

Public Participation in the People's Republic: Developing a More Participatory Governance Model in China

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Although they have delivered extraordinary and rapid economic growth over the past 30 years, China's leaders understand they need to do a better job of governing their complex country. Incidents of mass unrest increased nearly 50 percent from 58,000 reported in 2003 to an estimated 90,000 incidents in 2006,¹ and occurrences of civil unrest, often violent and prompted by diverse causes, continue seemingly unabated. Local leaders frequently still resort to force to quell criticism and protest, but the central leadership realizes their governance model has to change in order to better address the underlying issues prompting social unrest and achieve a more "harmonious society."

Chinese leaders now espouse the people's "rights to know about, participate in, express their views on and supervise" government administration, and the need to exercise government power responsibly "in the sunshine." Indeed, for more than a decade, China has been exploring and beginning to institutionalize mechanisms to make governance more transparent and participatory, and to permit the general public to have greater input into the government decisions, laws and regulations that affect their daily lives.

Use of the term "public participation" (*gongzhong canyu*, 公众参与) is of relatively recent vintage in China, although the concept itself is not. In its loose sense, "public participation" is used by Chinese observers to refer to a variety of participatory mechanisms, ranging from innovative deliberative democracy experiments at the local level (Leib and He 2006), to lawsuits against or complaints and petitions to the state, to requesting information from government agencies pursuant to China's recently promulgated government information disclosure regulations, to online activism by China's "netizens," to various kinds of protest. In a country that does not yet permit contested and meaningful political elections, all of these mechanisms of public interaction with the Party-state can be viewed as seeking through greater participation to ameliorate the "democratic deficit" in China.

However, "public participation" as used in this essay will refer more narrowly to the public's participation in the government decision-making process, which in China is differentiated into regulation or rulemaking (*zhiding tiaoli, guizhang*, 制定条例, 规章) and public policy-type decisions referred to as administrative decision-making (*xingzheng juece*, 行政决策) by the government at all levels, as well as the public's participation in law-making by the National People's Congress (NPC) and local people's

congresses (PCs). Both government rulemaking and congressional lawmaking are referred to by the Chinese and in this paper as legislation (*lifa*, 立法).

At the national level, both the NPC and China's cabinet, the State Council, are promoting and standardizing greater public participation in legislation, even while not yet subjecting it to detailed legal procedures. Both of these law-making institutions have incrementally introduced a more transparent and participatory legislative process, involving advice from academics and other experts, the discretionary use of public hearings and less formal public workshops, and publishing draft laws and administrative rules and regulations for input from the general public. Local PCs and governments have in many cases progressed even farther along the road toward regularizing more participatory governance.

Chinese Communist Party ideology has long endorsed the concept that government action should reflect the will of the people, manifested in the "mass line" principle of "from the people, to the people." Chinese leaders, however, have traditionally made law and policy through selective consultations with trusted groups of government officials, academics and other identified experts, supplemented by orchestrated "field investigations" to ascertain the "will" of the people. The establishment of regular and transparent channels for the general public to provide input into the legislative and policy-making process is a recent phenomenon. This essay will outline and discuss recent Chinese experience with public participation and its significance in the development of a more open, participatory and accountable governance model in China.

The Policy and Legal Framework for Public Participation in China

China's post-Cultural Revolution Constitution adopted in 1982 establishes the principle that all power belongs to the Chinese people, who are to manage state affairs, and requires state organs to "heed their opinions and suggestions, accept their supervision and work hard to serve their interests" (Constitution 1982, Articles 3, 27). China's opening and reform program that promoted greater interaction with the outside world introduced in the 1980s the concept that all laws, regulations and policies should be publicly known to ensure that the public (including foreign investors) would comply. The next stage was development of the idea that the general public should also know about and participate in the process of formulating the legislation and policies that apply to them.

The term "public participation" was first used by the Chinese leadership in a decision of the Third Plenum of the 16th Communist Party Congress in October 2003 (Central Committee 2003). However, the concept can be traced to the legacy of farmer participation in the rural collectivization and commune programs of the 1950s, especially in overseeing local finances (Zhou 2003, chapter 4). This experience helped shape the subsequent development of participatory villager self-governance and related village transparency policies in the 1980s and 90s (Horsley 2006).

The expansion beyond China's villages of a more participatory decision-making model began in the late 1990s in response to China's rapid economic and social development. As Chinese leaders were called on to make increasingly complex decisions, they came to recognize that public participation in the decision-making process could help provide more data, technical expertise and popular sentiment to make better decisions. Moreover, they realized that public participation in making the rules could also help improve the public's understanding of and compliance with legislation and policies, and thus promote social stability and build trust in government. The leadership further recognized that making the decision-making process more transparent and participatory could also help curb the rampant corruption and abuse of power that threatened to undermine the Party's credibility with the public.

Former Communist Party General Secretary Jiang Zemin provided policy direction for this development at the 1997 15th Party Congress, where he praised the practice of villager self-governance and transparency of village affairs, and called on township governments similarly to publicize their political and financial affairs so the people could directly take part in discussion and decision-making (Jiang 1997). Departments handling affairs of immediate concern to the people were, he instructed, to carry out an "open work system" and give scope to the role of "public opinion." This practice of "open government affairs" was extended incrementally up the administrative hierarchy, and in October 2000 the Party endorsed the new concept of "expanding citizens' participation in political affairs in an orderly way" (Central Committee 2000).

That same year, the NPC adopted the Law on Legislation, which stipulates that legislation should reflect the will of the people and requires for the first time that the Chinese people should "participate in legislation through various channels" (Legislation Law 2000, Article 5). Although this law and implementing regulations issued thereunder do not use the term "public participation" *per se*, they enumerate a variety of mechanisms that could be used to obtain public input, with slightly different formulations depending on which drafting institution is involved. The NPC Standing Committee is to seek opinions from "all quarters" on draft laws it considers and may adopt such means as workshops, expert meetings, hearings, and distributing drafts to relevant agencies, organizations and experts for their opinions, while "important draft laws" *may* be published to solicit opinions from the public at large. The State Council similarly is to listen widely to opinions when drafting administrative regulations and may utilize workshops, expert meetings, hearings and other mechanisms for this purpose. State Council implementing regulations under the Legislation Law stipulate that local governments and their functional agencies that draft lower level administrative rules are also to listen widely to relevant opinions and *may* do so through written comments, workshops, expert meetings, hearings or other means, whereas, when drafts affect the public's "vital interests" or give rise to sharp differences of opinion, the drafts *should* be published broadly for comment and hearings *may* be appropriate (State Council 2002, Articles 14 and 15).

China's commitment upon joining the World Trade Organization in December 2001 to improve regulatory transparency and provide opportunities for citizens of

member countries to comment on trade-related regulations before they go into effect gave further impetus to the development of participatory mechanisms.

By the time of the 17th Party Congress in October 2007, the complementary themes of transparency and public participation, which were closely linked to the goal of “scientific and democratic decision-making,” had become quite pronounced. After noting the “growing enthusiasm of the people for participation in political affairs,” Party General Secretary Hu Jintao promised: “To ensure scientific and democratic decision-making, we will improve the information and intellectual support for it, increase its transparency and expand public participation. In principle, public hearings must be held for the formulation of laws, regulations and policies that bear closely on the interests of the public.... We will improve the open administrative system in various areas and increase transparency in government work, thus enhancing the people’s trust in the government” (Hu 2007). Hu further observed that the Party itself needed to improve its own “scientific, democratic and law-based governance to ensure that the Party leads the people in effectively governing the country.”

The gradual evolution of public participation has been accompanied by an even more rapid development of policies promoting transparency of government affairs and the “right to know.” These policies, which also trace their roots to the “open village affairs” programs associated with villager self-governance, were “legalized” in a series of local open government information (OGI) enactments beginning in 2002. These locally applicable OGI rules introduced the unprecedented concepts that government agencies have an obligation proactively to disseminate a wide range of information to the Chinese public, and that the public in turn has a right to request disclosure of government-held information (Horsley 2007).

Drawing on those local experiments, the State Council adopted China’s first-ever information disclosure ordinance, the nationally applicable Regulations on Open Government Information (Horsley 2007a), which took effect May 1, 2008. A vice minister of the State Council pointed out at the time of their promulgation in April 2007 the close nexus between information disclosure and achieving more “scientific, democratic and law-based” governance, as well as securing the rights of the general public to “know about, participate in and supervise government” (Zhang 2007).

The Practice of Public Participation

The development of public participation in China has incorporated a variety of mechanisms, including public hearings, various kinds of open meetings often called workshops, technical seminars with invited experts and publishing drafts for written comment, as well as more traditional means such as seeking input from relevant government agencies and organizations, site visits to talk with members of the affected public at the “grassroots” and opinion surveys. Public hearings were initially the focus of experiments with public participation, while the written process of “seeking opinions” from the public by making drafts available through the media and on government

websites developed rapidly but more quietly in tandem with the spread of E-government and greater government transparency.

Legislative Hearings

As is often the case in China, local governments were the first to experiment with public hearings before they were tried at the center. Southern Guangdong Province led the way. Shenzhen, originally a small town in Guangdong where a special economic zone was established in the early 1980s to experiment with Western-style business practices and legal reforms, adapted in the late 1980s from nearby Hong Kong the practice of holding “hearings” (*tingzhenghui*, 听证会) for determining government-set prices.² In 1997, the Guangdong provincial price bureau adopted possibly China’s earliest regulation on price-setting hearings.

Hearings were subsequently introduced into national Chinese law by the 1996 Administrative Penalty Law, which provides for adjudicatory or trial-like hearings to determine administrative penalties like fines and license revocations in individual cases. However, the 1998 Price Law established the first *decision-making* hearing requirement, which like legislative hearings deal with matters that affect the general public prospectively. Article 23 of that law provides that, when government-guided or controlled prices on utilities and public services are being proposed or revised, public hearings presided over by the relevant government price department should be convened to solicit views from consumers, business operators and other quarters (Price Law 1998).

Initial price-setting hearings were criticized for their lack of transparency, selective and insufficient representation of differing points of view, and failure to effect any discernible change in the thinking of the decision-makers. National procedures for holding price-setting hearings have been revised several times and currently provide that at least 2/5 of the total number of participants must be consumers, that the proceedings should be open to public observers and the media, and that the final decision is to include an explanation of how the agency considered and handled the opinions of the hearing participants. (National Development and Reform Commission 2008)

The movement to make the legislative process more transparent and participatory also developed rapidly within the local people’s congress (PC) system. Shenzhen reportedly pioneered among local PCs the *pangting* [旁听] or audit system of inviting members of the public to sign up for the opportunity to sit in on legislative sessions and listen to the proceedings, a practice now regularly used by the NPC as well. These auditors are not permitted to take part in the discussion or ask questions, but are encouraged to submit written views about their observations, and suggestions for legislation.³

The Guangdong Provincial People’s Congress took public participation a step further in September 1999 when it held the first congressional legislative hearing ever conducted in the Reform-Era China (Zhou 2003, 58). That hearing involved draft legislation on bidding for contracted construction projects and was followed a year later

by a second public hearing on proposed legislation regarding construction project supervision.

After the discretionary practice of holding legislative hearings was endorsed in principle nationwide by the 2000 Legislation Law, implementing regulations thereunder on administrative rulemaking provided some general guidelines on how all levels of government below the State Council itself should conduct public hearings. Basically, if a government agency decides to hold a public rulemaking hearing, the organizer is to announce the relevant information at least 30 days in advance; the participants are permitted to raise questions and voice their opinions with regard to the draft; a written hearing record is to be kept; and the drafting unit is to carefully study the various opinions provided at the hearing. The drafting unit must also prepare a written explanation of the opinions and how they were dealt with in the final draft to be submitted for approval together with the final draft of the rule (State Council 2002, Article 15). However, these regulations do not require public disclosure of the explanation of how the public's opinions were handled or stipulate such matters as who can participate, when hearings should be open to the general public, and whether the hearing record should be publicly available. Moreover, implementing regulations under the Legislation Law did not provide comparable details on hearing procedures for use by the State Council and the PCs.

Many provincial and lower level governments embraced the idea of public hearings and established their own locally-applicable rules governing administrative rulemaking and local PC legislative hearings. As of January 2006, 45 legislative hearings had been held by the standing committees of provincial PCs on draft regulations concerning major issues of public concern⁴ and by mid-2008, 19 provincial-level governments and many large cities like Shenzhen, Harbin, Jinan and Dalian had promulgated administrative rulemaking hearing procedures.

At the center, the NPC and State Council have been cautious about using public hearings themselves. The NPC Standing Committee held its first and only public hearing to date in September 2005, on draft revisions to the Individual Income Tax Law. A hearing notice, accompanied by an application to speak and background information from the Ministry of Finance on the reasons for the proposed increase in the standard deduction, was posted online and carried in newspapers. Twenty representatives were selected out of 5,000 applicants from around the country to speak at the four-hour long televised and broadcast hearing, after which the standard deduction was adjusted slightly higher than the initially proposed increase. While many observers praised this experiment, others criticized it for being just a formality and having too few representatives given the nationwide scope of the issues. The NPC has promised to continue to experiment with public hearings and broadcasting its deliberations, but has not yet held a second hearing.

The State Council has not held any public hearings at all, despite its encouragement of central ministries and local governments to experiment with their use in formulating administrative rules and major policy decisions, especially when proposals

call for imposing a licensing or permit requirement, or when the matter is controversial or involves the “vital interests” of the public. Ministries regulating areas of direct concern to the people, such as the Ministry of Land and Resources and the State Food and Drug Administration, have established legislative and decision-making hearing procedures.

Participation in PC and administrative hearings has been selective to date. One improvement is the current practice of permitting interested individuals and business representatives to sign up to participate in response to a published hearing notice. The hearing participants are then chosen from among the applicants, sometimes supplemented by specially invited experts, representatives of social organizations and officials from other affected government agencies. Those who registered but were not selected may be invited to observe the hearing, and some hearings have been televised or broadcast over the Internet. However, development toward holding open hearing sessions where everyone who wishes gets a chance to speak has been slow. An interesting exception to this norm was the first online legislative hearing tried by Chongqing Municipality in November 2005. This hearing was opened to questions and comments from the general public over the Web, or by telephone to a special hotline, for two hours during which 80,000 web users visited the hearing Webcast.⁵

Another problem facing legislative and decision-making hearings has been insufficient transparency. Background materials are not always provided to participants in a timely manner so they can better understand the issues involved, let alone made available to the general public. Space for public observers and the media is often limited. Indeed, one activist Beijing lawyer sued the powerful National Development and Reform Commission for rejecting not only his application to be a participants but also, on grounds of insufficient space in the hearing room, his request to audit a hearing on nationwide mobile phones prices for which only five representatives of the consuming public were selected.⁶

Possibly because legislative hearings are time-consuming, costly to organize, and more limited in terms of the number of participants that can be heard efficiently, such hearings have not been made mandatory, nor have the circumstances and detailed procedures for holding legislative hearings been standardized at the national level beyond the general framework set out in the State Council rulemaking hearing procedures (State Council 2002, Article 15).

Development of Other Kinds of Meetings and Workshops

As Chinese decision-makers began to appreciate the need for additional expertise to assist with increasingly complex regulatory issues, governments and PCs looked first to outside academic and technical experts to provide advice and sometimes help with drafting. A form of participation called an experts “argumentation” or “demonstration” meeting (*lunzhenghui*, 论证会) became common for more specialized or technical subject matter. These meetings typically have not been open to the public and the various opinions offered or conclusions reached and shared with decision-makers have not been made public (Zhou 2003, 59-60).

Recently, consideration is being given to making these expert meetings open to the public to observe, and the meeting record published, so that others can benefit from and comment on the discussion. Indeed, pioneering measures on public participation in rulemaking adopted in 2006 by Guangzhou Municipality in Guangdong Province and Hunan Province's path-breaking Administrative Procedure Provisions (Hunan APA) both require that the record of opinions offered by experts who are invited to debate or "demonstrate" a proposed administrative rule or policy, respectively, be made public (Guangzhou Municipal People's Government 2006, Article 22; Hunan 2008, Article 36).

Another method of public participation mentioned in the Legislation Law is the workshop (*zuotanhui*, 座谈会), to which drafting units invite affected government organs, social organizations, enterprises, experts such as legal scholars, and selected members of the public. These meetings can be run fairly flexibly, and held at different stages of the drafting process. Traditionally, the proceedings themselves are kept confidential to encourage participants to speak frankly. Both government departments and the PCs use workshops to help ascertain preferences and resolve thorny issues. For example, the NPC convened over 100 workshops to discuss the hotly-debated draft Property Law, which went through seven readings rather than the normal three. Guangzhou Municipality requires at least one workshop for every agency rulemaking under its 2006 Public Participation Measures, which are the first Chinese ordinance to regulate in some detail and mandate public participation for every rulemaking and at each stage thereof (Guangzhou Municipal People's Government 2006, Article 18).

The Guangzhou Public Participation Measures introduced a new category of consultation literally called "seeking opinions in an open manner" [*kaifangshi zhengqiu yijian*, 开放式征求意见], which involves announcing and holding informal public meetings where any interested person can provide suggestions and comments to drafting officials (Guangzhou Municipal People's Government 2006, Article 20). This format, considered an innovation in China, has been adopted in the Hunan APA for use as appropriate, along with workshops, consultations (*xieshanghui*, 协商会) and public hearings, to obtain public input on proposed major policy decisions (Hunan 2008, Article 37).

Some localities are also experimenting with opening up executive government meetings for public observation and sometimes limited participation. Hangzhou in Jiangsu province started in 2008 to invite a few citizens to its executive government meetings that consider various actions, sometimes asking their input.⁷ This "government under the sunshine" practice of open meetings is also encouraged under the Hunan APA when administrative organs are considering matters involving the "vital interests" of the general public (Hunan 2008, Article 149).

Notice and Comment Procedures

While public hearings and less formal workshops and meetings gained popularity as a means for government to interact more directly with the public, experiments with the

“written hearing,” or what is referred to as “notice and comment rulemaking” in the United States, also expanded more quietly. One advantage of publishing draft legislation and decisions for written comment is that a broader range and greater number of individuals and organizations can submit written input, without having to get all relevant participants together for a meeting. Moreover, the rapid development of the Internet and E-government in China provide a potentially low-cost and widespread platform for governments and PCs at all levels to hear directly from the people.

Historically, the NPC released only 15 draft laws for public comment between 1949 and the end of 2007 (Guo 2008). The published drafts included the 1954 and 1982 Constitutions, the 1998 Organic Law on Villager Committees and the 1998 revised Land Management Law. Local PCs began to experiment with making selected draft legislation public for comment starting in the early 1990s, and this practice gained momentum by the end of that decade (Zhou 2003, 68).

After passage in 2000 of the Legislation Law, which was not itself released for public comment, the NPC began to use the Internet to publish drafts deemed to be of particular interest to the public, the first of which was the 2001 revision of the Marriage Law. The Property Law, one of the most controversial recent enactments, went through the first NPC reading in December 2002 and was not adopted until March 2007, after going through a 40-day public comment period in the summer of 2005 that elicited over 11,500 comments from all sectors of society. The draft Labor Contract Law released for public comment in March 2006 received even more - almost 192,000 comments, 65% of which were from ordinary workers. These comments prompted major revisions to the draft that was ultimately adopted a little over a year later (Guo 2008).

In April 2008, the NPC Standing Committee (NPC SC) announced that, going forward, all drafts submitted to it for review and adoption will ordinarily be made public as a standard practice, observing that an open and transparent legislative process would better ensure the public's “right to know, participate, express their views and supervise” and provide the people with a better understanding of new laws through participation in their formulation.⁸ Most drafts are to be published for comment over the NPC website after the first reading, while those drafts believed to relate to the “vital interests” of the public will also be carried in national media. The NPC SC subsequently released drafts of all 15 laws that it considered in 2008, and has maintained that practice during the first half of 2009.

Moreover, each draft starting with the Food Safety Law, which was published for comment in April 2008, has been accompanied by an explanation of the reason for and major issues raised by the draft law. In some cases, this explanation also included specific questions on which the NPC SC wanted particular input. Providing background materials, and guiding the public with specific questions the drafters are concerned about, has proved in other countries to be an effective way to improve the quality and usefulness of the public's comments.

Beijing was one of the first local governments to publish a draft regulation for comment, starting in the early 1990s with draft provisions on raising pet dogs, a topic that, like restrictions on fireworks, continues to elicit strong public interest and reaction. By the late 1990s, departments under the State Council such as the China Securities Regulatory Commission and the Ministries of Information Technology, Public Health, and Land and Resources also began to release selected draft departmental regulations for public input on their websites and in relevant newspapers (Zhou 2003, 69-70).

Although the Shanghai Municipal PC started releasing drafts of local legislation for comment earlier, the Shanghai government first experimented with public participation in administrative rulemaking by seeking public input on its pioneering OGI Provisions in 2003. Starting from May 2004, all draft government rules have been posted on the Shanghai government website, <http://www.shanghai.gov.cn>, as well as in local Shanghai newspapers, for public comment. Although Shanghai has not promulgated any regulation mandating this practice, more than 50 draft rules had been posted by the end of 2008. Moreover, recent drafts have been accompanied by the drafter's explanation of the legal basis, need for and background on the proposed decision, to help the public better understand the purpose and content of the drafts.

The Guangzhou Public Participation Measures make the written comment procedure the heart of the public participation process and grant the right to participate to everyone, not just Guangzhou residents or Chinese citizens (Guangzhou 2006). Guangzhou appears to be doing an excellent job of implementing these ambitious Measures, not only publishing all municipal government rules and agency rules for comment but also applying similar procedures to policy-making in the land use and other areas and conducting active outreach through various kinds of meetings with associations, individuals and experts to discuss the drafts. While some drafts get zero or few comments, others, like a proposal related to raising pet dogs that elicited more than 5,000 comments during the preparatory stage, draw more public interest. As is also the practice in Beijing and Shanghai, all or most public comments are also posted on the rulemaking website for others to read, making the public comment process more transparent.

Following initial experiments by some central ministries and local governments, the State Council Office of Legislative Affairs (OLA) first released one of its own draft national regulations, on property management, for public comment in October 2002. The OLA gradually increased the number of drafts that it chose to make public each year. In March 2007, it published a notice to all State Council departments reporting agreement by the State Council leadership to establish a procedure for determining at the beginning of each year what draft laws and regulations should be made public for comment, and agreeing to publication of seven named laws and regulations for that year. (State Council Office of Legislative Affairs 2007). As it turned out, the OLA released a total of 12 drafts in 2007.

In January 2008, the OLA announced in introducing its legislative plan for that year, that it and the central ministries would henceforth essentially abandon the test of

whether legislation relates to the “vital interests” of the public and would publish virtually all draft rules and regulations -- other than those involving state secrets or national security -- for public comment.⁹ In line with this new policy directive, the State Council released 25 drafts, most of which were accompanied by a background explanation, for public comment in 2008. The State Council OLA, in announcing its 2009 legislative plan, encouraged expanding the scope of public participation to ensure the opinions of basic level agencies and relevant industry associations and interest groups are heard.¹⁰ Within the first eight months of 2009, 45 central government agency and State Council drafts had been published for comment online.¹¹

The State Council OLA has also established and is working to improve a software program that collects, sorts through and analyzes the comments received, to make it easier to digest large numbers of public opinions. It is also working with provincial and lower-level governments to upgrade their websites in order to provide more standardized and efficient notice and comment procedures. Unofficial estimates are that 27 or 87% of 31 provincial-level government OLAs have sought public input over the Internet, and 17 or 34% of 50 central government ministries and organs have put out departmental rules through their websites as of July 2009. Many local draft rules are now posted on the State Council OLA website, <http://www.chinalaw.gov.cn>, and a central government portal website called www.gov.cn, at <http://www.gov.cn/zwhd/index.htm>. The OLA plans eventually to establish an integrated nationwide information platform for providing written notice and comment capability for government rulemakings at all levels and for all agencies.

The Supreme People’s Court has also on occasion held workshops to seek legal experts’ input on their draft annual work reports and in 2003 started issuing selected draft judicial interpretations, which elucidate how laws should be applied, for public comment. The Court now has a column on its website, where it posted 29 drafts that have gone through that process as of July 2009, <http://www.chinacourt.org/wsdc/more.php?location=2602000000>.

Extending Public Participation to Policy Decision-making

The Legislation Law, which provides the main legal basis for developing mechanisms of public participation in legislation, does not apply to what the Chinese call “decision-making.” However, some individual laws and State Council pronouncements do require or encourage the use of public participation in the course of formulating various kinds of decisions and policies. Public participation through hearings, as discussed earlier, was initially required for government price-setting, which is considered a form of decision-making.

The environmental protection field is another policy sector of great importance to the Chinese public. Many Chinese non-governmental organizations (NGOs) work to protect various resources and stop pollution. A 2003 law calls for the public to participate in environmental impact assessments and for public hearings or other mechanisms to be used when a plan or project might have an unfavorable impact on the

public and affect their environmental rights and interests (Environmental Impact Assessment Law 2003). However, the first public hearing ever convened by the State Environmental Protection Administration (SEPA, which was subsequently elevated to ministry status) did not take place until April 2005 in response to a public outcry over a water conservation project to line lakes in Beijing's historic Yuanmingyuan Park with plastic (Gong 2006). The project had not obtained the required environmental impact assessment approval, and academics and conservationists argued it would negatively impact Beijing's underground water systems. Following the hearing in which 120 participants raised differing views, an assessment was conducted and the plastic lining largely replaced with clay.

SEPA then issued interim measures specifically on public participation in environmental impact assessment, effective March 18, 2006, to attempt to ensure greater disclosure of environment-related information and provide more details on different mechanisms that should be used to obtain public input into the EIA process (State Environmental Protection Administration 2006). Public participation in environmental decision-making is still by no means regularized, but public interest and involvement in that sector continue to increase.

Urban planning, land use and major project decisions are other areas of great controversy in China, frequently involving the requisition of rural land and demolition of urban housing in furtherance of China's urbanization and redevelopment drive. The Ministry of Land and Resources promulgated provisions in 2004 that require hearings on the formulation of rules and regulatory documents relating to land use, compensation for land takings and development projects, all extremely sensitive issues in recent years. Continued experiments in this area led to the revised 2008 Urban and Rural Planning Law, which requires that draft urban and rural land use plans must be published for comment for not less than 30 days, the opinions of both experts and the general public must be sought through hearings, expert meetings and other channels, and those opinions must be considered and set forth in a report accompanying the draft plan submitted for approval (Urban and Rural Planning Law 2007, Article 26).

Following large demonstrations in the southern city of Xiamen over plans to build a chemical factory in a suburban area, the Shanghai government responded to massive protests in January 2008 against an extension of a high-speed maglev train line by committing to do a better job of consulting the public on major projects. Residents had voiced concerns over noise, vibrations and possible electromagnetic radiation from the train system, some residents would have to be relocated to accommodate the new line, and homeowners living nearby feared the project would negatively impact property values. Mayor Han Zheng personally promised that the city would improve public opinion surveys, public notice of projects and public hearings, and make sure that citizens are effectively involved in major projects,¹² and the government eventually postponed the maglev extension while it conducted further studies. Mayor Han similarly announced in February 2009 a new system of prior consultation for major urban redevelopment projects, both to obtain agreement by a given percentage of affected

residents to the project itself and at a second stage to obtain general agreement with the compensation and resettlement arrangements.¹³

A 2008 State Council decision on strengthening administration in accordance with the law at the municipal and county levels emphasized the need to improve the public policy decision-making process by increasing transparency and public participation, including by means of written comments, expert meetings and holding public hearings (State Council 2008). In accordance with this trend, the Hunan APA stipulates detailed procedures for “major administrative decision-making,” which is defined to include major policy matters such as economic development and other plans, budgets, investment projects, resource development, environmental protection, and fee and price-setting (Hunan 2008, Article 31). These procedures cover several different mechanisms for increased public participation, including advisory committees, expert participation, publishing decision-making proposals for comment for not less than 20 days, using informal workshops and public meetings, and holding public hearings where a proposal is of major interest to the general public, the public has major differences of opinion, social stability might be impacted, or if otherwise required by law (Hunan 2008, Chapter III, Section 1).

The Importance of Providing Feedback

Public participation in legislation and policymaking is not a vote. The ultimate decision is left up to the drafting authority. However, Chinese decision-makers recognize that inviting public input is also not a one-way street. They need to provide some kind of feedback to suggestions received on draft legislation and policy decisions to assure citizens that their voices are truly being heard and in order to maintain the credibility of these nascent public participation systems.

The NPC has experimented with feedback concerning some public comment exercises. In 2005, it published a discussion of 24 major issues that were identified in the 11,543 comments it received on a draft of the Property Law that was made public, together with the response of the Legislative Affairs Commission (LAC) to each of those categories of comments (National People’s Congress Legal Affairs Committee 2005). More recently, the NPC posted on its website three sets of reports on the more than 70,500 comments it received during the 50-day comment period on the draft Social Insurance Law, although without the useful response explaining what the LAC thought of and how it handled those comments. (National People’s Congress Legal Affairs Committee 2009).

The State Council has recently called for establishing and improving a feedback (*fankui*, 反馈) system for government regulation,¹⁴ and several local governments are already regularly providing responses to the public comments they receive during administrative rulemakings. Beijing Municipality was among the first local governments not only to start seeking public opinions on draft legislation but also to provide responses to the public. Its initial approach was to hold a periodic press conference and issue a press release about the kinds of comments it

had received on drafts that had been released during the preceding period and how those comments were handled, which was then posted on the government website. Successive press releases describing notice and comment rulemakings, starting in 2004, provided statistics on the number of comments received as well as a brief analysis of the major comments on each draft and how they were dealt with.¹⁵ These reports indicated that some draft rules went through more than one notice and comment process, some were withdrawn due to adverse public reaction, and some received no comments while others received several hundreds or thousands of comments.

The Guangzhou Public Participation Measures require a public response to the opinions received and at each stage of the rulemaking process (Guangzhou 2006). In practice, it is not clear whether this has been done consistently, as the explanations are published separately from the final rule. The Hunan APA similarly requires publicly available explanations of whether or not comments were incorporated into a draft or final major policy decision (Hunan 2008, Article 37). In 2007, the Shanghai government, which had previously published summary explanations in local newspapers, established a special column on the government website to provide feedback on how it handles various categories of comments received through hearings or in writing on each draft rule that it publishes for comment.

Providing a public description of what kinds of comments were received and an explanation of why they were or were not accepted in the final version strengthens the accountability of the process. This developing practice in China, while not yet legally enforceable, may help foster a more widespread practice of writing and publishing reasoned decisions that set forth the basis and considerations deemed most relevant, which might also help curb corruption by subjecting the decision-making process and the final decision to public scrutiny.

A New Role for Civil Society

The written notice and comment process is potentially broader, more “orderly” in line with Party preferences, and more efficient than hearings and other face-to-face methods of public participation, especially with respect to national issues. However, Chinese decision-makers recognize that this method will not necessarily work for the millions of Chinese citizens who still do not have access to the Internet, nor is there great public interest in all draft legislation and policy decisions. Indeed, local governments report a frequent lack of interest and use of their Internet systems to collect public input on draft rules. Moreover, not all comments provide useful information and suggestions.

In other countries, civic organizations, business and professional associations and other NGOs play an important role in alerting their members to the significance of proposed decisions, collecting and organizing their input and providing informed and targeted suggestions to the government and legislators. Indeed, passage of the 1946 US Administrative Procedure Act with its public participation requirement stimulated further development in the United States of associations, which now had a regularized channel

through which to obtain information about what government was planning and doing and to provide input on behalf of members into that process.

As participatory opportunities proliferate, so do opportunities for Chinese NGOs and government-backed organizations like the All-China Women's Federation and the China Consumers Association to further professionalize and demonstrate their utility in making and monitoring the implementation of government law and policy in a constructive manner, as they have already begun to do. Local governments and PCs increasingly look to local lawyers associations, social organizations and business associations for special expertise during their legislative processes.

A more active role of NGOs in public participation in legislation and decision-making is supported, at least in principle, by the Chinese leadership. Hu Jintao in his 17th Party Congress address in the Fall of 2007 recognized the role of civic organizations in providing public services and protecting the legitimate rights and interests of the public, helping expand the public's participation and "giving voice to their concerns," sentiments endorsed almost word for word in Wen Jiabao's government report to the NPC in March 2009 (Wen 2009).

Concluding Observations

Specific public participation procedures are not yet legally mandated or enforceable by Chinese citizens at the national level. Nonetheless, their increasing use, improvement and institutionalization, buttressed by adoption of the nationwide Open Government Information Regulations that for the first time in Chinese history require government to disclose a wide range of government-held information, seem to reflect a growing appreciation of how greater openness and consultation can result in better legislation and policies and elicit increased public support and compliance. These positive developments further suggest a growing confidence on the part of the Chinese leadership about their ability to interact with, respond to and manage conflict with the Chinese public. Moreover, widespread and repeated experience with public legislative hearings, open meetings and providing written input on draft decisions is also helping to foster a gradually more participatory political culture in China.

In the aftermath of the deadly Xinjiang rioting of July 2009, noted Chinese journalist Hu Shuli observed that "Mass incidents in China's current stage of development highlight the characteristics of a society in transition" and that an "immediate task calls for improving governance and building a framework for democratic dialogue" (Hu 2009). Increased and improved mechanisms of public participation in government legislation and decision-making, especially accompanied by development of feedback mechanisms to ensure accountability, may help provide one framework for a more constructive "dialogue" between the Chinese people and the Chinese government at all levels.

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