

China's Citizen Complaint System: Prospects for Accountability

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Introduction

Since the 1950s, "letters and visits" (*xinfang*) offices have served as a channel for citizens in the People's Republic of China to seek assistance in resolving specific grievances, to appeal government decisions, and to engage in a limited form of political participation. *Xinfang* institutions are found throughout the Chinese bureaucracy, including offices of the Communist Party, police, government, procuracy, courts, and people's congresses.

Chinese citizens employ a range of petitioning strategies in their efforts to access *xinfang* bureaus. Individual petitioning may be as simple as one dissatisfied individual visiting multiple government *xinfang* offices. Collective (or mass) petitioning may involve organized demonstrations, speeches, and marches of hundreds or thousands of people seeking to present their grievances to officials.

The actual authority of *xinfang* institutions to resolve specific grievances is quite weak. Most commonly, *xinfang* bureaus simply refer individual petitions to other government agencies for action. In a small number of cases, *xinfang* bureaus may send their own personnel out to investigate a particular dispute, or may recommend that Party or government authorities take action. In extreme circumstances (such as disputes that may generate social disorder), *xinfang* offices may prompt the personal intervention of core Party or government officials in resolving particular disputes.

Given the lack of legal resources in China, the institutional weaknesses of the Chinese judiciary, and government restrictions on citizen political participation, *xinfang* institutions remain a popular channel for injured citizens seeking to prompt elite involvement in the resolution of their particular grievances. Petitions to Party and government *xinfang* bureaus at the county level and higher totaled 8,640,040 for the first nine months of 2002, corresponding with an annual rate of 11.5 million per year. Even within the judiciary, use of *xinfang* channels appears to outweigh more formal procedures. The entire Chinese judiciary, for example, handled forty-two million letters and visits from 1998 to 2003, compared with approximately thirty million formal legal cases.

¹ This content of this statement is adapted from two articles by the author, "[Xinfang: Alternative to Formal Chinese Legal Institutions](#)," 42 *Stanford Journal of International Law* 103 (2006), and "[Riots and Cover-Ups: Counterproductive Control of Local Agents in China](#)," *University of Pennsylvania J. of Int. Law* (forthcoming 2009). Full references are available in those two articles.

Functional Roles of the *Xinfang* System

Xinfang institutions serve multiple roles for petitioners. They provide an arena for limited citizen political participation in an otherwise closed system. They also serve as channels for petitioners to seek recourse for violations of their rights. In the absence of open political and legal channels, petitioning is one of the main methods by which Chinese citizens attempt to affect or challenge the official decisions that affect their lives.

Xinfang institutions also serve several important functional roles for Chinese authorities.

First, *xinfang* bureaus are an information collection resource for government and Party officials. In a nondemocratic system with severe restrictions on the freedom of the press, central Chinese leaders themselves often lack information about local developments. *Xinfang* bureaus partially fill this void by providing Chinese leaders with a regular stream of information based on petitioner complaints.

Second, *xinfang* organs help higher-level Chinese authorities check the principal-agent problem inherent in Chinese governance. Lacking direct citizen input into the political system, Chinese central authorities must rely on local officials to implement government directives and also report on their efforts in doing so. This conflict of interest offers lower-level officials opportunities for abuse. Many simply falsify information. *Xinfang* channels provide central authorities a means of employing popular opinion to monitor the actions of local officials. Individual petitions may reveal instances of illegal conduct by officials. Statistical comparisons regarding the numbers, types, and locations of petitions may also assist higher-level officials in determining systematic malfeasance in particular regions or administrative bureaus.

Third, *xinfang* bureaus serve an important “tripwire” function in alerting central authorities to issues likely to produce social destabilization. *Xinfang* bureaus, for example, can alert leaders as to the arrival of two hundred aggrieved laid-off workers and prompt higher-level officials to intervene in a particular court case or municipal government decision, thereby preempting a mass protest of a group ten times larger.

Finally, *xinfang* bureaus help Chinese authorities address violations of citizens’ rights. On paper, the system is aimed in part at protecting the individual legal rights of each petitioner. In reality, *xinfang* bureaus primarily operate to attract leadership interest to—and prompt intervention in—selected cases, including those higher officials have already designated for resolution.

Effects

Despite these important roles, *xinfang* institutions have very negative practical effects.

First, from the standpoint of citizens seeking to redress their individual grievances, *xinfang* institutions are extremely ineffective. Many petitioners who approach higher-level agencies with complaints about local officials merely have their grievances sent

back to the same officials whose conduct is the source of the complaint. Even when higher-level *xinfang* bureaus give instructions in their referrals on how to resolve the citizen grievances, they are often easily ignored by local officials. According to a 2004 survey of the *xinfang* system conducted by the Chinese Academy of Social Sciences, government bureaus address only 0.2 percent of petitions filed.

This result is precisely because (as mentioned above) the main function of *xinfang* institutions is not to resolve all grievances equally, according to law. Rather, *xinfang* institutions are an information channel for higher authorities and a means to prompt the intervention of key Party or government officials in the resolution of particular disputes that might result in social instability. They represent the rule of man (or Party), not the rule of law. There is consequently a gaping disconnect between the institutional purposes of the *xinfang* system itself and those of many Chinese petitioners who seek to use it.

Second, incentives associated with *xinfang* system encourage local authorities to suppress petitioners and petitioning activity, sometimes violently. Higher-level Chinese authorities evaluate local officials through cadre responsibility systems that link career and salary rewards (or sanctions) of local officials to their success or failure in attaining specific targets. One of the most important targets: the number of petitioners leaving a particular jurisdiction to present grievances to higher-level authorities. Local Party and government leaders, in no uncertain terms, risk their job security when they fail to adequately check mass petitions or prevent petitioners from reaching Beijing.² As the other panel members will testify, this induces many local authorities to engage in harsh and repressive measures, such as illegally detaining petitioners in “black jails,” to prevent citizens from reaching higher-level authorities with their grievances.

Third, Chinese *xinfang* institutions support a perverse, destabilizing, and dangerous cycle of citizen petitioning. Because cadre responsibility systems apply harsher disciplinary sanctions to officials who experience larger and more frequent mass petitions, disgruntled petitioners have incentives to take their grievances to the streets to force officials to act. The threat of, or the actual carrying out of, a mass petition, can be a much more effective tool than any court decision for petitioners who are trying to prompt a local Party secretary to take or rescind a particular government action. After all, unlike a court decision, the threat of sanctions through cadre responsibility systems is directly linked to his official performance and career. As a result, disruptive, large-scale mass petitions directed at higher level officials can be an entirely rational alternative to formal legal channels for citizens seeking to prompt elite intervention in resolving their grievances.

Fourth, *xinfang* institutions and the citizen petitioning they engender undermine the authority of judicial institutions and the rule of law. Official resolution of petitions often depends on the discretionary willingness of high officials to intervene in particular cases rather than on the legal merits of the dispute in question. And the political ability of core

² For example, Anhui provincial regulations impose formal criticism on local officials who face mass petitions (over 50 petitioners at the provincial capital or over 20 at the national level) that remain for more than 48 hours at government agencies." Mass petition movements of over 100 people to the provincial capital (or over 30 to Beijing) result in suspension of the responsible official.

Party or government officials to intervene in particular disputes encourages citizens dissatisfied with judicial decisions to resort to petitioning *xinfang* institutions as a means to reverse unfavorable outcomes in court, even if the decision in question was entirely legally correct. As one Chinese observer has noted, "*Xinfang*—a mechanism originally established to resolve political problems, has gradually evolved into a system of assistance serving as a replacement for the judicial system."³

Recent Developments

In recent years, Chinese authorities have attempted to reform the *xinfang* system, including revising the national *Xinfang* (Letters and Visits) Regulations in 2005. But recent developments suggest that these efforts may risk exacerbating existing problems.

Recent reforms actually strengthen the problematic incentives associated with the *xinfang* system. For example, the amended 2005 *Xinfang* Regulations require each level of the Chinese bureaucracy to implement *xinfang* responsibility systems, and make officials' success in handling petitions (or lack thereof) a component in their performance reviews of civil servants. Joint opinions issued by the general offices of the Central Committee and State Council in 2009 require local-level Party and government officials, particularly those in political-legal organs, to devote a fixed amount of time each month (or week) to personally receiving individual citizen petitions, and to personally assume liability (*bao'an*) for resolving particular citizen petitions.⁴

This emphasis also risks undermining legal and judicial reforms that Chinese authorities have pursued over the past three decades. As Xin He has noted, confronted with the pressure to resolve citizen complaints at all costs, some courts in southern China are resorting to paying off disgruntled workers out of their own pockets.⁵ Naturally, this has real costs for the authority of Chinese judicial institutions.

Pressure to get citizen petitioners off the streets is also linked to an increasing emphasis in Chinese courts to rely on mediation, rather than trial. Party political-legal authorities have instructed Chinese courts and public security authorities to rely on mediation as the

³ Lang Pingping, Reform of the Xinfang System Must Be Coordinated with Judicial Reform, [信访制度的改革必须同司法制度的改革协调], China Youth Daily, Nov. 30, 2004.

⁴ See, e.g. Central Party Political-Legal Committee Interpretation of the Opinion on Strengthening Xinfang Work Involving Legal Issues or Cases, [中央政法委解读加强和改进涉法涉诉信访工作意见], at http://www.gov.cn/jrzg/2009-08/18/content_1395716.htm, and General Offices of the Central Committee and State Council Reissuance of Opinion Regarding Leading Cadres Regularly Receiving Petitioners [中办国办转发领导干部定期接待来访意见等三文件], http://www.gov.cn/jrzg/2009-04/14/content_1285430.htm.

⁵ See US-Asia Law Institute and Columbia Law School's webcast program on "China's Changing Courts," at <http://www.usasialaw.org/?p=69>.

preferred solution for a wide range of cases.⁶ Naturally, increased use of alternative dispute resolution can be a very good thing in many cases. But if administrative and civil cases that pose direct challenges to government interests, or that have the potential to erupt into mass incidents, are diverted to closed-door mediation as a way to keep them out of litigation (and possibly out of the public eye), this can negatively impact both legal interests of parties and citizen perceptions of judicial fairness.⁷

Avenues for Reform – The Domestic Perspective

Resolving the problems associated with the *xinfang* system requires confronting hard questions of institutional reform. This is the conclusion not only of observers outside China, but also a spectrum of domestic experts inside China. The latter range from liberal-leaning non-governmental domestic activist groups such as the Open Constitution Initiative (Gongmeng)⁸ to Chinese government research institutions such as the Chinese Academy of Social Sciences (CASS).⁹

One key change: altering the concrete incentives facing local officials. Cadre responsibility systems that evaluate local officials on the number of petitioners who bring grievances to higher authorities place extreme pressure on local officials to block or “retrieve” (*jiefang*) petitioners. This is the direct cause of many of the abuses associated with the *xinfang* system. Revising evaluation systems for local officials to remove this pressure would be one concrete step toward reform.

But addressing the core of the problems associated with the *xinfang* system requires much deeper reforms. Heavy citizen reliance on *xinfang* channels reflects a pervasive lack of alternative channels for bottom-up supervision of government action. Legally-cognizable grievances and citizen demands for political participation are being funneled toward *xinfang* channels that are not capable of institutionally responding to them, simply for lack of anything better.

As both CASS and Gongmeng have pointed out, responding to these problems requires meaningful legislative and judicial reform. Local Chinese legislatures – local people’s congresses (LPCs) – need to be given a greater role in supervising government action. LPCs need to be made more representative in nature, via meaningful electoral reforms. Similarly, the Chinese judiciary needs to be given greater independence and authority in checking government action. Only then can the demands of Chinese citizens for

⁶ Central Party Political-Legal Committee Interpretation of the Opinion on Strengthening Xinfang Work Involving Legal Issues or Cases, [中央政法委解读加强和改进涉法涉诉信访工作意见], at http://www.gov.cn/jrzq/2009-08/18/content_1395716.htm.

⁷ Carl Minzner, Chinese Judiciary Seeks to Divert Administrative Cases Out of Litigation, April 9, 2007, at http://sinolaw.typepad.com/chinese_law_and_politics_/2007/04/chinese_judicia.html.

⁸ See Gongmeng, *Report on the Xinfang System in China 2004-2007* [中国信访报告 2004-2007]. Gongmeng (Open Constitution Initiative)

⁹ See Yu Jianrong, *A Survey of the Xinfang System and Thoughts on Reform* [信访制度调查及改革思路], in 2005 Analysis and Forecast on China’s Social Development [2005年：社会形势分析与预测], 212.

increased participation in the decisions that affect their lives and the efforts of Chinese citizens to obtain legal redress for their grievances be channeled out of the *xinfang* system and into the gradual creation of other, better, institutions.