

USALI Perspectives

Rebooting China's Charity Law

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Balancing control with flexibility remains the key challenge

For over three decades, China's leadership has sought to mold the nongovernmental sector to serve Communist Party and state interests. Early on, restrictions on nonprofits were issued in the wake of the 1989 uprising, during which small and often informal civil society research groups in Beijing advised student and worker organizations. In the last decade, restrictions have been the primary form of party-state activity in the nongovernmental arena, typified by the restrictive implementation of China's first omnibus [Charity Law](#) (effective 2016) and the strict constraints on overseas NGOs, foundations, think

tanks, and business associations under the [Overseas NGO Law](#) (effective 2017).

At the same time, the Chinese party-state has recognized that nongovernmental groups can make valuable contributions to society. The party-state wants the nonprofit and charitable community to provide social services but not, generally, to engage in cause advocacy. Any advocacy that is allowed must be wholly cabined in controlled channels, such as certain forms of public interest litigation. In other words, the Chinese leaders want

more “third sector” and less civil society.

The Chinese Charity Law embodies the long-standing tension between exercising strict control over associational activity and encouraging the sector’s growth to serve the party-state. The Charity Law was the subject of long and fierce drafting battles that spanned decades. There were disagreements over fundraising, how to deal with unregistered organizations, how difficult or easy to make the registration process, which agencies should control the sector, and other key issues.

As the drafting process stretched over time, rapid growth in the sector kept creating new issues, forcing the drafters in the Ministry of Civil Affairs (MOCA), National People’s Congress (NPC), and other bodies to figure out whether and how to include those matters in the new law. The burgeoning fundraising industry, the sale of securities to fund charitable enterprises, the rise of charitable trusts to protect family wealth while also engaging in state-approved charitable work, and other issues bedeviled the drafters and delayed the process.

The Charity Law that resulted has satisfied virtually no one. Reformers hoped that it would open up the process of legalizing and registering large numbers of new charitable

organizations. Since 2016, when the law came into effect, that has not happened due to the larger trend of heightened party-state control over society. Others hoped that the law would significantly mold and guide the charitable and nonprofit sector to closely follow state mandates and serve the needs of the party-state. That hasn’t happened in significant measure either. Instead, the law has faded in importance, disappointing regulators, infuriating the regulated, and sometimes seemingly ignored in both the Chinese charitable and regulatory communities.

Now an effort is underway to update the Charity Law to correct its shortcomings. Critics of the law note that in recent years, nonprofit sector growth in China – at least among registered, legal organizations – has slowed, even as grassroots social needs and popular interest in community-based activity have remained strong. During the COVID-19 pandemic, many locked-down communities saw a rise in informal mutual aid organizing.

The effort to revise the Charity Law began in the fall of 2020 when a group of academic and philanthropic institutions, supported by the NPC and MOCA, began convening a series of meetings to discuss the implementation and evaluation of the law. Participants discussed the low growth rate of registered charitable organizations, the slow pace of growth and significant

limits on public fundraising, the inability of the Charity Law framework to sufficiently grow charitable service activities such as emergency services and volunteering, the failings of charitable self-regulation, where party-state ambivalence about genuine sectoral self-regulation has left such efforts as non-starters or completely controlled by local governments, and other problems. In each case, over-regulation was diagnosed as the root problem.

But how to proceed when stronger top-down control is the order of the day in Xi Jinping's China? One strategy, which has been slowed by China's "zero COVID" campaigns but not completely stilled, is to push for reforms that could activate the charitable sector while remaining acceptable to control- and security-oriented officials.

The discussants' recommendations include allowing more room for self-regulation of the charitable, nonprofit, and philanthropic sector by organizations themselves; forming a "National Charity Commission" that would include civil affairs, tax, and other agencies involved with the charitable sector to better coordinate policy and right-size MOCA mandates; reducing structural and technical barriers to designation as a charitable organization; recognizing a broader "public interest" basis for charity designation in order to broaden the

number of recognized organizations; reforming the long and cumbersome charitable registration procedures and very broad regulatory provisions in the 2016 law; strengthening support for expanding charitable services through expanding budgets and encouraging processes for contracting with the state; encouraging more volunteering; and encouraging work by grassroots and informal groups while retaining strict controls – a central policy tension in this drafting process.

One important goal, a Chinese observer [noted](#) as the pandemic picked up speed in late 2020, is to strengthen the role of charitable organizations themselves in regulation: "Evaluations and ratings of charities should primarily be done by the sector itself, with the government primarily playing guiding and supportive roles. Government can encourage the establishment and development of a third-party evaluation capacity in social organizations, and should nurture the sector through government contracting for services and other methods."

Some of these recommendations were included in a late [2020 NPC report](#) on the implementation of the Charity Law. The NPC report also explicitly recognized conflicting interpretations among agencies on how to enforce the law. In addition to over-regulation, it recognized significant problems in under-regulation of online fundraising

platforms, emergency assistance, and the rise of charitable trusts. Problems included fraudulent use of fundraising platforms, misuse of charitable funds for personal or corrupt uses (of which the famous [Guo Meimei case](#) is the best-known but not the only example), activities by “fake” charities, charities mimicking the names of well-known organizations, charities not using funds for the purposes they were given, confusion and mismanagement in charitably-funded emergency assistance, and other issues, all of which have been the subject of extensive Chinese press coverage over the past decade and more.

Developments slowed in 2021 as China was preoccupied with COVID, but by March 2022 the NPC had placed the revision of the Charity Law formally on the legislature’s agenda for 2022. There is now some chance we will see progress this year. And yet the key issues remain: registration bottlenecks; both too strict and too loose enforcement; fundraising; self-regulation; the problems of grassroots, informal, and unrecognized social organizations; the lag in tax incentives; and the problems of rapidly developing new mechanisms like online giving platforms and charitable trusts. Making progress will be difficult. And the overarching problem remains for the drafters of a revised Charity Law: Are the failings of the Charity Law due to the

law trying to do too much, with too little flexibility, and with regulators given too much authority? Or are the failings the result of insufficient supervision, regulation, and enforcement at a time of increasing controls in China?

The answer for China’s drafters should be to reduce direct government regulation in the Charity Law and other regulatory documents, while allowing the formation of more registered organizations and permitting the Chinese charitable sector to confidently govern more of its own activities through strong and effective self-regulation, quality controls, and internal disciplinary measures. At the same time, some under-covered areas of regulation such as fundraising and tax incentives should be updated, detailed, and encouraged.

Successfully balancing regulation and self-regulation, controls and flexibility will be very difficult for the NPC and other drafters in the current environment in China. But encouraging more real self-regulation and more sectoral self-control may be the only way forward to help ensure that China’s omnibus charity law doesn’t once again serve primarily as a stultifying force in the development of this important sector.



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