

# Chapter 2

## An Exposition of China's New System—A Modern NGO System

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Establishing a modern NGO system is a significant national strategy proposed by the 18th National Congress of the CPC. In a modern NGO system, the essence of separation of government administration and NGO management is reform, the essence of well-defined rights and responsibilities is transformation, and the essence of self-governance by law is social reconstruction. A modern NGO system shall include five aspects: monitoring system, supporting system, cooperating system, governing system and operating system.

### 1 The Inevitability, Importance and Urgency of Establishing a Modern NGO System

In the report of the 18th National Congress of the CPC, some important thoughts were expressly put forward, such as “strengthening social construction while improving the people’s well-being and innovating management”, “endeavoring to let the people live a better life”, “stepping up efforts to promote social structural reform” and “speeding up the formation of a social management pattern of the Party committee leadership, government responsibility, social cooperation, public participation and legal guarantee”. In particular, it for the first time expressly proposed

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to “speed up the formation of a modern NGO system characterized by separation of government administration and NGO management, well-defined rights and responsibilities and self-governance by law”, providing an important ideological guidance for the social reform and construction which are being energetically explored and promoted.

How should we understand the inevitability, importance and urgency of a modern NGO system? We believe that, after over 30 years of reform and opening up, China has made remarkable achievements in economic development, which has attracted worldwide attention. Unprecedented bright prospects have been presented for the great rejuvenation of the Chinese nation. At the beginning of the 20th century, the great revolutionary forerunner Sun Yat-sen once said: “The trend of the world goes forward with such mighty strength and vigor that those who go along with it will thrive and those who go against perish”. It is a trend of world development and also an inevitable result of the history of mankind that modern NGOs are flourishing and an advanced modern NGO system with Chinese characteristics is to be established. The inevitability, importance and urgency stems from the process of our marching toward a sound socialist market economy, from the historical course of reform and opening up and social transformation, and also from the historical inevitability of Chinese nation accomplishing modernization, building a harmonious modern society, realizing the great rejuvenation and joining the rank of world powers. Only by surveying from the height of the great rejuvenation of the Chinese nation can we fully grasp and understand the inevitability, importance and urgency of stepping up efforts to establish a modern NGO system, and can we earnestly implement such a national strategy of epoch-making significance, and then convert it into a great practice in comprehensively deepening reform in the social sector.

### ***1.1 Inevitability***

Establishing a modern NGO system is not only an inevitable trend of China’s market economic development, but also the only way for China to join the rank of world powers.

First, establishing a modern NGO system is an inevitable trend for China’s socialist market economic development. After over 30 years of practice in reform and opening up, we have now irreversibly taken a development path of socialist market economy. The development of a market economy will inevitably bring about the growth of a civil society. The most important symbol of the growth of a civil society is that various NGOs are playing an increasingly important role in social life. Theoretically speaking, one of the essential premises for developing a market economy is that the government should recognize and protect the legitimate rights and interests of a citizen under the framework of rule of law, the core of which is the protection of ownership of private property; the citizen shall in turn

undertake his responsibility and perform his obligation according to law.<sup>1</sup> The premise is also a prerequisite for the cultivation and growth of a civil society. The protection and empowerment of citizens' legitimate rights and interests will not only lead to a massive emergence of economic entities and various market behaviors, but also hasten the rising of NGOs as social subjects.<sup>2</sup> Therefore, the development of a market economy will inevitably bring about the emergence of a civil society. Seen from the development experience of major Western countries, a civil society is a social system and domain far more complex and broader than a market economy. A market economy will usually be incorporated into a civil society and exist as a way in which citizens deal with production, consumption and other economic activities in their social life.<sup>3</sup> As a matter of fact, besides market economy, there are a large number of problems in a civil society which have to be solved by various non-market and non-profit means. In this regard, NGOs have been playing a more and more crucial role. Seen from the practical development in China, with the country moving away from the old system of an omnipotent country, the planned economy and a Party-ruled society, and also with the construction of a socialist market economy in all respects ever since the reform and opening up, the development of a civil society with various NGOs as the main element has become an inevitable trend for China's social transformation.

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<sup>1</sup>In the Amendments to the Constitution (1993), Article 15 was revised from the original "The state shall practice planned economy on the basis of socialist public ownership" to "The state shall practice socialist market economy". In the Amendments to the Constitution (2004), it further provided that "The state shall establish and perfect a social guarantee system that is compatible to its economic development level". As such, the original social and economic rights which are otherwise abstract and programmatic have gradually been transformed into concrete and operational ones. Since a market economy takes free competition as its principle, and emphasizes maximum respect for individual rights and interests, adequately realizing and enjoying individual rights has become the premise of developing a market economy. Meanwhile, adequate realization of individual's social and economic rights will in turn promote the safeguarding of citizens' rights and interests.

<sup>2</sup>Any theoretical discussion on the nature of rights has an implicit logical premise that there is a well-defined boundary between different state powers and the spectrum for each kind of state power is clear. That is, although there are no definite provisions in the Constitution, however, based on the theory and interpretations of the Constitution, it can be logically concluded that an increasingly adequate protection of individual rights means that China has accepted the concept of a limited country and limited government. This has laid a foundation for the development of a civil society, and also reserved space for the expansion of self-governance.

<sup>3</sup>Hegel defined a civil society as a sum of interpersonal relationships including the exchange relation in a market economy. He described: "When men are thus dependent on one another and reciprocally related to one another in their work and the satisfaction of their needs, subjective self-seeking turns into a contribution to the satisfaction of the needs of everyone else. That is to say, by a dialectical advance, subjective self-seeking turns into the mediation of the particular through the universal, with the result that each man in gaining, producing, and enjoying on his own account is eo ipso producing and gaining for the enjoyment of everyone else. The compulsion which brings this about is rooted in the complex interdependence of each on all, and it now presents itself to each as the universal permanent capital." *The Philosophy of Right*, Translated and Compiled by Yang Dongzhu et al., Beijing Press, October 2007, p. 210.

Conforming to such a trend and accelerating the formation of a modern NGO system conducive to the development of China's civil society will become a necessary choice for Party commissions and government departments at all levels to vigorously promote structural reform and management innovation.

Second, establishing a modern NGO system is the only way for China to join the rank of world powers. Based on international experience, as NGO plays an increasingly important role on domestic and international levels, all major developed countries have invariably established a modern NGO system compatible to its politics, economy and culture so as to promote the healthy development of NGO. As far as a sound modern NGO system is concerned, internally, it should be conducive to developing all kinds of domestic NGOs and manifesting their roles, thus helping to resolve social contradictions and solve various domestic problems; externally, it should be conducive to NGO going abroad to play their positive roles in the international community, and working in unison with the country's overall strategy to form a three-dimensional pattern of international influence in which the government and NGO conduct joint cooperation. Nowadays, China's Gross National Product (GNP) has been ranked second in the world, however, China's NGOs are not so well-developed as those of major Western countries, and have not played their due roles either at home or in the international community. This has to some extent restricted our progress towards a world power. Among the reasons, there is such a restraint that, as a latecomer, China's NGO is not as capable and influential as its counterparts, nevertheless, the biggest restraint remains in that, confined to traditional concepts and conventional institutional restraints, we have yet to establish a modern NGO system compatible to the socialist economic development level. Thus, China's NGO development has been substantially restricted by factors related to system, institution, policy and other aspects. Therefore, in conformity with the tide of world development, making efforts to speed up reform and innovation and form a modern NGO system as soon as possible should be a historical inevitability and the only way for China to join the rank of world powers.

## ***1.2 Importance***

Establishing a modern NGO system is a key strategic project for comprehensively deepening reform in the social sector, cultivating new social ecology and capital, and rebuilding the social base of the ruling party.

First, establishing a modern NGO system, accelerating government reform and stepping up efforts to promote the reform of public institution system and of people's organization is an important strategic step in a period when our reform is advancing to a deeper level. Over the past 30 and more years, China has made universally acclaimed achievements in economic system reform and economic construction, however, in contrast with economic reform, our reform in social and political field is progressing with much difficulty, which has caused much

discordance in the overall social development. Ever since the Sixth Plenary Session of the 16th National Congress of the CPC, the central government has paid high attention to reform and innovation in the social field. The report of the 18th National Congress of the CPC has expressly proposed to “step up efforts to promote social structural reform” and set the formation of a modern NGO system as the strategic target of reform and innovation. Such strategic strategy shows that the guiding thought of the Party and the government on how to comprehensively advance the modernization of China has become even more mature and represents a strategic step in a period when China's reform is advancing to a deeper level.

With the government reform in full swing, we have become more and more aware of the importance of establishing a modern NGO system. The core of government reform lies in the transformation of government functions. In the final analysis, the transformation of government functions is to strip from the existing government functions those matters that the government is not authorized to manage, or cannot manage well, or should not manage or cannot manage at all, and return them to the society. Under the conditions of a market economy, those who are capable of taking over functions transferred from the government should not be profit-oriented enterprises but non-profit NGOs with certain degrees of public nature. Only when a modern NGO system is established, can we cultivate and develop a large number of modern NGOs which can effectively take over functions transferred from the government.

Founded in the war times, public institutions and people's organizations are effective institutional tools for providing social services and realizing the integration of politics and society in an omnipotent country and a Party-ruled society. With the launch of the reform and opening up policy and the development of a socialist market economy, reform of public institutions and transformation of people's organizations have gradually been put on the agenda. In 2011, the central government initiated a category-based reform of public institutions, and planned to comprehensively advance the reform of public institutions over a period of around ten years. Overall reform is gradually being unfolded in this huge social service system which has more than 1.2 million organizations and more than 30 million employees. As part of the practice in social management innovations, many local Party and government departments are making bold explorations in transforming people's organizations into hub-type and integrated NGOs. Despite the fact that the reform of public institutions and people's organizations has newly started, and is fraught with difficulty and complexity due to its grand scale and onerous tasks, its core, after all, is similar to government reform, which lies in nothing more than stripping those administrative and political functions attached to them, and through structural reform, transforming them into an organic part of a modern NGO system. Undoubtedly, for the reform of public institutions and people's organizations, which has only newly started and is still groping for the way ahead, stepping up efforts to form a modern NGO system holds great significance.

Second, only when a modern NGO system is established, can we speed up the development of NGO in China, and endeavor to cultivate modern NGO and its ecosystem, thereby nurturing new social capitals and realizing social reconstruction

on the basis of traditional culture and market economy. As the product of reform and opening up and social transformation, China's NGO has begun to take shape after over 30 years' development. At present, the total number of all kinds of NGO registered at departments of civil affairs at all levels has exceeded 500,000. If we take into account some grass-root NGOs put on file at the city communities and those that failed to be legally registered for one reason or another, the total estimation would be more than 1 million. Such a total number, though about the same with developed countries, has a wide disparity with developed countries in many aspects including their position, function and role in the entire social and economic life.<sup>4</sup> The problem is that NGO has not been mature in individual scale and capability, degree of specialization and influence, especially in its presence as a relatively independent third sector, and also its internal ecosystem has not been formed.

Seen from the grand historical perspective in which social transformation is driven by modernization in China, China's modernization course has undergone three mutually superimposed and staggered process. The first process may be termed the process of "revolution and reform", which lasts from the middle of the 19th century up till now. At its core is a process in which China's traditional structure including politics, economy, society, culture and value was constantly being destroyed by external forces and their own revolution and reform. The second process may be termed the process of "revolution and construction", which lasts from the founding of the new China in 1949 till the end of the "Cultural Revolution". Its core content contains two aspects: on one hand, China's traditional society, culture and value continued to be destroyed, on the other, the centralized socialist society and its ideology were established; the third process may be termed the process of "reform and development", which lasts from Reform and Opening up till now. Its core content contains three aspects: first, China's traditional society, culture and value system continue to be destroyed, second, comprehensive reform is launched for the centralized socialist society, and third, China is developing a market economy and endeavoring to build a new society while opening and integrating itself into the world trend of development. Over the recent years, there are more and more cries for China to return to the traditional society. However, it must be noted that such "return" is a kind of response after the traditions are being destroyed or have been destroyed, and is at best a kind of critical inheritance. "Return" can only be realized in the course of social reconstruction.

Therefore, from the perspective of social transformation, we are witnessing a social reconstruction on the basis of double negation: one is a complete negation of China's traditional society, culture and value system. The other is a complete negation of the society, culture and value system brought about by the centralized socialism. The complete negation of two established systems originating from two different historic periods and the ensuing social reconstruction in our expectation will definitely be an arduous and long historic course. Fortunately, with the rise and

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<sup>4</sup>For example, US currently has over 1.6 million non-profit NGOs of all kinds, while Germany, UK and Japan all have less than 1 million.

development of NGO, social reconstruction is more and more assuming the features of the reconstruction process of a modern and highly self-governed civil society which is based on rule of law, advances with the times and adapts itself to the world trend of development. One of the key strategic measures to promote China's social reconstruction is to make efforts to establish a modern NGO system and nurture modern NGO and its ecological system, thereby developing new social capital on the basis of traditional culture and market economy.

Third, only by forming a modern NGO system and advancing the healthy development of NGO, can we promote the reform and development of the ruling party itself in the course of social transformation and reestablish an inseparable relationship between the Party and the masses, thus cultivating and developing the ruling foundation of the ruling party in a modern civil society. Over the past half century or more, the CPC has led the Chinese people to struggle courageously and made world-renowned great achievements in the historic course of great rejuvenation of the Chinese nation, however, we must also not lose sight of the fact that, as the reform and opening up enters a deeper level, the relationship between the Party and the masses is also faced with many tests. There appear four dangers such as “the danger of slackness in spirit, the danger of inadequate capacity, the danger of divorcing from the masses and the danger of passiveness and corruption”.<sup>5</sup> An ever-deteriorating relationship between the cadres and the masses, between the Party and the masses has become the focus of all kinds of social issues and contradictions in a new period. Improving and reestablishing the relationship between the cadres and the masses, between the Party and the masses has become one of the major tasks of the Party and government departments at all levels in social management innovation. Over the recent years, many local Party and government departments, bold in reform and innovation, have made positive explorations and acquired much beneficial experience in improving and reestablishing the relationship between the cadres and the masses, between the Party and the masses. Such examples include the exploration of establishing a “harmonious homeland” in Wuxi, Chongqing city, the innovative practice of “the working methods of four family-related issues (take the masses as family members to properly address each affair, take each letter from the masses as a letter from home, take affairs of the masses as home affairs to solve each difficulty, and take work related to the masses as a family undertaking to fulfill each duty)” in Xinyang, Henan Province, and the pilot reform of “four full coverage (promoting full coverage of grass-roots Party organizations, full coverage of grass-roots democratic organizations, full coverage of rural economic cooperative organizations and full coverage of rural stability-maintenance organizations)” in Suning, Hebei Province. All such practical explorations share a common feature and objective, that is to reestablish the relationship between the Party and the masses by reforming the management system and strengthening social construction. In this process, NGOs of all forms have played the important roles of “intermediaries” and “buffers”.

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<sup>5</sup>See “July 1st Speech” by Hu Jintao in 2011.

### ***1.3 Urgency***

Only by stepping up efforts to form a modern NGO system, can we duly promote reform of NGO management system and establishment of the corresponding legal system, can we keep pace with the national strategy of “going global” and duly promote internationalization of NGOs, and also can we enhance the capacity of NGOs to enable them to undertake the historical responsibility of resolving social contradictions and coordinating social relations.

First, the existing NGO management system formed at the end of the 1980s and characterized by “dual management” is in urgent need of reform and innovation. The idea of “improving management of NGOs, establishing and perfecting an NGO management system characterized by unified registration, clear-cut responsibility, coordination and cooperation, level-to-level responsibility and supervision according to law” expressly put forward in the outline of the “12th Five-Year Plan” has become a basic consensus. However, the three new key administrative regulations concerning the three basic kinds of NGOs including foundations, social organizations and private non-enterprise organizations have yet to be revised and promulgated. The long-overdue NGO management system has severely hindered the development and corresponding reform and innovation of NGOs in China. Overall reform and innovations are direly needed in terms of the system and institutions.

Next, in stark contrast to the global financial crisis, China’s economy has continued to grow at a high speed and China’s international status has significantly improved, while very few of China’s NGO have played a major role in the international community. In today’s international community, non-governmental NGO has become an important force which involves itself in global issues and thus influences international relations, and also an important bridge through which national interests can be extended to the international community. Moreover, NGO plays a unique role in leading and initiating multinationals to participate in international competition on an equal footing. With the unfolding of the historic process of the great rejuvenation of the Chinese nation and the arising of unavoidable international constraints such as all sorts of frictions, confrontations and conflicts in the course of the rise of a powerful China, there are ever louder calls for NGO to play a crucial role in participating in global affairs.

Third, Only by stepping up efforts to form a modern NGO system, can we enhance the capacity of NGOs and enhance the enthusiasm, initiative and creativity of the Party and government departments at all levels in developing NGOs, thereby impelling all kinds of NGOs to undertake the historical responsibility of resolving social contradictions and coordinating social relations.

In a word, the national strategy of establishing a modern NGO system put forward by the 18th National Congress of the CPC is the necessary requirement for developing China’s socialist market economy, the necessary requirement for comprehensively deepening reform and also the necessary requirement for Chinese society to become a modern society, for China to become a modern country and for the Chinese people to realize its Chinese dream of the rejuvenation of the Chinese nation.

## 2 Basic Content and Tendency of a Modern NGO System

How should we understand and master the national strategy of a modern NGO system? The report of the 18th National Congress of the CPC proposed to speed up the formation of a modern NGO system characterized by “separation of government administration and NGO management, well-defined rights and responsibilities and self-governance by law”; The *Plans on Institutional Reform and Transformation of Government Functions of the State Council* deliberated and adopted at the Second Plenary Session of the 18th National Congress of the CPC and the First Session of the 12th National People's Congress reaffirmed the stance to establish and perfect a new NGO management system characterized by “unified registration, clear-cut responsibility, coordination and cooperation, level-to-level responsibility and supervision according to law”, reform NGO management system and promote the perfection of internal governance structure of NGOs; moreover, *Decisions on Some Major Issues Concerning Comprehensively Deepening Reform* adopted at the Third Plenary Session of the 18th National Congress of the CPC further proposed to innovate social governance system, improve social governance mode and motivate the vigor of NGOs. To our understanding, the basic contents of a modern NGO system should have three premises, i.e. separation of government administration and NGO management, well-defined rights and responsibilities and self-governance by law, and five aspects i.e. monitoring system, supporting system, cooperating system, governing system and operating system.

### 2.1 Three Basic Premises of NGO Reform in China

The report of the 18th National Congress of the CPC expressly proposed to speed up the formation of a modern NGO system under the premises of separation of government administration and NGO management, well-defined rights and responsibilities and self-governance by law. Then how should we understand these three premises? We think that: these three premises stress that there should be three mutually complementary and restrictive key steps in speeding up the formation of a modern NGO: the first is to realize separation of government administration and NGO management, that is, endeavor to advance reform, demarcate the boundary of government functions and foster a social synergistic situation where the government and NGO co-govern and cooperate in the course of reform; the second is to ensure well-defined rights and responsibilities, that is, realize the transformation of the relationship between the state and the society, between the Party, the government and NGO while promoting the transformation of government functions, build a new type of service-centered relationship between government's functional departments and NGO, and explore a cooperation and interaction mechanism between the Party and government departments and NGO; the third is to implement self-governance by law, that is, make explorations in social reconstruction, and promote the

cultivation and growth of the self-governing system of the society while constantly improving the guarantee system of fundamental rights of citizens on the basis of constitutionalism. Therefore, separation of government administration and NGO management, well-defined rights and responsibilities and self-governance by law are three important premises for establishing a modern NGO system, which emphasize reform, transformation and reconstruction. Only by speeding up the implementation of these three premises can we establish a modern NGO system.

**(I) The essence of separation of government administration and NGO management is reform**

Separation of government administration and NGO management means that, with the advancing and implementation of government reform, we should gradually demarcate the boundary of government functions, and promote the independence of NGO in basic functions, organizational structure, policy-making system and operation and management, thereby creating a social synergistic situation in which the government and NGO co-govern and cooperate in the course of reform. “Separation of government administration and NGO management” is the core of deepening government reform and promoting social structural reform and also an important premise for comprehensively promoting innovation in social management and construction. Only by separating government administration and NGO management can we clearly demarcate those government functions in the social field, can we convert an unlimited government to a limited government and reform the traditional system in which the government takes care of every affair of the society. More importantly, only by demarcating the boundary of government functions and reforming the old social system can a pattern of big society be likely to emerge and thus will there be ample space for NGOs of various forms to develop and play their roles. It needs to be emphasized that, “separation of government administration and NGO management” is not aimed to weaken the public management capability of the government, nor to let government step away from the society, but to emancipate minds, innovate system and demarcate the boundary of government functions, and enable the government to better manage those affairs it is supposed to manage, and more effectively provide those public services it is supposed to provide while continuing to deepen government reform and promote social structural reform.. Meanwhile, it is meant to strip from government functions those matters that the government is not authorized to manage, or cannot manage well, or should not manage or cannot manage at all, and energetically cultivate and develop NGOs of various forms and encourage social innovation through multiple mechanisms such as cultivation and development, incubation and support, and purchasing services, so as to propel NGOs to get involved in public services, social management and other public affairs and create a social synergistic situation in which the government and NGOs co-govern and cooperate in the course of reform. To realize separation of government administration and NGO management, there are two key links which deserve our attention: First, in stripping part of public affairs, the government should also transfer to NGOs the necessary public powers and corresponding resources in support of such public affairs. The following

situation should be avoided: the government only transfers functions and responsibility without transferring public powers and resources, leaving NGOs ill-afford to undertake these functions and responsibilities and thus reducing the quality of their services, which will further cause more social contradictions and problems. Second, the government should energetically cultivate, develop NGOs and enhance their capacity and gradually transfer some public powers and resources to them once they have gained some development and have had the capability to undertake such functions and responsibilities. Cultivating NGOs and supporting their development is one of the important duties the government should perform in the course of promoting separation of government administration and NGO management.

## **(II) The essence of well-defined rights and responsibilities is transformation**

Well-defined rights and responsibilities emphasize that, in the course of promoting transformation of government functions, efforts should be made to transform the relationship between the state and the society, between the Party, the government and NGOs, and to define the respective powers and responsibilities of all relevant departments of the Party and the government as well as the rights and responsibilities of NGOs, in a bid to build a new type of service-centered relationship between relevant governmental functional departments and NGOs, and make explorations in the cooperation and interaction mechanism between the Party and government departments and NGOs. With the continuous development of reform and opening up and the market economy, China's original pattern of an omnipotent government has broken up. On one hand, an increasingly important and relatively independent market economy system emerges from outside the state system; on the other, between the state system and the market system, there also emerges an increasingly dependent NGO system. The government itself is faced with the task of an overall functional transformation, the relational pattern between the state and the society is undergoing profound changes and transformation, public institutions which serve the function of social services under the omnipotent government system and people's organizations which act as the bridge connecting the Party, the government and the masses are faced with the task of reform and transformation, and NGOs themselves are also faced with the task of reform and development. As for the government, they should transform from the conventional control-minded and administrative government to a modern service-oriented government, becoming more limited, standardized, transparent and efficient, which involves major changes in its operating concept, power boundary, basic functions and responsibilities and obligations; as for public institutions and people's organizations, they should break away from the original pattern in which they have a full administrative hierarchy and the Party and the government take care of each and every affair for them, and instead take the direction of society, folk and public welfare and propel more public institutions and people's organization to transform themselves to modern NGOs; as for the entire sector of NGOs, they should accelerate development speed, make active explorations in reform and undertake more social responsibilities in adherence to the guidance of Party committee leadership, government responsibility,

social cooperation, public participation and legal guarantee. As for the relationship between the government and NGOs, efforts should be made to build a new type of service-centered relationship between registration authorities and other relevant governmental functional departments and NGOs, and to explore an cooperation and interaction relationship between the Party and government departments and NGOs on the basis of guarantee of rights and interests and well-defined rights and responsibilities. The core of well-defined rights and responsibilities lies in, on the basis of separation of government administration and NGO management, further defining the powers and responsibilities of all relevant functional departments of the ruling party and the government on the part of the state as well as the rights and duties of all kinds of NGOs on the part of the society, thereby each exercising their respective powers, safeguarding their respective rights and interests and fulfilling their respective responsibilities and duties. The ultimate solution to well-defined rights and responsibilities lies in rule of law. Either the ruling party, or governments at all levels, or all relevant governmental functional departments or all types of NGOs shall act under the framework of laws, and conduct practice, explorations, reform or innovations in accordance with the principle of rule by law. The “powers and rights” and “responsibilities and duties” should be clearly defined and set out in the form of laws. The Party and government departments should, adhering to the principle of administering by law, improve the system and mechanism for safeguarding the citizens’ basic rights on the basis of constitutionalism so as to cultivate and develop NGOs, and promote the growth and maturity of the social self-governance system.

### **(III) The essence of self-governance by law is social reconstruction**

Social reconstruction refers to the process in which the entire society reconstructs itself on the basis of rule of law in the context of reform and opening up, social transformation and market economic development. The core content of social reconstruction lies in constantly improving the system and mechanism for safeguarding citizens’ basic rights on the basis of constitutionalism, thereby promoting the development and growth of the social self-governance system. Since the reform and opening up, the centralized social structure which is based on an omnipotent state and a planned economy and whose principal component is “units” and “people’s organizations” has disintegrated, the rapidly-expanding market economy and swift urbanization process have broken up the traditional structure of social relations which features an “acquaintance society”. The established interpersonal moral and ethical consensus, social trust relationship and network gradually fail and are replaced by undisguised relationship of money, benefit, and game-playing. Unfortunately, the new social relationship structure, social trust network and its regulating system are far from being established. China’s reform and market economic expansion are challenged by a process of rapid social transformation, or as some call it a “fragmented” and “atomized” social collapse. In this process, the awakening of citizens and their reorganization on the basis of self-governance by law will be the core of social reconstruction and the only road for Chinese society to

become a civil society. In view of practice, a self-governance-based social construction mainly includes: reforming and innovating urban and rural residents' self-governance system, exploring wider and better grass-root democratic practice, cultivating more widespread and diversified residents self-organization system, safeguarding citizens' basic association rights and social participation rights, as well as NGO's basic rights and interests and exploring a multi-element co-governance pattern for urban and rural communities based on residents' self-governance.

In summary, separation of government administration and NGO management, well-defined rights and responsibilities and self-governance by law are basic principles for establishing a modern NGO system from the above three aspects: reform, transformation and reconstruction. Only by adhering to these three principles, can we establish a modern NGO system.

## ***2.2 Five Aspects of China's Modern NGO System***

What is the general trend for China's NGO reform under the above three premises of separation of government administration and NGO management, well-defined rights and responsibilities and self-governance by law? The report of the 18th National Congress of the CPC expressly proposed to step up efforts to form a "modern NGO system", which has provided a basic guiding framework for China's NGO reform and development.

Then, what is a "modern NGO system"? First, a modern NGO system refers to the NGO system that various countries in the world formed by constant accumulation, recapitulation and perfection in their practices when human society has developed to today's level, and is the quintessence of the modern and common system and institutions concerning NGO development and regulation, which has universal value to human beings; second, a modern NGO system refers also to an NGO system that the Chinese people has formed by constant accumulation, recapitulation and perfection in the historic journey of realizing the great rejuvenation of the Chinese nation under the leadership of the CPC. It particularly refers to the recapitulative experience in all the systems and institutions with Chinese characteristics concerning NGO development and regulation that we have gradually gained by summing up the experience and lessons from positive and negative sides and endeavoring to adapt to the socialist market economic development through constant exploration, reform and innovation over the past thirty and more years since reform and opening up.

Seen from the above two aspects, a modern NGO system is generally composed of the following five aspects:

### **(I) The monitoring system of modern NGO**

Monitoring system is the first aspect of a modern NGO system. It is a generic term of the systems and institutions of the state concerning administrative organ setup, division of authority, power operating mechanism and other aspects of NGO

management, which includes the registration system, filing system, category-based monitoring system and behavior management system for NGOs. A modern NGO monitoring system in essence reflects a basic profile of the relationship between the state and the society. It is a kind of national system whereby public powers are used to deal with the relationship between the state and the society. It is essentially a kind of risk control system of the government for NGO development. Over the recent years, with innovations in social management under way, the central government and local governments at all levels, in accordance with the requirements of unified registration, clear-cut responsibility, coordination and cooperation, level-to-level responsibility and supervision according to law put forward in the “12th Five-Year Plan”, are energetically promoting reform and innovation in China’s NGO management system, and endeavoring to form a modern NGO monitoring system which takes organizational development as its objective, standardized monitoring as its approach, and risk control as its limit.

Taking organizational development as its objective means the country takes as its main objective the task of expanding NGOs, giving full play to NGO’s positive roles and promoting NGO development. It should change its past policy orientation of “not trusting, not supporting and not developing” towards NGOs, build a policy system which is conducive to cultivating and supporting NGOs, and urge NGOs to enhance their own capacity, and guide social forces to support the development of NGOs.

Taking standardized monitoring as its approach means the country will supervise NGOs mainly through legal norms, build a complete NGO-related legal system and attach importance to legal efficacy. It should change the previous NGO monitoring mode which relies on policy-based, temporary and responsive measures, and promote the law-based NGO monitoring system from the following four aspects: legislation, law enforcement, administration of justice and cultivation of legal consciousness.

Taking risk control as its limit means that in its various risk monitoring activities of NGOs, the country merely exercises its regulating power to the extent that political and social risks do occur in reality. It should change its previous NGO monitoring thinking which antagonizes NGOs and features such key words as restriction, control and repulsion, and implement a feasible standardized system which centers its basic tasks around management of NGO’s daily behavior and adopts as its basic management criterion the occurrence of political and social risks in reality.

## **(II) The supporting system of a modern NGO system**

The supporting system is the second aspect of a modern NGO system. It refers to the sum of a country’s various supportive policies and institutions concerning NGO cultivation and development, support and promotion, preferential subsidy, including NGO cultivation and development system, support and promotion system such as priority for participating in service purchase, and preferential tax systems. The modern NGO supporting system essentially represents another profile of the relationship between the state and the society. It is a kind of national system whereby the public powers are exercised and public resources are mobilized to cultivate

social forces, strengthen social construction and promote the healthy development of NGOs.

In a modern society, various forms of NGOs undertake a large number of public affairs including public services, social management; moreover, although many NGOs do not directly undertake any public affair, they are playing an important role in the public domains by participating in social governance as organizations of mutual benefits or common benefits. The non-profitable nature of NGOs determines that a great majority of them cannot get the resources from the market system, but rely heavily on charity donations and other social resources. To advance the development of NGOs, many countries have established different forms of NGO supporting mechanism. For example, in the US, governments at all levels each year pay as much as \$100 billion to purchase services from NGOs, which accounts for 30–40% of the operating funds of NGOs. In Germany and some Northern European countries, this proportion is even as high as 60–70%. The UK has a supporting system for charitable organizations centered around the Charity Commission under the framework of *the Charity Law* by including the support for charitable organizations within the sphere of administrative functions. In China, government reform and social transformation are faced with such huge pressure that the current development level of NGOs can barely satisfy the demands. Thus cultivating and developing NGOs has become a pressing task for governments at all levels. Building a modern NGO supporting system remains an important link in strengthening social construction and innovating social management. Only by doing so, can we motivate the vigor of the society, extend the social space, and give full play to the positive energy of NGOs, thus promoting the building of a harmonious society.

A modern NGO supporting system also includes support for NGOs from other social forces. Besides national public powers, other social forces may also form various relationships with NGOs, such as citizens' voluntary service, donation and funding from enterprises and large foundations, and NGO cultivation and incubation platform set up by social forces. Support for NGOs from these social forces also needs to be brought onto the track of legalization, thus enabling the NGO supporting system to run in a standardized and healthy way.

### **(III) The cooperating system between a modern country and NGOs**

The cooperating system is the third aspect of a modern NGO system. It is another kind of national system built and formed upon the possibility for the state and the society to have cooperation. Usually, in the modern political discourse, what is emphasized is the difference and even confrontation between the state and the society, and what is concerned about is whether there exists any public space outside the national system and how we counteract public powers. While the cooperating system between a modern country and NGOs emphasizes the co-existence and cooperation between the state and the society. If we may say the modern NGO supporting system involves NGOs participating in public affairs and sharing public resources as a beneficiary, and stresses the interest output of public powers to the society, then the cooperating system between the modern state and NGOs, is mainly

a national system in which NGOs back-feeds public powers and the society, and emphasizes the tolerance, co-existence, symbiosis and common-prosperity of administrative public character and even political public character with social public character.

A modern cooperating system between the state and NGOs shall be composed of the cooperating system between the government and NGOs on supply and demand of public services, the cooperating system between the government and NGOs on policy making and implementation, as well as the cooperating system between the public sector and NGOs in the form of negotiation, interaction and joint action with regard to relevant political issues. Specifically, first, the cooperating system between the government and NGOs on supply and demand of public services mainly refers to the cooperative partnership and corresponding institutional forms between the government and NGOs concerning the supply of public services, which is formed during the period when the government purchases services and other kinds of outsourcing projects from NGOs; second, the cooperating system between the government and NGOs on policy making and implementation mainly refers to the institutionalized policy consulting mechanism between governments at all levels and NGOs, which is established in the context where NGOs leverage their extensive public support and profound professional expertise, serve their role in policy advocacy, and exert substantial influence on policy making and implementation as governments at all levels are trying to make the policy-making process democratic, professional, standardized and reasonable. These mechanisms mainly take the form of various kinds of informal meetings, symposiums and commissions; third, the cooperating system between the public sector and NGOs in the form of consultation, interaction, and joint action with regard to relevant political issues, for the current stage, manifests itself in the following ways: either heads of NGOs join the Chinese People's Political Consultative Conference (CPPCC), the National People's Congress and Congress of Party Representatives at all levels to offer advice and suggestions, discuss state affairs, or some NGOs coordinate and cooperate with the government in the international governance system by applying for the United Nations counseling status.

The basis on which a modern state and NGOs to cooperate lies in that, as public organizations, both the government and NGOs share orientation of public value, thus they can cooperate with each other and take joint action in many areas where public interests are involved, such as environmental protection, disease prevention and control, popularization of general legal knowledge. Joint action is a crucial link for the government and NGOs to conduct cooperation, and also one of the most appropriate positions taken by the government in addressing its relationship with NGOs. For instance, the "26 degrees celsius air conditioner temperature energy-saving action" was originally intended only as a social advocacy through which NGOs give play to their role in advocating policies, however, as government departments got closely involved, it eventually became a joint action of the government and NGOs. In Hangzhou, during the construction of many new public platforms named as "social composite subjects" over the recent years, including

“Life Quality” and “Conversation with Us Round Table”, many innovations and trials were jointly made by the government and NGOs.

#### **(IV) The governing system of a modern NGO system**

The fourth aspect of a modern NGO system is the governing system. It is not a national system, but a social public system built on self-governance and co-governance and established through government guidance and social participation.

The modern society is a highly self-governed civil society, and also a multi-element co-governed society which is full of consultation, dialogue and compromise. NGOs have both public responsibility and social responsibility. On one hand, as a self-governed entity, NGOs are a self-governed community whose dominant components are citizens and which is independent from the state and the market system; on the other, as social forces of public nature, NGOs are also one of the participants of numerous social affairs and the governing entities for establishing a modern NGO governance system. As far as its contents are concerned, a modern NGO governance system, which is based on both self-governance and co-governance, at least comprises the following four aspects.

First, rules and regulations concerning the self-governance and independence of NGOs. Derived from freedom of association, self-governance of NGOs is a system whereby the state guarantees NGOs' right to conduct self-management, self-education and self-service on the basis of freedom of association. It is also a principle norm which prescribes that NGOs should maintain self-governance and independence of the organization on the basis of the freedom of association. Such independence refers to not only independence from government and political forces, but also independence from enterprises and other market forces. The self-governance of NGOs is an important source of social forces.

Second, rules and regulations concerning NGOs' synergistic governance. Synergistic governance emphasizes that, NGOs participate in social public affairs through dialogue, negotiation, cooperation, advocacy and many other forms of mechanisms, give to play their role of synergy in such main aspects of governmental functions as economic regulation, market supervision, social management and public services, and improve government performance through extensive public participation while enhancing efficiency of government accountability. Synergistic governance requires that, on one hand, the government should establish various rules and regulations conducive to synergistic governance, and promote reform of and innovation in itself by transforming its functions and streamlining its organs; on the other, NGOs should have strong public management and decision-making capabilities for taking part in synergistic governance, and, on such basis, form a partnership relationship with the government.

Third, rules and regulations concerning public participation and social supervision. NGOs are the result of citizens forming associations freely. They are a social force with more of public nature which is operated and managed on the non-profit principle and committed to certain public affairs, and also a social community which more absorbs from society those resources of public interests or common interests. Despite the great difference between various forms of NGOs, generally

speaking, they can form widespread and open public participation mechanisms through membership, volunteerism and other means and receive extensive social supervision from the public and media by way of information disclosure and financial transparency.

Fourth, modes and regulations concerning network-based governance. Network-based governance refers to a multi-element co-governance system on a higher level formed on the basis of self-governance and synergy. It is usually established by a number of organizations with self-governing capabilities in accordance with certain purposes and procedures. Such organizations are mainly composed of NGOs, the government and enterprises, who get combined on the basis of a specific contractual relationship and cooperate with each other by leveraging their respective strengths, so as to realize their jointly-pursued public value. NGO's network-based governance mode emphasizes that, as one of the participants in network-based governance, NGOs should create network-based organizations (groups) with characteristics of NGOs while cooperating with the government, enterprises and other relevant organizations on a deeper level. Oriented towards programs, and linked through contracts, these organizations (groups) will endeavor to safeguard public interests, ensure coordinated interaction, and achieve mutual benefit and reciprocity through such basic behavior modes as inter-departmental consultation, common participation and joint actions.

#### **(V) The operating system of a modern NGO system**

The fifth aspect of a modern NGO system is the operating system, a kind of organizational operating system built on organizational management and operational performance. Such system not only has legal guarantee and policy support but also is subject to social supervision.

A modern NGO operating system shall include internal governance structure, information disclosure system, professional capability building and market-and-enterprise-based orientation. With fairness, transparency, accountability and efficiency as its major principles, a modern NGO operating system shall include the following four aspects.

First, a scientific and reasonable internal governance structure. Due to its non-profit, public and social nature, the internal governance structure of a modern NGO is different from that of either the government or an enterprise. To improve the overall capability of a NGO, it requires that composition of its decision-making body features specialization, democracy and a high proportion of social capital, its decision-making process follows the principle of democracy and openness, its supervision should be fair and come from external, and its management and implementation features professionalism and efficiency.

Second, a highly transparent information disclosure system. A modern NGO operating system requires that complete, genuine and accurate information about the organization, finance and activity as well as relating to public interests should be disclosed in a timely and convenient manner according to law, to the extent that such disclosure does not violate the privacy and trade secrets of donors, beneficiaries, cooperative agencies and other interested parties and also conforms with the

principle of maximum transparency. NGOs shall establish a basic information disclosure system to prevent any improper behaviors such as connected transaction, misappropriation or embezzlement of public welfare funds from occurring during the operation of any program.

Third, increasingly higher requirements for professional capability. A modern NGO operating system requires that NGOs shall have the professional expertise in appointment of leaders and staff, management of programs, and provision of services. Over the recent years, there is an increasingly obvious tendency that full-time leaders of NGOs should have professional background. Those leaders without professional capability find it harder and harder to be qualified for the position, while NGO leaders with strong professional capability have gradually become scarce resources for the whole society. Against the backdrop of rapid popularization of the mode of government purchasing services, the accumulation in NGOs of enormous public welfare and charity resources from the whole society, as well as competition between NGOs getting fierce, there is an ever higher requirement for NGOs to become professional in terms of talents, programs and services. Such requirement for higher level of professionalism in capacity will in turn drive the establishment of a series of rules and regulations concerning NGOs and their capacity-enhancing issues.

Fourth, NGO's market and enterprise-based orientation. Although NGOs are different from the government and enterprises, however, in practice, they not only interact more and more with the government and enterprises, but also draw experience from the market system in terms of the operating mechanism. They can use the various efficient, standardized and sustainable mechanisms of the former and change the way they participate in the society and provide services through market and enterprise-oriented operating modes. For instance, more and more market mechanisms can be introduced to the value maintenance and increase, fund-raising and operation, program management with regard to public welfare funds. More and more NGO leaders should have the spirit of entrepreneurs. In response to such needs, social enterprises, a type of special NGOs which address social problems through market mechanism, are also born. Both the cooperation between public welfare organizations and commercial organizations, and the innovation of social enterprises are indispensable to a modern NGO operating system.

To sum up, with the steady implementation of the three major principles—separation of government administration and NGO management, well-defined rights and responsibilities and self-governance by law, a modern NGO system comprising monitoring system, supporting system, cooperating system, governing system and operating system will gradually be established and perfected. China's NGO reform and development is set to present unprecedented endogenous impetus, playing the role of fresh troops in the social construction drive that is to be unfolded in all respects.



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