

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a draft law named "Overseas NGOs Administration Law of the People's Republic of China", which if adopted without further changes, would unduly and severely restrict the rights to freedom of association and of peaceful assembly and the right to freedom of opinion and expression.

According to the information received:

On 22 December 2014, at the 12th session of the Standing Committee of the 12th National People's Congress, a draft law named "Overseas NGOs Administration Law of the People's Republic of China" was presented by the Vice Minister of Public Security. The draft law is aimed at regulating overseas NGOs, which are defined as "non-profit and non-governmental social organizations established outside of China" (Article 2).

Formation of overseas NGOs

Article 5 of the draft law subjects associations seeking to conduct activities in China to obtain a prior registration from state's authorities. Article 6 specifies that the public security department under the State Council and its authorized police of provincial people's governments are registration administration authorities. The registration administration authority shall decide to approve or not to approve the application within 90 days from the acceptance of application (Article 10). It is reported that this procedure to register overseas NGOs fails to comply with

international law and standards pertaining to freedom of association and may not be sufficiently independent from executive powers.

Legal status of representative offices

Article 9 also provides that overseas NGOs applying to establish representative offices shall obtain approval from the competent authorities. If the application for registering a representative office of an overseas NGO is approved, the registration administration authority shall issue a registration certificate specifying the duration of operation (Article 11), thus limiting the enjoyment of freedom of association to a certain period. In the same vein, article 16 provides that temporary permits will be granted to overseas NGO without a representative office and conducting a temporary activity within China.

Article 11 further stipulates that the representative office of an overseas NGO does not have the status of a legal person, thus drastically limiting the scope of their activities.

Operation of overseas NGOs

Article 3 of the draft law limits overseas NGOs' ability to freely determine their activities by providing that "overseas NGOs shall not conduct or fund for-profit or political activities, or illegally conduct or fund religious activities." However, the draft law does not specify what "political activities" would entail. Article 4 further stipulates that "[w]hen conducting activities, overseas NGOs shall abide by Chinese laws and shall not endanger the national security, unity and solidarity, or jeopardize China's national interests, public interests and lawful rights and interests of other organizations and citizens, or go against China's social morality." Restrictions provided by article 4 of the draft law are reported not in compliance with those provided in international law and standards pertaining to the right to freedom of association and of peaceful assembly and the right to freedom of opinion and expression.

Chapter IV of the draft law will reportedly unduly and severely restrict the ability for overseas NGOs to carry out their activities freely. Article 20 stipulates that overseas NGOs shall conduct activities in the registered name "within the approved business scope and geographic area of activity". Further, "an overseas NGO shall submit its activity plan of the next year including the implementation of programs and the use of funds to the competent authority for approval before November 30 every year" (article 21). In this respect, article 22 states that "An overseas NGO conducting activities in China shall not impose upon Chinese partner organisations and beneficiaries additional conditions which violate China's laws and regulations or go against China's social morality", but do not define what "additional conditions" mean.

Overseas NGOs' ability to determine their structure freely is also reportedly put at risk by various provisions of the draft law. Article 29 provides that "where an

overseas NGO employs staff within China, it shall authorise the local organisation providing international services or others designated by Chinese government to employ staff. Article 30 provides that overseas NGOs' representative offices and overseas NGOs with temporary operation permits cannot increase membership or indirectly recruit members in China. Article 32 further limits the percentage of foreign nationality staff in representative offices to 50%.

Article 44 authorizes the police to enter the premises of the association's offices and venue of association's activities to carry out on spot inspections and to access any documents and materials, but does not specify whether a court order would be necessary.

Access to financial resources

Concerning access to financial resources, the draft law provides that overseas NGOs and representative offices "cannot fundraise or accept donations within China", thus limiting their ability to access funding.

Revocation of registration of overseas NGOs

Article 50 allows for the revocation of registration and prison terms for association's staff for minor and unspecified offenses, including in case the persons directly in charge "use the internet for starting rumours, libelling or publishing and disseminating other harmful information that undermines national security or harms national interests" or "being involved in or funding political activities".

The registration of the overseas NGOs' representative offices may also be revoked in case the organization "recruited or indirectly recruited members in China".

Reports indicate that a number of the provisions subject to serious source of concerns will in fact put in legal terms some existing practices, which casts further concerns at the current restrictive environment about the space devoted to overseas NGOs in China.

Serious concern is expressed that numerous provisions contained in the draft law do not comply with international law and standards pertaining to the rights to freedom of association and of peaceful assembly and the right to freedom of opinion and expression as established under Articles 19 and 20 of the Universal Declaration of Human Rights. Concern is also expressed that some provisions do not comply with the right to privacy as established under Article 17 of the Universal Declaration of Human Rights. Serious concern is expressed about several provisions of the draft law which may compromise the role and independence of civil society organizations and their ability to exercise freely and without undue interference from the State their activities, including in the promotion and protection of human rights such as the fight against corruption. Concern is expressed that this draft legislation may be rapidly adopted by the Standing Committee of the National People Congress in the very near future.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain how the draft law complies with your obligations under international human rights law.
3. Please indicate whether any consultation has been undertaken, including with civil society actors.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We are considering publicly expressing our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to request your Excellency's Government to take all necessary steps to secure the right to privacy, freedom of expression and opinion and the right to freedom of association, as per articles 17, 19 and 20 of the Universal Declaration of Human Rights, which provide for the protection against the unlawful and arbitrary interference with the privacy, family home and correspondence, the right to freedom of opinion and expression that includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media; and the right to freedom of peaceful assembly and association.

In his report A/HRC/20/27, the Special Rapporteur on the rights to freedom of peaceful assembly and of association stated that a "notification procedure", rather than a "prior authorization procedure" that requests the approval of the authorities, to establish an association as a legal entity, complies better with international human rights law" (para. 58). In the same report, the Special Rapporteur also indicated that "Members of associations should be free to determine their statutes, structure and activities and make decisions without State interference" (para. 64).

In this report, the Special Rapporteur also "recognize[d] the right of independent bodies to examine the associations' records as a mechanism to ensure transparency and accountability, but such a procedure should not be arbitrary and must respect the principle of non-discrimination and the right to privacy as it would otherwise put the independence of associations and the safety of their members at risk."

In the recommendations of his report, he further called upon States to ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association, nor is subject to threats or use of violence, harassment, persecution, intimidation or reprisals" (A/HRC/20/27 para. 84 (c)).

In connection with the above alleged facts and concerns, we would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. In particular, we would like to draw specific attention of your Excellency's Government to articles 5 and 13.