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弗里德里希-艾伯特基金会
——北京项目执行人办公室

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Diskussionsbeiträge

讨论稿

4

KRAFT HANNELORE

汉内洛蕾·克拉夫特

**NORMS AND STANDARDS FOR
CONSULTATION AT THE PROVINCIAL
AND LOCAL LEVEL**

地方立法磋商的原则和标准

**FRIEDRICH
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Informationen über die Arbeit des Büros der Friedrich-Ebert-Stiftung in Peking finden Sie am Schluss dieser Broschüre.

关于弗里德里希－艾伯特基金会北京项目执行人办公室的情况
请参阅本书结尾处的专门介绍

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Vorwort

Den vorliegenden Vortrag hielt Hannelore Kraft am 12. Juli 2006 auf einem internationalen Seminar über *“Comparative Review of the Norms and Standards for Consultation at the Provincial and Local Levels”*. Das Seminar wurde vom Forschungsbüro beim Ständigen Ausschuss des Nationalen Volkskongresses und des *Parliamentary Centre of Canada* vom 11.-13. Juli in Peking durchgeführt. Die Teilnahme von Hannelore Kraft wurde von der Friedrich-Ebert-Stiftung vermittelt.

Hannelore Kraft ist Mitglied des Landtages von Nordrhein-Westfalen / Bundesrepublik Deutschland. Sie ist Vorsitzende der Landtagsfraktion der SPD und ehemalige Wissenschaftsministerin des Landes Nordrhein-Westfalen.

Roland Feicht

Landesvertreter der Friedrich-Ebert-Stiftung in China

Peking, im September 2006

前言

本书系汉内洛蕾·克拉夫特女士于2006年7月12日在“省级和地方人大公众咨询活动的规范和标准比较国际研讨会”上所做的报告。研讨会由中国全国人大常委会研究室和加拿大议会中心共同举办。艾伯特基金会协助会议举办方邀请了克拉夫特女士参加会议。

汉内洛蕾·克拉夫特女士是联邦德国北莱茵-威斯特法伦州议会议员。她还是德国社民党该州议会党团主席，并曾任州科技部长。

NORMS AND STANDARDS FOR CONSULTATION AT THE PROVINCIAL AND LOCAL LEVEL --THE NORTH RHINE-WESTFALIAN CASE

MS. KRAFT, HANNELORE

MEMBER OF THE STATE ASSEMBLY TO NORTH RHINE-WESTFALIA

North Rhine-Westfalia a former coal and steel country with 18 million inhabitants is one of the most densely populated among the German federal states. Forty four of 100 leading companies have their headquarters in North Rhine-Westfalia. The states economy contributes with 487.5 billion Euros in 2005 about 22 percent of Germany's gross domestic product and with the Ruhr district it contains the largest industrial concentration in Europe.

Germany itself is organized as a federalist state. All the sixteen federal German states "Länder" set their own constitutions and implement laws passed by the national parliament "Bundestag". The states own legislation is limited to the fields of education, culture, media, police and local law. Justice, economy, labour market and social policy, transportation and environmental policy are fields of concurrent legislation between national and federal level. That means that the states parliaments "Landtag" may pass their own laws, but only if the national parliament does not. Additionally, the national parliament is

obliged to take into account the uniformity of living conditions between all federal states in its legislation. With the effect that more and more laws are passed by the national parliament while the federal states exercise most administrative powers.

Additionally the federal states can influence national legislation in the second chamber at national level - the "Bundesrat". Every federal state sends representatives of its government and has an amount of votes according to the size of its population. In this chamber the federal states can initiate bills or dismiss bills initiated by the national parliament the "Bundestag", especially if those bills concern the states interests. Therefore the main focus is to control legislation that has an impact on the federal states own financial situation.

Politics in North Rhine-Westfalia itself is organized at two levels. At the level of the federal state every five years the members to the federal parliament - the "Landtag" - get elected and form the state legislature. Until the state election in 2005 the state

地方立法磋商的原则和标准

——以北莱茵—威斯特法伦州为例

汉内洛蕾·克拉夫特女士
北莱茵—威斯特法伦州议员

历史上的煤铁之乡北莱茵—威斯特法伦州拥有1800万人口，是德国人口最为稠密的一个州。德国100强企业中有44个将总部设在这里。2005年该州的GDP为4875亿欧元，占全德国GDP总量的22%，州内有欧洲最大最著名的工业区——鲁尔工业区。

德国是一个联邦制国家。16个联邦州都有它们自己的宪法，同时执行联邦议院通过的全国性法律。各州自己的立法被限制在教育、文化、传媒、警务等地方事务领域。司法、劳工市场和社会政策、交通和环境政策属于联邦和州共同的立法领域，这意味着州议会只有在联邦议会没有立法的情况下，才能制定自己的法律。但是，联邦议会在立法时有义务考虑各州的生活状况等情况，以达到立法效果在各州的一致性。由于越

来越多的法律由联邦议会制定，各州的主要任务是行使行政权，执行法律。

然而各州可以通过联邦议会第二院——联邦参议院来影响联邦法律的制定。每个州政府在联邦参议院中都有自己选派的代表，并拥有与人口规模成比例的表决权。在联邦参议院，各州可以提出法案或否决由联邦议院提出的法案，特别是与各州的利益有关的法案，因此关注的焦点是那些对联邦州的财政状况有影响的立法。

北威斯特法伦州的政权组织结构分为两个层次。第一个层次是州这一级，每五年举行一次州议会选举，选出的成员组成州立法机构。在2005年的选举之前，州议会是由社会民主党和绿党联盟领导的。在2005年5月的选举中基督教民主联盟获得了胜利，他们和自由党组

was run by a coalition of Social Democratic and Green Party. After the success of the Christian Democratic Union in May 2005 North Rhine-Westfalia is ruled by a coalition of conservative Christian Democrats and the Liberal Party.

At the second, the local level, there are counties "Kreise" in rural districts and cities in urban districts (normally formed by cities with more than 100.000 inhabitants). The district parliament - either the "Kreistag" for the "Kreise" or the council "Rat" for the cities - is the legislative body of the districts and responsible for its local self-administration and the implementation of national and state laws. The "Kreise" are formed by an averaged number of about 10 or more towns, which possess a great deal of competences for local issues. As the cities, which concentrate the competences on the towns and the "Kreis" in one institution, they are ruled by the democratic elected "Rat" and led by an elected mayor.

According to the German political order that consists of the national level the "Bund", the federal states - the "Länder" and the local communities you can find three stages of participation going along with the administrative levels. While there is no culture of direct participation at the national level one can find a wide range of channels for citizens' participation and consultation at the local level and the federal level of the states. Despite this, one has to

keep in mind that the peoples' political will still is mainly represented by elected deputies.

At national level in 2002 a bill introduced by the Social Democratic and the Green Party to change the German constitution and allow peoples' initiatives and referenda missed the majority.

At the federal and local level each state and its communities regulate those participation rights in its constitutions or local codes. Those laws, which regulate the local participation, are set by the state. Especially in the 90ths the active role of citizens' participation in politics entered the focus. Only one of the German states - Baden-Württemberg - knew petitions for a referendum and referenda before 1990. After that all federal states (except Berlin) established the rights for petitions for a referendum and referenda in their local codes.

Since the North Rhine-Westfalian state was founded, citizens have the constitutional option to initiate referenda at federal level. The new local code of North Rhine-Westfalia came into effect in 1994. This new local code extended the rights for citizens' participations and decisions. In addition to directly elected mayors other forms were established like citizens' application, petition for a referendum and referenda as well as more rights for women and disadvantaged by widening rights for the "For-

成保守派联盟共同执政。第二个层次是地方一级，即农村地区的县和城市地区（通常是指由几个城市组成的居民超过10万的地区）的市。县或市的议会是地方立法机关，负责地方自治以及执行联邦和州的法律。县通常由10个或更多的镇组成，这些镇在地方事务上享有很大的权限。与县不同，市则将权力集中于一个机构，这就是由民主选举产生的市政厅，市政厅在选举产生的市长领导下工作。

德国的国家结构分为联邦、州和地方三级，由这三级结构所决定，公民的立法参与也分为三个层次。在联邦一级缺乏直接参与的传统，但在地方和州这两级，可以发现公民有广泛的参与和磋商的渠道。此外，必须记住的一点是，现在人民的政治意愿仍然主要由他们选举出的代表代为表达。

在联邦一级，2002年由社会民主党和绿党共同提出一项宪法修正案，要求赋予公民创制权和复决权，但这一动议没有获得多数支持。

在州和地方这两级，每个州都在宪法或地方性法规中规定了公众的参与权。在20世纪90年代之前，只有巴登—符腾堡州规定了公民申请复决和公民投票的权利，但90年代以后公民政治参与的积极作用成为人们关注的焦点。现在，除柏林外的所有联邦州都在法律中赋予公民申请复决和公民投票的权利。

1994年，北莱茵—威斯特法伦州制定了新的地方性法律，扩大了公民的参与权和决定权。除了直接选举市长外，还规定了公民参与的其他形式，如公民的动议权，申请复决和公民投票的权利，还通过加强“外国人咨询委员会”和“平等机会委员会”的权力，赋予妇女和弱势群体更多的权利。

一、北莱茵—威斯特法伦州立法参与和磋商的有关情况

北莱茵—威斯特法伦州宪法规定了三种直接参与的形式。最晚出现并且最不常用的形式是提出公民创制。这一权利是2002年以后才规定在州宪法中的。公民动议需要有0.5%的选民联名向州

eigners Advisory Councils" and "Equal Opportunity Commissioners".

Participation and consultation in the German states and North Rhine-Westfalia

The North Rhine-Westfalian constitution regulates three forms of direct participation. The latest and less extensive one is the right to conduct a peoples' initiative. It is covered by the North Rhine-Westfalian constitution only since 2002. To conduct a peoples' initiative 0, 5 percent of the electorate propose a bill or political issue to the parliament, which has to decide whether to accept or to dismiss it within 3 months. The states budget, or tax laws can not be an issue of the peoples' initiative. If the proposed bill would lead to additional expenses there have to be specifications about the cost recovery.

Only in this legislative period, means within one year, three peoples' initiatives have be initiated: Already two peoples' initiatives against shortages for programs supporting children youth and families and one for longer opening hours for video stores.

The second and more extensive channel to influence legislation in North Rhine-Westfalia is to conduct a petition for a referendum or referendum. There are several obstacles to do so. First of all, as for the peoples' initiative, the sovereign right of the

parliament to decide about the budget is not to be affected by the referendums aim. There have to be specification about cost recovery as well. That means: all plebiscites that have an impact on financial issues, taxes or salaries are illegitimate. Additionally, a certain amount of signatures has to be collected to conduct a referendum. This quorum ranges up to 20 percent of the electorate in the German federal states. With the result that until today referenda hardly ever took place.

In North Rhine-Westfalia the parliament actually lowered the signature quorum for petitions for a referendum in 2002 in to at least 8 percent of those entitled to vote. After that the parliament has to decide whether to agree with the petition or to conduct a referendum within two months. The petition can be dismissed by the ministry of the interior if the proposed bill does not contain specification about cost recovery or if it was an issue of another referendum within two years. If the deputies dismiss the proposal for a bill, citizens have to decide in a referendum whether to vote "Yes" or "No". The majority has to vote for one of these options and the petition has to be approved by at least 15 percent. If a referendum aims at changing the constitution two third of those entitled to vote have to accept the petition and turnout has to be at least 50 percent.

Another opportunity for citizens' to express

议会提出，提出的既可是一项法案，也可能是某个政治问题，议会将在3个月的时间里决定接受或否决该动议。州预算或税收法律不能成为提出动议的对象。如果提出的动议将造成额外的支出，必须附有弥补支出的详细计划。

在过去一年中，共提出了三项动议，其中两项动议是要求增加针对儿童、青少年和家庭的援助计划，另一项动议是要求延长音像店的营业时间。

第二种也是使用更为广泛的影响立法的途径是申请复决和公民投票。这种途径存在着几个困难。首先，和公民动议一样，公民投票的目标不能影响议会决定预算的绝对权力。当公民投票的事项有额外支出时，必须附有弥补支出的详细说明。这意味着，所有关于财政、税收和工资问题的公民投票都是不合法的。其次，申请公民投票需要得到一定数量的选民签名，在德国各联邦州中，法定人数的最高规定是全体选民的20%。由于存在上述困难，直到今天，进行公民投票的情况极其罕见。

北莱茵—威斯特法伦州议会在2002年将申请公民投票需要的签名数降到了选民的8%。议会必须在两个月的时间里决定是否举行公民投票。如果申请中没有包括弥补支出的详细说明或者申请公决的事项已经包括在近两年内举行的另一次公决中，内政部有权否决申请。如果议会否决了申请，而15%以上的选民又提出了同样的申请，就必须举行公民投票。如果公民投票的目的是修改宪法，则需要获得三分之二以上参加选举的选民的支持，且参加选举的选民数占全部选民的50%以上。

第三种公民表达意愿的途径是通过北莱茵州议会的请愿委员会。该委员会负责整理所有向议会提出的请愿，并向相关机构提出如何处理请愿的建议。政府和公共权力机构有义务告知请愿委员会关于请愿事项的情况，向该委员会提供文件资料。请愿委员会可以通过询问证人和专家来获得证据。

在立法的不同阶段公共磋商都得到了保证。根据州政府工作程序，在起始

their opinions is the committee on petitions in the North Rhine-Westfalian parliament. It proofs petitions that were filed to the Landtag and recommends responsible authorities how to deal with the controversial matters. The government and public authorities are obliged to inform the committee on petitions and grant access to the files. The committee on petitions can also supply evidence by questioning witnesses and experts.

Additionally public consultation is guaranteed at the different stages of legislation. According to the procedural rules of the states government associations and interest groups have to be involved at the very beginning of legislation, already in the cabinets' discussion of a bill if public interests are concerned. Specific laws like for example the act on schools states more precisely which interest groups should be heard before changing the law or regulations for conducting examinations. It's the teachers trade unions, the associations of parents, pupils and headmasters of schools, churches, federal chamber of industry and commerce and the communities associations that have to be involved in legislation concerning acts on schools.

This early consideration of public interests assures that resistances against a bill can be taken into account already before presenting it to the parliament and to the public. After revising the bill, considering the ob-

jections raised by the associations and interest groups and coordinating it between the departments, the cabinet decision finally leads to the bills' presentation in the parliament.

At first in the beginning of the parliamentary discussions a bill is rather fundamentally discussed by the deputies. After that it will be referred to the committees of experts, which with a few exceptions meet in public. One committee acts as coordinating committee, like for instance the committee for schools if the act in schools is discussed. Additionally the same bill can be referred to other committees as well, for instance if financial or local issues are concerned to the committees for finance or local politics. The committees can decide to hold public hearings on different aspects of the discussed bill. The right for public hearings of experts, people, interest groups and associations is defined in the rules of parliamentary procedure in North Rhine-Westfalia. Already 25 per cent of the committees members can propose to hold a hearing. For instance: If a bill concerns general interests of communities, the communities associations have to be heard. Every parliamentary group can name experts to make their statements about the bill and its consequences and raises questions in the run-up to the hearing that have to be answered by the experts. There is time for further questions by the deputies in the hearing.

阶段就应让社会团体和利益集团介入立法，即使是处于内阁讨论阶段的法案，只要涉及公共利益，也要允许相关利益团体介入。某些特别的法律，例如学校法，在进行实质性审议之前必须听取相关利益团体的意见。这些团体包括教师工会、家长协会、小学生和学校的校长、教会、州工业和商业部以及其他与学校立法有关的团体。

这种在立法早期考虑公共利益的做法确保了法案在提交议会和面对公众之前能够充分听取反对者的不同声音。在充分考虑社团和利益团体提出的反对意见，在不同部门之间进行协调平衡后，法案经过修改，由政府向议会提出。

在法案进入议会的初始阶段，议员们只是就法案的原则进行讨论。通常一个法案会被交给几个不同的委员会审议，其中一个委员会被指定为负责协调各委员会工作的协调委员会，比如说审议学校时的协调委员会就是教育委员会。委员会审议时可决定就法案涉及的某方面问题召开听证会，召开听证会的

有关程序，专家、公民、利益集团和团体的权利，由北莱茵州议会议事程序规定。当一个委员会内25%以上成员提议召开听证会时，必须召开。在听证会上，议会内的每个政党可以提名一名专家，代为陈述该党对法案的意见，并在听证会举行前准备拟提出的问题。

议会中的反对党经常利用听证会这一形式向公众宣示他们的立场和对法案的不同意见，以此来牵制政府。在过去一年，举行听证会的都是那些争议很大的法案，如学校法案已经开过8次听证会，涉及法案不同方面的问题。此外还举行过关于预算法案、关于限制承租人权利的法案和关于储蓄银行私有化法案的听证会。在之前的一个年度，则举行过有关学校和教育、社会和环境方面法案的听证会。

经过委员会阶段的听证和进一步的审议，法案再次返回到全院大会进行讨论。这一阶段议员可以提出修正案。最后全院大会通过法案，之后由政府宣布并发表在议会公报上。

Especially the opposition in parliament uses this opportunity to inform the public about its positions and objections and to control the government. Just for instance: In this ongoing legislative period within one year there have been public hearings about controversial bills like the highly controversial act on schools (already eight hearings on different issues within the act on schools), the act on the budget, about plans to restrict tenants rights and about the planned privatisation of saving banks (Sparkassen). In the last legislative period a lot of public hearings were hold on school and educational, as well as on social and environmental issues.

After those hearings and further (public) discussions in the committees the bill is again discussed in the parliament. At this stage deputies may suggest changes. Finally the deputies pass the law, which is afterwards announced by the government and published as printed matter of the parliament.

Those public hearings and the several discussions about the bill in the parliament and the committees assure a higher degree of transparency in the process of legislation, on the one hand because of the involvement of interest groups in the process of legislation. On the other hand because of the discussion and information by the opposition and the media about the consequences of the bills at the several stages of

legislation: in the first parliamentary discussion, in the public discussions in the committees, in public hearings and finally in the second parliamentary discussion.

Citizens' direct participation at local level

The most important forms of citizens' direct participation in the communities of North Rhine-Westfalia are petitions for a referendum and referenda. It allows citizens to influence local matters in their communities.

First step for conducting citizens' decisions is to initiate a petition. The local code regulates acceptable aims of the referenda, such as specifications about cost recovery, time limits and signature quorum. The petition has to be signed by 10 percent of the inhabitants in the community. The most common reason for petitions to fail is if the covered matters are excluded by the local code. Therefore in North Rhine-Westfalia most of the petitions are illegitimate because they cover issues of urban management or miss proposals for cost recovery.

If the local parliaments dismiss the petition a referendum can be initiated within three months. The majority of votes, at least 20 percent, have to accept the petition. In many of the North Rhine-Westfalian communities citizens make use of this right. Every year every fifteenth community decides about a petition. Since 1990 206 petitions

这些在全院大会和委员会阶段的听证会和多次审议确保了立法过程的高度透明。一方面在立法过程中相关利益群体参与进来，另一方面在全院大会一读、委员会公开讨论、公开听证会和全院大会二读等立法的不同阶段，反对派和传媒一直对法案提出不同意见并提供相关信息。

二、公民在地方一级的直接立法参与

在北莱茵州的各个地方自治单位，公民直接参与立法的最重要的形式是申请复决和公民投票。这一权利使得公民可以影响他们所在地区的地方事务。

公民表达意愿的第一步是提出申请。地方性法规规定了提出申请的要求，如关于弥补支出的详细计划、时间限制和联名需要的法定人数。申请需要整个社区内10%以上的居民联名，否决申请最为常见的理由是申请事项不在地方性法规规定的范围内。因此在北莱茵州大多数申请都是不合法的，因为它们涉及法规规定的除外事项或没有提出弥补支出的计划。

如果地方议会否决了申请，在三个月内20%的选民联名再次要求，则必须举行公民投票。如果半数以上选民参加投票且过半数通过，政府必须接受申请事项。在北莱茵州的很多市镇，公民行使了这一权利。每年都有15个以上的市镇出现申请，1990年以来全州已举行过206次公民投票，这个数字和其他州相比是相当高的。但考虑到北莱茵州各市镇的人口相对较多，公民对政治决策的非正式影响能力受到一定的限制，公民更多地求助于申请公民投票就不足为奇了。总的来说，大城市申请公民投票的数量比小市镇要高很多。

在北莱茵州，只有三分之一的申请获得成功，导致公民投票的发生。每年只有3%的市镇举行了公民投票。从投票结果看，只有40%达到了目的，所提出的要求得到认可并得以执行。但是，并不是只有成功的申请和公民投票才对政府产生影响。据统计，每四个申请中就有一个在提出后被政府采纳，这样就没有必要再进行公民投票了。通常的做法

and referenda took place in North Rhine-Westfalia. A relatively high number compared to other German states. But due to the big amount of relatively populous communities in North Rhine-Westfalia informal influence capabilities for citizens are restricted and result in a higher amount of petitions for referenda. Generally the number of petitions for referenda is higher in large cities.

But still, just a third of the petitions for referenda in North Rhine-Westfalia actually lead to a referendum and just in three percent of North Rhine-Westfalian communities referenda were conducted per year and just by 40 percent the intended aim was implemented. Nevertheless, one has to keep in mind, that not just successful petitions or referenda find their way into local administration. Almost every fourth petition is adopted by the administration, so that there is no need to conduct a referendum. It is pretty common that discussions with citizens are held after a petition for a referendum to adopt the controversial matter.

Considering the most common concerns of citizens' petitions, most of them try to reverse decisions of the municipal councils and fewer offer new political solutions. For instance in 2000 and 2001 58 percent of petitions for a referendum in North Rhine-Westfalia turned against privatisation in the public sector. Because of the exclusion of certain, for instance budgetary, matters

most of the petitions cover just a few topics. For instance: public buildings or institutions like schools and public swimming pools, transportation or communal construction projects. An interesting aspect: up to 1997 the closure of swimming pools was the most common topic of petitions for referenda, later on they rather focused on privatisation of communal companies. Which demonstrates the rising financial needs of communal budgets: in the beginning 90ths obviously local authorities hoped to balance the budget by closing public swimming pools, while in the late 90ths they more and more thought of selling their shares on public companies.

And interesting as well, due to the pretty stable German party system, party membership of those who initiate a petition influences the petitions concern. For instance: there was not a petition initiated by Conservatives against privatisation projects, while Social Democrats or the Green Party hardly support petitions against park space management or comprehensive schools.

Additionally, there are some less extensive forms for citizens' to exert influence on communal matters. For example so called "inhabitant requests" (Einwohneranträge). According to the local code the municipal council has to decide about those requests within four months. If citizens' file a complaint to the municipal council, there is no obligation to come to a decision, but the

是，当一个针对争议较大的问题的公民投票申请被提出后，政府就会与公民面对面进行讨论。

最常见的公民申请是试图否定市政厅已经作出的决定，很少有提出新的政治解决办法的。例如2000年和2001年，北莱茵州58%的申请是反对公共部门的私有化的。由于某些领域被排除在公民投票的范围之外，例如预算，申请的内容集中于以下几个方面：学校或公共游泳池等公共机构或公共建筑，交通或公共建设项目。一个有趣的现象是，1997年前的公民投票中涉及关闭公共游泳池问题的占很大比例，1997年以后更多的公民投票集中于公有企业的私有化。这反映了公共预算中的财政需求。在20世纪90年代初地方政府希望通过关闭公共游泳池来平衡预算，而90年代后期他们更多地考虑卖掉公有企业的股份来弥补财政亏空。

还有一个有趣的现象是，申请人的政党背景也影响着申请内容。例如，保守党人很少提出反对私有化的申请，而

社会民主党和绿党党员很少提出反对扩大公园面积或建立综合学校的申请。

此外，还有一些形式也能对公共事务施加影响，但是不太常用。例如“居民请求”这一形式，根据地方性法规，市政厅要在4个月内作出答复。虽然法律没有规定市政厅必须作出书面决定，但它必须对居民的要求作出非正式的说明。

州建筑法规定了市政厅的另一项义务。在公共建设项目实施前市政厅必须以公告或在新闻媒体上发布消息的形式，通知所有受到该项目影响的人：邻居、社区全体居民、有关机构和企业。建设计划必须公布，必须举行听证会，公民可以提出反对意见。那些与社区全体居民有关的公共事务，如自然保护、能源和水的供应、历史建筑保护等，都要事先听取公众的意见。如果对市政厅的决定不满，公民最后还有机会向行政诉讼提起诉讼。

三、公民参与和磋商的非制度化形式

council or a committee is at least obliged and forced in an informal way to make a statement about that matter.

Another obligation for the municipal councils is regulated in the federal building code. Before starting communal construction projects those who are concerned - neighbours, communities, authorities and companies - have to be informed, either in presentations or in the local media. Plans have to be announced in public, citizens may raise objections, and hearings have to be held. Those responsible for public matters like nature conservation, energy and water supply or monument conservation have to be heard as well. Finally there is the opportunity to appeal to the administrative court.

Non-institutionalised forms of participation and consultation

In addition to those rights for participation defined in the constitution or the local code, there are other non-institutionalised forms, especially at local level. For instance citizens' initiatives try to catch public attention for certain matters.

On the other hand there are top down forms of citizens' participation, if local authorities try to involve inhabitants in their decisions. For instance inhabitant meetings, question times for citizens in council meetings. But none of these rights regulated

in the local code oblige the councils to decide on the discussed issues nor do citizens have a voice.

Other forms are used by the local authorities before starting communal construction projects, like the so called "planning cell" where incidentally elected citizens are invited to discuss communal construction projects and articulate recommendations to the contracting body or authority.

Summary

All considered citizens' participation and consultation is not just a channel to express dissatisfaction. It forces local and federal authorities to regard public interests. It is also an important opportunity to incorporate trends within society into legislation and overcome resistances against political projects by involving those who are concerned, even though not all of the intended aims can be implemented in the legislation.

The agenda-setting-effect of participation and consultation should not be underestimated. Political projects were cancelled, even though the referenda or petitions were not formally legal. Bills or requests proposed by petitions were incorporated in legislation even before the actual petition was conducted.

除了上述宪法和地方性法规规定的参与权外，在地方一级还有一些非制度化的公民参与形式。例如试图引起公众对某个问题的注意的一些做法。

如果地方政府想在决策过程中吸收公民参与，他们有从高到低的不同形式的选择。如召开居民会议，或者在市政会议上安排公民质询时间。但是所有这些形式都没有规定在地方性法规中，是否采用取决于政府的考量。

在开始公共建设项目的，地方政府常常采用的另一种形式是邀请临时选出的公民代表参与对建设计划的讨论，向合同方或地方政府提出建议。

四、小结

公民的参与和磋商并不仅仅是表达不满的一个渠道。这种做法迫使地方和州的公共权力机构重视公共利益，也使制定出来的法律符合社会发展潮流。由于将那些受到决策影响的人吸收到决策过程中，即使他们的要求不能全部体现在法律中，也能有效地减少政策执行中

的阻力。

参与和磋商的确定行动计划的作用不能被低估。虽然一些公民投票申请因不合法而被否决，其结果却导致政治计划被撤销，有时公民投票尚未举行，公民申请中提出的法案或要求就已经被吸收到立法中。

Über die Friedrich-Ebert-Stiftung

Die deutsche Friedrich-Ebert-Stiftung (FES) ist ein Verein zur Förderung der politischen Bildung und des gesellschaftspolitischen Dialogs. Ihre Hauptsitze sind in Berlin und Bonn. Die FES wurde 1925 als politisches Vermächtnis des ersten demokratisch gewählten deutschen Reichspräsidenten und Sozialdemokraten Friedrich Ebert gegründet. Als eine gemeinnützige, private, kulturelle Institution ist sie den Ideen und Grundwerten der Sozialen Demokratie verpflichtet. An 14 Standorten in Deutschland leistet die FES ihren Beitrag für die demokratische politische Bildung und aktive Mitwirkung der Bürger in Politik und Gesellschaft. Sie ist zugleich auch Plattform und Ideengeber im offenen politischen Dialog zur Lösung gesellschaftlicher Probleme. In ihrer internationalen Arbeit für Demokratie, Entwicklung, sozialen Ausgleich und Frieden kooperiert die FES mit Partnern in mehr als einhundert Ländern. Sie ist mit eigenen Büros in 80 Staaten zu Gast. Die Stiftung misst der Vertiefung des internationalen Dialogs eine große Bedeutung bei. Die Weltgesellschaft und die Weltmärkte bedürfen der Einbettung in politische Verantwortung sowie sozialer und ökologischer Regulation.

Die FES nahm bereits zu Beginn der von Deng Xiaoping eingeleiteten Reform- und Öffnungspolitik Kontakte und die Zusammenarbeit mit chinesischen Institutionen auf. Eigene Büros unterhält die Stiftung seit 1985 in Shanghai und seit 1987 in Peking. Vertragspartner sind die Chinesische Gesellschaft für Internationale Verständigung (CAFIU) in Peking und das Shanghai Institut für Internationale Studien (SIIS) in Shanghai. Darüber hinaus gibt es seit Mitte der 80er Jahre eine vertragliche Kooperation mit der Freundschaftsgesellschaft des Volkes der Provinz Sichuan, die vom Büro in Peking koordiniert wird. Die Arbeit der FES ist Bestandteil der deutschen Entwicklungszusammenarbeit und Außenpolitik in China.

China öffnet sich zur Welt und hat als Transformationsland wirtschaftlich und politisch die Weltbühne betreten. Der nachdrückliche graduelle und tief greifende Wandel in Wirtschaft und Gesellschaft und der damit verbundene soziale Umbruch sind eine Herausforderung an die Gestaltungsfähigkeit der Politik. Die Kommunistische Partei Chinas, Ministerien, Hochschulen, Forschungseinrichtungen, Verbände, Gewerkschaften und Nichtregierungsorganisationen sind bei der Gestaltung des Reformprozesses offen für internationale Kooperation und den Erfahrungsaustausch. Ziel der Friedrich-Ebert-Stiftung in China ist es, in vertrauensvoller Zusammenarbeit mit ihren chinesischen Partnern die verschiedenen Ebenen des Reformprozesses zu begleiten und zu unterstützen sowie die internationalen Beziehungen zwischen Deutschland / Europa und China zum Nutzen beider Seiten und für eine friedliche und gerechte internationale Ordnung zu vertiefen.

关于弗里德里希－艾伯特基金会

德国弗里德里希－艾伯特基金会(以下简称艾伯特基金会)是一个促进政治教育和社会政治对话的社会团体,总部位于柏林和波恩。她于1925年根据德国第一位民选帝国总统、社会民主党人弗里德里希·艾伯特的政治遗愿成立。作为一个公益、私立和文化机构,艾伯特基金会信奉社会民主主义的理念和基本价值。她在德国的14个分支机构致力于民主政治教育和促进公民积极参与政治和社会。同时,她也是解决社会问题的公开政治对话的平台和智库。在促进民主、发展、社会平衡与和平的国际工作中,艾伯特基金会与一百多个国家的伙伴进行合作,在八十个国家设有办公室。她在深化国际对话中起着重要作用。国际社会和世界市场需要被赋予政治责任以及按照社会(福利)和生态原则进行调节。

早在邓小平先生推行改革开放政策伊始,艾伯特基金会就和中国有关机构建立了联系并进行合作。之后又分别于1985和1987年在上海和北京成立了办公室。在北京和上海的协议合作伙伴分别是中国国际交流协会和上海国际问题研究所。此外,80年代中期以来,艾伯特基金会还与四川省人民对外友好协会保持着协议合作关系,协调工作由北京办公室负责。艾伯特基金会的工作是德国发展合作与外交在中国工作的一个组成部分。

中国向世界开放并作为转型国家在经济和政治领域登上国际舞台。这个在经济和社会领域剧烈的、渐进的和影响深远的转型以及它带来的社会变革对政治塑造力提出了挑战。中国共产党、政府各部委、高校、研究机构、社会团体、工会和非政府组织在这个改革进程中都赞成国际合作和经验交流。艾伯特基金会在中国的目标是,通过和各领域伙伴充满信任的合作引导和支持此改革进程,深化中欧、中德的互利关系和强化一个和平、公平的国际秩序。

Das Büro der FES in Peking konzentriert sich zurzeit auf folgende Themenbereiche:

- ◆ Rechtsstaat, Bürgerpartizipation und soziale Dimension im marktwirtschaftlichen System
 - Arbeitsbeziehungen in der Wirtschaft, Arbeitsrecht, Arbeitsmarktpolitik
 - Soziale Sicherung
 - Gute Regierungsführung
 - Menschenrechte

- ◆ *Nachhaltige Entwicklung in der Provinz Sichuan*

- ◆ *Gewerkschaften und Interessenvertretung von Arbeitnehmern/innen*
 - Interessenvertretung, betriebliche Mitbestimmung
 - Deutsch-chinesischer Gewerkschaftsdialog zwischen dem Allchinesischen Gewerkschaftsbund und dem Deutschen Gewerkschaftsbund, der IG Metall, der IG Bergbau, Chemie, Energie und der Dienstleistungsgewerkschaft ver.di

- ◆ *Politischer Dialog China - Deutschland/Europa*
 - Menschenrechte
 - Außen- und Sicherheitspolitik
 - Innenpolitik in China und Deutschland / Europa

Die Partnerschaft der FES und der CAFIU ist einvernehmlich eine Plattform flexibel gestalteter Formen der Zusammenarbeit. Kooperationspartner der FES in Peking sind in 2006:

- Chinesische Gesellschaft für Internationale Verständigung
- Internationale Abteilung beim ZK der KPC
- Freundschaftsgesellschaft des Volkes von Sichuan
- Parteihochschule beim ZK der KPC
- Allchinesischer Gewerkschaftsbund
- Chinesische Stiftung für die Entwicklung der Menschenrechte
- Renmin Universität, School of Labour and Human Resources
- Chinesische Akademie der Sozialwissenschaften, Institut für Soziologie

Die Zusammenarbeit erfolgt hauptsächlich durch gemeinsame Tagungen und Gesprächsprogramme in China und Deutschland, die auf einen intensiven politischen und fachlichen Meinungs- und Erfahrungsaustausch orientiert sind. Dabei wird ein breites Spektrum von Regierungsstellen, Hochschulen, Forschungsinstituten, Gewerkschaften und Verbänden einbezogen.

艾伯特基金会北京办公室目前主要关注以下问题：

- ◆ 法制国家、公民参与和市场经济体制中的社会（福利）因素
 - 经济中的劳动关系、劳动法、劳动力市场政策
 - 良好的政府领导
 - 人权

- ◆ 四川省的可持续发展

- ◆ 工会和雇员利益代表
 - 利益代表、企业职工共决
 - 中华全国总工会和德国工会联合会、五金工会、化学能源工会和服务业联合工会间的德中工会对话

- ◆ 中—德 / 欧政治对话
 - 人权
 - 外交和安全政策
 - 中国和德国 / 欧洲的内政

艾伯特基金会和中国国际交流协会的伙伴关系也是其它多种合作的平台。2006年她在北京的合作伙伴是：

- 中国国际交流协会
- 中共中央对外联络部
- 四川省人民对外友好协会
- 中共中央党校
- 中华全国总工会
- 中国人权发展基金会
- 中国人民大学劳动经济学院
- 中国社会科学院社会学所
- 中国现代国际关系研究院

合作的主要形式是在中国和德国共同举办有助于思想和经验交流的政治性、专业性会议和座谈活动。参加者主要来自政府部门、高校、研究所、工会和社团。

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