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**COMMENTS OF THE FOUNDATION FOR LAW AND INTERNATIONAL AFFAIRS ON  
THE PEOPLE'S REPUBLIC OF CHINA CHARITY LAW (DRAFT)**

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The Foundation for Law and International Affairs (“FLIA”) welcomes the opportunity to comment on the draft of the People's Republic of China Charity Law (“Draft Law”). FLIA is an independent, nonpartisan, nonprofit organization mandated to promote academic and public discourse at the intersection of law and international affairs. The mission of FLIA is to facilitate international scholarly activities, conduct high quality, independent research and policy analysis, engage in public education and awareness-building programs, as well as amplify the voice of the rising generation.

Our comments are focused on a reading of the Draft Law for:

- (1) coherence and for conformity to the Chinese Communist Party Basic Line;
- (2) an internal coherence of the Draft Law, and the Draft Law's coherence with the domestic regulatory framework on civil society organizations;
- (3) general observations about legislative technique.

We believe that the Draft Law offers several possibilities to encourage a greater transparency and accountability of foreign as well as domestic NGOs, and improve the contribution of the civil society sector to local and global good governance. Some of these possibilities have been correctly identified but, other possibilities deserve a closer consideration. Corruption protection, the voluntary nature of service on charitable organizations, the role of foreign NGOs, Chinese civil society's role in promoting global good governance are some of the areas that we have identified as deserving further attention.

We have attached Professor Larry Catá Backer's general comments, and a table of technical comments on the Draft Law. We hope our comments will be useful to the Central Committee of the Chinese Communist Party, the National People's Congress, domestic and international donors and practitioners, and the scholarly community. We stand ready to further exchange views with relevant authorities on how to best regulate the charity sector.

Sincerely,

Foundation for Law and International Affairs

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## Comments to the Charity Undertakings Law of the PRC (Draft)

中华人民共和国慈善事业法（草案）

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The Charity Law (Draft) overall presents an important advance in Chinese rule of law. It is an important measure dealing with an issue tied closely to the direction and shape of socialist modernization, and as such, touches on sensitive matters requiring leadership from the Communist Party, especially as the CCP “unswervingly encourages, supports and guides the development of the non-public sector” (CCP General Program (GP) §14). My comments are focused on a reading of the draft Charity Undertakings Law both for coherence and for conformity to the Chinese Communist Party Basic Line. “The general starting point and criterion for judging all the Party's work should be how it benefits development of the productive forces in China's socialist society, adds to the overall strength of socialist China and improves the people's living standards” (GP §9). In those respects I respectfully offer the following comments:

### Chapter 1

1. It might be useful to align the focus of Sections 1 and 3. Section 1 touches on the legislative *purpose*, which include developing the productive forces (GP §9) represented by charity, the protection of charities and their stakeholders, and the promotion of social harmony. Chapter 3 *defines* charity to include a broader scope of activity—enhancing sports, culture, education, environment, etc. One might read Section 1 as touching only on the laudable goals of building a harmonious socialist society (GP §17). Yet Section 3 also speaks to developing an advanced socialist culture (GP §16); environmental protection (GP §18); and in “taking economic development as the central task making all other work subordinate to and serve this central task. The Party must lose no time in speeding up development (...) through science and education, the strategy of strengthening the nation with trained personnel and the strategy of sustainable development” (GP § 11). It might be useful to align the two sections to better reflect the CCP’s basic line for developing China’s productive forces through charitable efforts and in the definition of charity.

2. Section 4 correctly situates charity within social morals, the legal rights of others and the focus on public benefit. To the extent that the intent is to restrict profit, then the provision makes sense. And, indeed, that should be the interpretation reading sections 4 and 9 together. But that applies to the institution, not the individual. The provisions of Chapter 7 appear to make that clear (§§ 63-68). But it may be too broadly rendered when it also suggests that people who devote themselves entirely to charity should do so without payment. To the extent it suggests that people work without pay, that itself might suggest a contradiction with the CCP’s basic line on worker dignity and the avoidance of exploitation. More importantly, if only voluntary and part time efforts are permitted for individuals, without pay, then the utility of charity as an important means of developing mass

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culture, the development of harmonious society, and worker training, may be adversely affected to no good end. It might be worth permitting individuals who labor for charities to receive a fair wage.

3. Section 5 is a very useful provision. It is to be hoped that such planning will be undertaken strictly to advance the CCP's Basic Line. It might be useful, in that respect, to consider the development of a reporting mechanism so that these plans might be reviewed and approved by the appropriate level of government. In that respect Section 6 quite correctly emphasizes the need for coordination, but might also benefit by including an assessment obligation as well.

## Chapter 2

4. Section 9 provides a valuable framework for managing charities. It is not clear, however, whether charities may acquire the necessary funds or property from individuals or organizations outside of China, and if so, the extent to which such contributions will be examined by the authorities.

5. Section 10 provides a reasonable approach to registration. Two additional considerations might be made: first, should a national registry of charitable organizations be maintained? Second, should an organization be given a chance to correct errors and omissions and apply again should its registration be rejected? With respect to the first, a national registry might be useful to reduce fraud and corruption, an important element of the Basic Line (GP §23). With respect to the second, the right to reapply is implicit but not explicit and it might help lower level governments better understand the law if this was made clearer.

6. Sections 11-16 appear sound. One might consider a few points. First, it is assumed but never stated, that the General Assembly has the responsibility for ensuring assessment and improvement of charities, but their power to make that happen are unspecified in Section 11. Perhaps requiring the Board of directors to submit annual detailed reports of activities to the General Assembly (and to the government at the level of charity registration) might make accountability stronger and reduce the temptations of corruption. Moreover, it is not clear what the relationship is between donors (§15) and the General Assembly (§12).

7. Section 17 is important and necessary if foreign NGO work is to be aligned with the overall obligation to adhere to the CCP basic line, develop productive forces and ensure the path forward through socialist modernization of economy, politics, culture, society and environment. It is not clear, though it might be assumed, that a foreign NGO need only establish a local organ within China to meet the requirements of Section 17. That is, once Chinese citizens establish a charity under Section 10, that organization can be affiliated with the foreign NGO, receive funds and other materials from the foreign NGO and adhere to the foreign NGOs basic line. This appears a necessary reading of §§10, 17 and 20. If that is the case, then Section 18 suggests the limits of foreign NGO influence—which is no different than the ordinary requirements applicable to Chinese charities. That is, Foreign NGOs will be treated the same as Chinese charities and subject to the same rules and the same limitations. That is sound policy and accords with the CCP Basic Line (§ 17, 25). It is also central to the CCP's Basic Line or reform and opening up (“the basic state policy of opening up and assimilate and exploit the achievements of all other cultures” (GP §13)).

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### Chapter 3

8. The provisions on charitable donations are laudable and well written. However, they appear to emphasize collection mechanisms more effective in traditional systems and less useful in the great cities of modern China. It might be useful to permit, and regulate, new internet based collections.

9. There is no reason to limit the collection of charitable contributions from within China. Certainly Chinese charities ought to have the authority to make appeals for donations in other countries. While it is to be expected that such donations would be carefully regulated, and that one would expect such appeals and the property collected to be effected in a wholly transparent manner, there is no reason otherwise to restrict. This is especially the case where overseas Chinese communities might be donors.

### Chapter 5

10. Anti corruption protections must be at the heart of the Charities Law (GP §26). For this reason Section 48 is most welcome. However, it might be useful to elaborate on the nature of corruption and corruption activities for those entrusted with the objectives, work and property of charities. It is not merely a matter of conflict of interest, as Section 48 covers. It is also a matter of duty—here the duty to ensure that all charitable decisions are made solely to advance the objectives of the charity, inline with the overall objectives of socialist modernization, and that the directors of the charity can transparently demonstrate compliance with this duty. That touches on all aspects of the operation of the charity, as well as on the nature of the relationships among the members of the ruling councils of the charity itself. It is not clear that the Charity Law sufficiently deals with the issue of corruption in this respect.

### Chapter 7

11. The voluntary nature of participation in charitable work (§§63-68) appears to take a traditional approach to the enterprise of providing charitable services to the masses. It is not clear that this narrow position fully embraces the CCP Basic Line of opening up and emancipation of the mind (GP §13). I have suggested that such an approach might hamper the full development of productive forces and thus create a contradiction with the core objectives of socialist modernization. This is particularly true with respect to the building of socialist harmonious society, socialist culture and socialist ecological leadership, all key elements of the CCP Basic Line. It is true that under traditional models, charity was thought to be an addition to the main work of individuals in contributing to society. But that ancient view fails to consider the importance of the *work of charity*, and the necessity of investing societal productive forces to produce substantial improvements to the lives of people who might then be better positioned to more vigorously contribute to the construction of a socialist market economy (GP §14; through training, socialization, and education), socialist culture (GP §16 to “raise the ideological and moral standards and scientific and educational levels of the entire nation so as to provide a powerful ideological guarantee”); socialist harmonious society (GP §17 to “to create a situation in which all people do their best, find their proper places in society and live together in harmony”); and socialist ecological advancement (GP §18 “that leads to increased production, affluence and a good ecosystem”). It is useful, then, to

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consider permitting charities to hire and retain staff to further consolidate, improve and carry out their work. Indeed, it would seem that Section 11 of the Charities Law would itself require charities to press this point to improve their governance structures and the efficiency of their operations.

## Chapter 8

12. Chapter 8 is an important element of the Charities Law and is well written and comprehensive. But it lacks an important connection between the obligations of charities to disclose, and the obligations of local governments to make those disclosures public. Moreover, the Charities law does not impose local governments any obligations with respect to the good order of their management of charities, and no way for the masses to communicate with local officials respecting the work of charities. “The Party follows the mass line in its work, doing everything for the masses, relying on them in every task, carrying out the principle of “from the masses, to the masses,” and translating its correct views into action by the masses of their own accord” (GP §26). It is not clear how the Charity Law fully further develops and applies the mass line obligations to the operation of charities and to the responsibility of state organs in this critical arena. There might be room for improvement here. And that improvement itself can contribute both to socialist rule of law and democracy (GP §15 “effective measures to protect the people's right to manage state and social affairs as well as economic and cultural programs”). Local officials should be required to listen to the people in judging the effectiveness of charities and in considering proper management off charitable affairs. It ought to consider whether its own approach to charity disclosure is appropriate in light of mass opinion, appropriately translated as is its responsibility within the mass line itself. This is especially important with respect to statistical information (§70) and the content of disclosure (§71). It is not clear that there is a reason to withhold that information, restricting public reporting to those items listed in Section 72.

13. Section 78 on confidential information is important and correct. But in it lies a contradiction that the Charities Law does not yet overcome. That contradiction lies in the ability to use the broad categories identified in Section 78 as a *way to enhance the ability of officials to engage in corrupt activities with impunity*. That itself would constitute a severe breach of the CCP Basic Line, and should not be left unresolved without very good reason. Some facility must be created to ensure that Section 78 is not abused by corrupt officials. This would be especially important where corrupt officials might use their positions to operate through charities in ways that would hide their own bad actions. Tigers catch their prey under cover of darkness; they should not be allowed to feed with impunity on the donations intended to improve society. Senior officials should carefully consider the discretion built into Section 78 and build a cage of regulation around the discretion that they have provided—a discretion large enough so that any tiger can escape, and open enough so that even flies find its rules easy to avoid.

## Chapter 9

14. These provisions are useful. But it might be worth considering that local officials may delay their duties. That delay could seriously impede the implementation of the law and the useful operation of charitable activities. Government officials who delay without cause ought to be subject to swift CCP discipline. Others ought to be disciplined appropriately and charities should be given

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the power to seek registration from a higher level of government where the failures of a lower level make registration, or operation, impossible.

15. Section 90 and 91 are laudable and reflect well on government. But again, they might create an opportunity for corruption. Especially when combined with the secrecy rules of Section 78, Sections 90 and 91 can provide a large space where corrupt officials might operate with impunity. It is especially with respect to the entanglements of government officials, money and charities, that transparency must be much fuller. Alternatively, in such cases (Section 90 or 91 transactions)—local officials must be required to fully report on their activities to the next higher level of government—and to do so within a short period of time after they have engaged in such activity. In addition, the CCP disciplinary organs should be made aware and monitor such activities. It is only in this way that the state can truly achieve the excellent objectives of Section 92 (cultivation of charity culture).

## Chapter 10

16. Section 100 achieves the objective of ensuring that localities can adjust their regulations to local conditions. But the central authorities ought to be able to review and assess local deviations. A central data bank of local regulations should be maintained by central authorities, at a minimum. And the central authorities ought to make inspection tours of local operations periodically. This is especially important with respect to the powers exercised under Section 101. The central government retains its responsibilities to ensure the development of socialist rule of law. And that responsibility might require as well substantial oversight and assessment of local government behavior in light of their own legal responsibilities under the Charity Law. The Charity Law already has a model for this sort of oversight—Section 109 speaks to supervision by umbrella organizations. The same might be extended to the oversight of central authorities.

17. Section 112 provides a useful means of helping fight corruption—either by charities or by local officials. But it might be useful to consider the mechanics of public reporting. Might it be more efficient to centralize the collection of such complaints at the provincial level so that the more sophisticated machinery of the provinces might serve as a more efficient point for local discipline? Perhaps a better coordination of Sections 78, 90-92 and 112 would produce a more efficient system against corruption.