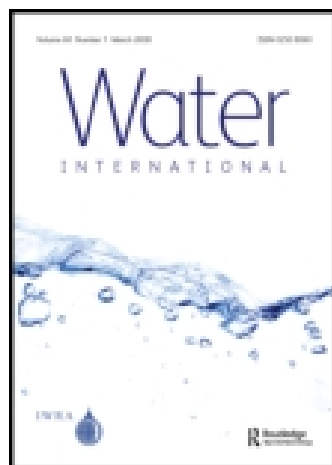


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A new perspective on water governance in China: Captain of the River

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A new perspective on water governance in China: Captain of the River

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Although formal law plays an increasing role in water governance in China, the political arena has a large influence upon it. This article seeks to provide a new perspective to understand water governance and what role formal laws play during China's transition phase through the lens of the 'Captain of the River', a newly developed water governance instrument in China.

Keywords: water governance; politics; objective responsibility; China

The Captain of the River

Wuxi City (in Jiangsu province) is the founder of the 'Captain of the River' (*Hezhang*) instrument. As one of the most developed cities in eastern China, water quality is a pressing issue. In 2007, a devastating blue algae bloom in Lake Tai seriously affected Wuxi City. Two million residents could not access clean tap water for five days, causing frustration among them (Tai & Ellis, 2008). Afterwards, the city government adopted a series of measures to tackle water pollution, and thus the Captain of the River instrument came into being.

The Wuxi (Communist) Party Committee and Wuxi City government require party heads and government officials at all administrative levels (city, county and district) to be 'Captains' of 64 rivers by signing responsibility contracts. The results from water quality monitoring in these 64 rivers are taken as a reference to assess the captains' administrative achievements. The Wuxi government created a special account to implement the Captain of the River instrument – a Guarantee Deposit. For example, in Huishan District (of Wuxi City), the captain of each river is required to deposit RMB3000 (US\$491) into the account at the beginning of each year. The fund is exclusively used for rewarding and penalizing the captain in question. At the end of the year, the captain whose river quality is assessed as 'improved' is eligible to have their deposit doubled as a reward. Those who have maintained the quality status quo can have their money returned, but for those whose water quality has worsened, their deposit will be confiscated.

This incentive policy of the Guarantee Deposit may play a role in motivating captains to protect their rivers, but this may not be the main factor. The amount of RMB3000, which is comparable with the annual per capita disposable income (RMB38,999/US\$6378 during 2013) (Chen & Tan, 2014), is not a great incentive to persuade captains to go to extraordinary, yet necessary, lengths to control pollution, especially given the pressure of gross domestic product (GDP) growth targets (discussed below in the section entitled 'Relationship between economic development and environmental protection'). Moreover,

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the deposits typically come from the government to which the captains belong, rather than being the captains' own funds, which can also undermine their motivation.

In spite of this, the Captain of the River instrument has achieved great success. The water quality in monitored sectors has improved significantly: 74.7% had reached the established standards in 2008, 50% more when compared with the previous year when the system had not yet been adopted (Ministry of Environmental Protection, *n.d.*). What contributed to this success was actually the Veto System (*yipiao foujue*), which is a core operating tool in China's (Communist) Party and governmental responsibility system. Under the system, a failure to attain any of the assigned targets will unilaterally lead to the disqualification of the official.

The Communist Party of China (CPC) Wuxi Committee incorporated environmental protection into its veto system. It states that:

For those who poorly govern environmental protection, those who cannot achieve the established objectives for energy-saving and emission reduction [...], the Organizational Department (of the CPC), after an investigation, will 'veto the relevant leadership when they participate in a city-level competition for an effective leading group, or veto the relevant responsible officials when they participate in the competition for advanced or excellent individuals, or veto the promotion of those directly responsible officials [...]. (*Xinhua News*, 2007)

Significant career pressure persuades captains to devote themselves to controlling water pollution. The reported improvement in the short-term, as stated above, is tremendous. The Captain of the River instrument, therefore, is rapidly expanding. As of September 2008, Wuxi City had promoted the instrument in its 815 rivers (Zhang, *n.d.*). Up to 2012, the city had 1284 captains (Environmental Protection Department, 2012). The system has since gone through a series of updates and iterations. For example, the 'Joint Captains of the River' instrument, where officials of the party and governments at both the city and county levels are asked to be 'Joint Captains' of selected rivers. In some areas, such joint captains extend four administrative levels (city, county, town and village). To date, the rivers in Wuxi City have been covered by captains without difficulty and each part of the river has a specific person in charge.

After seeing the success of the Captain of the River instrument in Wuxi City, the provincial Jiangsu government has begun to promote and improve this system since 2008. The province selected 15 rivers to implement the Joint Captains of the River instrument, connecting provincial and city levels. The names of the responsible officials are published by government. Up to 2014, 727 main rivers in Jiangsu province have their own captains (Wang, 2014).

The Captain of the River plays a significant role in the improvement of river water quality of Jiangsu today, and many other provinces are following suit. The Ministry of Water Resources encourages the development of this new instrument and plans to promote it nationwide. This is because that the Captain of the River happens to become an efficient tool to implement the 'Most Stringent Standards' water management mechanism promoted by central government, which assigns tasks to local governments through a Government Objective Responsibility System (GORS) (Dai, 2015). In other words, the Captain of the River renders the GORS more operational.

Why Captain of the River?

One of the key strengths of Chinese socialism is its capacity for long-term, national-level planning (Hu, 2011). China establishes its national development priority in its Five-Year

Plans, and normally implements them through a GORS. Through the GORS, central government assigns its overall established targets to provincial governments, which then reassign their quotas to lower levels (municipal and county levels). Party leaders and government officials at all levels are required to sign responsibility contracts and their performance will be assessed by the upper levels, sometimes through the veto system. The Captain of the River instrument is an implementation tool of the GORS.

Government Objective Responsibility Systems (GORS) in China

China's civil servant system includes two types of positions, leading cadres and non-leading cadres (Civil Servant Law, 2006), each managed differently. Non-leading cadres fall under the personnel departments and are subject to civil service regulations; they are admitted by examination, which is open to the public. The leading cadres are appointed and elected by the Organization Department of the CPC Committee, but are also regulated by the civil service regulations. The CPC Committee exercises authority over the leading cadres' promotion, dismissal and transfer one step down the administrative hierarchy, and the lower level is accountable to the next level above it (Edin, 2003).

Higher-level governments set targets and assign them to lower levels by signing performance contracts with the leading cadres, which form the GORS. In the contracts leading cadres pledge to achieve, and are personally held responsible for achieving, certain targets laid down by the higher levels (Edin, 2003). Non-leading cadres may also sign contracts, but these contracts are with their own working units. Incentives play a central role in motivating the cadres to fulfil their targets. Outstanding performances in the annual cadre evaluation are rewarded through promotion (in rank or position), additional wages or bonus payments or other material benefits, including administrative benefits (e.g., free transport, entertainment, training and travel), and other allowances for cadres (e.g., subsidized housing, healthcare and opportunities for further education) (Genia, 2014). Conversely, failing to meet some targets will result in censure and the denial of promotion.

The relative importance of different targets is made explicit in the GORS: soft ('guidance') targets, hard targets and 'targets with a veto power' (Minzner, 2009; Wang Y., 2013). Targets with a veto power are exclusively used for key policies of the central levels and sometimes also used for key policies at local levels (Edin, 2003). These targets are the most important and a failure to meet them automatically results in censure. Poor performance concerning veto targets cannot be remedied by good performance on other targets (Wang, 2013, 12–18). Hard targets are also important mandatory targets. Soft targets are lower priority objectives and are usually applied to those areas that are difficult to measure and quantify as well as to policies that are not deemed important by higher levels, such as cultural development (Edin, 2003).

Relationship between economic development and environmental protection

In 2014 China became the second largest economy in the world (Yueh, 2014). This success actually largely benefits from the GORS system. Economic goals have long been placed as nationwide hard targets in China. The country has had clear targets to boost the economy since reform and opening-up policies were introduced. The overall economic construction objectives were clearly laid down in the 'Three-Step Development Strategy' set out in 1987: Step One – to double the 1980 gross national product (GNP) by the end of the 1980s; Step Two – to quadruple the 1980 GNP by the end of the 20th

century; and Step Three – to increase per-capita GNP to the level of medium-developed countries by the mid-21st century (China.org.cn, n.d.). These targets have prioritized economic development at all administrative levels throughout the past three decades. GDP achievement have long been the focus of local governments and the performance of a government cadre has been solely based on its economic success (Easterlin, 2014). Cadres are extremely sensitive to their GDP indicator as it largely determines their career path. Research has found that provinces with higher revenue contributions and more rapid economic growth have gained more representation in the central committees compared with other provinces (Edin, 2003), however things have recently begun to change.

Speeches delivered by President Xi Jinping earlier in 2014 have stressed that ‘we should no longer evaluate the performance of leaders simply by GDP growth. Instead, we should look at welfare improvement, social development and environmental indicators to evaluate leaders’ and ‘the CPC should adopt more comprehensive criteria for assessing the performance of its officials’ (Rapoza, 2013). The Organization Department of the CPC Central Committee also stated that ‘GDP will no longer be the most important factor when evaluating an official’s performance’ (An & Zheng, 2013). These are healthy signs that China is switching its focus from ‘GDP worship’ to a more sustainable development mode. To date, more than 70 counties and cities (but only around 3% of the total) have bid farewell to the ‘only the GDP’ era, have cancelled GDP assessment, and have adopted an environmental and livelihood assessment guide instead (China has canceled over 70 counties GDP assessment, 2014).

Government Objective Responsibility Systems (GORS) in environmental pollution management

Environmental degradation has always been a concern for the central level. For example, as early as 1983 during the Second National Conference on Environmental Protection, the need for a coordinated advancement of both economic development and environmental protection was explicitly emphasized (CCICED, 2013). Environmental protection, however, has certainly not been a priority for both central and local governments. The idea of a ‘Green GDP’ was once explored by central government, but its 2004 Chinese Green National Economic Evaluation Research Report was not released until 2006, and subsequently ran aground (An end to GDP worship, 2011). Environmental targets have been determined to be soft targets and have long been devalued on the agendas of local governments. While prioritization was primarily given to economic growth, an insufficient effort and expenditure was devoted to environmental protection and social development (CCICED, 2013).

A historical change occurred in the 11th Five-Year Plan (2006–10), which elevated environmental goals to the same level as economic goals, i.e. from soft to hard goals (CCICED, 2013). The Plan lists eight ‘binding targets’ (hard targets) in which the ‘Major Pollutants Control Rate’ was included for the first time (Outline of the 11th Five-Year Plan, 2006). Its sub-plan, the 11th National Environment Protection Plan, was also, for the first time, issued as a State Council Document. It emphasized that ‘the CPC Central Committee and the Central Government take environmental protection to be a national development strategy’ (11th Five-Year Plan on Environmental Protection, 2007). The most prominent environmental targets of this sub-plan were the goals to reduce the major pollutant sulphur dioxide (SO₂) and chemical oxygen demand (COD) pollution by 10%, respectively (Wang, 2013, 12–18). It explicitly states that ‘tasks are assigned according to levels through the GORS, thereby incorporating the environmental indicator

into the performance achievement assessment of the Party leaders and the governments' officials and establishing a reward and sanctioning system'. Later that year the National Environmental Protection Bureau (which subsequently became the Ministry of Environmental Protection in 2008) signed responsibility contracts with seven major SO₂ and nine major COD emission provinces, and gradually with other provinces, to specify the provincial emission targets. Since then, environmental protection has been given unprecedented attention in China.

Government Objective Responsibility Systems (GORS) in water pollution control

The 12th Five-Year Plan (2011–15) highlights the need to 'construct a resource-conserving and environmentally-friendly society' (Hu, 2011). It incorporates 'energy saving and emission reduction' as one of its social development goals, and goes a step further towards water quality protection by initiating 'the most stringent water management' mechanism. It adds two more major pollutants to its binding goals, and again emphasizes target responsibility assessment.

To apply the 'the most stringent water management' mechanism, the CPC Central Committee outlined a 10-year water management plan, specified implementing policies, and developed national and provincial water quality objectives. The State Council specified objectives and timeframes and assigned them to each province. The implementation of each of province will be evaluated using a scoring system (Dai, 2015). At the beginning of 2014, the Ministry of Water Resources, jointly with 10 other ministries, issued an Implementation Plan Concerning the Most Stringent Water Management Assessment. The process, contents and scoring methods of the assessment are further specified by the plan. The GORS for water quality control have so far formed.

The veto system and the Captain of the River instrument

Veto targets, as stated above, are the most important targets for governments, meaning that if these targets are not met, all other achievements by a local leader will be rendered null and void (Genia, 2014). The veto power was originally applied to birth control in Hunan province in 1984 and was then updated as a national tool to ensure 'social stability' after 1991. Today, maintaining social stability and meeting birth control targets are almost universally covered by the veto, which may also cover items such as fiscal income, workplace safety and attracting investment (Wang, 2013). Energy saving and emission reduction fell under the veto power in 2007 (Notice of Energy Saving and Emission Reduction, 2007). That is why in the following year the CPC Wuxi Committee clearly declared that it would apply the veto system to assess leadership according to their achievements in energy saving and emission reductions.

Thus the 11th Five-Year Plan incorporated the 'Major Pollutants Control Rate' as a binding government target, the 12th Five-Year Plan added 'the Most Stringent Standards' to water resource management, and central government declared that it would apply the 'veto power' in emission reductions. It is against this background that the Captain of the River instrument rapidly became an adaptive instrument that can concentrate governmental manpower and personnel resources in a short period of time to deal with urgent pressures. It has been successful to an extent and has been approved by Wuxi City. However, it is not without problems in practice, which are discussed below in the section on the pros and cons of the Captain of the River instrument.

Where does the law stand in this respect?

Since 1979, the China National People's Congress (NPC) and its Standing Committee have passed as many as 280 pieces of legislation, of which 29 (almost 10%) relate to environmental issues. However, environmental pollution in China has reached a critical level, thus the implementation of these laws appears to have failed (Wang J., 2010).

The legislative body of the NPC, China's parliament, has grown in importance since 1978 when the domestic gates were opened. The NPC is often criticized as being a 'rubber stamp' for party decisions (How China is ruled, n.d.). Since approximately 75% of NPC deputies are CCP members, by the time a bill is placed before the NPC the major content of the bill has already been decided and members are expected simply to vote it through; bills are never rejected (Truex, 2013).

However, through the last decade there have been signs that the NPC is striving to be more independent. Today, it is playing an increasingly important role in China's governance and tremendous progress has been made by the NPC. For example, it approved the Administrative Procedure Law in 1989, which marked the first time that legal standards were applied requiring every level of government and all government employees to operate in accordance with the law (How China is ruled, n.d.). It added 'ruling the country in accordance with the law and building a socialist country of law' to the third amendment of the Constitution in 1999. To date, the NPC has passed hundreds of pieces of legislation, covering all aspects of society. As a country with 200 years of bureaucratic history, the construction of a legal system cannot be easy.

Not only is the NPC striving to create a country governed by the rule of law, but so is the party. The party created the ideology of 'ruling the country in accordance with the law' for the first time at the 15th Party Congress in 1998 and formally added the phrase 'ruling the country according to law' to the Party Constitution at the 16th Party Congress in 2002. It also included the requirement of 'exercising power scientifically, democratically and in accordance with the law' in 2003 (Cai & Wang, 2010).

The fact of the matter is that at China's present stage, neither the political nor the legal developments are a linear impetus to develop a law-ruled country. They are deeply intertwined and develop following their own dynamics; they cooperate with, yet constrain each other.

This cooperation shows that law has sometimes served as a lagging indicator, memorizing and 'legalizing' priorities established by the party state (Sunstein, 1996; Wang, 2013). For example, after the party incorporated pollution control as a governmental 'binding target' in the 11th Five-Year Plan, the Water Pollution and Prevention Law added GORS as a new provision in 2008, and this was also emphasized in the revisions of the Environmental Protection Law in 2014. The laws symbolically confirmed the GORS' legitimacy.

Law and party policy occasionally constrain each other. In practice, law has played a secondary role in China, being readily breached when it is in conflict with key bureaucratic targets (Minzner, 2009; Wang, 2013). In a random check of 126 industrial parks in 11 provinces (autonomous regions) in 2007, 87.3% of these parks were shown to have been approved by governments illegally or *ultra vires*, or by lowering the standards of environmental impact assessment. In more than half of the governmental urban sewage treatment projects corners had been cut or work was simply stopped (Geng, 2013). The enthusiastic pursuit of economic growth led governments to ignore the legal norms of environmental protection on a wide scale, and as one scholar has stated, 'a lack of good legislation is not the cause of China's ecological crisis, but rather a failure by government to prioritize the environment and enforce laws effectively' (Liu, 2014).

Law enforcement by the judicial system is weak, as local judiciaries are dependent on provincial and local governments for their funding. By controlling local judicial salaries and court finances, local governments often interfere with judicial decisions in order to protect local industries or litigants, or, in the case of administrative lawsuits, to shield themselves from liability (Brown, *n.d.*). For example, in Beijing City, the success rate of plaintiffs in administrative cases was 12.1% in 2013, and the national average success rate was less than 10% (*Xinhua News*, 2014). Some 87% of the public, when they encounter environmental disputes, choose to report the issue to governmental departments rather than bring the case before the courts (Huang, 2014). For example, the Wuxi Intermediate People's Court created a special tribunal for environmental protection in 2008; however, up to the end of that year, not a single conflict had been brought before the tribunal (Huang, 2014).

The fate of the 'failure of environmental law' is to a large extent exacerbated by the GORS, as the environmental protection therein has been included as one of the soft guidance targets and it has been given secondary importance to the GDP targets determined by the party (Wang, 2013). Moreover, environmental achievements were not an indicator for assessing officials' performance until 2006. This largely constrains the motivation of lower governments to conduct environmental protection.

Although the GORS, as well as the Captain of the River instrument, has been criticized as a 'rule of man' (Minzner, 2009), as being 'against the law' (Minzner, 2011), or as 'fixing the symptom instead of the root causes', it does not seem to be a better way of controlling rapid environmental degradation and achieving immediate results against the backdrop of a country undergoing a political and legal transition from an 'only GDP' era to a sustainable development era. Since the environmental problem is unique and must be quickly addressed, 'fixing' the symptoms can save time for 'fixing' the root causes.

Pros and cons of the Captain of the River instrument

A useful way of thinking about the Captain of the River instrument is that it is an adaptive tool to deal with the urgent pressures of water pollution. It has its strength, but it also has its shortcomings.

Benefits of the Captain of the River instrument

The Captain of the River instrument largely improves administrative efficiency. Fragmentation has been determined to be the primary weak point in China's institutional arrangement and legal framework for water resources management. It is often referred to as a multi-headed dragon since so many departments are involved therein (Dai, 2012). The Captain of the River instrument, to some extent, solves this problem. It contractually compels the official leaders of the party and governments as the first responsible actors to take charge of water quality, and directly correlates the consequences with their career possibilities. As the captains are the immediate leaders of different governmental sectors, and have direct influence on these fragmented departments, under their guidance it is easier to combine sectorial strength concerning pollution control and resource management in a short period of time.

The Captain of the River instrument promotes more site-specific policies. Water pollution sources vary on a regional basis, and especially in a country like China, industrial and agricultural pollution, the two main sources of water pollution, are unevenly

distributed. National or provincial regulations are not always suitable for local conditions. The captains, instead, can compensate for this defect. By diagnosing the specific causes of water pollution in their rivers, the captains 'relate the remedy to the specific situation', so that pollution problems are dealt with in a river-based perspective; the means, therefore, tends to be more practical.

Although the GORS occasionally constrains the implementation of formal law, it can also promote specific laws when setting hard targets in specific fields. For example, following the assignment of water quality targets by State Council to local governments, the NPC further strengthened the legal framework of environmental protection. Not only can the implementation of existing laws and regulations facilitate the pursuance of governmental goals, but also the designation of specific targets can also promote the implementation of formal laws and regulations.

Shortcomings of the Captain of the River instrument

The veto system is not only applied in the Captain of the River instrument, but also in other fields. For example, GDP achievements, birth control, safe production control and food safety, etc. According to a news report, in Jiangxi province alone there were 62 different items under the veto system applied to its local governments up to 2011 (Pan, 2013). Local cadres have a wide range of responsibilities, water pollution control (if they happen to be 'captains') being only one of them. Officials can be overburdened with pressure, especially when each of the responsibilities plays a decisive role in their promotion, reward or sanction. This pressure tends to lead to favouritism and manipulation, which are unavoidable under certain circumstances especially when competition for promotion is fierce. Many strategies have been adopted by lower governments in order to cope with the overwhelming pressure, for example, selective reports, selective implementation or the manipulation of data, etc. (Dai, 2015).

The Captain of the River instrument has achieved a level of success in the short-term; however, it might be the consequence of campaign-style enforcement. This enforcement style forces governments to resolve outstanding issues in the short-term by concentrating their manpower and material resources. An example of this is the 'Hard Strike' anti-crime campaign in 1983, which targeted a particular crime, and ramped up the law enforcement and state propaganda machines to obtain mass arrests, rapid trials and mass executions (Nestor, 2007). Another example is an anti-prostitution campaign in Dongguan City at the beginning of 2014. In one afternoon alone, the city dispatched 6525 police officers in raids to arrest 67 people and to close 12 entertainment venues (Kaiman, 2014). Both the 'Hard Strike' and the 'anti-prostitution' campaigns achieved immediate success, but neither had a long-term effect (Nestor, 2007).

Although the Captain of the River instrument tends to be a long-term strategy, it is not immune to the allure of campaign-style enforcement. Every captain has a limited tenure and everyone has his own understanding of career achievement. It cannot ensure that every cadre has the same enthusiasm concerning the pursuit of his career, or more directly in this case concerning water quality protection, especially when the captain may be close to the age limit for promotion. As one local official once said, he was 'too old for promotion, too young to stop working, but just right for mahjong and drinking' (Smith, 2013). It is, therefore, possible to have tight control on water quality in one period or place and to have a loose policy in others due to the individual character and situation of captains.

Another shortcoming of the Captain of the River instrument is that environmental effects tend to appear after a certain period of time, meaning that the effects may only emerge after a number of years and may not become apparent during the five-year tenure of the leadership at the township level. This time lapse can result in either officials ignoring the high-polluting source with slow consequences, like agricultural pollution, or with the captains being unfairly assessed, i.e. unjustly rewarded or unjustly sanctioned due to the previous tenure's efforts or ignorance. In the case of trans-regional rivers, the captains may be misjudged since the river is shared by different captains and the monitoring result in fact is a joint effort.

Transparency and public participation are poor in the veto system of the Captain of the River. In the process of assessing the captains in question, the public at large are generally excluded, since the veto system is the Communist Party's internal personnel system. Decisions are made by the Organizational Department and approved by the CPC Committee, independent monitoring is not necessary and the public does not need to be involved therein. Public participation, promoted by central government, is more applicable to non-leading cadres at the level of local governments. However, the opinions of the public are typically regarded as 'references' and have little practical effect on a cadre's career prospects (O'Brien & Li, 1999). Moreover, the Captain of the River instrument is result-oriented: it can easily lead to the lack of transparency and public participation and which may further lead to the illegitimate implementation and the ignorance of public rights.

Suggestions and conclusions

Although the Captain of the River instrument is largely ruled by man and seems to conflict with the country's objective of building a law-ruled society, it is still an efficient tool to promote environmental protection during this transitional period. While strengthening the legal framework, there is certainly room for and a need to improve this instrument.

One of the legislative tasks declared by the Communist Party in 1978 is that 'there must be laws for people to follow'. To date, although there has been major progress in water-related legislation by the NPC, its legal framework appears 'fragmented' and 'insufficient'. Approaches to tackle water pollution caused by point source (e.g. industry) and non-point source (e.g. agriculture) pollution has not yet been differentiated (Dai, 2014a). The integration of different water-related legislation needs to be further developed. In other words, there are still insufficient legal norms or obligations for either the captains or the public to follow. In order to correct this, developing an integrated and concrete legal framework through legal reform, as the author has observed in previous studies (Dai, 2014a, 2015), should be a priority.

Another task of the legislation initiated by the party is to ensure that 'the existing laws are observed'. In the 'GDP' era, the violation of environmental law by government was not uncommon. Since the party has now laid down water quality objectives by means of the GORS and has demoted the GDP goals, local governments may therefore be more inclined to respect environmental law as they are subjected to fewer pressures regarding economic development. However, if there is no sound monitoring system, the GORS, as well as the Captain of the River instrument, may lend weight to the failure of environmental compliance. As both the GORS and the Captain of the River instrument are results-oriented, countermeasures from local governments tend to vary, as discussed

above, and, without monitoring, effective and legitimate implementation cannot always be ensured.

‘Accepting the public monitor’ is a rule that has been adopted by the party over the years; however, it was not well implemented. It is a promising signal that, since the government of Xi Jinping, more attention has been paid to public participation, as Xi has said that ‘winning or losing public support is an issue that concerns the CPC’s survival or extinction’. Therefore the Political Bureau of the CPC Central Committee has decided to launch a campaign to boost ties between CPC members and the public in the near future (Xinhuanet, 2013). However, Xi’s new policies will be challenged by poor and ineffective levels of coordination between central government and local leadership and the inability of the country’s top supervisory body to regulate local cadres (Wang Y., 2013). Recently, the party has taken the unprecedented step of establishing an Online Public Opinion Monitoring Centre to monitor local-level government members on a daily basis (and also to keep a watchful eye on citizens in general) by collecting information from citizens (FlorCruz, 2013). This is a good start for the party in accepting public monitoring; however, given that only one-twelfth of China’s total population use the internet, other channels and more instruments may need to be further developed.

During the past few years, central government has expanded public participation in all processes, from access to information, participation in decision-making, to access to justice (Dai, 2014). Examples include, from a legal perspective, the publication of the Environmental Impact Assessment Law in 2002, the Implementation Measures of public participation in the Environmental Impact Assessment Process in 2004, the State Council Open Government Information Regulations in 2008, and similar local regulations and administrative measures (Wang, 2013). A skeleton structure for public participation has already been basically built at the national level; however, there is still a considerable gap between what is proposed by central government and what is actually implemented and enforced at the local level. This is because, historically, China’s governance is subject to a lack of public participation, ‘a wealth of laws with shallow roots’, as one scholar once described it (Wu, 2008). A suggestion would be to apply the existing norms more seriously by closed supervision with both a top-down and bottom-up approach, and parallel to this, strengthening general legal awareness and education.

Specific to the Captain of the River instrument, concerns arise with regard to the process of how targets are established, how the captains fulfil their assigned tasks and how they are assessed.

The establishment of water quality targets has been discussed in the author’s previous research (Dai, 2015). When central government designs water quality objectives, ecosystem indicators are not taken into account, and no attention is given to issues of ground-water quality. At the local level there is no mechanism to ensure that the captains’ tasks are assigned scientifically. With regard to this, more interdisciplinary research is needed, as neither legal nor political reform alone can fully correct this.

To fulfil the assigned tasks, captains are required to act in accordance with the law. Legitimacy should be fundamental for the system, which, however, has been largely ignored by the evaluators. Public participation can further improve this. For the time being, Zhejiang province is trying to establish an online monitoring system to implement its Captain of the River instrument, in which the public can upload photographs of polluted water and address complaints about misconduct by the captains. This bottom-up channel, once initiated, will largely improve governmental transparency and will also assist central authorities to tighten control over lower levels of government.

The veto system of the Captain of the River, as the party's personnel management tool, calls for the internal reform of the party. Although increasing transparency and public participation has been suggested, its implementation requires a change in party mentality. From a legal perspective, tremendous efforts have been made by central government, as discussed above, and are still made. For instance, at the beginning of 2014, the Ministry of Water Resources, jointly with 10 other ministries, issued an Implementation Plan on the Most Stringent Water Management Assessment, in which the process, contents and scoring methods of how to assess local governments are specified. According to the plan, the Ministry of Water Resources is to undertake the overall assessment. It is not yet clear how this plan can be harmonized with the veto system. Public participation needs to be further developed both within the party system and the formal law system, as neither is able to achieve the state's final goal – building a country ruled by law – on its own.

In this transition period, the Captain of the River instrument is an adaptive tool to curb emerging environmental pressures. It has been developed against the background that the party runs the state through a political system with a tight top-down responsibility system – GORS – in which the formal law is less important. Along with both the political and legal reform, the Captain of the River instrument faces the challenges, from a legal perspective, that the enforcement of available formal laws has not been effectively ensured and that there is a lack of legal instruments to enable governments to address water pollution, particularly non-point source pollution. With regard to this, the author proposes that while strengthening the enforcement of the existing laws, the legal framework that suits local conditions also be further improved.

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