



ACTIVATING THE NATIONAL PEOPLE'S CONGRESS

Law making on Behalf of the Party Center

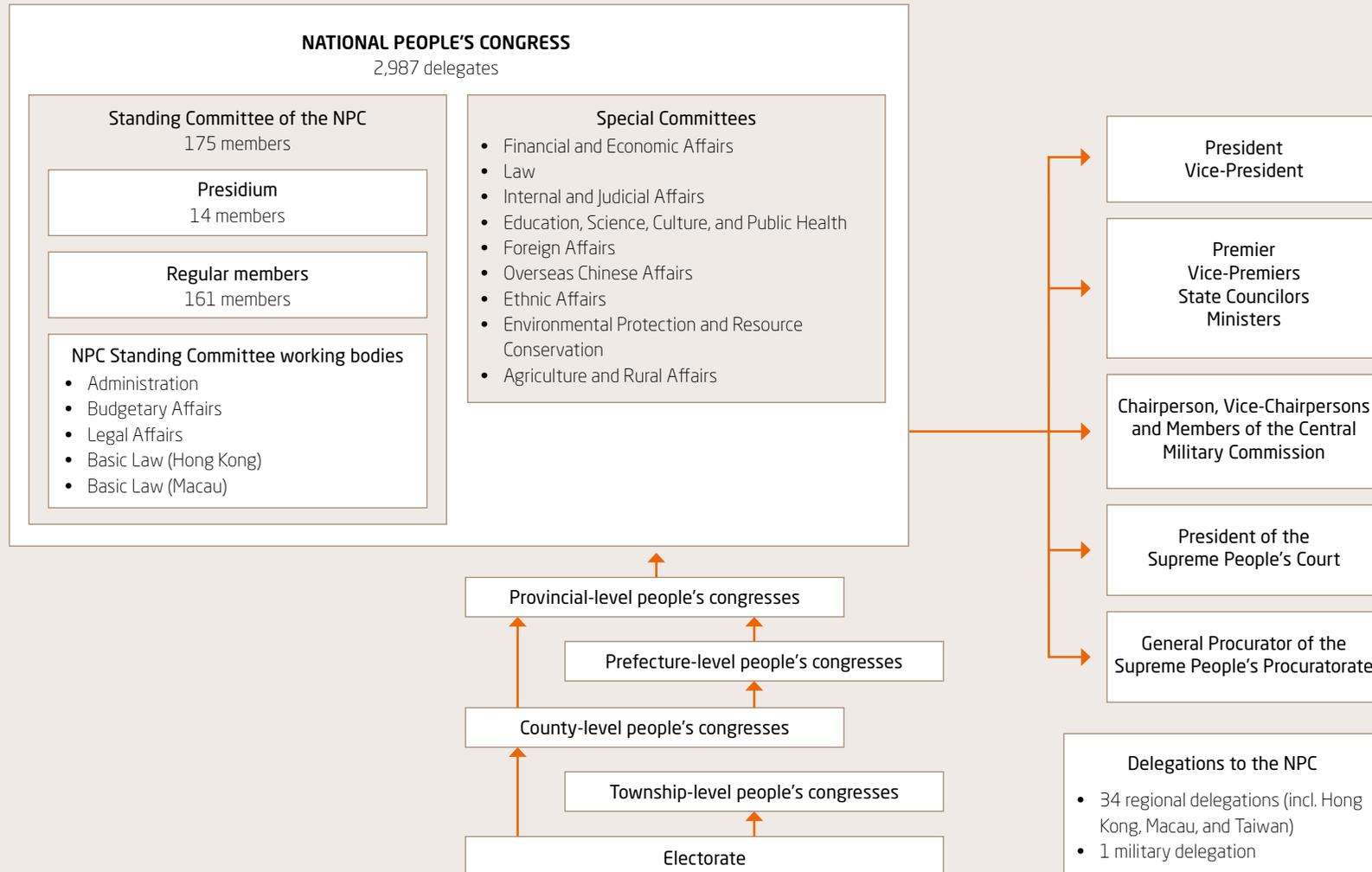
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Main findings and conclusions

- In China, the legislative initiative and law-making process was traditionally dominated by State Council executive agencies. Since 2015, significant changes have taken place: The Standing Committee of the National People's Congress (NPCSC) has played a very active role in introducing its own draft bills and has frequently vetoed government-initiated bills.
- The Chinese Communist Party (CCP) leadership bolsters this shift in the NPC's role. Its goal is to increase the effectiveness in law-making and ultimately to uphold the authority of the CCP as the governing party.
- The NPCSC, China's "core legislature," focuses its law-making efforts on social and environmental issues. The revision of the Environmental Protection Law in 2014 demonstrates the NPCSC's dynamic role as a political actor operating beyond institutional rivalries between State Council executive bodies.
- The NPC's increasingly active role is not meant to facilitate citizen-driven, bottom-up initiatives but rather to serve as an institutional counterweight against executive bodies' inertia in sensitive fields. The top leadership endorses this change to expedite legislation and regulation in policy areas that need urgent action to prevent discontent or protest.
- The NPC, together with the two-thirds of its delegates who are CCP members, remains under the CCP's stringent organizational and ideological discipline, which has recently intensified.
- The NPC cannot be seen as a free-wheeling law-making-body. The NPC and its Standing Committee are supposed to act strictly on behalf of the CCP's top leadership and its priority agendas. China's law-making bodies thus serve as a corrective of the bureaucratic leviathans in the executive branch often considered too ineffective to realize the will of the party's top leadership.

The National People's Congress, 2013-18

→ Election/confirmation by vote



Source: China's Political System (2017), p. 128

1. The CCP leadership headed by Xi Jinping bolsters a shift in the NPC's role

In the tradition of the socialist councils of people's deputies, China's people's congresses are supposed to be supreme state organs where the legislative, executive, and judicial functions converge. In contrast to parliaments in western democracies, socialist states practice concentration of power instead of separation of power.¹ Before 1978, the NPC was a feeble legislature without decisive influence on China's national law making. After this critical year for China's opening-up and reform, the CCP repeatedly called for a stronger role for the legislature in upgrading China's legal system to accommodate the new economic conditions. In the 1980s, Deng Xiaoping emphasized the importance of following legal rules. Jiang Zemin advocated "ruling the country by law" in the 1990s. And Xi Jinping's immediate predecessor at the helm of the CCP, Hu Jintao, insisted that all state and private entities abide by the constitution. On the organizational side, the number of permanent staff has increased considerably, benefiting the law-making capacities of the legislature.

However, there had always been clear constraints on the NPC, as the focus of its activities was more to support China's economic regulation than to supervise government activities.² After Xi Jinping took the helm of the CCP in November 2012, this situation was bound to change. Xi Jinping identified widespread corruption and arbitrary measures by government units as major threats to the CCP's legitimacy and China's overall political stability. By pledging to "constrain power within a cage," Xi emphasized the role of law in curbing the ineffectiveness of executive bodies in implementing the will of the CCP's top leadership and bypassing bureaucratic turf wars among State Council organs. This agenda aims to appease widespread discontent about corruption and social injustice and ultimately uphold the authority of the CCP as the governing party. Pre-

sumably, the NPC will take over some of these responsibilities as mandated by the CCP Central Committee. The goal is to authorize the NPC and its Standing Committee as the law-making body acting on behalf of the Party's top leadership and its priority agendas.

Selected voting results in the National People's Congress, 1995-2015



	Proportion of negative votes and abstentions
Votes on personnel matters	
Jiang Chunyun (Vice-Premier), 1995	37%
Jiang Zemin (Chairman, CMC), 2003	8%
Zeng Qinghong (Vice-President), 2003	13%
Xi Jinping (President), 2013	1%
Votes on legislative proposals /gov. programs	
Three Gorges Dam, 1992	29%
Central Bank Law, 1995	33%
Legislation Law (amendment), 2015	4%
Votes on work reports	
Government/Premier, 1995 / 2002 / 2015	3% / 3% / 1%
Supreme People's Procuratorate, 1998 / 2003 / 2015	44% / 27% / 12%
Ministry of Finance/budget report, 2002 / 2012 / 2015	20% / 20% / 14%

Source: China's Political System (2017), p. 133

2. The NPC's changing role

In the current context, mitigating social tensions is a daunting task for the legislature and its members to tackle. As China's economy is slowing down, the Chinese government is stressing the goal of redistributing existing resources among different layers of society.

2.1 ADDRESSING SOCIAL CONCERNS THROUGH LEGISLATION

The NPC is no longer preoccupied solely with economic law making. Rather, public laws that regulate the behavior of state agencies, curb abuses of power, and sanction government ineptitude have become its focus. For instance, the revised Administrative Litigation Law in 2015 has worked well in empowering individuals and enterprises to sue public agencies and reverse decisions affecting their lawful economic interests. Many Chinese citizens are no longer satisfied with rising wages alone. Rather, they demand an overall protection of their individual rights. In the past three years, initiating citizen-related bills has become a focus of the NPC's legislative work. The most prominent example is the commencement of the drafting of the Civil Code in 2016.

In 2015, the NPCSC made considerable adjustments to the 12th NPC legislative plan (2013-2018). The updated plan contains more bills relating to fundamental concerns in daily life, such as protection of consumers, promotion of public cultural service, and protection of the environment.³

2.2 THE NPC'S RIVALRY WITH THE STATE COUNCIL

In China, both the legislative and executive branches have the right to initiate draft bills. Organs directly under the State Council used to be principal initiators of draft bills. In the previous leg-

islative period, the NPC produced only one-quarter of all these bills. However, recently the situation has changed markedly. In the legislative plan of the 12th NPC the gap has been narrowing.

In the period from early 2015 to late 2016, the NPC took the lead in initiating draft bills. At the same time institutional rivalries with State Council organs became tangible. While the legislature passed 11 out of 13 draft bills that it had newly initiated, it shot down quite a few government initiatives.⁴ The statistics represent a noticeable improvement in the decision-making role of the NPC. There is an important reason for this profound change. The economic and social policies proposed by various organs of the party-state often go in different directions. These rivalries are a major concern for the CCP leadership, as institutional conflicts hinder both law making and law implementation.

Consequently, the CCP leadership allows the NPC to coordinate conflicting interests, weigh different strategies and integrate them into draft bills. In this sense, inter-ministerial

The NPC catches up with the State Council in law making

Number of legislative proposals brought by the NPC is rising (2008-2016)

Types of law	11th NPC: (Mar. 2008- Mar. 2013)	12th NPC: (Mar. 2013- Jun. 2016)
The NPC	13 (26%)	22 (42%)
The State Council	37 (74%)	30 (58%)

Source: NPC website, http://www.npc.gov.cn/npc/xinwen/syxw/2008-10/29/content_1455985.htm; http://www.npc.gov.cn/npc/xinwen/2015-08/03/content_1942908.htm.



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The 12th NPC's role in citizen-related legislation

Overview of 90 completed NPC legislation projects between June 2013 and December 2016

Types of law	State-related	Citizen-related
Social law	-	35 (40%)
Economic law	-	22 (24%)
Civil and commercial law	-	11 (12%)
Administrative law	9 (10%)	
Constitution-related laws	7 (8%)	4 (4%)
Criminal law	1 (1%)	
Procedural law	1 (1%)	

Source: NPC website: http://www.npc.gov.cn/npc/xinwen/node_12488.htm.



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Regulatory focus shifts from administrative and commercial law to economic and social law

Comparison of the legislative plans of three legislative periods (number and percentages)



Types of law	10th NPC (2003-2008)	11th NPC (2008-2013)	12th NPC (2013-2018) prior to the revision of the plan	12th NPC (2013-2018) after the revision of the plan
Administrative law	16 (27%)	15 (31%)	4 (10%)	8 (10%)
Civil and commercial law	10 (17%)	6 (12%)	3 (6%)	5 (7%)
Constitution-related laws	10 (17%)	5 (10%)	3 (6%)	11 (14%)
Criminal law	0	1 (2%)	1 (2%)	2 (3%)
Economic law	14 (24%)	11 (23%)	17 (36%)	24 (32%)
Procedural law	3 (5%)	5 (10%)	1 (2%)	1 (1%)
Social law	6 (10%)	6 (12%)	18 (38%)	25 (33%)

Source 10th NPC: people.com.cn, <http://www.people.com.cn/GB/14576/14957/2252949.html>, Source 11th NPC: NPC website, http://www.npc.gov.cn/npc/xinwen/syxw/2008-10/29/content_1455985.htm;
Source 12th NPC: NPC website, http://www.npc.gov.cn/npc/xinwen/2015-08/03/content_1942908.htm.

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rivalries contribute to the improvement of the NPC's political status. Later, we will illustrate this in detail through a case study on the revision of China's Environmental Protection Law.

2.3 INCREASING LEGISLATIVE EXPERTISE WITHIN THE NPC AND ITS STANDING COMMITTEE

Legislation requires a professional and independent team of legislators. Compared with former NPCs, the proportion of high-ranking government officials among NPC delegates has dropped from 42 to 35 percent.⁵ The most visible change in the NPCSC is the turn to professionalization: an increasing number of delegates in the Law Committee, which examines and reviews all legislative drafts before submitting them to a vote by the plenary session, hold degrees in law and have work experience in legislative bodies.

Delegates to the NPC

Chinese citizens directly elect delegates to people's congresses only at municipal and county levels. Every five years, people's congresses at the provincial level elect NPC delegates. This dualistic election system is supposed to ensure the selection of high-ranking delegates with absolute political loyalty. In 2015, the NPC promulgated the Law on Election of Members of the NPC and Local People's Congresses,⁶ which requires the NPC to make its internal process of collecting legislative opinions more transparent: NPC delegates have to take general opinions, advice, and criticism into account and convey them to government authorities.

However, there are serious flaws in implementation. First, election fraud challenges the system of indirect election. In 2016, 532 members of various people's congresses in Liaoning province bought votes to obtain membership in higher levels of people's congresses, including 45 delegates to the NPC.⁷

Moreover, independent candidates who attempt to participate in low-level election campaigns face chilling political obstacles. In 2016, police across the country reportedly intimidated and detained some 100 independent election candidates to discourage their candidacy in the forthcoming election.⁸

Nonetheless, delegates to the NPC have grown increasingly confident in their role as supervisors of government bills. While some 3,000 delegates who convene once every year in a plenary session have merely symbolic functions, the NPCSC, composed of around 170 senior delegates, takes up the daily work of China's legislature and issues the majority of legislative drafts at bi-monthly sessions. Many of them raise doubts about bills and question the bills' conformity with the constitution or relevant laws.

Veto against a “package of bills”

In April 2015, the NPCSC vetoed a “package of bills” brought forward by the State Council. Instead of submitting each of the 26 laws separately for the NPCSC to read and vote on, the State Council tried to take a shortcut. Changes to 70 provisions were submitted in one proposal.⁹ The respective laws covered areas as diverse as administrative licenses, commercial registration, and pricing policies.

The NPC argued that the package was incongruent with legal prerequisites, since the revision contained many provisions with heterogeneous contents: the revised Legislation Law in 2015 allows for the simultaneous amendment of several statutes only if they refer to the same issue area.

Delegates sought to adjure their counterparts in the executive branch to pay homage to their role as a guardians of the law. Su Zelin, former vice president of the Supreme People’s Court, expressed concerns that Chinese citizens would oppose such an unlawful revision. Fu Ying, former vice foreign minister, then urged the State Council to take draft bills more seriously. Finally, the NPCSC voted against the State Council’s proposal.

Legislative Consultation

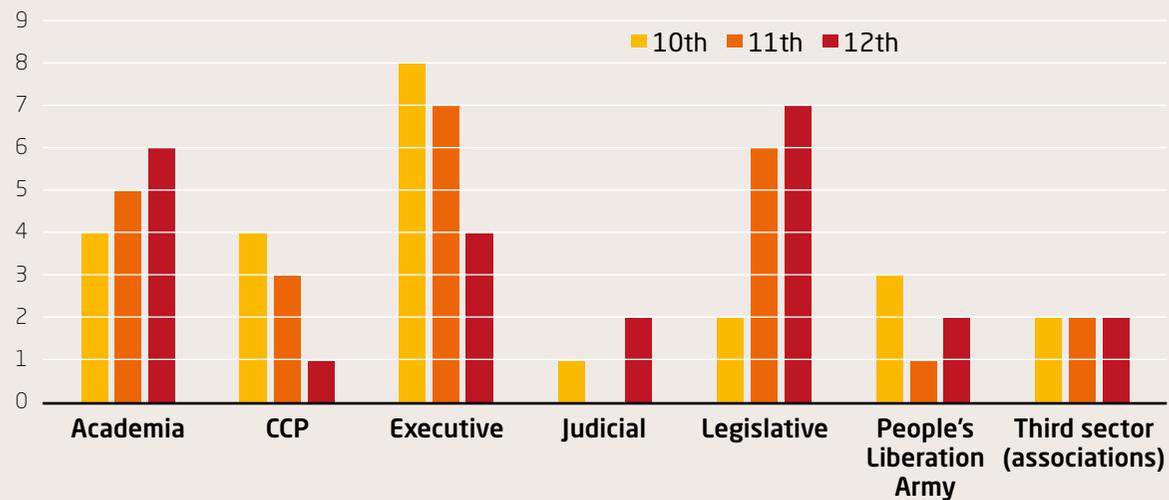
Although the 2015 revision of the Legislation Law prescribes new standards of imbibing a variety of opinions from different societal groups, the NPC filters uninvited voices through “legislative consultation.”¹⁰ In June 2016, the CCP issued a document that allows the NPC to recruit experienced law experts as its working staff for legislative projects.¹¹ Thus, lawyers, law professors, and former members of the Law Committee of the NPCSC may participate in China’s legislation by helping draft specific legal provisions. Nevertheless, the CCP imposes stringent criteria, such as political loyalty, on external experts.

In fact, the NPCSC has mapped out a bifurcated legislative strategy. On the one hand, it buttresses the civil agenda of ensuring economic and social rights such as economic development in rural districts, promotion of education, or envi-

ronmental protection. On the other hand, it follows the course of the party leadership on matters relating to political and civil rights. A spate of recent legislation, including the Anti-Terrorism Law, the Law on National Security and the Cyber Security Law, aims to circumscribe the freedom of Chinese citizens. Moreover, the NPC’s approach of combining a professional team of legislators with citizen-related legislative agendas is subject to “democratic centralism.” In accordance with one of the basic organizational principles of all Leninist parties, NPC delegates are ultimately bound to decisions and political directives made by the leadership of the CCP.

The professionalization of the Law Committee

The number of experienced lawmakers and academics increased (10th to the 12th NPC)



Sources: The Law Committee of the NPCSC, http://www.npc.gov.cn/npc/bmzz/falv/node_1666.htm.



3. Legislation in practice: The Environmental Protection Law and the NGO Law

Recent legislative practice best illustrates the changing role of the NPC in national policymaking and its ambivalent citizen-related strategy. The revision of the Environmental Protection Law demonstrates the NPC's dynamic role as a coordinator in grappling with institutional rivalries. By passing the new law on foreign NGOs, however, the NPC prioritized the key interests and control capacity of the party-state.

3.1 ENVIRONMENTAL PROTECTION LAW: THE COALITION OF ENVIRONMENTALISTS MADE A DIFFERENCE

In recent years there has been a multitude of discussions about ubiquitous pollution in China. In 2011, the NPCSC placed the revision of the Environmental Protection Law onto the legislative agenda. The Ministry of Environmental Protection, which was in charge of drafting a revised bill, led a coalition of advocates for stricter environmental standards that included a variety of NGOs and influential experts. After the ministry submitted a first draft bill with strict regulations, the opposing alliance gathered its strength. Industrial enterprises and business associations coalesced around the National Development and Reform Commission and recommended less rigorous rules in the name of economic growth.

Amid the heated controversy between 2012 and 2013, the NPCSC held several public hearings to collect opinions on a second revised draft bill. At that time, many members of the environment coalition, who advanced stringent legal measures for combating environmental pollution, were dissatisfied with the bill, which proposed only minor revisions to the Environmental Protection Law. The Ministry of Environmental Pro-

tection published an open letter to the NPCSC that strongly criticized the revised draft bill for its weak sanctions on environmental pollution. Many law professors expressed similar views in a joint open letter to Wu Bangguo, chairman of the NPCSC. Eventually, the Law Committee sided with the coalition of environmentalists.¹² The revised law containing stricter punishment and supervision of polluting enterprises was enacted in 2014, and took effect on 1 January 2015.

3.2 THE NGO LAW: POLITICAL AND CIVIL RIGHTS

In April 2014, Xi Jinping proposed an ideological movement encapsulating "national security." After that, the National Security Commission of the CCP ordered local authorities to conduct a national survey of foreign NGOs on drafting a bill (NGO law).¹³ In March 2015, Zhang Dejiang, chairman of the NPCSC, declared that the NPCSC should implement Xi's initiative by revising its legislative plan and reviewing the draft NGO law. Subsequently, an NPC document showed that the Ministry of Public Security, which took the lead in drafting the bill, would play a key role in administering foreign NGOs.¹⁴ Prior to the enactment of the NGO law, however, the main supervisory authority for foreign NGOs was the Ministry of Civil Affairs.

Foreign NGOs targeted by the draft replied with a stream of questions and criticism. Since the draft bill—published on the NPC website—involves restriction of civil liberties in China, the ambassadors of Canada, the EU, Germany, Japan, and the U.S. together submitted letters in January 2016 that expressed their grave concerns to the Ministry of Public Security. Meanwhile, the NPCSC solicited opinions from many international NGOs, including the Energy Foundation of the U.S., Save the Children UK, the German Chamber of Commerce in China, etc.¹⁵

Opinions diverged even among government authorities on the issue of transferring the supervision and administration of foreign NGOs from the Ministry of Civil Affairs to the Ministry of Public Security. Wang Cunkui, a professor working for the Ministry of Public Security, supported the new supervi-

sory authority, condemned some foreign NGOs for engaging in "ideological infiltration," and warned against the political risks that they presented to social stability and the Chinese government.¹⁶ By contrast, many local governments feared that harsh handling of foreign NGOs would result in their retreat from China and, thus, a reduction in the financial resources that the central government would grant them. It was, therefore, in their interest to argue that the civil administration was capable of supervising and, if necessary, taking tough actions against non-compliant NGOs. Since March 2016, the Ministry of Civil Affairs has pursued a crackdown on "fake" domestic NGOs. In August 2016, the ministry established a new bureau and issued new regulations that require NGOs to disclose financial information and submit annual reports.

Despite such conflicting standpoints in the legislative process, the guidelines of the CCP leadership prevailed in the NPCSC. In April 2016, two years after Xi's initiative on national security, the NPCSC adopted the NGO law, which imposes further restrictions on the operations of foreign NGOs in China, e.g. strict transparency requirements and day-to-day supervision. In November 2016, the Chinese government issued more specific guidelines on implementing the NGO law, which further nailed down the restrictive nature of the law.

4. Assessment and future prospects

Generally, the CCP's top leadership headed by Xi Jinping endorses the NPC's advocacy of social and environmental concerns and issues in law making. This is not meant to facilitate citizen-driven initiatives but to serve as an institutional counterweight against State Council bodies' inertia in these sensitive fields. In fact, the top leadership aims to expedite legislation in specific policy areas that might help iron out economic inequality in different provinces or assuage discontent about corruption and social injustice conducive to mass protests.

So far, the NPCSC has made progress in initiating citizen-related draft bills, supervising government authorities, and intervening more proactively where government activities do not comply with the law. All this adds to the NPC's profile and influence in policy-making. Still, the NPC cannot be seen as a free-wheeling law-making body. What we find is rather an authorization of the NPC and its Standing Committee as the law-making body acting on behalf of the party's top leadership and its priority agendas, such as anti-corruption, environmental protection and control of societal organizations.

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PUBLISHER'S DETAIL

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DESIGN

STOCKMAR+WALTER Kommunikationsdesign

ISSN: 2509-3843