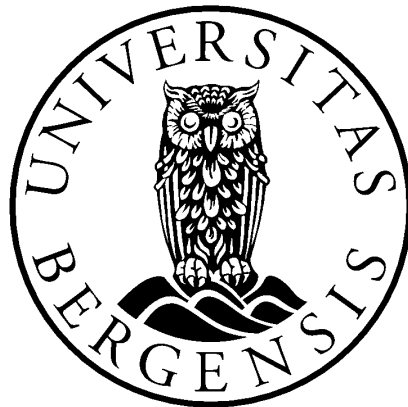


How to get invited to the party

An analysis of the ONGO law in China

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List of Acronyms

PRC	The People's Republic of China
NGO	Non-Governmental Organizations
NPC	National People's Congress
ONGO	Overseas Non-Governmental Organization
MPS	The Ministry of Public Security
MEP	The Ministry of Environmental Protection
PSU	Professional Supervisory Unit
MCA	The Ministry of Civil Affairs

1. Introduction

1.1 Theme and research question

I will in this thesis study the regulation of overseas non-governmental organizations' (hereafter NGOs) activities in China¹. January 1st 2017 the “Law of the People’s Republic of China on Administration, of Activities of Overseas Nongovernmental Organizations, in the Mainland of China” (hereafter the NGO law) took effect, and was the first of its kind to regulate NGOs in China. Throughout this thesis I will analyze the law, and also look at if and how the law applies to and shapes its society. The question I will try to answer is: What is the legal situation for NGOs in China under the new law? This question will bring me into an analysis of the rule of law, and whether or not it applies to the NGO legal area.

China is an authoritarian regime and has recently enacted strict regulation of NGO’s activity in the country. This creates special challenges for the NGOs operating there, as well as for foreigners who want to understand how the regulation functions. NGOs have been present in China since the early 80’s and have since the 1990’s grown in numbers. In 2016, Fu Ying, former vice foreign minister of China, suggested that there are more than 7000 NGOs in China². However, up until recently there has not been a cohesive law regulating these organizations. Up until the new law took effect, some NGOs registered with the authorities as businesses, charities or foundations, while others just flew under the radar.

In April 2016 the Chinese government passed a new law on overseas non-governmental organizations, which would regulate the registrations, operations and legal status of the NGOs in China³. China is not the only country that has enacted restrictions on NGOs. Since 2010 more than 60 countries has drafted or passed laws that curtail the activity of non-governmental and civil society organizations. 96 countries have taken steps to inhibit NGOs from operating at full capacity, under which international aid groups and their local partners are vilified, harassed, closed down, and sometimes expelled⁴. The new Chinese law enables organizations to achieve a clearer legal status, but it is also a new legal element to the

¹ “Overseas” is considered to be any territory outside of Mainland China, including Hong Kong, Macau and Taiwan. See the Chapter 3 for further disclosure on the term “NGO”.

² Wu 2017

³ Law of the People’s Republic of China on Administration, of Activities of Overseas Nongovernmental

³ Law of the People’s Republic of China on Administration, of Activities of Overseas Nongovernmental Organizations

⁴ Sherwood 2015

ONGOs' already established perception of their legal situation. In this thesis I will discuss and analyze the legal situation for ONGOs in China.

In order to explore this, the thesis will examine a narrower area of the Chinese legal system, in the hope that it will give the reader more insight into just how complex even the smaller pieces of the system are. I will also try to draw some conclusions about the rule of law in this particular area, but in consideration of the thoughts presented above, there will be less emphasis on this effort compared to the thesis's main goal, which is to give an example to how Chinese law could be approached in order to give an accurate picture of how the system's logic and dynamics actually are perceived on the ground. I have therefore conducted around a dozen interviews with ONGOs and experts in Beijing about their interpretation of their legal situation, and how that interplays with their risk assessment of legal sanctions and extralegal sanctions, as well as their operational strategies for reaching their organization's goals. The interviews were conducted in March/April 2017, shortly after the ONGO law took effect.

2. Method and sources

2.1 Accessibility of sources

With digitalization, sources of Chinese law have become more available than ever before. However, it is not just the mere access that has been an obstacle for foreigners who try to study the Chinese law system, also language has been a barrier for many. With China opening up to the West, more and more laws and legal documents have been translated into English. In this paper I'm using the official English translation of the ONGO law, provided by the Ministry of Public Security⁵. By using the official translation I try to limit the inaccuracies and misinterpretation that might arise in translation. However, it must be noted that the Chinese text prevails in the event of inconsistency, and that the risk of misinterpretation is still present even when the translation comes from an official source.

To discuss and analyze the legal situation for ONGOs in China I would argue that it is simply not sufficient to only examine the law in a narrow sense because this does not fully reflect the actual situation for the participants in this legal system. The law exists in an authoritarian

⁵ Official translation of the law is available at:
<http://www.mps.gov.cn/n2254314/n2254409/n4904353/e5548987/content.html>

legal environment where the legal subjects, the ONGOs, are also acting and reacting in relation to a set of state sanctioned unwritten norms, so only examining the law would be like only seeing one half of the playing field of a football match.

In the authoritarian context of China, the laws are also intentionally made unclear and vague, and are therefore hard to interpret for an outside student. Conducting fieldwork has facilitated the opportunity to fact check governmental information, consult multiple sources, and go directly to the ONGOs as primary sources. This benefits overcoming the possible biases that secondary literature may contain⁶. Having multiple and different sources also enhances the reliability of the study.

Because the civil society in China is growing and changing rapidly, many books and articles are already out of date. Because the new ONGO law is so new, there are not many studies available on this topic. Even though doing fieldwork for a master thesis of law is not the most common, it has been crucial for me. To be able to make a snapshot of the current situation, I had to get fresh updated information from the ONGOs at this point in time. I also hope that the findings will be valuable for further studies on the legal aspects of the civil society in China.

2.2. Selection and interview techniques

The subjects for the interviews was found by using multiple sources: Internet sources, contacts from other scholars and experts, and having sources name other sources. A problem with seeking sources with other sources is that the subjects might suggest interview subjects that have the same point of view as they have. Therefore, a combination of the different method for selection was preferred.

The interviews were semi-structural in the sense that the questions mainly followed an interview guide prepared in advance (See Appendix 1). During the interview I asked follow up questions, and the order of the questions was changed from interview to interview, according to what questions felt most natural at the time. By having an interview guide I made sure that all topics were covered. This is important so that all the interviews, and the ONGOs, could be analyzed in comparison to each other, according to the same topic.

⁶ Gerring 2007, 114

All the interviews were conducted in English. With each person I made an evaluation of whether an interpreter was needed or not. By my evaluation, all the people interviewed had high enough English language skills to express themselves sufficiently. However, as English, for some, was not their main language, some meanings or interpretations might have been lost in translation. With that said, by talking directly to the people I interviewed I was able to connect with the person interviewed and build trust. This would have been harder with an interpreter present.

Interviewing people active in the Chinese civil society about their relationship to the government is not without conflict or concerns. When asked, some of the people interviewed were not comfortable with having their, or their organization's name in this thesis. In order to make the interview subjects able to answer more openly, without being afraid of possible consequences, I decided to anonymize all interviews. Having anonymous sources in a study weakens the reliability of the findings, as the reader is not able to crosscheck the information presented by the anonymous sources without seeking me, the author, for the sources. The transcription of the interviews and information of the subjects interviewed has therefore been handled with great caution, as some of the topics that were covered are indeed sensitive. The respondent will in the thesis be referred to as Subject A, B, C and so on. At the time the interviews were conducted, the law was a very new element. Although the law had taken effect, the situation might have changed since then. Hopefully the interviews can serve to give a snapshot into a time of the implementation of a new law in China, and a larger perspective on a legal area in change.

3. What is an ONGO?

Although I have already used the term “non-governmental organization”, I will need to give a more expansive explanation on this term, and how it will be used in this thesis. The definition in the thesis differs from the legal definition in the ONGO law, which will be discussed further in Chapter 5. First of all, Western scholars are divided on the definition of NGOs, second, the term “non-governmental organization” does not have a direct translation into the Chinese language, third, there are some complexity to how a western theoretical definition could be applied to the authoritarian context of the Chinese civil society, and fourth, the ONGO law's definition is also operational with regards to jurisdiction. This thesis will

therefore not only have to present nuances in definitions raised by scholars and explain which definition this thesis will be using, but also discuss how the chosen definition will need to be adapted to an authoritarian context, as well as shed light on the Chinese interpretation in order to give context to the legal definition and the reasoning behind it.

3.1 What is a NGO?

This thesis will use Salamon and colleagues' (1999, 4) definition of non-governmental organizations, where NGOs are understood as organizations that have an institutional presence and structure; institutionally separate from the state; who do not return their profits to their managers or to a set of "owners"; fundamentally in control of their own affairs; and last, that membership in them is not legally required and they attract some level of voluntary contribution of time or money. NGOs are further a part of the greater «civil society», understood as a separate sphere outside the boundaries of the market and the state⁷. Salamon and colleagues writes that in a Western notion, non-governmental organizations are formal, private, and non-profit-distributing, but they are also self-governing and voluntary⁸.

Others, like Hasenfeld and Gidron (2005, 10) further distinguish between organizations that seek to reform or transform. While transforming organizations is characterized as opposing to the state regimes and seek to replace them with alternative regimes, reforming organizations, in contrast, seek to alter the state regime's policies. The literature on Chinese civil society, against the backdrop of the 1989 democracy movement, focused on the areas of conflict between civil society and democratization of the state⁹. In this way the civil society, and NGOs, have been viewed as a counter to the Chinese Communist Party, thus as transforming organizations.

This interpretation, in my opinion, does not fully reflect the complexity of the Chinese civil society, as many of the NGOs, both foreign and domestic, has chosen strategies of different levels of cooperation with the Chinese regime. Although some NGOs might have an ultimate goal of transforming the Chinese regime, most of them seem to realize that the space for opposition to the regime makes it too hard to operate without any form of collaboration or

⁷ Salamon et al. 1999

⁸ Salamon and Anheier 17 1992, 134

⁹ Saich 2011, 256

compliance with the government. To characterize most NGOs, domestic or otherwise, as transforming organizations would therefore be a too large simplification.

3.2 NGOs in the Chinese context

Not only the authoritarian context, but also the history of civil society in China makes the entire concept of NGOs a bit alien to China. The Chinese government refers to a whole range of domestic non-profit organizations as “social organizations” (*shehuozuzhi*), comparable to NGOs in the West. Categories used by the government to register these organizations vary, but none of them accurately corresponds to the term “non-governmental organization”¹⁰.

Also, the regulation and operation of NGOs, both domestic and foreign, are quite complex. In order to register as a non-governmental organization, you’ll need a Chinese bureau or a quasi-governmental agency as your “professional supervisory unit” (PSU) or “Chinese Partner”¹¹.

The list of approved PSUs (referred to as the Catalogue) mostly contain different agencies of municipalities, administration, commissions and bureaus¹². Also Chinese NGOs, in order to register as a legal domestic NGO, need a form of governmentally organized non-governmental organization (GONGO) as sponsor. Because of this some scholars question the autonomy and legitimacy of the Chinese NGOs, since the NGO will not be completely without governmental ties. According to Foster (2001, 85) co-opted NGOs are not functional in the civil society as they are not independent and therefore used as tools of the authoritarian states for domination of civil society. This idea has led some scholars, such as Feng (2017) to conclude that in strict legal terms, there are no legal domestic NGOs in China. They are either legal but not an NGO, or an NGO but not legal. However, how the PSUs function in practice, and the ties with the NGOs, vary in form and strength from organization to organization. Therefore, I would argue that it is too simplifying to say that Chinese NGOs are either governmental, non-governmental, reformative or transformative.

In light of this discussion, a NGO in this thesis will therefore be understood as an organization that have an institutional presence and structure, which are not run by the state or any governmental level. However, I would not be as strict on whether the NGOs have a link

¹⁰ For list of different NGO categories in China, see i.e. Feng 2017

¹¹ Pittman 2017

¹² The Ministry of Public Security 2016b. Translation available at:
<http://www.chinadevelopmentbrief.cn/articles/beijing-overseas-ngo-supervisory-unit-list/>

to any governmental agency, as this is required in order to register as a legal NGO or ONGO in China.

It is specified in the first and second article of The ONGO Law that the law concerns “nongovernmental organizations from outside China’s mainland”, and that “Overseas NGOs,” is referred to in this Law as “foundations, social groups, think tanks and other non-profit, non-governmental social organizations legally established overseas”. The definition in the legal text does not reflect any prerequisites for qualifying to be an NGO, but rather lists examples of what type of organizations that could be considered an NGO. The legal implications of this will be discussed later. On the terminological side, not much can be inferred from the law’s definition at face value. The thesis will therefore, in using the definition described above, err on the side of inclusion when it comes to what could be considered an NGO or not.

The ONGO-law uses the term “overseas NGO” instead of “foreign NGOs” (FNGO). The law specifies that “overseas NGO” also cover NGOs from Hong Kong, Macau and Taiwan¹³. This has in turn affected how the international civil society community in China uses the term “foreign NGO” and “international NGO” (INGO), which is largely equated to have the same meaning as “overseas NGO”. These three terms were used interchangeably during the interviews that were conducted for this thesis. The thesis itself will exclusively use “overseas NGO” for consistency, and because it seems to be the most precise alternative.

4. Theoretical Background

4.1 The Chinese legal system

4.1.1 The Chinese political, legal and judicial system

China is often described as a non-democratic, authoritarian regime, or high-capacity non-democratic regime¹⁴. The foundation of the political system of China is a one party system where the Chinese Communist Party is the only party in power. Unlike the separation of powers in the western countries, China centralizes the state power into the National People’s Congress (NPC), which not only enacts legislation but also appoints and supervises

¹³ Feng 2017

¹⁴ Tilly 2006, p 27

administrators and the judiciary¹⁵. As the permanent organ of the NPC, the Standing Committee is endowed with extensive legislative and supervisory rights under the constitution¹⁶. The NPC exercise the state power of amending the Constitution and supervising the enforcement of the Constitution, enacts basic laws of the state, as well as elects and decides on the choices of the leading personnel of the highest state organs of China. This includes among others electing the President of the Supreme People’s Court and the Procurator-General of the Supreme People’s Procuratorate¹⁷. Even though China is not completely comparable to the western module of separation of powers, the Chinese government is divided into different bodies of function. While NPC is the highest organ of state power, the State Council is the executive body and the highest organ of state administration, the people’s procuratorates is the state organ for legal supervision and the people’s courts are the juridical organs of the state.

The Chinese legal system is a socialist system of law based primarily on the Civil Law legal system¹⁸. When the reforms started in the late 1970s, the legal system was effectively at zero. Saich (2011, p 161-162) goes far in saying that the Chinese legal system “is simply one specific cog in a bureaucratic machine that is build to achieve state objectives”. After more than three decades of continuous work on the rule of law, China now exercises uniform yet multi-tiered legislation. This means that they emphasize that legal authority runs from the statues rather than judgments. The statutory hierarchy of the Chinese legal system runs from the Constitution of the People’s Republic of China of 1982, via laws, regulations, provisions, rules, detailed rules, measures, decisions, resolutions and orders¹⁹. Some of these are national, and some are local.

China has a four-tiered court system: the Supreme People’s Court at the center, the Higher People’s Courts at the provincial level, the Intermediate People’s Court at the municipality level and the Basic People’s Courts at counties or city districts level. The Basic People’s courts have tribunals at the local level, such as in towns, municipalities and autonomous communities. The Supreme People’s Court can review the decisions of all lower courts and has jurisdiction over all regular and special courts. Chinese courts at all levels have a juridical committee as the highest judicial organ in a court. Members of the juridical committees, at

¹⁵ Jiang 2017, p 344

¹⁶ Jiang 2017 p 321-322

¹⁷ Jiang 2017, p 318

¹⁸ Jiang 2017, p 321

¹⁹ Jiang 2017, p 330

various levels, are appointed and removed by the standing committee of the People's congress at the corresponding level²⁰. As in other civil law countries, China has a procuratorates system that parallels the court system, but is independent from both the courts and the Ministry of Justice, and is responsible for the supervision of the juridical system²¹. In China, the procuratorate is an active player in the adjudication system, and the procuratorates exercise the power of prosecution. In this sense China's procuratorate is unique compared to western equivalents, since it has a dual role in the criminal process, undertaking both prosecution and adjudicative supervision²². The Supreme People's Court and the Supreme People's Procuratorate bear the authority to issue nationally enforceable Juridical Interpretations as guidelines to the trials. The interpretation by the Supreme People's Court are more voluminous, comprehensive and pervasive, and therefore constitutes a significant part in the hierarchy of Chinese law²³.

4.1.2 Can the concept of Rule of Law be applied to China?

This brings us back to a central point in relation to the Chinese legal system: What is considered "legal"? Any legal scholar who tries to analyze the Chinese legal system have to answer this question in order to be able to actually describe what is going on in China. Some frame this debate by using the concept of "rule of law". There are many definitions and interpretations to such a contested concept, but at its most basic, "rule of law" refers to a system in which law is able to impose meaningful restraints on the state and individual members of the ruling elite, as captured in the rhetorically powerful, if overly simplistic, notions of a government of laws, the supremacy of the law, and equality of all before the law²⁴. Some scholars, such as Horsley goes a bit further when he defines it as "a system under which law acts as a curb on state and private power. Rules are set in advance and applied consistently, equally and transparently by independent courts that serve as a backstop to protect civil, political, and human rights"²⁵. This view of the legal system as a part of a democratic society has led many Western scholars to become skeptical about the claim of rule of law in China, and some, such as Jiang (2017, p 344) conclude that "a systematic approach,

²⁰ Jiang 2017, p 325-326

²¹ Jiang 2017, p 326

²² Jiang 2017, p 326

²³ Jiang 2017, p 331

²⁴ Peerenboom 2002, p 2

²⁵ Horsley 2006, p 93

to comprehensively promote the rule of law is also a far-reaching and profound revolution". Also Horsley (2006, 93), conclude that "China does not much resemble a "rule of law" society". In similar ways, other scholars advises that one have to recognize the limitation of the rule of law model that Westerners hold up as a universal standards because it has failed to guarantee social justice²⁶.

Finding a common vocabulary for analyzing Chinese law might be useful, however the problems arise when trying to nail down a label that fits the entire Chinese legal system. Some areas are more governed by law than others. Some parts might rather be governed by factors like politics, clientelism, and connections (*guanxi*), which does not fit the understanding of rule of law. Connections and politics affect some, but not all factors. An analysis of constitutional law might come up with an entirely different answer than an analysis of economic regulations. It is therefore a very difficult task to build a theoretical framework that allows for labeling the entire Chinese legal system as more or less based on rule of law.

In his book "China's long march toward rule of law" (2002), Randall Peerenboom provide a more nuanced view on the Chinese legal system and its relation to rule of law than many of his predecessors. However, as he himself mentions in his book, it is difficult to do an objective analysis without letting normative opinions about which factors to emphasize influence the scholar in their conclusions. Although this observation might seem to devalue attempts to draw conclusions about the Chinese legal system's relationship to rule of law, my opinion is that such an effort is not entirely futile as long as the scholar also tries to disclose the reasoning behind their choice of emphasis. Having this in mind, Peerenboom divides the theories of rule of law in to types: a "thin" and a "thick" interpretation of rule of law.

A "thin" theory of rule of law is understood as the minimum criteria for defining a state as based on rule of law: That any legal system must possess to function effectively as a system of laws, regardless of whether the legal system is a part of a democratic society or not. In this sense laws should be general, public, prospective, clear, consistent, capable of being followed, stable and enforced. On the other hand the "thick" understanding of rule of law, adds to the thin understanding elements of political morality, such as particular economic arrangements, forms of government, or conceptions of human rights²⁷.

²⁶ Turner 2000, p 5

²⁷ Peerenboom 2002, p 3

In this sense, I would not try to suggest that there is a single type of rule of law, or try to make one type of “rule of law” fit the Chinese model by “concept stretching”. However, I will use the “thin” theory of rule of law, described above, to understand the core concept of rule of law, and then use various thick theories when understanding different conceptions of the whole system.

4.2 Sources of law in China

4.2.1 Law, regulations and policies

There are several sources of law in China, but not all will be relevant for this thesis. I will be looking at national statutes, in the form of law, and articles. A law, in the Chinese sense, is a statute that has been enacted by the NPC or its Standing Committee. Law serves as basic statutes in the national sphere of government²⁸. The first and most important source of law for this thesis is the ONGO Law itself.

Sometimes governmental branches issues regulations, also known as “provisions” and “measures”, these are the national administrative rules designed to implement a law or policy, and are usually issued by the State Council²⁹. Regulations in China are viewed as a valid source of law, complimentary to statutes. In similar way, a set of rules, are usually issued by a ministry or a commission of the State Council within the limits of their competences, and often contain specific rules of interpretation or explanation of law or a regulation³⁰. In regards of this thesis, such relevant supplementary work will be the “Guide to the registration of Representative Offices and Submitting Documents for the Recording of Temporary Activities of Overseas Nongovernmental Organizations”³¹ (referred as the Guide), and the “Catalogue of Fields and Projects for ONGOs with Activities in China, and Directory of Organizations in Charge of Operations (2017)”³² (referred as the Catalogue) issued by the Ministry of Public Security at the end of 2016³³. Both “the Guide” and “the Catalogue” are giving indications on how to interpret the ONGO Law.

²⁸ Jiang 2017, p 330

²⁹ Jiang 2017, p 331

³⁰ Jiang 2017, p 331

³¹ The Ministry of Public Security 2016a

³² The Ministry of Public Security 2016b

³³ The Center for Charity Law of the China Philanthropy Research Institute at Beijing Normal University 2017a

Another legal source that should be mentioned in this paper are policies. In China, custom is not considered as a general source of law. According to The General Principles of the Civil Law³⁴, civil activities must be in compliance with the law; where there are no relevant provisions in the law, they shall be in compliance with state policies, hence depriving custom of general enforceability in the civil law³⁵. Policies can thus be a general source of law in China. In the case where no legal rules can be applied, state policies is granted binding force. Where there is no pertinent legal provision, policies amount to a direct source of law, meaning that citizen and governmental conduct must comply with the relevant state policy³⁶. Therefore, before the ONGO Law came into effect, Chinese policies played a role in regulating the ONGOs.

4.2.2 The court and the procuratorate

In China, another source of law comes from the court and the procuratorate. The reform and opening up to the world led to a litigation boom. In 1978, 613,000 cases were tried by the courts at all levels³⁷, while the cases accepted in 2013 grew up to 14,217,000 cases³⁸. The boom has stimulated further development of the legal profession and greater public and private expenditure on the legal practice. However, Chinese law does not consider judgments to establish legal precedent, at least not as formally binding on the courts. The Supreme People's Court gives interpretations on questions concerning specific application of laws and decrees in juridical proceedings. According to Jiang (2017, p 323) the practice of interpreting laws and decrees by the Supreme People's Court has developed in recent years to an extent that is called "juridical legislation". This was not previously defined in the constitutional law. However, the legislation does require guidance in order to fill gaps and to solve conflicts and some vagueness among the laws so that effective enforcement can be carried out by the judicial branch. The Supreme People's Courts can also compile guiding cases as necessary aid to juridical reasoning. The guiding case system will exert far-reaching impact on the Chinese civil law legal system. Compared with juridical interpretations, guiding cases reassemble

³⁴ The full version of the The General Principles of the Civil Law can be found at https://www.wipo.int/wipolex/zh/text.jsp?file_id=182628

³⁵ Jiang 2017, p 335

³⁶ Jiang 2017, p 335-336

³⁷ Zhu 2914, p 105-106

³⁸ Jian 2017, p 326

more significantly the doctrine of precedent of common law system³⁹. However, there are still no guiding cases on the basis of the ONGO law since there have been no cases, as far as I have found, processed in the court system, and has also not yet reached the Supreme People's Court. But with more and more organizations initiating public interest lawsuits⁴⁰, there is a possibility that this could be relevant in the future. In China, like in some other civil law countries, the typical decision is short, concise and lacking explanation or justification. This may not give sufficient explanation about what rule of law should be and potentially causing confusion among the litigants and judges. Therefore a reasoning from a future guiding case on the ONGO law would possibly enhance the clarity of rules applied with the ONGO law.

4.3 Law in action

As mentioned above, I will need to disclose my reasoning behind treating in example interviews with the legal subjects, which many would not consider to be a valid source of law, as part of the discussion and analysis of the legal situation for ONGOs in China.

Before going deeper into the theoretical nature of this question, and as a basic preliminary point of departure, the Oxford dictionaries defines *law* as “The system of rules which a particular community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties”⁴¹. The definition implies that not only formal law and statutes, but any kind of rules and norms are *law*, as long as they are enforced by the community as a whole, in this case the Chinese state power. Prior to the implementation of the ONGO law, this understanding of law was fundamental to how ONGOs stayed out of trouble with the Chinese state. ONGOs would use their contacts within the Chinese state system to predict whether or not their activity would be sanctioned or not, disregarding if these sanctions would be legal in nature or not. After the ONGO law took effect this system has been replaced by a formalized system of rules, but the new regulations has also been built upon the already existing system of permission by and cooperation with Chinese state organs. In an attempt to interpret Roscoe Pound's ideas from the famous article “Law in Books and Law in Action” from the 1910, Jean-Louis Halperin believes that there is a way to combine the positivist approach with legal analysis of the rule of change, and that it can be

³⁹ Jiang 2017, p 333

⁴⁰ Yao 2015

⁴¹ Oxford Dictionaries 2018

distinguished from sociological perspectives. Halperin criticize different approaches in the study of law, such as classical normativism (supposing that legal science reproduces legal norms), realism (considering that legal facts are revealed by juridical decisions), and discursive analysis (which amalgamates all legal statements), for denying the importance of the gap between “law in books” and “law in action”⁴². In this sense these theories risk the belief that law only exists through scholarly discourse and by this creating a virtual world, and underestimating the law’s grip on reality. Law in action, defined by Halperin is “law in change”: “a legal science aware of the relativity of its constructed object but anxious to be closely linked to empirical data supposes a study of these changes in norms”⁴³.

Halperin argues that an understanding of human behavior is not found in the relationships between cause and effect, but through the interpretation of human actions and the treatment of single individuals as basic units⁴⁴. He argues that if law consists of principles and interpretations, and not of rules, the gap between law in action and law in books is easier to ascertain: law in action is created through legal discourses which are confused and conflated with discourses about law that we can find in books⁴⁵. In this way one could argue that legal text exists and acquire meaning through the interpretation of its readers. Halperin therefore state that Pound’s formula, “law in books” is useful as it is based on some minimal definition of what counts as law, and is dependent on the respective roles that are assigned to constructed legal orders and empirically recognizable norms⁴⁶. This reasoning might not be far away from the jurisprudence of concepts, as practiced by German Pandectists in the nineteenth century. But by this, he encourages any student of law to check the ideal-type constructions by confronting them with empirical reality.

In studying the authoritarian Chinese case where rule of law is weak and even policies can be a legal source, the reasoning of law in action is useful as it not just examines the role of law, in terms of statutes and cases, but it actually examines how law is applied in the society and asks “How does this affect people’s lives in the real world”.

I have conducted interviews with ONGOs and experts in order to discover how the legal situation of ONGOs is perceived in action. Choosing this method of research is not entirely simple within the framework of legal theory. There are many opinions on how to delineate

⁴² Halperin 2011, p 59

⁴³ Halperin 2011, p 61

⁴⁴ Halperin 2011, p 73-74

⁴⁵ Halperin 2011, p 56

⁴⁶ Halperin 2011, p 76

what is considered to be subject of legal study, and what is more closely related to other scholarly disciplines.

At the same time that we accept that legal sociology can help legal scientists to understand human behavior as it relates to law, Halperin notes that we also must realize that only law produces law, it is not produced by external factors. Having this in mind, the thesis will use a combination of the law itself, the supplementary work, as well as how the law affects the people living with the law.

5. ONGO law

5.1 Historical and political context to the ONGO law

Before going into the analysis of the ONGO Law, we have to understand what was the situation for ONGOs in China before the ONGO act. When ONGOs first began to establish in China in the late 1970s and 80s, there were no laws or guidelines that regulated how they should register, be managed, or their activity. During the “reform and opening” period, the Chinese government’s attitude and policy toward overseas NGOs was to tolerate them by default, and to avoid issuing a clear set of policies and regulations that would legitimize their presence⁴⁷. Deng (2010, p 190) calls this the “three no policy”, “no recognition, no banning, no intervention”. He argues that in order to understand the government’s position, we need to recognize the system of hidden rules used by the local governmental and Civil Affairs Departments to administer the overseas NGOs⁴⁸.

In the absence of regulations, ONGOs still found ways to operate, some registering as foreign enterprises and others did not register at all. It was not until the late 80s that the Ministry of Civil Affairs developed internal guidelines for ONGOs, saying that authorities should not ban or intervene with ONGOs unless they threatened the state security or social stability⁴⁹. In 2000, the Provisional Regulations for Banning Illegal NGOs were issued, labeling many NGOs, both overseas and domestic, as illegal, but still generally tolerated in accordance to the internal guidelines⁵⁰. Further, in 2004 more regulations were issued, and the Ministry of Civil

⁴⁷ Shieh and Knutson 2012, p 11

⁴⁸ Deng 2010, p 190

⁴⁹ Deng 2010, p 190

⁵⁰ Deng 2010, p 190

Affairs requested that foreign foundations were re-registered under the Foundation Management regulations. In their report “The Roles and Challenges of International NGOs in China’s Development”, Dr. Shieh and Knutson (2012) found that this appeared not as easy for organizations that were not well connected and did not have a clear defined area of work, as one of the requirements was to have a professional supervisory unit (PSU). In example, the Ford Foundation, with a long history in China, had more difficulty securing a PSU because they worked in multiple areas, than for example the Bill and Melinda Gates Foundation, which had been working closely with the Ministry of Health⁵¹.

On one hand, the government sees ONGOs as valuable in providing assistance in addressing China’s many development challenges. On the other the government wary of the potential role ONGOs can play as competitors, and specially the ONGOs engagement in promoting democracy and “Western values”⁵². The suspicion of Western NGOs became especially visible after the “color revolutions” in Ukraine and Georgia in 2004, where civil society played a key role in bringing down the authoritarian governments of the former Soviet republics. Chinese authorities thus launched an investigation of both ONGOs and Chinese NGOs in China⁵³. Activities related to human rights advocacy, religious organizations, workers rights and ethnic minority rights has therefore been, and still is, under close scrutiny by the Chinese state. How the government has handled such organizations in the past, has led to an understanding of which issues and activities that are viewed as more sensitive than others.

As the “Overseas NGO Law” was announced during the National People’s Congress’s press conference, the National Standing Committee’s Deputy Director of Law, Zhang Yongdan, stated that “certainly there is a very small number of overseas NGOs who have attempted or have even already done things that threaten the stability of Chinese society or security”. This background to the “Overseas NGO Law”, symbolizes that China’s level of consideration towards national security cannot be compromised, Tsinghua University professor Jia Xijin concludes⁵⁴. From the “three no policy” to having a clear legislation, Jia argues that one could think that the formulation of the Overseas NGO Law is the result of combining worries about

⁵¹ Shieh and Knutson 2012, p 17

⁵² Shieh and Knutson 2012, p 11-12

⁵³ Shieh and Knutson 2012, p 12

⁵⁴ Jia 2017

national security and the rule of law concept of national governance. And that the challenges and opportunities this law presents also comes from this source⁵⁵.

5.2 Analysis of The ONGO law

5.2.1. Overview of the act

The ONGO Law took force the 1st of January 2017 and is divided into seven chapters. The first chapter contains general provisions, second, rules for registration and document submission, third, rules for activity specifications, fourth, facilitation measures required by the Chinese government, fifth, rules of oversight and supervision, sixth, rules of legal liabilities, and seventh, supplementary provisions. The thesis will not go into each chapter by itself, but rather analyze the law thematically according to key issues, starting with applicability, followed by rules of registration, control and supervision, facilitation, and liability. The thesis will not analyze every article, but focus on the most important aspects.

5.2.2 Who does the law apply to?

Article 1 of the law states the intentions behind the law, which is “regulating and guiding the activities in the mainland of China of nongovernmental organizations from outside China’s mainland (hereinafter referred to as “overseas NGOs”), as well as protecting their legitimate rights and interests and facilitating communication and cooperation.” Article 2 second sentence defines “Overseas NGOs” as “foundations, social groups, think tanks and other non-profit, nongovernmental social organizations legally established overseas.” Other than giving some non-exhaustive examples, the law emphasizes that the organizations have to be “non-profit”, “nongovernmental” and “legally established overseas” in order for the law to apply. The law does not make further specifications on what is considered “non-profit” or “nongovernmental”, which could point to that the law is to be given a wide interpretation in this regard. The purpose of the law and the context of its adoption, it is the only law governing organizations of this nature, also points towards the same interpretation, that if there is uncertainty towards the degree of an organizations “non-governmental-ness”, i.e. how

⁵⁵ Jia 2017

strong ties the organization has to the government both in connection and funding, the law would include rather than exclude such organizations from its jurisdiction.

Article 2 first sentence states that the law applies to all “activities” in the mainland of China by ONGOs. The law does not give further information on what is considered “activity”, although the law’s purpose might suggest that the term is meant to include as many types of “activity” as appropriate for the law to be effective.

In a meeting with consular officials from 11 countries on November 8th 2016, a representative from The MPS’ Foreign NGO Management Bureau said that there would be no “transition period” or “grace period” after the law was to take effect on January 1st 2017⁵⁶.

Based on the vague language in the above-mentioned articles, it seems like the law is meant to be applied as widely as possible under administrative discretion, starting from the moment the law takes effect. The law aims to treat all ONGOs of all legal areas of operations equally, making the law general in its application despite the diversity of organizations and areas affected. Before the law took effect the Chinese authorities treated different organizations and areas quite differently, based on the ONGOs’ level of cooperation, compliance and areas they worked in. Although the law aims towards a general application, the vagueness and catch-all language reflected throughout the law could still point towards the law opening for organizations to be treated differently based on the discretion of the authorities.

5.2.3 The rules and alternatives for registration

Chapter two of the law deals with the registrations process of the ONGOs. Article 9 sets up two ways to legally carry out activity in China: Either opening up a representative office or filing for temporary activity. Articles 10 to 15 describe the rules for registering a representative office, and articles 16 and 17 describe the rules for registering temporary activities. I will here give a short overview on how this system works.

To establish as a representative office, the ONGO, according to Article 10, must be (1) legally established overseas; (2) Able to independently bear civil liability; (3) Purposes and business scopes specified in the articles of association that benefit public welfare; (4) Existed and engaged in substantive activities overseas for more than two years; (5) Other conditions stipulated by laws and administrative regulations. According to the Center for

⁵⁶ Wong and Beijing Newsroom 2016

Charity Law of the China Philanthropy Research Institute at Beijing Normal University, evidence of legal establishment outside Mainland China refers to evidence that an organization has been registered overseas with relevant government agencies, and is an independent legal person able to bear civil liability. Documents demonstrating the non-profit nature of an organization will vary depending on the relevant laws and regulations of that specific country or region that the ONGO is first established⁵⁷. This relates to Article 15, which deals with the cancellation of a representative office. Article 15's last sentence states that the representative office does not bear individual liability, and all legal liabilities are transferred to the ONGO itself. It is unclear if this rule only applies to the cancellation of a representative office, but the system of the law implies that this rule applies generally, although not directly stated elsewhere.

Article 11 state that the organizations shall seek the approval of “organizations in charge of their operations,” generally referred to by the international community as “Professional Supervisory Units” (PSUs), based on earlier translations of drafts of the law⁵⁸. Article 11 second paragraph further states that the MPS are to make a directory of eligible PSUs public, which is also repeated in Article 34. This has been issued in “the Catalogue”⁵⁹, as mentioned earlier. Article 12 further states that the ONGOs, after receiving permission from a PSU, shall apply to the registration authority to register a representative office. “The registration authority” is, as stated in Article 6, “The Ministry of Public Security under the State Council and public security organs of provincial-level people’s governments”, hereafter referred to as “the MPS” for simplicity.

According to Article 13, if the application to establish a representative office is accepted, the ONGO will receive a registration certificate and an engraved seal⁶⁰ from the MPS, who will then publicly announce the acceptance. The registration certificate and seal will then have to be used to register for tax and open a bank account, after which the ONGO will submit a copy of the tax registration certificate, a sample of their seal, and their bank account details to the MPS, according to the last paragraph of Article 13. Changes to the registration information must first be approved by the PSU then the MPS, according to Article 14.

⁵⁷ Center for Charity Law of the China Philanthropy Research Institute at Beijing Normal University 2017b

⁵⁸ Shieh 2017

⁵⁹ The Ministry of Public Security 2016b

⁶⁰ Chinese law does not recognize signatures as an official seal of approval to the same extent that Western countries does. Instead engraved seals are used and registered with the authorities.

The second way to legally carry out activity in China, without having established a representative offices as described above, is to register to conduct temporary activities. Article 16 states that the activity then has to be conducted in cooperation with “State organs, people’s organizations, public institutions and social organizations”, referred to in the law as “Chinese partners”. As Prof. Shieh states on his blog, it is important to not confuse “Chinese partners” with PSUs. PSUs are generally different governmental agencies of municipalities, administration, commissions and bureaus, in the ONGO main field or area. While “Chinese partners” can be more varied types of organizations. Prof. Shieh writes that Chinese Partners can be “a government agency, a people's organization (e.g. Women's Federation, Communist Youth League, etc.), public institution (e.g. universities and research institutes), and social organizations (e.g. NGOs). The Chinese Partner also has no supervisory authority over the NGO. The NGO enjoys more of an equal relationship with the Chinese Partner⁶¹”, although the Chinese partner still has important responsibilities in getting the right approvals and filing documents for the ONGO.

Article 17 states that it is the Chinese partners of overseas NGOs who shall handle examination and approval procedures in accordance with State regulations and submit to local registration authorities when conducting temporary activities. The ONGOs conducting temporary activities has, compared to the ones opening representative offices, a much more limited scope of economic and legal rights, and will need to conduct most of their operations in cooperation with the Chinese partner, which further elevates the Chinese partners responsibility and risk of liability.

Another important difference between registering for a representative office and temporary activity is that Article 9 states that ONGOs who want to conduct temporary activities shall “submit documents for the record to this effect”. This means, theoretically, that ONGOs who want to conduct temporary activities only need approval from the Chinese partner, and is only required to inform the MPS by submitting the correct documentation.

When it comes to the definition of “Temporary activity”, Shieh has pointed out that there is a mistake in the English translation of the law, that makes it seem like the term is only defined for “emergency situations”, to be activity that does not exceed one year. According to Shieh, the one-year limitation rule is separated in its own paragraph in the original Chinese text, starting from the semi-colon in the second paragraph first sentence of the English translation,

⁶¹ Shieh 2017

and without there being a “however” connecting the two sentences⁶². “Temporary activity” is therefore, in the law, presumed to be activity that does not exceed one year. The last paragraph of Article 17 further states that the MPS can order the Chinese partner to cease the temporary activity if they believe that Article 5 has been breached.

5.2.3 Control and Supervision

The rules presented in this part are closely related to the preceding chapter, but the analysis will try to give a picture of the extent of oversight and supervision that the ONGOs are subjected to under the law.

Article 19 and Article 30 second paragraph requires the ONGOs to document and report their activity. Article 19 states that the representative office each year shall submit a plan for their activities in the following year, including projects and use of funds first to the PSU for approval, and then to the registration authorities. ONGOs and Chinese partners conducting temporary activities have to report on their activities, detailing their activities and use of funds to the registration authorities. The representative office also has to report on their previous year’s work to the MPS for annual inspection, according to Article 31. According to the second paragraph the reports should include an audited financial report, details of activities and personnel or organizational changes.

Article 22 states that ONGOs have to manage their funds for use in China through the representative offices’ bank accounts that are registered with the registration authorities. Second paragraph further state that ONGOs conducting temporary activity have to use the Chinese partners bank accounts, implement separate accounting and earmark funds for specific purposes. The third paragraph specifies that no other means are allowed to receive or make payments in China. This rule is related to Article 42, which gives the MPS power to access and freeze bank accounts.

Article 39, first article of chapter five “oversight and supervision” is a general rule stating that “Overseas NGOs carrying out activities in the mainland of China shall accept the oversight and supervision of public security organs, relevant departments and organizations in charge of operations.” Article 40 further specifies that PSUs responsibility in regards to the ONGOs representative office is issuing comments, changing registered details, compiling annual work

⁶² Shieh 2017

reports, guiding and overseeing the representative office activities and assisting public security organs and other departments in investigations of illegal behavior.

The MPS's responsibility in regards of the representative offices is, according to Article 41 first paragraph, registration and annual inspections. In regards of temporary activity they are responsible for receiving submission of necessary documents, and in regards of both representative offices and temporary activities they are responsible for investigating and punishing illegal behavior. According to the second paragraph, the MPS can initiate investigative measures if they "discover behavior they suspect violates the provisions of this Law in the course of performing oversight and supervision", meaning that illegal behavior has to be discovered during oversight and supervision, and that the MPS cannot arbitrarily investigate the ONGOs. Suspicion grants the MPS the power to interview with representatives, inspect the premises or site of the activities, question organizations and individuals related to the investigating incident and require them to clarify matters related to the incident being investigated, consult and copy relevant documents and materials, seal up for safekeeping documents or materials that could otherwise be moved, destroyed, concealed or altered, and shut down premises and facilities, or seize property, suspected of involvement in illegal activities.

As evident from the described rules, the amount of information the ONGOs has to provide to the MPS is quite extensive. The PSUs have a large responsibility of the day-to-day supervision of the ONGOs, and in addition to the investigative powers of the MPS, the law seems to make the ONGOs unable to operate without open cards. When comparing the generalism of the rules of liability described in the thesis, and the extensiveness of the powers of supervision and investigation described above, the law seems to require high carefulness of the ONGOs. The rules prohibiting activities that are subjected to more political discretion, in example the prohibition of "political activity", also requires the ONGOs to have a high level of awareness of the current political climate. The supervisory responsibilities of the PSUs, as well as their advisory responsibilities described in the chapter below, seems to encourage the ONGOs to use the PSUs as a main source of information in this regard. Compared to Western legal cultures where the principle of legality is emphasized, this aspect of the ONGO law seems especially characteristic of the authoritarian context of the law. The oversight and supervision stipulated in the ONGO law directs the ONGOs towards a strategy of cooperation and compliance, rather than bestowing the ONGOs with a mandate to act independently within a legal framework.

5.2.4 Facilitation

Chapter four deals with the facilitation measures in regards of the Chinese authorities duties to the ONGOs. It begins with the general rule, Article 33, stating that the State shall safeguard and support ONGOs in carrying out activities in accordance with the law in the mainland of China, and that relevant departments at all levels shall provide the necessary assistance and services for ONGOs to carry out the activities. According to Article 34, the MPS and other relevant government departments shall compile lists of the areas and projects of overseas NGOs, publish lists of PSUs, and provide guidance to overseas NGOs in carrying out their activities. Article 35 specifies that the government at or above county level should provide policy advice and guidance and services for the activities of overseas NGOs in accordance with the law. Second paragraph requires the MPS to also publish the procedures for overseas NGOs to apply to establish representative offices and submit the necessary documents for the record to carry out temporary activities.

This chapter of the law, at first glance, can seem a bit contrary to the supervisory regime stipulated above. Although the rules in this chapter are formulated very generally, i.e. the duty to provide guidance or assistance, they points towards the same system of cooperation and compliance described above. Also, by legislating the duty to provide assistance and guidance, the lawmakers force the governmental authorities to build knowledge and expertise in how to deal with ONGOs, which in turn makes a cooperative and non-confrontational approach to regulating ONGOs more likely. In other words, the law gives the authorities a duty of facilitation and help to the ONGOs who are committed to compliance and cooperation.

5.2.5 Liability

This part will analyze what The ONGO Law regards as illegal behavior and how it is sanctioned, which is mainly regulated in Chapter 6 if the law.

To start, Article 3 list areas of operation that are available for ONGOs. These are economy, education, science, culture, health, sports and environmental protection, as well as poverty and disaster relief. This list could be understood as exhaustive, and therefore excluding areas like human rights, workers' rights and legal advocacy. However the last section of the catalogue of available PSUs issued by MPS, lists PSUs that are working on topics such as

legal service, trade union and gender equality. This indicates that the list in Article 3 is not exhaustive, as the catalogue opens up for a few more restricted areas for ONGO working with the listed PSUs. However, this does not necessarily imply that the *topic* of human rights will be accepted as legal service activity by the PSU.

Article 5 is the general rule, and forbids ONGOs from threatening “China’s national reunification and security or ethnic unity”, “harm(ing) China’s national and social interests or the legitimate rights and interests of citizens, legal persons and other organizations”. Second paragraph further prohibits ONGOs to engage in or finance profit-making, political-, or religious activities in China. A legal definition of “political activities” and “religious activities” is not provided, which seems to be a consistent trend across all regulations meant to give the authorities legal discretion in matters of a more political nature. This is further reflected in Article 47, which will be examined below.

Articles 45 and 46 deals with failure to adhere to the more specific rules of registration and operating in China without proper registration, respectively. Article 45 also regulates Chinese partners in addition to the ONGOs, which is related to the responsibilities of Chinese partners stipulated in Article 17. Breaches of the alternatives in Article 45 gives the city district public security organs the power to issue warnings or ordering a cease of activities within a deadline, confiscate illegal gains and stolen property, and under serious circumstances have the MPS suspend registration certificates or prohibit temporary activities. Second paragraph also prohibits falsifying information in the registration process. Breaches of the alternatives in Article 46 gives the city district public security organs the power to issue bans or order to cease illegal behavior, confiscate illegal gains and property, issue warnings to those directly responsible, and under serious circumstances detain those responsible for up to ten days.

While Articles 45 and 46 implicitly refers to other rules in the law, Article 47 uses the catch-all language of typical authoritarian legal prohibitions. Breaches of the alternatives gives the MPS the power to suspend registration certificates or prohibit temporary activity, as well as authorizing city district public security organs to detain those directly responsible for up to fifteen days. In the alternatives, vague phrasing like “inciting resistance to laws and regulations”, “engaging in other acts that endanger national security or harm national or public interests”, and “illegally obtaining State secrets”, points towards the discretionary interpretation of both the authorities and the judiciary. This is a legislative technique commonly used by the Chinese authorities to open up legal areas to political influence. Rules

like this especially exemplifies the need to use alternative sources to understand how the law is being enforced.

Articles 48, 49 and 50 gives rules for 5 year activity bans, blacklisting, confiscation of certification and financial documents, and deportation, in the event of breaches of the articles mentioned above. Other prohibited activities include acting outside the scope registration or filing (Article 18 and 23), setting up branch organizations (Article 18), and engaging in fundraising (Article 21).

6. Interviews and discussion

Staying out of trouble with the government for a foreign NGO in an authoritarian regime is a much more complex endeavor than simply going to the official sources of law and trying to figure out what the rules say. In China, staying out of trouble also means adhering to unwritten rules and norms that are more political in nature, but with real potential sanctions behind them. Coming too close to sensitive issues and activities has in the past resulted in unwarranted searches or quasi-formal interrogations by the police, while treading over the line could result in extralegal abductions and beatings of staff members of NGOs' Chinese partner organizations, or arrests of NGO staff members and subsequent bans from re-entering China. Although the NGO law now regulates the registration of NGOs, the parts of the law relating to illegal activity is still based on many vague, general terms, open to interpretation. The system of the law seems to indicate that the former system of using extralegal norms and policies in order to regulate NGO activity has come to stay. In order to access these unwritten rules and norms, as well as to try to discover other discrepancies between the law in books and the law in action, I will now analyze and discuss the results from the interviews in regards of the key issues of the law discussed in the previous chapter.

6.1 Applicability and general provisions

Among the NGOs interviewed there were several ways to handle the law coming into effect. Subject E's organization was one of the first NGOs to register under the new law. The organization was registered for almost 10 years as a non-profit enterprise, under The State Administration Office of Industry and Commerce, and experienced little problem with the

new registration process. Also subject G's organization, which before was formally registered as a business, was also registering as an ONGO under the new law. The reason for this, G explains, is that "we also wanted to demonstrate to our government counterparts that we are doing everything to be compliant".

The decision of registering under the new law, and how to go about the process of doing so, has however not been as easy for most of the subject interviewed. Subject B's organization, wanted to register a representative office, but until that process could be finished the ONGO was to apply for a temporary registration for all activity. Others, like Subject A's organization, withdrew its operations in China, seeking to stay out until they were able to register. The same accounts for the ONGO of subject D, which was not registered before and interpreted that the law would make their activity illegal, and therefore paused the implementation of new programs, and applied for a temporary activity-registration on just one of their programs. Both subject B and D expressed the need for registering a representative office, and that the process of temporary registration would be too resource consuming in the long run. Also Subject H's organization closed down their office and decided to suspend trainings and workshops, which is one of their main activities, but are still working from home on research and writing, excluding field research, which was also suspended.

Other organizations made new strategies in order to try to avoid the ONGO law being applied to them. The organization of Subject C believed that the implementation of the ONGO law did not benefit the organization to label themselves an ONGO: "We've realized that as much as being a non-profit or an NGO, is more in line with our vision and mission to create this platform, it's not beneficial to us with the introduction of the new NGO law, it can only be detrimental, it can only raise questions about our legitimacy as an organization, both for the Chinese government and for our funders." The strategy of the ONGO of subject C was instead to register as a business and operate as a for-profit organization, and to not use the term "non-governmental" or "non-profit" in any of their communications, such as documents or website. "That was because we knew the companies and organizations that call themselves NGOs, non-profits, it's likely they will face more scrutiny, they'll be more visible for that reason", subject C explained. Other than this change of communication strategy, the organization did not change any operations, "things have just continued, business as usual", subject C explained.

"Staying under the radar" was the strategy of subject F's organization. The organization was registered in New York, and was wholly self-funded by Subject F. In China, it was registered

as a WFOE (Wholly Foreign-Owned Enterprise). Subject F's organization decided not to register under the ONGO law, after being in contact with some consulting firms. Subject F explained that F's organization therefore went out of their ways to stay under the radar because working with education and young children was regarded as especially sensitive by the government. F's organization wanted to continue to carry out their programs as effectively as possible, but F felt that the registration affected their operations too negatively to be worth it.

Both Subject E and Subject A problematized the time of the law taking effect. "The law didn't give a buffer time to say for how long people can explore, learn and go through the process, because if we don't have the Ministry of Civil Affairs to transfer us automatically to the Ministry of Public Security, we will be running through days without being covered by the law. That part was not clear," Subject E explained. Also Subject H questioned what they could do under the current situation, as they were not registered, but was looking into how to register: "Can we pay staff? Can we rent an office? Can we go to the office every day? In terms of activities, can we continue to do trainings? Can we do trainings here in China? Can we talk to our partners?", Subject H asked. Subject A did not view the 1st of January as the actual deadline as upon inquiry with a contact within the MPS, they was told that the MPS would not be working then because it is a public holiday. "So January 1st is not a deadline. By law and for a legal person it's a deadline, but for China it's a starting point. "Let's start from that and see", they explained.

In total, the interview subjects were generally under the impression that the law would apply to them. Some accepted both the new law and the registration regime and was decidedly seeking to comply with the new law, while others was primarily looking for ways to avoid the law being applied to them. The ones who were most uncertain about the decision either chose to withdraw from China or suspend activities, seeking to tentatively register temporary activities or waiting to see how the law would be applied before seeking to register. This uncertainty also stretched to *when* the law would be applied, even though both the law and official statements from the MPS signaled that there would be no grace period after January 1st.

6.2 Registration

Subject A's organization decided to not initially registering because the registration process was, in their opinion, too complicated, and they could not decide on the specifics of their registration. Even though the rules for registration might seem comprehensible as explained in the preceding chapter of this thesis, the process is still too unclear for some ONGOs to make a strategically sound choice. "The decision is based on your knowledge. If you don't have that much knowledge about how China works, it's very hard to make the right decision," Subject A explained.

The strategy of Subject D's organization was to take it slow and see what the new legal situation would mean for them. They were unsure about whom to seek out as their PSU, as they were active in several areas of operation. This was a problem for several organizations that had activities on different topics. Because the PSUs are sorted by areas of operation, the ONGOs themselves have to choose one or the other, even though they would define themselves as working in both. In Subject D's case, they had to choose between justice and education. It is still not clear according to the law if the organization registered under one topic can have activities related to another topic. Subject D explained that their organization might have to change their scope of activities in regards of this, and that the organization was still waiting for the answer to this.

Paradoxically, what might seem like the most comprehensible part of the law, supplied by the Guidelines, was the part about the law that was making the ONGOs interviewed the most uncertain. This is perhaps related to the fact that this part of the law leads to the most change in the ONGOs' legal situation. Instead of relying on the advice from contacts in the government, the ONGOs would have to refer to the law and its interpretation by the MPS. Several interview subjects reflected Subject A's view that the law taking effect was just a starting point in the enforcement of the law, as many of them was under the impression that the MPS and PSUs themselves were either uncertain about the ONGO law's interpretation on specific registration procedures or unwilling to release their interpretation without authorization from higher branches of government.

6.3 Control and Supervision

The subjects that already had established regular communication with higher governmental branches was also the furthest along in the process of registration. Some had relationships with ministries of reporting and reviewing before the ONGO law took effect, and found the new supervisory system a necessary evil in the tradeoff for closer ties and more influence with the PSUs. Some subjects also welcomed the clarification of the supervisory regime in the law: “Well first of all it's a law. It's better than no law. Secondly it involves public security departments into it, which gives the legitimacy. In the old days when public security was always behind it, but never in the front. Now it becomes something more obvious,” Subject A said. They continued, explaining that before the law, public security organs could i.e. eavesdrop or hack emails, but with the new law Subject A believed that such surveillance is more transparent. “You can not hide. Good or bad, I think it's a demonstration of China's government that they want to take control of the situation. So I have no comments about how good or bad it is, how positive or negative, but it's a position that China has put on the table, rather than under the table”, they said.

Subject E explained that there was a lot of experimentation on the government's part before the ONGO law: “When there is no regulational laws, you work with the relevant authorities to figure out what is that gonna be.” When there was no law, they explained, “you could just come in and work without following any regulations or running the risk of not following the law, as there was no law. It's a situation that was not clear”. Regarding the quasi-lawless situation the subjects describe, assuming that the supervision will be carried out according to the ONGO law, what in a Western perspective might be perceived as a draconian control regime could actually be viewed as a step closer towards rule of law for civil society in China.

Subject F did not share this view however: “The law changes almost nothing”, they believed. They held that no one was immune to getting in trouble with the Chinese government, even if registered: “Now, if an NGO does something that the government dislikes, they can pull out the law and point to the illegality of the organization”. They remarked that although some types of activity is illegal, NGOs can still do it as long as they don't step on any toes. Subject F believed that there are more between the lines of the law. They thought that the ONGO law introduced a surface level openness in the civil society sector, but that, if read between the lines, the law set in place a system that made it easier for the police to shut down ONGOs. They explained that if the police get notified about an ONGO that needs to be more closely

examined, they are more likely to close the ONGO down because that is the easiest solution for the police, and with the new ONGO law they will have the authority to do so.

Subject A was also skeptical, and explained that their organization had been working with top think tanks, policy makers and regulators for many years without any trouble. With the new law, the PSUs was Subject A's main concern about the law. They did not see or understand what the PSUs get out of the heavy administration process. Subject A characterized it as a burden on the government. "Registration is one thing. If you get registered, that's fine. Then what?," they asked.

So is the control and supervision regime in the ONGO law a step towards rule of law? It depends on which standards you'd use, and what the step towards rule of law is a step away from. Considering that before the law there was little to no regulations that the authorities would have to adhere to, or laws that the ONGOs could use to predict their relationship with the controlling organs, the implementation of the ONGO law gives both parties a frame of reference. On the other hand, the ONGO law has very limited amounts of judicial control mechanisms, and it's hard to tell if the MPS or the PSUs will adhere to the law as a framework for the ONGOs' predictability. At the same time, many of the articles regulating the supervisory relationship are vague enough to justify relatively strong interventional means.

6.4 Facilitation

Subject E explained that they see an advantage in having a law that provides channels to contact the authorities with inquiries: "In the past there was no laws on how NGOs should work in China. Basically everybody was trying their own way and there was no protection, no channels for filing complaints, even if you wanted to, no channels to look for support." With the new law, Subject E explains that there are organizations and agencies you can contact in regards to your issues. "So in a way we see this as progress", they conclude.

However, at the time the interviews were conducted, some already had negative experiences with the law's facilitating measures. According to Subject D, who at the time was looking for information on how to pick a PSU for an ONGO with activities in two different fields, the PSUs, in this case being ministries, was not answering their inquiries and did not seem ready for the issue. As mentioned earlier, this might be related to the implementation date of the law being regarded as a "starting point" for the new system to grow into its intended form. Other

interview subjects were not convinced that all the PSUs were welcoming the increased responsibility brought by the ONGO law.

On the other hand, the legal status, and the “stamp of approval” from the government, as some subjects were noting, could increase the perceived trustworthiness of ONGOs in potential PSUs. “The obstacle is that the ministries usually don't want to host any NGOs they don't know or trust, because the political risk is quite high”, Subject E explained.

Although there was no law making the cooperation between government and ONGOs mandatory before the ONGO law, some ONGOs developed relationships to the ministries in order to secure their legal position. Subject D explains that their organization tried to have annual meetings with the Ministry of Foreign Affairs (MFA) in order to make sure that their activities were in line with the authorities' view. The organization also made sure to ask their partners to apply for all activities to the MFA and also sign a Memorandum of Understanding (MoU) with the Supreme People's Procuratorate (SPP). This was process was working well until 2014/2015, when also several other interview subjects described the start of a tighter control regime from the authorities.

Several sources, such as Subject H, confirms subject D's description of the change in the government's agenda before the ONGO law was drafted. Subject D explained that it got harder to work on Human Rights issues, and systems for funding got more complicated. Subject D further told that the bureaucracy became heavier and political signals and communication towards ONGOs resulted in more self-censorship amongst the ONGOs and less willingness to cooperate amongst partners. Some of the practical challenges were related to uncertainty about visa, which again affected the uncertainty about working permission and subsequently the organization's presence and activities in China. The political situation made partners more nervous and hesitant to cooperation, and Subject D's organization therefore asked the MFA for a law that was more in line with the principles of rule of law. However the ONGO law, in Subject D's organization's opinion, was not what they wished for. Around the time the ONGO law was passed in 2016, the aggressive line towards ONGOs softened. Subject A explained: “Because they have the law now. And they are waiting for you to come to them. They don't have to sneak to you. Right now, if you want to register, you have to talk to the police. So now it's everything on the table.”

Although the ONGO law did not live up to Subject D's expectations in regards to rule of law, the theoretical framework for solving all the problems they mentioned seems to be present in

the law. As some of the other interview subjects pointed out, the law should be able to make it easier for compliant ONGOs to gain a predictable and comprehensible legal status, which would benefit them in a plethora of ways, at least compared to what was before. The facilitation measures in the law are meant to ensure that. However, whether or not the duties to guide and assist the ONGOs stipulated in the law will come to replace or supplement the system of cooperation present before the law is still uncertain. The law is vague enough to not discourage favoritism from the PSUs, and although the law has opened the channels for cooperation and facilitation, not all PSUs might view the relationships as beneficial ones. The vagueness and lack of control mechanisms also highlights a possibility for the PSUs to get away with interpreting the law to its bare minimum, leaving up to each PSU to decide just how helpful and facilitating they would like to be.

6.5 Liability

When asked about how they interpret unclear parts of the ONGO law, most of the interview subjects explain that they read the law to find out what's legal or illegal, and have hired legal help from lawyers or consultants for further interpretation. However, as discussed in the theoretical chapter, there are several unintuitive sources of law in China; policies could be considered a source of law, especially in order to interpret politically influenced rules like Article 47 of the ONGO law. When faced with the question of what strategies they use to avoid sensitive issues or “stay out of trouble” with the authorities, the subject’s answers became more diverse.

Subject A explained that they would also ask ministries, other potentially PSUs, MPS, the police, other NGOs, and/or Chinese scholars in order to understand the content of the law. Subject A expressed it like this: “Registration is just something to help you get legalized. But legal doesn't mean everything. In the past 40 years we have seen legal and illegal, there's not much difference.” Several subjects explained that their Chinese or governmental partners often explained to them what’s sensitive and not. Subject G explained it like this: “Basically our government partners tell us. They’ll say “this is sensitive”. But, interestingly, different people have slightly different opinions on that, or people are trying to self-monitor, you know, or self-regulate themselves on that, so it’s difficult.” Subject G further stressed the importance of paying attention to the signals, meaning actions, indicators or statements from the government. “ The International Corporation Department (ICD) of The Ministry of

Environmental Protection (MEP), they have the final word on whether something is wanted or not”, they said.

The interview have different pre-ONGO law experiences with walking the line between what’s considered legal or not, and coming close to the line. Subject J explained that “usually the government finds one small thing that becomes the official legal reason for why the organizations is closed down. Usually, organizations that are getting in trouble will first get a warning, and will then be supervised for a long time. This could for example come in a form of an invitation from the police to come drink tea with them”. Several of the subjects mentioned the tea meetings with the police as a semi-mandatory quasi-formal form of interrogation, others told about talks with the MPS about surveillance, or of a “redlist” and a “whitelist” of organizations that are trusted or requires caution⁶³.

Some interview subjects also spoke of another strategy to avoid sensitive issues:

Experimentation and exploring. “First of all, you're not challenged,” Subject A said. “We didn't get any questioning of [Subject A’s organization] doing something wrong, or being challenged by them (the authorities), saying what we do is not good or risky for China. We never heard about it, because we've been cautious. We are sensitive about it and try to avoid anything like that,” Subject A continued. This comprehension, that ONGOs will be notified when about to “cross the line”, was shared among most of the interview subjects. Some even said that this approach was what made them able to try new strategies and push borders.

Few of the interview subjects believed that using the experimental approach after the ONGO law took effect would get them thrown out of China right away. First they expected to get a couple of warnings, as Subject G explained: “I think the way it (The ONGO law) will be applied is that it's gonna be applied for dummies, right? So you're gonna get a warning, you're gonna get another warning, you're gonna get a talk, you're gonna get told that you're gonna get thrown out of the country, you know? Then you get thrown out of the country, then you come back again, you're still doing this thing, you know? Then maybe you get thrown in jail.” Subject G advised to step back already after receiving the first warning: “Because that means that you have stepped as far as you could have stepped. If you overstep that boundary, you could do that maybe once or twice, but it's not sustainable. You quickly get yourself in the wrong position. And then I don't get invited to the party anymore, right?”

⁶³ Red, being a lucky color in Chinese culture, signaling that the ONGO is trusted, while the white list signals caution. There are also a rumoured blacklist of ONGOs that are not to be trusted at all, but only one interview subject spoke of this.

Subject G's advice was echoed by several of the interview subjects. Especially the subjects connected to environmental ONGOs viewed the best strategy for staying out of trouble with the government and how to successfully pursue their operational goals as two sides of the same issue. Both would require close ties with the government, to be able to obtain updated information on which issues would be considered sensitive, and to have the greatest amount of influence over Chinese environmental policy possible. In any case, all of the interview subjects emphasized the importance of seeking informed partners or allies; the closer to the powers in charge of policy in the ONGOs area of activity, the better.

Prior to the ONGO law, in the events where an ONGO was advised or ordered by either public security officials or partners to cease certain activities, *none* of the interview subjects had ever experienced being supplied with legal arguments for doing so, or even heard about any other ONGO that had. Subject A spoke about veiled threats in tea meetings especially aimed towards representatives of Chinese partner organizations, and even of an event where a representative of a Chinese partner organization was abducted, interrogated and beaten. To Subject A, keeping up with the authorities' perception of what was considered sensitive or not was regarded as a security concern.

The introduction of the ONGO law does not seem to do away with this sensitivity interpretive system entirely. While the rules regarding compliance with the registration and supervision regime, in example Articles 45 and 46 in the law, seems fairly comprehensible, the rules that are open to political interpretation, in example Articles 47 and 5, would necessitate ONGOs who register under the law to still participate in at least parts of the pre-ONGO law "sensitivity system". Looking at the ONGO law from a more holistic viewpoint, the law seems to encourage this interpretation in more than one way. By mandating all ONGOs who register to tie themselves to a PSU or a Chinese partner, implementing facilitative measures to demand a minimum level of cooperation and open communication channels between them, as well as putting in force an extensive supervision system, the ONGOs would, in theory, be well equipped to keep themselves updated on how the politically discretionary parts of the law is to be interpreted at any point in time, or seek guidance if they are unsure.

If the lawmakers intended to keep parts this system of political interpretation as a supplement to the regulation of ONGOs, can the system be considered legal in nature? In an attempt to answer this question, the more operational question would be to where the system places on the spectrum of rule of law. Using the traditional Western understanding of rule of law as a frame of reference, the answer would be a clear no. Looking to Horsley's definition, the

system is not meant to act as a curb on state and private power, the rules are neither set in advance nor probable to be applied consistently, equally and transparently by independent courts to protect civil, political, and human rights.

However, looking to Peerenboom's definitions of a thick and thin model of rule of law, one could maybe draw some insight to the question. The system is "general", in the sense that it applies to all ONGOs, as well as "public", if considering that the vagueness of the legal text in the politically discretionary articles signals that knowledge about the current political situation is required to understand the interpretation of the terms used. Furthermore, assuming that the system of guidance, supervision and warnings function, the politically discretionary laws are "capable of being followed", as well as "enforced".

Whether or not the laws meet the requirement of being "prospective", "clear", "consistent" and "stable" are more debatable. For a law to be "prospective", it needs to, to a minimum, exist before it is enforced. If the majority of the interpretation of the law is under constant change and discretion of the authorities, it becomes very hard for the ONGOs to be aware of the law's interpretation to guide their actions. On the other hand, again assuming that the that the guidance and warning system functions, the ONGOs could be able to know how the law is interpreted before carrying out activity that may be in breach of the regulations. The same applies to the law's "clarity", it should be clear to anyone reading the law that more information is needed to correctly interpret it, and such information could be obtained by using the guidance and warning system. Lastly, however, it would be an even longer stretch to characterize the laws to be "consistent" or "stable", as they are under constant change and discretion of the authorities.

Using Peerenboom's definition of a thin rule of law to analyze the question of whether or not the interpretative system is legal or not does not give a clear answer, and could be explored in even greater detail. While meeting some of the requirements, one would have to stretch the term quite far to be able to answer yes to the question. However, considering the question is very useful to understand the authoritarian aspects of the ONGO law. *Law* works differently in China. Its system and logic is sometimes distinctively *non-legal* to Western scholars, yet considering that ONGOs in China had very limited regulation up until recently, ONGOs found ways to interpret and orient themselves in regards to its more authoritarian and quasi-legal aspects.

7. Conclusion

The ONGOs that operate in China all understand the risks involved to the point where it even might be hard to explain their strategies to people outside the Chinese system. Many ONGOs view compliance with the Chinese quasi-legal sensitivity policy and successfully working towards their operational goals as the same issue. Working with the government and having several contact persons in the right governmental branches can both provide networking opportunities, as well as advice about which whether or not a planned activity is going to be regarded as sensitive or not.

In this context, whether or not an ONGOs activity is sanctioned by the state, is governed by both law and unwritten norms. With the introduction of the ONGO law in January 2017, this system has been formalized. The law sets up regulations about registration and a control regime, but leaves it up to Public Supervisory Units (PSU), who in many cases are governmental departments, to act as the day-to-day advisor and supervisor for each ONGO.

Because of this the Chinese regulations appears legal in nature, but lacks sources that can be read and understood by a legal scholar in order to find what the rules really are. Some of the norms these ONGOs are adhering to are simply assumptions about what kind of behavior could lead to triggering the government into enforcing a rule they otherwise would have not enforced, or harassing and threatening Chinese partner organizations.

The Chinese authoritarian legal environment also reduces the legal subjects' access to independent courts. Although China has had the Administrative Procedural Law for several decades, which grants legal subjects the right to litigation against the government, as far as I am aware there has been no litigation brought against the government by an ONGO claiming breaches of their rights as organizations. A plausible explanation for this could be that the ONGOs don't trust the Chinese courts, and that there has been very sparse amounts of legal rights to claim breached, but for many of the ONGOs such a confrontational way of solving their problems with the government would harm their ability to successfully reach their goals and alienate valuable government partners. Whether this will change with the implementation of the ONGO law is still unknown.

As of today, the system remains one of permission, not rights. Although the ONGO law grants certain rights to registered ONGOs, at the moment it seems unlikely that these rights will be tested in courts, either by the unwillingness by the ONGOs to do so, or by the courts

restricting the ONGOs access to litigation. Before litigation is tested, whether or not such rights are applicable in the legal system remains speculative. Until then the ONGOs are likely to view the rules only as a way to gain permission to exist legally within the Chinese system.

8. Legal sources and bibliography

8.1 Law and supplementary work

Law of the People's Republic of China on Administration, of Activities of Overseas Nongovernmental Organizations, in the Mainland of China. Official English translation at The Ministry of Public Security of the Peoples Republic of China:

<http://www.mps.gov.cn/n2254314/n2254409/n4904353/c5548987/content.html>

The Ministry of Public Security. *Guide for the Registration of Representative Offices and Submitting Documents for the Record Temporary Activities of Overseas Nongovernmental Organizations*. (2016a) Accessible at:

<http://www.mps.gov.cn/n2254314/n2254409/n4904353/c5587463/content.html>

The Ministry of Public Security. *Catalogue of Fields and Projects for ONGOs with Activities in China, and Directory of Organizations in Charge of Operations (2017)* (2016b) Accessible at: <http://www.mps.gov.cn/n2254314/n2254409/n4904353/c5579013/content.html>

8.2 Literature

Deng, Guosheng. "The Hidden Rules Governing China's Unregistered NGOs: Management and Consequences." *The China Review* 10, no. 1 (2010), p. 183-206

European Chamber of Commerce in China. *Meeting with deputy director general HAO Yunhong, MPS* (2016), http://www.eurochamber.com.cn/en/lobby-actions/1596/Meeting_with_Deputy_Director_General_Hao_Yunhong_MPS [Accessed 26.11.18]

Feng C. "The NGO Law in China and its Impact on Overseas funded NGOs", *Cosmopolitan Civil Societies: an Interdisciplinary Journal*. 9 (2017), 95-105.

Foster, Kenneth W. "Associations in the embrace of an authoritarian state: state domination of society?", *Studies in Comparative International Development* no. 35 (2001) p. 84-109.

Gerring, John. "The case study: what it is and what it does", in *The Oxford Handbook of Comparative Politics*, Charles Boix and Susan C. Stokes (eds.), Oxford: Oxford University Press, 2007.

- Halperin, Jean-Louis. "Law in Books and Law in Action: The Problem of Legal Change", 64 *Maine Law Review* 64 (2011) p. 46-76.
- Hasenfeld, Yeheskel, and Benjamin Gidron. "Understanding multi-purpose hybrid voluntary organizations: The contributions of theories on civil society, social movements and non-profit organizations." *Journal of civil society* no. 1 (2005) p. 97-112.
- Horsley, Jamie P. "The Rule of Law in China Incremental Progress" in *The China Balance Sheet in 2007 and Beyond*. Washington: Peterson Institute for International Economics and Center for Strategic and International Studies, 2007
- Jia, Xinjin. *China's Implementation of the Overseas NGO Management Law*. China Development Brief, translated by Cameron Carlson and Gabriel Corsetti, 2017
<http://www.chinadevelopmentbrief.cn/articles/chinas-implementation-of-the-overseas-ngo-management-law/> [Accessed 20.10.18]
- Jiang, Dong. "An Introduction to Chinese Legal Culture", in *Comparing Legal Cultures* Søren Koch, Knut Einar Skodvin, Jørn Øyrehagen Sunde (eds.), Bergen: Fagbokforlaget, 2017, p. 317–358.
- Oxford Dictionaries. *Definition of law in English*. (2018),
<https://en.oxforddictionaries.com/definition/law> [Accessed 11.10.18]
- Peerenboom, Randall. *China's Long March toward Rule of Law*. Cambridge: Cambridge University Press, 2002.
- Pittman, Joann. *Professional Supervisory Unit or Partner – Which Is Right for You?*. China Source. (2017), <https://www.chinasource.org/blog/posts/professional-supervisory-unit-or-partner-which-is-right-for-you> [Accessed 06.10.18]
- Saich, Anthony. *The Governance and Politics of China*. 3rd edition., UK: Palgrave Macmillian, 2011.
- Salamon, Lester M, and Helmut K Anheier. "In search of the non-profit sector. I: The question of definitions." *Voluntas: International Journal of Voluntary and Nonprofit Organizations* no. 3 (1992) p. 125-151.
- Salamon, Lester M, Helmut K Anheier, Regina List, Stefan Toepler, and S Wojciech Sokolowski. *Global civil society – Dimensions of the Nonprofit sector*. Baltimore: The Johns Hopkins Center for Civil Society Studies, 1999.

- Sherwood, Harriet. *Human rights groups face global crackdown 'not seen in a generation'*. The Guardian (2015), <https://www.theguardian.com/law/2015/aug/26/ngos-face-restrictions-laws-human-rights-generation> [Accessed 15.09.18]
- Shieh, Shawn. *Some Insights from a Q&A with the Ministry of Public Security on the Overseas NGO Law* (2016), <http://ngochina.blogspot.com/2016/09/some-insights-from-q-with-ministry-of.html> [Accessed 02.11.18]
- Shieh, Shawn. *More FAQs on the Overseas NGO Law: Reading the Fine Print*. NGOs in China (2017), <http://ngochina.blogspot.com/2017/01/more-faqs-for-overseas-ngo-law-reading.html> [Accessed 02.11.18]
- Shieh, Shawn and Knutson, Signe. “Special Report The Roles and Challenges of International NGOs in China’s Development” Development Brief (2012) <http://www.chinadevelopmentbrief.cn/wp-content/uploads/2012/10/International-NGOs-in-China1.pdf> [Accessed 19.11.18]
- The Center for Charity Law of the China Philanthropy Research Institute at Beijing Normal University. *A Statistical Analysis of the Implementation of the ONGO Law*. China Development Brief, Gabriel Corsetti (ed.) (2017a), <http://www.chinadevelopmentbrief.cn/articles/a-statistical-analysis-of-the-implementation-of-the-ongo-law-2/> [Accessed 06.10.18]
- The Center for Charity Law of the China Philanthropy Research Institute at Beijing Normal University. *Practical Guide to the ONGO Law (Registration and Filing)*. China Development Brief, 慈善法律中心 (2017b), <http://www.chinadevelopmentbrief.cn/articles/practical-guide-to-the-ongo-law-registration-and-filing/> [Accessed 06.10.18]
- Tilly, Charles. *Regimes and Repertoires*. London: The University of Chicago Press, Ltd. 2006.
- Turner, Karen G. “The Problem of Paradigms”. In *The Limits of the Rule of Law in China*, Karen G. Turner, James V. Feinerman, R. Kent Guy (eds.) US: The University of Washington Press, 2000, p. 3-19.
- Wong, Sue-lin and Beijing Newsroom. *China says 'no grace period' for foreign NGOs under tough new law*. Reuters (2016), <https://uk.reuters.com/article/uk-china-ngos/china-says->

[no-grace-period-for-foreign-ngos-under-tough-new-law-idUKKBN134009](#) [Accessed 05.10.18]

Wu, DD. *More Than 7,000 Foreign NGOs in China: Only 91 Registered So Far*. The Diplomat (2017), <https://thediplomat.com/2017/06/more-than-7000-foreign-ngos-in-china-only-72-registered-so-far/> [Accessed 15.09.18]

Yao, Jiayi. *Two NGOs initiate first environment public interest lawsuit*. China Development Brief, 2015 <http://www.chinadevelopmentbrief.cn/news/two-ngos-initiate-first-environment-public-interest-lawsuit/> [Accessed 19.11.18]

Zhu Jingwen. "Behind more litigation: Positive and negative impacts", *Front. Law China*, vol 9 (2014), p. 105-127.

9. Appendix: Interview Guide

Attention: Every interview point is applied to the situation **before and after** the ONGO-law took effect, except point 2 which is asking about the ONGO-law specifically.

1. Please describe the history of the organization's existence in China and its goals, funding, activities, partners, registration status, and main challenges.
2. Please describe how your organization obtains its interpretation of the ONGO-law, which sources of information it uses to do so (i.e. state/other organizations/partners/media), which parts of the law appears more or less clear, and whether or not you think your organizations interpretation of the law is similar to the interpretation of other organizations.
3. Please describe the organizations relationship to the state and the relationship's effect on activities, including personal- and organization-level relationships.
4. It is my understanding that a lot of NGOs try to avoid getting in trouble with the state by not stepping over the line of how to act in China. If the law is unclear about where the line is, the line is sometimes hidden within a grey area. Please describe the organization's strategies to avoid getting in trouble, how you assess where the grey area begins and where the line is, which sources of information you use when assessing where the line is, and examples of risks of stepping over, or too close, to the line you have faced, or could face.
5. Please describe the organization's relationship to other organizations, and how these relationships affect your organization's assessment of risk of stepping too close to the line.