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Who Enforces China's Anti-corruption Laws? Recent Reforms of China's Criminal Prosecution Agencies and the Chinese Communist Party's Quest for Control

LYRIC CHEN^{*}

ABSTRACT

As Chinese President Xi Jinping's anti-corruption campaign continues to generate a staggering number of investigations, the institutions that conduct enforcement and the process of enforcement deserve closer examination. This article examines the People's Procuratorate, the Commission for Disciplinary Inspection, and the Ministry of Supervision, with an emphasis on the People's Procuratorate—the public prosecutor—and the 2014 reforms of the agency. An analysis of the process of anti-corruption enforcement shows that the People's Procuratorates have a tenuous role in supervising the Party. Following the 2014 reforms, which enhanced the capacity and investigatory powers of the People's Procuratorates, in 2016, the Party approved limits on prosecutorial initiative in anti-corruption investigation. These reforms and subsequent retrenchment underscore the Party's continuing control over the anti-corruption prosecutors; they also reinforce the view that China's legal system remains formalistic and that the Party continues to operate beyond the rule of law.

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I. INTRODUCTION

Beyond the staggering numbers of investigations conducted and individuals punished,¹ China's current anti-corruption campaign is a case study of institutional cooperation and competition. This article examines the process of enforcement and the institutions that undertake enforcement—the People's Procuratorate, the Commission for Disciplinary Inspection, and the Ministry and Bureaus of Supervision—with an emphasis on the People's Procuratorate, the public prosecutor in China.

Since the late 1980s, when China embarked on a series of economic and political reforms, corruption has become prevalent, high-stakes, and large scaled.² Bribe-taking is particularly common,³ and corrupt transactions are increasingly complex and networked.⁴ Given the intensification, Chinese leaders have voiced concern over corruption, acknowledging to varying degrees that corruption leads to arbitrary policies and government actions that could distort entrepreneurial decision making, reduce public confidence in government, and generate social unrest.⁵ Ultimately, however, their concerns focus on the detrimental effect of corruption on the legitimacy of the ruling power of the Chinese Communist Party.⁶

In the decades that followed, successive administrations have sought to crackdown on this conduct.⁷ In the current anti-corruption campaign, which began in November 2012, when Xi Jinping assumed the position of General Secretary of the Chinese Communist Party,⁸ the Party has investigated over 500,000 Party officials for corruption-related offenses and levied punishment against over 63,000 officials.⁹ Over

1. See Huaxia, *Xinhua, China Enhances Crackdown on Corruption: Reports*, XINHUANET (Mar. 12, 2015), http://news.xinhuanet.com/english/2015-03/12/c_134059857.htm.

2. Andrew Wedeman, *The Intensification of Corruption in China*, 180 CHINA QUARTERLY 895, 895 (2005).

3. Yong Guo, *Corruption in Transitional China: an Empirical Analysis*, 194 CHINA QUARTERLY 349, 357 (2008).

4. Ting Gong, *Dangerous Collusion: Corruption as a Collective Venture in Contemporary China*, 35 COMMUNIST & POST-COMMUNIST STUDIES 85, 85 (2002).

5. See DALI L. YANG, *REMAKING THE CHINESE LEVIATHAN: MARKET TRANSITION AND THE POLITICS OF GOVERNANCE IN CHINA* 221, 257 (2004); YASHENG HUANG, *SELLING CHINA: FOREIGN DIRECT INVESTMENT DURING THE REFORM ERA* 33, 112 (2003).

6. See generally YANG, *supra* note 5, at 220–21.

7. Daniel C.K. Chow, *How China's Crackdown on Corruption Has Led to Less Transparency in the Enforcement of China's Anti-Bribery Laws*, 49 U.C. DAVIS L. REV., 685, 690 (2015).

8. *News of the Communist Party of China*, PEOPLE'S DAILY ONLINE (Mar. 29, 2013), <http://english.cpc.people.com.cn/206972/206976/8188031.html>; *Xi Jinping Named President of China*, BBC NEWS (Mar. 14, 2013), <http://www.bbc.com/news/world-asia-china-21766622>.

9. Andrew Wedeman, *Analysis, Four Years On: Where is Xi Jinping's Anti-Corruption Drive Headed?*, CHINA POL'Y INST. (Sept. 19, 2016), <https://cpianalysis.org/2016/09/19/four-years-on-where-is-xi-jinpings-anti-corruption-drive-headed>; Chow, *supra* note 7, at 696.

roughly the same period, the People's Procuratorates have indicted over 120,000 officials, of which 100,200 have been convicted.¹⁰ Although the People's Procuratorates have at times competed with the Commissions for Disciplinary Inspection, more recently, the People's Procuratorates have acquiesced to Party control over the enforcement process. This acquiescence has consequences not only for enforcement outcomes, but also the authoritativeness and legitimacy of the enforcement process.

This article argues the process of anti-corruption enforcement provides insight into the prospects of the development of rule of law in China. The recent series of reforms, including the creation of a new anti-corruption unit in the People's Procuratorates in 2014 and the curtailment of their power in 2016,¹¹ confirms that, despite the country's rapid legal development in the past few decades, its legal system remains formalistic, and the Party continues to exert control over criminal justice institutions and resist checks on its power. The rest of this article proceeds in three parts. Section II provides an overview of the institutions engaged in enforcement. Section III analyzes the process of enforcement and the extent to which the People's Procuratorates compete and cooperate with the Commissions on Disciplinary Inspection. Section IV examines recent reforms of the People's Procuratorates and their implications.

II. ENFORCEMENT INSTITUTIONS

China's anti-corruption agencies and the dynamics among them should be considered in the context of an institutional arrangement that promotes the dominance of the Chinese Communist Party over the government.¹² At every level, from village or township to the national level, there is a Chinese Communist Party committee and a government entity.¹³ At each level, the Party committee outranks the government entity.¹⁴ Consistent with this structure, there are both Party and state agencies

10. Wedeman, *supra* note 9.

11. *Decision on Carrying Out Pilot Projects of the National Procurator System*, GEN. OFFICE OF THE CHINESE COMMUNIST PARTY'S CENT. COMMITTEE (Nov. 6, 2016), <http://www.chinalawtranslate.com> (passed by the 25th Session of the Standing Committee of the 12th National People's Congress on Dec. 25, 2016); *General Office of the Chinese Communist Party's Central Committee Issues "Decision on Carrying Out Pilot Projects of the National Procurator System,"* XINHUA (Nov. 7, 2016), http://news.xinhuanet.com/politics/2016-11/07/c_1119867301.htm.

12. See generally Chow, *supra* note 7.

13. Susan V. Lawrence, *China's Political Institutions and Leaders in Charts*, CONGRESSIONAL RES. SERVICE 4 (Nov. 12, 2013), <https://fas.org/sgp/crs/row/R43303.pdf>.

14. *Id.*

charged with anti-corruption enforcement.¹⁵ The Commission for Disciplinary Inspection is the anti-corruption authority for the Chinese Communist Party and enforces Party rules.¹⁶ The Ministry of Supervision is the counterpart for the Chinese government, and has jurisdiction where conduct is covered by administrative law or rules.¹⁷ The People's Procuratorate provides "legal supervision" and has jurisdiction where conduct violates criminal law.¹⁸ This section provides an overview of these institutions, beginning with and focusing on the People's Procuratorates.

A. The People's Procuratorates

In 1954, the National People's Congress adopted China's first Constitution and the Organic Law of the People's Procuratorate.¹⁹ The laws established the People's Procuratorate as the office of the public prosecutor, and authorized the agency to prosecute conduct proscribed by law and conduct "legal supervision" of state organs.²⁰ The laws also provided for the creation of the Supreme People's Procuratorate, local People's Procuratorates at each level of the party-state, and special procuratorates, such as military and railroad procuratorates.²¹ In the party-state structure, the Supreme People's Procuratorate reports to the National People's Congress and its standing committee.²² At subnational levels, the local People's Procuratorates report to their respective local People's Congress and its standing committee.

15. Stephen K. Ma, *The Dual Nature of Anti-Corruption Agencies in China*, 49 CRIM. L. SOC. CHANGE, 153, 154 (2008).

16. *Id.*

17. *Id.*

18. *Id.* at 155; *State Structure of the People's Republic of China*, THE NATIONAL PEOPLE'S CONGRESS OF THE PEOPLE'S REPUBLIC OF CHINA, available at http://www.npc.gov.cn/englishnpc/stateStructure/2007-12/06/content_1382077.htm (last visited July 31, 2017).

19. Hexing Shi, *The People's Congress System and China's Constitutional Development*, in CHINA'S POLITICAL DEVELOPMENT: CHINESE AND AMERICAN PERSPECTIVES 103, 107 (Kenneth G. Lieberthal, Cheng Li, & Keping Yu, eds., 2014); *Constitution of the People's Republic of China*, HUM. RTS. IN CHINA, <http://www.hrichina.org/en/1954-constitution-peoples-republic-china>.

20. *Taking Stock of the Anti-Corruption Process: Five Steps from Discovery to Disposition*, S. DAILY NEWS (Aug. 21, 2013), <http://www.chinanews.com/gn/2013/08-31/5229401.shtml>.

21. *Introduction of the People's Procuratorate of the People's Republic of China*, THE SUPREME PEOPLE'S CT. OF CHINA, <http://en.chinacourt.org/public/detail.php?id=44> (last visited Aug. 16, 2016).

22. *State Structure of the People's Republic of China*, THE NAT'L PEOPLE'S CONGRESS OF THE PEOPLE'S REPUBLIC OF CHINA, http://www.npc.gov.cn/englishnpc/stateStructure/2007-12/06/content_1382077.htm (last visited Dec. 10, 2016).

The functions of the Supreme People's Procuratorate are carried out by departments.²³ Some departments oversee aspects or phases of prosecution. For example, the investigation supervision department oversees arrests and investigations conducted by local People's Procuratorates; the public prosecution department provides guidance on and supervises decisions to indict or appeal, the trying of cases by local People's Procuratorates, and even the conduct of criminal proceedings by local People's Courts.²⁴ Other departments supervise the prosecution of certain types of offenses. For instance, until the reforms in late 2014, further discussed below, departments separately supervised the prosecution of various categories of corrupt conduct, such as embezzlement, bribery, dereliction of duty, and infringement of rights by officials.²⁵

The People's Procuratorates were shut down during the Cultural Revolution, which took place from 1966 to 1976, and were revived in 1978.²⁶ In 1979, the National People's Congress passed the Criminal Procedure Law, which provided the People's Procuratorates ample investigatory powers and few restrictions in their exercise.²⁷ For example, the People's Procuratorates could use a variety of tactics, such as subpoenas, warrants, interrogation, detention, and monitoring and detention of a suspect at his or her home.²⁸ A suspect could be represented by counsel only after the People's Procuratorates formally filed the criminal case in court

23. *Id.* ("The functional departments include the general affairs office, investigation supervision department, prosecution department, anti-embezzlement and bribery administration, [dereliction] of duty and rights infringement prosecution department, prison and detention department, civil and administration department, reporting and charges prosecution department (also known as the Reporting and Charges Center of the SPP), criminal appeals department, railway transportation prosecution department, department for the prevention of crimes committed by taking advantage of one's positions, law and policy research office, supervision bureau, foreign affairs bureau, planning, finance and equipment bureau.").

24. *Id.*

25. *Id.*

26. Xiandan Huo, *Legal Education and the Transformation of the Legal Profession*, in CHINA'S JOURNEY TOWARDS THE RULE OF LAW 251, 270 (Dingjian Cai & Chenguang Wang, eds., 2010); Yuzhong Dai, *The Pursuit of Criminal Justice*, in CHINA'S JOURNEY TOWARDS THE RULE OF LAW 155, 203 (Dingjian Cai & Chenguang Wang, eds., 2010).

27. See, e.g., *The Criminal Procedure Law of the People's Republic of China*, 73 J. CRIM. L. & CRIMINOLOGY 171, 184-89 (1982).

28. Zhong Liu, *Reading and Interpreting Shuanggui: Informal Anticorruption Procedures From the Criminal Technical Investigation Perspective*, 1 CHINESE & FOREIGN LEGAL STUD. 209, 209-33 (2014), <http://www.chinaelections.org/article/100/231854.html>.

and the court accepted the case.²⁹ In other words, the People's Procuratorates could investigate a suspect without dealing with his or her counsel, so long as the case has not been filed and accepted.³⁰ In addition, under the law, the People's Procuratorates could declare a suspect guilty without formally filing the case in court.³¹ Where a Procuratorate has not obtained evidence sufficient for filing a case, this mechanism allowed it to bypass the courts altogether.³²

In 1996, the Party proposed, and National People's Congress voted to enact, amendments that limited the People's Procuratorates' investigatory powers and provided greater protection of defendants' rights.³³ One amendment limited the validity of warrants and subpoenas to twelve hours and forbade successive warrants and subpoenas that functionally allowed a suspect to be detained indefinitely.³⁴ Another amendment provided the right to counsel after the first interrogation or "coercive measure."³⁵ Further, the revised law rescinded the People's Procuratorates' authority to declare a suspect guilty without court adjudication.³⁶

These amendments reflected the debate on the role of the criminal justice system, a debate that continues in China today and is in part informed by traditional Chinese legal thought, which emphasizes substantive justice over procedural justice.³⁷ Within this tradition, legal procedure merely provides a means for fact-finding, rather than for due process.³⁸ Historically and today, China's criminal system emphasizes crime control in investigation and adjudication, rather than fair process.³⁹ This focus stands in sharp contrast with that of criminal justice systems of western liberal democracies, which accept that the restrictions put in place to protect defendants' rights "impose[] a substantial cost on the societal interest in law enforcement by its proscription of what concededly

29. Zhonghua Renmin Gongheguo Xingshi Susongfa 2012 Xiuzheng (中华人民共和国刑事诉讼法2012修正) [Criminal Procedure Law of the People's Republic of China (2012 Amendment)] (promulgated by Standing Comm. of the Nat'l People's Cong., Mar. 14, 2012, effective Mar. 14, 2012), arts. 33, 38, 110 (China).

30. Liu, *supra* note 28, at 209–33.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. Liu, *supra* note 28, at 209–33.

37. Jingjing Liu, *Overview of the Chinese Legal System*, 1 ENVTL. L. REV. 1, 4 (2013).

38. *Id.*

39. NA JIANG, *WRONGFUL CONVICTIONS IN CHINA* 18–19 (2016).

is relevant evidence.”⁴⁰ More generally, the primary purpose of the traditional Chinese legal system, as it pertains to the conduct of officials, was “to increase government efficiency,” rather than to protect individual rights or enhance the legitimacy of the exercise of government power.⁴¹

The People's Procuratorates began enforcing anti-corruption laws in 1979, following the adoption of the Criminal Law, which penalized conduct such as embezzlement, bribery, financial fraud, and misappropriation of public funds and state secrets.⁴² In 1979, the Supreme People's Procuratorate established an office on economic crimes and began investigating and prosecuting conduct involving corruption.⁴³ In 1989, as student activists demanded political reform, top Party leaders called for more enforcement of corrupt conduct, particularly of receiving bribes.⁴⁴ That same year, the Provincial People's Procuratorate of Guangdong became the first People's Procuratorate to reorganize its economic crimes unit as an anti-corruption unit.⁴⁵ In 1995, the Supreme People's Procuratorate followed suit, creating an anti-corruption bureau that prosecuted crimes of corruption, tax evasion, and trademark infringement.⁴⁶ Since then, sub-national People's Procuratorates have established their own anti-corruption units.

As corruption intensified and prosecutors contended with various types of corrupt conduct, the anti-corruption units were further divided into sub-units that were separately responsible for investigating and prosecuting white-collar crimes, “professional” crimes, and fraud and economic crimes.⁴⁷ For a single case involving allegations of offenses in multiple categories, the allegations would be investigated separately by the sub-units.⁴⁸ Sub-division created delays in investigations. It also led

40. *United States v. Janis*, 428 U.S. 433, 448–49 (1976); see also *Colorado v. Connelly*, 479 U.S. 157, 166 (1986); *United States v. Havens*, 446 U.S. 620, 627 (1980).

41. Liu, *supra* note 37, at 4.

42. Criminal Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Jul. 1, 1979), ch. 8 (China), http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384075.htm.

43. Liu, *supra* note 28.

44. *Id.* (citing Recent Decision of the Chinese Communist Party and State Council regarding Certain Items of Concern to the People (Jul. 28, 1989)).

45. *Id.*

46. Ye Feng, *Anti-Corruption Fight by China's Procuratorates*, INDEP. COMMISSION AGAINST CORRUPTION, <http://www.icac.org.hk/news/issue3/content.asp?chapter=4> (citing China Procuratorate Yearbook (1996), at 101–2).

47. *China's Thirty Year Journey in Anti-Malefeasance and Anti-Infringement*, PROCURATORIAL DAILY NEWS (Sept. 22, 2008) http://news.china.com/zh_cn/history/all/11025807/20080922/15099675.html.

48. *Taking Stock of the Anti-Corruption Process: Five Steps from Discovery to Disposition*, *supra* note 20.

to redundancy in resource and personnel that could not be effectively mustered across sub-units, and, even worse, fostered competition rather than cooperation among them.⁴⁹

The People's Procuratorates are charged with investigating and prosecuting conduct penalized by the Criminal Law. Chapter 8 of the law identifies some twelve crimes, such as embezzlement, misappropriating public funds, accepting or offering bribes, crime of property or expenditure obviously exceeding one's lawful income, and dividing state-owned assets in secret.⁵⁰ The units investigate and prosecute officials whose ranks are a level lower in the hierarchy of political organization.⁵¹ For example, the Supreme People's Procuratorate investigates provincial officials and a provincial People's Procuratorate investigates prefectural officials. Given that the People's Procuratorates depend on Party committees of the same level for their budget and personnel, this arrangement of investigating a level lower, at least in theory, promotes some measure of independence.⁵²

B. Commissions for Disciplinary Inspection

The Commission for Disciplinary Inspection is the anti-corruption enforcement authority of the Chinese Communist Party.⁵³ The Commission is an agency of the Party committee at each level of the party-state structure, from national to local.⁵⁴ A version of the Commission for Dis-

49. Michael Martina, *China to Set Up New Anti-graft Office, Official Says*, WORLD NEWS (Nov. 2, 2014), <http://www.reuters.com/article/us-china-corruption-idUSKBN0IN07720141103>.

50. Criminal Law of the People's Republic of China, *supra* note 42, arts. 382–96; see *Anti-Corruption Authorities*, INT'L ASS'N OF ANTI-CORRUPTION AUTHORITIES, http://www.iaaca.org/AntiCorruptionAuthorities/ByCountriesandRegions/C/China/jigou/201202/t20120209_801303.shtml (last visited Aug. 16, 2016). The Criminal Law was amended in 2015; in April 2016, the Supreme People's Court and the Supreme People's Procuratorate issued interpretations of the law to guide enforcement. See, e.g., *China's Supreme Court and Supreme Procuratorate Issue Interpretation on Bribery Laws*, DENTONS (May 16, 2016), <http://www.dentons.com/en/insights/newsletters/2016/may/17/china-s-supreme-court-and-supreme-procuratorate-issue-interpretation-on-bribery-laws>.

51. Liu, *supra* note 28.

52. *Id.*

53. See generally William Wan, *Secretive Agency Leads Most Intense Anti-Corruption Effort in Modern Chinese History*, WASH. POST (Jul. 2, 2014), https://www.washingtonpost.com/world/asia_pacific/secretive-agency-leads-most-intense-anti-corruption-effort-in-modern-chinese-history/2014/07/02/48aff932-cf68-11e3-937f-d3026234b51c_story.html?tid=a_inl (last visited Aug. 16, 2016).

54. Ma, *supra* note 15, at 154.

cipline Inspection has existed since 1928; its modern incarnation was established in 1977.⁵⁵ During the Cultural Revolution that spanned the decade before its establishment, radical Party members—heeding the call of Chairman Mao to rid Chinese society of capitalism, the bourgeoisie, and traditional Chinese culture—engaged in abuse and violence against the Chinese citizenry across the country.⁵⁶ At the end of this period of upheaval, moderate Party leaders came to power and created the Commission for Discipline Inspection structure to ensure discipline among Party members and prevent abusive conduct.⁵⁷

Beginning in the late 1980s, as economic reform led to privatization of state-owned enterprises and created opportunities to participate in a market economy, the Commissions—particularly the Central Commission—became increasingly active and high-profile as corruption intensified.⁵⁸ In 1997, the report of the Central Commission to the Fifteenth National Congress of the Party touted Party-led anti-corruption enforcement efforts.⁵⁹ In 2002, the Party amended its constitution to codify the Commissions' authority in anti-corruption enforcement.⁶⁰

The Central Commission for Discipline Inspection—the national level Party enforcement entity—has jurisdiction over officials with ranks of minister, vice minister, provincial governor, and vice governor, while the subnational commissions have jurisdiction over officials of lower ranks.⁶¹ The national and subnational Commissions enforce Party disciplinary rules against a wide range of behaviors the Party deems “unethical,” such as unauthorized business operations, profiteering, nepotism for self-enrichment, smuggling, obtaining bank loans through one's office,

55. *Id.*; see generally Wan, *supra* note 53.

56. Ma, *supra* note 15, at 154; see generally Kenneth Lieberthal, *Cultural Revolution*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/event/Cultural-Revolution> (last visited July 30, 2017).

57. *Id.*

58. Yang, *supra* note 5, at 224.

59. See generally *The Work Report of the CPC Central Commission for Discipline Inspection to the Fifteenth National Congress of the Party*, PEOPLE'S DAILY ONLINE (Sept. 1997), <http://cpc.people.com.cn/GB/64162/64168/64568/65445/4526295.html>; see Liu, *supra* note 28.

60. Chinese Communist Party Constitution, art. 44, http://news.xinhuanet.com/18cpcnc/2012-11/18/c_113714762_7.htm (last visited Aug. 16, 2016).

61. See Graham Young, *Control and Style: Disciplinary Inspection Commissions Since the 11th Congress*, 97 CHINA QUARTERLY, 24, 49–50 (1984), https://www.jstor.org/stable/653913?seq=1#page_scan_tab_contents; Ling Li, *The Rise of the Discipline and Inspection Commission, 1927–2012: Anticorruption Investigation and Decision-Making in the Chinese Communist Party*, 42 MODERN CHINA 447, 463 (2016) (citing art. 3 of the Rules on the Jurisdiction to Approve Sanctions against Party Members in Violation of Party Discipline, Central Commission for Discipline Inspection, 1983).

misappropriation of public funds, and financial fraud.⁶² Prohibited conduct is not limited to criminalized behavior.⁶³ Party rules also prohibit lavishness, womanizing, patronizing prostitutes, practicing superstition, being religious, privilege-seeking, and violating the one-child policy.⁶⁴

Although there are numerous Party disciplinary rules, most call for self-investigation, self-correction, and self-regulation.⁶⁵ Enforcement is “sporadic” and “uneven.”⁶⁶ Even when the Commissions enforce the rules, they are neither guided by notions of due process nor limited by criminal procedure, because they are entities of the Party rather than the legal system.⁶⁷ For example, their investigators do not need a warrant to seize evidence or to detain individuals, even for prolonged durations.⁶⁸

Commission investigations may result in punishment against Party members that range from “light” to “severe.”⁶⁹ In 2015, among the almost 300,000 officials punished for graft, 200,000 received “light disciplinary punishments” and 82,000 were given “severe disciplinary punishments and major demotions.”⁷⁰ Although the most severe punishment the Commissions could dole out is expulsion from the Party,⁷¹ the Party may direct a Commission to transfer the case file to the People’s Procuratorate for prosecution in the court system and punishment under criminal law.⁷²

C. The Ministry and Bureaus of Supervision

The Ministry of Supervision enforces administrative rules that regulate the state—rather than Party—agencies, and its civil servants.⁷³

62. Young, *supra* note 61, at 33–39.

63. Andrew Wedeman, *The Intensification of Corruption in China*, in CRITICAL READINGS ON THE CHINESE COMMUNIST PARTY, 1248, 1254–55 (Erik Brodsgaard Kjeld, ed., 2016).

64. Hualing Fu, *The Upward and Downward Spirals in China’s Anticorruption Enforcement*, in COMPARATIVE PERSPECTIVES ON CRIMINAL JUSTICE IN CHINA 390, 395 (Mike McConville & Eva Pils eds., 2013)

65. *Id.* at 7.

66. *Id.*

67. Liu, *supra* note 28.

68. Wan, *supra* note 53.

69. Neil Connor, *300,000 Chinese Officials “Punished for Corruption” Last Year*, THE TELEGRAPH (Mar. 7, 2016), <http://www.telegraph.co.uk/news/worldnews/asia/china/12185584/300000-Chinese-officials-punished-for-corruption-last-year.html>.

70. *Id.*

71. See generally Wan, *supra* note 53.

72. *Id.*

73. *Ministry of Supervision*, CENT. PEOPLE’S GOV’T OF THE PEOPLE’S REPUBLIC OF CHINA, http://www.gov.cn/english/2005-10/03/content_74320.htm (last visited Aug. 16, 2016).

When the agency was established in 1949, it was initially called the People's Supervisory Commission.⁷⁴ In 1954, People's Supervisory Commission was renamed the Ministry of Supervision; at sub-national levels the entities were renamed Bureaus of Supervision.⁷⁵ Like other government institutions, the Ministry and Bureaus were shuttered during the Cultural Revolution and restored afterward, in 1987.⁷⁶ In 1997, the National People's Congress passed the Law of the People's Republic of China on Administrative Supervision, which provided the Ministry jurisdiction over central government departments and its officials.⁷⁷ This included officials appointed by the State Council, the government and top officials of provinces, autonomous regions, and municipalities that are directly controlled by the central government.⁷⁸ Meanwhile, Bureaus had jurisdiction over lower-ranked officials and government entities. The Ministry and Bureaus may "inspect" the functioning of government units and the work of their officers, investigate allegations of wrongdoing, recommend sanctions, and carry out punishment.⁷⁹ The Ministry also reviews appeals by officials sanctioned by Bureaus of Supervision.⁸⁰

Functionally, there is considerable overlap in the operation of Ministry and Bureaus of Supervision and the Central and subnational Commissions for Discipline Inspection⁸¹ because nearly all government positions, including those in state-owned enterprises, are occupied by Chinese Communist Party members.⁸² Since 1992, these entities have shared offices and personnel, and functioned as one in enforcing anti-corruption efforts.⁸³ Because the Party has primacy over the state in the Chinese party-state structure, the Central and subnational Commissions control anti-corruption enforcement of government officials, and the Ministry and Bureaus of Supervision have been essentially invisible in this process.⁸⁴

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *See generally id.*

79. *See generally id.*

80. *Id.*

81. Ma, *supra* note 15, at 154; Yong Guo, *The Chinese Communist Party's Commissions for Disciplinary Inspection: A Historical Overview and Future Prospects*, H.K. INDEP. COMMISSION AGAINST CORRUPTION, CENTER FOR ANTI-CORRUPTION STUD. CONF. PROC. 212 (Apr. 2009), http://www.cacs.icac.hk/tc/events/files/CACS_chi_P212-225.pdf (last visited Aug. 16, 2016).

82. Chow, *supra* note 7, at 693.

83. Ma, *supra* note 15, at 154; Guo, *supra* note 81, at 212.

84. Guo, *supra* note 81, at 212.

III. THE ENFORCEMENT PROCESS

Although the three institutions are formally charged with different missions, because the Party strongly prefers self-policing and self-regulation, the Commission for Disciplinary Inspections typically leads in the enforcement process and directs investigations.⁸⁵ Since the 1980s, when prosecution of “economic crimes”—the precursor to anti-corruption enforcement—began in earnest, Party policy has emphasized that its own investigators lead anti-corruption enforcement efforts.⁸⁶ In 1988, the Central Commission for Disciplinary Inspections and the Supreme People’s Procuratorate established a mechanism for information sharing during investigations and transferring cases between the agencies.⁸⁷ In 1993, the Central Commission for Disciplinary Inspections, the Ministry of Supervision, and the Supreme People’s Procuratorate agreed to enhance interagency cooperation and participate in regular tripartite consultation.⁸⁸ These policies required, albeit informally, the Supreme People’s Procuratorate and the sub-national People’s Procuratorates to defer to Party investigators in anti-corruption investigation.⁸⁹

In light of policies that give the Commissions the leading role in investigations, and the curtailment of investigatory powers from the 1996 amendments to the Criminal Procedure Law, the Supreme People’s Procuratorate adopted the policy of “coordination and support” with respect to Party investigations.⁹⁰ On occasion, it has even interpreted this policy as requiring the People’s Procuratorates to suspend their investigation when both the Procuratorate and the Commission were investigating the same target.⁹¹ As a result, even where criminal conduct is involved, the Procuratorates often take a subordinate, supporting role to the Commissions in investigations. As this section shows, over time, “coordination” and “support” have become indistinct with dependence, as Procuratorates have come to rely on the Commissions to investigate corruption cases.

85. Guo, *supra* note 81, at 212, 223; Fu, *supra* note 64 at, 393–4; *see also* MIKE MCCONVILLE & EVA PILS, COMPARATIVE PERSPECTIVES ON CRIMINAL JUSTICE IN CHINA 398–400 (Edward Elgar Publishing, 2013).

86. Liu, *supra* note 28, at 209–33.

87. Guo, *supra* note 81, at 223.

88. *Id.*

89. Liu, *supra* note 28.

90. *Id.* at fns. 32–34.

91. Fu, *supra* note 64, at 394.

A. Initiating an Investigation

Where a Procuratorate uncovers allegations of corrupt criminal conduct, it typically provides the information to the Commission for Disciplinary Inspection at the same level in the political hierarchy.⁹² This is particularly true where high level officials are suspected of wrongdoing.⁹³ The Commission then decides whether to conduct an investigation.⁹⁴ If the Commission decides to do so, it establishes a file and begins an initial investigation of the allegations.⁹⁵ To enhance its investigatory capacity, the Commissions, particularly the Central Commission, may convene a task-force staffed by Commission investigators and employees detailed from other agencies, such as the Procuratorates, the police, government agencies relevant to the investigation, and even judges.⁹⁶

B. Party Approval

Next, if the initial investigation corroborates the allegations, the Commission presents the results gathered thus far to the Party committee for approval to continue with the investigation.⁹⁷ If a case involves a high ranking official, such as a leader of a province or ministry, the Central Commission for Disciplinary Inspection must obtain permission from the Politburo, an elite policymaking committee of the Chinese Communist Party, or for even more serious cases, the Politburo's seven-member standing committee, a body composed of China's most powerful political leaders.⁹⁸ Commission investigators may be subject to intense pressure from Party leaders who do not want an investigation into their allies or

92. Liu, *supra* note 28; Directive on Conducting Case-Inspection Work (Central Commission for Disciplinary Inspection, 1988), art. 12 (China) ("The Central Commission for Discipline and Inspection shall conduct a preliminary verification of reports of violations for Central Committee members."). *From Allegations to Expulsion, What are the Stages of an Anti-Corruption Case?*, EAST DAY (Apr. 3, 2015, 11:05 AM), <http://news.eastday.com/c/20150403/u1ai8653710.html> (noting that the Commissions for Disciplinary Inspection or Central Commission for Disciplinary Inspection may receive a report of allegations or uncover evidence of corruption through monitoring.)

93. Liu, *supra* note 28.

94. Li, *supra* note 61, at 464 (citing art. 3 of the Rules on the Jurisdiction to Approve Sanctions against Party Members in Violation of Party Discipline, Central Commission for Disciplinary Inspection, 1983); Directive on Conducting Case-Inspection Work, *supra* note 92.

95. Directive on Conducting Case-Inspection Work, *supra* note 92, art. 10 ("The Commission shall conduct a preliminary verification of the information reflected in the report and allegations in has received.").

96. *China's top seizure will set up a new anti-corruption bureau*, RADIO FREE ASIA (Jan. 22, 2015), www.rfa.org/mandarin/yataibaodao/zhengzhi/nu-01222015101520.html; See Fu, *supra* note 64, at 398.

97. Liu, *supra* note 28, at 464.

98. See Wan, *supra* note 53.

themselves.⁹⁹ Approval for investigations is not based solely on the strength of the evidence, as political factions and networks maneuver, negotiate, and even horse trade, to protect their own from further investigation.¹⁰⁰

C. Formal Investigation

Once the case is “approved” by the Party committee, a formal investigation follows.¹⁰¹ The formal investigation may take up to two months and may be extended for a month.¹⁰² If the case is particularly complex, the Commission may seek further extensions.¹⁰³ Historically, and still true today, anti-corruption investigations rely on interrogation as their primary investigatory method.¹⁰⁴ In recent years, Commissions, particularly the Central Commission for Disciplinary Inspection, have organized numerous training programs for its investigators and increasingly request secondment of officials of other agencies with relevant skills, such as data mining and forensic accounting, to assist with investigations.¹⁰⁵ However, the Commissions and Procuratorates have not extensively developed their capacity in these investigatory techniques.¹⁰⁶

Commission investigators have described their work during the investigatory process as “cutting off” officials from their patrons and allies

99. *See id.* at 4.

100. *See id.*

101. Li, *supra* note 61, at 464.

102. *Chinese Communist Party Discipline Inspection Organs Cases Inspection Regulations*, art. 15 PEOPLE'S DAILY ONLINE, available at <http://cpc.people.com.cn/GB/33838/2539632.html> (last visited Aug. 16, 2016).

103. *Id.*

104. Li, *supra* note 61, at 467 (citing the 1994 amendment to the Central Commission for Disciplinary Inspection's 1988 Case-Inspection Directive). For example, when Bin Yu, a former deputy mayor of Linxiang, Hunan, who had worked for Linxiang's municipal Commission for Disciplinary Inspection and understood the agency's reliance on interrogation, was prosecuted for corruption for receiving over RMB 400,000 in bribes, he said, “I'm too familiar with the process. If I don't say anything, they won't find anything.” Liu, *supra* note 28, fn. 14 (citing “An Unconventional Deputy Mayor who Accepts Bribes to Help the Poor?,” Wenzhai Bao (Aug. 7, 2005)).

105. *See* Haojiang Ma, *Beijing Observer: The Central Commission for Disciplinary Inspection Brings New Skills from Multiple Professions to Investigations*, TAKUNGPAO (Apr. 28, 2016), http://news.takungpao.com.hk/mainland/focus/2016-04/3312129_print.html.

106. Wan *supra* note 53. In addition, Chinese anti-corruption investigators rarely make use of wiretapping or GPS tracking devices. In fact, CCP rules ban the use of covert surveillance, such as wiretapping and GPS tracking devices in intra-party disciplinary investigations. These techniques, if used, are only by prosecutors after a case has been transferred to the Procuratorate, and mainly to locate suspects rather than to collect evidence. Li, *supra* note 61, at 470–71 (citing OECD Secretariat of the Anti-Corruption Network for Eastern Europe and Central Asia, *Effective Means of Investigation and Prosecution of Corruption* (2010)); Lei Cheng, *On the Technical Investigatory Power of Procuratorates*, 5 JOURNAL OF POLITICAL SCIENCE AND LAW, 95, 96–97 (2011).

to extract information and preventing them from hiding evidence or silencing others.¹⁰⁷ To this end, Commission investigators wield “extraordinarily expansive powers”¹⁰⁸ in their authority to apply “shuanggui,” also referred to as “dual designation.”¹⁰⁹ Shuanggui refers to the Commissions’ authority to require any individual or entity with information relevant to a matter being investigated to provide that information to Party investigators at a designated time and location.¹¹⁰ Because Party regulation considers shuanggui as separate from criminal procedure and “non-coercive,” the measure is not regulated by the Criminal Procedure Law.¹¹¹ Therefore, investigators need not obtain warrants, and suspects and witnesses subject to shuanggui have no right to counsel.¹¹² In addition, there is no restriction on the amount of time an individual may be required to stay and respond to questioning, and no limit on the number of mandates to appear. The rules provide the Commissions significant flexibility, and nearly all questioning takes place at secret locations.¹¹³ Despite its formal classification as “non-coercive,” shuanggui involves warrantless, indefinite, and secret detention of individuals “suspected of violating an administrative rule” and does not comport with principles of due process.¹¹⁴

Given that one of shuanggui’s primary purposes is to extract confessions from suspects, the process of “breaking down” suspects often involves extended detention and isolation.¹¹⁵ Individuals subjected to

107. Wan, *supra* note 53, at 4.

108. William Wan, *How the Secretive Powerful agency in Charge of Investigating Corrupt Chinese Official Works*, WASH. POST (Jul. 3, 2014), https://www.washingtonpost.com/news/worldviews/wp/2014/07/03/how-the-communist-party-investigates-its-own/?utm_term=.581585f2a654; Li, *supra* note 61, at 465.

109. Liu, *supra* note 28; Li, *supra* note 61, at 468; See *What is Shuanggui?*, APPLE DAILY (Jun. 13, 2015), <http://www.appledaily.com.tw/realtimenews/article/new/20150613/628434/>.

110. Liu, *supra* note 28 (citing Chinese Communist Party Commission for Disciplinary Inspection Investigation Rules (Jan. 28, 1994)).

111. *Id.* at 12–13 (citing Chinese Communist Party Central Commission for Disciplinary Inspection Investigation Notice (2001-1) (Jan. 20, 2000)). Some interpret the 1996 amendments to the Criminal Procedure Law as effectively authorizing shuanggui. Li, *supra* note 61, at 468.

112. Liu, *supra* note 28, at 5; Li, *supra* note 61, at 468 (noting the lack of legal assistance or other protections).

113. Liu, *supra* note 28, at 5; see *What is Shuanggui?*, *supra* note 109; Li, *supra* note 61, at 468; Flora Sapio, *Shuanggui and Extralegal Detention in China*, 22 *China Information* 1, 7–37 (2008).

114. Liu, *supra* note 28 (citing Legislation Law, Article 8).

115. Liu, *supra* note 28, at 5; Li, *supra* note 61, at 468; Notice on a Few Issues Regarding the Application of Shuangzhi and Shuanggui Measures by Disciplinary Institutions in Compliance with the Law, Central Commission for Disciplinary Inspection (1998); Jianxing Wei, Guiding Principles and Policies on the Investigation and Handling of Cases, in *ON BUILDING A CLEAN PARTY STYLE AND THE ANTICORRUPTION STRUGGLE* (2001), available at <http://dangshi.people.com.cn/GB/146570/174891/10456272.html>.

shuanggui have “disappeared” for months or even more than a year.¹¹⁶ While under detention, suspects are watched by teams of investigators at all times and have no contact with others, even their attorneys.¹¹⁷ Further, some suspects have been subjected to torture.¹¹⁸ Wangyan Zhou, a former Party secretary of a municipal bureau of land and resources in Hunan, recounted being subjected to sleep deprivation, starvation, simulated drowning, beatings, and torture that left him with a fractured left leg.¹¹⁹ Allegedly, some suspects have died while in detention.¹²⁰ In 2013, a municipal court official in Henan reportedly died from a heart attack after eleven days of detention, and a provincial bureau chief in Hubei was sent to the hospital unconscious and later died.¹²¹ “A disturbing number of officials have committed suicide rather than face the no-holds-barred investigative techniques” of the Commission.¹²² The scope and extent of these abusive practices are unclear, as data on the application of this measure is scant. Nevertheless, during Xi’s administration, dozens of high level officials and hundreds of lower level officials have been subjected to shuanggui.¹²³ According to reports, lower level officials receive the most severe treatment during detention.¹²⁴ Given the one-sidedness of the measure and the lack of protection of suspects’ rights, it is no surprise that the measure has worked well for investigators and “the party seems to have developed a dependence on it[.]”¹²⁵ In 1998, the Central Commission for Disciplinary Inspection and the Ministry of Supervision issued a joint statement lauding the efficacy of the measure.¹²⁶ In 2001

116. Liu, *supra* note 28, at 7.

117. Wan, *supra* note 53, at 5; Li, *supra* note 61, at 468 (noting the lack of legal assistance or other protections).

118. Wan, *supra* note 53, at 5; Guoxing Cao, *China Poly Group President Dong Pingchuan Detained to Assist with Investigation of Dongsheng Li Case*, RADIO FR. INTERNATIONALE (Aug. 1, 2014) available at <http://cn.rfi.fr> (last visited Aug. 16, 2016); Sapio, *supra* note 113, at 16–20.

119. See Yongming Qi, *Tortured Chinese Official Explains His Suffering During Shuanggui*, VOICE OF AM. (Mar. 10, 2014, 9:12 PM), <http://www.voachinese.com/content/china-abused-official-20140308/1867178.html> (last visited Aug. 16, 2016); see also *Detention Deaths in Chinese Corruption Cases Stir Concern*, N.Y. TIMES (Jun. 21, 2013), <http://cn.nytimes.com/china/20130621/c21shuanggui> (last visited Aug. 16, 2016).

120. Nancy Tang et al., *China’s Rule by Law Takes an Ugly Turn*, FOREIGN POL’Y (Jul. 14, 2015), <http://foreignpolicy.com/2015/07/14/chinas-rule-by-law-takes-an-ugly-turn-rights-lawyers-crackdown-xi-jinping>; Sapio, *supra* note 113, at 20.

121. *Detention Deaths in Chinese Corruption Cases Stir Concern*, *supra* note 120.

122. Wan, *supra* note 53, at 5; Tang et al., *supra* note 121, at 8.

123. See Qi, *supra* note 120; see also *Detention Deaths in Chinese Corruption Cases Stir Concern*, *supra* note 120.

124. See *id.*; Tang et al., *supra* note 121.

125. Li, *supra* note 61, at 469.

126. Liu, *supra* note 28 (citing Chinese Communist Party Central Commission for Disciplinary Inspection Investigation Rules Implementing Details (Mar. 25, 1994)).

and 2005, the Central Commission for Disciplinary Inspection issued other notices encouraging its investigators to use the measure.¹²⁷

In contrast, the People's Procuratorates are constrained by laws and rules of criminal procedure. Arrest requires "evidence to support the facts of a crime" and is subject to other limitations and considerations such as the likelihood of committing additional crimes, destruction of evidence, or intimidation of witnesses.¹²⁸ The time limit for holding a criminal suspect in custody during an investigation is two months, although it may be extended subject to approval; residential surveillance detention is limited to six months.¹²⁹ In addition, interrogation by Procuratorate investigators must take place in the city or county where the suspect resides,¹³⁰ whereas the Party's rules on shuanggui allow for holding suspects in secret, faraway locations.¹³¹ Shuanggui has "not only made the Central Commission for Discipline and Inspection the most powerful specialized anticorruption institution of the party-state, but also made the Party disciplinary system the Party's most forceful instrument for consolidating its power."¹³²

D. Party Adjudication

After the formal investigation is complete, Commission investigators prepare a written report stating the initial allegations, the main investigatory findings, the nature of any violation, attitude of the accused toward the wrongful conduct, and suggestion for sanctions.¹³³ The report is provided to the leadership of the Commission, who determines whether the case would be sent to the Commission's case-examination department, which appraises the evidence for clarity of the facts, sufficiency and certainty of the evidence, accuracy of the characterization of the case, and propriety of the sanctions, and provides another written report.¹³⁴

127. *Id.*; see also Notice on a Few Issues Regarding the Application of Shuangzhi and Shuanggui Measures by Disciplinary Institutions in Compliance with the Law, *supra* note 116; Notice on the Correct Application of Shuanggui and Shuangzhi Measures (promulgated by the Central Commission for Disciplinary Inspection, 2001) (China); Opinions on Perfecting the Coordination Mechanism in Case Investigation and Handling and Further Improving and Normalizing the Application of Shuanggui (promulgated by the Central Commission for Disciplinary Inspection, 2005) (China).

128. *The Criminal Procedure Law of the People's Republic of China*, arts. 78–79 (amended Mar. 14, 2012).

129. *Id.* arts. 77, 154, 156, 157, 158 (amended Mar. 14, 2012).

130. *Id.* art. 116; see Liu, *supra* note 28 (citing Regulation on Detention Facilities (Mar. 17, 1990)).

131. Liu, *supra* note 28 (citing Chinese Communist Party Central Commission for Disciplinary Inspection and Ministry of Supervision Joint Notice Regarding Dual Designation (Jun. 5, 1998)).

132. Li, *supra* note 61, at 467.

133. *Id.* at 465.

134. *Id.*

Based on the final report, the Commission's leadership signs off on the proposed punishment.¹³⁵ In practice, this approval process is often undertaken with guidance from Party committees.¹³⁶ Although the Commission for Disciplinary Inspection conducts this review following a formal investigation, there is a prevailing perception that, if a formal investigation is authorized, the patrons of the political networks have "given up" on the official under suspicion, and liability is likely.¹³⁷ The review takes place in a secret proceeding within the Commission; neither the suspect nor his or her attorney or advocate is allowed to attend or review the evidence.¹³⁸ Although those found liable for violating Party rules may appeal, no case has been overturned.¹³⁹

E. Prosecution and Court Adjudication

If the investigation yields evidence of criminal conduct, the Commission may transfer the case to the People's Procuratorate for prosecution.¹⁴⁰ However, the Party's involvement is not limited by the transfer of the case. For one, the results of Commission-led investigations typically form the basis of the prosecution's case.¹⁴¹ In addition, after the file is formally transferred to the People's Procuratorate, the Party may instruct the agency on its handling the case,¹⁴² such as whether to charge the individual, which crimes to charge, what evidence to present at trial, and even what sentence to seek. For example, in the prosecution of Zhou Yongkang, a former top Party leader who was a member of the Politburo Standing Committee and the Minister of Public Security, the Supreme People's Procuratorate appeared to follow instructions based on a compromise between competing political factions in the sentence sought, and

135. *Id.*

136. *Id.* at 455, 457–59 (citing Art. 44 of the Party Charter as amended in 1982); see Young, *supra* note 61, at 49–50.

137. See Wan, *supra* note 53.

138. *Id.*

139. *Id.*

140. *From Allegations to Expulsion, What are the Stages of an Anti-Corruption Case?* *supra* note 92.

141. Liu, *supra* note 28; Fu, *supra* note 64, at 397–99.

142. Yishan Jing, *To Combat Corruption in Accordance with the Law, the New Anti-Corruption Agency Needs a Boost*, BEIJING DAILY NEWS (Nov. 6, 2014), available at <http://opinion.people.com.cn/n/2014/1106/c1003-25985282.html>; see XIAO YANG, *ANTI-CORRUPTION REPORT: THE BIRTH OF THE FIRST ANTI-CORRUPTION ADMINISTRATION IN THE REPUBLIC* 135 (Beijing Law Press, 2008); Fu, *supra* note 64, at 397–99; see *China's Anti-Corruption Campaign Is Not All It Seems*, FIN. TIMES (Aug. 4, 2014), <http://www.ft.com/cms/s/0/2ebe2150-1970-11e4-8730-00144feabdc0>.

Zhou received a sentence of life in prison rather than the death penalty.¹⁴³ Where Procuratorate officials fail to follow instructions, they are often reprimanded for “competing with the Party Committee” or “objecting to Party leadership.”¹⁴⁴ The Party’s involvement is based on not only the Party’s desire to control legal institutions, but also the principle that in China’s party-state system, the enforcement of law by the People’s Procuratorates “interferes” with the Party’s management of its personnel.¹⁴⁵

F. Implications

As the process described above has become the norm, the People’s Procuratorates have initiated fewer corruption cases, and more than 80% of cases are investigated by the Commissions for Disciplinary Inspection.¹⁴⁶ Party control over enforcement is even more pronounced for cases involving higher ranking officials.¹⁴⁷ This phenomenon, which reflects the People’s Procuratorates’ policy of depending on the Commission in investigations, has two implications. First, Procuratorates turn to the Commissions for political cover, as anti-corruption enforcement in China is an arena fraught with struggle between political factions, and corruption charges have been “used to justify the expulsion of low-ranking cadres or senior officials who had lost internal power struggles.”¹⁴⁸ Second, the Procuratorates’ dependence on Commission-led investigations allows them to use evidence obtained from *shuanggui* and thus skirt the restrictions of the Criminal Procedure Law.¹⁴⁹

IV. RECENT REFORMS OF THE PEOPLE’S PROCURATORATES

Two important reforms in the past few years aim to reduce the dependence of the People’s Procuratorates on Commissions of Disciplinary Inspections in anti-corruption enforcement. The first is a set of amendments to the Criminal Procedure Law that expanded the Procuratorates’

143. Xin Gao, *Xi Jinping Does Not Ask Zhou Yongkang to Surrender; Zhou Returns the Favor by Agreeing Not to Appeal*, RADIO FREE ASIA (Jun. 16, 2015) available at <http://www.rfa.org/mandarin/zhuannlan/yehuazhongnanhai/gx-06162015125204.html> (last visited Aug. 16, 2016).

144. XIAO *supra* note 144; Fu, *supra* note 64, at 397–99.

145. Liu, *supra* note 28.

146. Fu, *supra* note 64, at 395.

147. *Id.*; Chow, *supra* note 7, at 687–9 (The Chinese Communist Party has increasingly controlled the investigation and punishment of senior officials.).

148. Wan *supra* note 53 at 1; *see also* Gao, *supra* note 145.

149. *See* Qi, *supra* note 120; *see also* *Detention Deaths in Chinese Corruption Cases Stir Concern*, *supra* note 120; Liu *supra* note 28 (noting that some contend the practice of *shuanggui* violates China’s 2000 Legislation Law, which requires deprivations of personal liberty and other coercive and penalological measures to be governed by law. (citing Legislation Law, art. 8)).

investigatory powers. The second is the consolidation of anti-corruption enforcement units within the Supreme People's Procuratorate into a new agency. At least in theory, both reforms increase the efficacy of the Procuratorates. However, whether the People's Procuratorates ultimately function as an assertive legal counterpart to the Commissions depends on whether the Chinese Communist Party relinquishes its penchant for self-regulation and control.

A. Enhancement of Investigatory Power

In 2012, the National People's Congress amended the Criminal Procedure Law to strengthen the detention powers of the People's Procuratorates.¹⁵⁰ As amended, article 73 sets forth three categories of suspects, including those accused of "major corruption," and further authorizes the People's Procuratorates to order major corruption suspects to "reside" and remain, for up to six months, at a specific location and be subject to continuous monitoring.¹⁵¹ This measure differs from shuanggui in a few important ways.¹⁵² First, to apply this measure, the Procuratorate must seek the approval from the People's Court.¹⁵³ Second, a detained suspect or defendant may meet and correspond with his or her attorney and the meetings are not monitored by investigators.¹⁵⁴ Moreover, unlike those detained by the Commissions of Disciplinary Inspection, suspects detained by the Procuratorates generally are not removed to undisclosed locations.¹⁵⁵ Instead, suspects generally remain at home where they are monitored, unless detention at one's home impedes investigation.¹⁵⁶

150. See Di Wu Shiwu Hao, *Decision of the National People's Congress on Amending the Criminal Procedure Law of the People's Republic of China*, CENT. PEOPLE'S GOV'T OF THE PEOPLE'S REPUBLIC OF CHINA, (Mar. 14, 2012), http://www.gov.cn/flfg/2012-03/15/content_2092191.htm.

151. Diyan Feng, *Investigation on the residence system of the designated residence in the investigation of bribery cases by the procuratorial organs*, JUST. NETWORK (Jul. 16, 2012), http://www.jcrb.com/procuratorate/theories/academic/201207/t20120716_905182.html; Xin He, *Residential Surveillance at Designed Place: "Shuanggui" Being Indirectly Incorporated into the Law*, CAIXIN (Mar. 12, 2012), <http://china.caixin.com/2012-03-12/100367089.html> (last visited Feb. 12, 2016).

152. See generally Feng, *supra* note 153.

153. *Id.*

154. *Id.* (citing Supreme People's Procuratorate Regulation Regarding Supervision of Sub-Provincial People's Procuratorates Investigation); see People's Procuratorate Criminal Procedure Regulations (Preliminary) (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 15, 2012) arts. 110–128 (China).

155. Feng, *supra* note 153.

156. Criminal Procedure Law of the People's Republic of China (2012 Amendment), *supra* note 29, art. 75.

The amendments aim to empower prosecutors. Following the amendments, some local People's Procuratorates—particularly those at the municipal and county levels—have made effective use of the newly-available measure and reduced their dependence on Party investigators.¹⁵⁷ This appears to be true especially where the local Commission for Disciplinary Inspection is unwilling to investigate local officials, or where the official suspected of wrongdoing is of relatively low rank and is therefore of little interest to the central Party investigators. Where Party investigators are unwilling to act, local People's Procuratorates may find greater “space” for action and draw on their expanded investigatory power.

However, to those critical of Chinese anti-corruption enforcement's reliance on detention and interrogation, this amendment provides for a version of *shuanggui* for the People's Procuratorates.¹⁵⁸ They argue that the amendment fails to define statutory terms, such as what constitutes “major” cases, and that the lack of specification leaves room for abuse. Some observers note that suspects held under “designated residential surveillance” are “in practice . . . held under solitary confinement” and the law does not prevent confinement in unknown locations.¹⁵⁹ Indeed, “[t]his kind of detention amounts to enforced disappearance and is conducive to the use of torture.”¹⁶⁰

Further, the expansion of detention power potentially spurs People's Procuratorates to continue to rely on detention and interrogation, rather than on strengthening other investigatory techniques that involve a lesser degree of deprivation of personal liberty. The Procuratorates' investigatory technology lags behind that used by China's police or state security agencies.¹⁶¹ This deficiency specifically affects anti-corruption investigations, because even though the People's Procuratorates prosecute crimes, under China's Criminal Procedure Law, there is a division of labor in the *investigation* of crimes.¹⁶² In general, the police investigates street crimes, and the People's Procuratorates investigate crimes of embezzlement, bribery, dereliction of duty, and crimes involving violations

157. *Id.* at 26.

158. *Id.* at 1, 6, 19.

159. “*Special Measures*”: *Detention and Torture in the Chinese Communist Party's Shuanggui System*, HUM. RTS. WATCH, 16 (Dec. 6, 2016), <https://www.hrw.org/report/2016/12/06/special-measures/detention-and-torture-chinese-communist-partys-shuanggui-system>.

160. *Id.* at 20, fn 59.

161. Dongxu Zhou, *Top Prosecutor's Office to Open Anti-Corruption Bureau*, CAIXIN (Nov. 11, 2014), <http://english.caixin.com/2014-11-11/100749562.html>.

162. Criminal Procedure Law of the People's Republic of China (2012 Amendment), *supra* note 29, arts. 18–27.

of a citizen's personal rights, such as illegal detention, extortion of confessions by torture, retaliation, and illegal search.¹⁶³ Prosecutors note that anti-corruption investigations by local People's Procuratorates are often hampered by the time-consuming process of gathering of basic information from various sources, and a shared database of information on property, bank accounts, and business registration would greatly speed up investigations.¹⁶⁴

B. Consolidation of Anti-Corruption Units

The second set of reforms addresses the fragmentation of anti-corruption enforcement capacity within the Supreme People's Procuratorate. In late 2014, the National People's Congress adopted legislation to create a new anti-corruption enforcement agency within the Supreme People's Procuratorate called the anti-bribery bureau. The law provided for the consolidation of three units—the anti-bribery bureau, the malfeasance and infringement office, and the dereliction of duty office¹⁶⁵—to reduce redundancy and fragmentation of resources and capacity from having three separate units.¹⁶⁶ In addition, the reform elevated the rank of the agency's head to “vice-minister.”¹⁶⁷ This change enhanced the prestige and power of the new agency within the Supreme People's Procuratorate and, to a certain extent, vis-à-vis Party investigators.¹⁶⁸

The reform attempts to address “[a] lack of efficiency, inadequate personnel and resources, and weak coordination” that has plagued the anti-corruption units in the Supreme People's Procuratorate.¹⁶⁹ The consolidated agency could better muster staff and resources that were previously housed in separate units. Also, it could provide guidance more efficiently to local People's Procuratorates and avoid conflicting instructions.¹⁷⁰ Because of the volume of corruption cases, and given that the Supreme People's Procuratorate often has to overcome its staffing and resource constraints by working with local People's Procuratorates,

163. *See id.*

164. Zhou, *supra* note 163.

165. *Fourth Plenary Session of 18th CPC Central Committee*, XINHUA NEWS (Oct. 24 2014), www.news.cn/english/special/cplenum2014/index.htm (last visited Aug. 16, 2016); *see generally Highlights of Communiqué of 4th Plenary Session of CPC*, XINHUA NEWS, www.news.xinhuanet.com/english/china/2014-10/23/c_133737957.htm (last visited Aug. 16, 2016).

166. Zhou, *supra* note 163.

167. Martina, *supra* note 49; Zhou, *supra* note 163.

168. *Id.*

169. Dongxu Zhou & Fuduo Zhao, *Top Prosecutor's Office Plans New Body to Better Fight Corruption*, CAIXIN, (Nov. 21, 2014), <http://english.caixin.com/2014-11-21/100753969.html>.

170. Zhou, *supra* note 163.

police, banks, and other institutions, a consolidated anti-corruption agency could better coordinate investigations than the fragmented sub-units.¹⁷¹ Further, with greater authority and more capacity, the newly-created agency could better take on higher-stakes, larger, and more complex cases¹⁷²—such as those involving senior officials or officials in sectors with powerful political networks, such as construction, real estate, and infrastructure development—that have caused significant losses to government coffers.¹⁷³

A stronger national-level anti-corruption prosecuting office could become “the main force of anti-corruption investigations.”¹⁷⁴ Many were hopeful that anti-corruption enforcement would be led by an agency rooted in the law and criminal procedure and committed to transparency,¹⁷⁵ in sharp contrast to enforcement by the Central Commission for Disciplinary Inspection, which has become “more opaque, more secretive, and less rule-bound.”¹⁷⁶ Initial results indicate that following the reorganization in 2015, the Supreme People's Procuratorate conducted more investigations. That year, the agency investigated 54,249 officials, and among those, 41 were senior level officials, up from 28 in 2014.¹⁷⁷

Although the reform aims to create a national-level anti-corruption agency that is better able to provide guidance to local prosecutors, the reform does not address many of the challenges in anti-corruption enforcement at the local level, such as limited investigatory powers and personnel.¹⁷⁸ However, the reform may encourage local People's Procuratorates to experiment with institutional reform. In fact, successful local innovation often has formed the basis for national level reform. Back in January 2002, municipal-level prosecutors in Chongqing created a bureau to handle both official corruption and malfeasance cases, and a year later People's Procuratorates at all levels in Chongqing consolidated their anti-

171. Zhou & Zhao, *supra* note 171.

172. *Fourth Plenary Session of 18th CPC Central Committee*, *supra* note 174; *Highlights of Communiqué of 4th Plenary Session of CPC*, *supra* note 150; Martina, *supra* note 49.

173. Gao, *supra* note 145.

174. Zhou, *supra* note 163 at 2 (citing He Jiahong, a law professor at Renmin University and an adviser to the Supreme People's Procuratorate).

175. Guangzhong Chen & Xiaona Wei, *China's Judicial and Legal Institutions and Reform*, *Chinese Legal Studies* PROCEDURAL L. (2015), <http://www.procedurallaw.cn/zh/node/5574>; see also *Taking Stock of the Anti-Corruption Process: Five Steps from Discovery to Disposition*, *supra* note 20.

176. Hualing Fu, *Wielding the Sword: President Xi's New Anti-Corruption Campaign*, in *Greed, Corruption, and the Modern State*, U. H.K. 150 (Susan Rose Ackerman & Paul Lagunes eds., 2015).

177. *China Keeps “High Pressure” on Corruption: Reports*, CHINA DAILY ASIA (Mar. 13, 2016), http://www.chinadailyasia.com/nation/2016-03/13/content_15399629.html.

178. Zhou & Zhao, *supra* note 171 at 6.

corruption units.¹⁷⁹ The People's Procuratorates in Tianjin and in some districts of Shenzhen and Shenyang followed with similar changes.¹⁸⁰ The creation of the anti-bribery bureau of the Supreme People's Procuratorate can be seen as affirming the success of these local experiments. Nevertheless, despite institutional innovations, the number of cases prosecuted nationwide by local People's Procuratorates have remained relatively stable—approximately 35,000 to 39,000 per year in the past decade—which scholars point to as indication that local prosecution has not been able to keep up with rampant corruption.¹⁸¹ More resources, in addition to guidance and support by the Supreme People's Procuratorate, are needed.¹⁸²

Despite the shortcomings, the 2014 reforms of the anti-corruption unit in the Supreme People's Procuratorate were hailed as enhancing a countervailing investigative authority—one that is rooted in the law—to the Party's anti-corruption investigative apparatus. This is because, beginning in 2012, the Central Commission for Disciplinary Inspection has undergone its own reforms that expanded its enforcement capacity.¹⁸³ In those reforms, the Central Commission added four inspection offices,¹⁸⁴ developed a set of standard procedures to handle investigations of local corruption,¹⁸⁵ and assigned teams of Party investigators, who now total over a hundred, to monitor high-ranking officials in specific ministries or provinces.¹⁸⁶ These enhancements have made the Central Commission for Discipline Inspection a more powerful entity not only vis-à-vis its local counterparts, many of which are paralyzed by political capture, but also as to the People's Procuratorates.¹⁸⁷ The Central Commission's added capacity to investigate local corruption has cultivated a practice among subnational Commissions of referring complex or politically sensitive cases to the Central Commission, to avoid pressure from local Party committees.¹⁸⁸ Given that this practice centralizes anti-corruption enforcement activity in the Central Commission, it discourages the People's Procuratorates from initiating cases, perpetuating the dynamics of Party "self-regulation."¹⁸⁹

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. See Fu, *supra* note 178, at 136.

184. *Id.* at 141.

185. Fu, *supra* note 64, at 403–4; see generally Wan, *supra* note 53.

186. Fu, *supra* note 178, at 141.

187. *Id.* at 138; see generally Wan, *supra* note 53.

188. Fu, *supra* note 64, at 406.

189. Fu, *supra* note 178, at 141–144

C. China's Formalistic Rule of Law

Recent reforms of the People's Procuratorates are consistent with the trajectory of the development of China's legal system in the past few decades, during which the party-state has embarked on a project of developing formal legal institutions.¹⁹⁰ Since 1976, the National People's Congress and its Standing Committee have passed more than 337 laws, and local governments have adopted more than 6,000 regulations.¹⁹¹ In the past decade, China's courts handled cases that numbered in the millions each year.¹⁹² In addition, by 2011, a mere quarter century since Chinese law schools re-opened following the Cultural Revolution, licensed lawyers in China exceeded 200,000.¹⁹³ With these legal institutions in place, many scholars would characterize China's legal system as possessing the formalistic, instrumental aspects of the law, such as statutes and regulations, courts, judges, and a legal profession.¹⁹⁴ Although the party-state issues laws, regulations, and policies,¹⁹⁵ one of the key characteristics of the Chinese system is the Party's resistance to checks on its power.¹⁹⁶ That is, China's legal system operates in a political context in which the Party holds as paramount the primacy of its authority and continuation of its rule. In the past decade, concerns about social unrest, which may threaten the Party's rule, have led Party leaders to incorporate political-legal institutions into a "system-wide stability maintenance network."¹⁹⁷ For example, the Party has enhanced the efficiency of Chinese courts to handle large numbers of lawsuits, thereby addressing the need for dispute resolution and reducing the number of grievances that could turn into demonstrations or protests.¹⁹⁸ In addition, in propounding certain organizing principles in its legal system, the Party has emphasized collective rights over individual rights,¹⁹⁹ and extolled the primacy Party

190. See Ben Self, *The Bo Xilai Trial and China's Struggle with the Rule of Law*, 14 WASH. U. GLOBAL. STUD. L. REV. 155, 165 (2015); RANDALL PEERENBOOM, *CHINA'S LONG MARCH TOWARD RULE OF LAW 8* (Cambridge University Press, 2002).

191. PEERENBOOM, *supra* note 192, at 6.

192. *Id.* at 7.

193. Xinhua, *Number of China's Licensed Lawyers Reaches 200,000*, PEOPLE'S DAILY (Oct. 19, 2011), <http://english.peopledaily.com.cn/90882/7620752.html>.

194. See generally PEERENBOOM, *supra* note 192, at 3, 6.

195. *Rules of the Party*, ECONOMIST (Nov. 1, 2014), <http://www.economist.com/news/china/21629528-call-revive-countrys-constitution-will-not-necessarily-establish-rule-law-rules>; Zhong Wu, *China's Fearsome Jiwei Take on Graft*, ASIA TIMES (Jun. 9, 2010), <http://www.atimes.com/atimes/China/LF09Ad01.html>.

196. Tang, et al., *supra* note 121 at 4.

197. *Id.*

198. Benjamin Liebman, *China's Courts: Restricted Reform*, 21 COLUMBIA J. OF ASIAN L., 2, 4 (2007).

199. PEERENBOOM, *supra* note 192 at 4.

leadership.²⁰⁰ Through these measures, the Party has signaled its aim “to strengthen the law to make the Party more powerful.”²⁰¹

D. Policy and Prospects of Retrenchment

Viewed in the context of the Chinese party-state, although the reforms seek to enhance the capacity of the People's Procuratorates in anti-corruption enforcement, they do not address the observation that the Chinese Communist Party prefers to regulate itself, rather than submit to “legal supervision.”²⁰²

Chinese Communist Party members control political and economic power in China, occupying most of the positions of power in the government, the security apparatus, and state-owned enterprises. Although Party leaders are concerned with the existence of rampant corruption, they also worry about the *publicity* of rampant corruption.²⁰³ This latter concern underpins the reluctance to strengthen the People's Procuratorates' role in anti-corruption enforcement. The reasons are mainly two-fold. First, some Party leaders are uneasy with the expansion of prosecutorial power because the People's Procuratorates operate more transparently than Party investigators and information about investigations and the results of prosecutions are more likely to be made public.²⁰⁴ Second, some Party leaders prefer that the Party—rather than the law—impose punishment on offending members.²⁰⁵ This preference is based on the view that the Party is the ultimate source of power in China's party-state system. It also forms the basis of an informal Party rule that prevents Party members from being prosecuted for corruption in court, and requires the Party expel the member before the People's Procuratorate could prosecute the individual.²⁰⁶ Through this informal policy, the Party effectively controls whether the People's Procuratorates can conduct corruption prosecutions, and substitutes Party discipline for law enforcement.²⁰⁷

Also essential to understanding recent reforms in context is the fact that the Party continues to maintain control over the prosecutors' offices and resists relinquishing that control. The reforms did not change the fact

200. Tang, et al., *supra* note 121.

201. Zhong, *supra* note 197.

202. Fu, *supra* note 178, at 154.

203. PEERENBOOM, *supra* note 192, at 3; 2015 Human Rights Report: China, U.S. DEP'T OF STATE (Apr. 13, 2016), <https://www.state.gov/j/drl/rls/hrrpt/2015/eap/252755.htm>.

204. Tang et al., *supra* note 121, at 5.

205. *Id.* at 4–5.

206. See Zhong, *supra* note 197.

207. Zhou, *supra* note 163.

that, at all levels, Party committees and governments “supervise” the People’s Procuratorates and control their budget.²⁰⁸ This institutional arrangement exposes prosecutors to resistance and interference in their anti-corruption investigations.²⁰⁹ In addition, after the 2014 reforms to enhance prosecutor capacity, a more recent policy signaled a retrenchment of prosecutor authority. In November 2016, the General Office of the Chinese Communist Party’s Central Committee issued the “Decision on Carrying Out Pilot Projects of the National Procurator System,” which directed the People’s Congresses of three test sites, Beijing, Shanxi, and Zhejiang, to create unified “Supervision Commissions” comprised of the anti-corruption prosecutors and Party investigators.²¹⁰ These Supervision Commissions would carry out corruption investigations and, following their completion, transfer cases with evidence of criminal conduct to the People’s Procuratorates for prosecution.²¹¹ Observers predict, under the new institutional arrangement, Commissions of Disciplinary Inspection investigators would dominate the Supervision Commissions.²¹² As implementation began in late December 2016, when the Standing Committee of the National People’s Congress approved the Decision, few details on the results of the pilot projects are available.²¹³ Nevertheless, even if only in broad strokes, the policy sets forth a vision for an institutional arrangement in which the anti-corruption investigatory functions in the People’s Procuratorate would be moved to a new entity and under the control of the Party.²¹⁴

Even if this policy merely formalizes the reality of the current anti-corruption enforcement process, in which the Commissions lead and Procuratorates follow, it comes after successive reforms to enhance prosecutorial capacity and initiative, and signals a remarkable reversal. The formal removal of the investigatory functions of the People’s Procuratorates in corruption cases nearly ensures that only the Party can initiate anti-corruption investigations. The policy confirms the Party’s penchant

208. See generally *id.*

209. *Id.* at 3.

210. *Decision on Carrying Out Pilot Projects of the National Procurator System*, *supra* note 11.

211. *Id.*

212. *Plans for Anti-Corruption Bureau to be Moved to the Commission for Disciplinary Inspection Generates Debate*, RADIO FREE ASIA (Oct. 28, 2016), <http://www.rfa.org/mandarin/yataibaodao/zhengzhi/x11-10282016110140.html>.

213. See *Decision on Carrying Out Pilot Projects of the National Procurator System*, *supra* note 11; *Reform of Zhejiang’s Supervisory Institutions: the Anti-Corruption Bureau and Anti-Malfeasant Bureau Move Out of the Provincial People’s Procuratorate*, SINA (Feb. 4, 2017), <http://news.sina.com.cn/c/nd/2017-02-04/doc-ifyafcyx6892166.shtml>.

214. See *id.*

for self-policing and self-regulation, and illustrates the Party's uneasy relationship with any institution that serves as a check on its power.

V. CONCLUSION

The legitimacy and authoritativeness of anti-corruption enforcement depend not only on the punishment of illicit conduct but also on the fairness and evenhandedness of the enforcement process, as goals of detection and deterrence are balanced with the rights of defendants. This analysis of the process of anti-corruption enforcement in China shows that the People's Procuratorates have a tenuous role in supervising the Party. After reforms that enhanced the capacity of the People's Procuratorates and expanded its investigatory powers, the Party has sought to reassert control. The recent series of reforms affecting China's anti-corruption prosecutors confirms that, despite the country's rapid legal development in the past few decades, its legal system remains formalistic, and the Party continues to operate beyond the rule of law.