



公平发展 公共治理
Governance for Equitable Development

Improving Law Making in China: Public Participation, Legislation Evaluation and Law Harmonization





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Foreword

With the joint efforts of the European Commission (EC), United Nations Development Programme (UNDP) and the Chinese Government, the Governance for Equitable Development Project (GED) was officially launched in China in July 2007. The project aims to contribute to the Chinese Government's efforts in promoting rule of law and civil society development through the improvement of law-making mechanisms, judicial institutional reform and the facilitation of the CSO construction. The project is so far the largest comprehensive one among the international cooperation projects of its kind in China.

Over the past five years, remarkable achievements have been made in all three components of the project, including Component A-**Access to justice is increased** in cooperation with the Supreme People's Court (SPC), Component B-**The law and policy-making system is improved** with the Legislative Affairs Commission (LAC) of the National People's Congress (NPC) and Component C-**Civil Society Involvement is broadened** with the Ministry of Civil Affairs (MoCA).

In accordance with China's national construction objectives, GED supported activities, either domestic or international ones, have encouraged useful research in relevant areas and facilitated the promulgation of laws and policies in China, making a positive contribution to the promoting rule of law and an open society.

The reports are completed by Chinese and international experts, present an overall analysis and review of project achievements and indicate future directions for reform. There are four reports. The first is an overall assessment against the objectively verifiable indicators (OVIs) of the project. The other three focus on parts of the three components of the GED project, namely **judicial efficiency**, **law making and the development of civil society**.

I wish to take this opportunity to extend my sincere thanks on behalf of the Ministry of Commerce to the EC, UNDP, the LAC of NPC, the SPC and MoCA for their efficient cooperation and contribution to the successful and fruitful implementation of the project. And my thanks also go to experts, scholars, CSOs and media for their great attention and assistance.



Yu Jianhua

Assistant Minister

Ministry of Commerce of the People's Republic of China

May 2012

Foreword

The European Union was established with a legal treaty and is founded on the principle of the rule of law. This concept centres on a set of rules governing all society's processes and interactions and being above all society's institutions and organisations. The rules or laws set the moral and ethical standards by which the behaviour of members of society and organisations are judged. For the rule of law and thereby civil society to flourish, it requires the citizens of a country to respect and trust legal processes, and the law to be applied in a consistent way to all. This gives people a feeling of inclusiveness and optimism about their future. The European Union's GOVERNANCE FOR EQUITABLE DEVELOPMENT (GED) project, implemented by the United Nations Development Programme (UNDP) from 2007 to 2012, has assisted China to benefit from knowledge of Europe's developed legal system and civil society through technical exchange, research and knowledge sharing.



As people's incomes grow and material living standards rise, their expectations about the quality of life, participation in civil society, protection of property and individual rights increase. Meeting these expectations for a better life in a rapidly urbanising society with a still significant rural population is one of the key challenges facing China today. This is where the GED project has supported China in moving to a more equitable, inclusive and vibrant civil society, based on the rule of law.

The project has worked with three key Chinese agencies, the National Peoples' Congress, the Supreme People's Court and the Ministry of Civil Affairs on topics ranging from law drafting and court efficiency to registration of civil society organisations. The project has produced remarkable results over five years, leading to an improved environment for civil society to flourish in China, increased citizen participation in law making, reduced barriers to seeking justice, increased transparency and efficiency of selected courts and progress in the consistency of court decisions.

This compendium of papers summarises the achievements of the GED project in the wider context of China's recent reforms and looks to topics on China's reform agenda where there is scope for future international co-operation. The papers presented contribute to the debate on China's reform, while indicating the benefits international co-operation can bring to the reform process.

A stylized, handwritten signature in black ink, appearing to read 'Ederer'.

Markus Ederer

EU Ambassador to China and Mongolia

Foreword

In recent decades, China has achieved remarkable growth and development which has brought about equally dramatic reductions in poverty and improvements in people's living standards. Nevertheless, disparities continue to abound and there is much work that remains to be done if we are to ensure that China's poorest are able to participate more fully in, and benefit from social and economic progress. Within this context, the development of institutions and policy frameworks will be essential in reaching out to vulnerable individuals and groups and enhancing opportunities to improve their lives.



UNDP regards governance and the rule of law as an essential part of its cooperation with China. Together, our work includes support to the development of transparent and accountable legal processes that are effective and equitable, and that strengthen the rule of law. It also includes broadening the participation of citizens, through a robust civil society, in shaping decisions that affect their lives. In turn, this participation is increasing public trust in China's laws and institutions and reinforcing the rule of law.

Strengthening the rule of law and promoting civil society participation in legal spheres have been joint objectives pursued by the Governance for Equitable Development (GED) project in China. Through a partnership between UNDP and the European Union (EU), including financial support from the EU, the GED project is the first international cooperation in China to bring together the Legislative Affairs Commission of the National People's Congress, the Supreme People's Court and the Ministry of Civil Affairs.

Five years of close cooperation have yielded impressive results, as indicated by research and assessments conducted. Laws and policies aimed at increasing access to justice, enhancing judicial transparency and openness, expanding access to courts and the reform of the people's assessors system have been introduced. Systems related to the drafting of laws and their application have been taken forward in an unprecedented manner, with an increasing focus being placed on consistency and public participation at different stages of law-making. Policy breakthroughs have also been made through the introduction of policies that support CSO development.

Yet, notwithstanding the significance of these achievements, a number of challenges remain in terms of the scale and extent with which policies are implemented. Looking ahead therefore, it is clear that further efforts

will be required to achieve effective policy implementation at both central and local levels and to further strengthen governance for equitable development.

This series of four research publications engages experts, practitioners and policy-makers to critically analyse the successes and lessons learnt from the cooperation. It contains constructive proposals for future approaches to further strengthening the rule of law and the value of civil society development in this process in China. The true value of the GED project lies in building this solid foundation on a path to good governance.

A handwritten signature in black ink, appearing to be 'CB' with a stylized flourish.

Christophe Bahuet
UNDP China Country Director

Foreword

As a joint effort of the Chinese government, the European Commission (EC) and United Nations Development Program (UNDP) , the “Governance for Equitable Development” (GED) project has successfully concluded at the end of June 2012.

As one of the Chinese implementing agencies, the Legislative Affairs Commission (LAC) of the National People's Congress (NPC) cooperated with the EC and UNDP, and made a positive contribution towards the success of the project.

Since launching the reform and opening-up, China has attached great importance to the construction of a socialist democratic legal system in parallel with its economic development.

The GED project aims to support the process of building an open society based on the rule of law by improving governance and the policy making system. The beginning of the GED project launched in 2007, coincided with the 17th National Congress of the Communist Party of China being convened. The Congress put forward the general requirement for the rule of law construction, proposing to “comprehensively implement the rule of law as a fundamental principle and speed up the building of a socialist country under the rule of law” and “We must persist in scientific and democratic legislation to improve the socialist law system with Chinese characteristics.” Therefore the smooth implementation of the GED project was of great importance in promoting democratic and scientific legislation in China so as to realize the new target of rule of law construction.

During project implementation, the LAC of NPC paid much attention to ensure the performance of each planned activity. Catering to legislation requirements and key points, we selected carefully the research subjects and organized project activities centered on public participation in legislation, evaluation and consistency in law making. Under the program, we organized 31 project activities in total, of which, there were 9 domestic study tours, 7 overseas study tours, 5 domestic workshops, 5 international workshops, 2 training workshops, and 3 activities of research, translation and publication. Through the implementation of the above activities, the communication between China's legislature, international and Chinese experts and scholars, relevant organizations as well as with the people who focus on the people's livelihood was enhanced. Additionally the theoretical research and practice exploration on scientific and democratic

legislation has deepened. Three major achievements include; first, the mechanism of public participation in NPC legislation has improved and public participation in law drafting has increased. By the end of March, 2012, among all the existing legislation, public opinions have been solicited on a total of 40 draft laws, twice the number from 1989 to 2008. Second, the evaluation mechanism of legislation has been established with the post legislation evaluation piloted by NPC in 2010 on the Law on Science and Technology Progress and Law on Promotion of Agricultural Mechanization. In 2011, post legislation evaluation work was conducted on the Law on Promotion of Small and Medium-sized Enterprises. Meanwhile, pre-legislation evaluation was piloted on two legislation projects of Marine Navigation Law and Anti Domestic Violence Draft Law respectively. Third, the project promoted the full implementation of the regulations filing and review system. All the achievements have served as a solid foundation for further pushing forward scientific and democratic legislation as well as improving legislative quality. I would like to take this opportunity to extend our sincere thanks to the EC and UNDP who have supported the project.

While China has achieved much in the rule of law construction, China is still facing many new challenges. We will continue our efforts to complete the construction of rule of law system by strengthening the legislative work and enhancing the legislation quality to improve the socialist law system with Chinese characteristics which meets the requirement of the economic and social development as well as the construction of socialist democratic legislation. We wish to further our cooperation and communication with the EC and UNDP by widening our fields of cooperation and approaches to make new contributions towards peace and stability, development and prosperity for both China and the world.



Xin Chunying

Deputy Director of the Legislative Affairs Commission

National People's Congress

May 2012

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Improving law making in China: public participation, legislation evaluation and law harmonization

Huang Jinrong^① Randall Peerenboom^②

I. Preface and Introduction

This report discusses the project **Governance for Equitable Development (GED) -Strengthening Rule of Law and Civil Society Participation in China** 2007-2011. The main parties are the European Union (EU), United Nations Development Programme (UNDP), the Legislative Affairs Commission of the National People's Congress (NPC), the Supreme People's Court (SPC) and the Ministry of Civil Affairs (MoCA). Operationally, the European Union through its Delegation in China entrusted the management of the project to the United Nations Development Programme (UNDP). Daily project management was assigned by UNDP to the China International Centre for Economic & Technical Exchanges (CICETE), as the Government Coordinating Authority on behalf of the Ministry of Commerce of China (MOC) and is the Implementing Partner directly responsible for the government's participation in annual work plan (AWP).

As part of an effort to ensure the sustainability of the GED project results, four teams of international and national experts were commissioned to produce a collection of policy research papers to capture key results and lessons learnt from the GED project and partnerships. For each paper, a consultation workshop was held at UNDP to solicit feedback from peer experts and practitioners from government, academia and civil society. Based on this, policy recommendations were developed towards further strengthening of rule of law and civil society development in China and presented at the GED closing event on 25 June to Chinese and international senior officials and practitioners. The following is the list of titles and experts:

1. Governance for Equitable Development: Overall Results and Achievements by Natalie Lichstenstein and Yang Xin Xin
2. Access to justice: 'Review of efforts to improve judicial efficiency and reduce judicial costs' by Stephanie Balme

① Associate Researcher, Institute of Law, Chinese Academy of Social Sciences.

② Professor of Law, La Trobe University Melbourne; Associate Fellow Oxford University Centre for Socio - Legal Studies.

3. Improving the law-making system in China: public participation, legislation evaluation, and law harmonization by Randall Peerenboom and Huang Jinrong

4. Capacity development of social organisations role towards inclusive social management by Wu Fengshi and He Jianyu

The overarching goal of the project is “to support the Chinese Government in its efforts to develop an open and equitable society based on the rule of law.” The project “aims to contribute to the government's efforts in this respect by promoting civil society development and the rule of law through institutional reform, democratic law-making, participation, communications, and piloting, with a specific focus on urban-rural balances, gender issues and vulnerable groups.”

The project consists of three main components, each with several sub-components, delineated by institution: NPC (people's congress and legislative branch), SPC (judiciary) and MCA (civil society). More specifically, “the Programme seeks to raise awareness, build capacity, and stimulate creative participatory solution processes in order to achieve the following outcomes:”

- With respect to the NPC and local people's congresses, “institutionalizing participatory process for law making, enhancing capacities for law-making and public engagement, and improving law harmonization;”
- With respect to the SPC and judiciary, “enhancing the capacities of the SPC and local courts to deliver fair and transparent justice, and increasing the transparency in court decision-making;”
- With respect to MoCA and civil society, “improving the policy and legal environment of civil society organizations (CSOs) and enhancing perceptions of CSOs' role in development; building government capacities to involve CSOs in policy-making and public service delivery; improving co-ordination and communication between CSOs and between CSOs and the government; developing the institutional and professional capacities of CSOs.”

Methodologically, these goals were to be achieved through a combination of seminars, conferences and workshops; study tours both abroad and in China; empirical studies and surveys; training; piloting; dissemination and advocacy.

This report will focus on the NPC component and the three main subcomponents or areas: (i) public participation; (ii) harmonization of laws; (iii) post-legislation evaluation/legislative oversight.

This reports consists of five sections: Part I, introduction; Part II historical context and policy background; Part III overview of what GED has done and an assessment of its influence on the NPC and local people's congresses;^① Part IV analysis of future prospects and challenges for NPC and local people's congresses; Part V policy recommendations.

II. Historical context and policy background

The people's congress system and its problems

The system of people's congress is one of the major pillars of political system in socialist China. According to the PRC Constitution, the National People's Congress (NPC) and the local people's congresses at various levels are “the organs through which the people exercise state power,” and the NPC is the highest organ of state power and the source of powers of all other core central state organs such as the State Council, the President of State, and the Central Military Commission. As is the case in other socialist countries, the supreme power of NPC is to some extent nominal. In practice, the NPC has for all intents and purposes limited influence as a major policy-maker compared to the State Council, which usually has more say in the law-making process on many issues.^②

Structural flaws in the people's congress system limit the role of people's congresses. For instance, the large number of deputies (more than 3000) hinders serious debate, and ensures that real power concentrates in the NPC Standing Committee with less than 200 members. For most NPC deputies and even members of the Standing Committee, their NPC work is a part-time job, which means there is no guarantee of time and professional expertise necessary for the exercise of their functions as deputies. Furthermore, the NPC usually only has one session lasting about 10 days annually. As a result, the NPC is less a forum to debate seriously political issues than an annual political party.

While the Chinese authorities are undoubtedly aware of the flaws existing in the people's congresses system, they have adopted a cautious approach to reform of the system. It is true that democracy has been one of core values upheld by the CCP, although in a different sense from that of Euro-America. The first sentence of the white paper titled Building Political Democracy in China claims: “Democracy is an outcome of the development of political civilization of mankind. It is also the common desire of people all over the world.” However, the ruling CCP is fully aware that an open and free election would pose a potential threat to political stability. Accordingly, there has been no major reform of the people's congress system since the reform and

^① As this aspect will be covered in more detail in another report by other experts, we will provide only a brief summary and analysis.

^② It is of course not unusual in the modern era for the executive branch to play a more dominant role than parliament in a parliamentary system.

opening up policy was adopted in late 1970s.^①

Of course, the cautious attitude of Chinese authorities towards political reform does not mean no progress has been made in democratization. Grassroots democracy centered on the elections of villagers committee has achieved partial success.^② Grassroots organizations like the villagers committee belong to so called “mass organizations of self-government”. Their nature makes it is unlikely they will challenge the political system as a whole, even if free elections of such organizations are allowed. In this way, grassroots democracy has become an experiment in democracy in China. By supporting relatively free election of grassroots mass organizations, the Party intends to demonstrate its determination in ensuring the “people be the owner of its community” and relieve itself to some extent from the ever increasing social pressures for political reform both from home and abroad.

Meanwhile, despite the stagnant reform centered on the election of deputies of people's congresses, some progress has been made in capacity building of current people's congresses and their standing committees. First, some efforts have been made to improve the professionalization of the members of the standing committees of people's congresses. The standing committees of people's congresses at various levels actually exercise most of the functions of the people's congresses, but many standing committee members are officials who have retired from the leading posts in the party or state organs, which has a negative influence on the independence and capacity of the standing committees. In 2002, the CCP suggested that “the structure of the membership of the standing committees of people's congresses shall be improved.”^③ In 2007, the Party again mentioned that “the structure of knowledge and age of the membership of standing committees shall be improved.”^④ Since 2003, around 10 relatively young professionals became full-time members of the Standing Committee of NPC, and a few more professors also became part-time members. Such reform was deepened further in the 11th NPC after 2008.^⑤

Second, the legislative function of Standing Committee of NPC has improved. The Legislation Law in 2000 stipulates that there are nine legal areas that can only be regulated by laws made by the NPC and its standing committee, which to a certain extent limits the legislative power of the State Council.

① There have been some minor improvements on the reform of election system of deputies of people's congresses. For instance, in 2010, an amendment to the Electoral Law was adopted, requiring for the first time both rural and urban areas to adopt the same ratio of deputies to the represented population in the election of people's congress deputies. This number of people represented by each rural NPC deputy was eight times the number represented by each urban deputy during 1953 to 1994, and the ratio was narrowed to four rural residents for every urban resident in 1995,

② 黄金荣：《民主的监护与自主》，载《学术界》，2011年第8期。

③ 江泽民在中国共产党第十六次全国代表大会上的报告，2002年11月8日，<http://www.ccyl.org.cn/search/zuzhi/theory/leadertalk/2002/zttb20021118.htm>。

④ “胡锦涛在党的十七大上的报告”，2007年10月24日，http://news.xinhuanet.com/newscenter/2007-10/24/content_6938568_5.htm。

⑤ “全国人大“专职常委”扩编”，<http://www.caijing.com.cn/2008-03-17/100052864.html>。

Third, the standing committees of people's congresses at various levels have been given greater authority to check the powers of the lower people's congresses as well as the government at the same level. The Legislation Law strengthened the filing and review system for regulations, enabling the standing committees to better check the powers of lower people's congresses as well as the government at the same level. The Legislation Law also provides social groups, enterprise or non-enterprise institutions or citizens the right to make a written proposal to the NPC Standing Committee for a review of the legality of administrative regulations and local regulations. The 2006 Supervision Law of the Standing Committees of the People's Congresses at All Levels further enhances the oversight power of the standing committees of the peoples' congresses by providing procedures for supervision and expanding the duties of lower standing committees and government at the same level to file their regulatory documents.^① The law also strengthens the regulations filing and review system by making explicit that the filing and review process for judicial interpretations made by the Supreme People's Court or the Supreme People's Procuratorate, and providing that social groups, enterprise or non-enterprise institutions or citizens are entitled to make a written proposal to the Standing Committee of NPC for review of judicial interpretations.

As mentioned above, people's congresses generally lack both the independence and capacity to fulfill the functions of legislation and governmental oversight due to structural flaws in the system. However, the Chinese authorities have tried to strengthen the supervisory functions of the people's congresses without radically reforming with a view to better governance, corruption control and stability maintaining. It is against this background that some efforts have been made by the standing committees of people's congresses at various levels to improve their capacity to better exercise their functions in some limited areas. Such efforts may in some ways help to maintain the legitimacy of the people's congresses as well as the Party regime as a whole.

The development of three focused areas of the project.

The GED project sought to strengthen the capacity building of the NPC Standing Committee in the three focused areas, i. e. public participation in the law-making process, the regulations filing and review system and post-legislation evaluation. All three areas are related to the capacity of the NPC. The latter two in particular are largely technical in nature. Even with respect to political participation, there are many technical aspects

^① According to the Legislation Law, the NPC and its standing committee can make 'national laws'. The State council can make 'administrative regulations'. The people's congresses and their standing committees at provincial level can make 'local regulations'. The ministries, bureaus, committees directly under the State Council can make 'ministerial rules' and the governments of major cities can make 'local rules'. All of the above belong to laws are binding for courts. Beside laws, almost all law-making organs also can make 'regulatory documents' which are usually less formal yet still binding. However, 'regulatory documents' made by the people's congresses and their standing committees and governments in cities other than 'major cities' and in counties or towns are not laws legally binding courts. The filing and review of regulatory documents is regulated by the Law on Supervision by the Standing Committees of the People's Congresses at All Levels not by Legislation Law.

(e. g. the mechanics and logistics of holding a public hearing or how to effectively integrate use of the Internet into the notice and comment procedure). Accordingly, they are safe and acceptable areas to be explored and improved. Indeed, all three areas have been included in the Party agenda and the 11th Five-year Plan for Economic and Social Development of China as ways to promote democracy and rule of law in China. For instance, the 2006 Five-year Plan proclaimed: “The democratic system should be improved. Democratic forms should be diversified. Political participation of the general public should be increased.” Meanwhile, it committed that “the basic strategy of governing the country according to law shall be implemented and scientific and democratic law-making shall be promoted with a view to forming the socialist legal system with Chinese characteristics.” In 2007, the general secretary of the CCP Hu Jintao also claimed in the 17th CCP Congress that “we must ensure that all power of the state belongs to the people, expand the citizens’ orderly participation in political affairs at each level and in every field, and mobilize and organize the people as extensively as possible to manage state and social affairs as well as economic and cultural programs in accordance with the law.” He also noted that “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 impact significantly the interests of the public.” He also emphasized the importance of maintaining “the consistency, sanctity and authority of the socialist legal system,” and the need to persist in “scientific and democratic legislation to improve the socialist law system with Chinese characteristics.”^① It is against the backdrop of such commitments of the Party that the NPC Standing Committee has made considerable progress in the three focused areas within the project.

Public participation in law-making process.

Some progress has been made during the 11th NPC in terms of both the practice and institutionalization of public participation in the law-making process. The most notable development is that the NPC Standing Committee has committed to soliciting public opinions for the draft laws as a regular practice, rather than doing so on an ad hoc basis as before. In 2008, the Chairman’s Council of the NPC Standing Committee decided that “in principle, all the draft laws under the deliberation of the Standing Committee shall be publicized in the Chinese People’s Congress Website, and major draft laws shall be made public in major national media for public opinions, thus making publicizing draft laws a regular work.”^② The practice of publicizing draft laws for public comment started in late 1990s, but it had not been a regular practice until the decision made by the NPC Standing Committee. The 2008 decision may partly have been stimulated by the practices of some local people’s congresses since quite a few local people’s congresses had taken the initiative to publish all the draft local regulations for public comments in the previous years. For instance, the Standing

① Full text of Hu Jintao’s report at the 17th Party Congress, Oct. 31, 2007, <http://www.chinese-embassy.org.uk/eng/zyxw/t376863.htm>.

② “09 年全国人民代表大会常务委员会工作报告 (全文)”, 2009 年 3 月 16 日, http://www.china.com.cn/policy/txt/2009-03/16/content_17451873_5.htm.

Committee of the People's Congress in Zhejiang Province has done so since 2003, and the Standing Committee of the People's Congress in Shaanxi Province started to do so in 2007. ① In August, 2008, the Legislative Affairs Commission of the NPC Standing Committee passed an internal document- The Working Procedure of NPC Organs on Publicizing the Draft Law- which provides many internal procedures including feedback mechanisms for such practice. ② Statistics show that by February 2012, the Standing Committee of 11th NPC had made public 35 of 38 draft laws for public comment. ③ The limited exceptions are a few draft laws like the draft Law on Military Service, which were regarded as being related to national security or military issues.

Some draft laws attracted many comments, partly due to their being closely related to the immediate interests of the people, and partly due to wide advocacy in mass media by the legislature itself. For instance, in the month set for soliciting public comments for the draft Law on Social Insurance in 2008, 9, 924 persons submitted 68, 208 suggestions. For the draft Law on Vehicle and Vessel Tax in 2010, 22, 832 persons submitted 97, 295 suggestions. For the draft Amendment to the Law on Individual Income Tax in 2011, 82, 707 people submitted 237, 684 comments, a new record. ④

For some draft laws (such as the draft Law on Social Insurance and the draft Amendment to the Law on Individual Income Tax), the NPC Standing Committee regularly released statistics of major opinions from the general public on some main issues at different stages of the process and even publicized some letters of suggestions from general public as illustrations. But in most cases, the NPC Standing Committee has not provided feedback. In some cases, the lack of feedback reflects the low number of comments from the general public, ⑤ although it also highlights that there is no mandatory requirement to provide feedback or any requirements stipulating what form the feedback must take. Whether or how these public suggestions influenced the process is not clear. However, it is highly likely that some of suggestions with wide public support might be taken seriously by the legislature. One recent example is the draft Amendment to the Law on Individual Income Tax in 2011, when 48% of citizens suggested the monthly tax exemption threshold should be higher than 3000 RMB originally proposed by the State Council as well as the Ministry of Finance. ⑥

① According to Communications with the Standing Committee of People's Congress in Zhejiang Province and the Standing Committee of People's Congress in Shaanxi Province. in March and April, 2012.

② Feb. 24 meeting with NPC.

③ Feb. 24 meeting with NPC.

④ 有关数据，可以参见中国人大网，http://www.npc.gov.cn/npc/flcazqyj/node_8195.htm。

⑤ According to the Legal Affairs Commission of NPC, if there are not enough responses from general public, it will not provide feedback through media. In some cases, the response from the general public indeed was inactive. For instance, on the draft Amendment to Reserve Officers Law in 2010, only 22 persons submitted 76 suggestions, while on the draft Cleaner Production Promotion Law, only 22 persons submitted 179 suggestions. http://www.npc.gov.cn/npc/flcazqyj/node_8195.htm。

⑥ “48% 网民要求修改个税起征点”，2011 年 6 月 16 日，http://news.ifeng.com/gundong/detail_2011_06/16/7047761_0.shtml。

Eventually, the Standing Committee raised the monthly tax exemption threshold to 3,500 RMB.

In addition to providing for public comment, the Legislation Law also allows the Standing Committee to gather opinions through methods such as panel discussion, feasibility study meetings, hearings, etc. The 2005 white paper on Building Political Democracy in China pointed out explicitly that “Public hearings and publicity are increasingly becoming a common practice adopted by governments at all levels when making decisions,” and “in recent years, several thousand hearings of various kinds have been held across the country, and the public’s enthusiasm for participating in government decision-making is higher than ever before.”

However, the NPC Standing Committee has not been active in holding hearings. The Standing Committee held a hearing on an amendment to the Law on Individual Income Tax in 2005 for the first time. But during the 11th NPC, there have been no formal legislative hearings, nor has the Standing Committee passed guidelines or procedural rules for such hearings. The Standing Committee’s reluctance is partly because it’s not an easy job for the Standing Committee to organize a fair hearing nationwide,^① and partly because there are doubts among the members of Standing Committee over the effectiveness of such activities. Such inactivity in holding public hearings is also the case in local people’s congresses. For instance, no public hearing has taken place in the Standing Committee of the People’s Congress in Zhejiang Province since 2007, and the Standing Committee of the People’s Congress in Shaanxi Province has not held any public hearing since 2008 when the first hearing was held.^②

Compared to a formal hearing which draws much attention, feasibility study meetings are more favored by the Standing Committee. Such meetings are held when there are very professional issues in draft laws that need the participation of experts and scholars. In recent years, the Standing Committee of NPC has been trying to invite some citizens who have submitted suggestions to the legislature and other stakeholders to take part in the feasibility study meetings.^③ Compared with practice before, it is a kind of progress.

Feasibility study meetings are generally more formal than panel discussions. However, there are no guidelines or procedural rules for either type of meeting. Rather, the Standing Committee decides how to organize the meeting on an ad hoc basis.

Regulation filing and review.

The regulations filing and review system under the Constitution, Legislation Law and Supervision Law of the

① According to the saying of the Legal Affairs Commission, it is too troublesome and expensive to organize a hearing.

② According to Communications with the Standing Committee of People’s Congress in Zhejiang Province and the Standing Committee of People’s Congress in Shaanxi Province in March and April, 2012.

③ Feb. 24 meeting with NPC.

Standing Committees of the People's Congresses at All Levels aims to maintain the uniformity of the Chinese legal system. The reform of the system on the part of the standing committees of people's congresses at various levels has been one of the most remarkable areas that have drawn much public attention in the last decade. Since 2003, this mechanism has been increasingly used as a legal tool by lawyers, NGOs and citizens to advocate legal reform.^① There are many reasons for this phenomenon. First of all, the fact that there are various state organs with law-making functions makes legal inconsistency a serious problem. However, the courts are not empowered to review the constitutionality and legality of national laws, administrative regulations, local regulations, or ministerial or local rules.^② So there is no effective way to harmonize the law system other than the filing and review system. Second, in an environment where the room for political participation for Chinese citizens is very limited, the filing and review system has become one of a few channels through which citizens can legally challenge the constitutionality or legality of national laws, administrative regulations, local regulations, ministerial and local rules. Such a challenge is a legal action in nature, but it serves the function of political participation since media strategies are widely used during the process.

Admittedly, the effectiveness of the filing and review system is limited in part because there is no self-standing right for the citizens to petition for a ruling of the state organs on the legal conflicts. How to deal with the legal conflicts is fully discretionary for all state organs with law-making competence including the NPC Standing Committee. Under such a circumstance, there is no way to ensure the accountability of the NPC Standing Committee in exercising its function. So far, there are only very limited cases that might indicate the NPC Standing Committee has played a role in the revision of certain administrative regulations and local regulations.^③ Furthermore, it often took years to achieve the positive results.

① The regulation filing and review system became widely known by the general public in 2003 when three scholars with Ph. D of law submitted a suggestion to the Standing Committee of NPC for review of Measures for Custody and Repatriation of Urban Vagrants and Beggars, a regulation enacted in 1950s by the State Council and seriously abused by police in practice. The State Council, however, abolished this infamous outdated regulation quickly on its own. This event aroused great enthusiasm of the lawyers, law scholars, NGOs and ordinary citizens to make use of this mechanism for advocacy for legal reform. For further discussion on the roles played by these actors in petitioning for review of regulations, see 黄金荣:《“公益上书”的行动逻辑》,载《法制与社会发展》2010年第4期。

② There are cases where judges were removed or punished for exercising judicial review of some local regulations. For instance, see 田毅、王颖:《一个法官的命运与“法条抵触之辩”》,载《21世纪经济报道》2003年11月17日;李希琼、王宏:《甘肃:法院废了人大法规?》,载《中国经济时报》2000年9月4日。

③ The Standing Committee of People's Congress in Hebei Province reportedly revised the local regulation on land management according to the suggestion of NPC Standing Committee as a result of a petition for review made by an old woman in Hebei Province in 2005 (see “王淑荣:‘改写’一部法规的农妇”, <http://www.hebeidaily.com.cn/20051120/ca563551.htm>, 2005-11-20). The revision of the Interim Provisions Concerning Compensation for Bodily Injury of Passengers in Domestic Air Transport in 2006 and the repeal of Interim Regulation on the Administrative Punishment for Speculation and Profiteering by the State Council in 2009 by the State Council might also partly be attributed to the involvement of the NPC Standing Committee responding to review petitions from citizens (according to Feb. 24 meeting with NPC).

Nevertheless, there is still some progress in strengthening the filing and review system on the part of the Standing Committee of NPC. In 2004, the Standing Committee of NPC, for the first time, established an office for the filing and review of regulations under the Legislative Affairs Commission of NPC. In late 2005, the 40th Chairman' Council of the Standing Committee of 10th NPC enacted the Working Procedures for Filing and Review of Regulations and the Working Procedures for Filing and Review of Judicial Interpretations, two internal procedures for dealing with filing and review work. However, the actual work of the Standing Committee of NPC on filing and reviewing regulations is not well known by general public due to the lack of transparency regarding such activities. Only limited information is available in the annual work reports of the NPC Standing Committee. For instance, the annual work report of the Standing Committee of NPC in 2009 simply pointed out for the first time that "in the last year, the filing and review work on administrative regulations, local regulations and judicial interpretations has been speeding up. 475 pieces of regulations have been received for filing and 86 suggestions submitted by citizens and organizations have been received."^① work report in 2011 also shows that the filing and review work on the judicial interpretations by the Supreme People's Court and Supreme People's Procuratorate has intensified since 2006. ^②

Although during the 11th NPC, there were no significant improvements by the NPC Standing Committee of the formal procedural framework for filing and review, ^③ there has been substantial progress in the capacity building and procedural development on the system at local levels. Unlike the NPC Standing Committee, which began to carry out the regulations filing and review system right after the entry into force of the Legislation Law in 2000, the standing committee of people's congresses at local levels usually did not begin to develop the filing and review system until 2006 when the Supervision Law of the Standing Committees of the People's Congresses at All Levels was promulgated. In terms of capacity building, most standing committees at the provincial level (except Henan, Guangxi, Yunnan, Shanxi, and Qinghai) had established an office for filing and review of local rules and regulatory documents before the end of 2010. Almost half of the standing committees of people's congresses in 49 major cities have their own offices for filing and review of local rules and regulatory documents now. Around 20% of standing committees of people's congresses in the cities other than major cities which are divided into districts also have such special offices. In terms of procedural improvements, 29 standing committees at the provincial level have enacted local regulations covering the procedures for filing and review of local rules and regulatory documents. Beijing and Shanghai are the only

① “09 年全国人民代表大会常务委员会工作报告（全文）”，2009 年 3 月 16 日，http://www.china.com.cn/policy/txt/2009-03/16/content_17451873_5.htm。

② 参见“全国人民代表大会常务委员会工作报告”（2011 年）http://news.xinhuanet.com/politics/2011lh/2011-03/18/c_121203794_12.htm。

③ The NPC Legal Affairs commission, which is responsible for preliminary scrutiny of petitions and filing of regulations, appears to have made some improvements to the internal procedural framework. According to the interview with Legal Affairs Commission of NPC in Feb. 24, 2012, some internal mechanisms have been established to deal with the petitions from state agencies and civil society. For instance, all petition letters will be registered and filed, consulting meetings with other committees of NPC will be held to discuss difficult issues, and regular reports will be submitted to the leaders of the Standing Committee of NPC.

two exceptions which have internal guidelines in this respect so far. ^①

The Standing Committee of NPC has also made limited progress in public participation in the filing and review process. Although article 13 of the Working Procedures for Filing and Review of Regulations provides that ‘When the work on regulations filing and review is finished, the General Office of the Standing Committee shall notify in written form the unit or individual who submitted the suggestions for review’, this provision has not been well implemented.

Even though the general public has enthusiastically embraced participation in the filing and review process, there are few indications demonstrating that the NPC Standing Committee has responded to those who made submissions for review. One exceptional case is that the Legislative Affairs Commission of the 10th NPC, together with the Office of Legal Affairs of the State Council, responded indirectly to two lawyers who had submitted suggestions on regulations on road toll for review to the Standing Committee of NPC by making an open reply to one journalist. ^② According to the Legislative Affairs Commission of NPC, they did occasionally invite some individuals who had submitted suggestions for review to attend feasibility study meetings or panel meetings. In one example, five law professors from Peking University were invited to a panel meeting on the revision of the Regulation on Demolition after they submitted a suggestion for review of the regulation to the Standing Committee of NPC. In another example, a lawyer who had submitted suggestion for review of judicial interpretations was also invited to attend a panel meeting on this issue. Such opportunities for public participation and feedback happen only in very exceptional circumstances. Nevertheless, it is a breakthrough for the NPC Standing Committee, which is relatively conservative regarding public participation. ^③

Compared with the NPC Standing Committee, the standing committees of people's congresses at local levels have achieved much more progress in terms of feedback to petitioners. So far, at least 12 provincial level standing committees^④ have imposed on themselves the legal obligation to respond to petitioners who submit suggestions for review. For instance, according to the Standing Committee of People's Congresses at Various Levels in Fujian Province on the Filing and Review of Regulatory Documents in 2007, when the working organ of the standing committee thinks it is unnecessary to have a review, it is obliged to notify the petitioners with an explanation of the reasons. It is also obliged to notify the petitioners within 10 days after the completion of review work of regulatory documents. The local regulation on filing and review of regulatory documents in Zhejiang Province in 2007 also requires relevant working organs of the standing committees of people's congresses at various levels to notify the petitioner within 15 days after receiving the written suggestions for

① Feb. 24 meeting with NPC.

② 国务院法制办：燃油税出台前收养路费合法 [EB/OL], <http://news.sohu.com/20061124/n246582639.shtml>.

③ Feb. 24 meeting with NPC.

④ Such provinces and autonomous regions include Qinghai, Gansu Zhejiang, Sichuan, Fujian, Yunnan, Anhui, Shandong, Hunan, Ningxia, Guangxi and Tibet.

review and to notify them again on the results of the petition within 15 days after completion of review work. Although there is no detailed information available on the implementation of these provisions, there is anecdotal evidence showing that some standing committees at local levels have actively provided feedback to petitioners. The Standing Committee of the People's Congress in Zhejiang Province notified four petitioners of receiving suggestions in 2008. The Standing Committee of the People's Congress in Hunan Province had notified five petitioners that the review of targeted regulatory documents was beyond its jurisdiction before March, 2009. ^① The Standing Committee of the People's Congress in Fujian Province also provided feedback to the 10 petitioners in recent two years. ^②

(Post) legislation evaluation.

Of the three project areas, (post) legislation evaluation is the least regulated and the latest carried out. In this respect, the government began to conduct the legislation evaluation work earlier than the standing committees of people's congresses at various levels, and the standing committees of local congresses began evaluation work earlier than the NPC Standing Committee. The Enforcement Outline of Completely Advancing Administration According to Law promulgated in March 2004 by the State Council requires that “the making and enforcement organs of administrative rules and regulatory documents shall periodically conduct evaluation on their implementation.” The revised Working Rules of the State Council in 2008 also requires that “Post-legislation evaluation shall be conducted after an administrative regulation enters into force.” Furthermore, the State Council is now considering the draft guideline on the Post-legislation Evaluation of Administrative Regulations and Rules. Since 2008, two provincial capitals, Guangzhou and Xi’ an, and one municipality directly under the Central Government, Chongqing have enacted local administrative rules on post-legislation. Furthermore, some major cities like Suzhou and Benxi have also enacted similar rules on post-legislation.

The standing committees of people's congresses at local levels also have begun to conduct post-legislation evaluation tentatively since 2005. For instance, the Standing Committee of the People's Congress in Shanghai began to conduct its first post-legislation activity in 2005. The Standing Committee of the people's congress in Wuhan city began its first effort in 2006 while the standing committee of people's congress in Guangzhou city did not begin until 2011. Statistics show that so far more than 20 standing committees of people's congresses at provincial levels have conducted post-legislation evaluation and that more than 10 standing committees of people's congresses in major cities have followed suit. ^③ Furthermore, a few standing

^① These data are based on the conference materials on the Working Conference on Filing and Review of Regulatory Documents held by the Legal Affairs Commission of NPC in Beijing in March 26—27, 2009.

^② According to the speech made by Song Hongqin, Director of the Office on Local Rules Filing and Review of Standing Committee of the People's Congress in Fujian Province, in the International Seminar on Mechanism of Public Participation in Regulation Filing and Review held in Changsha in March 27-28, 2012.

^③ Feb. 24 meeting with NPC.

committees of people's congresses at municipal levels are making efforts to enact local regulations on post-legislation evaluation. On November 4, 2011, the Standing Committee of the people's congress in Qingdao city, Shandong province passed the Interim Rules on Post-legislation Evaluation of the Qingdao City Standing Committee of People's Congress, the first of its kind in China. In addition, the Standing Committee of People's congress in Guangxi is also considering making a local regulation on post-legislation evaluation. ^①

The NPC Standing Committee placed legislation evaluation onto its agenda only in 2010. The work report of the Standing Committee in 2010 pointed out that “it will make efforts to conduct pilot post-legislation evaluation at appropriate time. On the basis of the issues found in the inspections on law enforcement by the Standing Committee and the new situations found in the implementation of law, the Standing Committee will choose one or two laws that concern the immediate interests of the general public, conduct pilot work on post-legislation evaluation, and explore mechanisms suited for post-legislation evaluation.” ^② The work report of the NPC Standing Committee in 2011 mentioned that “it has conducted pilot work on post-legislation evaluation.” ^③ The first two pilot efforts of the NPC Standing Committee focused on the Law on Science and Technology Progress and the Promotion of Agricultural Mechanization Law. On June 27, 2011, the Legislative Affairs Commission of the NPC submitted the Report on the Pilot Work on Post-legislation Evaluation along with two reports of post-legislation evaluation on the two targeted laws, which were eventually deliberated by the Standing Committee of NPC. ^④ The two reports of pilot post-legislation evaluation activities which focused only on certain provisions of the two laws, but the results of the evaluation were reportedly positive and satisfactory. ^⑤ It is worth noting that the first two efforts on post-legislation evaluation have been relatively transparent from the beginning. The news was released through mass media when the evaluation work started. Questionnaires were published in internet and distributed to target interest groups for response, panel meeting held, and field investigation also made during the evaluation. ^⑥ The reports were deliberated by the NPC Standing Committee, and both of the evaluation reports have been made available in internet. From this perspective, it was really a good beginning for its post-legislation evaluation work. In 2012, a new agenda for post-legislation evaluation has been put into place by relevant commissions of the Standing Committee of NPC. This time, the Law on the Protection of Disabled Persons and the Law on Promotion of Small and Medium-sized Enterprises will be the targets for post-legislation evaluation. Nevertheless, considering the fact that it is a resource-demanding work and not well regulated, not all post-legislation evaluation activities have

① <http://www.nanning.gov.cn/n725531/n733865/n755667/11219722.html>。

② “全国人民代表大会常务委员会 2010 年工作报告”，2010 年 3 月 9 日，<http://baike.baidu.com/view/3370971.htm>。

③ “全国人民代表大会常务委员会工作报告”（2011 年）http://news.xinhuanet.com/politics/2011lh/2011-03/18/c_121203794_12.htm。

④ “法律合不合适要‘回头看’——全国人大常委会首次审议立法后评估报告”，2011 年 6 月 27 日，http://www.gov.cn/jrzq/2011-06/27/content_1894147.htm。

⑤ Feb. 24 meeting with NPC

⑥ 《全国人民代表大会常务委员会法制工作委员会关于立法后评估试点工作情况的报告》。

been well organized and effective, especially in local levels. For instance, some local standing committees of people's congresses at local levels claimed they finished the evaluation of dozens of local regulations in just one year. ^① This would seem to indicate that, for these local standing committees of people's congresses, post-legislation evaluation is nothing but a concentrated effort to check technical problems existing in local regulations.

What's noteworthy is that compared to post-legislation evaluation, pre-legislation evaluation has not received much attention from the legislatures in China. This is not to say that there is no pre-legislation evaluation. Rather, the concept is poorly understood and there are no regulations covering pre-legislation evaluation. This situation stands in sharp contrast with that in the West where pre-legislation evaluation is more emphasized and well regulated. In the last two decades, many Western countries and international organizations have made laws or guidelines for pre-legislation evaluation. For instance, in the regulatory reform carried out in 1990s, the parliaments of the United States passed a few laws on pre-legislation evaluation. Britain also made the Good Policy Making Guide to Regulatory Impact Assessment in 2000. European Union Commission issued its Impact Assessment Guidelines in 2002 and updated it regularly ever since. Furthermore, OECD also issued Building an Institutional Framework for Regulatory Impact Analysis: Guidance for Policy Maker in 2002, providing guidelines for regulatory impact analysis for all its members.

However the concept as well as the practice of pre-legislation evaluation is just in embryo in China. According to the Legislative Affairs Commission of the NPC Standing Committee, it conducted its first experiment on pre-legislation evaluation of the Marine Navigation Draft Law and the Anti-Domestic Violence Draft Law in 2011. ^② It is said that methods adopted are similar to that in post-legislation evaluation, which include questionnaires and panel discussions. Considering such work is just beginning, it is too early to speak of making guidelines for pre-legislation evaluation.

III. Overview of GED activities 2007-12

Overall, 31 activities were carried out under the project, including 9 domestic research trips, 7 international study tours, 5 domestic seminars, 5 international conferences, 2 trainings for local people's congress, and 3 activities on research, translation and publication .

Public participation

More specifically, the public participation component involved study tours mainly to Europe to learn from their experiences. For most trips, there was considerable pre-trip preparation, including submission of topics and

^① Feb. 24 meeting with NPC.

^② According to interview with Legal Affairs Commission of NPC by Natalie Lichtenstein and Xinxin Yang.

questions in advance. According to post-trip reports, the participants found these trips very informative and useful. The experiences of foreign countries are reflected in a 527-page compilation of materials prepared for internal references purposes. ① This volume included materials on public participation in the OECD and EU, US, UK, Russia, Germany and France. The topics range from the consultation process, public hearings, lobbying activities, legislative review, to legislative oversight of the implementation of the law. There was also an international conference in Beijing, which resulted in the publication of *Public Participation in the Legislative Process*. ②

In addition, there were conferences in China to obtain information about successful experiences and challenges. This led to the publication of *Public Participation in Law Making – Theory and Practice*. ③ There were also several study tours to Hunan, Shanghai, Jiangxi and Hainan to understand domestic best practices and challenges for public hearings, as well as workshops in Yunnan, Tibet, Guizhou and Guangxi where local practices for soliciting public opinions on law drafts were studied. Issues discussed include how to enhance access to public opinions, how to process the collected data, how to cooperate with the media, and how to build an effective feedback system, as well as cost control; how well as to effectively use the internet to solicit opinions and increase public participation. This type of local benchmarking is an important step towards establishing national standards. In general, China has favored a pragmatic approach toward reforms that starts by comparing local experiments in a particular area and then selects among the more successful practices the ones suitable for national standards.

In addition, more than 1300 officials from the NPC and local people's congresses reportedly received training on public participation in law-making through GED supported activities.

Not all project activities were completed according to plan. The project plan called for pilot projects in two regions based on level of development. However, no pilot projects were conducted. Nevertheless, there have been many other projects sponsored by international donor agencies and the Chinese government over the years, including projects on legislative and administrative hearings, notice and comment provisions, freedom of information regulations, etc.

Although the project contemplated the publication and dissemination of *Guidelines for public hearings to be held by the NPC*, this was not prepared. However, in the internal conference of public participation in legislation in Hainan in November 2011, representatives from local people's congresses proposed standardizing public hearings in amending the Legislation Law, which may be possibly endorsed by the Legislative Affairs Committee of the NPC in making proposals for Legislation Law revision. According to

① Public Participation in Foreign Countries Reference Materials (2009).

② Chinese Academy of Social Sciences 2010.

③ People's Court Publishing, 2010.

participants from the NPC, currently (i) there are provisions regard public hearings in local regulations passed by local people's congresses; (ii) in some cases, the standing committee of local people's congresses have passed regulations specifically on public hearings; and (iii) there are the provisional rules announced by the NPC before particular public hearings. As noted above, the NPC Standing Committee has been lukewarm about public hearings given the financial and human resources demands and concerns about their effectiveness.

The project plan also originally contemplated the publication and dissemination of a manual for people's congresses on public participation (Manual of Rules and Procedures on Participatory Processes in Legislation). This manual was never prepared.

Nevertheless, on the whole, the project was reasonably successful in the broad goal of increasing awareness of the need for political participation and increasing knowledge of how other systems go about it. The project was also successful in understanding domestic developments and challenges, and in raising awareness of the importance of public participation among members of the NPC and local people's congresses and training them in various activities relating to public participation.

Although there has only been one formal legislative hearing at the national level, as noted above drafts of 35 of the 38 laws passed during the 11th NPC session were made available to the public for comment, and the NPC is committed in principle to making all draft laws available to the public.^① Some laws have resulted in hundreds of thousands of comments, demonstrating that the public is interested in this form of participation at least with respect to some laws that concern their immediate interests. Moreover, as described above, there has been considerable progress in establishing the procedural framework for public comment at both the central and local levels, as well as progress in institution building. Further progress in improving the effectiveness of public comments is expected as practical experience is accumulated and people's congresses respond to criticisms and citizen demands.

The immediate results of this component of the project must be understood in a broader context. Public participation is obviously of central importance to rule of law and effective governance, and much work remains to be done. It is however a difficult area for international donors to focus on for various reasons. First, given the differences in levels of development and the nature of the political systems between Europe and China, some forms of political participation possible and suitable for Europe may not be possible or suitable for China. Accordingly, some of the arguably most important reforms may not be on the table. For example, the NPC and local people's congresses have been reluctant to hold public hearings due to cost considerations, among other factors. The NPC in particular has preferred smaller scale, more focused expert meetings or events

① Feb. 24 meeting with NPC.

to which representatives chosen based on region and other factors are invited.^①

Similarly, although there has been an increase in the amount of information made available to the public online and in other fora, and there appears to be an intent to make publicly available more information about the legislative process including draft legislation and records of deliberations by NPC representatives,^② the amount of information available to the public is still quite limited compared to the U. S. and other countries.^③ For instance, the United States Free Public Records Directory (<http://publicrecords.onlinesearches.com/UnitedStates.htm>) provides free and fee-based searchable directories for legislative bill tracking, political contributions, national spending (budget), federal employee salaries, Department of Labor statistics, court resources, bankruptcy cases, securities filings, recalls and product safety news, food safety information, free instant appraisals of value of homes anywhere in the US, criminal records, sexual offender tracking, etc. Establishing similar databases would be expensive, and the lower level of Internet access in China would limit their effectiveness to some extent. Nor is there a comparable service to that provided by the US Library of Congress for tracking bills that allows citizens to monitor the entire process for passing a law.^④

Polling is another area subject to both financial and political constraints. While polling in China has improved, polling is hampered by the size of China, lack of adequate funding, lack of adequate training for many academics, limitations on empirical research including the need for government approvals and limitations on the ability of the press to report all of the results.

More generally, effective participation requires a literate and informed citizenry capable of critical reasoning, which has significant financial implications for the general education system. It also requires an active role for the media and civil society organizations, which currently are subject to political constraints in China.

The results of this component of the project then must be evaluated in terms of the options available for international donor agencies for collaboration and the restraints imposed by the level of development and nature of the political system. As noted above, the project focused on areas that were generally considered to be politically safe, highly technical, and already on the reform agenda. These areas may not be the most crucial

① Feb 24 meeting with NPC (noting that the NPC has held only one formal legislative hearing, in conjunction with the Individual Income Tax Law.)

② Feb 24 meeting with NPC.

③ See generally, Weibing Xiao, *Freedom of Information Reform in China* (Routledge 2011) (arguing that freedom of information in China is based on a proactive rather than a reactive model where the amount of information publicly available is driven primarily by government agencies deciding what information is to be available to public rather than by citizen demand and requests from the public for information).

④ The website contains a number of sections: Bills, Resolutions; Activity in Congress; Congressional Record; Schedules, Calendars; Committee Information; Presidential Nominations; Treaties; Government Resources; For Teachers; Help and Contact. See http://thomas.loc.gov/home/abt_thom.html.

areas for political reform or the areas of reform that would have been chosen as priorities absent such limiting conditions.

Second, political participation is a broad topic that covers many different areas including access to information, the role of the media and civil society, and citizen participation in the implementation and supervision process through class action law suits and public interest litigation. Even with respect to a single form of participation such as “public hearings,” there is wide variation between legislative and administrative hearings and between legislative hearings at the national level, provincial level, county level, etc. Accordingly, even in the absence of political constraints, given limited financial and human resources and a relatively short five-year time frame, only certain areas can be targeted.

Third, China's size presents challenges both for reforms and for donor assisted programming. The size of China raises a number of technical challenges about the representativeness of participants, how to aggregate and respond to multiple comments, the costs of hearings, etc. Moreover, wide regional diversity within China hinders a uniform approach and makes consistent implementation difficult.

Given these challenges, the publication of manuals on public participation and public hearings may not have been very realistic goals. It would be difficult to produce a single manual that covered all aspects of public participation for all levels of government. Indeed, it is arguably not even possible to develop a single set of detailed procedures for public hearings for all levels of government given the differences in subject matter areas, specific topics, and the size of the constituencies at different levels of government. ① There are however ongoing efforts to develop more tailored regulations for different levels of government. Moreover, in the future it is possible that certain basic requirements can be established in national regulations (such as the Law on Legislation, which is scheduled for amendment) regarding such issues when a hearing is required; how participants are to be selected to ensure public participation and broad representativeness; the rights and obligations of the participants; notice requirements and other procedural rules; and how the results of the hearings are to be reported (including feedback requirements).

① There are no generally applicable federal rules for legislative hearings in the U. S. Rather, the committee decides the rules. At the state level, each incoming legislature may decide rules, or the decision may be left to the committees. In general, US congressional meetings have a complete written transcript, which is then sent to witnesses for correction and published in Federal Register and available online. These transcripts provide the basis for determining the intent of legislature and the reasonableness of laws (which are important in terms of providing guidance to government agencies and to courts for purposes of judicial review). For state legislative hearings, there is often just a summary. Moreover, often only the committee report is published (along with list of witnesses and their written statements if they submitted them). The Administrative Procedure Law provides rules for administrative agency rulemaking, including for hearings. Some laws also specify additional procedures, such as environmental laws that set out rules requiring the Environmental Protection Agency to hold hearings on environmental legislation. See Randall Peerenboom, Public Participation in Legislation and Governance in the US, report prepared for GED for the International Workshop on Public Participation in the Law-Making Process, held in Beijing in December 15-16, 2008.

Overview of regulation filing and review activities

The activities aimed at enhancing law harmonization included international study tours of The Netherlands, Switzerland and Greece, and local study tours in Guangxi and Yunnan. There was also an international workshop to exchange information and experience from abroad and a domestic conference to define oversight procedures and methods appropriate to China while clarifying the role of each entity in the implementation and monitoring of harmonization. A national workshop in Beijing in 2009 focused on the theory and legal basis of the legislation review; definition of regulatory documents; subject matter of the reporting and review; objectives and focus of the review; legal effect of the review; methodology of the review, and establishing a reporting and review department at the local people's congresses. A local workshop in Hangzhou was mainly used as a training workshop for Tibetan officials on the filing and review system.

On the whole, the project resulted in some demonstrable positive results, including the publication of *The Filing and Review System for Regulative Documents: Theory and Practice*.^① In addition, more than 600 officials have reportedly received training on regulations filing and review from project activities.^② Furthermore, two conferences on filing and review system have been held in this project, one national conference on general topic on filing and review work of regulative documents held in Beijing, 2009, another international conference on 'Mechanism of Public Participation in Filing and Review of Regulations' was recently concluded in Changsha, March, 2012. Such conferences have facilitated the sharing of experiences within the standing committees of people's congresses at various levels.

Again, not all of the project goals were met. Notably, the project called for the creation of a database to strengthen the efficiency of review mechanisms by posting information about new regulations that enacted at the local and provincial level; identifying contradictory regulations and laws; and exchanging information between the relevant departments of people's congresses. The project also called for the training of IT personnel within the NPC to maintain and update the database. However, the database was not created.

In sum, the project has resulted in some strengthening of the file and review system, and furthered the goal of harmonization of law. More generally, as noted above, there has been progress both at the central and local levels in strengthening the filing and review system. However, there are serious doubts among academics, business people, citizens and even government officials as to whether the system of filing and review, even if strengthened, will be adequate to ensure legal consistency. As noted by NPC participants to this project, human resources remain limited. The number of personnel charged with reviewing documents is insufficient to meet the needs. Accordingly, only a small fraction of regulations are reviewed. Moreover, opportunities for

^① China Democracy and Law Publishing (2011).

^② Feb. 24 meeting with NPC.

citizens and business people to seek review remains limited, and whether or not the regulation is reviewed remains at the discretion of those in charge. While local regulations in some cases require a response to citizen requests for review, the NPC Standing Committee is not required to provide any feedback. Furthermore, in many cases, the conflict is between regulative documents and administrative regulations or rules. As such, administrative agencies and local governments are responsible for reviewing and addressing inconsistencies, rather than the NPC or local people's congresses.

More fundamentally, few if any countries rely so heavily on a filing and review system to ensure legal consistency. Indeed, one wonders what the purpose of study tours to the Netherlands, Switzerland and Greece was given the obvious differences in the way the legal systems of these countries seek to ensure legal consistency. In almost all legal systems nowadays the judiciary plays an important role in ensuring legal consistency. Even in civil law countries, courts of some type have been given the power to strike down lower level legislation that is inconsistent with national laws or the constitution. One of the advantages of relying on the courts is that it allows citizens who are directly affected by the regulation to challenge on concrete grounds. It is difficult for even the most conscientious and well-informed government official to perceive all of the ways a regulation might contradict higher legislation. It is much more likely that individuals adversely affected by particular provisions in a piece of regulation will be aware of the conflict and motivated to raise the issue.

Overview of post-legislative oversight

Post-legislative oversight activities included a national conference in 2008 that discussed among other things methods of evaluation such as self-evaluation, surveys and questionnaires, field work and study tours. In 2010, an international conference was held on post-legislation evaluation. This was then followed by a study tour of France, Spain and Poland in 2010.

More than 300 officials from NPC and local people's congresses reportedly received training on post legislation evaluation through GED supported activities. In addition, six questionnaires were published on official websites in the evaluation of two specific laws – the Promoting of Science and Technology Law and the Promotion of Agricultural Mechanization Law. The report of the evaluation results was issued in 2011. Nevertheless, the Internal Guidelines of the NPC on Post-legislative Review were not produced as originally planned.

While worth pursuing, post-legislative oversight by the legislator is only one of many methods to ensure laws and regulations are implemented as designed. Moreover, the NPC is only able to investigate a small number of laws every year. Similarly, local people's congresses and administrative agencies are only able to investigate a limited number of regulations each year. Accordingly, other methods for ensuring proper implementation need to be explored and strengthened to meet the project's broader goals of promoting the rule of law.

Summary and general comments on project design and results

First, in terms of choice of substantive areas, each of the topics targeted by this project presents challenges to the realization of rule of law in China. However, not all of them fit naturally or exclusively within the domain of the NPC as the main partner for this component of the project. As noted, legal inconsistency in particular requires filing and review by local governments and state agencies, and arguably a stronger role for the courts. Post-legislative evaluation by the NPC is only one of many methods involving multiple actors and venues for monitoring and overseeing the implementation of law. Accordingly, strengthening these mechanisms cannot be expected to have a significant impact on rule of law more broadly.

Increasing public participation in the law-making (and administrative rule-making), in the interpretation, and in the implementation processes has a greater potential to lead to significant improvements in rule of law and good governance more broadly. However, public participation is a broad area. This project focused on legislative hearings and notice and comment provisions. Both are important but limited in terms of their overall impact on rule of law more broadly. Deeper and more comprehensive reforms would be needed to fully realize the benefits of public participation in other areas.

Second, the project emphasized study tours and conferences leading to the publication of edited volumes. In several cases, the production of manuals or regulations did not occur, and pilot projects were not designed and carried out as originally contemplated. It also bears noting that although the project called for study trips to Asian countries or other countries at similar level of development, almost all trips were to Europe, America and other developed countries. Given that the types of projects that could be pursued successfully is limited by the level of development and the nature of the political system, it would seem to make sense to visit other countries at a similar level of development or with similar political systems.

Moreover, while the participants were keen to go on international study tours and claim they provided invaluable lessons learned and crucial reference materials and experiences, there was a markedly diminished appetite for foreign experts to visit China to share their expertise, as reflected in the unused budget for such expenses. This is consistent with a noticeable general trend that has accelerated since the Financial Crisis where many officials, academics and commentators in China have begun to feel that China must go its own way, and there is little or at least less to learn from foreign countries.

Third, in terms of goals and measurable results, although the broad goals were reasonable, some of the goals were ambitious, difficult to realize given the duration of the project, and difficult if not impossible to measure and objectively verify within the five-year time frame. Other goals, such as national regulations that apply to all public hearings, were arguably not well-conceived given the experiences of other countries and the diversity within China. Similarly, while setting specific goals for achieving gender equality among people's congresses

may be laudable,^① it is not clear how the project sponsors intended to achieve that goal or to enforce that requirement. In the future, choosing more tailored and feasible goals might lead to more successful results.

Attempt to sort out the GED—specific impact, if any, on developments in the three project areas is a quixotic quest – the modern day equivalent of tilting at windmills– given that these are areas that were already on the reform agenda and there are potentially multiple causes/explanations for every development. In general the project was more successful when there was strong political support for the item in China, while there were more difficulties and less progress in areas that were politically sensitive such as public participation in legislation, judicial appointments^② and an increased role for CSO.^③ In some cases, the annual work reports appeared to formalistically invoke the mantra about the need to emphasize gender equality, the most vulnerable members of society, and bottom-up participation from civil society rather than to take meaningful actions to realize these goals.

Nevertheless, it is safe to say that the GED project supported activities played a positive role to some extent in the achievements made by the NPC and local people's congresses in the three focused areas in recent years. However, it is more difficult to quantify to *what extent* the GED project contributed to progress given that the three focused three areas were already on the NPC agenda from the start of the project. Apparently, the study tours, international conferences and books on foreign experiences in the respect of public participation in law-making under the project are helpful for the NPC and local people's congresses to learn relevant systems in foreign countries. However, foreign experiences and expertise, which are based on judicial review, are of little value for China, which does not rely on judicial review but the filing and review system. In the area of legislation evaluation, the experiences and expertise in the West can also be very helpful for China. Nevertheless, considering the limited activities under GED project and on the part of NPC, the GED project has not brought its potential into full play in this regard.

It would be more difficult to assess GED project activities such as national conferences or domestic study tours conducted solely by the NPC without any involvement of foreign elements. It is doubtful whether there is a need for GED to provide financial support for such activities given that there are more and more resources available in China itself. It is entirely possible and indeed likely that the NPC would organize similar activities

① One of the objectives of the project was to ensure that the percentage of female members of the people's congress and village committees is increased, e. g. from 20% to 30% in the NPC, and from 15% to 25% in village committees.

② But some progress on “*Tentative Measures of Public Selection of Judges and Prosecutors*” and “*Draft Measures of Selection and Appointment of New Entrants to the Judiciary*” prepared by the Personnel Department of SPC.

③ Of the three components, the judicial component seems to have been most successful at completing the projects as contemplated in the work plans, notwithstanding a complicated internal bureaucratic organization that required the work and cooperation of numerous internal departments and coordination with different government organs outside the judiciary. Interviews revealed that the NPC may have less direct influence over the agenda of local people's congresses than the SPC has over local courts.

even without support of the GED project. Nevertheless, it is possible that under the facilitation of the GED project, the staff of the Legal Affair Commission of NPC might have been more motivated to exert influence on the leaders of NPC in putting project-related activities onto the agenda of the NPC. It is said that the NPC decision to publish most draft laws for public comments in internet in 2008 was partly a result of a suggestion made by the officials who are responsible for the implementation of the GED project. ①

It is not possible to establish the exact linkage between the GED project and the achievements made by the NPC, especially when the GED project can only focus on what have been or will surely be on the agenda of NPC. It is also understandable that the NPC and its officials as political policy-makers will, to a large extent, avoid admitting publicly the foreign influence on their decision-making.

In sum, foreign donors who cooperate with NPC can only play a limited role as facilitators in helping Chinese officials to renew their knowledge and mindset. It is not realistic to expect immediate results of a project in such a short term or to expect that Chinese policymakers will pursue substantive reforms simply because they are high on the foreign donors' agenda.

IV. Analysis of the future reform agenda in the area of law-making in China

At the moment it does not appear that the leadership of China has any major plans for the reform of NPC system. It's possible that some more progressive reforms of the NPC will be put on the agenda after the 18th Party Congress in late 2012 when the new Party leaders will be elected. Such a possibility can't be excluded, considering the high-profile, open calls to deepen reforms (including political reform) both from the major Party media and the leaders of the government this year. ② However, the 12th Five Year Outline contains no concrete major plans for reform of NPC system. The 12th Five-year Plan still envisions a mixture of one party system, limited democracy and governance by law by claiming that the China will 'adhere to the unity of the Party's leadership, people as masters of their own country, and governing the country by law; develop socialist democratic politics, and build a socialist country ruled by law'. The Plan also claims China will 'adhere to and improve the system of the people's congress', 'support the people's congress to exercise their functions', 'persist in scientific and democratic legislation', and 'protect the unity, dignity and authority of socialist legal system', all of which repeat longstanding goals.

Nevertheless, some improvements with a view to strengthening the functions of the people's congresses are still possible in some politically controllable areas. For instance, in the just concluded fifth session of NPC in March, 2012, the NPC decided that the proportion of the deputies of NPC with the capacity of leadership in

① According to an official with NPC who attended the April 11 meeting in UNDP.

② 例如, 参见“人民日报评论部: 宁要微词, 不要危机”, <http://opinion.people.com.cn/GB/40604/17192845.html>。

the Party and the governments at various levels will be reduced to some extent in the forthcoming 12th NPC while the proportion of deputies of farmers, workers and professionals will be increased accordingly.^① Although such fine adjustments are still piecemeal in nature for NPC, they do demonstrate the limited will of the authorities to push the reform process forward.

Under the objective to ‘persist in scientific and democratic legislation’, the people’s congresses at various levels will surely develop in terms of public participation in legislation. However, it will be more realistic to expect that the NPC Standing Committee and standing committees of people’s congresses at local levels will learn from each other rather than explore radically new ways to increase participation. For instance, allowing citizens to observe the sessions has become a common practice for many standing committees at local levels. Some standing committees at provincial level (Heilongjiang, Guizhou, Shandong, and Anhui, for instance) even have enacted local regulations in this respect. This form of public participation still is not in place on the part of the NPC Standing Committee, although renovations have begun of the conference venues, paving the way to follow the practice of standing committees at local levels.^② The NPC Standing Committee can also learn from standing committees at local levels in respect of soliciting public opinions on the legislative plan for the future, since it has been a regular practice for many provinces such as Guangdong, Shandong, Hubei, Gansu, Yunnan, etc., which is still not the case for the NPC Standing Committee. The NPC Standing Committee also can play a big role in pushing the standing committees at local levels to increase public participation of legislation. For instance, the decision of NPC Standing Committee in 2008 to solicit public opinions on draft laws through the media has stimulated the standing committees at local levels to do so. Similarly, under the inspiration of the NPC Standing Committee, the Standing Committee of the People’s Congress in Shaanxi Province determined to publish all draft local regulations and solicit public opinions via the Internet in 2011.^③ There are quite a few other experiences of some standing committees at local levels that can be shared by other localities and the national legislature. For instance, the Standing Committee of the People’s Congress in Zhejiang Province has made all the sessions of the Committee broadcast live through internet since 2005. The Standing Committee of the People’s Congress in Guangzhou City, together with Guangzhou TV Station, has sponsored a monthly public forum called ‘Yangcheng Forum’ (means Guangzhou forum) for 12 years since 2000. This televised forum, which is held in a central city park and is open to general public, touches on quite a lot of legislative issues on which all citizens have a chance to have their voiced heard. Such a forum can be especially useful for legislatures in major cities.

Strengthening the regulation filing and review system is in line with the commitment to ‘protect the unity,

① “全国人大首提降领导干部代表比例”，2012年3月9日，<http://news.sina.com.cn/c/2012-03-09/023424083594.shtml>。

② According to the interview with Legal Affair Commission of NPC on Jan. 24, 2012.

③ “陕西省人民代表大会常务委员会工作报告（全文）”，2011年2月25日，<http://news.cntv.cn/china/20110225/109574.shtml>。

dignity and authority of socialist legal system' enshrined in the 12th Five-year Plan. Since there are basic provisions on the methods of filing and review in the Legislation Law and Supervision Law of the Standing Committees of the People's Congresses at All Levels, it would be unrealistic to have radical reform in this regard. Nevertheless, there is still some room for the system to improve in terms of increasing public participation and transparency. Improving the feedback mechanism to the petitioners for regulation review can be very helpful to arouse the enthusiasm of the general public to participate in the review process and thus increase the effectiveness of the system. The Legal Affairs Commission of the NPC realizes the importance of such feedback mechanism, and has suggested for some improvements through possible revision of the Legislation Law.^① However, considering the poor records of the NPC Standing Committee in implementing the relevant provisions in its internal Working Procedures for Filing and Review of Regulations in this respect, it is doubtful that NPC Standing Committee will strongly support an overhaul of the feedback mechanism. The reason behind the negative attitude of NPC Standing Committee towards responding to the petitions is that the petitioners always increasingly demand it exercise its constitutional review power to strike down administrative regulations that are allegedly inconsistent with the provisions on basic rights of citizens in Constitution. Dealing with such petitions that demand radical political and institutional reforms is far beyond the actual capacity of NPC Standing Committee. In such cases, there is no way that the NPC Standing Committee will simply make a legal judgment and declare the invalidity of certain regulations without regarding the obvious political implications. Since it is more often than not that no legal judgment can and will be made by NPC Standing Committee on tough issues, it is more in the interest of the NPC Standing Committee to provide feedback to petitioners in some technical issues on an ad hoc rather than regular basis. Accordingly, it is unlikely that the NPC Standing Committee will soon change its negative attitude towards regular interaction with civil society in the near future.

Compared with NPC Standing Committee, it is more feasible to promote feedback mechanisms among the standing committees of the people's congresses at local levels. The standing committees of local people's congresses usually only need to deal with technical conflicts between local regulations or rules, and national laws or regulations, so there is less political concern for them to develop feedback mechanisms. The real developments on feedback mechanisms also show that the standing committees at local levels are far more promising in this respect. So far, at least 10 standing committees of provincial people's congresses have imposed on themselves the obligation to respond to the petitioners for regulation review in local regulations. Nevertheless, there are still some worries and concerns hindering the standing committees of local peoples'

① In the speech in the International Seminar on Mechanism of Public Participation in Regulation Filing and Review held in Changsha in March 27-28, 2012, the director of the Regulation filing and Review Office of Legal Affairs Commission of NPC complained that lack of feedback to the petitioners has caused many misunderstandings of the general public toward the NPCSC, and has aroused suspicions among the general public that the NPCSC has failed to exercise the function of regulations filing and review according to law. He suggested that interaction mechanism should be established, and the NPCSC should provide feedback to the petitioners either by written letters or telephones or by panel meetings with the attendance of the petitioners in order to maintain the credibility of NPCSC.

congresses to fully embrace the direct interaction with the general public. For instance the Standing Committee of the People's Congress in Jiangsu is very open-minded to public participation in the filing and review process, so much so as to publish most the local rules and regulatory documents recently filed on the Internet soliciting public comments. But out of concern for social stability, it is inclined to gather public opinions through internet in a very limited sphere when it comes to petitions for review on sensitive issues. ①

Except for feedback mechanism, transparency in the regulation filing and review process also needs to be increased. The NPC Standing Committee releases few statistics on regulation filing and review, although it repeatedly emphasizes the importance of such work. The only exception is that it mentioned for the first time the petitions received from civil society for regulation review in 2008 in its annual work report in 2009. But no further details on the results of the review were released therein. Such a secret way of operation means the general public knows little about the work of regulation filing and review of NPC Standing Committee. Comparatively, it seems the State Council is a bit more open in this regard. It is said that it has published some information on filing and review occasionally. ② Furthermore, there are standing committees of local people's congresses which have imposed on themselves obligations to release their regulation filing and review work regularly. For instance, the Rules of Standing Committee of People's congress in Zhejiang Province on the Filing and Review of Regulatory Documents in 2007 provides that 'the standing committees of people's congresses at and above the county level shall submit written reports to their immediate superior standing committee of people's congress on the working situation of the regulatory document filing and review work in the previous year, and make it public to society'. It's indeed a good practice worth promoting throughout China. However, it seems that the Standing Committee of the People's Congress in Zhejiang Province does not fulfill its commitment in this respect very well, since no details of the work of regulation filing and review have been released in its annual work reports in the last three years. There are no judicial remedies available to enforce the legal obligation to release information, so there is no way to guarantee the local standing committees of people's congresses will take their commitments (if there are any) seriously

① Legal Affairs Commission of the Standing Committee of the People's Congress in Jiangsu Province, *A Thought on the Practice of Public Participation in Filing and Review Process*, in the Speech Scripts of the International Seminar on Mechanism of Public Participation in Regulation Filing and Review held in Changsha in March 27-28, 2012. An official with Legal Affairs Commission of the Standing Committee of the People's Congress in Hunan Province even suggested in his speech in the same conference that no feedback should be provided to petitioners who have made the petitions high profile through media.

② The director of Filing Office in the State Council revealed some information on its filing and review work in his speech in the International Seminar on Mechanism of Public Participation in Regulation Filing and Review held in Changsha in March 27-28, 2012. According to his speech, the State Council received 630 petitions for review in the last decade, among which 81.5% are from individual citizens, 14% from social organizations and enterprises, and 4.5% from state agencies. In the 630 petitions, around 84.3% demanded reviews on legality of local regulations and local rules, and more than 80% were dealt with in the year of reception of the petitions. He also suggested that the State Council released some information on its filing and review work in the Legal Daily which we have not found yet.

In terms of legislation evaluation, both the NPC Standing Committee and local standing committees of people's congresses have committed to continuing their efforts to carry out post-legislation evaluation work in the near future. The NPC Standing Committee will continue to conduct post-legislation evaluation on two laws in 2012, based on the experiments on two other laws started in 2010. In 2012, the Chairman of the NPC Standing Committee also committed in his annual work report of NPC Standing Committee to the NPC that the NPC Standing Committee will 'further improve the post-legislation evaluation mechanism based on the experiences learnt from previous experiments, promoting this job to be done more frequently and regularly'.^① This statement shows that NPC Standing Committee will try to make the post-legislation evaluation a routine job in future. It is possible the NPC Standing Committee will issue guidelines on post-legislation evaluation, especially since the State Council is considering such guidelines and some local standing committees of people's congresses have passed local regulations on this issue. Taking into account the fact that the NPC Standing Committee has also taken the initiative to experiment on pre-legislation evaluation on the Marine Navigation Law and Anti-domestic Violence Law in 2011, it can be expected that it will continue the work in future. But It definitely has a long way to go in developing pre-legislative evaluation mechanisms for the NPC Standing Committee as well as for other legislatures in China in the years to come.

V. Policy recommendations and suggestions for future collaboration

The need for a fundamental rethink of the approach to international assistance

When China began reforms in 1978, it was a low income country. It lacked resources, and institutions were weak. Now, after 30 plus years of reform, China is a middle income country. There has been considerable development of the legal system and other institutions. Indeed, in 2011, NPC Chairman Wu Bangguo confidently proclaimed the completion of the construction of China's socialist legal system. This must be understood in a historical, comparative and relative sense, as there are still many areas in need of improvement. However, with a few notable exceptions (no genuine constitutional review body, no administrative procedure act, unified civil code still not passed, insufficient evidence laws, etc.), Chairman Wu is descriptively correct that China has passed laws to cover most major areas, and established the basic institutions. This is no small feat. However, the major problem now is to make sure that the laws are implemented and the institutions operate as they should.

Many in China are also increasingly convinced that China must follow its own development path. The general contours of this development path, discussed in the previous section, are set out in various white papers, most notably the white paper on democracy, various papers on human rights, and the white papers on the socialist

^① 全国人民代表大会常务委员会工作报告 (全文), 2012 年 3 月 18 日, <http://www.yicai.com/news/2012/03/1538592.html>。

legal system, and reflected in the 11th Five- year plan, the Third Five-year Agenda of the Supreme People's Court, the NPC agenda and other documents.

International donors must adapt to the new realities, and adopt a different approach to legal assistance. In the past, Chinese reformers were more content to look to international best practices, and to seek advice from experts who described the practices and institutions in their own countries. International donors also sought, as in this case, to negotiate with central and local authorities long term collaborative agendas that focused on areas that often reflected the priorities and concerns of the donors. As we have seen in this project, this approach has encountered difficulties. In general, the items that were completed successfully or at least more in accordance with initial expectations were the ones that were already on the agenda of the NPC and the Party-state. Those items that reflected donor concerns that were not a priority of the Chinese side or high on their agenda were not as successful: eg. pilot studies in some areas; an increase in public hearings at the NPC and the promulgation of procedural rules for such hearings, etc. Moreover, changes in domestic priorities led to deviations from the originally negotiated plan, including more emphasis on post legislation evaluation and the addition of a conference that focused not on public participation but improving the professional qualifications and performance of people's congress deputies.

China now has considerable financial and human resources of its own. Chinese leaders have firmly taken control over the reform agenda. Reformers have ready access to information about other countries through the extensive network of contacts they have developed through the years, and from high-quality Chinese scholars working in universities and think tanks who have lived abroad and/or have the necessary linguistic skills and training to prepare reports on foreign legal systems and arrange for study trips abroad if further information is needed.

Rather than continuing the current model where foreign donors negotiate and fund long terms collaborations mainly on items that the Chinese authorities want to and will pursue on their own anyway, and which are subject to modification when priorities change within China, foreign donors may wish to consider a new approach based on a contractual model. Having defined their own reform agenda and established short and long term agendas, the Chinese authorities would contract with international donor agencies with the relevant experience for the services they want and find valuable enough to pay for.

There are several advantages to this approach. First, it would alleviate the moral hazard problem whereby there is a strong preference for international study tours paid for by foreign donors to developed countries even when the systems are radically different and there is considerable information already available in China about such systems. This is also consistent with the trend to de-emphasize international best practices in favor of China's own way, and the reservations about the utility of foreign experts and their expertise (reflected in this case in the failure to hire foreign experts even when funds were allocated for such purpose). In the future,

more study tours might be to countries at similar levels of development, which are more likely to be confronting issues similar to those faced by China, and for which less information is available as there tend to be fewer Chinese scholars familiar with such systems.

Second, shorter term contracts would reduce the problem of changes to a negotiated agenda due to changes in domestic priorities.

Third, there would be less time and energy wasted on projects for which there is little political support and little chance of success.

Fourth, this approach is consistent with the general lessons learned in more than 50 years of law and development experience, most notably that reforms are country-owned and country-led are more likely to be successful, and that international best practices at odds with the local norms, institutions and practices are likely to fail or to be adapted in ways not expected or desired by the donors.

Fifth, as noted, international donor agencies are not able to pursue many of the most crucial and fundamental reforms because of political constraints. The collaboration agenda is already driven by domestic concerns and priorities, and thus to a significant extent piecemeal and ad hoc. The piecemeal, ad hoc nature of collaboration fits well with a case-by-case contractual approach. The projects, while perhaps less ambitious in scope, will be feasible within the political context and likely to produce positive, demonstrable results.

Sixth, and more broadly, this approach would free up financial and human resources of international donor agencies to be used to meet the pressing need of low income countries and the bottom billion.

Whether or not a contractual approach is adopted, international donors, including the EU and the UNDP, must develop new approaches tailored to the specific needs of middle-income countries, a process that has not yet

begun for many donors and is in the early stages for others. ^①

Topics/areas for future collaboration

There are many reforms and activities that could contribute to the broad goals of “developing an open and equitable society based on the rule of law” and to the more specific goals of “institutionalizing participatory process for law making, enhancing capacities for law-making and public engagement, and improving law harmonization.”

The following recommendations are by no means exhaustive. **They focus primarily on the legislative component.** Accordingly, they are not the most important or crucial areas of reform or the most likely to have a significant impact on rule of law. And they do not take into consideration political restraints. In that sense, they are perhaps somewhat of a wish list.

Structural reforms of the NPC and local people's congresses

One of the key concerns of citizens is the lack of input into the selection of deputies. There are a number of ways to increase public participation in selection of deputies: direct elections at next level; direct election of certain percentage of deputies; allow citizens to nominate candidates to be vetted by the CCP Organization Department, etc. A pilot study to experiment with various ways to increase participation would be welcome. It is notable that while Vietnam has generally followed closely China's reform path, it has already allowed for direct election of national representatives to the legislature. Perhaps a study tour to Vietnam could be organized to better understand the effects of direct elections of national representatives within an effectively

^① The World Bank World Bank, Projects: Middle-Income Countries (MICs), <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:20976054~pagePK:41367~piPK:51533~theSitePK:40941,00.html>; IEG (Independent Evaluation Group). 2007. Development Results in Middle-Income Countries: An Evaluation of World Bank Support. World Bank, http://siteresources.worldbank.org/EXTMIDINCCOU/Resources/MIC_evaluation.pdf; Linn Hambergren, “Rule of Law Challenges in Middle Income Countries and Donor Approaches to Addressing Them,” in Michael Zurn et al. eds. *the Dynamics of Rule of Law in an Era of International and Transnational Governance* (forthcoming Cambridge University Press, 2012). Given the wide diversity in countries, no single approach or blueprint will suffice. China is obviously different than many middle income countries in many respects. Central level policymaking has been strong relative to other countries. Given its huge population and the strength of its tertiary schools, there are many extremely intelligent and qualified people in key institutions who are responsible for identifying problems and devising solutions. Moreover, foreign governments and international development agencies have been eager to advise China. To its credit, China has followed the methodology recommended by many donor agencies for designing reforms. Before undertaking any significant reform, the government conducts extensive comparative research, carries out empirical research, consults with a wide variety of stakeholders including academics and representatives from the main interest groups affected by reforms, increasingly invites public comment on major laws and pieces of public regulation, and establishes pilot programs to test results before scaling them up nationally. To be sure, China's size also makes it difficult to implement reforms as implementation requires qualified people at every level, in every position. Implementation is also hindered by principal-agent issues and incentive structures for local officials that lead them to set aside central policies to pursue economic growth.

single-party socialist state

A project to assess the advantages and disadvantages of reducing the number of deputies and requiring that deputies be full-time would also be useful.

There is also still considerable need to strengthen the professional capacity of people's deputies through training programs and to explore ways to improve their performance. A conference in Heilongjiang discussed:

1. providing sufficient information on the law drafts before they are presented before the people's congresses for adoption;
2. regulating the system to promote representative's bills;
3. seeking opinions of representatives during legislation planning;
4. inviting representatives to attend the meetings of the standing committees of the people's congresses and the meetings of the special committees;
5. seeking opinions of representatives during the law-making process;
6. seeking opinions on the implementation of the law;
7. providing services to representatives to familiarize them with the purposes and the content of the law draft, such as organizing training sessions and some study tours for representatives.

There is also need for institutional capacity building of the NPCSC Legislative Affairs Committee in charge of constitutional review as part of the filing and view process (including clarification of procedural rules, efforts to increase transparency and enhance timely responses to requests for review by citizens, social organizations and others entitled to request review), as well as a study to evaluate alternative mechanisms that might be more effective.

Political participation in the legislative process

Access to information in a timely fashion remains limits. A project aimed at increasing the amount of information available to the public would be useful. The development of an online service for tracking bills and so on such as the Thomas system in the U. S. should be explored.

Interviews with NPC members suggest the need for earlier involvement of the public in commenting on draft laws, particularly laws drafted by the State Council.

Pilot studies to investigate ways to allow citizens to observe legislative debates either live or via television or the Internet also merit consideration. ① In this regard, the experiences of the Standing Committee of the People's Congress in Zhejiang Province might be very useful, since they have allowed citizens to observe legislative debates both through live and via internet for years. In March, 2012, the Standing Committee of the People's Congress in Henan Province also broadcast live its session via the Internet for

① Members of the NPC mentioned in meetings the desire to renovate people's congress halls to allow citizen observations.

the first time.^①

Legal Harmonization

There is still the need for considerable capacity building and training to strengthen the filing and review system, including the need to standardize the process. Shanxi people's congress members identified many operational challenges: (1) lack of designated offices and staff at the grass-root levels, (2) lack of consensus on review scope, (3) electronic version of the documents is usually not provided as requested, and (4) more publicity work to be done to raise awareness.

There is also the need to strengthen the rights of citizens to participate in review process by requesting reviews.

A pilot study to determine the most effective ways of providing feedback to citizen requests would also be useful, as it now appears different people's conferences adopt different approaches. In-country experience sharing on the participation in the filing and review process is especially important in this regard, since a number of standing committees of people's congresses and governments at provincial level have done quite well in terms of feedback mechanism building as well as practice. For instance, the Standing Committee of the People's Congress in Jiangsu has done an excellent job in facilitating participation in filing and review process, since it has published all the local rules and regulatory documents filed on the Internet and solicited public comment (just as it does for legislation).^② The cooperation between EU, UNDP and NPC might to a large extent stimulates the experience sharing process among standing committees of people's congresses at various levels in future, just as current project has done in this respect.

Another recommendation would be to create a database to strengthen the efficiency of review mechanisms by posting information about new regulations enacted at the local and provincial levels; identifying contradictory regulations and laws; monitoring requests from citizens and organizations for review; provide notice of hearings for review; tracking and disseminating responses to review requests; and exchanging information between the relevant departments of people's congresses. There would also be the need to train IT personnel at the local and central levels to maintain and update the database.

Because a filing and review system alone will not address the problems of legislative inconsistency, other approaches must also be explored. Expanding political participation in the legislative processes of local

① “河南省人大常委会会议首次网络直播”，2012年3月30日，<http://roll.sohu.com/20120330/n339422907.shtml>。

② Legal Affairs Commission of the Standing Committee of the People's Congress in Jiangsu Province, *A Thought on the Practice of Public Participation in Filing and Review Process*, in the Speech Scripts of the International Seminar on Mechanism of Public Participation in Regulation Filing and review held in Changsha in March 27-28, 2012.

people's congresses, governments and administrative agencies would also allow interested parties to raise objections about the consistency of proposed legislation with higher level legislation. The development of a consultative process, where interested parties, legal experts and members of the drafting body held hearings to study the issues, would further reduce inconsistencies.

In 2011, the Legal Affairs Commission carried out pilot studies on pre-legislative view of two laws: the Marine Navigation Draft Law and the Anti-Domestic Violence Draft Law. The project apparently focused on cost-benefit analysis. This may also be an area for future collaboration, particularly given that cost-benefit analysis is a highly technical area. Pre-legislative evaluation is something that little attention has been paid to so far in China and an area that has been well developed in the US, UK, EU and OECD. It's also an area that builds on and expands all three of the focused areas of the GED project. Pre-legislative evaluation plays a very important role in ensuring law harmonization and making better laws in the abovementioned countries and international organizations. The experience of the EU in regulating pre-legislative evaluation is especially useful for China. The public participation mechanism with excellent feedback procedures in pre-legislative evaluation process in the EU can provide NPC with ready solutions for their current problems existing in public participation in law-making, regulation filing and review, and post-legislation evaluation. So it is definitely an area that EU and UNDP can further cooperate with NPC in future.

No amount of pre-legislation review however is going to solve all of the problems. In some cases, inconsistencies will depend on how the regulation is interpreted and applied, and hence only because discovered when it is implemented. Given the huge numbers of regulations produced every year and the limited number of personnel assigned to filing and review, the obvious approach to deal with legal inconsistency based on the experiences of almost all other legal systems is to allow citizens and interested parties the right to challenge the consistency of legislation in court and then to all the judiciary a greater role in striking down inconsistent legislation. A pilot study could be designed to experiment with different arrangements with respect to standing requirements, level of court, the powers of any given level court to strike down different levels of legislation (eg. , High Courts might have the power to strike down local and ministerial rules, but intermediate courts would only be able to strike down regulative documents originating from agencies at the municipal level or lower in their jurisdiction).

Post-legislative review and the implementation of law

Many local people's congresses and governments are now developing systems for post-legislative review. A conference to review regulations of local people's congresses and their experiences in order to establish best practices would be useful. The goal would to standardize to the extent possible and desirable the contents of review, to enhance public participation, and to increase the effectiveness of the review mechanism. For instance, Shanxi has established a reasonably comprehensive review procedure that includes: (1) who should conduct the review – the principle is to widely involve experts and

representatives from different backgrounds in order to avoid self-evaluation (2) what indicator system should be adopted in review; (3) how to weigh different aspects of review; (4) what the procedure should be like; (5) what review methodology should be used, i. e. research, survey, field trip, public hearings, etc, and (6) how to prepare the final report.

The number and professional capacity of people conducting evaluation remains limited in many places. Accordingly, there is the need for capacity building and institutional strengthening through training of people responsible for legislation oversight.

Another recommendation would be to develop procedural guidelines or regulations for post-legislation evaluation by the NPC. There may also be opportunities for collaboration with the next round of post-legislative review by the NPC. Apparently, the NPC intends to investigate implementation of the Law on the Protection of Disabled Persons and the Law on Promotion of Small and Medium-sized Enterprises.

Post-legislative review and legislative oversight are by no means the only or even the most important mechanisms for ensuring that laws are implemented properly. Various mechanisms exist, including consultative committees,^① administrative supervision bodies somewhat akin to ombudsmen in other countries, a letter and petition system and administrative reconsideration and administrative litigation. All of these mechanisms could be further developed. In addition, new mechanisms for monitoring, supervising and affecting implementation of laws and regulations also need to be developed.

In many countries, class actions and public interest litigation are two of the most important and effective tools for allowing citizens to ensure that laws are properly implemented and to ensure that government decisions are in accordance with law. In China, there are numerous obstacles to class actions and public interest litigation (narrow standing requirements that do not allow citizens or social organization to act as private attorney general, court practices and incentive structures that favor individual suits over collective suits, limits on contingency fees, political concerns about social stability that result in courts refusing to accept certain types of suits, etc.).^② Nevertheless, there are still many collective suits every year, and in recent years there have been experiments with the procuracy or civil organizations having standing to bring public interest suits in environmental cases and consumers' rights cases. A conference or two to collect information and data and to review and evaluate the experiences of these local initiatives would be useful in benchmarking and developing

① Citizen consultative committees are also playing a greater role in governance. According to the State Council's Democracy White Paper: "They can also participate, upon invitation, in other law-enforcement examination activities organized by the people's procuratorates regarding crimes committed by civil servants, and make suggestions and comments on violations of law and discipline discovered. By the end of 2004, a total of 18, 962 people's supervisors had been selected, who had supervised the conclusion of 3, 341 cases."

② For a general discussion of public interest litigation in China, see 黄金荣:《走在法律的边缘——公益诉讼的理念、困境和前景》,载《法制与社会发展》2011年第4期。

best practices and proposals for the rule changes that would be needed to make greater use of these mechanisms. Furthermore, lawyers, legal scholars and civil organizations are the most active players both in public interest litigation aiming at private enforcement of law and in petitions for review aiming at striking down conflicting regulations or rules. Conferences with the participation of these activists would be very helpful both for the NPC and activists in understanding each other better in this regard.

One of the most pressing concerns in China, as in many middle income countries, is how to address socio-economic cases (involving, e.g., land takings, welfare claims, medical care, education, labor rights, environmental issues) where citizens have legitimate claims yet resources are inadequate and institutions too weak to deal with them. The inability of the courts to provide effective remedies in such cases is one of the reasons for the rising number of mass protests. In recent years, grand mediation (*datiaojie*) has been promoted to handle such claims. Grand mediation seeks to address these problems by bringing together government and Party officials, members of the people's congress, judges, and interested parties and organizations. In so doing, grand mediation challenges traditional notions of judicial independence and opens up discussion for what the proper role of the courts and people's congress should be in the process. In 2011, a joint notice was issued promoting more extensive use of grand mediation.^① A large scale empirical study of grand mediation would be useful to collect data on what types of cases are mediated, the nature of the claims, the results, and citizen satisfaction with the results. The study would also shed light on the procedures for the mediation and the various roles of the different actors, and the advantages and disadvantages of this approach.

Traditional assistance on laws in the drafting phase

There are often opportunities for international donors to provide technical assistance for laws in the draft process. Among laws on the agenda for amendment are the Legislation Law and Consumer Protection Law.

Conclusion

Establishment of rule of law is a long term and ongoing process in any country. While China has made

^① Guanyu Shenru Tuijin Maodun Jiufen Da Tiaojie Gongzuo de Zhidao Yijian [Guiding Opinion on Deepening and Pushing Forward Grand Mediation Work for Contradictions and Disputes] [hereinafter Guiding Opinion on Grand Mediation] (jointly issued by the Centr. Comm. for Comprehensive Mgmt. of Pub. Sec., the Sup. People's Ct. & 15 other agencies, Apr. 22, 2011); see also Guiding Opinion on Grand Mediation, *supra* note 405. For examples of other circulars, see Guowuyuan Guanyu Jiaqiang Fazhi Zhengfu Jianshe de Yijian [State Council Opinion on Strengthening the Construction of Rule of Law Government] (issued by the St. Council, Oct. 10, 2010, effective Oct. 10, 2010) 2010 GUO FA [ST. COUNCIL NOTICES] no. 33, para. 23, *available at* http://www.gov.cn/zwgc/2010-11/08/content_1740765.htm; Zuigao Renmin Fayuan Guanyu Jin Yibu Guanche Tiaojie Youxian, Tiaopan Jiehe Gongzuo Yuanze de Ruogan Yijian [SPC Several Opinions on Further Implementing the Work Principle of "Giving Priority to Mediation and Combining Mediation with Judgment"] [hereinafter SPC Opinion on Giving Priority to Mediation] (issued by the Sup. People's Ct., June 7, 2010, effective) 2010 FAFA [SUP. PEOPLE'S CT. DOC.] no. 16, *available at* http://www.court.gov.cn/qwfb/sfwj/yj/201008/t20100811_8489.htm

considerable progress, much remains to be done. International donors have provided effective assistance in the reform process. However, as China has grown and the legal and political systems have evolved, new issues and challenges have arisen that require new approaches and strategies on the part of international donor agencies. This report has outlined one possible strategy. In addition, the report has provided a number of specific areas where reforms are needed, including areas where international donors such as the EU and UNDP may be able to play a positive role.