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## Two years of refurbishing the command and control apparatus: the Chinese Communist Party strengthens its hold on the judicial system and societal forces

Disciplining of the political elite, CCP control over judiciary remains, systematic monitoring of society.

by Matthias Stepan

### Main findings and conclusions

- The primary objective and key driver of the reform process is the aim to strengthen the rule of the party. The CCP has succeeded in recentralising power over the last two years, increasing its efficiency in the process. However, power structures which have been closely tailored to suit Xi Jinping, who is both the president of the PRC and Communist Party leader, are also making the party more vulnerable.
- The party obviously still has problems with internal discipline, even three years after the launch of the anti-corruption campaign. For the first time, the CCP leadership has issued directives demanding strict discipline from all party members.
- Significant progress has been made in terms of reducing bureaucracy: the central government has cut down the number of approval items and put an end to overlapping competencies in state organs. Subnational authorities have retained their scope for local experiments and innovation, at least for the time being.
- The legal reforms driven by the central government are also aimed at consolidating its rule. An expansion of the right to appeal against official decisions is designed to channel the discontentment that has been emerging among the population. However, the legal basis for accessing the personal data of Chinese citizens has also been extended.
- The extent to which the judiciary has been granted greater autonomy is limited. Courts now enjoy better protection from the political interference of local cadres, however, since supervisory powers have been transferred as appropriate to the next-highest level of government.
- In order to strengthen its monitoring powers, the CCP has defined a comprehensive security concept with the objective of establishing technocratic rule. Rather than having a civil society, the CCP is striving to establish a so-called 'civilised society' which cannot evade the party's control. Citizens who could possibly be capable of articulating autonomous interests and organising followers are therefore systematically monitored by the Chinese government.

## Refashioning Command and Control – China's Communist Party Cements its Leadership



## 1. The key driver of the reform programme: the wish to strengthen the Communist Party

Two years after the CCP announced its extensive reform package at the third plenary session of the Central Committee in November 2013, the same priority still applies: the objective and key driver of the reform process is the wish to strengthen the CCP under the leadership of General Secretary Xi Jinping.

The indications of ongoing problems in terms of party organisation can hardly be overlooked. The anti-corruption campaign which was launched three years ago is currently centred on the financial sector.<sup>1</sup> The Chinese public applauds the hunt for corrupt officials. At the same time, the public has itself been targeted by numerous new measures. Some such measures are aimed at increasing the party-state's supervision over society. On the more positive side, there has also been an increase in spending on social welfare, and the announcement of the end of the one-child policy at the fifth plenary session end of October 2015.

This issue of the *China Monitor* reviews the progress of the reforms so far and assesses the extent to which they have succeeded in the context of the state and party apparatus, the judiciary and society.

## 2. Disciplining of the political elite: reorganisation of the party and state apparatus

In order to tackle the deep-seated problems of nepotism and corruption within the party and state apparatus, the Central Committee defined the improvement of party discipline as one of the core element of the reforms.

### 2.1 Bringing the party into line

Xi Jinping considers a 'cleansed' and therefore controllable party as a prerequisite for pushing forward with the economic and social goals of the reform agenda. At the same time, the anti-corruption campaign serves as a vehicle for appointing loyal Xi supporters to central offices.

In order to tackle the fight against corruption, the CCP's Central Disciplinary Commission was allocated additional resources. A hard crackdown followed with proceedings against a number of senior party members, including former security chief Zhou Yongkang.

In order to track down cadres who have fled overseas, the head of the commission, Wang Qishan, set up a special new unit: Operation Fox Hunt (猎狐), launched in July 2014, was replaced in April 2015 by a global campaign dubbed Operation Skynet (天网).<sup>2</sup>

Wang also stepped up the monitoring of procedures in selected ministries: the commission set up branches in a number of ministries so that breaches of discipline could be reported immediately.<sup>3</sup> He also increased the frequency of inspection trips to the provinces and to state-owned enterprises.

At the same time, the anti-corruption campaign was met with 'fierce resistance' within the party, according to reports by state media channels.<sup>4</sup>

The Politburo issued new directives on discipline and self-discipline on 12 October 2015. The guidelines with respect to political discipline (政治纪律) include a strict ban on forming factions within the party, for example; even in their private lives, cadres are now obliged to follow stringent standards and guidelines regarding their lifestyle (生活纪律).<sup>5</sup>

### 2.2 The state and administration move towards better efficiency and a greater focus on service

China's Prime Minister Li Keqiang has been pushing ahead with the transformation of the government's role and function (政府职能转变) ever since March 2013. The objective of the transformation is for state organs and public administration bodies to regulate procedures more clearly, improve their efficiency and become more service-oriented. The reform decision gave Li a strong mandate to push

forward his initiatives, although they met with strong resistance from the bodies in question. By 2018, central government organs are expected to exercise significantly less control over economy and society.

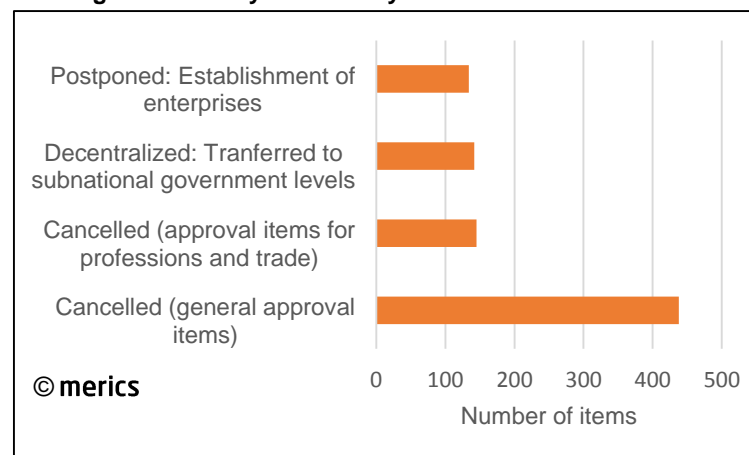
The CCP anticipates that a decentralised, efficient and more transparent administration will reduce the administrative workload and encourage entrepreneurial activity at the same time. The project is certainly moving forward: at the central level, for example, more than 600 approval items have been simplified or completely abolished since 2013.<sup>6</sup> The competencies of individual state organs are now clearly defined and duplicated responsibilities have been eliminated. The situation at the subnational level is somewhat different, however, where the project has stagnated in many respects. On the one hand, authorities feel overwhelmed by the administrative tasks that have been delegated to them. On the other hand, they are afraid of losing an important source of income if fee-based approvals are done away with. Up to 2013, this was actually one of the main sources of income for public bodies, many of which were already indebted by then.

Since the third plenary session, local state bodies have also been called on to cut back the number of bureaucratic processes. Anyone who opposes the goal of reducing bureaucracy by introducing new

fees, for example, risks high penalty payments or even removal from office.

Promoting entrepreneurial activity is one of the main focuses of the drive to reduce bureaucracy. Instead of going through the previous bureaucratic processes, which were lengthy, only a handful of steps are now required to register a company and the requisite certification is likewise minimal. There has consequently been a strong increase in the number of business start-ups. In many cases, these are just internet retailers or small companies with just a few employees and a low sales volume.

Image1: **Retreat of the central government from steering the economy and society**



### 2.3 Cadre positions remain attractive despite the campaign for more discipline and transparency

In February 2014, the State Council Office for Public Sector Reform published an overview on their website of all the competencies assigned to central government organs (权利清单). The list provides information about different areas of jurisdiction as well as internet links to the relevant legal fundamentals.<sup>7</sup> This not only gives citizens and entrepreneurs fast access to information; it also helps the government to pinpoint areas where there may still be redundant, duplicated responsibilities.

Despite the seemingly omnipresent surveillance, cadre careers have not lost any of their appeal among the Chinese population. Around 1.4 million candidates have successfully registered for the selection test for entry to the civil service in 2016.<sup>8</sup>

Contrary to previous reports, local governments continue to operate independently as far as possible. When it comes to promoting their own regions, local officials are still willing to take risks,

as

proven by the numerous local experiments in the spheres of judicial reform and social security.

### Progress in implementing the CCP's reform resolution: Party and state apparatus



Progress on a scale from 1 – 5<sup>9</sup>

### 3. Reorganisation of the legal system: political control remains reality

Improving the professionalism and efficiency of the legal system is one of the key aims of the reform. The CCP's objective is to simplify processes and clarify responsibilities with regard to government business.

The Chinese population's confidence in the judicial system remains low, however. Legal proceedings tend to be drawn out and reports of forced confessions, arbitrary rulings and political interference by local politicians are still commonplace.

Xi Jinping has given top priority to the matter of judicial reform. The reform decision of November 2013 contained a separate paragraph concerned with promoting the rule of law, and the party leadership even dedicated the fourth plenary session in October 2014 entirely to the issue. Getting the public involved in political processes is one objective of the reform – albeit controlled involvement. This facilitates so-called public interest lawsuits, which can be filed against industrial companies which have polluted the environment.<sup>10</sup> There are also plans to increase the legal accountability of public bodies. A central goal of this initiative is to channel the population's growing discontentment in the face of environmental and food scandals, for instance. The leadership hopes to gain an insight into any political adjustments that may be desirable by reviewing petitions or complaints that have been filed.<sup>11</sup>

#### 3.1 Influence of local cadres on the judiciary to be reduced

In 2014, the central government introduced its plans for implementing this initiative in a practical

context. Experiments have meanwhile started on a trial basis in various cities, including Shanghai and Shenzhen. There is no intention for the judiciary to become independent of the executive and the CCP, however. Decisions about judicial appointments and salary levels have been elevated to the provincial level. The task of political supervision remains the remit of the party's Central Political and Legal Affairs Commission (政法委员会).<sup>12</sup>

The Western principle of separation of powers was categorically rejected by the Supreme People's Court.<sup>13</sup> Attempts by the executive to influence judicial proceedings continue to be a huge problem. It was therefore ruled at the fourth plenary session in October 2014 that efforts by cadres to influence court decisions should be documented and penalised.<sup>14</sup>

#### 3.2 Campaign to attract judges and prosecutors to the judiciary

The CCP is attempting to encourage well-trained lawyers to join the civil service by offering them higher salaries and the promise of greater responsibility. Although the State Council has reformed the remuneration system, recent pay increases for judges have been relatively low and accompanied by a ban on any outside income. There has been no reduction in terms of workload, however. Many judges and prosecutors are therefore turning their

back on the judicial system, preferring to move to the private sector. In the city of Shanghai alone, 86 judges moved to the private sector in 2014, the majority of them highly qualified junior lawyers.<sup>15</sup>

At the same time, there have been a number of recent cases where the presiding judges have demonstrated their commitment to professional ethics: in two trials which were instrumentalised for political purposes, they defied the orders of the authorities. With regard to the proceedings against human rights lawyer Pu Zhiqiang – which were deferred in May 2015 – and the detention of investigative journalist Liu Hu, both of the respective courts ruled to dismiss the cases.<sup>16</sup> This is not a common procedure in the Chinese legal system.

### 3.3 Lawyers are given easier access to court files, but are also under increasing political pressure

The CCP is aiming to strengthen the position of lawyers – but only where the party can expect to benefit in some way. This applies to civil and commercial law, for example. When it comes to human rights and cases which are politically sensitive, the Chinese leadership continues to crack down and does not even hold back from arresting lawyers.

The continuing ambiguity towards lawyers is shown particularly clearly in a document published on 20 September 2015 by the Supreme People's Court:

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defence lawyers are selectively being awarded more rights, such as unlimited access to files relevant to a case. At the same time, however, restrictions are being tightened when it comes to disclosing information related to ongoing judicial proceedings, for example.<sup>17</sup>

The CCP demands absolute loyalty from practicing lawyers. Any lawyer who openly voices criticism or brings critical cases to public attention has to reckon with facing reprisals. In early July, a number of human rights lawyers and their supporters were arrested in a nationwide swoop. Of the 200 and more people who were originally arrested, over 20 are still in detention.<sup>18</sup> In other words, there is no evidence as yet of lawyers having an independent control function.

### 3.4 The CCP's judicial reform is on target – but not without any friction

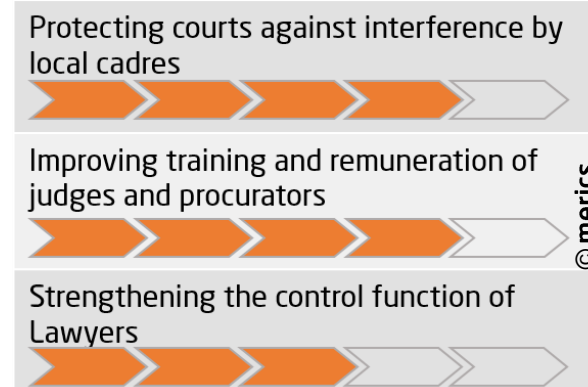
Shortly after the third plenary session in November 2013, the central government announced the abolishment of the 're-education through work camps' policy. There were reports of some local governments perpetuating the practice, however, with the detention facilities simply being renamed.<sup>19</sup>

There has been a real step forward in reducing the official number of crimes punishable by the death penalty, however. End of August 2015, China's legislature adapted the revision of China's criminal law.

The total number of capital offences has dropped from 55 to 46.<sup>20</sup> The changes became effective from November 1, 2015.

In the judicial sector, the CCP is pushing forward the planned reforms on its own terms. The party often acts against the visions and concerns of the legal profession. If employees of the judiciary were to become more insistent in terms of their professional ethics, this could bring them into an open conflict with the goals of the official legal reform.

#### Progress in implementing the CCP's reform resolution: Judicial system



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## 4. Social control: the party in the driving seat

The CCP fears the emergence of an autonomous society. In an age in which people are increasingly aware of their rights and where social media is becoming more and more popular, the party needs to find new ways of controlling the population effectively. Instead of attempting to wind back the clock, its leaders intend to turn the developments and achievements of the digital age to their own advantage. Under the premise of improving security within society, they have established the legal basis for comprehensive access to the data not only of individual citizens, but also of private companies.

### 4.1 Between protection and surveillance

Acting in the name of security, the CCP did not waste any time in putting new means of surveillance in place. In January 2014, the National Security Commission (NSC) was installed as the coordinating body. Headed by Xi Jinping, the NSC attends to all matters of external and internal security. In order to legitimise the invasion of citizens' privacy, the National People's Congress has passed a number of different bills, kicking off with the counter-espionage law (中华人民共和国反间谍法) in November 2014. The term 'espionage' is defined extremely vaguely and casts suspicion on practically any organisation which has direct contact with foreign representatives. The National Security Law (国

家安全法) followed soon after on 1 July 2015. Under this law, any public act can be declared as relevant to national security.<sup>21</sup> This could be taken by the authorities as a licence to intervene massively both in the private lives of Chinese citizens and in the economy.<sup>22</sup> We already know of several real examples: against the backdrop of the stock market crisis, for instance, the Chinese police have detained almost 200 journalists and bloggers for disseminating 'harmful rumours'.<sup>23</sup>

### 4.2 Non-governmental organisations are under pressure

The CCP would like to allow non-governmental organisations (NGOs) and other forms of social involvement greater scope for initiative. However, the party only welcomes NGOs which have devoted themselves to politically harmless topics such as academic exchange, environmental protection and cultural issues and which co-operate closely with public institutions.

The passing of the National Security Law and the debates about the draft bill on the management of international NGOs (the 'INGO Law') have caused lasting uncertainty in the non-profit sector. According to the present draft bill, foreign NGOs are to be entrusted to the Ministry of Public Security, which would mean even closer monitoring. Not just representatives of NGOs and international observers,

but also Chinese academics have expressed their doubts about the practicability of the proposed bill; the Ministry of Public Security is considered to have too little experience in dealing with foreign organisations.<sup>24</sup>

The CCP Central Committee made another move to increase its direct control over non-state organisations in a document written at the end of September: this paper proposes the establishment of CCP party structures in NGOs. The purpose of this, according to the document, would be to teach NGO employees about the party's views and to enlist new party members.<sup>25</sup>

On the whole, the CCP has proceeded in tightening its control over society in a very systematic way. Nevertheless, some activities have so far failed to achieve their intended purpose or have even had the opposite effect than intended: instead of increasing trust and confidence in the party and the state, they have often destroyed long-established relationships and uncovered inconsistencies. The type of social dynamism which is not only desirable but essential according to the party and state is being hampered, since opportunities for social self-organisation are deliberately suppressed.

## Progress in implementing the CCP's reform resolution: Social control



## 5. Conclusion: reforms are going according to plan, but the consequences for international relations are unclear

Xi Jinping has so far been extremely assertive in his efforts to tackle reforms. He has already made considerable progress in pushing forward with a many of the reform measures announced in 2013, particularly in the fields of politics, the judiciary and society.

Two factors are decisive for the further progress of the ongoing reforms: the loyalty and unity of the political elite on the one hand, but also the general public's widespread support and acceptance of the content of the reforms on the other.

Observers have been surprised by the determination and unity with which the CCP has tackled some very risky reforms. The tough, wide-reaching anti-corruption campaign and the tightening of party discipline have primarily affected the political elite. As yet, there have been no open conflicts at party leadership level. After two years under Xi Jinping's leadership, the CCP is certainly more powerful than before, but it has also become more transparent in terms of its information policy and therefore less unpredictable. However, a further crackdown on discipline could put an end to the display of unity that has been witnessed up to now.

Under Xi's leadership, the CCP has extended its control to cover virtually every single economic and social sphere. The party keeping control over the judiciary, intensified supervision of social groups and massive expansion of internet surveillance already conflict with societal interests to a large extent. If there is another economic downturn and with it a decline in future opportunities for large sections of the population, there is a risk that these conflicts might spark off protests.

On an international level, an overly euphoric reading of the reform paper has led to bitter disappointment over the last two years. Instead of the country opening up further in an economic and political sense – as was expected after the announcement

of the 1993 reform programme targeted at establishing a socialist market economy – there is a clear trend towards partial isolation. Not only German but also other international players in the spheres of politics, commerce and society should certainly rethink their involvement in China in the light of the developments, but not fundamentally question it. To withdraw from dialogues and collaborations built up over several decades would be fatal for international relations and for any form of broad-based social exchange. The attempts to establish greater rule of law and the reduction of bureaucracy are two further key examples from which both China and its partners can benefit.



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