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# **PARLIAMENTARY COMMITTEE PUBLIC HEARINGS AND THEIR APPLICATION IN VIETNAM**

*For internal use only*

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# REPORT

## 1 Introduction

Our report has three objectives:

- to define public hearings within parliamentary committee systems;
- to analyse the nature of public hearings, and;
- to consider how public hearings might operate in Viet Nam.

To fulfil the third objective, the current legal basis for hearings in Viet Nam is examined, exposing the challenges of implementing public hearings, and a prospective roadmap for introduction

The operation of hearings in the parliaments of Viet Nam's regional neighbours, specifically, Japan, Korea, Philippines, Malaysia, Singapore, Solomon Islands, Thailand, and Indonesia, and states in Europe and North America, including Britain, Germany, New Zealand, Poland, and the United States, were compared to assess their experiences in implementing and conducting parliamentary committee hearings. The information presented for comparative purposes is based substantially on the findings of a survey carried out by the Inter-Parliamentary Union (IPU), while that relating to the Vietnamese context is based on research carried out by National Assembly of Vietnam staff.

## 2 The parliamentary committee system

### 2.1 The committee

Parliaments<sup>1</sup> have a range of tools to conduct core business. One of the most important and frequently found is the parliamentary **committee**. A **committee** is a group of members of parliament mandated to perform a particular function. This may be either a single, time-limited task, or it may be a subject themed task (often focused upon the activity of a particular government department or departments) lasting the entire length of the parliament's mandate. Committees conduct business at a level of detail which is inappropriate for the Chamber, and, in accordance with clear '**terms of reference**'. These terms of reference often reflect the structure of a government's departments, or may be brigaded by subject. (Annex 1, 2.1) Committees require appropriate powers to call and to hear from relevant government ministers and senior officials, as well as access to documents, and the freedom to develop an independent programme of work.. (Annex 1, 2.1)

Committees generally have two main roles – the examination of legislation, and the oversight of government activity. Detailed work on the examination of draft **legislation** is where members of the committee scrutinise legislative drafts line by line and make decisions usually by vote. . In terms of **oversight**, committees assess particular policies or areas of government work. Annex 1, 3.2 and 3.3)

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<sup>1</sup>A key feature of most parliaments is their representative nature, with public representatives chosen by a process of selection (often, but not always, by election) to act on behalf of a certain constituency, geographic, functional or otherwise.

## 2.2 Committee activity overview

Committee activity<sup>2</sup> consists of examining a particular subject or policy area or other matter based on its terms of reference and within a defined period of time. To achieve this objective it employs a wide range of tools. (Annex 1. section 4.1). These tools include:

- **letters or questionnaires** sent to key contributors;
- **visits** to relevant locations, and;
- **public hearings**, in which individuals speak directly to the committee often after offering reports in writing.

A committee might make use of all of these tools. Of the tools listed the public hearing is perhaps the most important available, since it provides an highly flexible means by which committees can gather information, and within which stakeholders can present their views. Many committees in the parliaments considered in Annexes 2 and 3 saw public hearings as their core business.

There are some key elements which are essential to successful committee inquiries:

- The **chairman** must be an experienced parliamentarian with time to offer.
- Committees must have **experienced staff** providing managerial, expert and administrative support.
- Each committee must have **appropriate accommodation and budget**.
- Appropriate **choice of subject of inquiry**.

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<sup>2</sup> This process is commonly known as an inquiry in some states. This activity contrasts with public hearings in that inquiries might comprise a series of public hearings which are rounded off with a formal report.

- The committee must seek a **balance between private deliberation and public information gathering**, with the latter predominating.
- The committee must select the **appropriate speakers and contributors**.
- **Publicising** the activities of the committee is key for maximum impact.
- The committee must **‘follow through’**, publishing reports or transcripts and conducting additional hearings if required. (Annex 1, section 4.2)

### **2.3 Definition of public hearings**

Parliamentary committee **public hearings** are a formal mechanism by which parliaments gather information from both governmental interlocutors, external experts on major and permanent areas of government activity, and from other stakeholders in any particular policy issue, including civil society organisations and other non-governmental commentators. This process is designed to inform policy development and, in many cases, will enhance the quality of subsequent decision making on the part of government. Public hearings are an essential tool with which parliaments conduct their programme of work and are of value in both the process of examination of draft legislation and in the oversight of government policy and activity. (Annex 1, section 4)

Public hearings for oversight or scrutiny of legislation purposes differ in nature from a range of other tools, including:

- Hearings held by temporary committees of investigation conducting inquiries into particular, time-bound issues on behalf of parliament, which are of an investigative nature
- Activities in plenary session, such as “Question Time”, where single questions receive a government response. This is obviously distinct from a broad ranging subject based investigation. the scope of the exchanges is narrower and since the focus of such activities
- Trials held in a court of law, either in relation to criminal activity or civil disputes.

### 2.3.1 A comparative assessment of public hearings

This study assessed parliamentary public hearings in 13 different states. Nine of these were Asian<sup>3</sup>, three were European<sup>4</sup> and one is a North American<sup>5</sup>. Using this cross section, this report takes examples of best practice from a wide geographical sample containing different legal, political, cultural and historical traditions (including presidential, parliamentary and hybrid models). The analysis of the Asian states was carried out on a thematic basis (see Annex 2), and other case studies have been included for comparative purposes (see Annex 3). From this analysis, the report has distilled the nature of public hearings by parliamentary committees.

Almost all sampled parliaments made use of **Standing or Permanent Committees**. The number of committees varies, from 80 in the UK House of Commons, to 37 in the Philippines’ House of Representatives, to four in the Malaysian Senate. Committee membership is usually

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<sup>3</sup> Indonesia, Japan, Malaysia, New Zealand, the Philippines, Singapore, the Solomon Islands, South Korea, and Thailand.

<sup>4</sup> Germany, Poland and the United Kingdom.

<sup>5</sup> United States of America

proportionate to political party membership. (Annex 2, section 1.2) The number of members on any particular committee varies, from as many as 80 on certain committees in the Philippines House of Representatives, to as few as four in Singapore. The German Bundestag provides a key exception to the general rule that only MPs populate committees; one type of Bundestag committee includes 50% MPs and 50% non-governmental experts. (Annex 3, section 2). Committees generally have their own staff which generally numbers 10 or under. Committees meet frequently; in the UK committees meet at least once and often twice a week when parliament is sitting.

### **2.3.2 The widespread nature of hearings**

All parliaments surveyed made use of **public hearings**. Indeed, the right of committees to call hearings is enshrined in the regulations of the lower Houses of both Indonesia and Japan. The hearings process has also existed in the US Congress since its inception and is an integral part of Congressional oversight. In Poland, when considering legislative proposals, committees of the Sejm apply two main techniques: first, requesting information of the main institutions of government; and, second, the ‘public hearing’. (Annex 3, sections 5 and 6).

### **2.3.3 Procedures for hearings**

Many parliaments make use of similar set of procedural rules in public hearings as apply for committee meetings<sup>6</sup>, albeit on a more flexible approach since public hearings do not require decision making; flexible procedures generally assist the committees in carrying out public hearings. In New Zealand, for instance, the conducting of a public hearing will usually involve:

- Drawing up terms of reference ;

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<sup>6</sup> Committee meetings differ from public hearings. In essence, meetings are administrative in nature while hearings focus on the collection of information.

- Calling for submissions of written information<sup>7</sup>;
- Seeking independent expert assistance ;
- Speakers being heard in public ;
- The committee publishing uncorrected transcript of proceedings, before producing a report.

The rules on the *quorum*<sup>8</sup> vary widely consisting of generally about 1/3 of members (in the Philippines’ Senate) or in certain cases as few as three MPs. (Annex 2, section 2.7).

Some parliaments make use of a subcommittee process to conduct hearings in circumstances where the workload of the committee does not permit it to do so, or where committees are so large that public hearings in full committee would become unwieldy. An example of this latter process might be where a committee with responsibility for a wide range of social issues will devolve responsibility to sub-committees..

#### **2.3.4 Topics of hearings**

Hearing topics vary widely depending on what terms of reference parliament has set out for its committees. Some parliaments permit a committee to pursue almost any line of inquiry it desires – as is the case in the Philippines’ House of Representatives – while others constrain activities tightly. In Japan’s Diet, for instance, the Speaker of the relevant House must give permission for committee assessments of government policy or legislation. (Annex 2, section 2.4).

#### **2.3.5 Identifying interlocutors**

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<sup>7</sup> The committee announces its intention to assess a particular area of policy or piece of legislation and calls for interested parties and members of the public for the submission of information in a written format prior to public hearings; at times, the committee will invite people to submit written information.

<sup>8</sup> A quorum is the official number of members in attendance below which committees may not conduct official business.

The process for finding interlocutors to provide views to committees varies. Some parliaments allow those who have written in advance to present their views – as is the case in Malaysia’s lower House – while other parliaments, such as the Philippines’ House of Representatives, select and invite speakers to appear. Normally, speakers will include government ministers or civil servants, individuals proposed for important posts, non-governmental experts in policy areas relevant to the committee’s work and representatives of civil society or scientific institutions. Many parliaments have powers to compel<sup>9</sup> speakers to come before the committees, although these powers are used infrequently. (Annex 2, section 2.7)

### **2.3.6 Public nature**

A key component of public hearings in most parliaments is that they are usually open.<sup>10</sup> A written uncorrected record of proceedings will be published, the public can attend, and the proceedings will be broadcast by the media. For example, in Korea hearings must be announced at least five days in advance, and proceedings must be reported subsequently to the Speaker of the Parliament. Hearings of committees in both Chambers of the US Congress are open to the public unless a majority votes in open session to close.

### **2.3.7 The benefits of hearings**

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<sup>9</sup> For instance, US Congressional committees can issue a *subpoena*, a type of writ which summons individuals to attend.

<sup>10</sup> Confidential sessions are not uncommon. The German Bundestag’s higher committees, dealing with Foreign Affairs, Defence, Budget and Internal Affairs, are to some degree closed to the public due to the confidential nature of much of the material discussed there. (Annex 1, section 4.2).

The benefits of a system of public hearings extend to the government, parliament and public:

- Public hearings are a key tool with which committees and parliaments can gather objective knowledge about particular issues – providing a ‘gold mine of information’. This material helps the committee to make more considered decisions based on objective information.
- Public hearings contribute to the development of policy and process expertise for committee members and their staff; this is especially true when large committees establish sub-committees to conduct work in areas narrower than the full committee’s remit.
- Public hearings enhance links between the legislature, as embodied in the committee, the government, and the public by encouraging transparency; such measures improve support for the parliament and government and enhance their popular legitimacy, and media involvement in this process is of immense importance.
- Fourth, hearings also provide government with a sounding board for its work and policies, at the same time as offering a venue for the public and stakeholders to ‘feed into’ the political process.
- Public hearings provide a means by which committees and the legislature can react quickly to topical issues. This bolsters the importance of parliament in the political arena and ensures that urgent issues receive parliamentary attention.
- Committee hearings can inform debates in plenary, facilitating capacity to tackle certain issues; such a process can also

improve the quality of legislation emanating from parliament. (Annex 4, Section 1)

### 3 The Vietnamese context

The benefits outlined above suggest that the Vietnamese National Assembly would profit from the introduction of hearings, since they would ensure the supply of a flow of information to representatives and make the work of committees in particular and the National Assembly in general more transparent and accessible to the public. These hearings would build on a range of existing mechanisms by which the National Assembly currently conducts activities such as the scrutiny of legislation and the oversight of government work. Some of these activities are outlined in the table below:

Table of Committee Activities

Activities	Way of conducting	Outsiders' involvement	Transparency	Information received
<b>Explanatory meetings</b>	Official, plenary committee meetings; prepared questions, scenario, briefing	Government officials, rarely experts	Media's attendance; materials are disseminated only to members of Committee	Record, transcript; the information may be focused, but it comes mostly from the Government agencies
<b>Oversight missions</b>	Official meetings by a group of committee members, usually standing members; materials provided, but no prepared questions.	Agencies, organisations under oversight mission's scope (Ministries, PComs, SOEs)	Closed meetings; materials are disseminated only to members of Committee	May be recorded; the information may be useful, but in many cases it was superficial; it comes only from the Government agencies
<b>Dealing with complaints and denunciations</b>	Official meetings by Standing Body of committee	Complainer and related agencies	Closed meetings; materials are disseminated only to members of Committee	May be a minute; Information on a particular case, but can be a starting point for policy

<b>Field visits</b>	Official, meetings by group of committee members, usually standing members; materials, but no prepared questions	Authorities and/or people at localities	No media; materials are disseminated only to members of Committee	Notes by members and staff; superficial information
<b>Preliminary examination of bills</b>	Official, Standing Body of a committee; materials, but no prepared questions	Drafting bodies; rare attendance of experts	Closed meetings; materials are disseminated only to members of Committee	Record, transcript, final report; opinions of standing members on a bill
<b>Official examination of bills</b>	Official, plenary committee meetings; materials, but no prepared questions and scenario	Drafting bodies; rare attendance of experts	Closed meetings; materials are disseminated only to members of Committee	Record, transcript, final report; opinions of members of Committee and experts (if any) on a bill
<b>Workshops, roundtables, experts meetings, etc</b>	Unofficial, number of members varies	Representatives of various agencies, organisations; and individual researchers, experts	Media may attend; materials are disseminated only to participants of the event	Note-taking; Generally more focus on theoretical knowledge
<b>Public Consultation tools</b>	Official, group of members, usually standing members; materials to members, but no prepared questions and scenario	Each group of stakeholders is involved in each single event	Open meetings; but materials are disseminated only to members of Committee	Record, transcript, reports. Generally, information on the public concerns and interests
<b>Hearings (If applied)</b>	Official, sub-committee, or group of specialized members; materials provided; prepared questions and scenario	All related to a chosen topic stakeholders are invited	Open meetings; materials shall be disseminated widely	Record, transcript, reports with recommendations. Specialized, objective, deep, and diversified gold-mine of information for legislative and oversight purposes

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### 3.1 The legal framework

The legal basis for public hearings in Vietnam is unclear, although a framework within which committees can conduct hearings is in place.

#### 3.1.1 Oversight of government activity

In terms of **oversight** of government the key provisions are:

- Article 38 of the Law on the Organisation of the National Assembly
- Article 27 of the Working Regulations of the Ethnic Council and Committees of the National Assembly.

At present, all committees can make requests for explanations from government interlocutors, and the recipients must respond to such requests. As it stands, Article 27 of the Working Regulations permits committees to hear from non-governmental contributors with regard to oversight of government policy in a forum known largely as “stakeholders’ meetings”. However, the laws do not make entirely clear whether such meetings can operate as public hearings, and so further clarity in this regard is necessary given Vietnam’s strong civil law tradition.<sup>11</sup> (Annex 4, section 2.1)

#### 3.1.2 Examination of legislation

The powers to apply public hearings are slightly clearer in terms of examination of draft legislation, with the main legal provisions being:

- Article 4 of the 2008 Law on Laws;
- Article 41 of the Law on Laws and;

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<sup>11</sup> Some other laws apply in relation to oversight work, but do not directly relate to the issue of public hearings; these include laws related to requests for reporting from government, and those on the oversight of denunciations and complaints (see Annex 4).

- Article 21 of the Working Regulations of the Ethnic Council and Committees of the National Assembly

Similarities exist between the existing scrutiny process and public hearings.

- First, the role of the National Assembly in policy assessment linked to draft legislation is compatible with the public hearing process.
- Second, the work of information collection in the scrutiny process fits neatly with public hearings, since they can act as part of a National Assembly filter process.
- Third, the National Assembly already makes use of external advice in the scrutiny process, which mirrors the ‘openness’ of public hearings.

Differences also exist however and point to the advantages of developing a full hearings system. For instance, the present scrutiny process may not cover all relevant policy issues contained in draft legislation; hearings have a rich variety of outputs such as reports and press conferences, which, for example, help provide persuasive clarification on the costs and benefits of the draft legislation. A further difference is that public hearings require a separate procedural framework for their application. (Annex 4, section 2.2)

### **3.1.3 Lack of clear legal framework**

A further problem is that a range of legal uncertainties dog the implementation of public hearings, a key concern given Viet Nam’s strong civil law tradition.

- First, the lack of direct reference to public hearings in the regulatory framework leads to confusions about their nature.

- Second, the exact powers of the committees in conducting hearings require further clarification; for example, the law is not entirely clear on the nature of committees’ powers to call non-governmental witnesses with regard to legislative oversight, although the breadth of definitions – to cover ‘relevant agencies, organisations, individuals’ – suggests that calling experts is lawful.
- Third, detailed regulations on the procedure for hearings on a National Assembly wide level are essential to ensure conformity in practice across all committees conducting public hearings in oversight and the scrutiny of legislation work.

### **3. 2 Challenges for the introduction of hearings in Vietnam**

#### **3.2.1 Conceptual issues**

The most immediate challenge related to the introduction of hearings relates to conceptual difficulties. Some differences of opinion have arisen about the terms used to describe hearings.

First, the use of the term “điều trần” (hearings) has proven an ‘irritant’ to some owing to perceptions that it entails an investigation, suggesting an apportionment of responsibility and a collision with the government; this issue is particularly problematic because the phrase “điều trần” is not defined in Vietnamese law in relation to public hearings.

- Second, confusion has arisen with regard to the differences between “Question Time” which takes place in plenary session and public hearings.
- Third, hearings are often associated with oversight of government, which does not take account of their potential to contribute to the examination of legislation process,

- Fourth, some interlocutors have asked about the differences between the National Assembly’s current efforts to engage with stakeholders and public hearings.

These conceptual issues need to be addressed. Our comparative research suggests that the effective functioning of public hearings depends on close working relations between government and parliament, and that they operate more in the nature of efforts to gather information and clarify, and even to build consensus around policy for government to take forward, than as a ‘collision’. Viewing hearings as a ‘collision’ can risk undermining the core ‘information gathering’ purpose of public hearings – that they are designed as a means for MPs to listen to a wide range of interlocutors.

The hearings process differs from “Question Time” in that hearings take place in a smaller forum (i.e. the committee), assess issues more deeply and operate on a distinct procedural basis. Hearings also differ from current engagements with stakeholders mainly in their public nature and formalized record keeping; these components are integral to their effective functioning.

In this context, a range of different terms might be used to describe public hearings, including, “stakeholder meetings”, “public consultation seminars” or other clarificatory terms, provided that the legal framework defined carefully the nature of their activities. In this context, discussions with linguistic experts and looking in several Vietnamese-English dictionaries have suggested that the term “điều trần” most accurately reflected the nature of public hearings. A procedural framework based on clear legal definition, which establishes how hearings should take place and thereby ensures an understanding of their differences from other Assembly activities should certainly be considered.

### **3.2.2 Capacity issues**

A concern relates to a range of capacity issues.

- First, the numbers of committees (10) and Executive Departments (26) are different, which means committees have responsibility for at least three governmental departments;
- Second, a number of committee members also hold positions in related arms of the executive, if only on a regional basis. The wearing of ‘two hats’ raises concerns about conflicts of interests;
- Third, the short annual calendar of the National Assembly and the limited number of full time MPs ;
- Fourth, the large size of committees, although one solution would be the development of a sub-committee system.
- Fifth, the novel nature of public hearings means that the preparatory process is not yet fully efficient. Staff will need to gain more experience of preparing briefing and suggested questions for committee members, while MPs will need to develop the requisite chairing and questioning skills.

## **4 The road ahead**

Resolving these difficulties and strengthening understanding of the public hearings process will take time. In this regard, the activities of the Committee on Social Affairs and the Ethnic Council in conducting “Explanatory Sessions” have cast valuable light on the process of hearings in the Vietnamese National Assembly and have already contributed to a solid body of experience; from this work, some key lessons have been drawn which point to the need for the steps set out below.

#### **4.1 Legal framework**

The legal framework requires clarification. A clear definition of public hearings is essential, as is work to set out the nature of committee powers related to the hearings process. The laws should contain information about the nature of hearings, the powers available to committees and details on when their application should take place; for example, in relation to the examination of legislation at the preparatory stage, and throughout the oversight process. National Assembly regulations on public hearings should also be introduced to ensure uniformity in application of procedures by different committees, so as to avoid confusion about the nature of hearings. These procedural rules should set out the role of the chairman, the formula under which to conduct hearings and outline the process by which committees select witnesses, among other issues. All told, an effort to prepare draft regulatory amendments to enshrine public hearings in the legal framework is an essential next step, although an assessment will be necessary to ensure that excessive regulation does not prevent committees from carrying out hearings effectively. Practice in a range of civil law jurisdictions suggests that regulations can vary from the detailed to the light touch. (Annex 4, section 4 and Appendix to Annex 4)

#### **4.2 Communication**

A key challenge facing the application of hearings in Viet Nam is a full understanding of their nature. A priority, therefore, must be to disseminate their nature and benefits, their legal basis, the role of stakeholders and the public in the process, and how hearings operate. The main audience of this information campaign will be the members and staff of the National Assembly, government agencies, civil society and scientific organisations, and the public. A range of

tools might be used to carry out this communication task, including seminars and meetings with key participants, media campaigns and of course simply by conducting hearings or Explanatory Sessions (as the Committee on Social Affairs and Ethnic Council have done to date). (Annex 4, section 5.1)

### 4.3 Tackling capacity

The next key task is to tackle the capacity constraints limiting the application of hearings. This might fall into two categories – first, that of **managing existing resources** and second on **building capacity**. (Annex 4, section 5.2)

Making use of **existing resources** is an immediate priority, and the first point will be to ensure that hearings scheduled tackle a manageable quantum of work. A second point would be ensuring that committees draw on the outside support wherever possible, as the Committee on Social Affairs has done in its public hearings on poverty reduction. (Annex 4. Section 5.2.1)

To build **capacity**, a longer term programme will be needed. This effort must focus on the members of parliament and the staff of the National Assembly. . Efforts to enhance staff capacity are especially important since staff provide the “institutional memory” of the National Assembly, and their ability to support public hearings in future parliaments will be crucial. Measures to improve capacity might include conferences, workshops and seminars, organising training courses, disseminating documents on hearings to MPs and staff, organising domestic and overseas study tours. Some regulatory amendments, which might include reducing the size of committees, would also enhance committee capacity with regard to public hearings. (Annex 4, section 5.2.2)

### 4.4 Finance

Enhancing capacity in the way we have outlined above will stimulate the demand for committee resources, including financial resources. It will be necessary to quantify this impact as a part of considering future committee capacity building. We recommend that the stakeholders consider the impact on resources currently available to the committees of the National Assembly as a part of reviewing capacity support to them.

## 5 Conclusion and recommendations

Public hearings provide discernable and significant benefits for the committees of the National Assembly, in particular offering a key means to gather information for legislative scrutiny and oversight. Hearings enable committees to operate qualitatively better. We believe, therefore, that the current piloting of hearings should be developed further as a priority. Each committee of the National Assembly should consider undertaking at least two hearings a year in the coming 13<sup>th</sup> National Assembly. Resources would need to be found to match the requirements of committee business which, as noted, would be likely to grow over time. This will require a policy decision on the part of the National Assembly.

Adopting this course will require a number of actions which are the subject of the following specific recommendations:

1. **‘Business as usual’**: Committees should continue to pilot public hearings or explanatory sessions based on the existing legal framework and resources, notwithstanding the problems identified in this report. This will enable the process of enhancing the knowledge base of the committees and building on the success of the public hearings process to continue, while systemic improvements are identified and implemented.

2. **Needs Assessment:** The capacity of the National Assembly committees to carry out public hearings should be assessed with the aim of identifying those areas which most require capacity building. Subsequently, a plan of training and other programmes to enhance capacity over time should be drawn up.
3. **Provision of addition funding:** The relevant component of National Assembly should be involved closely in order to prepare an assessment of the likely cost of conducting a growing number of committee hearings and to identify appropriate potential sources of funding for such activities.
4. **Legislative changes:** An assessment of legislative changes which may be necessary to place public hearings on a clear legal basis is essential. We recommend that the relevant bodies of the National Assembly should establish a working group of legal experts to examine the legal framework and produce recommended legislative draft amendments.
5. **Procedures on Public Hearings:** Once the necessary changes have been adopted by the National Assembly, the ONA should draw up suggested guidelines on public hearings. These should take full account of the pioneering work of committees such as the Committee on Social Affairs and the Ethnic Council, with the aim of translating these guidelines into firm rules of committee procedure. This group should present a draft of proposed regulations to the National Assembly for their inclusion with other rules of procedure.
6. **Communicating on public hearings:** The relevant bodies of the National Assembly should be asked to prepare a

communications strategy aimed at raising awareness of public hearings amongst government agencies, members and the staff of the National Assembly, and the broader public. The contents of the material should include an outline of the nature and purpose of hearings and details on their functioning, with emphasis on how the relevant interlocutors contribute to proceedings.

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# Annex 1

## BUILDING BLOCKS AND PRINCIPLES

### 1 General Context

The general context of this paper is ‘normative parliamentary operations’. By this is meant those operations which most parliaments generally have in common. However, parliaments operate in widely differing, broad governance contexts, which may incorporate a very wide variety of formal and informal actors, for example, the judiciary and civil society.

While there are many differences between parliaments, both formally, as expressed by countries’ constitutions, and informally in the way parliaments work, this report seeks to identify the elements which parliaments share. The ‘localisation’ of political expression is a vital attribute of governance legitimacy but such localisations arise as variants of certain defining parliamentary characteristics. It is such characteristics which lend parliaments their common nature, and which provide the context in which committees, inquiries, and hearings take place.

A key aspect of parliaments generally is their representative nature. Members of parliament are chosen by members of the public, and for the period of their mandate, represent those by whom they have been chosen. This mandate of the representatives usually lasts for a defined period or term, after which the mandates are renewed (or re-located) by locally legitimised means, for example, elections.

### 1.1 Duties of members of a parliament

In between the processes of formal mandate renewal, members undertake a range of duties. Two of the most important of their duties are focused upon: first, **the examination of legislation**, i.e. the initiation and discussion of draft laws and the passing of draft legislation; and, second, the **oversight** of government activity to ensure transparency of process, to improve future performance, and to check potential abuse. Both of these duties require an organisational structure which allows members to focus their attention in detail upon the subject in hand.

## 2 Definitions: committees, inquiries, hearings

It will be important to distinguish carefully and define committees, inquiries, and hearings.

### 2.1 What is a committee?

A ‘committee’ in the context of parliament, may be defined as a group of members of parliament mandated by parliament to perform a specialised or particular function. This may be either a single, time-limited task, or it may be a subject themed task lasting the entire length of the parliament’s mandate.

### 2.2 Why are committees needed?

Not all parliamentary business can be conducted efficiently and effectively in plenary session.). Much requires to be delegated from parliament as a whole. This delegation is frequently made to, and exercised by, committees whose powers emanate from, and frequently reflect the party makeup, of parliament as a whole. Committees are the ‘work horses’ of parliament.

### **2.3 How are committees composed?**

Where there is a political party system, committees are frequently made up to reflect the proportion of party representatives elected or selected by the electorate/public. Members' own preferences are often taken into consideration. Special administrative arrangements are made; namely, a 'committee of selection'.

### **2.4 The powers of committees**

In order to operate effectively, parliament must provide a committee with sufficient appropriate powers.

- Each committee needs terms of reference. Frequently the terms of reference are apportioned by government department or by subject in the case of oversight of government. In parliamentary systems, for instance, in the case of proposed government legislation, committees may be formed for the purpose of examining and reporting back to the parliament on a piece of proposed legislation.
- Committees require, as of right, to be able to call and to hear from relevant ministers and senior officials working within the policy areas reflected in the terms of reference. Without such interaction between members of civil society, independent experts and other interlocutors and ministers and officials the committee is most unlikely to be able to perform adequately the function given to it by parliament.
- Committees also need unfettered access to documents, including official documents.
- Committees need the freedom to make up their own programme of work, within the terms of reference given to

them, and without interference from any third party. They need to be able to meet as and when they wish, again, without interference from any third party.

## 2.5 The benefits of committees

Committees are tools with which parliaments push roots into the political consciousness of the general public, and keep in touch with opinion on a wide range of matters. Their use presents opportunities, too, for representatives to consolidate and to demonstrate expertise in particular areas of policy and knowledge. A further benefit is that well run and active committees can be in frequent/constant session interacting with a wide variety of public opinion and civil society groups even if the plenary session is not.

## 3 Committee assessments

### 3.1 What is a committee assessment?

A committee assessment may be defined as an examination by a committee of a particular subject or policy area or other matter based on particular terms of reference and within a reasonably well defined period of time.

### 3.2 Main functions of committees: legislative and oversight assessments

It is worth noting in more detail, therefore, what are considered the two main uses of committees, namely, to **examine legislation in detail**, and to **oversee the activities of government**.

Parliaments have a crucial role in the process of assessing proposed legislation. In that process, the proposals are frequently amended, and the institutional vector for proposed change and improvement is

parliament. It is in the nature of successful legislatures to be sensitive to public views and opinion. The detailed work on draft legislation is usually seen as a main committee function where members of the committee are given time to examine the drafts line by line, clause by clause, and to debate them prior to passing them. In the absence of such detailed work it would be virtually impossible for any legislative body in plenary session to take sound decisions on legislation. The plenary not only considers the draft as it has been amended in committee, but in plenary session debates on the draft will listen closely to those on closely involved in studying the subject.

### **3.3 The process of oversight**

Parliamentary oversight of government in its policy and process is also key to its legitimisation. The appropriateness or otherwise of particular policies can frequently be demonstrated or refuted by the detailed work of an experienced committee. The efficiency and effectiveness of government's implementation of a particular policy or policies, for example, the way it spends money, can also be looked into. While the outcomes of both oversight and legislative processes can frequently be highly critical of government, the underlying intention and rationale is to contribute improvements to the way government works on behalf of the people.

### **3.4 Conclusion**

There can often be a clear 'cross over', or link, between policy inquiry work and legislation, as outlined above. Legislation takes close account of policy, and frequently the policy work of experienced committees will stimulate or contribute to legislative proposals considered or pursued by the government. In this work of committees, therefore, the processes of governments and parliaments complement one another.

## 4 Hearings

### 4.1 General

Committees have a wide variety of means of eliciting information. For example, letters to institutions and persons of interest, questionnaires where the number of potential respondents is large and the subject is particularly complex, and national and international visits for the purposes of comparison and ‘on the spot’ investigation. A central technique of primary significance however, and one which figures in most inquiries conducted by committees of established parliaments, is the **public hearing** in which those directly involved in the matter under investigation speak directly to the committee often subsequent to offering evidence in writing .

As its name suggests, the fundamental point of a ‘hearing’ is for the committee members to listen to individuals’ and groups’ accurate and truthful views about the subject under investigation by the committee. This receptive mode does not imply passivity, though. On the contrary, the hearing’s quality will depend to a large extent upon how well researched and founded the committee’s prior decisions on *who* to invite to give evidence, and on *what aspect* of the topic of the inquiry those witnesses will speak. In addition, the members will need to ask pertinent and penetrating questions relevant to the witness’s area of expertise in order to gather information.

### 4.2 Key elements of hearings

There are relatively few key elements which are essential to inquiries and hearings. The presence of those elements will not ensure success mechanically, but the absence of one or more is likely to cause the committee to work sub-optimally.

- Chair

Strong, considerate chairing is required to ensure effective committee operations. Frequently, the most fruitful arrangements in this area are made with the minimum of formal chair powers and the maximum moral suasion. The appropriate chair would normally be a parliamentarian of some experience and achievement and therefore capable of building respect from those sharing his or her policy and political viewpoints *and* those opposed. They must be transparently fair and firm in laying a businesslike groundwork for the operation of the committee, and spend much time on committee work.

- Staffing and support

Without adequate staff the committee will be unable to function. Staff are usually of three sorts: managerial, expert, administrative, though some staff may double up functionally in practice. All functions are of equal importance. The first and last will (or should) be permanent. The second may be temporary/inquiry-specific. A good staff manager, responsible for all staffing and support to the committee is essential. The manager will provide the overall responsibility for coordinating all aspects of staff support to the committee. The experts will provide intellectual horse-power to the committee, and the administrative staff ensure that the programme is brought to life by arranging for the venue, publicity, witnesses to attend, and other tasks.

- Housing the committee

Committees often meet away from parliament and so thought needs to be given to appropriate locations for hearings. Equally, committees will frequently meet in the parliament's national building and need appropriate physical space.

- Budget

Committees need some public financial resources. These resources need to be spent accountably to ensure probity and transparency in the use of public money. The committee needs to be able to identify and deploy the specialist services it requires to fulfill its mandate, such as hiring subject experts. It also needs to be able to account for all money spent and provide an example of excellence in administrative process. A budget is the mechanism for achieving both objectives.

- Choice of subject for assessment

Committee inquiries are likely to be most successful in proportion to their relevance to the terms of reference, the expertise of the committee members, and to the current concerns of parliament. The choice of subjects should rest with the committee as it will be the committee alone which is best placed to understand how to carry forward the mandate given to it by parliament.

- Organizing the inquiry and the hearing(s) – private and public

Inquiries and hearings are normally partly private and partly public processes. Very often committees make decisions on their future programme and on their recommendations from particular assessments in private, without the discussion being transcribed and with only a note of the decisions being made. This privacy affords the committee freedom for open discussion.

However, the process of gathering evidence (the majority of time spent by the committee) is normally done in public and with an official transcription or record. The rationale for this rests on the principle of public involvement. Parliaments are quintessentially representative bodies in the operation of which those being represented have a vital interest. It follows, therefore, that in order to facilitate and deepen the positive relationship between those

representing the public and the public themselves, the latter should have access directly, and via the media – with appropriate safeguards. Vitality, such an approach allows the media to report proceedings to the wider public throughout the country, and for those willing and able to attend in person, to do so. The relevance of the committee's work to the wider national public is therefore emphasized. This is to the benefit of parliament and the committee by maintaining a high and positive profile for parliament amongst the public.

Organizing the inquiry and the hearing(s) – publicising the hearing:

One of the objectives of an inquiry process is to engage with the general public. This requires that parliament ensure that committees publicise their programmes of work, i.e. the inquiries they propose to conduct over the coming period, and in particular the localities, venues, and timings of hearings that will take place. These practical considerations are vital because without good publicity hearings will not engage the general public, and parliament and its institutions will risk losing relevance and respect.

- Organizing the inquiry and the hearing(s) – witness selection

In choosing speakers, the committee will be likely to be guided by the views of members themselves and staff. If the inquiry has been adequately publicised, the committee is likely to have many requests to be heard. It will need to prioritise ruthlessly to maintain the tempo of its work programme and the integrity of its inquiry subject. Written submissions may be made and received.

- Organizing the inquiry and the hearing(s) – follow through

Clarity is needed on how the product of the hearing, i.e. the transcript of witness evidence will be treated and utilised within the inquiry

generally. Treating all the evidence received by the committee with respect, and ensuring, so far as possible, that transcriptions of hearings are accurate and remain unaltered, is an important part of consolidating the committee's reputation. Parliamentary committees frequently publish uncorrected transcripts of evidence quickly after evidence sessions to ensure public access to the committee's work.

The main output of any committee assessment into government activity is normally a report, although in the case of draft legislation, the committee output may be a redrafted bill. This is frequently summarised by the committee for the media and public in a Press Release or, in the case of particularly high level inquiries, a Press Conference may be held by the Chairperson and the committee. This report will reflect the evidence taken by the committee in both written submissions, and orally (transcripts of evidence). The conclusions and recommendations of the report should, of necessity, be related to the evidence received, so as to have 'evidence based' credibility.

## **Annex 2**

# **A THEMATIC ASSESSMENT OF PUBLIC HEARINGS IN ASIA**

### **1 Introduction**

In the context of the National Assembly (NA) adopting some common working procedures from other parliaments in the world into its work, including parliamentary committee public hearings, it is important to study international best practices in adapting similar working procedures. As such, some countries with a context similar to Viet Nam, such as Japan, Korea, the Philippines, Malaysia, Singapore, Solomon Islands, Thailand, and Indonesia, were selected in order to assess their experiences in implementing parliamentary committee hearings. The information presented in this research is mostly based on the findings of a survey carried out by the Inter-Parliamentary Union (IPU) in 2010, and on similar surveys conducted earlier.

### **2 Overview of parliaments in some Asian countries**

As in many other countries in the world, parliaments in the East Asia and South East Asia emerged out of the process of importing governance models from western countries. In most of the studied countries, parliaments were established from the end of 19<sup>th</sup> century into the first half of 20<sup>th</sup> century.

Table 1: The year of parliament establishment

No	Country	Year
1	Japan	1890
2	Philippines	1898
3	Thailand	1932
4	Indonesia	1945
5	Korea	1948
6	Malaysia	1957
7	Singapore	1965
8	Solomon	1960

In some countries, parliaments were established as part of a self-motivated effort to reform the governance model. For instance, in Japan the establishment of parliament as stipulated in 1889 Meiji constitution resulted from the process of actively seeking to learn from western states and consequently of applying their parliamentary models, especially those of contemporary Britain and Germany<sup>12</sup>.

In other countries, the establishment of parliaments resulted from the process of copying the institutional models of mother countries in the colonial era. For instance, after becoming independent in 1957, Malaysia imported the formula of its state apparatus, including its parliament, from the United Kingdom. At that time, the parliament of the then Malayan Federation included two Houses, including the House of Representatives which was elected directly by the people, and the Senate, whose members were in part chosen by the King

<sup>12</sup> Henkin, Louis and Albert J. Rosenthal, *Constitutionalism and Rights: the Influence of the United States Constitution Abroad*, (Columbia University Press, 1990), p.424.

(which is similar to the model of House of Lords in the UK). However, since their establishment parliaments have evolved to match social and economic conditions. For example, after becoming independent from the Spanish in 1898, the Parliament of the Philippines has undergone a process of evolution<sup>13</sup>.

Due to the differing processes of establishment and development, the institutional models and structures of the studied parliaments vary markedly. However, the parliamentary regime is seen in most of the countries including Japan, Thailand, Malaysia, Singapore and Solomon. Two countries following the presidential regime model are Philippines and Indonesia, while Korea is the only state following the mixed regime model.

**Table 2: Institutional models and the organization form of parliaments**

No	Country	Institutional model	Organization form
1	Japan	Parliamentary	Bicameral
2	Philippines	Presidential	Bicameral
3	Thailand	Parliamentary	Bicameral
4	Indonesia	Presidential	Bicameral
5	Korea	Mixed	Unicameral
6	Malaysia	Parliamentary	Bicameral
7	Singapore	Parliamentary	Unicameral
8	Solomon	Parliamentary	Unicameral

<sup>13</sup> See more: House of Representatives, *Brief History of the Philippines Congress*, accessed 17/07/2010.

Of those countries following the parliamentary organization model, bicameral systems are used by five countries. However, the nature of the Upper House varies from country to country. For example, in Malaysia, Japan and Thailand, some members of the Upper House are representatives of other administrative levels, of different occupations, or of regions, while some are elected directly by the people. The Regional Representative Council of Indonesia (the Upper House), for instance, includes only representatives for geographical areas (each of which has 4 senators). In the Philippines, the Senate includes 24 Senators elected on a basis differing from lower house electoral areas. This structure helps the Philippines' Senate represent the interests of the whole nation and ensures senators consider matters from a national perspective.<sup>14</sup>

## 1.2 The Standing committees

Almost all the parliaments establish standing committees to carry out the business of parliament. However, the number of committees and their nature differ.

Generally, countries that follow the Westminster model such as Malaysia, Singapore, and the Solomon Islands have fewer standing committees than other parliaments. The fundamental reason is that in these parliaments, when a bill submitted to parliament is examined, the assembly establishes *ad hoc* select committees to carry out this work. Standing committees carry out more regular work such as examining the budget, home affairs, working procedures, and other matters. For example, in Singapore, the standing committees include the Committee of Selection, the Committee of Privileges, the

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<sup>14</sup>. Senate of the Philippines, *Composition of the Senate*, available at <http://www.senate.gov.ph/senators/composition.asp> accessed 17/07/2010.

Estimates Committee, the House Committee, the Public Accounts Committee, the Public Petitions Committee and the Standing Orders Committee<sup>15</sup>.

In other countries, the system of standing committees plays a critical role in carrying out parliamentary business. Normally, standing committees are established to scrutinize bills drafted by ministries as well as to oversee ministries' activities. Therefore, the number of standing committees can be much larger. For example, in the Philippines, while there are 37 committees in the Senate, there are 58 committees in the House of Representatives. In Thailand, these numbers are 22 and 36 committees, respectively. These committees are often established by area of policy or just simply as a mirror to governmental ministries. In Indonesia, there are 11 select committees numbered from 1 to 11, each corresponding to some specific ministry in the executive branch.

**Table 3: The number of standing committees in some parliaments<sup>16</sup>**

No	Country	Number of standing committees
1	The House of Councilors of Japan	17
2	The House of Representatives of Japan	17
3	The Senate of Philippines	37
4	The House of Representatives of Philippines	58
5	The Senate of Thailand	22

<sup>15</sup> Parliament of Singapore, *About Us*, <http://www.parliament.gov.sg/AboutUs/Committees.htm> accessed 17/07/2010.

<sup>16</sup> Collected from website of studied parliaments.

No	Country	Number of standing committees
6	The House of Representatives of Thailand	36
7	The Regional Representative Council of Indonesia	9
8	The People’s Representative Council of Indonesia	16 <sup>17</sup>
9	Korea	16
10	The Senate of Malaysia	4
11	The House of Representatives of Malaysia	5
12	Singapore	7
13	Solomon	5

The number of members in each committee also varies. In some parliaments such as Singapore, each committee comprises only 7 or 8 members, while in other parliaments like that in the Philippines, there may be 85 members to a committee.

### 1.3 Ad hoc committees

Besides standing committees, in some cases, *ad hoc* committees are also established.

In the Westminster model, as is followed by states such as Singapore, Malaysia, and the Solomon Islands, *ad hoc* committees are selected to scrutinize bills or matters submitted to parliaments. For example, according to Article 101 of the Standing orders of the Singapore

<sup>17</sup> Including 11 committees in different areas and 5 special committees: Legislative Council, Budget Committee, Home Affairs Committee, Inter-parliament Committee, Ethic Inspection Committee

parliament, *ad hoc* committees can be established as requested to scrutinize bills or matters submitted to the Parliament. *Ad hoc* committees in other parliaments might be established to undertake an oversight task or examine projects relating to many areas under the authority of several committees. For example, according to Article 45 of Japan Diet law, a House may set up Special Committees in order to consider matters which are deemed necessary by the House, or to assess particular matters which do not come under the jurisdiction of any Standing Committee.

Some parliaments may also set up other particular committees. For example, in Japan, the House of Councilors may set up Research Committee to undertake comprehensive and long term research on fundamental matters in relations to state administrative management.

## 2 Public hearings

In some countries studied, hearings have been introduced subsequent to the formation of parliaments, although in others they were present from inception. For instance, the Parliament of the Republic of Singapore reflects the Westminster system, and committees and public hearings have existed since its birth. By contrast, in Korea, it was not until 1988 that articles/provisions regarding committee hearings were introduced into the Law on the National Assembly of Korea despite the fact that the Korean National Assembly started operations in 1948.

### 2.1 The legal framework on committee hearings

Committee hearings are mentioned more or less in the legal normative documents of each parliament. In Malaysia hearings are not regulated clearly in the rules of House of Representatives, but there is particular

mention of hearings in the rules of Japan House of Councilors. By contrast, though, in the rules of the National Parliament of Solomon islands, although there is a specific section for rules and procedures of committees, public hearings are not mentioned.

**Table 4: Regulations on hearings in legal normative documents on parliamentary organization and operation<sup>18</sup>**

No	Country	Regulated	Not regulated
1	The House of Councilors of Japan	✓	
2	The House of Representatives of Japan	✓	
3	The Senate of Philippines	✓	
4	The House of Representatives of Philippines	✓	
5	The Senate of Thailand	N/A	N/A
6	The House of Representatives of Thailand	✓	
7	The Regional Representative Council of Indonesia	N/A	N/A
8	The People’s Representative Council of Indonesia	✓	
9	Korea	✓	
10	The Senate of Malaysia	N/A	N/A
11	The House of Representatives of	✓	

<sup>18</sup>. Collected from feedbacks of some parliaments to IPU and some parliamentary rules.

No	Country	Regulated	Not regulated
	Malaysia		
12	Singapore	✓	
13	Solomon		✓

Generally, these documents do not specifically define committee hearings but just mention hearings as one of committees' tools by which they might examine matters before them.

## 2.2 Objectives of Hearings

Public hearings are generally considered a tool to execute both the legislative and oversight functions of parliamentary committees. As set out in Indonesian Regulations of the Lower House of People's Consultative Assembly (Article 37, Provision 4.d), committees hold the rights to summon a hearing to perform their functions. Similarly, the Japanese Regulations of the House of Representatives and the Lower House (Article 76, Provision 77) acknowledge the authority of a committee to organize public hearings to look into the submissions it receives or to launch preliminary studies of its initiatives.

## 2.3 Which committees can use the hearing tool?

Hearings are accepted unquestionably by parliaments as a tool used by standing committees and possibly by ad hoc committees. For example, Article 51 of the Law on the National Diet (Legislature) of Japan states that a committee, regardless of its standing or interim status, can organize public hearings; this applies to such specialized committees as the Research Committee.

## 2.4 Topics/Subjects for Hearings

Some parliaments give committees the power to decide all hearings-related issues, which means a committee can summon a hearing on any issue of its interest. As stated in Article 37 of the Regulations of the House of Representatives of the Philippines (the lower chamber), “A committee *or* a sub-committee can organize a hearing on any issue on the condition that the tentative program and the notice on the hearing is publicized to the public at least 3 days in advance.” However, the issue must be approved by the majority of the committee.<sup>19</sup>

Issues for hearings must be important matters of common interest or issues that need experts’ support; accordingly, parliamentary regulations set out specific conditions under which committees hold their hearings. For example, in both Houses of the National Diet of Japan (i.e. the House of Representatives and House of Councilors), hearings can only be organized on receiving the go-ahead from the Speaker of the House of Representatives and President of House of Councilors.<sup>20</sup> In Korea, the issues for the hearing must require expert support; furthermore, in regard to an important issue under a committee’s examination, a hearing is only convened if it is approved by a third of the committee’s members or a related resolution is issued by the committee.<sup>21</sup>

Some parliaments make hearings a compulsory activity in specific cases. Regulations on the National Diet of Japan (Article 51, Paragraph 2) state that hearings are mandatory in committee examination of the state budget or important bills relating to state

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<sup>19</sup> Article 25, Regulations of The House of Representatives of the Philippines

<sup>20</sup> Article 78, Regulations of the House of Representatives of Japan, Article 62, Regulations of The House of Councillors of Japan

<sup>21</sup> Article 63, Law on the National Assembly of Korea

revenues. There is no item in the Regulations of the Congress of the Philippines that defines the compulsory content for a hearing; however, the Constitution of the Philippines states that hearings must be convened during the examination of and consultancy process in support of legislative work. Under the Regulations of the People's Hall and The House of Representatives of Malaysia in relation to a draft bill which has significant implications on Malaysian citizens, if the People's Hall receives petitions from constituents before passing the bill to its committees for examination, it is compulsory that the related committees convene hearings to listen to interested parties during the examination process.<sup>22</sup>

**Table 6: Hearings as a compulsory activity in different countries<sup>23</sup>**

List	Countries	Compulsory	Partly Compulsory	Not Compulsory
1	The House of Councilors of Japan		✓	
2	The House of Representatives of Japan		✓	
3	The Senate of Philippines		✓	
4	The House of Representatives of Philippines			✓
5	The Senate of Thailand	N/A	N/A	N/A
6	The House of Representatives of Thailand			✓

<sup>22</sup> Article 50, Provision 3, Regulations of the Malaysian People's Hall

<sup>23</sup> IPU and studies of different countries' parliaments

List	Countries	Compulsory	Partly Compulsory	Not Compulsory
7	The Regional Representative Council of Indonesia	N/A	N/A	N/A
8	The People's Representative Council of Indonesia			✓
9	Korea			✓
10	The Senate of Malaysia	N/A	N/A	N/A
11	The House of Representatives of Malaysia		✓	
12	Singapore			✓

**2.5 Speakers at a hearing**

Speakers at committee hearings are chosen based on the proposed content of a hearing. Speakers and presenters are normally those whose interests are affected by the draft bills and issues being considered by the committees or those who have related expertise.

There exist differences in the practice of specifying the speakers or presenters at a hearing. In some countries, speakers or presenters at a hearing are those who have sent in advance their requests to speak. For example, as set out in the Regulations of the House of Representatives of Japan (Article 80), those who would like to speak at the hearing have to send written requests to do so to the committee in advance, stating whether they are for or against the issues under consideration. The committee will from these requests select the speakers/presenters. In the People's Hall (House of Representatives)

of Malaysia, hearings are organized by committees to listen to those who have sent requests to speak in advance.

By contrast, in other parliaments, committees select and send invitations to certain individuals. In the House of Representatives of the Philippines, if a committee finds it necessary to organize a hearing, they will specify a date, a venue and publicise the meeting to the public; then the committee selects the relevant individuals, experts, or scholars. It should be noted that those invited by the committee to speak at a hearing can include government officials; regulations on the House of Councilors of Japan clearly state that both elected representatives and public servants have the right to speak in a hearing.<sup>24</sup>

During the process of organising hearings (especially those organized to serve investigative purposes) in certain countries, committees are given the rights to summon the witnesses (the person who can provide information/evidence, not the ‘witness’ in legal sense) to the hearing. Article 85-II of the Regulations of the House of Representatives of Japan states that committees of the House can summon related individuals if necessary. In such cases, the Chairpersons of the committees need to give notice to the individuals or the related state agencies (if the needed individuals work for these state agencies). This practice is also applied in Thailand and Korea.

In many cases, speakers at a hearing may be candidates for important positions. As set out in Article 65-2 of the Law on the National Assembly of Korea, committees of the National Assembly can organize hearings on the appointment of high-level positions; in these hearings, participants have a chance to listen to the candidates for

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<sup>24</sup> Regulations on the House of Councillors of Japan

important positions as appointed by the National Assembly, (e.g. a judge of the Constitutional Court, members of the National Election Council, the State Council, or other similar posts).

## 2.6 The openness of committee hearings

Normally, a public hearing is implicitly considered to be open unless the committee decides otherwise. Therefore, Clause 4, Article 65 of the Law on the National Assembly of South Korea stipulates that hearing sessions are open subject to a decision otherwise made by the committee.

The openness of hearings is demonstrated through announcement to the public. Normally, the time, venue and contents of hearing sessions is released to the public. Some parliaments even stipulate specific timelines and methods for publicizing the contents of hearing. Clause 3, Article 65 of the Law on the National Assembly of South Korea stipulates that information on committee hearing activities must be made public five days prior to the day the activities start. Similarly, the standing order of the House of Representatives of the Philippines stipulates that committee hearing sessions must be announced at least 3 days prior to the day the hearing's start.

The openness of public hearings is ensured through live broadcast TV and radio (usually subject to prior registration). Furthermore, to make sure that they are open to the public, some parliaments allow committee public hearings to take place outside the parliament building, (although the public must be informed as to the venue). However, some parliaments (for instance the National Diet of Japan) require that hearing sessions, like committee plenary sessions, must be held within the parliament building.

## 2.7 Procedures for conducting hearings

Some parliaments consider a public hearing as a committee meeting, so that the procedures for conducting them vary little from committee meetings. Clause 4, Article 64 of the Law on the National Assembly of South Korea affirms that a public hearing is considered to be a committee meeting and the same procedures apply for both.

However, in general, the procedures for conducting public hearings in other parliaments are simpler than conducting committee meetings because the objective of hearings is for committee members to get information from the invitees, not to make decisions. This is best seen in some provisions of some parliaments. Article 70 of the Standing Order of the National Diet of Japan affirms that during public hearings committees do not hold discussions or vote. A further example of this can be seen in the requirement for quorum, which is not as strict as it is for committee meetings. For instance, Article 22 of the Standing Order of the Senate of the Philippines stipulates that the quorum to conduct a committee meeting must be 1/3 of the total number of full-time committee members. Furthermore, in a public hearing, the committees might consider the number themselves and decide on a smaller quorum. Therefore, in a hearing session in some cases only 2 or 3 committee members are needed.

In a public hearing, committee members will listen to the opinions of those who register to speak. In the House of Representatives of Malaysia, those who send their written opinions prior to the sessions will be invited to speak. Whereas in Japan, those given a chance to speak are selected by the committees on the basis of whether the number of supporters and opponents to the policies addressed at the hearing session are equal. Therefore, in a public hearing, the chairs

must ensure that both supporters and opponents are given chances to speak in turn.

However, an importance difference between a hearing session and a committee session is that some parliaments ask the speakers at the hearing session to take an oath that the information provided is true. For example, Article 12 in the Statutes of Procedures for investigation supporting legislation works of the Senate of the Philippines requests that those who provide information at a hearing session swear to tell the truth. However, it should be noted that not every parliament asks for an oath before providing information as is the case in a public hearing before the National Diet of Japan.

Some parliaments stipulate more specific provisions to guarantee effective hearing sessions. For example, the standing order of both the House of Representatives and House of Councilors of the National Diet of Japan stipulates that at a public hearing, committee members only have the right to put questions to those invited to speak, not to the members of the Houses. In addition, when a speaker goes beyond the hearing topics or behaves inappropriately, the chair of the session can stop him from speaking and even ask him to leave the meeting.

In general, other parliaments do not stipulate in detail the procedures for conducting committee hearings. In some countries, the procedures are only provided in the operation regulations of each separate committee. As stipulated in the standing orders of the Senate of the Philippines, each committee of the Senate can draw up their own regulations to apply the House's provisions including those on

conducting hearings<sup>25</sup>. Some other parliaments have instructions on the conduct of hearings for the committees and MPs, as does the National Diet of Japan.

**Table 5: Instructions on procedures for conducting hearings in the studied countries** <sup>26</sup>

No.	Countries	Instructions on Conducting Procedures	
		Yes	No
1	The House of Councilors of Japan	✓	
2	The House of Representatives of Japan		✓
3	The Senate of the Philippines		✓
4	The House of Representatives of Thailand		✓
5	Korea		✓
6	Singapore		✓

## 2.8 Results of the hearings

The information gathered will contribute to committee activities. For example, information gained from a hearing on a bill will be used to examine that bill. Therefore, it can be said that results of the hearings will be indicated in the committees' reports on matters under its authority which they submit to parliament.

<sup>25</sup> Article 9, the Statutes of Procedures for investigation supporting legislation works of the Upper House of the Phillipines.

<sup>26</sup>. Consolidated from IPU surveys conducted in 2006 and 2010. Only countries with information included.

However, some parliaments require that the results of hearings be reported to the Speaker. Article 64, Provision 2, Korean National Assembly Act stipulates that: “When a committee holds a public hearing, it shall make a report to the Speaker in writing recording the agenda, date, time, place, persons stating opinion, expenses and other reference matters”. For the above purpose, proceedings of the hearings must be recorded in a written form. Article 13, Rules of Procedure Governing Inquiries in Aid of Legislation, of the Senate of the Philippines stipulates that: “A complete and accurate record shall be kept of all testimonies and proceedings at hearings, both in public and in executive sessions”.

In the case that hearings are conducted in public, the records are also public. Records of the hearings at the House of Representatives and House of Councilors of Japan are uploaded onto its website.<sup>27</sup> The Rules of Procedure Governing Inquiries in Aid of Legislation of the Senate of Philippines state that participants of the hearings can have access to records of both public and private sessions, through the secretary of that committee.

### **2.9 Reflections on hearings**

Hearings have become a popular activity in almost all parliaments. In Japan, hearings have been made compulsory in respect of the annual budget plan and bills related to state spending; hearings have become regular activities for the parliament’s committees.

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<sup>27</sup>. For example, hearing record of Research Committee on Constitution of the National Diet of Japan, 22/3/2007 available at: [http://www.shugiin.go.jp/itdb\\_english.nsf/html/kenpou/english/20070322f1.htm](http://www.shugiin.go.jp/itdb_english.nsf/html/kenpou/english/20070322f1.htm).

**Table 8: The popularity of hearings in different countries<sup>28</sup>**

List	Countries	Are hearings popular in the operations of committees?	
		Yes	No
1	The House of Councilors of Japan	✓	
2	The House of Representatives of Japan	✓	
3	The Senate of the Philippines	✓	
4	The House of Representatives of Thailand	✓	
5	Korea		✓
6	Singapore	✓	

Although hearings have become regular activities among studied parliaments, there exist challenges in their organisation. The common challenge shared by many countries is a lack of people who are willing to participate in committees' hearings; this is especially a problem facing developing countries in South East Asia (e.g. the Philippines or Thailand). In the Philippines, committees often face a shortage of people who can provide valuable information and inputs for the hearing. Furthermore, people may be reluctant to provide all the necessary information. Similarly, parliamentary committees in Thailand often face the reluctance of related individuals or organizations to contribute. However, it should be noted that this reluctance only exists among a limited number of related individuals/agencies. Normally the

<sup>28</sup> IPU surveys conducted in 2006 and 2010

majority of those with interests tied up with the bills or issues under consideration are willing to voice their concerns before the committees so as to protect their rights and benefits.

In order to solve the above-mentioned problem, parliaments are often empowered with the authority to request the compulsory participation of the people who have related information in committee hearings, although the use of such powers might raise tensions between the state agencies and the committees of the parliament. This is where the public nature of hearings should be stressed. As hearings are public, they naturally create public pressure which will help persuade those who are reluctant to provide information. Further, efforts by committees to secure access to information are also recognized by the public through hearing sessions.

Although the lack of cooperation is a common problem, parliamentary committees are not encouraged to intervene too much in related agencies' operations over the hearing/investigation process when they relate to judicial matters. In Japan, it is considered a violation of the principle of the separation of powers if committees get too involved in the operation of judicial agencies during the hearing/investigation process, although some exceptions to this rule exist. During the process of examining the court and prosecution activities, the Justice Committee of the House of Councilors of Japan examined a legal case and concluded that the final judgment that had been made was not fair. However, the Supreme Court reacted strongly, stressing that the Justice Committee “violates the independence of the justice agency, crossing the borders set by the Constitution regarding parliamentary examination/investigation”.<sup>29</sup>

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<sup>29</sup> Information on the House of Councillors of Japan according to IPU research

Furthermore, as hearings have strong implications for the decision-making process of committees, there are usually divisions within a committee regarding whether a hearing should be organized or not, which can affect the organization of committees' hearings. For instance, in the House of Representatives of Japan, it is usually hard for the ruling party and the opposition party in committees to reach a consensus on matters as small as the date for a hearing on compulsory issues (e.g. budget plan or projects/bills that have implications for state revenues).<sup>30</sup> Nevertheless, this is a difficulty found in any committee activities, and is not limited to hearing activities. The difficulty can be overcome if the majority in the parliament is also the majority in the committee, thereby ensuring influence on the committee's decision through voting mechanism.

### 3 Lessons learned

The most key conclusion about public hearings that might be drawn from this study relates to their purpose. The fundamental objective of hearings is to help parliamentary committees gain more information for decision making process. As a result, speakers at the hearings are not limited to officials in the state apparatus but also include other stakeholders and experts in the related areas. In this context, hearings must be linked to committees' activities, and there should be no hearings unconnected to matters under committees' authority.

Some conclusions may also be drawn about their procedures. Hearing procedures are generally not as strict as procedures to conduct committee sessions, since their objective is to listen to others than to make decisions. It is important to note that information on time, venue and content of the hearings must be released publicly in advance to

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<sup>30</sup> Information on the House of Representatives of Japan, 2006 IPU research

mobilize the participation of many stakeholders in the hearings. Moreover, during hearings, procedures must be designed to help Members of Committee to listen to stakeholders as much as possible. Some parliaments provide guidelines on the conduct of hearings to ensure that committees and MPs can effectively participate in the hearings.

A further conclusion to draw is that in order to effectively conduct hearings, the legal framework on hearings must be clear. Without such a framework, the legal basis and conceptual clarity of the hearings process comes into question.

In sum, this assessment of the process of applying committee hearings, demonstrates that parliaments have recognised that hearings are a consequence of the natural development of MPs' needs in seeking adequate information for decision making. Although hearings may delay the work processing of committees, hearings are essential activities in efforts to facilitate the participation of people in the decision making process of the state.<sup>31</sup>

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<sup>31</sup> Feedback of Congress of the Philippines in the IPU survey provided in 2010.

## Annex 3

# CASE STUDIES OF DIFFERENT PARLIAMENTS

### 1 Britain

#### General

Britain (the ‘United Kingdom’) is a democracy and a constitutional monarchy. Queen Elizabeth II is the Head of State. There is full separation of powers (legislature, executive, and judiciary) and a parliamentary system of government (the ‘Westminster System’). The leader of the largest party after general elections is called by the Queen to form a government. The legislature is bicameral with 650 seats in the House of Commons and about 750 in the House of Lords. The period since 1999 has seen the devolution of domestic powers over Scotland and Wales to the Scottish Parliament and the Welsh Assembly respectively. The premier House in powers and importance is the Commons to which the government is overwhelmingly responsible and whose confidence government must retain in order to govern. The Lords is a reviewing chamber with the power to delay but not reject Bills.

#### Committees and inquiries

The most significant Commons committees concern themselves with examining the work of government. Those in the Lords focus on 4 areas: Europe, science, economics, UK Constitution. There are approximately 80 committees ‘selected’ by Parliament, i.e. their

membership is approved by the House. The remainder of this section will concentrate on the House of Commons committees.

There are a wide range of types of committee in the House of Commons but 2 are preeminent: Public Bill Committees (PBCs, a category of General Committees) and Departmental Select Committees (DSCs). PBCs comprise between 16 and 50 members and are appointed to take written and oral evidence from government and other officials and experts on the merits of government legislation. Bills are examined clause by clause and a report with suggested amendments is made to the House. PBCs reflect the political makeup of the House.

The function of Departmental Select Committees (DSC) in their modern form is to ‘examine the expenditure, administration, and policy of the principal government departments’. They mirror each department and are reorganized periodically following each machinery of government reorganisation. Each is supported by a small (around 6) secretariat/staff; and the committees as a whole by a dedicated office headed by a senior House of Commons clerk.

DSC powers are set out in Standing Orders, committee resolutions and other operational guidance and include calling for (and compelling the production of) papers and persons. Their memberships reflect the political composition of Parliament, but their mode of operation and their culture is (aspirationally at least) non-partisan. They meet at least once, often twice and sometimes three times a week when Parliament is sitting. Overall their *modus operandi* for inquiries, hearings, and the production of reports follows that described for the New Zealand Parliament. (See Annex 3, Section 3)

Lessons learned and practical challenges in developing committees and implementing hearings mechanisms

The establishment of modern DSCs has been considered a success, and the broad story since 1979 has been one of consolidation and the expansion of status and influence within and outside Parliament. This evolution saw changes to committees in 1992, 1997, 2001, 2007, and 2010. Calls for the reform of Parliament have very often focused on greater powers for the DSCs even where there has been disappointment at their stretch of influence. There is a general recognition that their operation is the major way in which government in the UK is held accountable at national level.

As a result, this period has seen a series of changes to the committees which have reflected the desire to strengthen this pillar of accountability: financial and staff resources have been made available to them; since 2002 there has been a ‘Scrutiny Unit’ staffed by accountants, lawyers, and other professionals dedicated to supporting the operations of the Committee Office and the DSCs; the officials of the National Audit Office both support the Scrutiny Unit and the DSCs directly in a number of cases; Media Officers support each DSC; the staff available to individual DSCs has increased.

The status of committee chairs has risen with a sense that some MPs might wish to have a career in the DSCs rather than in government.

Conclusions

The process of evolution described above is likely to continue with periodic calls for enhancements to the DSC process, for example:

- The desirability of each MP sitting on a DSC

- Increasing the powers of committees, for example, over senior appointments in government related posts
- Increasing the amount of time paid to DSC business on the floor of the House, for example, debates on DSC reports, which might mean a reduction in the time for government business on the floor of the House
- Increasing DSC powers to call for government officials
- Despite the increase in resources made available to DSCs over the past decade, some see enhancing staff and financial resources as key to further consolidating their reach

## **2 Germany**

### General

The Federal Republic of Germany is a federal democracy with separation of legislative, executive and judicial functions. The constitutional provisions setting out these functions are designed to balance the powers of each function and, overall, to limit the powers of the state. Legislation and oversight of government processes are dealt with primarily in the Bundestag or Federal Parliament (622 seats). Along with the Bundesrat (69 seats) which represents the interests of the states directly, and has important rights to review legislative proposals at an early stage, it comprises the legislative branch of government.

The Federal Constitutional Court is responsible for interpreting the German constitution. As such, it can have a vital impact upon committees of the Bundestag. For example, when decisions of 1994 and 2001 stressed the role of the Foreign Affairs Committee in the

formation of German foreign policy and expanded the committee's importance and scope for action.

### Committees and inquiries

The most significant Bundestag committees are the so-called permanent committees (the number has varied in each elected term – currently there are 22) set up to shadow a particular Federal ministry. Amongst those, are what might be called 'super committees', for example, Budget, Defence, Foreign Affairs, which have especial priority or powers usually as a result of being identified in the German constitution (Basic Law). For example, the Foreign Affairs and Defence committees are the subject of Article 45a of the Basic Law. Some committees are generally 'closed' which means that the public is excluded from the deliberations of the committee on the basis that the deliberations of the committees cover confidential material. Examples of such committees are Defence, Foreign Affairs, Budget, and Internal Affairs.

Permanent committees have 2 functions: the detailed processing of legislation; and oversight of the Federal government. Committees are constituted in proportion to overall party strength in the Chamber. Each has a small staff of around 10. Bills are referred to committees by the Bundestag and the committees, after due consideration, pass Bills back to the Bundestag with any proposed amendments. When exercising their oversight of government role, committees may make their own minds up about what subjects to inquire into. Rule 68 of the Rules of Procedure sets down the right of committees to summon members of the Federal government to give evidence.

Overall, the committees of the Bundestag have provided the mechanism for enabling the Parliament to have a progressively greater say in the active government of the country and in key decisions.

Generally there are two sorts of committee which may hold public hearings and inquiries. Bundestag procedure mandates the referral of Bills to the relevant standing (permanent) committee responsible for that field of legislation for detailed scrutiny. That committee will remain responsible for the piece of legislation but may involve other committees in the scrutiny process if that is relevant. It is up to the committee to decide what witnesses it might call and to hear from in the course of this scrutiny.

A second form of Bundestag committee which may hold hearings is the so-called ‘study committee’ which may be set up under Rule 56 of the Rules of Procedure to inquire into particular significant issues and to prepare decisions. These committees are radically different in composition from the permanent committees comprising 50% members of the Bundestag and 50% experts in the field. A third sort of committee which may hold public inquiries is the ‘committee of inquiry’ set up under Article 44 of the Basic Law to investigate controversial or contentious areas. For example, maladministration, misgovernment, misconduct issues on the part of politicians. 25% of the Bundestag must agree to such a proceeding.

Lessons learned and practical challenges in developing committees and implementing hearings mechanisms

The freedom of committees to hold public hearings was introduced first in the Bundestag in 1951. That reform was influenced by the practice in the US Congress, and by parliamentary practice in the Weimar Republic. It was only 30 years later, however, that the public hearing came into its own, probably as a way in which the then very small Opposition (49 members) could amplify its voice. Public inquiries came to be seen not only as a means to obtain information

but as a way in which the numerically Opposition could exercise more control over Executive power. The current position is that public hearings play a major part in the legislative work of the Bundestag. Nearly every Bill undergoes a public hearing process.

### Conclusions

The German case illustrates two relevant points. First, the history of hearings in the Bundestag demonstrates how procedural opportunities can be mobilised politically. In a situation where opposition parties were in a tiny minority the chance to amplify influence through the public hearings mechanism became expedient. Second, the German example demonstrates the importance of ‘localism’ in the way in which the ‘closed’ committee system works which, for example, is more extensive than the UK parliamentary system. Where UK DSC committees do of course have closed sessions, no such committee operates normally in closed session.

## **3 New Zealand**

### General

New Zealand is a democracy and a constitutional monarchy. Queen Elizabeth II is the Head of State who is represented locally by the Governor General. It has a separation of powers (legislature, executive, and judiciary) and a parliamentary system of government (the ‘Westminster System’). The leader of the largest party after general elections assumes the right of forming a government and would normally lead it as Prime Minister. The legislature is unicameral with 122 seats.

### Committees and inquiries

The New Zealand Parliament was based on experience of the British Parliament. Committees evolved gradually from the first meeting of the Parliament in 1854 when inquiry work moved from the floor of the House directly to select committees. In 1985 a ‘general power of inquiry’ was given to committees formulated as the power to inquire into the policy, administration and expenditure of government Departments and Non Departmental Public Bodies (NDPBs).

There are currently 13 select committees, and committees and committee hearings are an important part of parliamentary business. Standing Orders (SOs) provide for committees to exercise a power to initiate hearings in their areas, and SOs also govern how committees obtain evidence and conduct hearings. In the main, committees make their own decisions on what work they do. But in certain circumstances select committees (whether regular subject committees or special purpose committees) may be required by the House to inquire into and report back on particular matters.

The process of a committee inquiry is governed by a procedural manual, and takes the following course:

- Terms of reference drawn up
- Call for evidence
- Independent expert assistance sought as necessary
- Evidence heard in public normally
- Committee staff draw up a draft report for the committee’s consideration, frequently with recommendations for the government
- Committee considers draft report and amends as required

- Committee agrees a final report after deliberation and reports formally to the House
- Report is printed and published
- Government required to respond to a report within 90 days in a report to the House, and this is published
- The report is placed on the Order Paper for debate, though this rarely takes place

Lessons learned and practical challenges in developing committees and implementing hearings mechanisms

The New Zealand Parliament has identified a number of challenges in conducting inquiries efficiently and effectively and enhancing future standards, including:

- Maintaining a balance where there is finite time between mandatory and discretionary committee tasks, for example, considering bills and initiating inquiries
- Inquiries, which are time consuming, need to be carefully planned within a tightly disciplined committee schedule
- Inquiries are staff intensive functions, but more staff may place pressure on management
- Access to experts costs money and so an adequate committee budget is required
- Systems are required to cope with large numbers of submissions in writing after a call for evidence has been made in relation to a particular inquiry. Electronic systems and databases may help with this task
- Budgets must allow the committee the freedom to travel and take evidence relevant to enquiries

- Up to date communications systems, for example, video conferencing and telephone conferencing, interpretation services where required, are essential
- Professional editing and printing services are required to produce reports which are in presentational terms attractive and inspire confidence

### Conclusions

Many of the practical difficulties identified here are the normal process of operating select committee arrangements. One interesting issue is the balance between mandatory tasks and tasks arising from a committee's own power of initiative. If the balance is weighted in favour of the latter then work which is mandated constitutionally may not be concluded. On the other hand, it can be in a government's interests to keep committee's busy to reduce the amount of time committee's have to spend on inquiries into government policies and activities.

## **5 Poland**

### General

Under the current constitution of 1997, Poland is a democracy with separation of legislative, executive, and judicial powers. The legislature is bicameral comprising the Senate (100 seats) and the Sejm, or Lower House, (460 seats). Legislative proposals may be introduced in the Sejm by members of the Senate, the President, and the Council of Ministers. The President is Head of State and guarantees the constitution and heads the executive branch, amongst other specific duties. The Prime Minister leads the Council of Ministers and is responsible for day to day government. The Prime

Minister and the Cabinet require the confidence of the Sejm in order to continue in government.

### Committees and inquiries

What follows focuses on the Sejm. There are 25 committees in the Sejm covering all the main functional areas of the executive government. Committees function by inquiring into legislative proposals and undertaking oversight of executive government activity.

In considering legislative proposals, committees of the Sejm apply two main inquiry techniques: first, requesting information of the main institutions of government; and, second, the ‘public hearing’. The first approach, which is well established, requires Ministers and senior officials, and the leaders of state bodies, to report to the committee as requested. Chairs of committee may also invite other parties to provide such information as may be required.

The second technique, the public hearing, is of more recent origin having been taken in to the Polish legal system in 2006 when the *Act on Lobbying Activity in the Lawmaking Process* (2005) came into force. The policy aim of the Act (a consequence of Poland’s accession to the European Union, which originated specifically as a result of a petition submitted by a group of non governmental organizations) was to provide a higher level of transparency in the legislative process. The Bill was passed unanimously by the legislature.

The public hearing procedure may be initiated in respect of a Bill by a member of the Sejm and requires then to be passed by resolution of the relevant committee. The hearing takes place at a single committee session, after the Bill’s first (formal) reading, but, importantly, before any detailed consideration is given to it, clause by clause. Any interested party may join the hearing without specific invitation from the committee. Hearings themselves are required to be publicised on

the Sejm Information System 14 days prior to the date of the hearing. Committees may change or cancel a hearing for practical reasons, for example, lack of time. There is, as yet, no manual or organisation of hearings and inquiries in the Sejm.

The nature of the interested parties who use the public hearing system is of relevance. The public hearing approach allows for the direct participation of professional lobbyists in the legislative process. For example, 21 out of 155 professional lobbyists registered by the Ministry of the Interior and Administration had an involvement in Sejm business. In the year 2009, professional lobbyists took part in 49 Sejm committee sittings, including three public hearings.

#### Lessons learned and practical challenges

There appear not to have been any conceptual problems in extending the scope of hearings in 2006 due to the unanimous belief that such change was required. Implementing the new arrangement, however, had some teething problems. First, announcements of hearings on the website of the Sejm proved to be insufficient, owing to few site hits. Second, there were issues related to the publication of the record of the hearings.

#### Conclusions

A number of practical and broader points arise from the Polish experience.

- First, the timing of the hearing within the legislative process – after introduction, and before detailed consideration – seems sensible as consideration by members of a legislature of a Bill should be as richly informed as possible.

- Second, at the heart of practices such as the public hearing, petitions, and so on, is the notion of strengthening the links between the public and their representatives at national level; publicizing the meeting is thus crucial;
- Third, any serious hearings system must have an excellent transcription service, and a procedure to validate the record by those providing testimony or evidence and those receiving it.
- Fourth, the term ‘lobbying’ is a rather controversial one and it will clearly be important that thought is given to how the system of hearings is used in a way that maximises use across society and protects against ‘lobby capture’.
- Fifth, it is important for orderly proceedings underwritten by clear procedure.
- Sixth, and on a much wider point, one part of the legitimisation of modern democratic institutions lies in the way these interact with the public. This happens on many levels. Mature democracies demonstrate many *systematically* applied ways for the public to participate in key parliamentary processes of legislation and oversight. The public hearing obviously has a place in this approach and can be very useful in demonstrating a listening committee, and in drawing up into consideration of Bill clauses real public concerns.

## 6 United States

### General

The US is a federal system of government. There is separation of powers between the executive, legislature, and judicial branches of the government. The US Congress, comprising the Senate (100 seats) and

the House of Representatives (435 seats), is the bicameral legislature of the federal government. Legislative powers are vested by the US constitution in the Congress. Laws presented for the US President's signature require the prior agreement of both Houses.

Committees and inquiries

Congress has extensive authority under the constitution to oversee and investigate the executive branch. The hearings process has existed in the Congress since its inception and is an integral part of Congressional oversight undertaken both to supervise the implementation of public policy and inform the Congress's own law making efforts.

There are well over 100 committees and sub-committees which act to review legislative proposals, evaluate policy issues, undertake in-depth oversight of the executive branch, and report to the Senate and to the House. All committees have standing authority to hold hearings, conduct investigations, *subpoena* witnesses and documents, and to publish their hearings. Hearings of committees in both Chambers are open to the public unless a majority votes in open session to close, although this can only be for reasons within the Chamber rules.

Chairs have scheduling authority related to hearings, as well as dictating the selection of witnesses and the form of hearings, although recent reforms have increased minority influence. The rules of both Chambers encourage the submission of written evidence prior to hearings so that the hearing itself can be devoted to informed questioning. Many commentators note the power of committees in their areas of competence relative to the Senate and House generally.

## Lessons learned and practical challenges in developing committees and implementing hearings mechanisms

Some of the main spurs to modern reform efforts in the construction of the committees and the development of hearings have been: the unruly growth in the number of committees; their overlapping and imprecise jurisdictions; obscure scheduling practices; and unbalanced workloads. As will be seen, however, the evolution of committees in the US Congress in modern times has left no area of committee operations untouched.

### *Acts of 1946 and 1970*

In 1946, a *Joint Committee* of Congress was authorized to review the structure of Congress and to make recommendations. The recommendations were largely implemented in the *Legislative Reorganization Act 1946* which codified committee jurisdictions and instituted a professional committee staffing structure. The 1946 Act reduced the number of committees from 33 to 15 in the Senate, and in the House from 48 to 18. The jurisdiction of committees were formalised and written down and a number of other reforms promoted.

A further round of reform measures were proposed in 1970 (*Legislative Reorganisation Act 1970*) by the *Joint Committee* formed in 1965 in response to calls for reform in a variety of areas from both inside and outside Congress. The focus of the 1970 Act was not on the structure of committees but rather on the rules governing them. Many of the reforms were designed to reduce the power of committee chairs and to rebalance power within the committee to enable committee members some influence over the course of inquiries and hearings.

Importantly, the 1970 Act established a *Joint Committee on Congressional Operations* of 10 members (5 from each Chamber) charged with a watching brief on reform and oversight of a new Office of Placement and Office of Management to support members' staffing and office requirements.

*Post-1970 developments*

In the House, a number of post-1970 caucus reforms are noteworthy for seeking to remove seniority rules and opening up committee chairs and the membership more equally to more junior caucus members.

*Post-1995 developments*

Republican control of Congress after 40 years from 1995 provoked a major if incremental committee restructuring involving several jurisdictional changes and a number of detailed procedural and staffing reforms. For example: members were now limited in the numbers of committees and sub committees on which they might sit; committees were required to prepare end of Congress reports summarising actions taken; committee staff were cut by one third. In addition, the post of Chief Administrative Officer (CAO) was created, and a range of administrative tightening and service streamlining reforms were instituted.

In 2003, in response, ultimately, to the events of '9/11' two years previously in which 3,000 Americans and others died in the attacks by Al Qaeda on New York and other Eastern US seaboard targets, the House created a *Select Committee on Homeland Security* with a strong subcommittee structure numbering 5 subcommittees.

Conclusions

There are a number of conclusions which may be drawn from the material set out and analysed above.

- First, the vital importance Congress attaches to its committee structures which are the ‘reactors’ of the institution shaping and reflecting political power institutionally
- Second, committees are vital institutions for all ‘core’ activities of the Congress: legislative, oversight, administrative
- Third, the requirement for detailed, constant procedural and administrative maintenance of the Congressional system as a whole – and committees in particular – has grown in direct proportion to both the growing complexity of the system, and the increasing sensitivity of the system interface with civil society.
- Fourth, hearings play a particular role in opening a window onto the life of the United States ‘political nation’ for the American and global public. Thus the committees, due to their size and administrative and political agility, are (or can be if used properly) the monitors or ‘screens’ of the Congress

Fifth, reform is most frequently the application of small, even minute, progressive adjustments to the way committees conduct hearings and otherwise go about their business. Mature reform is not normally rushed, normally is incremental, always deliberative, usually tied to and understood by reference to clear political imperatives and consensus which takes time to achieve.

**ANNEX 3: CASE STUDIES OF DIFFERENT PARLIAMENTS**

## Annex 4

# THE VIETNAMESE CONTEXT

This part of the report will explore the need to apply committee hearings in the operation of Viet Nam National Assembly Committees, will compare that need with current provisions of laws on activities of Committees, will assess how the concepts of public hearings in Viet Nam differ from those in other countries and will analyse the conditions necessary to conduct committee hearings in the National Assembly. This Annex will then make some recommendations on the possibility of applying hearings as part of the examination and oversight activities of Committees.

### 1. Why to apply public hearings in the Vietnamese National Assembly

#### 1.1 The role of the public in hearings

Committee hearings of other parliaments are defined in part by the interaction between the committees and the public, which is much more intense than in plenary sessions of the parliament. Through committee hearings, the public can quickly and directly gain insight into the processes of Committees of the National Assembly. Thus, committee hearings bring activities of the National Assembly and its Committees closer to the public, so bringing laws to life.

#### 1.2 Enhanced information collection for the National Assembly

The most important role of committee hearings is information collection, which can serve as a basis for MPs to assess bills and oversight issues. As such, hearings may provide a “gold-mine of information” on major national issues, and the gathering of information will ensure that the National Assembly members garner ever greater expertise in particular areas of policy.

### **1.3. The contribution of hearings to transparency**

Openness and transparency are the basic working principles of the National Assembly and its Committees, and are requirements of practice. Recently, the openness and transparency of the National Assembly’s sessions have increased, but the system of the National Assembly Committees is still closed to the public.<sup>32</sup> In this context, committee hearings can enhance transparency by creating a forum for the mass media, the public and experts to participate in legislative and oversight activities. Committee hearings also require the maximum publication of committee’s documents. So committee hearings enhance the transparency in the accountability of the Government, the transparency and behavior of committees and ensure both respond to social concerns, thereby increasing public confidence in the administrative system.

### **1.5 Hearings facilitate rapid response**

In 2009, a range of major issues, including concerns about the economic stimulus, and the implementation of the Law on Personal Income Tax showed the need for a strong and professional system of National Assembly Committees. These issues also highlighted the

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<sup>32</sup> For example, some comment that the examination of bills and draft ordinances by the Ethnic Council and Committees is closed. There has been rare presence of experts in examination meetings on bills. See: Prof. Dr. Tran Ngoc Duong, “Examination of bills and draft ordinances by the Ethnic Council and Committees of the National Assembly – Current situation and solutions”. Legislative Studies Journal No. 113, 1/2008.

need for a rapid response. At present, few tools can fulfill this need - although public hearings would go far to fill that gap.

### **1.6 Hearings can improve the National Assembly agenda**

Committee hearings bring about clear benefits in relation to the promulgation and oversight of policies. Committee hearings act as a “filter” to remove unnecessary or weakly drafted bills from the legislative program of the National Assembly. Hearings can also assist committees in assessing bills prior to their being brought before the plenary session. Furthermore, hearings can help ensure clarity in the process of examining legislation.

## **2 The Legal Framework related to the holding of Public Hearings**

Under the provisions of Viet Nam’s laws, committee hearings may be applied in both the legislative and oversight activities of committees. This section reviews the provisions in the two fields of legislation and oversight, explores how to apply committee hearings in the current legal framework, and identifies the shortcomings in the legal framework which might be amended so as to create more favorable conditions for the application of committee hearings in Viet Nam.

### **2.1 Provisions related to Committee oversight activities**

Under current rules, the Ethnic Council and National Assembly Committees are entitled to request Cabinet Members, the President of the Supreme People’s Court, the Procurator General of the Supreme People’s Procuracy, and other agencies or relevant organizations or individuals to supply documents or appear before them to present on those issues which are being considered and verified by the Council or Committees. The recipients of the request shall comply with such a request. (See Article 38 in the box below).

**Box: Explanatory meeting**

*Law on the Organization of the National Assembly, Article 38:* The Ethnic Council and Committees of the National Assembly are entitled to request the cabinet members, the President of the Supreme People’s Court, the Procurator General of the Supreme People’s Procuracy and concerned state officials to supply materials or to attend to present matters which are considered and verified by the Council or the Committees. Persons receiving the requests of the Council or Committees of the National Assembly shall comply with those requests.

*Working Regulations of the Ethnic Council and Committees of the National Assembly, Article 27:* The Ethnic Council and Committees of the National Assembly are entitled to request the cabinet members, the President of the Supreme People’s Court, the Procurator General of the Supreme People’s Procuracy, other agencies or relevant organizations or individuals to supply documents or appear to present issues which are being considered and verified by the Council or Committees. The recipients of the request shall comply with such a request.

In accordance with this wording, at an Explanatory Meeting committees are entitled to request senior officials to attend, but the law does not clarify whether committees may or may not call for information from other groups who have a stake in the issues under consideration. However, the law does not prohibit committees from doing so. Indeed, indirectly under provisions on the principles of openness and transparency and in accordance with the principle of the participation of the people, the committees may invite other parties to discussions. Moreover, Article 27 of the Working Regulations of the Ethnic Council and Committees of the National Assembly (see the

above box) provides more broadly that the officials or individuals committees may request to attend meetings can include “relevant agencies, organizations, individuals”. These relevant agencies, organizations, individuals may be understood to include not only those of state agencies but also social associations, non-governmental organisations (NGOs), enterprises and businesses, institutes, schools, experts and individuals.

## **2.2 Provisions related to the examination of legislation**

At present, the Law on Laws 2008 provides the legal framework related to public consultations in the process of the examination of legislation. Article 4 of the Law authorises the Ethnic Council and the Committees of the National Assembly to request representatives from the agencies submitting laws to come to report on contents of the bills, although that article lacks exact detail in this regard. However, Article 41 of the law clearly permits the Ethnic Council and Committees of the National Assembly to invite representatives from concerned agencies and organizations, experts, scientists, and representatives of those affected by the draft laws to present opinions on their contents. Taken together these two Articles provide the legal basis for the implementation of activities of the nature of committee hearings. Other provisions related to the examination stage at committees and public consultations clarify this viewpoint, although it is clear that some gaps between provisions related to the examination of legislation and the carrying out of committee hearings have consequences for the prospects of applying committee hearings in the National Assembly of Viet Nam.

### **Provisions related to the examination of legislation**

#### **1. The Law on Laws 2008**

*Article 4. Contribution of opinions to the elaboration of legal*

*normative documents*

1. The Viet Nam Fatherland Front and its member organizations, other organizations, state agencies, People’s Armed Forces units and individuals have a right to give opinions on draft legal normative documents.

2. In the course of elaborating a legal normative document, the drafting agency or organization and concerned agencies and organizations shall create conditions for agencies, organizations, units and individuals to give opinions on the draft document; and organize the collection of opinions of those to be directly affected by the document.

***Article 41. Examination by the Ethnic Council and Committees of the National Assembly***

3. The examining body may invite representatives of concerned agencies, and organizations, specialists, scientists and representatives of groups to be directly affected by the draft documents to attend meetings it organizes to present opinions on issues related to the contents of the draft documents.

4. The examining body may request the agency, organization or National Assembly Deputy submitting the draft document to report on issues related to the contents of the draft document; hold either on its own or together with the drafting agency workshops and field surveys on the issues related to the contents of the draft document.

Agencies, organizations and individuals shall, upon request, provide information and materials and comply with other requests of the examination agency.

**2. Working regulations of the Ethnic Council and Committees of**

### **the National Assembly**

**Article 21:** In preparation for the examination of bills and draft ordinances, resolutions, reports or other draft documents, the Standing Board of the Ethnic Council or Standing Board of a Committee of the National Assembly shall:

1. Assign a sub-committee or members of the Council or the Committee to study those draft documents and prepare their opinions;
2. Request the drafting agency and concerned agencies to present relevant issues;
3. Organize the collection of expert's opinions;
4. Conduct on its own or coordinate with submitting agencies field surveys.

An examination of these legal provisions is instructive. Under their terms, committees must collect information on draft legislation in order to verify the documents and to assist in their later revision. The wording and spirit of Article 41 of the Law on Laws provides explicitly for this process of information collection. Article 21 of the Working regulations of the Ethnic Council and Committees of the National Assembly in the preparation for the examination of bills and draft ordinances then sets out how this process should take place. The Standing Boards of the Ethnic Council and Committees must: assign a sub-committee or members of the Council or the Committee to study those draft documents and prepare their opinions; request the drafting agency and concerned agencies to present relevant issues; organize the collection of expert's opinions; and conduct field surveys. This powers and obligations would be

well served through the use of public hearings, but the laws do not explicitly mention the use of hearings.

Article 41 of the Law on Laws and Article 21 of the Working regulations of the Ethnic Council and Committees of the National Assembly also provides clearly for a preparatory process in the examination of legislation, during which hearings would most naturally take place and within which their application would represent a natural addition to existing working practice. Indeed in existing practice the Ethnic Council and Committees assign members to work with the drafting board so as: to understand fully the drafting process and the contents of bills; to report back on draft laws; to request concerned agencies, and organizations to provide information related to bills; to organize the collection of opinions from concerned agencies, organizations, and specialists; and to conduct field surveys and study tours. Committee members may in addition independently collect opinions of experts and from those people affected by the draft documents. The information collected then provides an important platform for discussions on the revision of bills and draft ordinances.<sup>33</sup> After this introductory process, the committees organize a plenary session to discuss on bills.<sup>34</sup>

### 2.3 Conclusion

From this analysis, it can be inferred that the conduct of public hearings rests on a sound legal basis, although the provisions are clearly insufficient in certain regards. The most significant such lapse

<sup>33</sup> Nguyen Dinh Quyen, “Enhance the legislative activities of the National Assembly”, *Legislative Studies Journal* No. 7/2002, p.22.

<sup>34</sup> Michael L.Mezey, *Comparative Legislatures*, 1979, p.67.

is the absence of explicit mention of the use of hearings in the oversight or examination of legislation processes, a significant weakness given Viet Nam's strong civil law traditions and the consequent desire for complete regulatory clarity. The introduction of well drafted regulations overtly mentioning hearings use is thus greatly desirable so as to remove any vestiges of doubt about their legal basis. Otherwise, though, it is worth noting that the provisions in place are entirely complimentary with the application of hearings and as drafted do not require significant amendment to permit their use.

### **3 Current understanding in Viet Nam of public hearings**

One challenge facing the application of hearings in Viet Nam is that perceptions and understanding of the concept of committee hearings in Viet Nam are not clear. Particular difficulties have arisen from the translation process, since the translation of "hearings" from English to Vietnamese as "điều trần" can suggest a collision between the legislative and executive. Its meaning also hints at "investigation", thereby suggesting that representatives from the executive invited to attend committee hearings come in order to answer for their wrongdoings. The assumption that hearings must focus on the allocation of responsibility contrasts with the working reality of hearings, though, which is that they are a key means to clarify policy issues through the collection of information, and to compare information provided by the Government to that deriving from other sources (although in some jurisdictions hearings can take on a more combative nature). This unfortunate misconception has led some Deputies of the National Assembly to hesitate before applying hearings, for fear of facing a lack of cooperation from ministries if the

committee hearing is organized and of prompting a ‘collision’ between government and legislature.

Compounding this conceptual uncertainty is the lack of clear detail in the legal framework. The lack of mention of the word “hearings” or “điều trần” has led some commentators to question the legal status of hearings while others say hearings are not new activities for the Committees of the Viet Nam National Assembly. In this context, they refer to the provisions related to “explanatory meetings”, which resemble hearings; and indeed some committees have had meetings with ministries, agencies or local governments and the people akin to public hearings, although these meetings are often not public.<sup>35</sup>

A related concern is that some commentators fail to distinguish committee public hearings and question time, and instead regard committee hearings as question time at committee level.<sup>36</sup> This misconception has spread through newspapers and other media<sup>37</sup>, and even some experts with deep knowledge of the National Assembly have adopted this misunderstanding, despite clear procedural

<sup>35</sup> For example: Ethnic Council; Committee on Social Affairs

<sup>36</sup> Some heads of Committees of the National Assembly say that while the law does not mention committee hearings, the nature of questioning at the Ethnic Council and Committee of the National Assembly recalls hearings. See: Vo Van Thanh, “committee hearings for the clarification of responsibility”. Tuoi tre, 3/3/2009.

<sup>37</sup> Reading articles related to committee hearings in newspapers of Viet Nam, readers are often confused between “committee hearing” and “questioning”. Some articles describe exactly the public hearing in a foreign country, but when mentioning the activity of committees, the author uses the concept “committee questioning” (see Le Kien, there have been no committee hearings as National Assembly’s agencies see that “the spirit is willing, but the flesh is weak?”, Vietnamnet, 1/4/2009; Thanh Tam, “Questioning, accountability or committee hearings – only the issue of concept”, Elected Deputies Daily Newspaper, No. 1/10/2009, Vo Van Thanh, “committee hearings for the clarification of responsibility”. Tuoi tre, 3/3/2009.

differences between hearings and question time.<sup>38</sup> One risk in this regard is that committee hearings come to resemble a question time session, in that they seek to tackle much broader issues than is suited to their more narrow focus.<sup>39</sup> A separate confusion has also arisen about the scope of the application of committee hearings, since many Vietnamese commentators regard committee hearings as a tool only applicable to the oversight of activities of the Government, and do not always realise that hearings can also be applied in the process of the examination of legislation.<sup>40</sup>

These misconceptions are not ubiquitous, however. Some scholars have demonstrated a different understanding of hearings, distinguishing clearly between hearings and questioning.<sup>41</sup> One author states that hearings differ from question time because not only officials from the executive and MPs contribute, but also representatives from many other interest groups. They then take this perspective further, though, suggesting that any meeting in which the committee listens to opinions of the people might be called a committee hearing.<sup>42</sup> Clearly procedural clarity would help alter this perception. Another author has stated that the intention of hearings is

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<sup>38</sup> Pham Duy Nghia, Questioning activities from the voters' outlook, *Legislative Studies Journal*, No. 15, August 2010, p16.

<sup>39</sup> The idea on implementing committee questioning is also not right to the nature of activities at the plenary sessions of the National Assembly. However, it is another issue.

<sup>40</sup> At present, in Viet Nam, there are some articles and studies on the application of committee hearings on legislative activities: Center for Information, Library and Research Services, research report on "the development of sample rules and procedures of Committees of the National Assembly", 2008; Nguyen Duc Lam, Committee hearings: possibility to apply in Viet Nam, presentation at workshop on "the role of Committees in legislative activities of the National Assembly", Office of the National Assembly, 28-29/6/2007.

<sup>41</sup> Thanh Tra, Select committee hearings or questioning, *Elected Deputies Daily Newspaper*, No. 7/3/2009.

<sup>42</sup> Tieu Lam, Committee hearing – a "breakthrough" activity at the National Assembly, *Vietnamnet*, 15/03/2009.

to clarify issues rather than allot responsibility.<sup>43</sup> Such comments show that the concept of public hearings is now taking hold in Viet Nam, creating favorable conditions for their application. However, these views are not yet widespread, and more importantly, they tend to come from those who are not decision makers in relation to the application of committee hearings.

A final conceptual issue relates to the understanding of the procedures for committee hearings. For example, some people worry that only a few members are chairing a hearing, so violating the majority working principle of Committees.<sup>44</sup> Other issues which arise are questions about why are hearings organized in such a strict procedural format, whether they exert pressure on the participants, particularly senior officials, and questions about why the chair does not conclude proceedings.

In sum, these conceptual difficulties arise from the lack of experience in carrying out public hearings in Vietnam. While the confusion is understandable, without resolution these issues may impede the implementation and effective functioning of public hearings.

#### **4 Shortage of resources and capacity**

This section conducts an analysis of the shortage of resources in the National Assembly committee system and how such constraints might affect the application of committee hearings.

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<sup>43</sup> Nguyen Hai Long, Legal issues over hearings and questioning at the Ethnic Council and Committees of the National Assembly, <http://www.ttb.gov.vn>.

<sup>44</sup> In fact, at the stakeholders' meeting of the Committee on Social Affairs organized in 4/2010 (with the implication of a pilot committee hearing) all committee members could ask questions of the Minister of the Labor, Invalids and Social Affairs. Many members take this opportunity to raise their questions.

First, the number of the National Assembly committees is limited, and committees do not ‘mirror’ the structure of the governmental ministries and agencies. Whereas there are 26 ministries and ministry-level agencies in the Government, there are only 10 committees in the National Assembly, which means that a National Assembly committee on average has to cover three ministries or agencies. In reality, even this is an understatement; committees have to operate with much wider scope because of overlapping administrative responsibilities. This problem is most clearly discernible in those committees with the widest remits, such as the Committee on Economy, the Committee on Finance and Budget, the Committee on Law, the Committee on Social Affairs, and the Committee on Culture, Education, Youth and Children, amongst others. These overlapping responsibilities increase the workload of the Committees, and while committee members made great efforts to complete the NA tasks,<sup>45</sup> 48% of MPs and legal experts think that the NA committees are overloaded.<sup>46</sup> The introduction of public hearings will further add to this heavy burden.

**Box: The workload in drafting an oversight report**

Judging from prior work in the National Assembly, in order to draft an oversight report on the “implementation of food safety policy”, a Committee must: go through reports from 63 People’s Committees,

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<sup>45</sup> See “Bases of Argument and Status of Improving the Legal Framework”, a ministerial-level research, Centre for Information, Library and Research Services (CILRS), 2005-2006.

<sup>46</sup> The final report on the National Assembly 11<sup>th</sup>, March 2007.

59 MP delegations, and five ministries and agencies, as well as a consolidated report from the Government; hold meetings with ministries and agencies; conduct workshops, seminars and dialogues; go on oversight trips to ten provinces or cities, each of which entails trips to numerous sites; analyse a range of international documents; compile seven annexes of statistics, analysis and evaluation; and carry out other tasks as they arise.

Second, to help the committees operate effectively, it is essential to have capable research offices and supporting staff. Each committee currently only has one supporting department staffed by no more than 20 persons. Supporting teams, as stated in the final report of the 11<sup>th</sup> National Assembly, already struggle to meet the existing work load.<sup>47</sup> As such, limited staff numbers and capacity may hinder the organization of hearings, given that they are a new, hard and in-depth activity.

Third, many members of the Ethnic Council and NA Committees are part-time members, which limits their ability to contribute to work. The Standing Body of Committees only includes a few full-time members, meaning a few deputies have to carry much of the work burden.<sup>48</sup> This is a challenge to the application of committee hearing

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<sup>47</sup> Former NA President Nguyễn Văn An once commented that to complete the assigned tasks, the Standing Committee members all became “Mr. Saturday, Mrs. Sunday” (they often work at the weekend).

<sup>48</sup> Quoted as saying by MP. Nguyễn Văn Tri, Vice Chair of the Committee on Science, Technology and Environment, the National Assembly 11<sup>th</sup> at the workshop “*The Structure and the Role of the Committee system in the Operation of the National Assembly*” organized by the Centre for Information, Library and Research Services in April 25<sup>th</sup>, 2006. Quoted from the desk review on “Building Working Procedure Sample for the NA Committees”, CILRS, 2008. According to a survey conducted by the experts of the Department of Economics and Budget, in the legislature 11<sup>th</sup>, 72% of the Committee’s meetings were carried out in the form of committee’s standing sessions or committee’s

because of the lack of the committee members with suitable expertise and time to spare.

Fourth, a further constraint in terms of committee activity derives from conflicts of interest. A good number of committee members also hold important positions in the executive bodies and agencies that their committees supervise. For instance, 13 of 20 members of the Committee on Judicial Affairs work in the judiciary, procuracy and executive bodies. This situation can lead to a conflict of interest when the committees conduct oversight. Therefore, committee members who also hold positions in the ministries or agencies may be unwilling to examine deeply the business of their ministries or agencies.<sup>49</sup> This unwillingness might be an obstacle to conducting effective public hearings, since some Committee members may balk at putting detailed questions to senior officials.

Fifth, committee hearings are new to Vietnam's National Assembly. Even though some Committees have conducted Explanatory Sessions, the Committee leadership, Committee members and supporting staff still are not fully familiar with needs of the preparation, organisation and chairing of hearing meetings in accordance with the correct procedures.

## 5 Conclusions and recommendations

In short, hearings offer a range of benefits to many parties. For the MPs, hearings provide a chance to study issues in a deep fashion.<sup>50</sup> Hearings can also operate as a thermometer to measure public

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open standing sessions; only 28% of the meetings were carried out in the form of the committee's plenary sessions.

<sup>49</sup> Vũ Đức Khiên, Membership of the Ethnic Council and NA Committees – Theoretical and Practical Bases, a presentation at the workshop “Activities of the Ethnic Council and NA Committees – Theoretical and Practical Issues”, August 2010

opinion. For those who have interest in issues of national importance, hearings can act as a source of information about laws and the legislative process of the National Assembly. For champions of policies, hearings provide an opportunity to meet with MPs and raise topics of concern.

In terms of the Vietnamese National Assembly's work, Explanatory Meetings and some aspects of the preparation process for examination sessions share similarities with public hearings. The similarities may not mean these processes are the same as public hearings, but they can offer lessons and experience transferable to the application of public hearings. Such a process could bring about the following benefits – more substantive and effective examination/explanation sessions, a consolidation of the role of committees in the examination of legislation, and further development of both the examination of legislation<sup>51</sup> and oversight processes. Also, hearings grant the public a chance to engage in National Assembly activities, so contributing to the making of better policies and laws.

Concerns about hearings still exist despite their benefits, though, and so it is important to first and foremost outline the benefits of hearings so that all related parties fully understand their nature and becoming more willing to contribute to hearings at committees. Based on the above analysis of the need for public hearings, the legal framework, awareness, resources and capacity, some recommendations are made below.

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<sup>51</sup> We believe that the fundamental role of the National Assembly in the legislative process can be seen in the way it represents different interests (national, local, constituent and groups) and only approves the bills that benefit the interest of the majority and dismisses the bills that benefit only small groups in the society. (For more, please see “*Legislative Work: Start from Changing the Mindset* ” by Nguyen Lam, The Manager magazine Issue 46, 4/2007)

## 5.1 Addressing conceptual issues

Perhaps the foremost obstacle to the application of hearing in the Committee's activities is awareness and understanding. Therefore, it is necessary to carry out communication activities to enhance understanding of the nature and purposes of hearings, so encouraging people to engage in them.

### 5.1.1 Communication to Whom?

First of all, communication activities should be carried out within the National Assembly, amongst the Committees and the MPs. The Committees can only be confident in carrying out hearings if they hold a full understanding of their purposes and nature. In particular, communication should be targeted at the leadership of the National Assembly Committees, who are the key decision makers in relation to the application of hearings.

Second, ministries and government agencies must be a target for communication to ensure that they fully understand their roles at hearing sessions. The specific characteristics of Vietnam's political system, in that governmental members may hold higher rank in government bodies than Committee members, makes it even more essential that government interlocutors understand how to operate within the hearing system.

Third, any communication campaign must also target the wider public, including experts, institutions, entrepreneurs, citizen and through the mass media. These various target groups, except for experts, may have limited understanding of National Assembly and legislation activities, but their involvement is essential to the effective conduct of hearings.

### 5.1.2 Communication on What?

*The nature, purposes and benefits of hearing:* First, target groups must understand the nature, purposes and benefits of hearings. These contents must be made clear to all the groups, although each group may require more information about different aspects of hearings.

**Box: Communication on the contents to the target groups**

**Ministries** and **agencies** must understand that hearings are not aimed at holding them responsible, but instead create a channel of communication between legislative and executive bodies. It is also important to emphasise that hearings amount to an opportunity for the ministries and agencies to explain policy issues, and the challenges and difficulties they face when building and implementing policies to the National Assembly and to the public.

The **public** must understand that without them hearings cannot take place. Besides, it is necessary for them to understand that when conducting hearings their position is of equal status to that of officials and that many people can provide information to the Committees. This knowledge will help them overcome any reticence in contribution. In particular, the public must come to understand that their opinions are a key input for the Committees discussions and decision making.

The Committees must understand fully the nature and purposes of hearings so that they can be organized in a correct way, thereby helping gather diversified and multifaceted information on policies.

*The legal basis for conducting activities with nature of hearing:* The communications effort must clarify that current regulations provide a sound basis for the incorporation of hearings into various National Assembly activities. This material should first be aimed at the

National Assembly committees so that they grow more confident in applying hearings and come to understand at what stage to apply hearings within the current legal framework. However, government ministries and agencies must also understand this detail as to clarify any questions they may have.

*The role and participation of each party:* It is also necessary to impart to Committee chairs their rights when chairing so that they make the best use of their powers to lead the session in the right direction. Government ministries and agencies must also understand these rights so as not to second guess the Committee members when they use them. Government ministries and agencies, as well as the public must also be clear how to act when that they are invited to provide information to the Committees in public hearings.

*The process and procedure:* The process and procedure for conducting hearing needs to be well understood to help stakeholders know better the order of proceedings, how and when they must act, and what they are allowed and not allowed to do. More importantly, following a clear set of procedures will help the hearing sessions achieve the expected results.

### 5.1.3 How to Communicate?

The method of communication might include various means such as conferences, workshops, seminars, training, the distribution of brochures or leaflets, instruction, one-on-one meetings with key decision makers, articles in the press, interviews with media, and publication on the National Assembly or government website. The Committees themselves offer a natural venue for communicating the nature and purposes of public hearings.

The means should be tailored to the target groups. For example, for the experts, institutes, ministries, agencies and National Assembly elements, workshops, conference, seminar and the circulation of reference materials might be most fitting. For the wider public, working with the press and making use of the National Assembly’s website, as well as distributing leaflets, might be the best means to pass on information. In relation to the media, the Office of National Assembly should work with media training institutes to teach journalists about National Assembly activities, including hearings, as part of classes on journalism.

#### 5.1.4 Who does the Communication?

The National Assembly agencies are both the facilitators and targets of communication. The key agencies are the Committees, the Institute of Legislative Studies (ILS), the Centre for Information, Library and Research Services (CILRS), the Legislative Studies Journal, and the People’s Deputies Daily newspaper. Each of these entities has its own strength in communication. However, given that Vietnam’s National Assembly has no communications department, it may be necessary to use the press office of the CILRS as the focal point for information on hearings. In this context, the National Assembly agencies may invite the media to attend workshops, conferences, meetings on hearings, and to provide information and documents on hearings. It is also important to invite media to attend and report on the hearing sessions of the National Assembly committees.

### **5.2 Strengthening resources and capacity**

In terms of the application of committee hearings, it is necessary:

- to make best use of the currently available resources,

- to come up with capacity building measures,
- and to change some relevant legal regulations.

### 5.2.1 The application of hearings within current resources

The resources currently available to the Committees include the personnel (Committee members and staff of the supporting departments), time, budget, and the information necessary to permit selective application of committee hearings; these resources, while subject to constraints, should be adequate to start the application of public hearings. To do this, the following issues should be taken into account:

**First**, given the limited nature of existing resources, it is essential to select narrow topics for hearings. Committees generally have just one day to carry out each hearing, and deputies may struggle to gather enough material if the topic is wide. Moreover, the current human resources of and limited time available to the Committees conspire against efforts to prepare for a session on a wide topic. Without a good preparation, the hearing session will fail to achieve its objectives.

**Second**, a means to call on external support is needed for the application of hearings. In this regard, the Committee on Social Affairs' experience offers a valuable lesson. In preparation for a public hearing in April 2010, the leadership of the Committee worked with a number of key experts in the poverty reduction field to help them build a set of questions relevant to each main topic. Other committees might emulate this approach.

### 5.2.2 Capacity Building

*Capacity Building for Whom:* Two groups require increased capacity: the Committee members and the Committee supporting staff. For the Committee members, it is most important to provide information on hearings to the standing committee members and full-time MPs working in the Committees. In addition, Committee personnel are especially important. The supporting staff provide the institutional memory of the National Assembly. Committee secretariats deliver advice on the policies and also organize the work for the Committees. Thus, during the application of committee hearings, they must both grasp technical issues related to the hearing topics and understand the process and procedure for hearings. They must therefore participate in the capacity building activities. An evaluation mechanism might be one key means to help staff learn from and share their experiences. Furthermore, as the “brain” of the Committees, the National Assembly departments need to set up a data system and information channels to serve the Committees’ activities as a whole and the committee hearings alone. This is important to hearings because information, knowledge and experiences from each hearing session must be retained. A range of measures might build capacity, including:

*One, organizing conferences, workshops and seminars.* These activities will disseminate understanding about hearings. In the beginning, there should be introductory meetings and seminars on hearings in other countries and exchanges among experts, researchers on domestic and overseas practices. At the same time, those workshops will discuss the application possibility of committee hearings within the legal framework, current capacity, the socio-economic situation, and also address challenges and obstacles.

**Two, organizing training courses:** It is necessary to hold training courses on hearings for both Committee members and their supporting staff. When designing training curricula, some contents may be shared between groups, but some specific contents should be tailored to each group. For the Committee members, contents might include chairing and questioning methods. For the supporting staff, the programmes might focus on how to prepare for and organize effective hearing sessions. Normally, training courses focus more on the skills than knowledge. However, since committee hearings are a new concept, an appropriate amount of time should be spent on disseminating knowledge of hearings, albeit alongside the imparting of skills. The training experiences at People’s Council level demonstrated that practice enhances the learning experience.<sup>52</sup>

**Three, the composing and distributing of documents on hearings to Committee members and supporting staff, especially instruction documents such as manuals and guidebooks.** These documents should cover the concept, nature and meaning of hearings; the legal background for the application of committee hearings, and their means of application. In particular, core topics for this kind of documents might include instructions on the preparation and organization of hearings. These documents have to be short, simple, and concrete and should avoid theoretical wording.

**Four, organizing domestic and overseas study tours.** Staff and deputies should observe and learn from experiences of other

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<sup>52</sup> At a training course for the People’s Council of Son La province in May 2010, after rehearsing a hearing session, one deputy who acted as chair in the session said: “I grasped a lot of knowledge through the training; by playing the role and listening to the trainers’ comments, I became much more aware”.

parliaments.<sup>53</sup> The National Assembly Committees can also learn from the experiences and lessons of the piloting cities and provinces which have conducted public consultations in the 2008 to 2010 period, including Ho Chi Minh City, Can Tho, Vinh Phuc, Ha Tinh, Dong Thap.<sup>54</sup> These Provincial Councils can offer lessons:

- on reaching agreement and garnering support for the application of public hearings;
- on applying current regulations to organize hearings;
- on selecting suitable topics;
- on preparing and carrying out hearings;
- and on the roles of the stakeholders in hearings.

To make study tours effective, the participants must include those who will conduct hearings later or play important roles in capacity building. Information collected from the study tours must be consolidated into a set of documents to be shared with Committee members, their supporting staff and other advisory bodies of the National Assembly.

### **5.3 Amending certain regulations to enhance capacity**

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<sup>53</sup> One member of the national expert team had the opportunity to attend a training course on committee hearings in Australia in 2009. The knowledge and experience gathered from the course were applied in the training courses for PPCs in the provinces/cities, in conferences and seminars on hearings.

<sup>54</sup> See references to the final reports on the pilot public consultations and constituency relations activities in 2009 of the cities/provinces: HCMC, Cần Thơ, Đồng Tháp, Hà Tĩnh, Vĩnh Phúc and the writings on pilot public hearing conducted by some PPCs: Nguyen Thi Nhan, It was Hearings, the People's Deputies Daily newspaper, 8/12/2009; Đinh Thị Minh Thu, Extending the Forms of Constituency Relations, 12/4/2010; Văn Đức Sơn, Hearings for Resolving People's Petitions, the People's Deputies Daily newspaper, 16/4/2010; Đoàn Đình Anh, Public hearings in Ha Tinh People's Council, the People's Deputies Daily newspaper, 30/7/2010.

In addition to capacity building measures directly related to hearings, amendments to the structure and powers of Committees would also enhance the capacity of Committees to apply committee hearings. In the next legislative term, some Committees such as the Committee on Social Affairs, the Committee on Youth, Education, and Children might be divided so that the Committees can specialize and reduce the Committee work load. Changes to the numbers of Committee members might also make them more effective. The Ethnic Council and each Committee might be changed so as to have only 20 to 25 members, most of whom should be full-time. Some of these members can be part-time but they must be committed to participation in Committee activities. In addition, the Ethnic Council and the NA Committees might establish sub-committees. The heads of the sub-committees might be the Vice Chair of the Ethnic Council or the Vice Chairs of the Committees, as well as other full time members of the Committees.

A further innovation which would add to the importance of hearings would be to provide the committees with rights to dismiss a draft law or ordinance proposal or return a draft to the drafting bodies. One proposal put forward in scholarship states that the role of the Committees in recommending issues for discussion in Parliament should be increased.<sup>55</sup> To do so, though, would require changes to the relevant legal regulations such as the Law on the Organization of the National Assembly.

Another amendment might ensure effective management of proceedings. Perhaps the foremost condition to their sound functioning is that Committees receive reports, proposals and drafts in

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<sup>55</sup> Ngô Đức Mạnh, “Thoughts about the renovation in the organization of the National Assembly Committees”, *Suggestions for Legislation*, No. 5/2006.

good time. Amendments to regulations on the rights of Committees in the light of late of draft laws submission to the National Assembly might enhance the examination of legislation process.

#### **5.4 How to apply committee hearings?**

This section sets out a recommended method for the application of committee hearings within the current legal framework in relation to both oversight and legislation activities.

##### 5.4.1 The use of hearings in both oversight and legislation

The first thing to stress is that committee hearings are suitable for both current oversight and legislation activities in the National Assembly. The hearing meetings should be open, transparent and involve the public and media. This approach will build on invitations to the press to participate in plenary sessions of the National Assembly Standing Committee, as well as the Committee on Social Affairs' request to the media to report on their explanation meeting on poverty reduction in April 2010. Such actions may help "open the door" for the mass media to attend the Ethnic Council and Committee plenary sessions. The participants must be varied. Different participant groups should be invited as suited. Their opinions must be weighed equally alongside those of the ministries and agencies.

Hearings also might be brought into committee oversight and legislation activities by making use of existing resources. Perhaps one approach is for hearings to operate as part of existing operations; such an approach will not unduly disrupt the daily schedules of Committees. A further means to facilitate easy adoption of hearings is by selecting issues related to both the law-making agenda and oversight work. For instance, in 2009, the National Assembly tackled food safety laws and policy in close succession, thereby garnering

expertise and reducing work. In terms of organizing hearings, in the long run, the organization of hearings should be assigned to sub-committees of the National Assembly's committees. However, at present, the lack of full-time members in sub-committees and the burden of the committee work would mean work falls more on committee standing members.

#### 5.4.2 Applying hearings in oversight activities

The current enforced legal framework on oversight activities of the National Assembly's committees already provides committees the powers necessary to hold meetings, such as that of being able to request the information from related parties or agencies. In terms of their application to oversight work, a hearing should primarily be considered a means to collect information in preparation for the examination of reports submitted by related agencies. Therefore, it is not necessary to have all members of a committee at a hearing. Given the short parliamentary calendar and the limited number of full time MPs, hearing activities might most naturally fall to standing members of the committees. These standing members not only have the advantage of time to give, but also boast status equal to that of ministers; therefore, it is easier for them to summon these ministers as well as to manage the meeting. However, the organizing and managing functions of committees should only be transferred to sub-committees once these sub-committees are in a strong position to fulfill their responsibilities.

#### 5.4.3 Applying hearings in the examination of legislation

In relation to the examination of legislation process, the National Assembly's Committees already have powers to convene "meetings" with the participation of the public as part of the preparatory process.

Some meetings already resemble hearings, and so making the changes necessary to put these “meetings” onto a hearings basis would not be unduly burdensome. As such, it is possible to organize meetings to listen to public responses in hearing sessions in preparation for examination sessions.

Leaders of a committee might pick important topics from important bills, and then select a group of MPs (including standing members) with specialized knowledge to organise the hearing. Sub-committees can also be tasked with organizing the hearing. Tasking the sub-committees with leading a hearing should help guarantee its technical focus. Alternatively, selecting a group of MPs might ensure both technical focus and dedicated participation.

With regard to the program for hearing sessions, committee leaders should have the right to select the topics best suited to the context and the capacity of the committee. Although hearings took place in order to prepare information for the official examination sessions, the program of hearings should not be tightly tied to issues to be examined in official examination sessions (as set out in the Law on Laws). A more flexible approach might prove more valuable – with the issues for hearings selected in response to the contents of specific bills – and should not be limited to four groups of issues as stated in the Law on Laws. In a final note, opinions and information collected outside hearing sessions also need to be analyzed and compiled into a report submitted to all committee members or standing members for consideration in preliminary or official examination sessions (together with other sources of documentation as relevant).

### **5.5 Roadmap**

This roadmap seeks to set out a suggested timeline for the next legislature for the application of hearings, picking up on the work already done in the close of the last National Assembly. To date, some information sessions on hearings have been held with selected National Assembly's committees, and some committees have held pilot hearing sessions.<sup>56</sup> Technical assistance, training and an associated increase in experience are needed to help committees develop and follow the rules and procedures for hearings. Furthermore, it is also important that committees carry out pilot hearings in preparation for examination sessions of draft bills. For the first two years of the 13<sup>th</sup> Legislature, these committees should organize perhaps one or two (possibly more than one session each), with the aim of increasing frequency as familiarity and experience increase.

For those committees which have yet to participate, information sessions on hearings need to be held, either by targeting the whole committee system or by targeting just a specific committee. All committee members and supporting staff should be encouraged to attend. Next, training on practical skills is needed. Starting from the second year of the 13<sup>th</sup> Legislature, the target should shift towards encouraging more committees to organize hearings, with the end goal of all committees doing so. Workshops and seminars on how to integrate hearings into committee activities and on how to amend the requisite regulations are also necessary; through these workshops and seminars, experience and lessons can also be shared among committees. The experience and lessons learned from pilot hearings should also be well-documented to prepare for the amendment/adjustment of regulations of committees' operations.

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<sup>56</sup> The Ethnic Council and the Committee on Social Affairs of the National Assembly

The process of piloting and officially organizing hearings should finally work alongside with the process of revising the Law on the Organization of the National Assembly, the Law on Oversight Activities of the National Assembly, the Law on the Promulgation of Legal Documents (or Law on Laws referred to in this report), and the Operational Regulations of the Ethnic Council and different committees of the National Assembly. Before hearings are officially recognized, international experience on the comparative regulatory framework would be of great benefit.

## Appendix to Annex 4

# SUGGESTED INCLUSIONS FOR REGULATIONS ON THE PROCEDURES OF PUBLIC HEARINGS FOR THE COMMITTEES OF THE NATIONAL ASSEMBLY

The following appendix is mainly based on the 2008 research “Building the model rules and procedures for the operation of the National Assembly’s committees” conducted by the Centre for Information, Library and Scientific Research. This appendix sets out material which might be included in the Operational Regulations of the Ethnic Council and National Assembly’s committees. Before the Regulations and other legal documents of higher level of importance are amended, it might be advisable that the National Assembly’s committees hold the authority to regulate the proceedings of their public consultative seminars based on the following suggestions. These procedures can also be applied in legislative and oversight activities of the committees.

### 1 Making decision on organizing consultative seminars

#### Suggestions

1. A request to organize consultative seminars should be put

forward by sub-committees or a third of committees' members; after that, the Chairperson of the committee will seek advice from the heads of sub-committees and vice-chairs of the committee before deciding whether or not to organise a consultative seminar on bills, reports or a piece of work assigned to the committee. If the Chairperson turns down the proposal to organize public consultative seminars, relevant parties might bring the proposal to the meeting of the committee's standing members for decision.

2. The request must include the following points:

- a) Topic of the public consultative seminar
- b) All documents related to the topic
- c) List of tentative participants
- d) Venue for the public consultative seminar

3. The request must be sent to the Chairperson and Vice Chairs of the committee, and heads of sub-committees at least 10 days before the tentative date for the public consultative seminar.

## **1.2. Legal basis**

1. In the law making process, the role of the National Assembly is to examine policies submitted by the Government and other related agencies (i.e. to explore whether policies advance the rights and benefits of constituents or not). The National Assembly will approve, dismiss or partly approve the policies taken into account the rights and benefits of their constituents; this underlines the interactivity among the MPs, the National Assembly agencies and constituencies. It is through these interactive relations that the impact of legislative solutions can be seen. For all the above, public consultative seminars

are very important. Public consultative seminars are aimed at collecting information to prepare for plenary sessions. The “lead actors” in public consultative seminars are experts and those who bear the impact of draft policies instead of the committee members. The committee members who join these seminars ask questions to clarify the information provided in the sessions; they do not express any opinions that may affect the decision to be made in plenary sessions of the committee.

2. All preparatory work for plenary meetings (where decisions are made) at committees might be done by sub-committees or groups of MPs; therefore, it is reasonable that the sub-committees and groups of MPs have the authority to request the public consultative seminars. The continuous nature of the committees’ work explains why public consultative seminars need to be organized on regular basis. To ensure the timeliness of public consultative seminars, we suggest the Chairperson of the committee have the power to decide whether or not a public consultative seminar is organized. This is also in line with the practice that the committee chair is responsible for procedural and administrative work. However, if the Chairperson turns down the request, those who have the rights to request the public consultative seminars can bring the request to the meeting of committees’ standing members for discussions and decisions. To facilitate decision-making by the committee’s chair, the request must be enclosed with sufficient information: topic for the hearing, relevant documents, list of tentative participants and tentative program. In preparation for the hearing, the proposed topic is very important because it will guide the tentative speakers to prepare the content they are about to present at the hearing.

## 2. Participants in a hearing

### 2.1. Suggestions

1. As requested by sub-committees and groups of committees' members, the committee's chair will send official letters to related individuals or representatives of related agencies, organizations or those having expertise on the topic of the hearing to request their participation. These request and relevant documents must be sent at least 7 days before the hearing is commenced.

2. The tentative program of the committee's hearing and related documents/information must be published on different media outlets at least 7 days before the hearing is commenced so that the public know and can register their participation. Participation registration should be finished at least 3 days before the hearing starts; those from the public need to state whether they will speak in the meeting or not, and whether they speak for themselves or on behalf of a specific group during registration.

3. All MPs who are not committee's members can also be invited; however, they can only speak if allowed by the chair person.

4. The media is granted access to the hearing but not allowed to interrupt the hearing proceedings.

### 2.2. Legal basis

Under the Law on the Organization of the National Assembly, the Ethnic Council and committees of the National Assembly hold the authority to request members of the Government, the Chief Justice of the Supreme People's Court, the Procurator General of the Supreme People's Procuracy and other related public servants to provide documentation or to show up in person to explain the issues that the

Ethnic Council and other committees need to examine.<sup>57</sup> Section 3, Article 41 in the Law on Promulgation of Legal Documents states that the National Assembly's committees have the rights to request representatives from related agencies/organizations/experts/scientists and those bearing the impact of policies to participate in the committee's hearings to voice their positions/concerns/comments on draft bills/policies. This is the legal basis for organizing public consultative seminars/hearings on the draft bills/policies under consideration.

### **2.3. Explanation and Comments**

1. To ensure that the hearing is transparent, accountable, democratic, and covers different perspectives/information, the participation of all related individuals and agencies is required. Besides the MPs, important participants will be those who submit the policies (usually Government representatives) and those who bear the impact of these policies. The former, under the law, is requested to take part in the hearing while the latter joins on voluntary basis. When the news on the hearing is published on the media, related individuals from the public can register their participation to contribute their opinions. It is obvious that hearings are the most important communication channel connecting the National Assembly with constituencies and experts of relevant areas. This public engagement is to ensure the effectiveness and continuity of the hearing.

2. The publicity of the hearing agenda helps ensure the above-mentioned objectives of the hearings are met. In the current context, notice and information about hearing sessions can be published on the National Assembly's digital platform ([www.quochoi.vn](http://www.quochoi.vn)) or on the

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<sup>57</sup> Article 38, Law on the Organization of the National Assembly

daily print publication *People's Representatives* of the Office of National Assembly and other major print media in Vietnam.

3. The public consultative seminars/hearings are aimed at pooling opinions/information instead of reaching any consensus or agreement. Therefore, it is not necessary that the hearing is attended by a specific number of the committee's members. In some countries, a hearing is sometimes managed by only one MP charged with related responsibilities.

### **3. Tentative program of the public consultative meeting**

#### **3.1. Suggestions**

1. Based on the list of presenters from the public and the tentative objectives of the hearing, sub-committees or groups of committees' members who have requested the hearing will draft the tentative program and submit it to the committee chair for decisions. If too many register to speak in the hearing, it is necessary to hold more sessions.

2. The tentative agenda should be published on different media outlets at least 2 days before the hearing.

#### **3.2. Legal basis**

That the committee chair has the authority to decide the agenda of the hearing is in line with current regulations on the responsibilities and rights of the Committee Chairperson, set out in the Law on the Organization of the National Assembly (Article 2, Provision 25) and the Operational Regulations of the Ethnic Council and the National Assembly's committees (Article 8).

### 3.3. Explanation and Comments

Like any other meetings, building a tentative program for hearing sessions is important as the success of the hearing depends on who is selected to contribute their opinions, voice their concerns or provide information. In principle, any tentative program should let all the participants who have registered to present have chance to speak; however, if there is any duplication in the proposed content of different speakers, adjustments are recommended.

## 4. The proceedings of the hearing

### 4.1. Suggestions

1. The committee chairperson can chair the hearing him/herself, *or* he/she can assign the chairing responsibilities to the head of the sub-committee which request the hearing
2. Participants of the hearing will present in the following order:
  - i) Representatives from the agencies in charge of drafting policies, proposals related to the hearing topic
  - ii) Experts of related fields
  - iii) Representatives from related organizations and interest groups
  - iv) Registered presenters from the public
2. The total duration for each presentation (Q&A included) is 45 minutes as maximum, following the order below:
  - i) 10 minutes is allowed for each presenter; if 10 minutes is not too short for their prepared content, a written version of the presentation should be sent to the hearing chairperson

ii) Members of the committee will raise their inquiries, 5 minutes maximum each. The order of members to ask questions follows the order that has been sent in advance to the hearing chairperson.

iii) If necessary, the hearing chairperson could let the public participants to ask questions. 5 minutes in maximum is allowed for each question and answer.

All the time limitations as above can be adjusted by the chairperson if necessary.

3. Participating MPs are not allowed to interrupt any presentations, except when the chairperson finds it necessary. Differently, the hearing chairperson or members of the committee can interrupt the presenters to ask questions.

4. The chairperson may request anyone who behaves inappropriately to leave the room during the process of the hearing.

#### **4.2. Legal Basis**

As mentioned above, because these are the provisions detail the proceedings of the committee's hearings, they share the similar legal basis with the provisions of organizing the committee's plenary meetings. Generally speaking, there are no legal restrictions on the regulations on the proceedings of public consultative seminars/hearings.

#### **4.3. Explanation and Comments**

1. Aiming at collecting opinions and feedbacks of related parties on draft bills or policies, the proceedings of a hearing are different from those of a plenary session as a hearing centers on those who give feedbacks/comments and provide information while a plenary session centers on the draft bills/policies themselves. The order of hearing

proceedings will start from ministries' representatives, continue with recognized experts of related areas, representatives from interest groups and the interested public.

2. Time limitations are set out to ensure that all those who have registered to present have chance to speak, aiming at the efficiency of the session.

## **5. Minutes of the hearing sessions**

### **5.1. Suggestions**

1. The minutes record in full all the hearing content. All written documents will be included in the appendix of the minutes.
2. The minutes must be completed at least 2 days after the hearing and be sent to all members of the committee and all presenters. The minutes will also be published on the digital portal of the National Assembly.
3. The minutes will also be sent to all MPs together with the committee's reports on different projects, bills, policies and other issues

### **5.2. Explanation and Comments**

1. The request to take minutes of the hearing is in line with the general principles of organizing a meeting. Minutes of the hearing are important as hearings have significant implications for the work of the National Assembly's committees.
2. As the hearing provides a chance for the public to participate in the decision-making process of the National Assembly, the results of the hearing should be publicized. This is one reason why the minutes need

to be published. In Vietnam, the public can access the minutes if they are posted to the digital portal of the National Assembly.

3. Although the Law on the Promulgation of Legal Documents includes specific articles/provisions on the documentation of draft bills submitted to the Government, the Standing Committee of the National Assembly and different committees of the National Assembly for comments and examination<sup>58</sup>. However, there is an absence of regulations on the documentation of the examination reports in the law. To ensure that the MPs are fully informed during plenary sessions, the committee's examination reports and the hearing minutes need to be sent to all MPs.

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<sup>58</sup> Law on the Promulgation of Legal Documents 2008, Article 37, 42, 55

# **PARLIAMENTARY COMMITTEE PUBLIC HEARINGS AND THEIR APPLICATION IN VIETNAM**

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