other social groups, foreign business associations are required to submit annual reports on their activities to the authorities. The professional leading department in this case is the Ministry of Foreign Trade. No Chinese nationals are allowed to participate in such associations.

### **Restrictions on the Media**

The Chinese media are now very commercialized. The exponential growth of media such as radio phone-in programs and lifestyle magazines means that ordinary people have more opportunities than before to communicate their concerns on many issues. But at the same time there are severe restrictions on the establishment of media outlets and on sensitive content. The CCP continues to view the principal role of the mass media as "guiding public opinion" to support Party policy. At a conference launching a new nationwide campaign to promote "spiritual civilization" in late 1996, President Jiang Zemin reiterated the long-term principle that control of the media should remain in the "firm grip" of Party loyalists. "The press ... must stay in tune with the political ideology of the Party center, which is to spread patriotism, collectivism, and socialist values," Jiang stated. More recently, the CCP has continued to call on the media to assist in maintaining "social stability", warning that some have gone too far in reporting negative news. "The media must give the Party's image greater priority," Ding Guan'gen, head of the CCP's Propaganda Department told a November 1998 conference.

Such an orientation is likewise considered vital for literature and art, as well as for education and even academic research. Efforts to increase controls in these areas are also part of the spiritual civilization campaign. An official "blueprint" for the development of culture in the next century released at the beginning of 1997 stated that a "powerful management and operations mechanism" would be used to ensure that cultural endeavors remained under Party control and stuck to "an explicitly socialist focus".

Print media must go through a licensing process, and all broadcast media are effectively state-owned. Any serial or book must be issued an official number without which it is an "illegal publication". The censorship system relies on the principle of "responsible editors", who are required to know what the authorities permit them to publish. Content restrictions are generally issued in the form of regular directives from the CCP's Central Propaganda Department or its local level departments. Some such directives contain general guidelines, for example, that the main tone of media reporting should be "positive propaganda" or that the media is to remain the "mouthpiece of the Party". Media are also required to differentiate between reports for internal circulation - only available to the leadership in restricted distribution publications - and reports for the general public. For example, a number of orders have been issued in recent years prohibiting the mass media from disseminating any news of scandals involving state functionaries unless they had obtained the approval of the authorities. Other Propaganda Department directives focus on specific subjects, or criticize reports carried

in a particular media organ for having a negative effect or harming unity. On some occasions the Propaganda Department may issue an instruction that on a certain story only the reports issued by the Xinhua News Agency are to be used and media organs may not do their own reporting or commentary on the subject.

Editors can be disciplined, demoted, fired or otherwise punished for running reports that contravene these “instructions”. In extreme cases, media organs may be closed down entirely.

These restrictions create great difficulties for the independent operation of social groups. They not only prevent groups from publicizing particular concerns in the mass media, but also affect their internal operation and scope of work. In China, all news conferences must receive official permission in advance, while foreign journalists are required to request permission from the authorities for all interviews with an “institution” of any kind, including social groups. The subject of social groups is itself a sensitive matter. As mentioned above, official approval is required for any public announcement of the establishment of a national organization.

Content restrictions do not only apply to the mass media. The CCP Propaganda Department regularly issues instructions that also impinge on academic social science research. In the last two years, the Propaganda Department has banned commemorative activities of the anniversaries of the 1957 Anti-Rightist Movement and the 1966 Cultural Revolution, effectively banning even academic history associations and individual researchers from holding scholarly conferences to discuss these seminal events in the PRC’s history or publishing papers or books on them.

In addition, the State Secrets Law of the People’s Republic of China, which entered into force in 1988, and its implementation regulations, also apply to much media work. According to regulations issued by the Ministry of Public Security, virtually all information relating to crime and law enforcement is to be considered “state secrets” unless the Public Security organs specifically permit its publication. The authorities may also classify a vast array of economic and social statistical information as “secret”.

#### **IV. Enforcement and its Impact**

*Since the Third Plenum of the 11th Central Committee of the Party [in 1978], social groups in our country have developed rather rapidly, and have thus played an active role in fostering the development of the socialist economy, culture and technology, in promoting academic research and communication, and in furthering international civilian exchanges. However, incomplete regulations and inefficiency in management have contributed to a number of problems in social groups: firstly, in recent years some social groups have been a haven for certain unstable elements as a result of the development of bourgeois liberalism in our country; secondly, the activities of some social groups in pursuing profits have interfered with the normal economic order of our country; thirdly, some social groups were either established without formal approval or engaged in activities inconsistent with their goals or names; fourthly, too many social groups have been set up, exceeding the need for their services, and their activities overlap with one another....”<sup>29</sup>*

#### **Proscribed Organizations**

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<sup>29</sup> 1990 Ministry of Civil Affairs report to the State Council on the rectification of social groups.

As the figures in Table 3 (below) show, registration of social groups was declining even before the latest rectification campaign, while many thousands of groups are struck off the register annually. Of course not every group that is de-registered is dissolved because the authorities disapprove of the content of its work; the group may have run out of money, its members or officers may decide it is no longer needed, it may have been involved in fraudulent or other criminal activities and so on. No statistics are provided to explain the differing reasons for de-registration of groups, but there is overwhelming evidence that groups have been and continue to be closed down for what are essentially political reasons. A few examples suffice to make the point clear.

- At the beginning of December 1998, former student leader Wang Youcai was indicted on charges of “conspiring to overthrow state power” for attempting to register a group called the China Democracy Party. Also arrested for the same offense were prominent dissidents Qin Yongmin and Xu Wenli. All are expected to be tried imminently.
- In July 1998, Zhang Shanguang was detained and later formally charged with secrets-related offenses for attempting to register the Association to Protect the Rights and Interests of Laid-Off Workers with the civil affairs department in his native Xupu, Hunan Province. Civil affairs officials were initially helpful to Zhang and his initiative only fell foul of the authorities when the local trade union found out about it.
- In October 1998, MoCA officials raided the Beijing offices of the China Development Union, an association registered in Hong Kong, and affiliated with a research institute attached to the Ministry of Public Security. The officials, who did not have a warrant, said the Union was “illegal,” and ordered it to halt all activities, such as the seminars it had been holding on political reform and protecting the environment. Three staff members were taken away for questioning for several hours and computers and papers were confiscated.
- In 1995, the first women’s studies center in China, the Zhengzhou International Women’s College, was closed for undisclosed reasons. The Chinese Women’s Museum associated with the college had been closed in late 1994 after officials determined that the exhibits had not been approved and that the museum’s presentation of women’s history deviated from the approved Party view of the subject.
- In 1993, a discussion club for gay men, Men’s World, and a Beijing telephone hotline offering advice on AIDS were closed down after an individual involved with initiating both projects, Wan Yanhai, was sacked from his job with the Ministry of Health for allegedly “promoting homosexuality and human rights”.
- In early 1996, a shelter for battered women in Shanghai - the first in the nation - run by a local businessman as an undertaking of his registered company, was closed down just weeks after it had opened. A team charged with conducting an investigation into whether the shelter should be permitted, which included representatives of the local branch of the ACWF, apparently concluded the shelter should be closed for the following reasons: unspecified “financial irregularities” on the part of the businessman who initiated it; it was “inappropriate” for an individual to operate such an institution, which should be run by a government department; and the center had attracted the attention of the international and domestic media.
- In 1996, the Friedrich Naumann Stiftung, a German foundation, was forced to close its office in Beijing after it refused, despite pressure from the Chinese government, to revoke funding it had granted for a conference in Germany of Tibet support groups from around the world.

- In 1993, an application to establish a social group focused on seeking compensation from the Japanese government for Chinese World War II “comfort women” was rejected. No explanation was given. Activists in the popular movement to gain reparations for war damage from Japan have been sent on enforced “vacations”, put under house arrest and even sent to serve administrative re-education sentences.
- No organization associated with independent human rights, ethnic minority, political, religious or labor activists has been able to register, although a number have tried to apply for formal status in recent years, beginning with the Shanghai Association for Human Rights in 1993. For obvious reasons, no such organization would be able to find a sponsor, but those that have tried to apply directly to the civil affairs departments, such as human rights groups in several cities, have either had their applications ignored or rejected without explanation. Some individuals who have attempted to file such applications have been detained for doing so.
- Businessmen in Beijing’s “Zhejiang village”, a well-established community of migrants from the central Chinese province, set up the Loving Hearts Society in 1994 to represent the interests of the enclave in disputes with the local government. But it was declared “illegal” in 1995 as part of a “clean-up” in which much of Zhejiang village was demolished. In south China, a Shenzhen advice center for migrant workers set up in 1994 by a group of young activists was quickly closed and the organizers arrested. The “ringleaders” were later sentenced to three and a half years in prison, while others connected with the initiative were sent to Re-education Through Labor.<sup>30</sup>
- In late 1995, some 15 people were detained for establishing the Southern Mongolian Democracy Alliance in Inner Mongolia. Two “ringleaders”, Hada and Tegexi, were later sentenced to prison terms of 15 and ten years for offenses including “organizing a counter-revolutionary group”, “conspiracy to subvert the government”, “splitting the nation” and “spying”.
- Various self-help groups have been forced to close due to bureaucratic interference. The Divorced Women’s Teahouse in Beijing was pushed to find a sponsor, but when it was unable to do so and to come up with the required funds for setting up such a group, it was forced to close.
- According to a book on civil affairs work in Shanghai, during 1996, 51 social groups in the city were punished by being ordered to halt their activities. Most of these were groups which had failed to register, or branches of registered organizations which had not gone through proper procedures.

*In the course of one year, we dissolved ‘Shanghai Computer World Friendship Association,’ ‘Shanghai Modern Economy and Culture Information Center,’ ‘‘Friendship Association of Listeners and Readers of ‘Window on Japan’,’ ‘Shanghai Liaison Office of the Taiwan Buddhist Charitable Causes Foundation’ and the ‘Shanghai Office of the China-Hong Kong Philately Knowledge Friendship Association,’ while we cancelled the illegally-established branch operation ‘Pudong New Zone Office of the Shanghai Creative Writing Center.’ In Minxing District, we dissolved the ‘Hired Hand Workers Mutual Aid Promotion Society.’ In this way, we upheld the authority of state law and the severity of its enforcement, thus contributing to maintaining political stability in society. [SOURCE OF QUOTE SHOULD BE GIVEN IN FN]*

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<sup>30</sup> An administrative labor camp term which can be imposed by the police for up to three years without a trial.

Ad-hoc groups can also become targets of official repression, and clearly the regulations permit the authorities to label any unregistered association, however informal, as an “illegal group”. Discussion groups of academics and professionals have been forced to close in this way. Organizers of petition campaigns raising peasant concerns about high taxes or fraud in elections have been charged with “disturbing social order”, while signatories to human rights petitions have been sent to labor camps for such activities. Self-help groups set up by laid-off workers have been forced underground. In the prosecutions against dissidents Wang Dan and Wei Jingsheng, raising money for and providing assistance to victims of political persecution and their families was cited as among their “crimes” forming part of a “conspiracy to subvert the government”.

As mentioned above, as part of the national political purges that occurred in many spheres of Chinese life in the wake of the suppression of the 1989 democracy movement, in 1991-2 some 30,000 social groups and foundations were closed. On a number of occasions, officials have expressed concern about corruption and fraud among social groups, citing this as a reason for shutting down organizations. The latest clamp-down was launched in late 1996, following Jiang Zemin's launch of an intensified effort to build “spiritual civilization”, and during 1997, over 13,000 groups had been closed down.

In the course of the coming year, many more groups are likely to be forced to shut or merge with official organizations. The similarity in the number of groups approved at various levels in recent years points to some kind of quota system being in operation. In the past, the Chinese government has frequently used quotas to set targets for campaigns it launches. Such quotas could also be used to determine the number of groups permitted to reregister and units allowed to register in the coming year, leaving those organizations which do not have good official connections at a distinct disadvantage, whatever the nature or quality of their work.

**Table 3: Changes in Numbers of Social Groups 1992-96**

Year	Total social groups registered	Of these, provincial level	Of these, prefecture level	Of these, county level
1996	11,172	1,190	4,152	7,068
1995	12,823	1,365	4,432	7,024
1994	15,235	1,556	5,382	8,285
1993	25,958	2,627	8,628	14,680
1992	54,852	4,842	14,440	35,132

Year	Total struck off register	Of these, provincial level	Of these, prefecture level	Of these, county level
1996	6,757	133	2,197	4,426
1995	6,472	156	1,675	4,641
1994	8,298	78	2,006	6,213
1993	11,331	110	1,950	9,255
1992	7,654	463	880	6,311

Source: China Law Yearbooks 1993-1997

### **Inconsistent Enforcement**

As with so many spheres of life in China today, the situation of social groups is a study in contradictions. It reflects the broader problems of the legal and political systems: a restrictive legislative regime that gives officials too much power is combined with a widespread failure to enforce laws and regulations that could protect rights. Occasionally, surprisingly positive initiatives can emerge in the spaces created by these contradictory impulses.

Social groups are hemmed in by a proliferating array of laws, regulations, directives and authoritative statements of all kinds, as well as a web of supervision that means much of their energy must be absorbed in dealing with a tangle of bureaucratic requirements. In reality, many “social groups” are actually extensions of the bureaucracy, increasing its capacity to manage the economy and society or merely providing sinecures for dead wood cadres.

The new stringent requirements for registration of social groups will make it impossible for associations formed by poorer citizens to register, and will thus bar the development of self-help groups and other such associations. The minimum membership requirements effectively mean that only large groups will be permitted to exist. The inordinate number of documents required and the long delays before a group is formally established create formidable barriers to association. Independent initiatives to provide social services will encounter similarly daunting obstacles, and will have to expend a substantial amount of sometimes hard-earned money and effort on fulfilling obligations to their supervising agencies.

In practice, however, those with power and influence can always bend the rules. The restrictions on social groups are enforced in a very selective way. The space for each group is contingent on its political patronage, its sphere of activity and the changing political environment. An indication of the latitude available to some privileged groups is the fact that many social groups are involved in profit-making activities with little relation to their sphere of interest. On the positive side, a few more independent groups have managed to find a sponsoring unit that allows them substantial autonomy. But this may well change, as sponsoring units now must take on significant responsibilities by approving the registration of a group.

Unfortunately, the coming purge of groups and units is likely to eliminate or co-opt some of the most innovative and useful initiatives Chinese people have struggled to create in recent years in the face of continuous official hostility. The lack of appeals procedures for any of the decisions taken by the civil affair departments or other government agencies regarding the affairs of non-profit entities means that groups and units will have no chance to contest any such decisions, as the new regulations establish an arbitrary system granting the authorities virtually unlimited discretion to block and ban associational and non-profit activities “according to law”.

Even the registration requirements are ignored by many social groups, with an estimated 20,000 groups in the country either unregistered or approved by an organization without the power to do so, according to an authoritative 1996 report. According to a 1995 investigation in Hainan, only 13 of 100 non-profit foundations had formal approval to operate. In contrast to the swift suppression of any dissident groups, particularly underground organizations, underworld criminal societies are reported to have at least 500,000 members. **[Is the 1996 report the source for the 1995 investigation? Ref. To report in footnote/biblio?]**

State Council regulations bar government leaders from holding positions in foundations, yet most leadership posts in foundations are held by retired or current government officers. Officials also fill high positions in many social groups. Civil affairs officials have expressed concern over this trend towards bureaucratization in the sector. According to a 1996 report **[same ref as above?]**, of 441 provincial level organizations in Zhejiang, 301 had serving officials in important positions, while in one Jiangsu county, of 47 social groups, 40 had Party or government functionaries as leaders. Viewed from this perspective, the growth in social groups partly reflects further enlargement of China’s already extensive bureaucracy.

However, the initiative for the involvement of officials in social groups can come from the group itself. The prime movers behind a social group may find that it cannot achieve the objectives it has set for itself without official patronage, and thus they may be forced to invite a local leader to join their organization’s governing body. Alternatively, the group may not be

able to get its opinions heard in ruling circles without the entree that recruiting a serving official can provide. Such phenomena reflect the fact that despite the growing influence of the market, power remains highly concentrated.

The regulatory structure also means that social groups suffer from many of the same deficiencies as the bureaucracy to which they are attached, in particular the same vertically-oriented command structure, lack of transparency and accountability, insufficient horizontal coordination and monopolization of issues on their “turf”. A county-level group, for example, may only have members within that county, and may only conduct activities there. The ACWF has sometimes vetoed the involvement of other groups in providing services targeted at women, while it is itself engaged in a running battle with the ACFTU over how much it can intervene in matters relating to the protection of women workers. The necessary closeness of social groups with government can mean that they are more responsive to the concerns of the leadership than to their members, funders or the constituencies they are supposed to serve.

### Repression Creates Instability

*It is the people's prerogative, when faced with unreasonable individuals and unacceptable matters, to make criticism. Indeed, it is also their unshirkable duty to do so, and this is a sovereign right with which no individual or government organization has a right to interfere.*

*Criticism may not always be pretty or pleasant to hear, nor can it always be completely accurate. If one insists on hearing pleasant criticism only and demands its absolute accuracy on pain of punishment, this is as good as forbidding criticism and banning reforms altogether.<sup>31</sup>*

There are few signs that the authorities have any intention of unleashing the potential of autonomous organizations to monitor officials or ensure accountability, despite the optimistic statements of some international agencies working in China. Lack of enforcement of the regulations is seen as problematic, rather than any indication that the regulation itself might not be necessary. The fact that international NGOs have operated in China for some time despite the absence of any regulations governing their activities does not appear to pose a challenge to such attitudes. As indicated by the content of the new regulations, the authorities continue to stress increasing “management” of social groups, and are ready to close down any group seen as threatening “social stability”. “Maintaining stability” is a key concern of the leadership.

Early in 1997, Minister of Public Security Tao Siju reportedly identified the main causes of instability in society as the articulation of grievances through actions such as strikes, petitions and demonstrations by workers, peasants, university students and disgruntled or cheated investors. Both Party “leftists” opposed to further privatization of the economy and growing inequality and dissidents critical of endemic corruption and rights abuses have been accused of “using” social problems to foment disorder. As the economic crisis has deepened, with more and more Chinese workers finding themselves laid off, the leadership’s concern about “stability” has only increased. In spring 1998, the CCP set up a Central Committee leading group for maintaining social stability, reports said, which was to focus on the possibility of unrest fomented by “laid-off workers, disgruntled farmers and underground political organizations” as well as “infiltration by ‘hostile foreign forces’ and ethnic unrest in Xinjiang and Tibet”.<sup>32</sup>

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<sup>31</sup> Wei Jingsheng, at his October 1979 trial.

<sup>32</sup> See Willy Wo-Lap Lam, “Beijing sets up unit to halt unrest”.

In November 1998, officials of the CCP and the government gathered for a work conference on “strengthening the management of independent organizations in order to maintain social stability”.<sup>33</sup> Along with the two regulations governing such organizations which had just been enacted, a report on the meeting said the CCP and the State Council had issued a series of policy documents on how to deal with social groups and non-enterprise units. Leaders at all levels were urged to take personal charge of the work of managing such organizations, and were to be held responsible for what happened in their jurisdiction. They should “fully recognize the significance of the work of managing independent organizations, and firmly implement the policy of combining cultivation and development with supervision and management, using an approach of cultivating and developing with one hand, while supervising and managing with the other, but being tough in both”.<sup>34</sup> And State Councillor Ismail Asmat told the conference: “The governments at all levels should offer help in the effort to reorganize NGOs and make them effective assistants of the governments in maintaining national unity.”<sup>35</sup>

Evidently, the non-profit sector is in for a shake up. But in reality, the repressive tactics the authorities employ to contain perceived “threats” to social stability may actually exacerbate tensions. Suppressing news about social problems, preventing groups from forming to address them or closing down those which have emerged to do so will not miraculously make the problems disappear; it merely delays an effective solution and can mean that an explosive situation is created. This chain of events is seen most clearly in China’s countryside, where violence has repeatedly broken out over excessive taxation and official brutality in the absence of proper channels for resolving peasants’ complaints. Workers who have no faith that the official trade union will represent their concerns are likely to turn to street protests.

The Chinese government has acknowledged that the command system did not work for the economy, yet it continues to attempt to maintain such a system for the political and social spheres. Autonomous social groups could provide structures for the peaceful resolution of the many conflicts that are emerging in Chinese society in the course of reform, and could be a first step in building stable grassroots democratic institutions. Despite the restrictive climate, some social organizations and initiatives have put forward innovative solutions to social problems, as well as ways of carrying them out. For example, they have been primarily responsible for putting domestic violence on the public agenda. They are also at the forefront of developing a culture of philanthropy in China, a project that will surely be aborted if social groups are allowed to deteriorate into just another way for corrupt officials to extract money from the people. Unfortunately, the little autonomy gained so far now appears to be under threat.

## V. Recommendations

As the above discussion has shown, the various laws and regulations that govern the operation of NGOs in China allow the authorities enormous latitude to restrict the three basic freedoms. They clearly express a presumption that the rights in question may only be exercised when express permission is granted by the authorities, and thus essentially nullify the freedoms Chinese people should enjoy. The current system is clearly *not* designed to facilitate the establishment of independent organizations; on the contrary, its purpose is control.

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<sup>33</sup> The term used here, *minjian zuzhi*, does not appear in any of the regulations, and is clearly intended to encompass all non-government groups.

<sup>34</sup> See “Meeting with representatives to the Work Conference on Strengthening the Management of Independent Organizations in Order to Maintain Social Stability, Wei Jianxing indicates that leaders at all levels should take charge of managing independent organizations themselves”.

<sup>35</sup> See “NGOs pressured to work as government bodies”.

It has been argued that the passage of an “NGO law” governing the formation and registration of associations would be a step towards realizing the freedoms promised by the 1982 Constitution. Such a general approach to the problems faced by NGOs provided the basis for the World Bank’s May 1997 *Handbook on Good Practices for Laws Relating to Non-Governmental Organizations* (Discussion Draft). But the Chinese authorities, using the World Bank’s *Handbook*, could find plenty of justification for imposing all kinds of regulatory requirements on NGOs in order to enforce “transparency” and “accountability” rules that would likely go far beyond what is required of other social groupings, such as businesses. A similar logic to that of the Handbook can be seen in providing assistance for the drafting of “NGO law” to the Ministry of Civil Affairs, as groups such as the Asia Foundation and the International Center for Not-for-Profit Law (ICNL)<sup>36</sup> have done in the name of “promoting civil society”.

But as the above discussion makes clear, in the case of China the principal barrier to organizations and individuals exercising the three basic freedoms in conducting NGO-type activities is currently *over-regulation*. This is indicative of official attitudes that see no utility in independent organizations. Legal or regulatory changes are likely to remain meaningless without a commitment from China’s leadership that it will respect basic constitutional rights to freedom of association, expression and assembly - in other words, that it acknowledges the value of pluralism. In the case of China, neither the World Bank nor other international agencies should engage in discussions of NGO law, or fund such activities, without first receiving some clear sign that the government is prepared to acknowledge the vital role played by independent organizations, including those conducting public advocacy and human rights work. In the light of the new regulations, it is clear that by failing to gain such assurances from the government, the Asia Foundation and ICNL ended up aiding an effort designed to further curtail the freedom of association in China.

China’s membership in the United Nations and its permanent seat on the body’s Security Council mean that it has a crucial international role to play in ensuring that rights are respected around the world. When Beijing took the long-overdue and welcome step of signing the ICCPR in October 1998, it made a moral commitment to uphold the basic rights that document contains, which include rights to free expression, association and assembly. As mentioned above, China has incorporated guarantees for such rights into the 1982 Constitution, yet has effectively nullified them by inserting an overarching preamble incorporating the “Four Basic Principles” that places unacceptable restrictions on the exercise of basic rights. Such restrictions on freedoms of association, assembly and expression for NGOs - and on individuals seeking to engage in the type of independent advocacy, interest articulation and service provision generally associated with this sector - clearly violate both the spirit and the letter of international human rights law.

We therefore present the following recommendations - addressed to NGOs, the Chinese government and the international community - in order to move towards respect for, and protection of, the three basic freedoms in China, thus guaranteeing that the Chinese people can truly exercise their constitutional rights to freedom of expression, association and assembly and that independent NGOs can contribute to ensuring that social justice and human rights for all are a central focus of China’s development.

### ***To the NGO community:***

Groups inside and outside China, and using different strategies, should increase communication and cooperation. Outside groups need to do more to inform inside groups about what they are doing and why, and inside groups should give feedback to those outside about the approaches they have found most useful.

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<sup>36</sup> ICNL is co-author of the *Handbook* [correct?].

***To the Chinese government:***

**General**

1. As an indication of its commitment to the three basic freedoms, China should ratify the International Covenant on Economic, Social, and Cultural Rights at the next session of the National People's Congress in March 1999, and should take immediate steps to implement them. **[I've removed ICCPR, as its already done.]**
2. All those imprisoned for exercising their right to freedom of association should be immediately released.

**Legislative**

3. The first step in developing true freedom of association in China would be to abolish the requirement of registration, both from a sponsoring unit and from the departments of civil affairs.
4. A new law should be passed by the National People's Congress to provide a legal procedure by which organizations may be registered with the authorities, but this should not make registration a requirement for operation. The law should not set any restrictions on the agenda or topic that an organization may work on, and Chinese citizens should have the freedom to form the labor unions, youth groups, women's organizations and religious groups of their choice. The regulation allowing only one organization on a particular topic within the same administrative area should be repealed. **[should we add in that Chinese and foreigners should be allowed to associate freely?]**
5. All administrative decisions relating to organizations should be subject to review by an independent court system.
6. The National People's Congress should undertake a review of all laws that mention state security and revise these so they may not be used to prosecute individuals or groups of individuals for exercising their rights to freedom of association, assembly and expression. New, narrowly-defined standards of what constitutes state security and any harm to it , based in internationally accepted legal standards, should be included in the resulting revised or new laws.

**Policy**

7. A group should be free to determine its own organization and methods. CCP interference with the operation of groups in any manner should be banned, unless the organizations concerned wish to have such involvement.
8. Restrictive rules limiting the operation of the media and preventing individuals or groups from holding press conferences or other media events should be lifted. The CCP Propaganda Department should no longer direct the content of the mass media.
9. The government should abolish its long-term practice of organizing its own "NGOs", and concentrate on performing the duty of an official registrar for those groups that choose to register so as to gain legal personality, tax exemption or other benefits.
10. Communication and cooperation between organizations and individuals involved in NGO work, and particularly between domestic and international NGOs, should not be viewed as a threat to the government. All rules limiting or prohibiting such activities should be scrapped.
11. The government should seek to create an enabling environment for NGOs. Some appropriate steps include establishing tax deductions for donations to registered NGOs, easier access for NGOs to government information at all levels and a cooperative attitude towards NGOs from all government departments.

***To international organizations working in China, intergovernmental agencies and foreign governments:***

1. Pressure should be exerted on the Chinese government to enact the above mentioned reforms and to create an enabling environment for independent NGOs. Agencies such as the World Bank and the Asian Development Bank should stress the importance of such reforms. The focus should not be on regulation, but on freedom of association. The crucial contribution of such NGOs to economic and social development should be constantly reiterated.
2. International agencies should seek to work with, and foster, the more independent groups, including increasing communications with organizations outside China, and should reject the division between organizations seen as “hostile” to the government and “friendly” groups.
3. International lending agencies should adhere strictly to their guidelines on accountability and consultation, and insist on monitoring such processes. Where channels for such consultation with local communities do not exist, international agencies should seek to create them, in consultation with domestic and international NGOs.
4. International funders providing assistance for projects promoting “good governance”, “civil society” and “human rights” should incorporate into this concept a recognition of the constructive, positive role independent NGOs play in monitoring both official and private actors and in holding government accountable. They should ensure that funding in this area contributes to creating space in China for the operation of independent civil society groups, and should not fund initiatives which may have the opposite effect.

### List of abbreviations:

ACFIC: All-China Federation of Industry and Commerce  
 ACFTU: All-China Federation of Trade Unions  
 ACWF: All-China Women’s Federation  
 CCP: Chinese Communist Party  
 CCYL: Chinese Communist Youth League  
 CICETE: China International Center for Economic and Technical Exchange  
 GONGO: Government-organizaed NGO  
 ICCPR: International Covenant on Civil and Political Rights  
 ICNL: International Center for Not-for-Profit Law  
 MoCA: Ministry of Civil Affairs  
 MOFTEC: Ministry of Foreign Economic Relations and Trade  
 NGO: Non-Governmental Organization  
 NPC: National People’s Congress  
 PRC: People’s Republic of China  
 SELA: Self-Employed Laborer’s Association

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<sup>37</sup> This is only a partial bibliography. Certain papers used as sources for this report cannot be listed here as their authors did not wish their studies to be publicly identified. This indicates the continuing sensitivity of this subject in China.

<sup>38</sup> For CCP and government documents, no published is listed since most were issued by the institution in question. Some are available publicly, while others are in “internal-use only” compilations; others were obtained from the Internet, and from document collections put out by various institutions. All are on file with Human Rights in China.

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