THE DEVELOPMENT OF LEGISLATIVE HEARINGS IN CHINA

A Report on NDI’s Seminar on Local Legislative Hearings and Local Governance

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I. INTRODUCTION

While citizen participation in China’s political process remains tightly controlled and limited, in recent years the country’s system of governance has afforded more opportunities to citizens to play a role in the government decision-making process. Avenues for public participation have increased and taken on forms such as legislative hearings, advisory committees, elections for local officials and a system of “letters and visits.” However, serious constraints on these forms of citizen involvement still exist.

As is the case with village elections, the development of hearings in China is one of the most promising areas for citizens to begin the process of influencing public policy and, more important, demanding government accountability. Eventually, citizens may want to organize around issues in order to affect government decision-making. Moreover, hearings can provide a forum for divergent views on public policy issues. Traditionally in China, legislative law-making and executive branch rule-making relied on informal discussion meetings (zuotian hui) and formal discussion meetings (lunzheng hui) to gather the input of scholars and people from relevant agencies and departments to provide opinions on drafts. In 2000, the Law on Legislation broadened the use of hearings as a way to incorporate public opinion into the creation of laws, rules and regulations by People’s Congresses and their Standing Committees at the provincial and municipal levels. After the adoption of the Law on Legislation, most local people’s congresses amended their rules to incorporate the practice of hearings. By December 2002, all provincial level people’s congresses, except the Xinjiang Autonomous Region, and 19 municipalities had written hearings into their legislative procedural rules.

Though legislative hearings have been an accepted method for collecting public information and opinion for more than three years, their implementation lacks standardization and they are not widespread. There are still no established rules for legislative or administrative hearings applied nationwide, and only eight provinces and municipalities have created rules on hearings that have been used throughout an entire jurisdiction. In most provinces and municipalities, rules are established for hearings on a case-by-case basis, and do not follow an established format. Other problems persist. Many hearings in China today cannot be considered truly “public” since people must apply and then be approved before they can attend a hearing and offer testimony. Provincial and municipal officials are unsure about how to select witnesses or how to incorporate input from hearings. Moreover, the relatively new practice of holding hearings lacks a sufficient body of research for legislators to draw upon.

In 2000, NDI began a program aimed at educating legislators, legislative staff and others about democratic legislative processes and to determine whether interested Chinese were able to receive and disseminate information on democratic governance. Starting in May 2000, NDI organized a series of three national seminars in conjunction with the Center for the Study of People’s Congress and Foreign Legislatures at Peking University Law School on governance reform and strengthening mechanisms to incorporate citizen participation in the legislative process, primarily through the promotion of public legislative hearings. NDI has also collaborated with the Shanghai
Legal Affairs Office to organize a series of two seminars on the development of both public legislative and administrative hearings in the municipality. In 2001 NDI worked with the Ford Foundation to advise the Research Center for Contemporary China of Tsinghua University on the design of a program that addressed the problem of HIV/AIDS legislation and regulation in China. The issue of HIV/AIDS was used as a case study to illustrate how legislative hearings could better incorporate more diverse citizen voices into the policy debate than the more traditional means of closed consultations. In the last two years, NDI has continued to expand its programming aimed at assisting Chinese efforts to enhance citizen participation and transparency in Chinese governance.

II. SEMINAR ON LOCAL LEGISLATIVE HEARINGS AND GOVERNANCE

From September 18 to 21, 2003, NDI sponsored a national seminar in Beijing with the China Center for Comparative Politics and Economics (CCCPE) on the development of legislative hearings at the municipal level. The seminar followed a field study by CCCPE that was also sponsored by NDI, which assessed the development of legislative hearings in five cities: Guiyang, Shenzhen, Wuhan, Chongqing, and Guangzhou. This research became the case studies for the seminar. The participants were government officials or legislative staff and academics from selected provinces including Qinghai, Gansu, Guangdong and Shanxi provinces and Guiyang, Wuhan, Xiamen, Shenzhen, Nanjing, Shanghai and Beijing municipalities. The seminar provided an opportunity for Chinese officials and academics to learn from each other about procedures for holding hearings throughout China and to hear from international experts about how other systems utilize legislative hearings. NDI and CCCPE structured the agenda to focus on five Chinese and two international case studies to provide an opportunity for participants to learn about concrete implementation and models from several Chinese cities and the United States and Germany. After each case study, the participating Chinese officials and academics were able to critique, offer recommendations, and discuss the rationale for different procedures with their counterparts. NDI sponsored the participation of two international experts, Judy Erwin and Alexander Longolius, who provided an international perspective on local level hearings and, more broadly, on the question of citizen participation in legislative and other government processes. Alexander Longolius is Executive Director of Checkpoint Charlie Foundation for German-American Relations and a former member of the Berlin House of Representatives, Chairman of the Social Democratic Caucus and president Pro Tem of the Berlin House of Representatives. Judy Erwin is the Senior Vice President of Res Publica Group (a consulting firm advising on regulatory, legislative and political initiatives). She served five terms in the Illinois House of Representatives and spent 14 years as the Illinois State Senate’s Communications Director.

NDI’s objectives for the Seminar on Local Legislative Hearings and Local Governance were to provide a venue in which Chinese legislators, legislative staff and academics could share their experiences in organizing and carrying out legislative hearings, and discuss the challenges that they had faced as well as solutions for
successfully implementing hearings. NDI also hoped that officials who had worked on hearings would form networks for further support and information sharing on the development of hearings in their respective localities.

Legislative hearings are now being used sporadically in municipalities and provinces throughout China to inform policymaking on a range of issues and in varied formats. While regional variation is not necessarily a problem, Chinese provinces and municipalities could benefit from further developing and formally implementing rules of procedure that reflect basic guidelines. All seminar participants recognized the value that hearings can have for strengthening public policy and incorporating citizen feedback. However, participants also described frustrations with hearings after two years of experience. Some of these included: the high cost of hearings; determining when to hold a hearing; selecting a balanced panel of witnesses and audience; managing the extra workload; determining methods for effectively incorporating citizen input into decision-making; and determining how to publish the results of official debate and the decision-making process following hearings.

One interesting strand of debate addressed the extent to which government officials should be included as witnesses in hearings. Alexander Longolius pointed out that choosing appropriate witnesses is a common problem everywhere in the world. Legislators, he noted, will often want to pick witnesses who will represent their own views. However, he also stressed that in his 18 years in government, he talked to government officials a great deal, but he would never have called these meetings actual hearings; and generally, he would exclude government officials from acting as participants in hearings. There was also discussion about if time should be allowed for question and answer (Q&A) sessions during hearings. The Chair of the Legislative Affairs Committee of the Shanxi Provincial People’s Congress argued in favor of such Q&A sessions within hearings.

Discussion about how to include the greatest number of people and generate interest among the public also dominated the seminar. Issues included: how to choose the most appropriate topic for hearings; how long the application period to participate in a hearing should be and how far in advance of the event; how specific and technically detailed the topic should be; and how hearings should be publicized. Some participants argued that hearings that are on more specific subjects often draw more participants, speculating that this is because interests surrounding these types of topics are usually more polarized. Participants also debated what the role of “special guests” in hearings should be (such as industry representatives or people’s congress officials), and how these participants should generally be treated. Participants criticized the case-study presenter from Chongqing since it appeared that representatives from property management companies had received special treatment, including a longer time to speak, at the hearing.

Another of the seminar’s case studies was on the development of legislative hearings in Guiyang. The Director of Research for the Guiyang Municipal People’s Congress described how that body had recently experimented with holding back-to-back
sessions on two different topics on the same day in the same hearing. The hearing addressed both the protection of the Nanmin River and the management of real estate in the space of several hours, without allowing for a change of hearing audience and witnesses. The Guiyang local government tried to ensure that a wide range of citizens were able to participate in the hearing, through televising hearing proceedings and an on-site call-in center. Nonetheless, many seminar participants expressed concern over the doubling-up of topics in a single hearing, stating that neither issue could get adequate attention.

Overall, the seminar’s attendees appeared positive about hearings as a method for soliciting greater public input on issues of legislation and governance. One participant, the Director of the Center for the Study of People’s Congress and Foreign Legislatures, noted that hearings are gaining legitimacy in China and that he hopes to see more of them in the future. He also explained that while some believe that the cost of hearings is too high, they serve the function of public education for all of society. However, he also noted that it is not necessary to conduct hearings with the costly fanfare to attract media that occurred in Guiyang and other localities, stating that these were “luxury” hearings that were far too expensive to be sustainable. As long as hearings are open, he argued, members of the public in China should take the initiative to decide if they want to participate.

Beyond the procedural questions, participants raised fundamental problems about hearings in their current context. The question was phrased in various ways, but it is essentially about “guaranteeing” the effectiveness of a hearing in the legislative process in the absence of other democratic institutions. For example, some participants raised the question of how witnesses can be trusted when they might have self-interests or could personally benefit from the outcome of a hearing. The quality of participants’ testimony, in terms of ensuring that witnesses are well-informed, was also an issue that came up repeatedly. This is understandable in a system that has yet to incorporate interest group advocacy. The Chair of the Legislative Affairs Commission of Gansu province also made the cogent observation that the role of hearings should not be exaggerated, and the indirect influences of legislative hearings could be greater than their direct impact. Hearings alone cannot bring legitimacy to the legislative process. He noted further that form should not override content in hearings and that more types should be tried.

The following report documents the presentations given by both international experts, Alexander Longolius and Judy Erwin, discussion following these presentations by the participants and abstracts of papers submitted by the Chinese researchers for the seminar.
III. INTERNATIONAL EXPERTS’ PRESENTATIONS

A. Legislative Hearings in Germany—transcript of lecture by Alexander Longolius

Introduction

It is a great honor to be here and to have the privilege of sharing some of my legislative background with you.

Legislative hearings in Germany are one element, a relatively recent element in a whole system in which citizens can participate in running the country. There are some people who make good use of their democratic rights, and there are others who do not care about that which is a matter of concern to many in Germany. I happen to believe that our system of government can only work well if a great majority of citizens take an active part in it.

In theory, the German system lives on the assumption that the sum total of our citizens’ ideas will result in intelligent and wise decisions for the common good. We have tried alternatives in our history, as you know, liberal ones and terrible ones, and we like this system the best.

However, the German system has many shortcomings, and I promise to mention some. I have no intention to speak to you as a missionary. Every country will have to find its own compromise between a maximum of citizen participation and efficiency, between listening to the people for a sufficient amount of time and still reaching the necessary decisions.

Political Structure of Germany

Let me begin by briefly explaining the political structure of Germany.

Basically, there are four levels of government.

a) A growing number of affairs are being discussed and decided on the European level, social and environmental standards for example, human rights, foreign trade. Rules set by the European Union, therefore, eventually become national laws in these areas.

b) Issues like foreign policy, defense, most taxation laws, etc., are handled on the federal, i. e. national level.

c) The administration of most laws, education and cultural affairs as well as others are the business of the state or regional level. Germany consists of 16 states. In all affairs reserved to the jurisdiction of the states, they have legislative powers. Although, our constitution rules that life for Germans should more or less follow similar standards no matter which state a person lives in.
d) We also have the communal level, cities, towns, villages and counties. These all have limited self-government, including elected officials running their affairs in city and town councils, but they do not have legislative privileges and they may levy only very few taxes.

In addition, I hope I do not confuse you too much when I add that three of our states are so-called city-states, states and communities at the same time, Berlin is one of them.

On all of these levels, the people’s representatives are voted into office. Whether we talk about our Federal Chancellor—Gerhard Schröder, a village mayor, members of the national parliament—the Bundestag, or representatives of city councils, they are all elected.

Elections in Germany are competitive and include several parties with conflicting views asking for the support of the voters.

Therefore, political parties are a very important element of Germany’s political life. In most cases, candidates only have a chance of getting elected if they are supported by one of the major parties. Once elected, the members of the same party form a group in the legislature, a caucus or faction, and these groups more or less organize the legislative schedule. A legislator represents his party just as much as he represents his voters which, as you can imagine, often leads to conflicts.

The chairman of a caucus, of one of these party groups, therefore is a very powerful figure in a German parliament.

**Citizen Participation in Germany**

An interested citizen in Germany finds many ways and levels to have his voice heard. Let me mention some of them.

1. Since the parties are so important and since a person needs their support to be nominated as a candidate and then run an election campaign, one of the most important opportunities to be active in politics is to join one of them. Anybody can do it, and the parties are happy about new members. Once an individual has joined, he or she pays a monthly fee and has a vote within the party about candidates, the platform, and so on.

   Sadly enough, only 4% of our eligible citizens in Germany use this powerful tool.

2. Citizens can take part in elections and choose between different parties. I did not mention this as the finest instrument with German democracy because when I go to the polls, many important decisions have already been made, such as who the candidate is or what each party stands for. If I wanted to influence any of this, I would have had to be a party member.
3. During election campaigns, political parties and candidates have to account for their achievements during the past electoral period, including what became of the promises they made during the last campaign. They do this through holding numerous public meetings, publishing newspaper ads, and so on. Citizens have an opportunity to go to these meetings, ask questions and tell the candidates whether they are happy or unhappy with them.

4. Citizens can also join a political, economic, cultural or social associations or interest groups, outside of parties, and influence politics that way. Specifically, I am talking about trade unions, associations of employers, environmental groups or spontaneous neighborhood clubs, which want a playground built or an airport closed down.

5. In addition, citizens can lobby members of parliament by calling them, writing to them, going to their official meetings or arranging an individual appointment so that they can present their case.

6. All of this will often result in legislators introducing so-called Parliamentary Questions into parliament, which the government has to answer.

7. Moreover, citizens can take part in a political strike or demonstrate for or against a certain cause. They can organize media campaigns by writing letters to newspapers in mass. They can also become involved by getting themselves elected as representatives of the parents at their children’s school or kindergarten and exercise pressure that way.

10. In Germany, the public can also petition their legislatures to look into collective or individual cases of concern, of governmental injustice and of unfair treatment by authorities. Legislatures and councils on all levels of government have special committees with far-reaching privileges to take care of these petitions, and many are successful.

There are many other ways that citizens can influence governance in Germany. All of the ones that I mentioned are guaranteed by law or even laid down in federal or state constitutions. Any interested and informed citizen in Germany who is not happy with the course of events in any given area will find a way to present disappointment, frustration, advice and help during or between elections.

But, I promised to mention problems with citizen participation. Here are two of the most significant:

First, often not enough people are interested in participating. Not enough are willing to invest time, energy and ideas into their future and to stick with that cause. Too many are happy to just sit back and let others do the work.
The other problem is probably even bigger. Germany is a small country, with only about 83 million people. Yet, for a person to express what he or she wants effectively, through such methods as printing material or buying advertising time on TV, a great deal of money is needed. Small groups of ordinary citizens have a greater difficulty being heard than large, powerful and rich associations. The money and publications of large organizations often have a greater capacity to influence the minds of people.

Capitalism and democracy often go different ways.

The Role of Hearings

The instruments of citizen participation, which I have mentioned so far, have not included hearings yet. This is because my list so far has included only elements which the people of Germany themselves may use if they wish. They are free to vote or to stay home. They can actively take part in their neighborhood’s affairs or they can go to a bar at night and complain that nothing is being done. They can stand up for their interests or they can leave their future in the hands of others.

Hearings are different. In most cases, a government agency, a legislature or another authority decides to deal with a certain subject matter, and only then asks for the people’s opinion, advice or expertise. In Germany, citizens have to go through a lot of trouble to force a certain issue on a legislature or to have a bill passed if law-makers did not have it on their agenda. This has not happened yet on any major issue.

Generally, German legislators were reluctant to use legislative hearings in the early years of the Federal Republic of Germany. Only in the 1970s hearings as a method of gaining citizen feedback become increasingly popular, and even then, their use remained limited at the state and communal levels.

Why is that?

a) After legislators have discussed an issue for a long time, they sometimes think that everything worthwhile about it has been said. Once they have reached decisions within their party on an issue, this can have a somewhat binding effect, and it can be hard for a legislator to imagine that an ordinary citizen would have anything worthwhile to add. Legislators feel that changes made after their party has made decisions about an issue can create problems.

The first question, therefore, which legislators have to answer is: do they believe in and trust people? Also, they should ask themselves if they think that citizens have ideas and create solutions which they, as legislators, have forgotten.

b) Hearings take time. They slow down the process of legislative decision-making. Even on smaller issues and in a city state like Berlin where individuals do not have to travel far to present their case, my guess is that on the average a hearing and its
consequences take between one and three months. When I describe an example later, you will see what I mean.

c) Legislators have to accept people as equal partners. Once a legislator opens a hearing on a given subject he or she cannot be sure what opinions are going to be offered. It is a very dangerous matter to hold hearings and not plan to be open for their results. If a legislator is not willing to integrate the outcome of hearings into the final text of a bill, he should have very good reasons why he did not because the decision will likely bring about frustration among some citizens if it is not adequately explained or justified.

d) On the other hand legislators have to be careful that powerful and affluent minorities and demagogues do not use hearings in order to publicize their minority views and dominate the policymaking process.

e) Yet, while most legislators believe that they work for the common good, hearings will of course often produce special interests in contradiction to their goals. It is not easy to understand that it is the people’s right to have individual and therefore special interests. It is the legislators’ job to balance them.

f) I would like to add a side remark here. My German experience tells me that it is not enough to introduce hearings or other participatory elements into the life of a community and expect the citizens to make good use of them right away. The government has to find a way to educate citizens to take advantage of participatory opportunities available to them. Citizens should be taught in kindergarten, in school, in their organizations that they are responsible for their community and country. This process starts right in the family.

In Germany, we call this Political Education. Others call it Civic Education, which I like more. Public funds are allotted for this purpose in Germany. Citizens are taught about their rights and duties and about ways of participating in public affairs. In night schools, lectures and seminars, they can obtain information about the issues facing their country and the world.

Under certain circumstances they can be excused from work while being fully paid to attend these classes. The idea behind this is, of course, that only informed citizens will be able to vote intelligently.

Every society which would like their members to be active participants in public life should invest heavily in this area.

The Importance of Hearings in the German Context

I have mentioned some of the problems related to hearings. Why, in spite of them, are they still an important element of law-making?
a) Although, as I have mentioned, hearings take time, they also save time. Within a short period of time, if a legislator picks the right people, he or she can assemble a great amount of knowledge and experience on a given subject.

b) Doing this, legislators increase the quality of their work, including both democratic participation and expertise. And this will make them more credible and less vulnerable to public criticism that their decisions are made behind closed doors.

c) To conduct a hearing successfully a great degree of transparency is required. Even if citizens do not participate in decisions, they will want to know how and why decisions that influence their lives are being reached.

d) People will understand the feeling of participating in public affairs when they, or at least some of them, are being heard. Participation and public responsibility go hand in hand.

e) All of this is especially true when people really know what they are talking about. This will be more difficult on the national level, and that is why in Germany hearings are so popular in states and communities. A person does not have to be the owner of a big construction company to be an expert about a road when that road will eventually destroy his or her house. Being concerned is one form of being an expert. Hearings should always include those who are going to be affected by a law.

**Berlin Hearing Case Study**

Now, I would like to describe an example of a hearing which the Berlin State House of Representatives organized some years ago; I was quite involved in it.

In our schools, we had several forms of participation regarding the running school affairs --participation by the teachers, parents and students. Several years ago, while I was still a legislator, we wanted to put all of this into a law, so that the relevant rules would be identical throughout the state of Berlin.

The Commissioner of Education, after discussing the issue with a few lobby groups like the teacher unions, presented a first draft to the two caucuses in the legislature backing the government. We had a coalition majority at that time.

We discussed the draft within our caucus, took it to party bodies and slowly developed a party opinion. Our coalition partner did the same thing. Then spokesmen of the two party groups got together in parliament and developed a compromise draft which we took back to our respective parties. While all this took place, we were constantly lobbied by representatives of teacher, parent and student groups, many of them of course were also party members.

Only after all of this had been completed, did we write a new draft which we officially introduced into parliament. After the so-called First Hearing in a Plenary
Session, the bill was referred to the School Committee and some others, the Legal and Finance Committees, if I remember correctly, and only then did the School Committee, at one of the regular meetings, decide to have hearings.

In preparation for the hearing, all of the party groups had to decide whom to invite, which of course included representatives suggested by the opposition or minority parties, and how much time to spend on the hearings. The Committee Chairman would also chair the hearings, and the staff would be responsible for the minutes which we wanted to be word-for-word.

As part of standard procedure, the groups and individuals whom we invited would all get the text of the draft and the minutes of the hearing following its completion. Witnesses were asked to present a statement and to be ready to answer questions. We decided that the hearing would not include debate.

In the end, it took us two morning sessions of two hours each to hear everyone invited. It took a lot more time to read the statements sent to us by groups who had not been invited. After these sessions, the next several meetings of the School Committee were devoted to analyzing what we had heard. You would be surprised what different ears will hear from the same person if they want to hear different things.

We finally passed the bill after it had undergone dramatic changes from the first draft written by the Commissioner, and the entire process from drafting to passing the bill took about one year. The law is in effect today and is used widely. However, it has also been changed several times through various amendments; even after we took so much time drafting it, it had its faults. I can say, however, that the people of Berlin, all those interested in schools and education, had a part in it. After all, everyone is an expert in this field, we all went to school at one time.

Procedural Guidelines

Rules on hearings can never be fully identical. The hearing body which can be a committee or a caucus or party organization will always adapt them to its needs. But here are some general suggestions:

The majority in a given political body will decide whether to have a hearing, but should allow for strong minority rights. Twenty-five percent of the members for example should be able to demand one.

This is also true in deciding who should be heard. Minority nominations should be accepted.

The analysis and consequences of a hearing should not be discussed before the minutes are available. These debates should also be public if at all possible.

The minutes should be made public, even on the Internet if possible.
Minutes can be word-for-word or just a record of decisions. The format must be decided at the beginning.

At the start, the committee should decide what kind of hearing it is going to hold:

- Only listening to statements by people being heard;
- Listening to statements and asking questions by committee members; or
- Statements, questions and debate.

It is my experience that the attention span of committee members covers a maximum of three hours. If we allow a statement of 10 minutes for a group or individual heard and a maximum of 10 minutes for questions and answers plus 2 minutes of calling the next person, etc., that means we need about 20 minutes per group or 9 groups per session. It is better to have hearings on two or more days than to stretch them over too many hours on one day.

The committee, etc., should consider meeting in different locations when they hold hearings. Sometimes watching participants can be as informative as hearing.

In Germany, the political body that decided to hold a hearing is also responsible for the cost of printing, renting rooms and technical equipment, travel expenses, etc.

Conclusion

Let me summarize my observations.

Hearings are an important instrument for citizen participation in public affairs, even if they are only a weak instrument. They help to broaden legislators’ perspectives and factual knowledge and improve his or her respect for the expertise of the people.

Hearings should always be public. Fact-gathering discussions with individual experts behind closed doors should not be called hearings.

The more that people are affected by a law, the more they should be heard. This is true for city planning, school and kindergarten construction, speed limits in residential streets, environmental issues, and so on. In Germany, we exclude matters of the budget, salary for civil servants, issues decided on the European level, foreign affairs, and others.

Hearings must remain advisory instruments. The final decision on an issue must be kept with a political body which can be held accountable for their vote.

When hearings are taken seriously, however, it is my belief they lead to a broader concept of democratic participation. People eventually ask for more than just being heard, and at some point want to transform a passive form of partial rule into an active one.
B. Legislative Hearings in the United States—transcript of lecture by Judy Erwin

The ability of Americans to actively participate in all levels of government is a recurring theme in U.S. democracy and also, a continuing challenge. Likewise, the ability of citizens to know and understand the actions, procedures and operations of state and local government frequently clashes with competing needs of government agencies, elected officials, appointed bureaucrats, the news media and a wide variety of interest groups.

Before considering the actual conduct of a legislative hearing, I would like to first talk about the informal means of communication between constituents and their representatives in government. Clearly, formal legislative hearings are not the only means for citizens to convey their views, needs and preferences for government policy and service. In many instances, legislators and administration officials seek citizen input in a more informal way to help guide them in making policy choices.

Since speaking individually to each citizen is out of the question on the thousands of pieces of legislation considered by state governments like the State of Illinois, legislators must be inventive to help determine what constituents want from their government.

Clearly in American democracy at the federal, state and local levels, the electoral process has at its basis the idea of “voter satisfaction.” If citizens who qualify to vote (18 years or older) are dissatisfied with the actions or votes of a legislator, then they are most likely to vote against them in the next election. This “electoral connection” is a primary motivator for elected officials to keep in close communication with their constituents.

State and local legislators frequently solicit citizen input through “constituent surveys” asking them to complete a survey of questions regarding positions and policy choices. Although not usually a scientific sampling, this information helps the legislator to gauge the relative support for a wide variety of issues in a fairly efficient way. For every piece of communication sought by a legislator, there are likely many more that constitute “unsolicited” expressions of opinions regarding a wide variety of topics.

State and local officials also frequently refer to “constituent mail,” the written correspondence from constituents, as a strong method of determining local support in policy matters. Increasingly, the Internet is used as an even more accessible and affordable method of two-way communication between a legislator and her citizens.

These communications fall into many different categories including inquiries regarding government services; requests for instructions on how to apply for government services and more commonly, expressions of support or opposition to a particular policy choice.

Legislative proposals to make permanent changes in state and local laws may have their seeds in these more informal types of communication. Indeed, many
initiatives presented by state and local legislators first come to them as an idea or request from a constituent. Since citizens’ satisfaction highly motivates government officials who stand for election, it is not surprising that many of these proposals take shape as initiatives formally introduced into the legislative process.

Since much of this communication including phone calls, letters and emails finds its way into more formal changes in public policy, legislators usually have a method of “tracking” or documenting the communication.

In public debate or comment, it is common to hear U.S. state or local legislators remark that they have received “hundreds of letters, calls or emails” on a particular issue. Keeping the electoral connection in mind, a legislator needs to use his limited time and resources in a manner that mirrors the desires of the particular constituents. In other words, why would a state legislator spend time and energy on an issue no one in his district remotely cares about?

Once a specific idea takes the shape of a proposed law or policy change, it moves the conversation into the more formalized process of legislative hearings. While there are variations of legislative hearings between state and local governments in the U.S., there are many more similarities than differences.

Legislative hearings play a central role in the U.S. at the federal, state and local levels. Indeed, the opportunity for citizens to register their views is fundamental to the law-making process. The credibility of legislative hearings is almost as critical as the hearing itself.

Rules governing the public hearing process, as part of the larger legislative process, are normally adopted at the beginning of a legislative body’s term of office. For instance in Illinois, state representatives are elected for two-year terms of office. So the elected members vote on the rules to govern their proceedings, including public hearings, prior to legislative proposals being considered.

Rules for hearings may include how, where and when the public notice is made for the hearing; public access to the hearing itself; the ability of citizens to register their appearances at the hearing; how the official record is kept of the proceedings; media access to the hearing and relevant documents; and public access to the results of the hearing.

The wide use of the Internet today has dramatically changed the opportunity for American citizens to have improved access to information regarding legislative hearings. In the past, public hearing notices were published in newspapers and posted in a variety of locations. Today, citizens can log-on to the government website and find a wealth of information about the plans, proceedings and results of legislative hearings.

The use of technology in making government more accessible and transparent is a significant development in the U.S. In Illinois for instance, a citizen can actually watch a
live video transmission of the state house and senate from their home computers. While it does not allow two-way communication, as would be important in a legislative hearing, that development may not be far behind.

The make-up of the committees conducting legislative hearings are of varying sizes and comprised of individual elected legislators organized around subject matter. In Illinois for instance, the House and Senate have committees that separately consider education, transportation, health care and labor issues. The virtue of this organizational scheme allows government officials and staff to develop an expertise on a particular subject matter over time.

At the municipal level, legislative committees mirror those of the state and federal government in their structure and organization, but the subject matter parallels the different roles and duties of municipal government.

Normally, the political party holding the majority of votes in the body choose the committee chairs who, in many instances, wield enormous power over the issues to be considered. For instance, the agenda for a public hearing is normally developed by the chairman of the committee. In some instances, rules determine when, how and where an agenda is provided to interested citizens.

Committee hearings may be about a specific piece of legislation, or in some instances, information gathering prior to the development of a particular bill. Given the increasingly complicated and sophisticated nature of many problems in the public sector, for example environmental regulation, it is not uncommon for state and local government bodies to conduct hearings to help in the development of legislation and to understand potential consequences.

The accessibility and credibility of the official record of a hearing is normally governed by the rules established by the body. In the Illinois House, a clerk is assigned to each committee hearing to operate the electronic recording system and take the official record of attendance and all roll-call votes on legislation. In addition, witnesses appearing before the committee and/or those submitting testimony must supply a written statement as to their identity and representation.

Citizens then have the opportunity to review the official record of a hearing. Should a subsequent dispute arise regarding the process or action taken at a hearing, the veracity of the official hearing record becomes the means to a resolution.
IV. SUMMARY OF DISCUSSION

Q&A following presentation by Judy Erwin

Q: It is clear that hearings are a way to increase citizen participation, but how can legislative hearings be evaluated in the law-making process?

I operate on the belief that the more information that is gathered from the public, the better off the process and the legislation will be. However, when I served in the Illinois legislature, there were cases where hearings were not that helpful. When this was the case, we sought out other means or alternative bodies to gain citizen feedback.

Q: Is there a provision in Illinois that requires that a hearing be held before a law can be passed? What if a decision regarding a law does not include consideration of information that was given during testimony?

Yes. I’m not aware of any law that has been passed without giving the public some kind of chance to weigh in through use of public legislative hearings. Integration of public opinion into legislation is seen as very important in the United States. Legislators must weigh all of the information that comes out of hearings. If in the process, you go against public opinion, there may be fireworks. Also, it is not uncommon for a legislative body to admit a mistake if there is enough public protest. In a case like this, additional legislative hearings may be held.

Q: What kind of procedure do you use when you want to select a witness?

One consideration we have to use when selecting witnesses is the cost involved in including them. If there are substantial costs associated with a particular witness who we feel is important to include, we will need to create a budget and find the funding to support it. Often, however, witnesses will participate as volunteers because they are interested in the topic. In rare cases, we may pay for travel costs. As far as procedure is concerned, generally anyone can comment during a hearing if they would like to as long as there is enough time. Also, when committees coordinate witnesses on a particular subject they will generally try to solicit the participation of experts on all sides of the issue.

Q: How are hearings paid for in the Illinois legislature?

In the United States, there is a budget for hearings within associated committees. Committees, which are responsible for holding hearings have full-time staff, and there are usually rooms available for committees in which they can hold hearings. Therefore, the costs of hearings are built into the legislative process.

Q&A following presentation by Alexander Longolius

Q: How can legislators know when to hold hearings?
There is no mention of hearings in the constitution, only in the bylaws as “committees may have hearings.” I have noticed that in China there is only one hearing per draft of legislation. In Germany and elsewhere, there can be multiple hearings, depending on the need for the hearing versus the costs. A government must decide how to compromise between costs, efficiency and fully carrying out public consultation and procedure. Hearing meetings themselves can often run very late to allow for full discussion about a particular topic or if discussion about an issue cannot be abbreviated.

Often, if there are several parties in a system and there is still public dissatisfaction about a piece of draft legislation, a smaller party will revitalize the debate and coordinate additional hearings.

*Q: Are meetings to analyze the information learned at hearings open to the public?*

Yes, these meetings are open to the public, but often because debate and discussion about draft legislation can run so long, people will drop out of these sessions.

*Q: How, in Germany, are legislative powers divided at the federal and state levels?*

In Germany, there are certain issues like defense and foreign policy that can only be determined at the federal level. However, issues such as policing and education are handled at the state level. Some issues that are newer, such as the environment, are up for grabs. If the state does not have the money to handle a certain issue, it can give up its right to the federal level.

**Q&A following presentation by Wu Liping, Director of Research, Guiyang Municipal People’s Congress (a video accompanied this presentation)**

*Q: Since the hearing in Guiyang focused on two very different topics, how did the hearing organizers know which witnesses to call on? It looked like witnesses simply raised their hands and were randomly chosen. Did this cause individuals with important information to be missed?*

The sequence of participants, although it may seem random on the DVD that was made of the hearing which was just played, was pre-arranged by the legislative affairs staff.

*Q: How did the Guiyang government deal with the opinions expressed at the hearing? Was the discussion that took place during the hearing open to the public?*

A hearing report was drafted collating 300 opinions from the public which was used to assess the pending regulations. Eight different opinions from the hearing report were adopted. After the regulations were passed, the public was informed. Also, the hearing minutes were published in one of the municipality’s main newspapers.
Q: I prefer the process of having one hearing for one topic, otherwise, the overlap of opinions is unavoidable, and also the participating witnesses might not be interested in both chosen hearing topics. Also, one of the hearing topics might be more important that the other and this will not allow for sufficient time to be given to both topics. Why did the Guiyang Municipal People’s Congress decide to have two hearings at once?

We decided to hold two hearings at one time to decrease costs. We wanted to maximize the public participation generated for both topics. We conducted research on how to make the live broadcast vivid and create enthusiasm among citizens for offering input on hearing issues. We chose the topics that we did because we did not want to involve too many technical or legal details and because citizens expressed concern about the protection of the river and property issues. Had we chosen different topics, the hearing might have been too boring.

Q: What has the public done in Guiyang to follow-up and stay involved in the creation of legislation after a hearing?

Some people have called the legislative affairs office to ask questions about the results of a hearing. As I mentioned, we published the final report of the hearing, which first must be approved by the standing committee. Based on this report, members of the public can make comparisons. If they have questions, we are open to providing an explanation. However, nobody has come forward with any questions to date.
V. CHINESE PAPER ABSTRACTS (Translated by CCCPE)

Wang Chunming  
*East China University of Politics and Law*

This analysis is based on legislative hearings held by the Shanghai government. The paper argues that protecting participation is the primary function of legislative hearings. The major aims of hearings is to collect information for policy-making, allow citizen’s to express their interests, disseminate policy and develop interactions between legislative institutions and citizens. However, the paper claims that now the practice of hearings still has weaknesses. For example, the selection and constitution of witnesses is limited. Witnesses cannot express their interests completely, and it is difficult to evaluate a hearing’s effect on policymaking. It also recognizes that there is still internal tension between the function of protecting participation and the system in which it is rooted.

Li Cijing, Zhen Yisheng and Tang Liming  
*Guangdong Provincial People’s Congress*

Li, Zhen and Tang’s paper notes that hearings are a tentative practice for local congresses and their standing committees. Within hearings, the principles of equity, justice and openness are emphasized. The principle of order is followed by some localities. The procedure of hearings consists of initiation, preparation and implementation.

Currently, hearings are confined to law-making and not extended to the fields of supervision, significant decision-making and personnel appointments and recall. Nonetheless, a number of issues are raised by the practice of legislative hearings. These include: 1.) a lack of a universal hearing rules, which undermines hearing procedure; 2.) the fact that a wide representation of witnesses cannot be guaranteed because of narrow sectional interests and the limited judgment of law-makers; 3.) because the record of witnesses is not paid full attention to by local people’s congresses.

The paper proposes that local legislative hearings will be improved in the following ways: 1.) a law for holding hearings should be made and clarified; 2.) the scope of hearings should be broadened to cover every law and regulation, supervision, significant decision-making and personnel appointment and recall; 3.) the principle of giving the opposition priority should be emphasized and reinforced; 4.) the procedure of hearings should be stricter and made more regular; 5.) the record produced from hearings should be dealt with seriously to make full use of each hearing.

Cui Wei  
*Chair of Legislative Affairs Commission, Shanxi Provincial People’s Congress*

This paper observes that in terms of current legislative hearings widely held by local congresses in China, their procedure is similar to that of mix-typed of legislative hearings in the United States. They are following the development trend of legislative
hearings in the world. More significantly, this kind of hearing is basically suitable for the Chinese situation and can be accepted more easily by the public. The emphasis for local congresses should be on regulating and improving existing practices, not on diversifying or giving up on hearings. Any so-called innovative actions that would probe new ways of holding hearings should not be advocated or encouraged.

Two principles should be followed to determine the scope of hearings. One is the balance of interests and another is the cost-benefit principle. A hearing can be held under six kinds of conditions. These include if: 1.) the law will exert serious influence upon the general situation of economic and social development; 2.) the law will seriously influence citizens, corporations and other organizations; 3.) the concerned groups will have obvious divergences over certain issues; 4.) the existing information for making a law is not sufficient; 5.) some articles of the law are controversial; of 6.) the legislative branch thinks it is necessary to hold a hearing.

\textit{Tang Juan}  
\textit{Associate Professor, College of Management, Shenzhen University}

\textit{Regulations for Auditing Supervision of Shenzhen Special Economic Zone (SEZ) was the first law to be heard in 2000. As of September 2003, four hearings have been heard in Shenzhen. Hearings have become an integrated part of legislative innovation, especially for the building of the legal system in Shenzhen.}

In terms of rules and functional processes, legislative hearings in Shenzhen have six features: 1.) the scope of hearings is comparatively clear; 2.) hearing procedure is legally strict; 3.) it is up to the municipal people’s congress standing committee, special committee, working commission or special issue investigation committee to decide to hold and organize a hearing; 4.) the constitution of witnesses and auditors is broad; 5.) the principles of issue concentration, sufficient participation, effective debate, strict procedure and transparency are followed; 6.) the hearing report is made on time and submitted to concerned participants.

\textit{Guo Aijun}  
\textit{Associate Professor, Institute of Public Administration, Lanzhou University}

Legislative hearings provide a new form to participate in public affairs for citizens and social groups. We must think of hearings as institutions in order to make them function smoothly. Hearing rules are very important for the normalization of hearings in China. The meaning of hearing rules lies in enhancing the authority of legislative hearings, increasing the enthusiasm of the public to participate in them and developing citizens’ sense of political responsibility.

\textit{Kong Fanbin and Wei Shu}  
\textit{Associate Professor, Department of Politics and Administration and Doctoral Candidate, Nanjing University, respectively}
This paper focuses on the efficiency of legislative hearings through analyzing their procedure-design and narrative pattern. It is argued that the emergence of legislative hearings, as a form of democracy, is a notable event in the evolution of Chinese democracy. In order to promote this institutional practice, we need to recognize the value of hearings and accumulate more knowledge about them.

Wang Yali  
*Legal Affairs Commission Staff, Shanxi Provincial People’s Congress*

This paper focuses on the role of legislative hearings in local legislative practices. Legislative hearings solve the problems of democracy in legislation by collecting ideas from the public. Transparency, justice and procedure guarantee not only people’s rights to express their interests, but also to increase the efficiency and quality of legislation. Legislative hearings ultimately promote the democratization of local legislation.

Cai Fengying  
*Chair of the Legislative Affairs Commission, Xiamen Municipal People’s Congress*

Hearings are a process for law-makers to know, balance and coordinate diverse interests. Three principles should be observed for a hearing. First, witnesses should be selected reasonably in order to guarantee all concerned interests are expressed. Stakeholders should be given priority as witnesses. Every concerned side should have its own witness. The number of witnesses on each side should be roughly equal. Highly-qualified and expressive witnesses should also be given priority. As for specific topics, experts should be invited. Second, diverse interests should be coordinated equitably and reasonably. The number of witnesses and the quality of debate cannot ensure a balance of interests. The record of hearings cannot be simplified or biased. Third, the result of a hearing should be paid attention to positively in order to ensure that the record and witnesses play their role in law-making.

Chen Jiagang  
*Research Fellow, Center for Comparative Politics and Economics*

In this paper, legislative hearing rules and practices in three cases, including Guangdong province, Shenzhen municipality and Guiyang municipality, are compared and studied. It is argued that the normalization of hearings will depend on specific procedures, norms and technical arrangements, namely legislative hearing rules. Some progress has been made by localities in establishing and practicing local legislative hearing rules, but there is still a long way to go. Local legislative hearing rules need improving further so that the quality of political participation and law-making can be increased and legislative hearings can be routine.

Peng Zongchao  
*Associate Professor, Deputy Director, Public Policy Institute, School of Public Policy and Management, Tsinghua University*
This paper focuses on the significance of the public hearing system in the public policy-making process on public governance reform in present-day China from the perspective of public governance theory. It first discusses theoretically the relationships among public governance, the public policy-making system, and public hearings. Second, it conducts a case study on the national public hearing on the price of railway tickets, which took place in Beijing in January 2002 to analyze its practical functions, effects on governance and corresponding problems. Finally it offers some policy suggestions for solving problems and improving public hearing systems.

**Tang Xinglin, Liu Guozhen and Li Xingliang**  
**Zhongshan University**

Two cases are analyzed in this paper. One is the first legislative hearing in China, which was held on September 7, 1999 on *The Regulations of Construction Bidding in Guangdong Province*. The other was held on October 18, 2000 on *The Regulations of Supervising Construction in Guandong Province*. Both cases required specific knowledge and experts as witnesses. They also faced the same dilemmas: law-makers were not experts in the specific fields and public participation in the hearings was not mature.

Some problems emerged from the two cases, which need to be resolved in the future: 1.) the legal effectiveness of hearing reports and records should be clarified; 2.) the moderator should be entitled to give initial suggestions; 3.) the relationship between the congress, the hearing organizer and participants should be clarified; 4.) the procedure for hearings should be regulated by law; 5.) procedure for discussion and feedback after a hearing should be established; 6.) witnesses should be protected by law and the hearing record should be open; and 7.) hearings should be held according to established conditions.

**Yang Xuedong**  
**Associate Professor and Assistant Director, China Center for Comparative Politics and Economics**

Legislative hearings have multiple functions. In some sense, they are a key function to broaden civic participation and strengthen interactions between law-makers and citizens. Local legislative hearings can vividly disclose the relationship between the state and civil society and the development of civil society.

Law-making is dominated by government in China. Governmental branches play a significant role in initiating and drafting a law. Therefore the whole process of law-making is obviously hierarchical. On the other hand, local legislation is making more laws while civic participation lacks necessary channels. The quality of local law-making and legal consciousness of the public are seriously constrained.

Legislative hearings are a new and formal way for citizens to participate in the process of reforming the Chinese legislative system. In terms of existing local practices,
legislative hearings can be categorized into four types according to interest scope and technology. Hearings can focus on technological and non-technical issues. Therefore, four types of hearings are followed: 1.) technical hearings relating to general interest; 2.) non-technical hearings relating to general interest; 3.) technical hearings relating to specific interest; 4.) non-technical hearings relating to specific interests. According to statistics, the number of hearings relating to specific interest is more than that of hearings relating to general interest; the number of non-technical hearings is more than that of technical hearings.

In terms of civil participation, hearings have not been a routine channel for citizens to participate in law-making. They are obviously decided temporarily and at will. In some localities, hearings are even like a method of political mobilization and are totally manipulated by the leader of the local standing committee. Therefore, civic participation can be constrained in the process of hearings.

The limited civic participation reflects not only a lack of design technology for hearings, but also broad institutional defects. Currently, local congresses are learning from their foreign and domestic counterparts to improve design technology and strengthen the procedure of hearings. Nonetheless, the democratization of law-making can be guaranteed institutionally only after the legislative branch is democratized. Then legislative hearings can become routine and formal institutional channels for escaping from the dilemma of a lack of civic participation.

Zhang Ningsheng and Zhong Lianyong
Legislative Affairs Commission, Nanjing Municipal People’s Congress, Vice Chair and Staff, respectively

Legislative hearings are a democratic law-making procedure. Debate is encouraged. Meanwhile, hearings are a selectable procedure. First, whether a hearing is held is not a given. A hearing is not a necessary procedure for making a law. It is usually practiced for three kinds of law: 1.) if a law is closely related to the public and invokes public concern; 2.) if a law will exert long-term influence upon local development; 3.) if a law is originally initiated and cannot find any clear support from higher-level laws. Second, the topic to be heard is selectable. What will be heard includes: 1.) whether one law will be made; 2.) the whole draft law; 3.) a specific part of a law. Third, it must be determined which stage of law-making the hearing is held in. A hearing can be held during either special committee meetings or standing committee meetings, either before the first reading or the second reading of a draft. In addition, the number of hearings is selectable for one law. A law can be heard once or several times.

Tan Junjiu
Professor, School of Politics and Public Administration, Wuhan University

This paper is based on a hearing of Regulations of Commodities Exchange Markets in Wuhan Municipality held by the Wuhan Municipal People’s Congress on August 28, 2003. The hearing’s procedure was complete and provided institutional
channels for different groups to express their interests. It made the law-making more democratic and scientific. The hearing also showed that it is significant to develop rational interest groups. There were some questions that emerged about the process of holding the hearing, including: 1.) how to clarify the scope of hearings; 2.) how to decide on witnesses; 3.) what the role of administrative branches during the hearing is; 4.) how to deal with the cost-efficiency of a hearing; 5.) how to balance different ideas in a hearing; 5.) how to improve some specific linkages of a hearing.

Wu Liping
Director of Research Office, Guiyang Municipal People’s Congress

By comparing two legislative hearings held on July 2000 and August 2003 by the Guiyang People’s Congress, the author argues that legislative hearings should be adjusted according to specific laws and concerned interests in order to provide more effective opportunities and channels for civic participation. As for legislative hearings, various methods can be used according to specific draft laws. The program should be adjusted according to specific targets. Presentation time should be flexible. Also, legislative hearing rules should be made practically. The paper also stresses that legislative hearings should be understood in terms of improving democracy within legislation. The goal of legislative hearings should ultimately be to strengthen civic participation.

Song Yubo and Zhang Linhua
Management School, Southwest University of Politics and Law

The legislative affairs commission of The Chongqing People’s Congress held its first legislative hearing on the draft of regulations on management of real estate on September 5, 2002, which was also the first law to be drafted by a law firm in China.

Major characteristics of Chongqing’s first legislative hearing were:

I. Sufficient preparation

The legislative affairs commission took the hearing very seriously and did a good and cautious job in selecting the draft bill, setting up procedures, planning for concrete progress, issuing information and preparing the hearing room. In addition, all participants in the hearing had sufficient time to gather information and materials and prepare for statements, and the exact effect of their participation was obvious. Scholars and lawyers invited to attend the hearing were also well prepared and therefore, provided helpful consultation and advice during the hearing.

II. Strong relativity and professional connection of the participants

Participants were openly and justly selected from applicants of owners and managers of real estate who were closely interested in the issue. Also, 10 of those who were not selected but interested in the hearing were allowed to attend the hearing as audience members. Experts invited to attend the hearing included a number of lawyers
experienced in dealing with conflicts concerning the management of real estate and well-known professors who specialized in economic and administrative law. Therefore, all attendees were closely related to the issues heard, which was quite helpful for obtaining a good result.

III. The procedures of the hearing were well-regulated and the topic was one that could be debated

A set of comprehensive written procedures, including procedures for issuing topics to be heard, selecting spokespersons, and summarizing and reporting afterwards, were established before the hearing, which guaranteed the impartiality and justice of the hearing. Both sides had the same number of spokespersons. They had equal opportunities and time to present their ideas. Spokespersons from both sides could not only present opinions but could also debate with each other.

IV. The hearing was effective because the issues were selected according to public interest

Four possible controversial issues were selected based on public interest, including: the creation and conduct of real estate owners’ committees and meetings; the distribution of security responsibility in a certain real estate area; the collection, use and management of a maintenance fund; and standard fees imposed by economic housing management. Reasonable opinions of both sides were considered or adopted in the final draft of the legislation. Those suggestions that were not accepted were also explained afterwards. This embodied the modern requirements of openness and democratization in law-making, and therefore, ensured that the hearing was scientific and complete legally. The successful experience of this hearing was highly regarded in society and widely reported in the media.

Nonetheless, this hearing had some weaknesses because it lacked institutionalized procedures. For instance, the items of focus were purposely narrowed down to a very small scope while so many other controversial issues also needed to be clarified. The hearing did not provide chances for those who were interested in the issues nor sufficient opportunities for the chosen spokespersons to express their views comprehensively. There were no following-up hearings on complicated issues that emerged from the first hearing. Moreover, the role of the experts and scholars in the hearing were limited in terms of consultation in advance and answering questions afterwards, and hence, their capacity was not fully utilized. Furthermore, the hosts of the hearing acted relatively passively because of a lack of experience and procedural restraints. All of these weakened the actual effect and limited the scope of the hearing. Major reasons for this are that citizens were not mobilized, there were no national institutionalized regulations, and the congress had limited financial and personnel resources to contribute to the hearing.