

Good Governance for Environmental Protection in China: Instrumentation, Strategic Interactions and Unintended Consequences

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ABSTRACT *During the past decade, China's Ministry of Environmental Protection has pursued a strategy of "extending governance" to the public by creating formal public participation channels and promoting environmental transparency. Rather than representing a normative end in their own right, these features of "good governance" are being used instrumentally by the political executive to enlist public support in enforcing environmental regulations, and to depoliticise dissent by channelling it through legal mechanisms. This paper examines how environmental non-governmental organisations and "not-in-my-backyard" movements strategically interact with the Ministry of Environmental Protection and its good governance rhetoric to promote their own objectives. At the same time, it argues that unintended consequences have emerged as Chinese citizens increasingly assert their participatory and transparency "rights." By appropriating instrumental good governance policies to their own advantage, citizens define concepts such as participation and transparency on their own terms.*

KEY WORDS: Good governance, transparency, participation, environmental, civil society, China

Faced with a serious and unprecedented environmental challenge, the Chinese central government has progressively strengthened environmental protection laws and institutions, and diversified environmental policy instruments (Mol and Carter 2006). One key aspect of these environmental governance reforms has been the attempt to enlist public support in tackling polluters and unruly local officials under whose watch egregious environmental degradation frequently occurs. Starting in 2003, the central government has introduced laws and regulations that provide legal channels for public participation and information disclosure as part of a "public supervision mechanism" (*shehui jiandu jizhi*) (State Council 2005). Formal channels for soliciting public comment in planning decisions have been established under the Environmental Impact Assessment (EIA) and Administrative Licensing (AL) Laws (both effective since 2003). Moreover, local governments and enterprises in violation of pollution laws and regulations are required to disclose certain types of environmental information, following the 2008 Measures on Environmental Information Disclosure (Trial Version) (MEID). At first glance, the aim of

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the public supervision mechanism appears to be the introduction of greater accountability, transparency, predictability and participation in environmental governance. Elsewhere, these qualities have been defined as institutional features of “good governance” (World Bank 1992).

The “good governance” concept became prominent in the late 1980s when certain aid donors insisted that recipient countries adopt good governance practices, ostensibly to maximise the effectiveness of developmental aid. Although a set of objective criteria for measuring the concept is lacking, various subjective criteria have been identified (Nanda 2006). Accountability is premised on the ability of government officials to answer for their actions and be responsive to the public (Asian Development Bank 1995; Sibbel 2005). Transparency means that the rules and functions by which a government operates are clear, and that information should be accessible to the public through channels including a free media and legislation that compels public officials to release information (Asian Development Bank 1995; Sibbel 2005). Predictability is closely associated with the rule of law. It means that laws, regulations and policies are in place to regulate society, and are applied fairly and consistently to state and non-state actors (Asian Development Bank 1995). Finally, participation involves providing a role for the public in development, including individuals and intermediary organisations such as non-governmental organisations (NGOs). It is based on the assumption that governance can be improved if those affected by development can also influence events as agents of development (Asian Development Bank 1995).

Critics have claimed that the World Bank and other donors have used good governance criteria instrumentally in order to legitimise the imposition of a neoliberal agenda on developing countries (Cammack 2004). Rather than giving the public agency in development issues, good governance promotes a form of “controlled participation” that is largely inconsequential to outcomes (Cammack 2004; Mercer 2003; Cornwall and Brock 2005). Concepts such as participation, empowerment and transparency are in reality often little more than “buzzwords” that have been co-opted by international organisations to serve their own goals and depoliticise societal contestation (Cornwall and Brock 2005; Jayasuriya and Hewison 2004).

With this in mind, how should we interpret the introduction of “good governance” practices in environmental policy in an unambiguously illiberal regime that simultaneously restricts civic and political rights in order to maintain one-party rule? This paper argues that the public supervision mechanism has been facilitated by wider ongoing administrative reforms within the central government that emphasise good governance principles such as rule of law, transparency and public participation. Rather than representing the part of the normative “good governance” agenda designed to foster political liberalisation, institutional features of “good governance” are being introduced instrumentally to legitimise Chinese Communist Party (CCP) rule and depoliticise civil society (Pieke 2012). Certain “reformist” officials within China’s Ministry of Environmental Protection (MEP) have utilised this broader commitment to “good governance” principles to advance a public participation agenda within the existing political process that they hope can improve environmental policy implementation and bolster the MEP’s standing relative to powerful economic ministries. MEP officials have entered into mutually beneficial “strategic interactions” with several environmental NGOs (ENGOs) to improve institutional conditions for public participation (a key goal for many green groups) whilst achieving their own organisational aims. These strategic interactions have raised the

public supervision mechanism's public profile, and have sometimes helped ENGOs exert limited external oversight over polluters. Yet in reality, China's public supervision mechanism is a weak tool that can at best facilitate tokenistic participation with a negligible impact on environmental outcomes. At the same time, some not-in-my-backyard (NIMBY) campaigners have appropriated the public supervision mechanism to their own ends by interpreting legal participatory and transparency provisions in the language of "rights." Rather than being satisfied with the mere opportunity to participate via institutional channels, as some ENGOs appear to be, NIMBY actors tend to adopt a more expansive definition of good governance. Because they mobilise reactively in defence of their own health and/or financial interests, NIMBY actors are especially persistent in pressing officials to respect their "right" to be consulted over locally-unwanted-land-uses (LULUs). These new bottom-up pressures for a more substantial vision of good governance with meaningful as opposed to tokenistic participation are unintended consequences of the central government's administrative reforms.

"Good Governance" and China's Administrative Reforms

Chinese interest in the concept of "good governance" was stoked by the publication and subsequent translation into Chinese of the 1992 World Bank Annual Report entitled "Governance and Development." According to Zheng Yongnian (2006), the CCP leadership became interested in pursuing good governance during the reform and opening-up era as its source of legitimacy shifted from communist dogma towards governing competency. Zhang Weiwei (2006) claims that a consensus emerged among the country's leadership that promoting a managerial form of good governance by cultivating rule of law, increasing media supervision and improving supervision over government institutions is necessary, and is also seen as preferable to introducing a model of Western liberal democracy (see also Heberer and Schubert 2006).

The spirit of good governance has been embodied in many recent government policies, and some Chinese commentators have closely linked it to the much more prominent "Harmonious Society" rhetoric promoted by the Hu/Wen leadership (Zhang 2007; also see Yu 2006). The central government has taken steps to encourage managerial competency, organisational capacity, accountability, rule of law, transparency and public participation, within the context of a one-party state (Xue and Liou 2012). This has been embodied in, for example, the 2004 State Council "Comprehensive Strategy to Implement the Promotion of Administration According to Law," as well as the 2007 "People's Republic of China Ordinance on Governmental Information Disclosure" (hereinafter referred to as the "PRC Information Disclosure Ordinance") and e-government initiatives that promote government transparency (State Council 2007). Citizen participation has been facilitated via village elections and, more recently, public hearings that have mainly focused on the setting of urban water tariffs and train ticket prices (Zhong and Mol 2008; Xue and Liou 2012). Jun Ma (2012) has labelled these top-down reforms as examples of "state-led" social accountability. He distinguishes them from "society-led" social accountability, which involves ordinary citizens holding officials accountable through, for example, social movements, NGOs and internet campaigns (Ma 2012).

Frank Pieke (2012) has viewed these administrative reforms as an attempt to facilitate greater pluralism whilst simultaneously strengthening the CCP's leading role over society. One key aim is to channel growing popular unrest within the system, depoliticise civil

society and maintain social stability in response to the growing societal diversification of the reform era (Pieke 2012). According to this view, the aim of these administrative reforms is to maintain the CCP's grip on power amid significant social and economic change.

“Good Governance” as Instrumentalism: China’s Public Supervision Mechanism

China began to establish its “environmental state,” which includes environmental laws, policies and governing institutions, in the early 1970s (Mol and Carter 2006). Whilst Chinese environmental legislation had become relatively comprehensive by the 2000s, the highly decentralised nature of enforcement has led predominantly to weak implementation by environmental protection bureaus (EPBs) which answer first and foremost to local governments that tend to prioritise economic growth (Jahiel 1997; Economy 2005; Van Rooij 2006; Mol and Carter 2006).

More recently however, the central government has accorded greater priority to environmental issues. Growing concern for environmental and resource issues has been expressed in numerous high-level speeches and documents, and is reflected in ambitious pollution reduction and energy efficiency targets found in the 11th and 12th Five-Year Plans covering the 2006–15 period. In the past decade, China’s State Environmental Protection Administration (SEPA), long seen as a weak department, became more assertive in holding local officials accountable for implementing environmental legislation.¹ Enforcement of EIA procedures became a key focus for SEPA officials, who decried the tendency of local governments and powerful economic ministries to forego proper EIA procedures in relation to new projects. Between 2005 and 2007 SEPA launched three “environmental storms,” in which it implemented high-profile crackdowns on large-scale construction projects that had violated the EIA Law. Yet although the environmental storm initiatives temporarily halted several major projects and raised SEPA’s profile, this campaign-style approach to environmental enforcement only represented a short-term fix, and many projects continue to proceed without taking EIA seriously.

Some SEPA officials have therefore argued that China can only overcome weak policy implementation through enabling the public to “supervise” local officials. China’s broader administrative reforms provided “legal authorisation” that enabled SEPA to advance a public participation agenda designed to boost transparency and enlist public support in improving policy implementation (Interview with Peking University academic, June 26, 2012). Rather than representing a new direction for SEPA as a whole, this agenda was promoted by certain “reformist and enlightened” officials within the agency, who viewed constraints on public participation and transparency as obstacles to environmental protection (Interview with MEP official, June 21, 2012). However, as Andrew Mertha (2008) found in his study of Chinese hydropower politics, these “policy entrepreneurs” prefer to work within the existing political process rather than against it. Chief among them was SEPA Vice-Minister Pan Yue, who also spearheaded the three environmental storms. Pan stated that “the ultimate force for resolving China’s serious environmental problems comes from the public” (*China News Online*, April 1, 2007). Yet he also acknowledged that a dearth of institutionalised participatory channels had undermined environmental public participation in China. In Pan’s words, “insufficient legal mechanisms for public participation are an important reason why China’s environmental protection has laws that are not enforced, as well as having laws that are enforced in a lax manner” (Pan 2004). To

remedy this situation, SEPA began establishing a legal framework for public participation, which has been referred to as a “public supervision mechanism” (see Table 1) (State Council 2005). It was hoped that this would facilitate greater public supervision of unruly local officials through enhancing state-led social accountability.

So far, the public supervision mechanism incorporates three main strands: incorporating public opinion into planning decisions, improving environmental transparency and promoting environmental public interest litigation (State Council 2005). Due to space constraints, this paper focuses on the first two strands. The EIA Law states that public opinion “should” (*yingdang*) be solicited for projects liable to have significant public impact. This also applies to the granting of licences under the AL Law. Both these laws state that the

Table 1. Key public participation and transparency legislation

Legislation/regulation	Date effective	Promulgating agency	Relevance
Environmental Impact Assessment Law	2003	National People’s Congress (NPC)	Public should be consulted over projects that affect them
Administrative Licensing Law	2003	NPC	Public can apply for a public hearing over licensing decisions that affect them
Notice Regarding the Carrying Out of Environmental Protection Checks by Companies Applying to be Listed, and by Listed Companies Applying for Refinancing	2003	SEPA	Companies applying for listing must provide environmental information to local environmental authorities
Temporary Measures for Public Participation in Administrative Licensing Hearings	2004	SEPA	Clarifies how and when public should be consulted over an administrative licensing decision
State Council Decision Regarding Implementing the Scientific Development Concept and Strengthening Environmental Protection	2005	State Council	Calls for improved social supervision, transparency, advocates public interest litigation and public hearings; public participation should be facilitated
Temporary Measures for Public Participation in Environmental Impact Assessment	2006	SEPA	Clarifies how and when public should be consulted over an EIA
Temporary Measures on Environmental Information Disclosure	2008	SEPA	Outlines 17 types of environmental information that should be publicly disclosed
Water Pollution Control and Prevention Law	2008	NPC	Citizens can sue for damages caused by water pollution; NGOs and lawyers can support litigants

public may be consulted via mechanisms such as public hearings, questionnaires and/or opinion surveys. Their implementing measures, promulgated by SEPA in 2004 and 2006 respectively, further clarify how public participation should proceed. Yet there are shortcomings in this legislation. For example, the term “public” is left undefined, allowing considerable scope for authorities to meet these public consultation requirements through soliciting opinions of, for example, experts or handpicked members of the public unlikely to oppose a certain project. In addition, the wording of the EIA Law suggests that public consultation is still voluntary and not mandatory. As a result, units responsible for conducting EIAs frequently “go through the motions” (*zou guochang*) and treat public participation as a box-ticking exercise, rather than an opportunity to facilitate meaningful participation (Qie 2011).

During the past decade the central government has also attempted to improve environmental transparency. Since 2003 it has increased environmental disclosure requirements for companies applying for initial public offerings (IPOs), and has provided opportunities for the public to comment on IPO applications. According to the 2003 “Notice Regarding the Carrying Out of Environmental Protection Checks by Companies Applying to be Listed, and by Listed Companies Applying for Refinancing” (referred to as the “2003 Notice”), companies applying for stock market listing must first obtain approval from the environmental agency based on their environmental records, before their listing applications can be approved by the China Securities Regulatory Commission (SEPA 2003). Companies must provide environmental information to the authorities covering the 36-month period prior to their IPO application. If they violate environmental legislation during this time they should be prevented from conducting an IPO. Furthermore, in May 2008 the MEID, which was pursuant to the PRC Information Disclosure Ordinance, took effect. These measures require the disclosure of information by EPBs and enterprises that have violated environmental regulations. They also enable the public to apply to local governments for environmental information disclosure. Improving transparency is vital in empowering the public to help achieve SEPA’s goal of holding officials and polluters accountable. As one SEPA official remarked, “environmental information disclosure ... is beneficial for public supervision, and provides beneficial conditions for strengthening the enforcement of environmental legislation and overcoming local protectionism” (*China Environment News*, April 26, 2007). Despite this, the MEID also suffers from weak wording. For example, it defines information disclosure as something that companies and local officials “should” (*yingdang*), and not “must,” do. In addition, there is considerable scope for information to be withheld ostensibly to protect state and/or company secrets.

The party-state’s policy on public participation and transparency is not designed to give the public unlimited involvement in environmental issues, for example, by challenging the party-state’s control over formulating environmental policies. Rather, the aim is to create “orderly participation” through a top-down mechanism that citizens can access to rein in unruly local officials and therefore serve the aims of the central government’s environmental protection agency (Ma 2006; State Council 2005). In other words, the purpose of introducing “good governance” features in the environmental protection sphere is to enable the public to help SEPA achieve its operational mandate of protecting the environment, a mandate undermined by weak policy enforcement by local governments. Yet the promulgation of legislation to facilitate public participation is insufficient. The same officials charged with implementing this legislation are loath to encourage public

supervision amounting to a check on their own power. As a result, public action is needed to bring SEPA's public participation agenda to life.

Strategic State–Society Interactions and Unintended Consequences

The question is whether, or to what extent, such narrowly instrumental objectives of the central state can be achieved, without letting loose other social processes and setting the scene for wider changes at the same time? This section examines, through several case studies, how ENGOs and NIMBY actors have responded to the MEP's public supervision mechanism to bring about a mix of consequences. The section discusses two cases of ENGO interaction with the public supervision mechanism. The first case discusses how ENGOs worked with SEPA in 2005, as the latter held China's first national-level environmental public hearing in relation to renovation work conducted at Yuanmingyuan (the Old Summer Palace). This case was selected because it was widely seen as an important early experiment in conducting public consultation for a controversial project. The second case shows how ENGOs pressurised the Gold East Paper Company over its environmental record during its application to conduct an IPO. This case was chosen because unlike the Yuanmingyuan case, ENGO activism was aimed at a corporation. In addition, this case occurred in 2008, by which time relations between SEPA and ENGO activists had dampened. Although these cases cannot be fully representative, they do show how ENGOs (sometimes in collaboration with SEPA) try to enforce the public supervision mechanism. Information for these two cases is derived from documentary sources, including newspaper reports, government documents and ENGO newsletters. In addition, I conducted 15 interviews between 2007 and 2012 with ENGO participants, government officials and Chinese academics.

ENGOs

A 2008 report by the All-China Environment Federation (ACEF) stated that China had over 500 "grass-roots" ENGOs (ACEF 2008). The vast majority of these practice self-censorship and maintain a low profile in order not to antagonise the party-state (Ho and Edmonds 2007). In some cases, ENGO activists enjoy close personal ties with party-state officials, leading some scholars to claim that Chinese environmental activism is "embedded" within the state (Ho and Edmonds 2007). Although the need to self-censor limits ENGOs' freedom to act, embeddedness enables green activists to exert influence by working with sympathetic officials. Not all ENGOs are "embedded" in the state, or are embedded to the same degree. Nevertheless, developing a similar "outlook" and a collaborative rather than conflicting relationship can provide green groups with access and influence to areas of public policy and decisions where and when interests between activists and officials coalesce.

The promotion of a good governance agenda through the top-down public supervision mechanism is an area of mutual interest for the MEP and ENGOs. Whilst the MEP needs the public supervision mechanism to bolster local execution of its environmental policy, ENGOs see an opportunity to extend the boundaries of the authoritarian political system and improve the institutional conditions for environmental activism (Johnson 2010). To achieve this goal of "turning laws on paper into laws implemented in reality" (Interview

with Peking University academic, June 26, 2012), ENGOs have entered into “strategic interactions” with the MEP in promoting its good governance agenda.

The Yuanmingyuan Public Hearing

In 2003 local government agencies drafted plans to renovate Yuanmingyuan, a site of historical importance in Beijing. These plans included lining the site’s numerous lakebeds and riverbeds with plastic to reduce water seepage. This project only became public knowledge in March 2005 after a concerned visitor alerted the media and Friends of Nature, a Beijing-based ENGO. On 31 March, SEPA stepped in and ordered renovation work to halt because no EIA had been conducted. A “make-up” (*buban*) EIA was ordered, and SEPA announced that China’s first national-level environmental public hearing would be held to debate the issue.²

The Yuanmingyuan public hearing must be understood in the context of preceding environmental opposition to hydropower development on the Nu River in Yunnan Province. Since 2003, SEPA and ENGO activists had worked together to oppose the damming of the river, and had brought the issue to public attention (see Mertha 2008). SEPA officials initially planned to hold a public hearing to debate this highly contentious issue once the EIA Law became active in 2003. However, the pro-hydropower National Development and Reform Commission (NDRC) vetoed this move (Interview with ENGO founder, Beijing, June 20, 2012). When the Yuanmingyuan controversy emerged, SEPA then transferred its preparation work for the aborted Nu River public hearing to this far less contentious case (Interview with ENGO founder, Beijing, June 20, 2012).

From the pro-environmental actors’ perspectives, the issue of renovations to Yuanmingyuan was relatively minor compared with hydropower development in an area of impressive biodiversity and natural beauty. Nevertheless, SEPA identified the significant public interest in the Yuanmingyuan case as a good opportunity to showcase its nascent public participation agenda. According to one official, “at that time ENGO and public attention [on the Yuanmingyuan issue] was substantial. *We decided to utilise this to convene a public hearing, and meaningfully implement the Temporary Measures on Public Participation in EIA*” (Interview with MEP official, June 21, 2012, emphasis added).³ SEPA support for public involvement in the Nu River and Yuanmingyuan cases was a reflection of the will of individual leaders such as Pan Yue, who were committed to public participation. One MEP official claimed that “if different people were in post [at SEPA], the Nu River would have been developed ten times over, Yuanmingyuan would have been covered by ten layers of plastic” (Interview with MEP official, June 21, 2012).⁴

Several Beijing-based ENGOs helped SEPA showcase its legal framework for public participation. One ENGO activist involved in the case described this as a “very natural cooperation,” given that expanding public participation was a common goal for ENGO activists and certain SEPA officials (Interview with ENGO activist, July 14, 2007). Liang Congjie, founder of the ENGO Friends of Nature, expressed strong support for a public hearing in conversations with SEPA officials (Interview with MEP official, June 21, 2012). Strategic interactions between ENGO activists and SEPA officials were facilitated by overlapping goals and personal connections (Interview with ENGO founder, June 20, 2012).

Before the public hearing, several green groups organised events that helped keep the Yuanmingyuan issue in the public eye. For example, Friends of Nature organised a “people’s hearing” to generate debate several days before the official hearing (Interview with ENGO activist, July 14, 2007). Over 50 people attended, including academics, ENGO activists, journalists, members of the public and, in a show of support, one SEPA official. Several ENGOs also issued a statement criticising project overseers for ignoring EIA procedures and calling for a public hearing to be held (Friends of Nature 2005).

During the public hearing of 13 April, Pan Yue stated that its purpose was to expand and standardise public participation, and promote a more “democratic” decision-making process. It was seen as a test case in implementing the public supervision mechanism. As Pan stated,

In reality, we just want to do an exploration. The government establishes an open platform and allows all kinds of opinions to collect and be exchanged. Through a kind of transparent and open forum, [we can] open up to society all of the relevant links in the government’s decision-making, publicise decision-making content towards society in a timely manner, and make the government’s administrative behaviour subject to public opinion and supervision. This is consistent with an administrative method of democratic decision-making, scientific decision-making, and is beneficial towards the building of a harmonious society (*Xinhua News Agency*, July 18, 2005, emphasis added).

Another official recounted that “without wanting to overestimate our abilities, we wanted to open a reform to the political system, [we wanted to open] an entry point for public participation” (Interview with MEP official, June 21, 2012). Over 120 people attended the hearing, and several ENGO participants contributed their views. In a show of transparency the hearing was broadcast live on the websites of *Xinhua* and the *People’s Daily*, and the EIA report was subsequently uploaded to SEPA’s website. Within 10 hours of appearing online, the report had received 17,000 hits, causing the website to crash (*Southern Weekend*, July 22, 2005).

From SEPA’s perspective, ENGO participation added legitimacy to the process. Moore and Warren (2006, 9) argued that “in part due to national NGO participation, the Yuanmingyuan hearing involved greater attention to the public’s procedural participation rights and implementation through hearing rules, as well as greater national publicity and increased attention to the [EIA] report’s conclusions.” ENGO participants viewed the public hearing as an important step towards their goal of expanding environmental public participation (Friends of Nature 2006). The value of the legal provision for public hearings for ENGO activists is that it enables them to legitimately “speak out” (*shuo shi’er*) and call for procedural justice in relation to the EIA process (Interview with ENGO founder, June 20, 2012). This was evident in the Nu River campaign, when ENGOs on two occasions called for a public hearing to be held, although to no avail (Johnson 2010).

Ironically, despite the enthusiasm stimulated by this exercise in public participation, the impact of ENGOs and of the hearing itself on the outcome of this case was negligible. The 90% of the project already completed was allowed to stand, stoking speculation that SEPA had made a political decision rather than embracing the outcome of “public supervision” (Moore and Warren 2006, 17). In addition, the hearing was only conducted after the EIA had been completed, not – as it should have been – before (Moore and Warren 2006). In

short, the public hearing only brought forth a thin veneer of good governance – through raising public awareness about legal channels for public participation.

The Campaign Against the Gold East Paper Company

The Yuanmingyuan case featured close personal cooperation between SEPA officials and ENGO activists. The will of individual leaders (most notably Pan Yue) was important in promoting a public participation agenda that suited both parties. Yet by late 2007 Pan Yue, who once stated that ENGOs and SEPA officials “are all in the same family” (Young 2005), had reportedly been side-lined within SEPA (Interview with Peking University academic, June 26, 2012; *The Guardian*, March 12, 2009). This, along with the removal in 2005 of SEPA Minister Xie Zhenhua, dampened ENGO relations with the ministry (Interview with MEP official, June 21, 2012; Interview with ENGO activist, July 3, 2012). Although ENGOs continued to cooperate with SEPA, this was mainly with lower ranking officials (Interview with ENGO activist, July 3, 2012). Despite this, legislation for public participation and transparency has endured, as has the goal shared by many ENGOs of using it to promote reform within the system.

An ENGO campaign against the Gold East Paper Company (GEP) shows how activists have utilised the MEP’s good governance agenda to improve oversight of enterprises. Compared with the Yuanmingyuan case, this campaign involved a more “tacit” (*moqi*) form of cooperation between lower-ranking MEP officials and ENGO activists (Interview with ENGO activist, July 3, 2012). Hence, despite reduced support from MEP leaders, relationships between ENGO activists and lower-level officials were such that cooperation could endure, albeit in a less high-profile manner. In the GEP case, although the former relayed information to the MEP through personal connections, they also attempted to hold GEP to the requirements of the public supervision mechanism (Interview with ENGO activist, July 30, 2009).

On 5 August 2008, GEP and six subsidiary companies applied for an IPO on the Shanghai Stock Exchange. The MEP placed a public notice (*gongshi*) on its website announcing the application (MEP 2008). It stated that although the seven companies “basically met” the necessary environmental conditions required for listing approval, a nine-day public comment period had been opened (MEP 2008). After learning about the public notice period from the MEP’s website (Interview with ENGO activist, July 20, 2009), FON, Global Village Beijing, Green Earth Volunteers, Green Watershed, Green SOS and Greenpeace China attempted to block the IPO, based on GEP’s allegedly woeful environmental record. On 12 August the six ENGOs wrote to the MEP, claiming that GEP had violated environmental laws and regulations, and should therefore be prevented from conducting its IPO (Friends of Nature 2008a). The ENGOs also claimed that GEP and its subsidiaries had violated the MEID. The ENGOs claimed that GEP and its subsidiaries, having been publicly identified by local environmental authorities for contravening environmental regulations, had ignored MEID stipulations that such “named and shamed” companies should publicly disclose environmental information within 30 days. ENGOs wrote to APP China and requested it to disclose the relevant information (Friends of Nature 2008b). Although the ENGOs received no direct response, APP issued a statement the following day defending its environmental record and emphasising its contribution to the Chinese economy (APP China 2008). Several days later, the ENGOs wrote again to APP China reiterating the request that it disclose information according to law (Friends of

Nature 2008c). On 2 September, the ENGOs wrote to the MEP and provided more details about the environmental record of Hainan Jinhai Pulp, one of the six subsidiaries (Friends of Nature 2008d). ENGOs listed 26 separate environmental violations that the company had allegedly committed within 36 months prior to its listing application. This information was in the public domain, largely thanks to an increase in information disclosure by environmental authorities in recent years (Interview with ENGO activist, July 30, 2009).

ENGO participants considered the campaign a partial success, as the IPO was delayed for nine months and the companies had to reapply (Interview with ENGO activists, July 13 & 30, 2009). ENGOs welcomed the opportunity to conduct environmental oversight of an IPO process for the first time (Interview with ENGO activists, July 13 & 30, 2009). In addition to pressuring APP China to defend its record to the Chinese public through the media, the attention led to company representatives holding a meeting with ENGO activists (Interview with ENGO activists, July 13 & 30, 2009). Even though the MEP had approved the initial IPO application from an environmental perspective, it apparently welcomed the ENGO interventions. According to an ENGO participant, the MEP benefited by raising its profile within the IPO process and showing that its regulations are effective (Interview with ENGO activist, July 13, 2009). However, the MEP eventually approved the IPO application; despite the seven companies not meeting ENGOs' information disclosure demands. In addition, one participant in the case claimed that the nine-month delay was not necessarily detrimental to GEP, due to the onset of the global financial crisis (Interview, ENGO activist, July 3, 2012).

Although ENGO activists involved in the Yuanmingyuan and GEP cases viewed their participation as beneficial in promoting the public supervision mechanism (Interview, ENGO founder, June 20, 2012), the final substantive outcomes were disappointing. In contrast, so-called NIMBY activists are primarily motivated by substantive outcomes, namely whether or not an unwanted facility is constructed in their neighbourhoods. Although NIMBY activists have engaged with the public supervision mechanism, "good governance" is seen as a means to an end rather than an end in itself (Johnson 2010). Compared with ENGOs, NIMBY activists are not easily placated by procedural good governance if they perceive outcomes as unfavourable. This can result in unintended consequences whereby NIMBYs use the public supervision mechanism to sustain and legitimise confrontations with elites based on the latter's "bad governance."

NIMBY Activism

The term NIMBY is often used pejoratively to describe selfish, irrational opposition by individuals or communities to the locating of facilities necessary for the public good such as waste incinerators or prisons in their "backyards." In some cases NIMBY activism is symptomatic of concern about potential environmental and health threats from projects such as factories and waste treatment facilities, although it can also be motivated by concern over property prices. This section discusses several high-profile NIMBY cases, drawing on documentary data and interviews with non-state participants conducted between 2009 and 2012. The cases examined involve urban, predominantly middle-class communities. They are not representative, but highlight how NIMBY actors have interacted with the public supervision mechanism. Although campaigners in these cases demonstrated strong opposition to unwanted local projects, they also displayed a desire to avoid antagonising the government, and stay within the law as far as possible. By calling

for greater attention to good governance principles within the existing political system, NIMBY activists have attempted to promote society-led accountability that goes beyond the limited state-led accountability contained in the public supervision mechanism.

Despite the existence of public participation and transparency requirements, local officials are often reluctant to encourage public supervision over new, potentially lucrative, projects. An MEP official stated that from the perspective of local officials, “one fewer matter is preferable to one more matter ... Truly meaningful public participation is very rare, [officials] go through the motions, they treat public participation as a mere formality” (Interview with MEP official, June 21, 2012). This often results in projects being approved without the knowledge, let alone input, of local communities. In response to these “bad governance” practices, NIMBY actors have sometimes employed the “good governance” rhetoric stemming from the MEP’s public supervision mechanism. In particular, they have strongly lamented the governments’ failure to incorporate public opinion into the decision-making process as a violation of their public participation “rights” as set out by the public supervision mechanism.

In some cases, NIMBY activists have invoked the letter of the public supervision mechanism in complaining that their participatory rights have been violated. Complaints that public consultation requirements have not been adhered to can be, in the words of one environmental lawyer, a useful “entry point” (*qieru dian*) for campaigners challenging siting decisions (Interview with environmental lawyer, November 29, 2010). As well as enabling campaigners to make claims within the law, it also enables them to portray LULUs as contrary to public opinion. In this sense, public participation legislation has influenced, and opened political opportunity structures for, public mobilisation against LULUs. For example, in 2007, residents in Shanghai mobilised against the planned extension of the city’s Maglev train system and demanded that a public hearing be held, as provided for by the EIA Law. They also tried to extend the boundaries of the law by asking for a longer public comment period and demanding to see the full version of the EIA report, despite the fact that legislation only requires publication of an abridged version (*The Beijing News*, January 22, 2008). Campaigners opposed to the construction of incinerators in Beijing’s Liulitun and Gaoantun also complained that proper public consultation procedures had not been followed. In the former case, residents claimed that results from a questionnaire conducted as part of the EIA process were “fake” (*jia de*) (Interview with Liulitun residents, July 29, 2009). They also complained that the 100 questionnaires distributed were insufficient to gauge public opinion (Interview with Liulitun residents, July 29, 2009), despite technically meeting legislative public consultation requirements. In response, local residents conducted their own survey of 400 people, which found almost unanimous opposition to the incinerator. This highlighted the perceived gap between the siting decision and public opinion, which according to the EIA Law “should” be factored into this type of project.

SEPA itself has also faced pressure over limited transparency and for failing to consider public opinion. For example, SEPA approved the EIA for the Gaoantun incinerator in 2004.⁵ Local residents challenged this decision, based partly on limited public participation, but encountered obstacles. The abridged EIA report was not released publicly, and although residents were allowed to view the report at SEPA offices, they were refused permission to photocopy or photograph it (Interview with environmental lawyer, June 22, 2012). Campaigners asked to see the contents page of the full EIA in order to determine whether or not potential health impacts had been addressed, but were refused on grounds

that it would infringe on company secrets (Friends of Nature 2011). Similarly to Liulitun, the public opinion section of the EIA report also indicated public support. Yet local residents discovered through the abridged EIA report that only 50 people had been consulted via questionnaires. They subsequently filed an administrative review application with SEPA against its decision to approve the EIA, claiming it had “violated public participation principles [and] did not solicit the opinions of interested parties consistent with procedures contained in the EIA and AL laws” (Home Defence Action Group 2008). SEPA upheld its original decision, and local residents lost their appeal to the Legislative Affairs Office of the State Council. One SEPA official reportedly told campaigners that, in relation to soliciting public opinion via questionnaires, “even if we do only one [questionnaire] it means we’ve done it (fulfilled public consultation requirements), there are no requirements about the number [of questionnaires]” (Friends of Nature 2011). This highlights the problems that arise in relation to implementing the top-down public supervision mechanism, when officials are essentially asked to hold themselves open to public scrutiny.

NIMBY campaigners tend to use a variety of tactics in defending their interests, including protests against unwanted projects. In some cases, this leads to projects being suspended pending further inquiry and public consultation. From the government’s perspective, the tactic of suspending projects pending further public consultation can buy time for the authorities, and can temporarily defuse social unrest. For example, in 2007 a reported 8,000 residents marched on government headquarters in Xiamen to express opposition to a paraxylene (PX) chemical plant that was to be constructed in the city. In response, local officials halted the project pending further investigations including public consultation. During this period the public was invited to submit comments, and the local government even convened a two-day public hearing. Although it is likely that this did not influence the final decision (Johnson 2010), arguably it reinforced the idea that the public plays a role in siting decisions. Some media reports subsequently framed the Xiamen PX case as a “win-win” situation, in that protestors behaved “rationally” and the government listened to, rather than ignored popular opinion (*People’s Daily*, January 2, 2008). Similarly, a protest by Liulitun residents resulted in the incinerator being suspended. Here, as in Gaoantun and Shanghai where protests also occurred, officials convened several meetings with resident representatives. Although these meetings appear to have been rather ad hoc and informal, they enabled government officials and residents to exchange views. This was a significant improvement compared to the previous practice.

Paradoxically, although they have campaigned for their participatory rights to be upheld, citizens tend to be highly sceptical of formal channels. Unlike ENGOs, which have a long-term stake in improved legal channels for transparency and public participation, NIMBY activists exhibited significant distrust of these mechanisms, which they see as open to manipulation by decision-makers (Interview with Liulitun residents, July 29, 2009; interview with Panyu residents, July 20, 2012). As one campaigner from Guangzhou stated, regarding a public consultation exercise following the suspension of an incinerator project in the city’s Panyu district,

government departments just give us a mailbox, a fax, a phone number to allow us to express our opinions. We hope that every opinion expressed by a member of the public can be laid out under the sun so that everybody can see it, and not placed into a black hole where only ... [officials] know about it” (Dayoo.com, April 13, 2011).

One problem is that officials can operate top-down participatory channels with little or no external accountability mechanisms. Despite these shortcomings in the public supervision mechanism, employing the language of good governance helps legitimise opposition to projects that have clearly violated the letter, or sometimes the spirit, of the law. Here, there are clear parallels with O'Brien and Li's "rightful resisters," who call out unruly local officials for failing to implement central-level policies (O'Brien and Li 2006). NIMBY activists have sometimes appropriated the public supervision mechanism to their own advantage by exposing cases where public opinion has not been consulted adequately. They utilise good governance principles in an instrumental way to legitimise their cause and achieve their own ends, namely the cancellation of LULUs irrespective of whether or not due process has been carried out. In this sense, the NIMBY opposition examined above has not been channelled through the public supervision mechanism; rather, the MEP's good governance agenda has provided a legitimising narrative for citizen activists who are willing to engage with formal participatory channels alongside more overt forms of protest beyond the official "good governance" institutions.

Conclusion

China's leaders have introduced good governance principles from the top-down in order to improve governance effectiveness and bolster regime legitimacy. Certain reformist officials within the MEP used this to create legal mechanisms for public participation and information disclosure. This "public supervision mechanism" was created in the hope that public involvement could improve local officials' adherence to environmental protection legislation and check powerful economic interests, which would in turn serve the MEP's interests. In other words, from its inception good governance principles and institutions were established not for their own sake, but as a means to achieve a more traditional objective of the central government, namely control of its local agents. ENGO and NIMBY activists have utilised newly established legal channels for public participation, and have demanded that good governance principles are adhered to when local officials and/or enterprises engage in what could be described as "bad governance." The MEP's good governance agenda has altered the parameters for Chinese environmental civil society by directing activism towards the public supervision mechanism and legitimising public calls for good governance principles to be enforced.

However, achieving good governance objectives in environmental protection is a difficult and contested process in China. Thus far, the public supervision mechanism has only placed a thin veneer of good governance onto an otherwise opaque and non-participatory political system with weak accountability and rule of law. Many government officials are reluctant to apply good governance principles that could reduce their control over decisions. In each of the NIMBY cases reviewed in this paper, for example, officials initially attempted to push through unwelcome projects without transparency or meaningful public consultation. Consequently, the public has to fight for the right to participate in planning decisions. In these NIMBY cases, officials paid greater attention to public opinion only after public unrest occurred. Yet even when public participation channels are opened, there is no guarantee that public comment will influence decisions, and officials remain reluctant to release information.

Despite the difficulties in implementation, the MEP's good governance agenda has arguably contributed to a gradual transition to a managed "Chinese" version of good governance. Pan Yue encapsulated the MEP's incremental approach to environmental governance reform when he said that "to move the system forward, we're playing a kind of game: we enforce a new environmental law – and the other side retreats a bit, and we advance a bit" (*Southern Weekend*, January 23, 2007). Civil society plays a crucial role in this process, as an ally of MEP alongside the latter's "game" to induce the compliance of local government actors, through providing external oversight and by framing demands in such a way as to invoke the good governance principles to which the central government states that it subscribes.

The cases examined in this paper do suggest, however, that although the MEP sees benefit in public supervision, it also wants this supervision to occur on its own terms. The side-lining of Pan Yue around late 2007, apparently due in part to his outspokenness on issues such as public participation and transparency, suggests disagreement within the MEP about the public's role in environmental protection (*The Guardian*, March 12, 2009). Despite this, the "good governance" agenda has endured and spread, largely due to citizen pressure. NIMBY actors, who, in common with ENGOs, have attempted to appropriate the public supervision mechanism to their own advantage, have played a key role in pushing concerns about good governance to the forefront and promoting official accountability from the bottom up. Rather than being satisfied with essentially tokenistic participation and other "due process" values in themselves, as some ENGOs appear to be, NIMBY actors are very much focused on the *substantive* ends, regardless of how they are achieved. NIMBY activists are generally loath to challenge the party-state and invite oppression upon themselves, but nor are they "embedded" within the state in the same way that some ENGOs are. NIMBY actors have thus adopted, generally, a wider variety of tactics, including highly visible protests that are symptomatic of a much more contentious approach than ENGOs. Even without any legal framework for public participation, it is likely that these citizens would mobilise against the LULUs in question. However, adopting the language of "rights," which is part of the officially mandated mechanism of public supervision, enables these actors to frame their opposition in more legitimate ways. This in turn supports persistent, sustained mobilisation and makes it harder for officials to dismiss their claims as irrational and selfish. As China's urban middle classes become increasingly aware of the negative impacts, including public health risks, associated with China's rapid modernisation, it is likely that they will follow the example of other campaigners in pressing for good governance criteria to be upheld. The ongoing legitimacy of the CCP may depend on its ability to accommodate these demands.

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Notes

- ¹ SEPA was replaced by the higher-ranking MEP in 2008.
- ² Constructors who fail to carry out an EIA are allowed to do a "make-up" EIA after construction is underway. This is seen as a major weakness in the EIA process, as it effectively undermines the whole logic behind the EIA process.
- ³ The Temporary Measures on Public Participation in EIA were not formally promulgated until 2006.

⁴ The Nu River hydropower project was temporarily suspended in 2003 by Premier Wen Jiabao.

⁵ In contrast, the Liulitun EIA had been approved by the Beijing Environmental Protection Bureau.

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