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Jamie P. Horsley: China's rulers commit to the (socialist) rule of law



Paramilitary policemen and pedestrians are reflected in the window of a shop selling souvenirs bearing pictures of China's President Xi Jinping, left, and former leaders near the Great Hall of the People in Beijing on October 23. © Reuters

Amid signs of a faltering economy, an anti-corruption campaign that has ensnared some 180,000 party cadres, daily protests and an increasingly complex international environment, China's Communist Party leadership convened last week to discuss "governing the country in accordance with law." The goal was to chart a course toward legal and governance reforms, in order to bolster public trust in the party and help achieve sweeping economic and other reforms announced nearly a year ago.

As anticipated, the Central Committee Fourth Plenum, held Oct. 20-23, reaffirmed the necessity of party leadership to build "socialist rule of law." While more detailed results of the meeting are expected shortly, the initial concluding communique gave unusual prominence to the constitution as the country's basic law.

Ultimately, the plenum's impact will depend on how legal reforms are implemented -- and whether the Chinese people are afforded mechanisms to enforce them and apply bottom-up pressure for continued improvements. One positive sign is that legal professionals and academics are already parsing language in the communique to suggest further measures and innovations in line with the stated goals.

While the party committed to ruling the country and running the government in line with the constitution, its own affairs are to be governed based on internal regulations. Although the plenum announced the expulsion of several party members for "disciplinary problems," it did not reveal the results of high-profile investigations into former Politburo member Zhou Yongkang and Gen. Xu Caihou, former vice-chairman of the Central Military Commission. Nor did it address specific procedures to ensure that the extralegal anti-corruption investigations, conducted secretly by party officials, will conform to the rule of law.

Still, important principles of legality, fairness, transparency, participation and accountability, as well as President Xi Jinping's theme of restraining power with a "cage of regulations," run through the communique.

Less abuse, better decisions

The plenum observed that good laws are the basis of good governance. It directed the National People's Congress to ensure legislation is "scientific" and "democratic" -- with greater transparency and participation by interested government bodies and the general public -- so that laws better reflect the will of the people and protect personal, property and basic political rights. The NPC has already been publishing draft laws for public comment, without any legal requirement to do so.

China's vast bureaucracies are instructed to achieve "rule-of-law government" through explicit standards to curb abuse of discretion, along with measures that promote just and "civilized" law enforcement. And given the country's recent spate of anti-pollution and land-related protests, the plenum called for making better decisions on policies and projects. This would be achieved through procedures -- currently being drafted by the State Council -- that ensure increased public participation, expert consultation, risk analysis, legal review and collective decision-making.

The leaders also affirmed greater openness of government affairs. The basic principle is that disclosure should be the norm and nondisclosure the exception, a policy reflected in the State Council's 2007 Open Government Information Regulations. The party further committed to govern the People's Liberation Army in accordance with law, develop a military rule-of-law system and increasingly legalize national defense and military affairs.

"Sunshine" judiciary

Significant reforms to enhance the stature of the judicial system, which includes both the courts and the procuratorates that investigate and prosecute cases, are among the more concrete measures described in the communique.

Faced with a rising number of disputes of growing complexity, the party recognizes that political interference, low compensation and corruption have undermined trust in the system.

To promote more independent exercise of judicial authority, the plenum directed the exploration of cross-jurisdictional courts and procuratorates removed from local government pressure. It also called for a system to end "interference" by leading cadres in specific cases by recording, reporting and pursuing individual liability for such obstruction.

The current Supreme People's Court has overseen a reduction in use of the death penalty, the overturning of wrongful convictions and increased transparency of the entire judicial process. It has promised more open trials and required that judicial decisions nationwide be posted online. The plenum endorsed such developments through its call for stronger judicial guarantees of human rights and building a "sunshine" judiciary that is open, dynamic and convenient for the people.

To ensure that leaders in all sectors take these initiatives seriously, the plenum ordered that rule-of-law indicators be written into annual cadre performance evaluations, and that government officials and judges be held permanently accountable for their decisions, even after they transfer to different positions or retire.

Global implications

Increased law-based governance also holds implications for China's international relations. The plenum called for strengthening foreign-related legal work and using legal measures to safeguard China's sovereignty, security and development interests -- as well as to protect Chinese citizens and corporations abroad and foreign counterparts in China.

The more law-based, transparent, participatory and accountable China becomes, the more it might be expected to achieve its goals of delivering sustainable economic growth along with social justice and stability. It would also be better positioned to participate constructively in the rules-based international system. These are outcomes the international community should welcome.

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