

# Public Participation in China's Environmental Lawmaking: In Pursuit of Better Environmental Democracy

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## ABSTRACT

For a country without a mature representative democracy, the development of public participation mechanisms in lawmaking processes is of paramount importance and deserves research. In China, public participation in lawmaking through a one-stage disclosure and comment process is now routine, and the revision of the Environmental Protection Law beginning in 2012 gave birth to a new mechanism featuring a two-stage disclosure and comment process. Expanding public participation can benefit environmental democracy by bringing environmental insights and interests into environmental lawmaking, balancing economic and environmental interests and strengthening public participation in the implementation of law. Recent environmental lawmaking activities with the new public participation mechanism show positive progress towards a more transparent and inclusive lawmaking process, but also limitations regarding the effective interaction between the public and the legislature, the meaningful consideration of public comments into legislative decisions, and the mobilisation of civil society and environmental NGOs. China needs both short- and long-term measures to address the problems and thus fully realise the benefits of public participation.

**KEYWORDS:** environmental lawmaking, public participation, 'disclosure and comment'

## 1. INTRODUCTION

Public participation has been an important topic in China's environmental policy debate. A core issue is the proper mechanism to disclose legislative proposals for public comments in the country's lawmaking process. After decades of practice without institutionalisation, China revised its Legislation Law in 2015 that requires the National People's Congress (NPC),<sup>1</sup> the country's top organ with legislative powers,

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1 The NPC is China's highest organ of state power, include the authority to enact all 'basic laws' (jiben fa), to supervise the implementation of such laws and to make amendments to the Constitution. The Constitution of 2004 of PRC (adopted on 4 December 1982, amended on 14 March 2004) arts 57 and 62.

to disclose all its legislative bills for public comment during the deliberation stage ('disclosure and comment').<sup>2</sup> A typical practice under this rule has been a one-time disclosure and comment of the legislative bill from the NPC. But the recent Environmental Protection Law (EPL) revision process witnessed an unprecedented move from the NPC with a two-stage disclosure and comments process. The draft bill is disclosed for public comments, deliberated by the lawmakers and then disclosed again for a second round of public comments.<sup>3</sup> This move marks a significant change in China's environmental lawmaking processes, and the new two-stage disclosure and comment process has been followed in the revision of other important environmental laws including the Air Pollution Prevention and Control Law (APPCL) beginning in 2014 and the revision of the Wildlife Animals Protection Law (WAPL) beginning in 2015.

In China, public participation in the legislative process is a relatively new academic topic.<sup>4</sup> Public participation has apparent benefits of balancing policy interest,<sup>5</sup> incorporating public values,<sup>6</sup> bringing expertise<sup>7</sup> and facilitating compliance and enforcement.<sup>8</sup> As a specific mechanism, disclosure of legislative bills for public comments can make the legislative process more transparent: it informs the public of debated matters, improves the interactions between the people and the legislature, and demands incorporation of public opinions into law. In addition, it compensates

- 2 The Legislation Law of 2015 of PRC (adopted on 15 March 2000, effective on 1 July 2000, amended on 15 March 2015) art 37 ('For a bill on the agenda of a session of the Standing Committee, the draft law and an explanation of the drafting and amendment thereof, among others, shall, after the end of the session of the Standing Committee, be released to the public to solicit opinions, unless a decision not to release the same is made at the Chairmen's Meeting. The period during which public opinions are solicited on the same shall not be less than 30 days. Information on the solicitation of opinions shall be released to the public'.)
- 3 The first disclosure was on 31 August 2012; the second on 17 July 2013. On both occasions, the draft amendments were published on the NPC's website <[http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2013-07/17/content\\_1801189.htm](http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2013-07/17/content_1801189.htm)> accessed 10 March 2017.
- 4 See Gong Gu, 'Environmental Lawmaking Should Strengthen Public Participation' (2011) 7 *Environmental Protection* 44; Yang Tianyi and others, 'Public Participation in Environmental Legislation from the Perspective of Ecological Crisis' (2013) 2 *Ecological Economy* 161; Song Jufang, 'Thoughts of Public Participation in Environmental Lawmaking from the Perspective of Deliberative Democracy' (2014) 5 *Journal of Gansu Political Science and Law Institute* 127; Yan Bin, 'The Deficiency and Perfection of Public Participation System in the Legislative' (2015) 1 *Journal of North China University of Water Resources and Electric Power* (Social Science Edition) 84. In comparison, public participation in China's environmental decision-making, mostly notably environmental impact assessment, has been well studied; National Research Council, *Public Participation in Environmental Assessment and Decision Making* (The National Academies Press 2008) 2. See Yuhong Zhao, 'Public Participation in China's EIA Regime: Rhetoric or Reality?' (2010) 22 *Journal of Environmental Law* 89; Marc Mihaly, 'Citizen Participation in the Making of Environmental Decisions: Evolving Obstacles and Potential Solutions Through Partnership With Experts and Agents' (2009) 27 *Pace Environmental Law Review* 151.
- 5 Zhu Jingwen, 'Some Issues Regarding Public Participation in Legislation' (2000) 1 *Zhejiang Social Sciences* 73; Xu Zhangrun, 'From Policy Game to Lawmaking Game: Research on the Legislative Democratization Process in Contemporary China' (2008) 3 *Politics and Law* 2.
- 6 Thomas Beierle and Jerry Cayford, *Democracy in Practice: Public Participation in Environmental Decisions* (Resource for the Future 2002) 6.
- 7 Gu (n 4) 44.
- 8 National Research Council (n 4) 44. Tianyi and others (n 4) 162.

for the deficiencies in public debates over social issues due to a less-developed representative democracy and civil society.<sup>9</sup>

This article argues that the new two-stage disclosure and comment process has contributed to improving public participation in Chinese lawmaking processes despite its defects and other limitations and provides suggestions for the further improvement of public participation in lawmaking in China. Section 2 introduces the development of public participation mechanisms into environmental lawmaking by focusing on the disclosure and comment process. Section 3 explains the benefits of public participation in environmental lawmaking in a country without mature representative democracy. Section 4 evaluates the efficacy of current public participation mechanisms in incorporating public values and knowledge in lawmaking processes, as well as mobilising the civil society and environmental NGOs. Section 5 proposes suggestions to enhance public participation in environmental lawmaking both in the short and long term.

## 2. DEVELOPMENT OF PUBLIC PARTICIPATION MECHANISM IN ENVIRONMENTAL LAWMAKING

China has had a long history of public participation in lawmaking practices since the foundation of the People's Republic in 1949. The earliest example was the enactment of China's first Constitution in 1954. Back then, the draft was disclosed nationwide for public discussion following Chairman Mao's instruction to 'coordinate the cadre and the mass' in legislative work.<sup>10</sup> However, even it was implemented in practice, the principle of public participation in lawmaking, as well as its specific mechanisms, were never institutionalised as part of China's statutory law throughout the 20th century. Fortunately, the principle has enjoyed a new birth and become formalised in the past two decades. Since 2000, the Chinese Communist Party (CCP or Party) has frequently espoused the concepts of 'democratic lawmaking' or 'open-door lawmaking' in several of its important policy announcements, propelling the idea to become a fundamental principle in practice and, eventually, part of the written law.<sup>11</sup>

9 The NPC has been widely criticised on the grounds that its delegates are indeed pre-arranged rather than elected; see Cheng Zhuru, 'Delegation and Supervision: Several Issues of Improving People's Congress System' (2005) 6 *Academic Monthly* 34, 38 (criticising that the proportion of government officials in the delegates is too high because of pre-arrangement instead of election); that it has not performed actively on protecting citizen rights and supervising the government; Cai Dingjian, 'Research on the Reform and Perfection of the NPC System' (2004) 6 *Tribune of Political Science and Law* (Journal of China University of Political Science and Law) 8, 10; and that its lawmaking process is dominated by powerful ministries of the State Council; Du Wanping, 'Environmental Legislation: Process and Procedure' (2008) 3 *Wuhan University Journal (Philosophy & Social Sciences)* 320–24, 320; Tianyi and others (n 4) 162.

10 Talking about the draft of 1954 Constitution, Chairman Mao pointed that '[t]he drafting adopts the approach of combining leading organs' opinions and the mass's opinions. After considering few leaders' opinions and opinions of more than 8,000 cadres, the draft was open for public comments and discussion nationwide, therefore combining the opinions of the central government and the people all over the country. We adopted this approach in the past and shall continue using this approach in the future, especially for all important legislations'. See Mao Zedong, *Selections from Mao Zedong Volume 5* (People Press 1977) 126.

11 At the 17th National Congress of the CCP, former Party Secretary Hu Jintao asked for 'scientific and democratic legislation' in his report. Hu also asked for 'expansion of channels for people's orderly participation in the legislative process' in his report at the 18th-National Congress of the CCP. Incumbent

## 2.1 A Brief History of the Disclosure and Comment Process

In the past 60 years, the disclosure and comment process has always been a primary approach for public participation in China's lawmaking processes. Public discussion before the enactment of the Constitution in 1954 engaged more than 150 million people who provided comments.<sup>12</sup> Back then, the disclosure and comment process was limited to only the laws closely related to all people's interests or with a major impact on the society:<sup>13</sup> from 1954 to 2000, only eight laws had been disclosed for public comments.<sup>14</sup> China has its first Legislation Law in 2000. It stipulated that a legislative bill may be published for soliciting opinions. This first prescribed the legal basis for the disclosure and comment process under 2000 Legislation Law.<sup>15</sup> In 2008, the Council of Chairmen of NPC (NPC-CC) made the requirement mandatory for all lawmaking processes in general.<sup>16</sup> The revised Legislation Law in 2015 confirmed this change.<sup>17</sup> A brief history of the disclosure and comment process divided into three periods is shown in Table 1.

## 2.2 Legislation Law: The NPC Lawmaking Process and the Disclosure and Comment Process

As legislative practices, all environmental laws have been enacted by the Standing Committee of the NPC (NPC-SC) instead of the NPC.<sup>18</sup> The Legislation Law, which guides China's legislative process on the national level, lays out a four-step process for making and amending laws by the NPC-SC: proposal, deliberation, voting, and promulgation.<sup>19</sup> Under the Legislation Law, bills must be first proposed by a competent state organ or entity. While the Legislation Law authorises several entities to propose bills,<sup>20</sup> in practice the proponent is usually either the State

Party Secretary Xi Jinping emphasised 'scientific and democratic lawmaking' in his report at the 4th-pleenary session of 18th-CCP Central Committee. So far, 'scientific and democratic lawmaking' has officially become a top-down party instruction for legislative work.

- 12 Cui Qingxin, 'Triple-Deliberation System, Disclosing for Comments, Pre-Enactment Evaluation: 60 Years' Evolution of Legislative Mechanism Shining Democracy and Scientificity' *Xinhuanet News* (Beijing, 13 September 2014) <[http://news.xinhuanet.com/politics/2014-09/13/c\\_1112468950.htm](http://news.xinhuanet.com/politics/2014-09/13/c_1112468950.htm)> accessed 10 March 2017.
- 13 Zhu Jingwen, 'Public Participation in China's Lawmaking' (*AISIXIANG.com*, 8 June 2010) <<http://www.aisixiang.com/data/34157-2.html>> accessed 10 March 2017.
- 14 *ibid.*
- 15 The Legislation Law of 2000, art 35.
- 16 See Zhu Lei, 'Open-the-Door Legislation Pushes Forward Democratization of Legislation' *Legal Daily* (Beijing, 10 September 2014) <[http://www.legaldaily.com.cn/zfzz/content/2014-09/10/content\\_5755337\\_3.htm](http://www.legaldaily.com.cn/zfzz/content/2014-09/10/content_5755337_3.htm)> accessed 10 March 2017.
- 17 The Legislation Law of 2015 (n 2) art 37.
- 18 As by April 2014, all national environmental laws are passed by the NPC-SC, including the EPL. See Mu Zhilin, 'Research on Interests in Environmental Legislation' (PhD Dissertation of Renmin University of China 2014) 91.
- 19 Xiao Zhu, *Environmental Law* (China Environmental Science Press 2011) 42. Here in this section we cite provisions of the 2015 Legislation Law. The 2015 Legislation Law generally inherits the institutional framework for national lawmaking from the 2000 Legislation Law. Therefore, although our case studies took place before the 2015 revision, the general lawmaking process then applies now.
- 20 Competent proponents include the Chairmen's Meeting, the State Council, the Central Military Commission, the Supreme People's Court (SPC), the Supreme People's Procuratorate (SPP) and specialised committees of the NPC. A group of 10 or more members of the NPC's Standing Committee (NPC-SC) can also propose bills. The Legislation Law of 2015 (n 2) art 26.

**Table 1. Development of 'Disclosure and Comment' in NPC Lawmaking Processes**

Time period	Institutional basis	Examples	Features
1954–2000	No institutional basis for 'disclosure and comments' procedure.	The 1954 Constitution, the revision of the Constitution (1982) and the Contract Law (1999).	Few legislative bills except those closely related to peoples' interests and having major impact were disclosed for public comments.
2000–08	The 2000 Legislation Law stipulated that important legislative bills may be disclosed for comments by decision of the NPC-CC.	The Property Right Law (2007), the Labor Contract Law (2007), the Employment Promotion Law (2007) and the revision of the Water Prevention and Control Law (2008).	More legislative bills were disclosed and the amount of comments also increased. The draft of the Labor Contract Law received more than 200,000 pieces of opinions, the highest in history at that point.
2008–present	The Council of Chairmen of the 11th NPC decided to disclose all legislative bills for comments except for the ones inappropriate for release. The Legislation Law revised in March 2015 confirmed this decision.	The Patent Law (2008), the Torts Law (2009), the Social Insurance Law (2010), the Revision of Personal Income Tax Law (2011) and the Clean Production Promotion Law (2012).	Most drafts were disclosed. The draft amendment of the Labor Contract Law again received most comments (more than 550,000).

Council or a NPC special committee.<sup>21</sup> At this stage, the proposing authority will hold seminars and forums mainly to collect comments from relevant authorities and experts, but the public are rarely informed and involved.

Public participation occurs at the next stage and is referred to as 'deliberation'. After a bill is proposed, the Standing Committee of the NPC (NPC-SC) will act on

21 NPC special committees' main lawmaking-related responsibilities include proposing legislative bills themselves and providing formal comments on the bills proposed by the State Council and other entities within the special committees' scopes of functions. The Organic Law of the NPC of 1982 (adopted on 10 December 1982, effective on 10 December 1982) art 37.

it.<sup>22</sup> The NPC-CC first places a bill on the meeting agenda of the NPC-SC.<sup>23</sup> The Legislation Law then requires that the legislative bill on the agenda generally must be ‘deliberated’ three times before voting.<sup>24</sup> During the deliberation, delegates voice their opinions, which the Law Committee of NPC (NPC-LC) will subsequently consider and reflect upon in the bill-revising process. After the bill is adequately revised, deliberation ends and is followed by a vote at a plenary meeting at the NPC-SC, where the bill needs simple majority support for adoption.<sup>25</sup> Then the law will be promulgated by the President.<sup>26</sup>

The disclosure and comment process, as a primary mechanism for public participation,<sup>27</sup> is part of the deliberation process. After the deliberation of a bill draft, the NPC-SC will post the draft on the NPC website of the NPC with a brief explanatory statement to allow public comments for 30 days.<sup>28</sup> In this way, everyone with Internet access can read the whole draft and submit his comments. While the Legislation Law does not specify how the solicited public comments shall be considered during the NPC-LC revision, normally the NPC-LC will sort out the comments and list representative opinions in its report on the next draft to the NPC-SC.<sup>29</sup> Compared to other approaches such as seminars, forums and hearings under the Legislation Law,<sup>30</sup> which could only engage limited and selective groups of participants,<sup>31</sup> the disclosure and comment process allows broader public participation and also serves as basis for more focused communication in legislative hearings.<sup>32</sup>

### 2.3 The Two-Stage Disclosure and Comment Process

As the language in the Legislation Law only ambiguously requires ‘legislative drafts’, rather than ‘every draft’, to be disclosed,<sup>33</sup> whether to use the disclosure and

22 The NPC-SC is authorised to interpret the Constitution, pass laws other than basic laws, interpret laws and supervise the work of the other principal organs of government including the State Council, the Central Military Commission, the Supreme People’s Procuratorate and the Supreme People’s Court. The Constitution of 2004 (n 1) art 67.

23 The Legislation Law of 2015 (n 2) art 25.

24 *ibid*, art 29. However, it may be put to a vote after only one or two deliberations if general agreement is reached on a bill or the bill to be discussed involves a simple or partial revision of a law. See The Legislation Law of 2015 (n 2) art 30.

25 *ibid*, art 41.

26 *ibid*, art 44.

27 Jingwen (n 5) 74.

28 The Legislation Law of 2015 (n 2) art 37.

29 At the beginning of every deliberation meeting, a report supplementing the draft will be submitted to the NPC-SC with the draft text. During the EPL revision, the report supplementing the first draft amendment (hereafter ‘first draft report’) was submitted by the EPRCC, explaining the reasons for the proposal. The reports on subsequent drafts were submitted by the NPC-LC, explaining modifications on the previous drafts.

30 The Legislation Law of 2015 (n 2) art 36. Legislative hearings have not yet been applied in NPC environmental lawmaking processes. See Wanping (n 9) 323.

31 Because laws do not stipulate specific methods to select participants for the seminars, forums and hearings, competent legislative authorities are inclined to only invite representatives from relevant authorities and experts that they are familiar with.

32 Zhu Liyu and Yi Youlu, ‘Pengzhen’s Democratic Legislation Thought and Its Impact on Legislative Practices’ (2008) 9 *Truth Seeking* 62.

33 The Legislation Law of 2015 (n 2) art 37.

comment process once or more is subject to the legislative authorities' discretion. In practice, although the disclosure and comment process had become universal in NPC lawmaking, none of the legislative bills had been disclosed more than once until the EPL revision beginning at 2012. Normally, only the first draft of a legislative bill under deliberation was released to the public.

The practice of a two-stage disclosure and comment process was born in the EPL revision process, during which both the first draft amendment and the second draft amendment were disclosed for public comments.<sup>34</sup> It was not in fact a pre-arranged, purposeful design, but a byproduct of a temporary NPC-LC decision, where the second draft amendment turned out to be substantially distinguished from the first one.<sup>35</sup> In addition to this change, another unique feature of the EPL revision process was that the draft amendments were deliberated on four times instead of the normal three times as stipulated by the Legislation Law.

As the third draft amendment of the EPL was not released, public comments were solicited in another way—in the form of a pre-enactment evaluation seminar.<sup>36</sup> The NPC-LC and the Law Affairs Commission of the NPC-SC (NPC-SC-LAC)<sup>37</sup> held this seminar to solicit opinions on whether the fourth draft amendment under formulation was mature enough for final deliberation and voting.<sup>38</sup> There was no formal rule on the selection of participants for the seminar, and an NPC-SC-LAC official said that representatives from environmental organisations would not be excluded in this process.<sup>39</sup> For instance, Ma Jun, the director of the environmental NGO Institute of Public & Environmental Affairs (IPE), was invited.<sup>40</sup>

After the EPL revision, this new public participation mechanism was also used in the revision processes of the APPCL and the WAPL, two other major environmental statutes in China. During the revision of the APPCL, a first draft was disclosed for

34 The text of the first draft amendment is disclosed on the <npc.gov.cn> on 31 August 2012. The text of the second draft amendment is disclosed on the <npc.gov.cn> on 17 July 2013 <[http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2013-07/17/content\\_1801189.htm](http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2013-07/17/content_1801189.htm)> accessed 10 March 2017.

35 More details will be discussed in section 3.1 of this article.

36 When the Legislation Law was later revised in 2015, this pre-enactment evaluation seminar was stipulated as an optional procedure. The Legislation Law of 2015 (n 2) art 39 ('For a bill to be placed on the agenda of a session of the NPC-SC for deliberation and adoption, before the NPC-LC produces a report on the deliberation result, the operating divisions of the NPC-SC may assess the feasibility of major rules in the draft law, the timing of the issuance of the law, the social effects of the implementation of the law, and the possible problems, among others. An explanation on the assessment shall be provided by the NPC-LC in the report on the deliberation result.')

37 NPC-SC-LAC is a NPC-SC commission in charge of legislative affairs, and shares staff with the NPC-LC.

38 See Zhang Mingqi, *Report of Review of the Draft Amendment (Fourth draft report) of the EPL of PRC by the Law Committee of the NPC* (Presented on the 8th Session of the Standing Committee of the 12th NPC on 21 April 2014) <[http://www.npc.gov.cn/wxzl/gongbao/2014-06/23/content\\_1879673.htm](http://www.npc.gov.cn/wxzl/gongbao/2014-06/23/content_1879673.htm)> accessed 10 March 2017. (hereafter 'Fourth Draft Report of EPL revision')

39 Generally, all kinds of entities are invited to the meeting, just as with disclosure for comment. Particularly the entities, whose interests will be influenced by the future law, will have opportunities of acquiring feedback and communication. Grassroots organisations, interested parties whose comments have not been adopted and departments impacted by the new law would be invited. However, the MEP generally would not be invited because its presence is considered enough. Interview with a NPC-SC-LAC staff (Beijing, 14 February 2016).

40 On 24 February 2016, the first author of this article verified this fact by making a phone call to Miss Wang Jinjin, Deputy-Director of the IPE.

**Table 2. Key Facts of Public Participation in EPL Revision, APPCL Revision and WAPL Revision**

	First disclosure and comment	Second disclosure and comment	Pre-enactment evaluation seminar
EPL revision	<ul style="list-style-type: none"> <li>• Lasted 30 days.</li> <li>• Received 11,748 comments.</li> <li>• Impacted 14 articles in the second draft.</li> </ul>	<ul style="list-style-type: none"> <li>• Lasted 30 days.</li> <li>• Received 2,434 comments.</li> <li>• Impacted seven articles.</li> </ul>	<ul style="list-style-type: none"> <li>• 10 days before the final deliberation.</li> <li>• Impact was not Illustrated.</li> </ul>
APPCL revision	<ul style="list-style-type: none"> <li>• Lasted 30 days.</li> <li>• Received 5,047 comments.</li> <li>• Impacted 25 articles.</li> </ul>	<ul style="list-style-type: none"> <li>• Lasted 30 days.</li> <li>• Received 1,762 comments.</li> <li>• Impacted 11 articles.</li> </ul>	<ul style="list-style-type: none"> <li>• 28 days before the final deliberation.</li> <li>• Impact was not illustrated.</li> </ul>
WAPL revision	<ul style="list-style-type: none"> <li>• Lasted 30 days.</li> <li>• Received 6,205 comments.</li> </ul>	<ul style="list-style-type: none"> <li>• Lasted 23 days.</li> <li>• Received 878 comments.</li> </ul>	<ul style="list-style-type: none"> <li>• Has not been reported yet.</li> </ul>

comments on 29 December 2014; and a second draft was disclosed on 6 July 2015. An evaluation seminar was then held to solicit public opinions on the feasibility, time, social effects and potential problems of the draft revisions before a third draft was submitted for voting.<sup>41</sup> The WAPL draft amendments were disclosed for public comments on 30 December 2015 and 27 April 2016, respectively. A brief summary on public participation activities in the EPL, the APPCL and the WAPL revisions is provided in Table 2 further below.

The revisions of the EPL, the APPCL and the WAPL, considered together, show that a new public participation mechanism, featuring the two-stage disclosure and comment process and a pre-enactment evaluation seminar, is becoming routine in China's environmental lawmaking.<sup>42</sup>

### 3. HOW PUBLIC PARTICIPATION IN ENVIRONMENTAL LAWMAKING CAN BENEFIT ENVIRONMENTAL DEMOCRACY

The section above shows a newly emerged positive paradigm of more public participation—a two-stage disclosure and comment process during the NPC-SC lawmaking process—in recent environmental legislative practices in China. What benefits, if any, can such practices bring to China's environmental policymaking? In terms of

41 Sun Baoshu, *Report of Review of the Draft Amendment (Third draft report) of the APPCL of PRC by the Law Committee of the NPC* (Presented on the 16th Session of the Standing Committee of the 12th NPC on 24 August 2015) <[http://www.npc.gov.cn/wxzl/gongbao/2015-11/10/content\\_1951914.htm](http://www.npc.gov.cn/wxzl/gongbao/2015-11/10/content_1951914.htm)> accessed 10 March 2017. (hereafter 'Third draft report of APPCL revision')

42 Some non-environmental laws have also used this new public participation mechanism, including in the revision processes of the Consumers' Right and Benefit Protection Law (2014), the Budget Law (2014), the Asset Evaluation Law (2016) and the revision of the Private Education Promotion Law (under deliberation).



environmental lawmaking and enforcement, we believe that increased public participation, such as the two-stage disclosure and comment process, can at least benefit China's environmental policymaking in three aspects: incorporating technical expertise in the environmental decision-making process; balancing between environmental and economic interests, and enhancing more public control over the subsequent environmental administrative practices.

### 3.1 Bringing Environmental Expertise and Insights to the Legislature

The first benefit from more public participation in China's environmental lawmaking is to bring technical expertise to the country's legislature. This alleviates the tension between the NPC's relative lack of talents and resources in the field of environmental policy and the country's urgent need for comprehensive and quality legislation to tackle its environmental challenges. Environmental policymaking, due to the nature of the issues, often requires highly technical and scientific understanding of the matter to be regulated. Despite widespread public concern about environmental issues, the NPC currently lacks the capacity to respond effectively.

In the previous section, we explained that major legislation in China usually starts with a proposal from the State Council or special committees in the NPC. In the context of environmental law, that special committee is the NPC's Environmental Protection and Resources Conservation Committee (EPRCC).<sup>43</sup> As such, EPRCC plays an important role as the primary proponent for most of China's major environmental legislation on the national level: it proposes its own legislative bills as well as provides formal comments on the bills proposed by other competent entities to put the bills in good shape before the NPC-SC's deliberation and voting.<sup>44</sup> The Committee's expertise is particularly critical because of the environmental context: in the NPC-SC, most other delegates do not have expertise on environmental issues. Therefore, EPRCC's formal comments usually are deemed as the most reliable professional opinions for NPC-SC's consideration in environmental lawmaking.<sup>45</sup> It is, therefore, reasonable to expect that EPRCC's members have a strong background, either through education or professional experiences, on environmental issues.<sup>46</sup>

Unfortunately, the talents for environmental policymaking at the EPRCC are at most barely adequate. According to a study on the composition of the EPRCC of the 11th NPC, only eight of all the thirty-four members possessed an environment-related educational background; only thirteen had relevant working experiences; and

43 The NPC did not form a special committee to address environmental issues until 1993, when the role of the NPC's special committees started expanding as a general political trend. See Zhang Hongjun and Richard Ferris 'Shaping an Environmental Protection Regime for the New Century: Environmental Law and Policy in the People's Republic of China' (1998) 6 *Asian Journal of Environmental Management* 35, 41.

44 The Organic Law of the National People's Congress of 1982, art 37.

45 Liu Leming, 'Research on Delegate Structure of the NPC Specialized Committees – An Analysis Based on the 271 Delegates of the Specialized Committees of the 11<sup>th</sup> NPC' (2012) 12 *People's Congress Study* 11–19, 16.

46 There is a distinction between the members and staff of the ERPCC. Members of the EPRCC are all delegates of the NPC, many of which are also NPC-SC members. The ERPCC also has a non-delegate staff team of about 30 people.

only five had both.<sup>47</sup> To be fair, it is not an EPRCC-specific problem: NPC special committees in general have long been criticised as, at the outset veiled ‘elderly homes’ for retired cadres of the party, the government and the army—even though, theoretically, positions at these committees should be reserved for experts in the relevant professional or technical fields.<sup>48</sup> Although the ERPCC delegates have become younger (and thus more educated and specialised) since the 6th NPC, delegates aged between 51 and 70 years old (especially those between 61 and 70 years old) still dominated the ERPCC of the 11th NPC.<sup>49</sup> Retired cadres of the party, the government and the army accounted for 81.6% of all the 271 delegates of the EPRCC of the 11th NPC, while delegates coming from the relevant industries or fields were very few.<sup>50</sup>

The relative lack of talents and resources in the environmental field is not the only problem at the EPRCC. It is in clash with the simultaneous increase in need for Committee actions. Stationed personnel at the Committee are, consequently, simply unable to undertake the obligated workload. The Bill Chamber of the EPRCC, for example, is responsible for legislative affairs at the Committee. The Chamber only has eight employees.<sup>51</sup> However, since the 12th NPC beginning in 2013, this eight-person entity has been delegated to provide formal comments on 173 legislative bills proposed by NPC delegates.<sup>52</sup> In addition to those, it has proposed five legislative bills of its own: the Soil Pollution Prevention and Control Law, the revision of the Wild Animal Protection Law, the Nuclear Safety Law, the revision of the Circular Economy Promotion Law and the Deep-Sea and Sea-Floor Area Resource Exploration and Development Law.<sup>53</sup> In 2015 alone, two bills, the revision of the Wild Animal Protection Law and the Deep-Sea and Sea-Floor Area Resource Exploration and Development Law, came from the EPRCC to the NPC-SC for deliberation.<sup>54</sup>

It is challenging, under such circumstances, for a Committee with little expertise to navigate on its own this sea of legislative proposals and comments on a wide range of environmental issues. More comments from people educated and working in the environmental fields, through public participation in the commenting and revising

47 The term of the 11th NPC was from 2008 to 2013. See Leming (n 45) 17.

48 *ibid.* 18.

49 *ibid.*

50 *ibid.*

51 Interview with an official of the EPRCC (Beijing, 10 February 2016).

52 ERPCC, *Report on the Deliberation of the Legislative Proposals Delegated by the Presidium of the 3<sup>rd</sup> Plenary Session of the 12<sup>th</sup> NPC* (Submitted to the NPC-SC on 30 October 2015) <[http://www.npc.gov.cn/npc/xinwen/2015-12/28/content\\_1957346.htm](http://www.npc.gov.cn/npc/xinwen/2015-12/28/content_1957346.htm)> accessed 10 March 2017; ERPCC, *Report on the Deliberation of the Legislative Proposals Delegated by the Presidium of the 2<sup>nd</sup> Plenary Session of the 12<sup>th</sup> NPC* (Submitted to the NPC-SC on 26 December 2014) <[http://www.npc.gov.cn/wxzl/gongbao/2015-02/27/content\\_1932689.htm](http://www.npc.gov.cn/wxzl/gongbao/2015-02/27/content_1932689.htm)> accessed 10 March 2017; ERPCC, *Report on the Deliberation of the Legislative Proposals Delegated by the Presidium of the 1<sup>st</sup> Plenary Session of the 12<sup>th</sup> NPC* (Submitted to the NPC-SC on 25 December 2013) <[http://www.npc.gov.cn/npc/xinwen/2014-01/27/content\\_1825110.htm](http://www.npc.gov.cn/npc/xinwen/2014-01/27/content_1825110.htm)> accessed 10 March 2017.

53 NPC-SC, *Legislative Plan of 12<sup>th</sup> NPC-SC* (revised on 1 June 2015) <[http://www.npc.gov.cn/npc/sjb/2015-08/03/content\\_1942944.htm](http://www.npc.gov.cn/npc/sjb/2015-08/03/content_1942944.htm)> accessed 10 March 2017.

54 See (n 51).

process, will certainly provide additional professional and practical insight to the benefit of the Committee and the NPC-SC's deliberation and decision-making.

### 3.2 Balancing Economic and Environmental Interests in Lawmaking

A second benefit from greater public participation in environmental lawmaking is to push for more consideration of environmental interests in the legislative process. In the big picture, more participation will enable the NPC to more properly balance economic and environmental interests in China's environmental legislation. This benefit can be directly seen through the two-stage disclosure and comment process in the revision process of the EPL.

As background, NPC lawmaking has, for a long time, been seriously impacted in practice by political powers who disfavour environmental protection. A few powerful bureaucratic and interest groups, including economic ministries such as the National Development and Reform Committee (NDRC), large state-owned enterprises and local governments share a common policy priority of economic development. These players formed an 'economic camp' and have stronger political influence in NPC than the other 'environmental camp', which, on the national level, is essentially just the Ministry of Environmental Protection (MEP). Major environmental legislation often witnesses the power struggle between these two camps, which will determine the extent of a promulgated law's inclination to achieve environmental goals.<sup>55</sup>

Unsurprisingly, a similar political fight took place in the revision of the EPL, a fundamental statute in China's environmental policy framework. The drafting work for the EPL revision bill was initially delegated by the EPRCC to the MEP, a common bill-drafting practice for environmental legislation.<sup>56</sup> In line with its radical standpoint on environmental protection, the MEP worked out a draft amendment with major revisions on the 1989 EPL and conveyed it to the EPRCC.<sup>57</sup> Usually, following such communication from a State Council ministry and preparing its draft amendment for the NPC-SC deliberation, NPC's special committee would make adjustments based on the Ministry's submission instead of placing it aside and working from scratch. But this time the EPRCC discarded the MEP submission and prepared a new draft amendment reflecting its idea of limited revision.<sup>58</sup> This new draft amendment took an incrementalist approach with 47 articles, only including the most urgent, feasible and commonly agreed upon improvements that required little change to current laws.<sup>59</sup> One important reason for the EPRCC to take this

55 See Zhang Lei and others, 'Power Politics in the Revision of China's Environmental Protection Law' (2013) 6 *Environmental Politics* 1029, 1032.

56 Lv Zhongmei, 'The Past and Present of Environmental Protection Law' (2014) 5 *J of Political Science and Law* 51, 55. As explained in the previous sections, competent special committees of the NPC and State Council ministries often work together when drafting laws pertaining to particular subject matters.

57 The radicals argued for major changes to reaffirm environmental protection as a fundamental national policy and to strengthen and operationalise key environmental principles (eg prevention, public participation, environmental justice). They also advocated strengthening the responsibility and supervision power of state environmental authorities, enhancing their legal responsibility and accountability and removing articles that conflict with other environmental laws. See Lei and others (n 55) 1032.

58 *ibid* 1032.

59 As explained by the EPRCC, the comments on new regulatory policies that current environmental laws did not mention and were highly controversial among the relevant ministries were not adopted, such as

approach, as some scholars suggested, was that then EPRCC leader was eager to get the revision passed during his term in office—and a radical, more environment-friendly revision would face strong opposition from the economic camp and thus doom the final passage of the revision.<sup>60</sup>

While major conflicts between the two camps were well known to government insiders, the general public was largely unaware of what happened to the EPL revision at that time. Feeling overpowered by its opponents, the MEP believed that its position might be enhanced by drawing more public pressure upon the EPL revision.<sup>61</sup> In the past, the MEP would do so by taking indirect actions, such as cooperating with sympathetic state media to spread its ideas for public support.<sup>62</sup> But the MEP decided to voice out its standpoints directly this time: two months after the release of the first draft amendment, the Ministry's opposition appeared directly on its official website.<sup>63</sup> The open letter contained the Ministry's 34 arguments against the first draft amendment.<sup>64</sup> Unprecedented in China's legislative practices, this action pushed the customary hidden intra-governmental fights into the spotlight.<sup>65</sup>

After the drama, the NPC-LC initiated another consultation process.<sup>66</sup> The result was a significantly revised draft amendment for the second deliberation on 26 June 2013. This second draft amendment made forty-five modifications based on the first draft amendment; it had fifty-nine articles, twelve more than the first draft amendment.<sup>67</sup> The draft amendment incorporated about 20 of the 34 arguments from the

the pollution discharge permit system, environmental pollution liability insurance system and environmental function zoning system. See Wang Guangtao, *Illustration of the Draft Amendment of the EPL of PRC* (Presented on the 28th Session of the Standing Committee of the 11th NPC on 27 August 2012) <[http://www.npc.gov.cn/wxzl/gongbao/2014-06/23/content\\_1879667.htm](http://www.npc.gov.cn/wxzl/gongbao/2014-06/23/content_1879667.htm)> accessed 10 March 2017. (hereafter 'First Draft Report of the EPL Revision').

60 Lei and others (n 55) 1032.

61 Despite the importance of MEP's mission, the agency has faced many barriers to enforcement from other central authorities and local governments. This has increased the need for MEP to rely more heavily on environmental NGOs for support and services. See Robert Percival and Zhao HuYiu, 'The Role OF Civil Society in Environmental Governance in the United States and China' (2014) 24 *Duke Environmental Law & Policy Forum* 141, 150. MEP sees the public as the largest stakeholder of the environment and wants to set up a mechanism to involve the public for rational and constructive participation. See Zhao (n 4) 123.

62 The MEP utilised state media to get support from the public during the APPCL revisions in 1995 and 2000. See William Alford and Benjamin Liebman, 'Clean Air, Clear Processes? The Struggle over Air Pollution Law in the People's Republic of China' (2000) 52 *Hastings Law Journal* 703, 717.

63 Ministry of Environmental Protection, *Letter of Opinions and Suggestions on Draft Amendment of the EPL*, Huan-Han-[2012]-No 284 (29 October 2012) <[http://www.mep.gov.cn/gkml/hbb/bh/201210/t20121031\\_240778.htm](http://www.mep.gov.cn/gkml/hbb/bh/201210/t20121031_240778.htm)> accessed 10 March 2017.

64 *ibid.*

65 According to the opinion letter co-signed by 12 eminent environmental law scholars, the first draft amendment has been the most immature and disappointing one among every kind of environment and resources protection law drafts since 1990s. Some scholars criticized even more sharply that it just liked something drafted by polluters and someone who indulged them. See Wei Min, 'Story of Competition in the EPL Revision' (2014) 8 *Zhejiang People's Congress* 33, 33.

66 Since the first review, the NPC-LC took over the legislative work of EPL revision in pursuance to NPC legislative procedures, and the EPRCC seemed to have been moved into an observer role. Sun Youhai, 'History and Future of the EPL Revision' (2013) 16 *Environmental Protection* 14, 14.

67 For a detailed comparison of the 1989 EPL, see the 2012 draft revision and the 2013 second draft revision <<http://www.wageningenur.nl/en/show/First-and-second-revision-drafts-of-the-1989-Environmental-Protection-Law.htm>> accessed 10 March 2017.

MEP.<sup>68</sup> Meanwhile, the NPC-LC decided to launch a major, instead of limited, EPL revision, signaling by the title change from *Xiuzheng* to *Xiuding* in the draft amendments.<sup>69</sup>

The conflict at the earlier stages during EPL revision shows the fierce inner-circle political fight that might imperil the proper balance between economic and environmental interests in environmental lawmaking. While the MEP issued the open letter to inform the public in this case, it is unlikely to occur in all environmental lawmaking processes, and the MEP does not always stand with public environment interests because of its own bureaucratic interests.<sup>70</sup> Therefore, regular and consistent procedural requirements should be established to promote public participation in the lawmaking process.

### 3.3 Strengthening Public Participation in Implementation of Law

A third argument to support increased public participation in environmental lawmaking is to strengthen public participation in the implementation or administration of environmental laws. Adequate public participation in environmental decision-making relies on a strong institutional framework. It is, therefore, unlikely to occur if public participation is lacking at the beginning in the lawmaking process. Laws can safeguard the public's rights to participate in important policymaking decisions by specifying key procedural elements such as stages, scope and approaches for policy implementation. These are important considerations in China, a country that lacks the tradition of public participation in government decision-making.

Admittedly, China has achieved a certain degree of institutionalisation of public participation in environmental decision-making through a handful of laws and regulations. The first major legal arrangement to incorporate public environmental participation is the environmental impact assessment (EIA) system. The Environmental Impact Assessment Law (EIAL), enacted in 2002, provides basic rules for public participation in EIA of plans and construction projects. Public participation requirements for EIA were further specified in 2006 through the Interim Measures for Public Participation in Environmental Impact Assessment (IMPPE), issued by the former State Environmental Protection Agency (SEPA, now MEP).<sup>71</sup> Another example is the information disclosure system: in 2007, the former SEPA promulgated the

68 Min (n 65) 33.

69 Generally, 'Xiuzheng' refers to a limited revision without structural change of the law, such as adding or deleting a chapter, in a comparison, 'Xiuding' refers to a comprehensive revision involving structural change and more clauses. The names were also changed because according to legislative convention, a legislative bill would be abolished if it was not passed after being reviewed by the NPC-SC for three times, the Law Committee made this technical change to continue the legislative process. See Zhang Mingqi, *Report of Revision of the Draft Amendment of the EPL of PRC by the Law Committee of the NPC* (Presented on the 5th Session of the Standing Committee of the 12th NPC on 21 October 2013) <[http://www.npc.gov.cn/wxzl/gongbao/2014-06/23/content\\_1879668.htm](http://www.npc.gov.cn/wxzl/gongbao/2014-06/23/content_1879668.htm)> accessed 10 March 2017. (hereafter 'Third Draft Report of EPL revision')

70 The administrative authorities are willing to impose obligations on the regulated parties, but do not want to bear obligations and responsibilities to enforce the laws. See Zhang Shufang, 'Value Choice of Administrative Legislation' (2003) 4 *China Legal Science* 53–62, 59.

71 Interim Measures for Public Participation in Environmental Impact Assessment (promulgated by the State Environmental Protection Agency, 24 February 2006, effective 18 March 2006), Document no 28 of State Environmental Protection Agency (2006).

Measures for the Environmental Information Disclosure (for Trial Implementation) (MEID) to require government and enterprises to disclose information in matters with environmental protection implications.<sup>72</sup>

But the practical effect of these legal developments has not been satisfying. Taking the EIA system for instance, while there were exceptional cases where public voice indeed had an impact on the outcome of government decisions due to EIA, more prevalent practices of non-participation or tokenism still remain.<sup>73</sup> The public generally are limited in how they participate, in their access to information, in their influence in decision-making and/or their opportunities to obtain judicial review and a remedy.<sup>74</sup> The lack of functioning legal recourse to express their opinions on environmentally harmful projects in turn contributes to more street protests from citizens and also for environmental groups to impose pressure on the government.<sup>75</sup>

One critical reason for such failure is that legal rules on public participation in EIA are weak and not comprehensive. For instance, the public has no legal entitlement to participate in the decision-making process for construction projects, which only requires the submission of EIA report forms or registration forms.<sup>76</sup> Seldom incorporated in such submissions are complaints from the public on the projects, especially those for catering and entertainment facilities.<sup>77</sup> In addition, soliciting comments from relevant entities, experts and the public are all regarded as public comments under the EIAL.<sup>78</sup> Experts, however, do not necessarily represent public interests as they become financially supported by certain interests groups or government authorities and argue for private or other non-environmental interests.<sup>79</sup> In practice, companies have exploited this loophole in the law and held seminars involving only experts, but not the more general public, to fulfil the legal requirement.<sup>80</sup>

Similar problems exist in relation to the environmental information disclosure mechanism. Since 2009, the IPE and the Natural Resources Defense Council (NRDC) have been assessing the Pollution Information Transparency Index (PITI), a standard consistent with international standards,<sup>81</sup> in major cities in China for six

72 Measures for Environmental Information Disclosure (for Trial Implementation) (promulgated by the State Environmental Protection Agency, 8 February 2007, effective 1 May 2008), O No 35 of State Environmental Protection Agency (2007).

73 Zhao (n 4).

74 Wang Canfa and Fan Xinghua, 'China's EIA System Waits for New Development in the New Period' (2012) 22 *Environmental Protection* 25, 25. *ibid.*

75 Well-known protests include the protest on the Xiamen PX Project in June 2007, the protest on the Fanyu Incinerator Project in November 2009, the protest on the Dalian PX Project in August 2011, the protest on the Zhenhai PX Project in October 2012, the protest on the Shenzhen LCD Plant in January 2013.

76 An EIA report is required if the environmental impact is significant. An EIA report form is required if the environmental impact is slight. Only an EIA registration form is required if the environmental impact may be very small and thus no need for EIA. See the EIAL of 2002, arts 16 and 21.

77 Zhu Qian, 'Suggestion on the System of Public Participation in EIA of China' (2015) 10 *Environmental Protection* 27, 27. Xiao Qiang and Wang Hailong, 'Analysis and Comment of the Current Legal Institution on EIA Public Participation' (2015) 12 *Legal Science Magazine* 60, 67.

78 The EIAL of 2002 (n 76) art 21.

79 Qian (n 77) 29.

80 Canfa and Xinghua (n 74) 27.

81 Its scope of assessment included four aspects up to 100 points, specifically, 50 points of environmental regulatory information disclosure, 20 points of enterprise discharge data disclosure, 15 points of EIA

straight years. The latest 2014–15 PITI assessment, covering 120 major cities, showed an average score of 44.3 points out of 100, indicating that the general status of environmental information disclosure was far from satisfying.<sup>82</sup> The PITI report attributed the failure to the vague context and weak enforcement of laws on information disclosure: the laws only imposed limited responsibility on regulators, left excessive administrative discretion, and failed to stipulate legal liability for the regulators' own violations or inactions.<sup>83</sup>

Insufficiency of public participation can be seen from the increasing environmental complaints and environmental legislative proposals. As shown in Figure 1, environmental complaints have increased from fewer than 100,000 cases in 1992 to about 1,260,000 cases in 2013, and environmental proposals raised by the members of the Two Sessions (the NPC, as China's top legislative body, and the Chinese People's Political Consultative Conference, as the top national advisory body) also rose gradually in response to citizen concern with environmental issues.<sup>84</sup> If public concerns had been effectively relieved by the current mechanism for participation in environmental decision-making, this upward trend should have been reversed or at least slowed down.

From the analysis above, it can be seen that laws have not worked well to ensure that public environmental interests are sufficiently considered in the implementation stage. While abundant academic literature in China has pointed out this problem and proposed suggestions to establish a better legal framework for public participation,<sup>85</sup> many authors have missed the point that such suggestions themselves are infeasible without public participation.

The EPL revision process reveals this point missed in literature. The law's establishment of a general framework for public participation, by confirming it as a principle of environmental law and setting a special chapter for its implementation,<sup>86</sup> is born out of several steps of public participation in the legislative process. The first draft of the EPL revision proposal did not include the language regarding public participation that would be in the finalised bill.<sup>87</sup> Only after the MEP posted its open letter to criticise this defect and attracted wide public attention, as discussed above, the NPC-LC determined to add these changes into the second draft amendment. Afterwards, although the second draft amendment only allowed one government-

information disclosure and 15 points of interactive responses. See Institute of Public & Environmental Affairs (IPE) and Natural Resources Defense Council (NRDC), *120-City Pollution Information Transparency Index (PITI) Assessment Report (2014-2015)* (11 August 2015) 2–3 <<https://www.nrdc.org/sites/default/files/piti2014-15-en.pdf>> accessed 11 March 2017.

82 *ibid.*

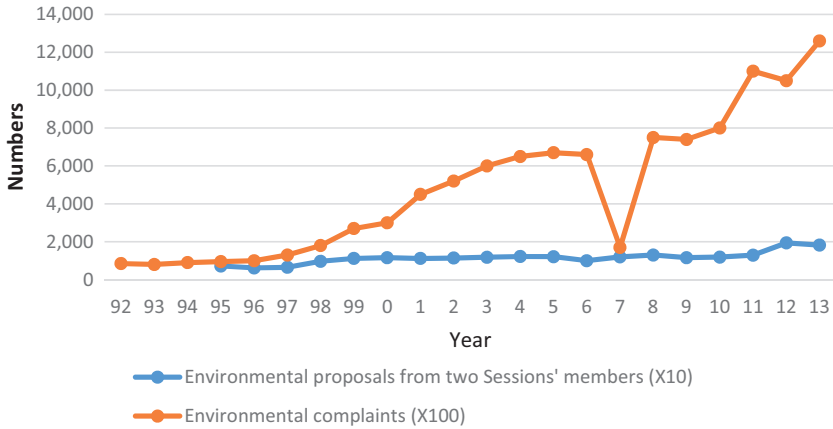
83 *ibid.*

84 Ministry of Environmental Protection, *China Environment Yearbook (1992-2014)* (China Environmental Yearbook Press 1992–2014).

85 For instance, influential environmental law scholarship in China suggests that a special law on public participation in environmental issues be enacted, including chapters on environmental information disclosure, participation in environmental lawmaking, participation in environmental administration, participation in environmental judiciary, participation in other environmental issues and legal liabilities. See Zhongmei (n 56).

86 The Environmental Protection Law of 2014, art 5 and ch 6.

87 Zhu Xiao, 'Establish the Principle of Public Participation in the Basic Environmental Law' (2012) 12 *Legal Science* 127, 127.



**Figure 1.** Environmental proposals from two session’s members and registered environmental complaints in China, 1992–2014. (Data Source: China Environmental Yearbooks, 1992–2014)

organised NGO to file EPIL cases, the public’s continuing participation before the legislature ultimately further expanded public participation in the court by pressuring the finalised version of the revised EPL to permit that all qualified social organisations to file EPIL cases.<sup>88</sup>

**4. EVALUATION OF THE NEW PUBLIC PARTICIPATION MECHANISM IN ENVIRONMENTAL LAWMAKING**

In the previous section, we propose three general ways in which more public participation may benefit China’s environmental lawmaking. We now turn to observations and empirical studies to evaluate whether the new mechanism of public participation, namely having two-stage disclosure and comments process during the legislative process, actually improve China’s environmental legislation. Specifically, we draw lessons from three recent legislative actions by the NPC: the EPL revisions, the APPCL revision and the WAPL revision.

We will first evaluate the new public participation mechanism applied in these legislative processes by focusing on three primary aspects of it: allowing the wider public to know about legislative processes, providing specific and focused feedback on public comment and the serious consideration of public opinion in decision-making. We believe the longer legislative transparency brought in by the new public participation mechanism has a positive impact on these three aspects. Then we will focus on civil society and see how the new mechanism impacts public participation in practice.

**4.1 Efficacy of Allowing the Public to Know the Legislative Processes**

Allowing the broad public to know about legislative processes, serves as the cornerstone for meaningful public participation. Comprehensive and timely awareness of

88 This process will be discussed in more detail in section 4.1.



legislative processes is a prerequisite for the public to form and express its opinions by the public. To this end, the public should be informed of the policy proposals and debates throughout legislative processes.

The key change from the two-stage disclosures and comments process is that the legislature is open to the public for a longer timeframe. Back in the days when only the first drafts were disclosed to the public, the legislature closed its door after the beginning of a lawmaking process—the public's awareness of the lawmaking progress was limited to the first-deliberation stage. Now, a second round of disclosure brings the public into the later stages of bill deliberation and revision. In addition, the pre-enactment evaluation seminar can further extend the period of legislative transparency.<sup>89</sup>

Thanks to the longer legislative transparency, the public is kept updated with changing policy initiatives and controversies throughout the legislative process. People will no longer feel surprised when they find that the finalised and promulgated version of a law is significantly different from the initial draft. A good example here is the EPL revision. As introduced above, the initial draft amendment that the EPRCC proposed was conservative and unsatisfying because of the intra-government power politics. The MEP's unprecedented move to publicly raise its opposition and bring the debate into the spotlight considerably changed the overall design of the revised EPL. Imagine that the public received no disclosure from the MEP or the revised draft amendment, but later found that the final draft amendment was considerably different from the initial version that EPRCC proposed: average people outside the NPC-SC would have had no idea what happened in between that contributed to the changes if the draft amendment was only disclosed once at EPRCC's initial proposal.

#### **4.2 Efficacy of Promoting Interactions between the Public and the Legislature**

Interactions between the public and the legislature allow the legislature to know public opinions on policy initiatives and debate. Under the new public participation mechanism, longer periods of transparent lawmaking also bring in more constructive interactions between people and the legislature. The public now have more chances to express their comments, get more feedback, and therefore provide their comments in a more specific and focused way.

An additional round of disclosure brought new comments, as shown by the empirical data from the EPL, APPCL and WAPL revisions. During the EPL revision, 9,572 persons submitted 11,748 comments in the first comment period and 822 persons submitted another 2,434 comments in the second period.<sup>90</sup> The APPCL revision witnessed 5,047 and 1,062 comments in the two stages. And the WAPL revision drew 6,205 and 878 comments, respectively.

89 An example is the APPCL revision. See Third draft report of APPCL revision (n 41).

90 Lin Hong, 'The Construction Route of Legitimacy for NGOs as Action Subjects in Environmental Governance of China: A Case Study on the Revision Process of Environmental Protection Law' (2015) 4 *Social Development Study* 82, 85.

The public is also more likely to get feedback on their comments under the new mechanism. Under the old mechanism of disclosure and comment only once, the public had no way to know whether or how their comments had been adopted or considered before the final law came out. In comparison, now the public can get feedback on their comments by reading the disclosed second draft and comparing it with the first one. In addition to looking at the text of the second draft, the public may also get to know whether and how their first-round comments are adopted by reading the second draft report. By these means, the public can better identify the core disputes during the lawmaking process.

Thanks to more chances to submit comments and better feedback, the new comments solicited from the second disclosure process have a much narrower and targeted focus, which helps roll the legislative discussion forward. The best example is the inclusion and refinement of the Environmental Public Interest Litigation (EPIL) clause in the EPL revision. During the first round of disclosure and comment, commenters' main concern was whether the public would have rights to participate in such lawsuits; the specific design for EPIL was not yet an issue.<sup>91</sup> In response to the concern from this round, a revised draft amendment added an EPIL mechanism, but only the All-China Environment Federation (ACEF), a nationwide government-organised NGO affiliated to the MEP, would have the right to file EPIL under the new Law. Then, after the release of this draft amendment for a second round of comment submission, commenters' inquiry substantially changed. The key debate now became a more refined procedural issue: whether the scope of qualified EPIL plaintiffs should be broader. The supporters for greater scope argued that only allowing the ACEF to file EPIL was unfair and would unnecessarily restrict standing eligibility in EPIL cases. On the other side, the opponents argued that scope of eligibility for EPIL plaintiffs should not be too broad, because environmental damage should be mainly remedied through administrative enforcement actions, criminal sanctions and civil lawsuits.<sup>92</sup> As a result, the finalised version of the EPL revision expanded the scope of qualified EPIL plaintiffs to all qualified social organisations.

As this example shows, during a second round of disclosure and comment, the public will review the updated context and newer controversies in the revised draft. Commenters, therefore, can participate in the legislative process in a more meaningful manner and, as a result, help the legislation move forward. Only one round of disclosure and comment at the bill's initial introduction would not have had a similar effect.

While the new mechanism has brought progress, problems still exist. First, for their comments on the first draft, the commenters whose comments were not adopted have no way to know the reason for rejection. The second draft report only lists the adopted comments, but does not respond to the comments that were not adopted. For instance, during the EPL revision, the pollution discharge license (PDL) system had attracted broad public attention. On a workshop involving major

91 Zhang Mingqi, *Report of Revision of the Draft Amendment of the EPL of PRC by the Law Committee of the NPC* (Presented on the 3rd session of the Standing Committee of the 12th NPC on, 26 June 2013) <[http://www.npc.gov.cn/wxzl/gongbao/2014-06/23/content\\_1879692.htm](http://www.npc.gov.cn/wxzl/gongbao/2014-06/23/content_1879692.htm)> accessed 10 March 2017. (hereafter 'Second Draft Report of EPL revision').

92 Third Draft Report of EPL revision (n 69).

environmental NGOs, the participants discussed the PDL system and submitted their comments on establishment of this system during the first disclosure and comment stage.<sup>93</sup> However, the second draft did not include a PDL system and the draft provided no explanation. Unaware of the legislators' consideration behind the second draft amendment, the commenters were unable to provide further arguments on this issue.

Secondly, for the comments on the second draft, the public also have no way to know whether their comments were adopted. During the EPL revision, the only way for the public to participate in the subsequent legislative process after the two-stage disclosure and comment process was to attend the pre-enactment evaluation seminar, because the third and fourth draft amendments were not disclosed. Even so, the practical impact from the seminar was limited because the full text of the fourth draft amendment was not offered to the participants.<sup>94</sup> Even worse, the legislators were not willing to accept any substantive suggestion during this stage. For example, five legal experts questioned the environmental torts clause at the seminar during the EPL revision, but their suggestions were not accepted by the legislature and no explanation was given.<sup>95</sup>

Finally, after the drafts are submitted for final deliberation, public participation is even less significant as the seminar would no longer be held.<sup>96</sup> Public participation in this period, however, is no less important than in former processes. Some revision opinions coming up during this deliberation, as can be seen from some media reports, were not just literal or technical in nature. For instances, Article 39 of the final EPL regulates environmental and health, and Article 9 of the final law regulates environmental education, both of which were proposed by delegates during the fourth deliberation and were not included in any of the previous four draft amendments.<sup>97</sup> Therefore, soliciting public comments on these issues during the final deliberation can be significant for ensuring meaningful public participation in all the important issues in the law.

93 Friends of Nature, 'Revision of the EPL was Still Lagged and the Legislation was Hard to Break Through' (21 September 2012) <<http://www.fon.org.cn/index.php/index/post/id/887>> accessed 10 March 2017.

94 On February 24 of 2016, the first author of this article verified this fact by making a phone call to Wang Jinjin, Deputy-Director of the IPE.

95 See Zhu Xiao, 'Legislative Expansion of Environmental Torts Cause Action' (2015) 2 China Law Science 255. See also the Law Committee of the NPC, *Report of Revision of the Second Draft Amendment of the EPL of PRC by the Law Committee of the NPC* (Presented on the 8th Session of the Standing Committee of the 12th NPC on 24 April 2014) <[http://www.npc.gov.cn/wxzl/gongbao/2014-06/23/content\\_1879683.htm](http://www.npc.gov.cn/wxzl/gongbao/2014-06/23/content_1879683.htm)> accessed 19 September 2016.

96 NPC-LC, *Report of Revision of the Second Draft Amendment of the EPL of PRC by the Law Committee of the NPC* (Presented on the 8th Session of the Standing Committee of the 12th NPC on 24 April 2014) <[http://www.npc.gov.cn/wxzl/gongbao/2014-06/23/content\\_1879683.htm](http://www.npc.gov.cn/wxzl/gongbao/2014-06/23/content_1879683.htm)> accessed 10 March 2017.

97 See Chen Liping, 'Feng Changgen: Should Add Regulation on Environment and Health' (23 April 2014) <[http://www.npc.gov.cn/huiyi/lfzt/hjbhfxzaca/2014-04/23/content\\_1860869.htm](http://www.npc.gov.cn/huiyi/lfzt/hjbhfxzaca/2014-04/23/content_1860869.htm)> accessed 10 March 2017. See also Chen Liping, 'Ma Ruiwen: Take the Concept of Environmental Education in the Legislation' (23 April 2014) <[http://www.npc.gov.cn/huiyi/lfzt/hjbhfxzaca/2014-04/23/content\\_1860872.htm](http://www.npc.gov.cn/huiyi/lfzt/hjbhfxzaca/2014-04/23/content_1860872.htm)> accessed 10 March 2017.

### 4.3 Efficacy of Putting Public Environmental Interests into Decisions

Even if the public has been well informed and sufficiently expressed its opinions, public participation will still be meaningless if the legislature does not actually take the collected comments into consideration. Admittedly, the legislature does not have to accept all public opinions, but they should consider public opinions seriously within the confines of proper procedural arrangements.

Under the new public participation mechanism, longer legislative transparency has spurred the legislature to consider public comments more seriously. With the prospect of second disclosure, the legislators are motivated to take the comments solicited during the first disclosure because the original commentators will be able to supervise their work by reading the second draft amendment. During the EPL revision, public comments on the first draft amendment have prompted the NPC-LC to add and revise fourteen articles in the second draft amendment,<sup>98</sup> and public comments on the second draft amendment again prompted the NPC-LC to add and revise seven articles in the third draft amendment.<sup>99</sup> And during the APPCL revision, public comments impacted 25 articles<sup>100</sup> and 11 articles<sup>101</sup> in the second and third draft amendments, respectively.

Existing problems should not be ignored. First, legislative staff may block public comments from reaching the delegates. During the second disclosure and comment stage of the APPCL revision, the NPC-SC-LAC held a seminar involving major environmental law experts to get their comments. Except for one expert, all attending experts were strongly against the second draft amendment and argued for putting off the third deliberation, but their suggestions were not adopted.<sup>102</sup> One participant summarised that:

in these years, environmental law experts rarely saw delegates of the NPC-SC on such seminars, but only non-delegate staff. Because of the heavy workload and limited time, these staff wished the law to be enacted or revised as soon as possible. Therefore, many valuable comments were blocked from reaching the decision-makers.<sup>103</sup>

It can be argued that if comments from the invited experts were not taken seriously, it is highly unlikely that comments from the wider public would have been genuinely considered by the legislative staff. Unreasonable time arrangement of inner working procedures in the NPC may also impede public comments from being seriously considered. From 6 July to 5 August 2015, the draft amendment of the APPCL

98 Second Draft Report of EPL revision (n 91).

99 Third Draft Report of EPL revision (n 69).

100 Sun Baoshu, *Report of Review of the Draft Amendment of the APPCL of PRC by the Law Committee of the NPC* (Presented on the 20th Session of the Standing Committee of the 15th NPC on 24 June 2015) [http://www.npc.gov.cn/npc/lftz/rllys/2015-07/07/content\\_1941197.htm](http://www.npc.gov.cn/npc/lftz/rllys/2015-07/07/content_1941197.htm) accessed 10 March 2017. (hereafter 'Second draft report of APPCL revision').

101 Third draft report of APPCL revision (n 41).

102 Chang Jiwen, 'Revision of the APPCL: Please Put off the Third Deliberation' *South Weekend* (9 July 2015) <<http://www.infzm.com/content/110502/>> accessed 10 March 2017.

103 *ibid.*

was disclosed for comments for a second time. After the aforementioned expert seminar on 7 July, an official of the NPC-SC-LAC said that comments from experts and the public would be sorted out and submitted to the NPC-LC for review in one or two weeks before the NPC-LC leaders went abroad for a conference.<sup>104</sup> Consistent with this undisclosed information, an official report recorded that the NPC-LC held a review meeting on 23 July.<sup>105</sup> As the third draft amendment was formed in this review meeting, comprehensive consideration of public comments on this meeting was important. However, as the deadline of the second comment-solicitation stage was 5 August, obviously the comments received after 23 July were impossible to be considered in this review meeting.

#### 4.4 Efficacy of Mobilising the Civil Society and Environmental NGOs

Environmental NGOs are primary representatives of environmental public interests in legislative processes, therefore it is important to see how the public participation mechanism impacts their behaviours in practice. Compared to citizens' personal participation, NGO participation could help to balance state power and social rights, therefore making equal dialogue more possible.<sup>106</sup> In addition, citizens' ability to act could be enhanced by this collective approach. Citizens are also likely to be more rational in the negotiation process.<sup>107</sup> Under the new public participation mechanism, environmental NGOs' willingness and confidence in participation have grown substantially. This can be seen from their fight for the EPIL system during the EPL revision.

Friends of Nature (FON), a grassroots NGO, was China's first major environmental NGO.<sup>108</sup> While FON only held small-scale discussions among major environmental organisations and lawyers during the first disclosure and comment stage,<sup>109</sup> it became far more active after the second draft amendment came out. Knowing that the second draft amendment had added the EPIL system but limited the qualified plaintiff to the ACEF, FON immediately published an open letter online, calling for expanding the scope of qualified plaintiffs.<sup>110</sup> FON further pushed forward the

104 Information got from the first author's private talk with the NPC-SC-LAC official after participation this seminar.

105 Third draft report of APPCL revision (n 41).

106 Ma Changshan, *Civil Governance in Rule-of-Law Development: Research on the Relationship between Civil Social Organizations and Rule-of-Law Order* (Law Press 2006) 66–67; Kong Lingqiu, 'NGO's Function in Legislative Deliberation and Its Realization' (2015) 3 *Academic Exchange* 120, 123.

107 Zhu Qian, 'Defects of Individual Participation in Environmental Public Decision-Making and the Solutions' (2009) 2 *Legal Science* 49–57, 55.

108 Percival and Huylu (n 61) 146. FON formed its law and policy advocacy team in 2005, beginning to promote environmental protection through legal approaches. Since it became the first civil environmental organization to file EPIL in 2011, it had been an active player in this field and thereby accumulated abundant legal working experiences. See Friends of Nature, 'Friends of Nature Filed an EPIL on the Chromium Slag Pollution Incident to the Intermediate Court of Qujing City in Yunnan Province' (22 September 2011) <<http://www.fon.org.cn/index.php/index/post/id/696>> accessed 10 March 2017.

109 After discussion participants agreed that 'if EPIL system and other important environmental measures couldn't be absorbed into this revision, the time was not ripe to amend the law, therefore the legislative process had better been temporarily stopped'. Friends of Nature (n 93).

110 See Friends of Nature, 'Urgent Appeal Regarding the EPIL Clause of the Draft Amendment of the EPL under Review' (26 June 2013) <<http://www.fon.org.cn/index.php/index/post/id/1441>> accessed 10 March 2017.

revision in various ways, such as requesting NPC delegates to deliver their opinions to the legislative organs, organising discussion on social websites and exchanging ideas with representatives from different fields.<sup>111</sup> Then FON submitted its formal comment to the NPC.<sup>112</sup>

In addition to FON, another environmental NGO, the Nature University, also worked actively during the second disclosure and comment stage. Disappointed with the EPIL provision in the second draft amendment, the Nature University initiated a co-signing activity and acquired signatures of 360 persons and 112 environmental NGOs.<sup>113</sup> In this co-signed letter, the Nature University questioned the EPIL clause which granted the privilege of filing EPILs to the ACEF, and thought it was a huge humiliation to, and defiance against, the public, and would oppress the public's enthusiasm for environmental protection.<sup>114</sup> The Nature University thus suggested that every citizen be granted rights to file EPILs.<sup>115</sup> Since then, the Nature University has organised another three co-signing activities.<sup>116</sup>

The substantial work that FON and the Nature University had done showed their stronger willingness to promote EPL revision during the second disclosure and comment stage. The new public participation mechanism has brought significant progress by convincing civil society that their participation could make a difference and, in turn, encouraging them to participate more actively.

Problems also exist. While NGOs could play important roles in the lawmaking process, currently they have not been provided valid institutionalised mechanisms for participation. While some academic organisations were asked for comments during the APPCL revision,<sup>117</sup> no special mechanism has been established to solicit NGO's comments. Because of lack of formal ways to effectively communicate with legislators, NGOs could only turn to informal ways such as open appeals, co-signed letters, and online discussions. Although these forms of participation had brought some positive impacts during the EPL revision, they might have undermined rational communication between the public and the legislators, and thus covered up conflicts instead of resolving them.

111 Hong (n 90) 88.

112 With regards to EPIL system, FON restated that all environmental organisations should have equal standing before courts. See Friends of Nature, 'Comment on the Second Draft Amendment of the EPL' (13 August 2013) <<http://www.fon.org.cn/index.php/index/post/id/1577>> accessed 10 March 2017.

113 Since then, the Nature University has organised another three co-signing activities. See Hong (n 90) 88–89.

114 Nature University, 'Everyone has the Right to File Public Interest Litigation: An Open Letter from Nationwide Folk Environmentalists' (28 June 2015) <<http://www.mycaijing.com.cn/news/3211.html>> accessed 10 March 2017.

115 *ibid.*

116 Hong (n 90) 88–89.

117 The first organisation solicited comments from 12 experts of its eight subordinated divisions such as the environmental law division and the air environment division, and held an expert seminar on 21 January 2015, and then submitted formal written opinions to the NPC-SC-LAC. See CSES, 'Reply Letter of Comments on Revision of Draft Amendment of the APPCL of PRC' *Zhong-Huan-Xue-Fa* (4 February 2015). Another organisation even invited relevant staff of the NPC-SC-LAC to audit and take part in the discussion when it held the forum on 27 January 2015, therefore improved the possibility of their comments to be adopted. The first author of this article was invited to take part in this forum and was delegated by the second organisation to draft the written opinions of this law expert forum, which was submitted to the NPC-SC-LAC.

In addition to the lack of participatory approaches, NGOs themselves are faced with a capacity building predicament. During the EPL revision, China's grassroots NGOs<sup>118</sup> played the most active role in public participation in lawmaking.<sup>119</sup> However, grassroots NGOs face serious challenges because of their small size, funding difficulties and operational capacity. A survey of environmental public interest organisations showed that Chinese grassroots environmental NGOs generally were small: 73% had fewer than ten staff members, and 41% had fewer than five.<sup>120</sup> Financially, 76.1% had no stable funding sources, and 81.5% could only raise less than 50,000 yuan annually.<sup>121</sup> Persistent funding shortages trouble even some well-known grassroots NGOs.<sup>122</sup> In addition, grassroots NGOs also need capacity-building. An investigation in 2010 showed that about 30% of China's grassroots NGOs had no boards, and even for the grassroots NGOs with boards, their management capacity was far poorer than their mature counterparts in developed countries.<sup>123</sup> Their staff's professional level was also much lower than that of the average international NGO.<sup>124</sup> Furthermore, only 11 environmental organisations in China provide legal assistance and engage in policy advocacy—a very limited number considering the overall activeness of China's environmental NGOs.<sup>125</sup>

## 5. ENHANCING PUBLIC PARTICIPATION IN ENVIRONMENTAL LAWMAKING

The new two-stage disclosure and comment process, as section 4 shows, is changing China's environmental legislative process. Despite its existing deficiencies, the mechanism symbolises China's progress in public participation in legislative activities. It is reasonable to envision that this burgeoning practice will not (and should not) be the end of China's efforts to improve public participation in its environmental lawmaking.

We, therefore, propose what China may further do to enhance the environmental public participation in its legislature in the future. Recall that in section 3, we summarised the three perspectives of how public participation, in theory, can

118 Environmental NGOs in China can be divided into three general categories: (i) officially endorsed NGOs, (ii) international NGOs and (iii) grassroots NGOs. See Percival and HuYyu (n 61) 150.

119 During the EPL revision, most active NGOs were FON and the Nature University, which were both grassroots NGOs without government background. Grassroots NGOs still enjoy public support because they are perceived to be more objective as neutral third parties monitoring governmental and corporate behaviour. See Luna Lin, 'Government-Backed NGO Under Pressure to Act Against China's Largest Coal Miner' (*China Dialogue*, 23 July 2013) <<https://www.chinadialogue.net/blog/6227-Governmentbacked-NGO-under-pressure-to-act-against-China-s-largest-coal-miner/en>> accessed 10 March 2017.

120 All-China Environment Federation, *Report on the Development Status of Chinese Environmental NGOs* (also known as the 'Blue Paper on the Development Status of Chinese Environmental NGOs') (2006) 5B Environmental Protection 60, 67.

121 Guosheng Deng, 'Research on Development Index of China Environmental NGO' (2010) 6 *China Non-Profit Review* 200, 205.

122 See Cai Shouqiu and Wen Lizhao, 'The Latest Development of Environmental NGOs in China' (2013) 4 *International Union For Conservation Of Nature Academic Environmental Law Journal* 39, 42.

123 Deng (n 121) 205.

124 *ibid* 205.

125 Percival and HuYyu (n 61) 152.

improve China's environmental law design and implementation. Our suggestions are intended to further these objectives. In addition, we recognise that the progress from the two-stage disclosure and comment process, discussed in section 4, is at most a change based on China's existing legislative institutions—more fundamental changes may potentially require an overhaul of institutions, or even the underlying societal environment. These changes, if any, may not take place until the very long term. In that vein, it would be more meaningful as policy advice to bifurcate what China may consider in the short term and in the long term.

### 5.1 Short-Term Suggestions: Taking Better Use of Current System

In the short term, as public participation is still developing in the current legislative framework, the key message is that commenters optimise the use of existing system. The first way to do so is to better use the first disclosure and comment stage. Even though there are now multiple disclosures, political and legislative feasibility determines that the first disclosure and comment stage remains as the most open to public participation. Consider a typical legislative timeline. During the first round of the bill-revision process, because the drafting body of the first draft amendment (the State Council, special committees of the NPC, or other qualified state organs) is usually different from the drafting body of the second draft amendment (the NPC-LC), the latter feels more comfortable, rather than being embarrassed and reluctant, to make major or even subversive modifications on the first draft amendment. This is not the case during the second disclosure and comment stage however, as the legislature is now revising its own work. Then, after the second disclosure and comment is over and the draft enters into the third stage of deliberation, public participation is even less favoured. According to legislative convention, the third deliberation only revises individual clauses and makes technical improvements on the language and logic flow instead of substantive policy directions or considerations.<sup>126</sup>

In other words, as the legislative process moves forward public participation declines and legislature control rises. More general legislative transparency will unlikely change this overall pattern. Thus, even if the public now enjoys more disclosure, commenters should still plan well and carefully craft its more important opinions at the beginning of the legislative process.

A second point for the effective use of the current system is that the public should provide more focused and specific comments, instead of general expression of grievances with little in the way of proposed solutions. The bill-proposing bodies<sup>127</sup> and the legislature,<sup>128</sup> as a matter of fact, have limited time, energy or professional

126 Jingwen (n 13).

127 For instance, the EPRCC, as this article discussed above, is unable to pay attention to all public comments because of limited staff, inadequate professional capacity and heavy workload, therefore it can only selectively tackle some comments.

128 Currently, there is no special chamber-level body for environmental legislation in the NPC-SC-LAC. The NPC-SC-LAC's body in charge of environmental legislation is the First Office of the Administrative Law Chamber. Because of the increasing workload and importance of environmental legislation, this office has just been delegated to take charge of this work in the past two years. Of all the four employees, including three formal employees and one transferred employee from local people's congress, only one of them has a master degree of environmental law, and others have no educational



capacity to take a more searching approach in their operations. Thus, they are inclined to give low priority to general comments without enough detail or grievance-only comments which do not propose sensible suggestions. Improvement here requires cooperation from the public and decision-makers: because the operating capability of the lawmaking entities cannot be fundamentally changed (at least in the foreseeable future), commenters need to do more homework to get their opinions accepted. Meanwhile, the government and the legislature should think about how to facilitate and ease the process, through educational instruction or streamlined mechanisms that will render the comments more constructive. This both increases the legislative quality and reduces the work burden of these entities themselves.

A final point is to better use the media as a channel for public voices. This is particularly important at the final stages of legislative deliberation. As delegates have heard public opinions on the bill through previous disclosures and the remaining time is limited, the legislature itself is no longer open to the public. Fortunately, media may still occasionally enter the process and are permitted to reveal legislative progress. In the APPCL revision process in 2015, for example, during the five-day period between the final deliberation and the final vote, media revealed to the public the information regarding several major issues subject to revision.<sup>129</sup> In those situations, the public has no formal mechanism for direct participation in the legislature; instead, people can only learn about legislative response to the submitted comments and voice out new concerns through the media. They should rightfully do so.

## 5.2 Long-Term Suggestions: Improving the Mechanisms

More improvements on the mechanisms themselves may be made in the long term to increase public participation in environmental lawmaking. First, the disclosure and comment process should be more transparent and interactive so that the public can see other comments and receive feedback from the legislators. During the revision processes of the EPL and the APPCL, while the commenters who participated in the first disclosure could get some feedback by reading the disclosed second draft amendment, the commenters during the second stage were unable to get such feedback. The function of the draft reports as feedback is limited because they failed to present public comments separately and completely. Nor did they provide relevant background information such as the commenters' identity and the frequency of a particular comment.

The quality of such presentation is critical because it helps provide a more objective view on the quality, credibility and integrity of the comments. These, in turn, are an important basis and justification for the legislature's adoption or rejection of certain ideas. As we discussed in section 3, public participation should ensure that different interests are heard and that expertise and insights are brought in. These objectives necessarily require that certain information is disclosed properly so that ideas are debated and considered in an inclusive, unbiased way.

background of environmental law. Information got from the first author's private talk with a NPC-SC-LAC official by phone.

129 A collection of the media reports can accessed at <[http://www.npc.gov.cn/npc/lfzt/rlyl/node\\_25960.htm](http://www.npc.gov.cn/npc/lfzt/rlyl/node_25960.htm)> accessed 10 March 2017.

Along those lines, the public needs a platform to see all the comments and competent authorities' responses in a comprehensive and organised way. People can then present their individual facts, express their values and bring in their expertise, resulting in more well-balanced and high-quality legislation. During both the EPL and APPCL revisions, the authority set up web pages to present disclosed bills; these are good examples for platform establishment in the future. With respect to the contents of the feedback, practices from the People's Congress of Guangdong Province may serve as a model: after the solicitation of public comment, competent committees are required to show at least an overview of these comments, what comments are adopted and the reasons why other comments are not adopted.<sup>130</sup>

Secondly, the pre-enactment evaluation seminar needs to be more transparent. The Legislation Law requires that the NPC-LC shall provide a summary of the evaluation seminar in its report to the NPC-SC.<sup>131</sup> A properly organised seminar can be an effective feedback channel for the public to know how their comments have been considered. It may also allow the public to reiterate their previous opinions or come up with new comments.<sup>132</sup> But as discussed above, the current pre-enactment evaluation seminars have not been functioning well.

Improving these seminars will retain the value of public participation all the way to the end of the legislative process, and therefore ingrain its benefits into the legislation itself. These pre-enactment seminars, are typically immediately followed by the final refinement and the promulgation of a bill, serve important purposes to determine the power balance in the spirit of the enacted laws as well as connect policy design and implementation—two of the policy rationales we proposed in section 3 for public participation in environmental lawmaking. There is nothing more astounding than that an 11th-h U-turn from an environment-friendly bill to a conservative one, or from a law that provides more public participation in implementation to the one that provides little room for public voice. Public participation needs to survive the consummation of a legislative project, and the seminars are a key milestone in this regard.

The seminars may be improved in several ways. The final drafts should be disclosed to all participants in full and with necessary explanation. Representatives of the public or environmental organisations should always be invited; their number and proportion, compared with other participants, should gradually increase. Furthermore, additional effective feedback needs to be available so that the seminars make a real impact on the deliberation of the final drafts.

A third suggestion is to build up the professional capacity of legislative bodies, lawmakers and staffs in environmental law and policy. As discussed above, neither the EPRCC nor the NPC-SC-LAC has enough legislative staff with adequate training and knowledge on environmental science, policy or law. Because of poor understanding of air pollution issues, the Administrative Law Chamber of the

130 The Regulation on Legislative Disclosure Work of the Standing Committee of the Guangdong Province People's Congress of 2013 (adopted on 14 June 2013, effective on 14 June 2013) arts 34, 35 and 36.

131 The Legislation Law of 2015 (n 2) art 39.

132 For instance, on the fourth deliberation meeting of the EPL revision, the fourth draft report submitted by the NPC-LC mentioned the adaptation and treatment of the comments solicited on the pre-enactment evaluation seminar held on 11 April 2014. See Fourth Draft Report of EPL revision (n 38).

NPC-SC-LAC was criticised for simply following the norms and principles of the EPL without considering the unique nature of air pollution issues.<sup>133</sup> The same problem existed in the NPC-SC, where delegates were largely aware of the evolved status of pollution, the existing regulatory regimes and the engineering and technical availability regarding tools and techniques that may alleviate air pollution.<sup>134</sup> Some commentators alleged that as a result of these inadequate legislative capacities, the lawmaking process resulted in an unenforceable APPCL of little use.<sup>135</sup>

Building up a more professional and specialised team for environmental legislation will help bring expertise into the legislature, a key objective we proposed in section 3. In practice, more specialists in relevant technical and legal fields should become delegates of the EPRCC and the NPC-SC-LAC, therefore ensuring the quality of the initial legislative work. While the delegates of the NPC-SC may not be selected for their outstanding capacity in certain professional fields, more training in legislative skills and professional knowledge will be helpful. For instance, the NPC-SC can invite legal experts, scientific experts and representatives of relevant industries to host seminars or lectures for the delegates.

Finally, actions should be taken to foster civil society. In addition to enhancing legislators' willingness and capacity of engaging with public comment, actions should also be taken on the side of the public. To this end, developing environmental NGOs is the most effective approach.<sup>136</sup> Environmental NGOs not only can improve the public's awareness and understanding of environmental issues, but also can contribute to public participation in a more organised, systematic, rational and comprehensive manner.<sup>137</sup> They can serve as public representatives before the legislature and have a more powerful impact on environmental legislation. Furthermore, since many NGOs participate in, and monitor, the subsequent implementation and enforcement of environmental legislation, they have a strong interest in providing quality input into lawmaking so that public participation in implementation is safeguarded by the legislative design. All these benefits echo the rationales in section 3.

In practice, institutional changes should come with two general perspectives. First, environmental NGOs should have more established approaches to participate in the lawmaking process. They should be asked for comments regularly and provided with timely and elaborate feedback as participants in the lawmaking processes. In addition, considering the small number and weak capacities of environmental NGOs in China, the government should also improve the policy environment supporting their growth and development. For example, the government could offer financial support to environmental NGOs through subsidies, tax relief and government purchases of their services.<sup>138</sup>

133 Jiwen (n 102).

134 *ibid.*

135 *ibid.*

136 Gao Yan, 'The Organization Way of Public Participation' (2014) 4 Hubei Social Science 47, 47.

137 *ibid.* 47.

138 Tax benefits are only available to legally registered NGOs, so many grassroots NGOs that are registered as businesses do not benefit. See Shawn Shieh, 'Can Bill Gates and Warren Buffet Start a Philanthropic Revolution in China' (*NGOs In China*, 1 October 2010) <<http://ngochina.blogspot.com/2010/10/can-bill-gates-and-warren-buffet-start.html>> accessed 10 March 2017.

## 6. CONCLUSION

In general, public participation in environmental lawmaking can improve legitimacy of environmental policies, provide access to knowledge and intelligence from diverse sources, build up social consensus on decisions and promote legal compliance and enforcement. In China, public participation in environmental lawmaking is particularly important because the current lawmaking entities require more technical assistance formalising environmental policy, the representation of environmental interests is relatively weak in the legislature and public participation in environmental law implementation needs better institutional support. The public's direct and profound participation can promote environmental interests in both lawmaking and implementation stages.

Compared to the old mechanism of allowing disclosure and comment only once, the current public participation mechanism features two-stage disclosure and comment and a pre-enactment evaluation seminar. These provide the public with more and better chances to get involved in, and influence, the lawmaking process, leading to environmental legislation that better serves public needs. Some problems still exist and impede meaningful public participation, but they can be addressed by making better use of the current system and gradually improving mechanisms.

China continues to hold an open mind about public participation in environmental lawmaking, which can be seen from the Party's policies of 'ecological civilization construction'<sup>139</sup> and 'open-door lawmaking'. With the current trend, public participation can play an increasingly important role in achieving more well-balanced and high-quality environmental laws and thus promotes environmental rule-of-law in China.

139 One principle of ecological civilisation construction is promoting participation and supervision by social organizations and the public. See the Central Committee of the Communist Party of China and the State Council, *Overall Plan for the Reform of Eco-Civilization System* (21 September 2015) < [http://www.gov.cn/guowuyuan/2015-09/21/content\\_2936327.htm](http://www.gov.cn/guowuyuan/2015-09/21/content_2936327.htm) > accessed 11 March 2017.