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China's Leaders Endorse Disclosure as the 'Norm'

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In an important policy decision adopted at the conclusion of a four-day plenary meeting of the Chinese Communist Party's Central Committee from October 20-23, the Party endorsed disclosure as the norm, with non-disclosure as the exception, a slight reconfiguration of the presumption of transparency it has supported in principle for nearly a decade. ([See previous FreedomInfo.org report.](#))

While they have recently tightened up on freedoms of expression, the press, association and assembly, China's leaders seem increasingly to recognize that government transparency generally and freedom of information – the disclosure of government-held records — specifically help to better govern the country. Transparency can help the public better understand, participate in and comply with law and policy, help to restrain government power and curb corruption, and help build public trust in the Party as well as the state apparatus.

Disclosure and transparency are themes that run throughout the Party's Fourth Plenum "Decision on Certain Major Issues in Comprehensively Promoting Governing the Country in Accordance with Law" (Chinese original at: http://www.gov.cn/xinwen/2014-10/28/content_2771714.htm; unofficial English translation available at: <http://chinacopyrightandmedia.wordpress.com/2014/10/28/ccp-central-committee-decision-concerning-some-major-questions-in-comprehensively-moving-governing-the-country-according-to-the-law-forward>). Policies set forth in the Decision will apply nationally and down to the township level, and not only to the government, but also to the people's congresses, the procuratorates that investigate and bring cases and the courts that try them, as well as the Party itself.

Scientific and Democratic Legislation

The Decision calls for more transparent and participatory legislative and rulemaking processes, together with improved expertise and use of third party assessments, to achieve what is called "scientific and democratic legislation," a term that includes both congressional lawmaking and government rulemaking.

Although both the peoples' congresses and government departments at all levels are currently publishing draft laws and regulations for comment prior to finalization as a matter of policy, systems for public participation in legislation, including more experiments with authorizing third

parties such as scholars and other experts to prepare drafts of laws and regulations and having social organizations, experts and scholars also consult on particularly controversial legislation, are to be improved. So is a mechanism to provide feedback on the public's comments, something that the National People's Congress has experimented with and that some local congresses and governments currently do but which, like detailed "notice and comment" procedures, has not been legalized through binding law or regulations. The Decision recognizes the role that public feedback and explanation of why a final law or regulation turned out the way it did can help build greater public consensus.

Following the Fourth Plenum, the State Council issued a notice calling for the first time for suggestions from the public on regulations that should be placed on its rulemaking agenda to carry out the initiatives put forward at the Party meetings over the past two years, citing the goal of deepening its scientific and democratic legislative process.

Ever Increasing Government Disclosure

Although the State Council Regulations on Open Government Information (OGI) that became effective in 2008 already require government to disclose a wide range of information proactively and on request, the Decision calls for ever greater openness regarding topics of particular interest to the public including finances and budgets, low-income housing and the like, as well as in five areas of government activity: the decision-making process for major policies and investment programs; enforcement of the law; management; services; and results.

Government agencies have recently overcome initial objections to sharing certain negative information about companies and begun to disclose administrative law enforcement actions such as penalties imposed for intellectual property infringements or producing counterfeit goods, both to enable the public to better protect itself and also to use publicity to incentivize regulated entities better to comply with the law and correct any problems. ([See previous FreedomInfo.org article.](#)) The Decision thus confirms this trend. It also stresses that "normative" or guidance-type documents affecting the rights and obligations of the public, which should be disclosed pursuant to the OGI Regulations but frequently are not, are to be published.

To help curb abuse of government power, the Decision also calls for standardizing a recent practice requiring government departments to publish a list of their powers, at the same time reaffirming the OGI Regulations' requirement to disclose information concerning their specific functions and duties, who is subject to their jurisdiction, and similar matters.

Lastly, China like the United States is also encouraging the use of new information technologies to provide greater access to government-held information, as well as to establish online platforms to share more "big data." For example, the State Administration for Industry and Commerce has established a national online database called the corporate credit information publicity system, through which the public can access the information that companies must now report annually. Also along these lines, the State Council in June announced new requirements for more complete and unified reporting of statistics nationwide on OGI implementation including proactive disclosure, disclosure on request, agency explanations of policies, responding to society's concerns, administrative appeals and litigation, complaints, institution-building and OGI training.

“Sunshine” for Judiciary

Moving beyond the government sector, the people’s “right to know” is specifically applied to the judicial sector.

The Party Decision sanctions recent policies to make the judiciary more, dynamic, transparent and convenient for the people, and calls for a “Sunshine” judiciary with more open trial, prosecutorial, police and prison affairs, including making public on a timely basis the legal basis, procedures, processes, results, and text of legal decisions, and putting an end to “black box” practices.

Moreover, the procuratorates and courts are to strengthen the use of legal explanations and reasoning in their legal documents, and establish unified online, open and searchable systems for legal documents once they have taken effect.

Court decisions and procuratorate case information have traditionally been difficult for the public – including the parties involved — to access, and information concerning major criminal investigations can still be classified as a state secret. Nonetheless, the reforms called for by the Fourth Plenum have largely already been introduced and are providing more information to the parties and the general public, even though trials are still effectively closed in cases that are deemed sensitive. The Supreme People’s Court (SPC) has established an online platform for posting its own and lower court opinions, and the Supreme People’s Procuratorate also recently established an online case information website.

The SPC is now not only publishing court decisions, but it is also increasingly providing “model” as well as “guiding” cases to make court adjudication throughout the country more consistent and also help the public better understand the courts’ application of the law. Noting that over 5,000 OGI cases were filed nationwide in 2013, comprising a large proportion of all lawsuits against government entities, the SPC recently issued ten “model” OGI decisions that reflected sophisticated reasoning and clarified certain requirements in the OGI Regulations.

Party Transparency

While the Decision does not call for greater transparency of the Party itself, it directs Party members to help achieve legal reforms and improvements in the sectors discussed above, while stipulating that the Party governs itself through internal regulations. In fact, the Party has gradually become somewhat more transparent about its leaders, meetings and decisions. It has established spokespersons and media offices and a website on which both current and historical information about Party affairs is available. The Party incorporated a “right to know” as one of the people’s “four rights” (in addition to the rights to participate, express oneself and supervise) into its official documents as early as 2006 and has included drafting of regulations on “open Party affairs” in a five-year rulemaking plan for 2013-2017 that it made public in November 2013.

To be sure, information sharing by and about the Party is still highly selective. The composition of leadership sub-groups established to carry out the Xi Jinping administration’s sweeping

reforms has not yet been made public, nor have widely publicized court reform plans and certain important Party instructions that impact that public. Nonetheless, the Party does seem to be moving incrementally toward greater transparency about itself and within its own membership ranks, which number roughly 87 million, while at the same time supporting increased transparency in the state sectors.

The Fourth Plenum Decision does not mandate any new specific transparency reforms. Nonetheless, just as presidents in the United States set important policy directions for federal government agencies in implementing the U.S. Freedom of Information Act, this Decision signals that the ruling Chinese Communist Party views openness and information disclosure as important to its goal of improving governance and moving toward greater rule of law in China, and that it supports and encourages the continued improvement of disclosure by the legislative, government and judicial sectors along the lines they are currently pursuing.