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**An Overview of China's Legal System for
Combating Corruption and Upholding Integrity**

(Translation of original speech in Chinese)

China has speeded up the development of its anti-corruption system following the 16th CPC National Congress in 2002. On January 6, 2006, President Hu Jintao emphasized at the 6th Session of the Central Commission for Discipline Inspection of the CPC, "We must put in place a system to rein in power, work and personnel, and push on with the institutional and regulatory development for improving the Party's style of work, upholding integrity and combating corruption." At the 2009 annual sessions of the National People's Congress (NPC) and National Committee of the Chinese People's Political Consultative Conference (CPPCC) which were held not long ago, Premier Wen Jiabao reiterated in his Report on the Work of the Government, "Focusing on a regulatory system and a check and balance mechanism, we will strive to stem and punish corruption at its origin in areas and links prone to corruption."

Since the 16th CPC National Congress, the Communist Party of China has not only enhanced its internal rules and regulations but also motivated competent organs such as the National People's Congress and the Government to legislate in those areas. Statistics show that by the end of 2008, China has conducted an overhaul of more than 1500 regulations on policies regarding anti-corruption which were formulated after the adoption of reform and opening up policy, and has so far rescinded over 100 obsolete law and regulations. The CPC Central Commission for Discipline Inspection and Ministry of Supervision drafted, formulated and revised more than 170 relevant rules, regulation and normative documents, and drafted more than 50 documents in collaboration with other relevant departments. Provinces, autonomous regions, municipalities directly under the Central Government, Central Committee of CPC and other State organs drafted and formulated more than 1200 documents. Significant progress has been made in the institutional development of the anti-corruption campaign, and a basic framework for combating corruption and upholding integrity has been built.

I. The Existing Legal System of Anti-Corruption in China

Comrade Deng Xiaoping once said: "The State shall have laws, and the Party shall have rules and regulations. Without Party rules and regulations, it would be difficult to enforce State laws."¹ According to the political structure in China, the existing anti-corruption system in China is made up of two components, namely state laws and party rules and regulations, which are complementary in nature and coordinated in development².

¹ Deng Xiaoping: Liberate Minds, Based on Solid Evidence, United and Looking Forward [M], Selected Articles of Deng Xiaoping: Volume II, Beijing: People's Publishing House, 1994:147.

² Democratic countries generally have three categories of laws on anti-corruption: 1) comprehensive anti-corruption law, integrating departmental laws such as Criminal, Criminal Procedural, Judicial Organization Laws in one to form an independent system, with general and separated provisions and provisions from Criminal, Criminal Procedural and Judicial Organization Laws as well as supplementary and special provisions; 2) substantive anti-corruption law, in which most provisions are on corruption crime and punishment supplementary to Criminal Law as well as some special provisions; 3) procedural anti-corruption law featuring special criminal procedures, which mainly provides for the special procedures of investigation. Owing to China's one ruling party political system, it is considered that the anti-corruption law system in China is comprised of two complementary parts namely Party rules and State laws.

There are roughly 10 categories of laws and regulations in this system: (1) general categories of laws and regulations for improving the Party's style of work and upholding integrity, such as the "Regulations of the Inner Party Supervision of the CPC (Trial Implementation)", "Provisions on Practising the Responsibility System of Construction of the Party Style and A Clean Government" and "Administrative Supervision Law", etc; (2) laws and regulations on the integrity and self-discipline and other codes of conduct for party members and leading cadres; (3) laws and regulations on the investigation and handling of violation in party and government disciplines and other working procedures; (4) laws and regulations on the handling of defaulting party members and public servants; (5) laws and regulations on rectifying malpractices in departments and industries; (6) laws and regulations on the supervision and restriction and on preventing and combating corruption at its origin; (7) laws and regulations on the publicity and education in combating corruption and upholding integrity; (8) laws and regulations on the discipline inspection and supervisory functions, organization development and internal monitoring; (9) laws and regulations on the anti-corruption cooperation with overseas organizations, and domestic laws and regulations drafted or formulated in accordance with international conventions; (10) relevant laws and regulations of the Central Committee of CPC and State Organs and local organizations of the Party and local organs of State administration at different levels.

This article will briefly review the efforts China has made in perfecting State laws and party rules and regulations since the 16th CPC National Congress, in three aspects, namely State laws and regulations, party rules and regulations, and local and departmental rules and regulations.

(1) State Laws and Regulations on Anti-Corruption and Upholding Integrity

The core of State laws is the Constitution. The essence of rule of law is the rule of constitution. The realization of ruling the country by law depends on the implementation of ruling the country by constitution. As the fundamental and most important systematic arrangement of a country, the constitution underlines the political, economic, cultural and social principles and systems of that country. Needless to say, it plays a pivotal role in curbing and eliminating corruption.

The Constitution guarantees that power is supervised by power. A constitution is a systematic arrangement to check power by power, and to maintain balance and supervision among different powers. It is the precondition and guarantee for stemming and combating corruption. The systematic arrangement for checking power by power in our Constitution mainly lies in the fact that the National People's Congress and the local people's congresses at various levels are the organs through which the people exercise State power. All other organs of the State, especially "people's government, court and procuratorate" are created by the people's congresses to which they are responsible and under which they are supervised.

The Constitution guarantees the check of power by rights. A constitution is a systematic arrangement to establish and guarantee citizen rights, providing the precondition and guarantee for supervision and combating corruption. To check power by rights, which refers primarily to the limitation and control of power abuse in the following aspects: 1) the constitution provides that a government in exercising its power shall not act ultra vires to the infringement of citizen rights, while such citizen rights form a check and balance mechanism against any abuse of government power; 2) when a government acts ultra vires, abuses its power or has any misconduct, such rights enable the citizens to make some positive resistances, thereby forcing the government to withdraw its reach of power or rectify its misconduct.

On March 14, 2004, the "Amendment to the Constitution of the People's Republic of China" was adopted at the Second Session of the 10th National People's Congress. This has a great significance to anti-corruption. For example, the amendment added the wordings of "under the guidance of the important thoughts of the 'Three Represents'" under the section "Primary Tasks of the Nation". Besides, the relevant provision in the Constitution was revised to "Citizens' lawful private property is inviolable". There was also a newly added sentence specifying "The State respects and protects human rights", which means that illegal

property acquired through corruption is not protected by law, and officials are forbidden to violate citizens' lawful rights, democratic rights and property rights through abuse of power or corruption.

The “Criminal Law” is the State’s lethal weapon against corruption. On December 10, 2003, the Chinese government signed the “United Nations Convention Against Corruption”. To get in line with the “Convention”, the NPC Standing Committee amended the “Criminal Law” on several occasions. “Amendment VI to the Criminal Law”, which was adopted on June 29, 2006, focused primarily on combating bribery in business. Through this amendment, commercial bribery was given a broader scope to cover employees of other working units on top of companies and enterprises. It was effective in preventing and combating commercial bribery crimes in such industries as the medical services, finance, construction, power supply, telecommunication and environmental protection. For instance, bribes in the medical industry in the process of procurement for medicine and medical appliances including soliciting/accepting medicine rebates, sponsorship, recommendation fees for new medicines where a relatively large sum of money is involved shall be pursued for criminal responsibility under the offence of commercial bribery. “Amendment VII to the Criminal Law”, which was just adopted on February 28, 2009, raised the maximum punishment for the crime of owning a huge amount of property of unidentified sources from 5 years’ imprisonment to 10 years’, a move that intensified efforts to crack down on corruption. Meanwhile, the amendment had also seen some new provisions aiming to curb and combat “trading power for money” activities between State personnel, former State personnel and their close relatives and persons closely related to them, thereby deepening and widening the campaign against corruption in China.

Supervision is the key to preventing corruption. The “Law on Supervision by the Standing Committees of the People’s Congresses at All Levels” (also referred to as the “Supervision Law”) adopted on August 27, 2006 provides clear and specific provisions on the foci, methods, channels and results of supervision over administrative, judicial or procuratorial powers, underling the legal basis for the organ of State power to exercise its power of supervision on administrative, judicial, procurator institutions and their employees in accordance with law. Furthermore, the amended “Audit Law” effective June 1, 2006 strengthens auditing and supervision mechanisms; perfects auditing and supervision responsibilities; enhances auditing and supervision methods; standardizes auditing activities; and provides a comprehensive legal basis for auditing and supervision to play a more important role in anti-corruption.

Regulating administrative behaviour is a major approach to combating corruption. At the level of State legislature, the “Civil Servant Law” adopted on January 1, 2006 is a major law on regulating civil service behaviours. This law defines the qualifications, rights and obligations, exchanges and withdrawals, resignations and dismissals and legal liabilities of civil servants, so as to standardize and legalize their management. The “Civil Servant Law” provides that “being honest and clean, just and upright” is the obligation a civil servant shall bear. And a civil servant shall not have any of the following behaviour: negligence of duty; offering or accepting bribes and making use of his office for the benefit of himself or others; violating financial and economic disciplines and wasting State assets; abusing his power to the infringement of the lawful rights and interests of any citizen, legal person or any other organization. These specific provisions underline the basic principles for civil servants to perform their duties with integrity. Moreover, in order to ensure proper administration by law and prevent improper intervention of market activities by administrative powers, the “Administrative Permission Law” was promulgated and became effective from July 1, 2004. By defining the open and transparent principles in granting permission, the Law is conducive to preventing corruption and power abuse and building a clean government.

Apart from these, the supreme legislature also adopted laws that contain some anti-corruption provisions such as the “Anti-Money Laundering Law”, “Property Law” and “Anti-Monopoly Law”. The “Anti-Money Laundering Law”, which took effect from January 1, 2007, is an effective measure in preventing capital outflows by corrupt officials. The “Property Law”, which was adopted on March 16, 2007, outlaws the violation of property rights in the public and private sectors from the perspective of ownership and use

of property. This Law is a big “No” to the gains acquired by corrupt officials and a prerequisite for imposing civil and economic punishments on them. The “Anti-monopoly Law”, which was adopted on August 30, 2007, is a powerful weapon in law to stem corruption by monopoly, thereby protecting consumer interests and public interests.

(2) Party Rules and Regulations on Anti-Corruption and Upholding Integrity

The “Party Constitution” is the core of party rules and regulations. The struggle against corruption in China was led by the Communist Party of China. The “Party Constitution” underlines the basic criteria governing party members’ behaviour and the fundamental principles for improving the Party’s style of work and upholding a clean government. On January 6, 2006, President Hu pointed out at the 6th General Meeting of Central Commission for Discipline Inspection of the CPC, “A major conclusion can be drawn by summing up our experience in party building, including the improvement in our style of work and fight against corruption. That is the whole Party should always consider it a major to study, observe, realize and safeguard the Party Constitution.”

The 16th CPC National Congress approved the partial amendments to the “Constitution of the Communist Party of China”. These amendments have a profound effect on the anti-corruption efforts since the 16th CPC National Congress: The “Three Representatives” provision was added to the “Party Constitution” for party members to bear in mind their responsibilities and missions; It was made clear that “The Party must practise self-discipline and be strict with its members. It must constantly improve its art of leadership and governance, and raise its ability to resist corruption, prevent degeneration and withstand risks”; “Enhancing the supervision of party organs and party leaders for an ongoing improvement in inner-party management”; The wordings “assist party committees to organize and coordinate the efforts against corruption” were added as a major task of the party’s commissions for discipline inspection at all levels: The wordings “oversee Party leaders in their exercise of power and guarantee the rights of Party members” in the routine work of the Party’s commissions for discipline inspection.

The 17th CPC National Congress adopted more amendments to the Party Constitution, furthering the fight against corruption. Four institutional provisions in party’s organizational system were added in this amendment: Party organizations at all levels should increase transparency in Party affairs in accordance with regulations; a tenure system is adopted for delegates to party congresses at all levels; an inspection system should be put in place in the Party’s Central Committee and committees of provinces, autonomous regions and municipalities directly under the Central government; the Political Bureau reports on a regular basis to the plenary session of Central Party Committee; and the standing committees of the local party committees at all levels report on a regular basis to the plenary sessions of local party committees.

Amendments to the “Party Constitution” have ushered in a new round of establishment and improvement in party rules and regulations. On June 19, 2003, the General Office of the CPC Central Committee published and distributed the “Measures on Supervision and Inspection of Selection and Appointment Procedures of Leading Cadres (Trial Implementation)”. On December 31, 2003, the “CPC Regulations on Party Discipline Sanctions” was adopted as a manifestation of party discipline. It is a key measure to strengthen party building, and has a great significance in the implementation of the party line, principles and policies and the State laws and regulations, and the deepening of efforts in combating corruption and upholding integrity. The “Regulations of the Inner Party Supervision of the CPC” adopted on February 17, 2004 states clearly that a party organization should enhance its supervision of subordinate organizations, and also emphasizes the importance of strengthening the monitoring of party organizations by party members and party cadres by party members as well as the supervisory party organizations by subordinate party organizations. These Regulations have laid a clear legal foundation for the Party to intensify inner-party supervision. In addition, the Central Commission for Discipline Inspection

formulated with relevant central departments, certain supplementary rules and regulations on inner-party supervision such as the “Interim Measures on the Work of Inspection Tour by Central Commission for Discipline Inspection and CPC Central Organization Department” and “Decision on Performance of Duties by Representative Offices of Central Commission for Discipline Inspection” to gain more experience for the system of inspection tours. On September 22, 2004, the “Regulations on the Protection of Rights of CPC Members” was adopted, and on March 1, 2006, the “Interim Measures on Reporting on Work and Integrity for CPC Leading Cadres” was formulated. Both of them have a positive effect on protecting the rights of members and developing democracy within the Party. The formulation and implementation of the above mentioned laws, regulations and normative documents on strengthening anti-corruption and integrity in party and government organs and in leading cadres is a clear evidence that improvement in style of work and anti-corruption efforts are undergoing an orderly progression by law.

Among all these rules and regulations, the most important one is definitely the “Implementation Outline for Establishing and Perfecting System to Punish and Prevent Corruption by Attaching Equal Importance to Education, Institution and Supervision” issued by the CPC Central Committee in January, 2005. It is a strategically all-round directive to the efforts of combating corruption and upholding integrity at present and for some time to come. It consists of 8 parts and 21 sections, with 118 specific anti-corruption rules and regulations which need to be established and perfected, and meanwhile sets out the primary goal: “By 2010, a basic framework for punishing and preventing corruption must have been built, and a long-lasting education system, a supervision system for the exercise of power and a sound system for punishing and preventing corruption will have to be completed some time after 2010.” In June 2008, the CPC Central Committee issued “2008-2012 Work Plan on Establishing a Sound System for Punishing and Preventing Corruption”. This is a specific practice and gradual arrangement for the “Implementation Outline”, aiming to lay down systematic and practicable tasks for perfecting the anti-corruption system and making targeted, planned and gradual progress.

(3) Rules and Regulations on Anti-Corruption formulated by local organizations of the Party, local organs of State administration and other units

Apart from the above-mentioned State or Party laws and regulations, those rules and regulations on Anti-Corruption formulated by local organizations of the Party, local organs of State administration and other units are an integral part of anti-corruption and upholding integrity law system in China.

For example, in order to crack down on corruption in economic activities such as construction project bidding and tendering, assignment of operational land use rights, real estate development and operation, etc., the General Office of the State Council promulgated “Notice on Readjusting Various Development Zones and Strengthening Construction Land Management”; the Central Commission for Discipline Inspection issued “Measures for Handling of Leading Cadres who Take Advantages of Their Offices and Powers to Meddle with and Intervene in Market Economic Activities including the Bidding and Tendering of Construction Projects, Assignment of Operational Land Use Rights, Real Estate Development and Operation to Secure Private Interests for Himself or His Relatives” on February 3, 2004. The Supreme People’s Court issued “Interpretation of the Supreme People’s Court on the Application of Law for the Trial of Cases of Disputes on Contracts Involving the Right to Use State-owned Land” on November 23, 2004, to stem corruption in land granting and leasing.

The State Council and its Ministries and Commissions issued laws and regulations in areas of environmental protection, production safety and finance such as the “Interim Regulations on Punishing Illegal Acts and Violation of Discipline in Environmental Protection”, “Interim Regulations on Imposing Policy Discipline Punishment on Illegal Acts and Violation of Discipline in Production Safety”, “Special Provisions by State Council for Preventing Accidents in Coal Mines”, “Regulations on Penalties and Sanctions for Fiscal Violations”, etc.

Efforts have also been made in discipline inspection and supervision organs to uphold administrative and party rules and regulations. To enhance the collaboration in case investigation between discipline inspection and supervision organs and auditing institutions, the Central Commission for Discipline Inspection, Ministry of Supervision and National Audit Office jointly issued the “Notice on Collaboration between Discipline Inspection and Supervision Units and Auditing Units in Case Investigation”. In 2004, the CPC Central Commission for Discipline Inspection and CPC Central Organization Department established ad hoc inspection units with full time inspection staff, and issued “Interim Measures on the Work of Inspection Tour by Central Commission for Discipline Inspection and CPC Central Organization Department”, thereby strengthening the supervision party members, especially senior ones, in their carrying out of party lines, principles and policies and exercising public powers with integrity. On July 11, 2005, the standing committee of Central Commission for Discipline Inspection approved upon discussion the “Regulations on Discipline Inspection Commission Assisting Party Committees in Organizing and Coordinating the Work Against Corruption (Trial Implementation)”.

The judicial discipline regulations are also under constant improvement. For example, the Supreme People’s Procuratorate promulgated the “Regulations on Procurator Discipline Penalties and Sanctions (Trial Implementation)” on August 10, 2004.

In general, thanks to the efforts in the past few years, significant progress has been achieved in combating corruption and upholding integrity in terms of Party rules and State laws, as China has successfully steered the country towards “anti-corruption by means of a system”.

This achievement manifests itself in the following aspects: 1. The method of combating corruption has shifted from a pure crackdown to both institutional construction and crackdown, focusing on finding out the root causes of corruption from an institutional perspective, so as to stem corruption from its sources by eliminating the contributing factors and conditions for corruption and limiting the scale of corruption; 2. Anti-corruption efforts have shifted from punishment afterwards to prevention in advance, mainly embodied in improving supervision mechanism and enhancing education of officials. For example, by means of changing the method of appointment method for leading members of local discipline inspection commissions, the supervision of central over local and the role of local discipline inspection commission have been enhanced: Firstly, this was done by establishing an inspection tour system to supervise leading cadres of provincial and sub-provincial governments. Secondly, it was achieved by discipline inspection commission at all levels adopting “vertical management” over discipline inspection representative offices in government departments at the same level. From 2004 to late 2005, the Central Commission for Discipline Inspection and Ministry of Supervision unified the management of their representing offices in 56 departments, while provincial government and sub-provincial government also unified management on discipline inspection representative offices at the same level. Thirdly, efforts against corruption by means of political campaigns and character pinpointing have been shifted to institutional anti-corruption where development of a system for combating corruption and upholding integrity becomes a routine duty.

II. Certain Issues arising from the Implementation of Anti-corruption Law

Although the legal development of anti-corruption system in China has made some progress, we should not be over-optimistic about that. We should note that there are certain issues arising from the implementation these laws and regulations, and some of them are of pressing and serious nature. If these problems could not be overcome, our anti-corruption achievements might be compromised.

(1) Formulation of Specialized Anti-corruption Law

In view of anti-corruption development in China and with reference to international experience, the call for formulating a specialized anti-corruption law in China has been long-standing. Some scholars argue that “we must, in legal construction, formulate a long-term stable, scientific and effective specialized

law as the legislative basis for combating corruption in China, so as to put work against corruption in line with rule of law and under the protection of law.”³ During the sessions of the National People’s Congress (NPC) and National Committee of the Chinese People’s Political Consultative Conference (CPPCC) in 2002, Song Qingwei, vice-chairman of the 9th National People’s Congress Foreign Affairs Committee, urged that “To fundamentally curb and eliminate corruption in China, one of the keys is to establish and perfect legal mechanism against corruption, promptly deliberate and formulate “Anti-corruption Law”. During the sessions of NPC and CPPCC in 2002, some delegates even put forward a motion that an “Anti-corruption Law” be enacted as soon as possible.⁴

The “Implementation Outline of Establishing and Perfecting System to Punish and Prevent Corruption by Attaching Equal Importance to Education, Institution and Supervision” which was promulgated in 2005 stated clearly that the country should “speed up anti-corruption legislation, deliberate and formulate specialized anti-corruption law”. This indicated that the CPC Central Committee had added legislation of specialized anti-corruption on its top agenda. Together with the goal “By 2010, a basic framework for the punishing and preventing corruption mechanism shall have been installed” stressed in “Implementation Outline”, some scholars and media predicted upon the promulgation of the “Implementation Outline” that “the time for formulation of specialized anti-corruption law is not remote and should be within 5 years.” However, it has been 4 years since the “Implementation Outline” was promulgated. The development of this specialized anti-corruption law is slow without breakthrough.

(2) Coordination of Party Rules and State Laws

Party rules and State laws are two powerful weapons for the Chinese government to combat corruption. The coordination of these two weapons in such a way that party rules are integrated with State laws is pivotal to the development of anti-corruption by law and by institution in China.

Owing to imperfection in the legal system, the fights against corruption in China have been relying on party policies for long. These fights usually come in three forms of “anti-corruption movement” as follows: 1. Fight against corruption in the form of Party rectification. Party rectification is a frequent measure to solve internal problems in the history of CPC and includes educational programs and disciplinary actions. The Yanan Rectification Movement well-known in modern Chinese history is a case in point. This kind of rectification remained popular till 1990s. In mid-1980s, the CPC set up the Central Party Consolidation Guidance Commission and organized two rectification movements. The aim of that Party rectification was to eliminate unhealthy practices inside the party, such as leading cadres engaging in commercial activities, setting up business enterprises, spending extravagantly under false pretences, squandering public funds on entertaining guests and giving gifts, etc. 2. Fight against corruption in the form of hard-hitting and pursuing big cases. This form of fight is periodic in nature, just like a hurricane, violent when it comes but quiet after it leaves, prompting people to label it “Operation Hurricane”. “Operation Hurricane” is an effective deterrent against corrupt officials but may also deliver a wrong message that they can get away with luck. Moreover, this form of fight tends to go beyond the law in the course of action. For example, corrupt officials put on trial during an operation hurricane usually get a severer punishment than what the law prescribes. 3. Fight against corruption in the form of response to the personal instruction given by top leaders. In corruption cases involving high ranking officials or uncovered by higher authorities, the top leaders’ instruction is an important cause of fight against corruption. Without leader’s instruction, some cases could be postponed or eventually overlooked. In countries whose legal systems are yet to be sound, the personal influence of top leaders is often a key drive in combating corruption.

³ *Oriental Outlook*, July 2006. <http://www.china.com.cn/chinese/zhuanti/liaowang/1266498.htm>.

⁴ In early 2004, Yang Weicheng, delegate of the 10th National People’s Congress and Vice-chairman of All China Lawyers Association (ACLA), called upon the State to formulate specialized anti-corruption laws.

In the new era, the ruling approach of the CPC has gradually shifted from relying on party policies to relying on State laws. Wordings like combating corruption by law and by institution are seen frequently in various party and State policy documents. This transition takes time, however. During this transition period, we need to enforce State laws and regulations as well as party rules and disciplines. In China, party policies and regulations play a guiding and forward-looking role in State laws and regulations to be promulgated when conditions arise. Also they serve as the basis for the formulation of such laws and regulations. Under certain circumstances arising from ruling needs or inappropriate timing for formulating State laws, some key issues are first stipulated in the form of party policies. As a result, how to deal with the relations between party policies and State laws and regulations remains the key issue in the fight against corruption in China.

Take, as an example, the famous “Shuanggui” system implemented by the CPC. “Shuanggui” is a powerful weapon for discipline inspection and supervision organs to punish corruption. Since its inception, it has been widely applied by discipline inspection and supervision organs at all levels, but at the same time has also aroused many concerns and controversies which are focused primarily on the balance of conflict and coordination between party rules and State laws.

“Shuanggui”, also known as “Double Designated”, originated from relevant measures on discipline inspection, supervision and investigation, including Article 28 of “Regulations on Case Investigation of CPC Discipline Inspection Organs”, Article 30 of “Measures on Investigation and Handling of Administrative and Disciplinary Cases by Supervisory Organs” and Article 20 of “Administrative Supervision Law of the People’s Republic of China”. The essence of “Shuanggui” is that “based on investigation needs, the investigation group may, acting in accordance with the prescribed procedures, order a person under investigation and other persons involved to give an explanation on issues relating to the case at a designated place within the designated time. Any organization or individual who knows some facts of the case is obliged to provide those facts without concealment.” The provisions regarding discipline inspection and supervision organs state that “the investigation group may, if deemed appropriate, order that “Shuanggui” or “Double Designated” be enforced.” But those provisions fail to set out the detailed procedures or full definition of “Shuanggui” or “Double Designated”. Rather they just mention that “a notice of supervision shall be produced in accordance with the prescribed procedures”. Nevertheless the “Administrative Supervision Law” provides clearly that “the person under investigation shall not be detained or imprisoned (under the name of “Shuanggui”)”.

“Shuanggui” was originally one of the measures for administrative supervision, the target of which was presumably either State administrative personnel or civil servants or persons in charge of enterprises or institutions responsible for recruitment, appointment or dismissal through administrative channels. According to the practical conditions in China, these people are usually CPC party members, and could be the subject of investigation by the discipline inspection commission. Meanwhile, the discipline inspection commission enjoys a higher and more influential status than the procuratorates in the political hierarchy of our country. As a result, the supervisory function assumed by the procuratorates has gradually shifted to the commission, and “Shuanggui” has become a key measure in case investigation conducted by discipline inspection and supervision organs of the Party.

In China, it has become a usual pattern that criminal cases involving bribery and corruption are investigated first by a party organization (the discipline inspection commission) and administrative supervision organs and then transferred to judiciary organs. Of all big cases in China, such as the Yuanhua case, most were investigated under the decision, guidance and support from the CPC Central Committee and led and commanded directly by the Central Commission of Discipline Inspection. Now it is a common practice for major and substantial cases in corruption to be “thoroughly investigated” by discipline inspection organs instead of law enforcement organs before being transferred to procuratorial organs whose primary duty is to file a public prosecution instead of conducting a case inquiry.

Apart from the above controversy in theory, the “Shuanggui” measure has some problems in practice. One is that “Shuanggui” has been over-extended. Some investigators abuse “Shuanggui” by using it as an everyday tool for investigation, regardless the size of the case and its necessity. Since some investigators in certain local districts were of low quality without a good sense of responsibility, or the cases under investigation simply failed to meet the minimum requirements for “Shuanggui”, the subjects under such “Double Stipulated” eventually escaped or committed suicide. Such typical cases include the case of “Subject Seized by Force During Shuanggui”⁵ organized by Yao Chuanrui, former general manager of the Shenzhen branch of China Construction International Corporation and his mistress, and the case in which Liang Yuncai, former Party secretary and Chairman of International Trust & Investment Co., Ltd. of Hebei Province, was beaten to death during “Shuanggui”⁶, and the case in which Zeng Jinchun, Secretary of Discipline Inspection Commission of Chenzhou, Hunan Province, broke the law deliberately by abusing “Shuanggui” for his own gains⁷. It was reported that a large number of cadres in Chenzhou fell victim to Zeng’s abuse of “Shuanggui”. While there are many government departments such as the highway, communications, taxation, and industry and commerce administration bureaus located in a street by the name of Chengnan Street in Guiyang County, Chenzhou city, all the leading cadres of these government agencies and departments were made subjects of “Shuanggui” by Zeng with no exception. Furthermore, Zeng even made “Shuanggui” his tool for seeking personal gains by detaining private enterprise owners who were neither party members nor cadres purely for controlling and securing some mining interests.

⁵ In 2006, Yao Chuanrui, General Manager of the Shenzhen branch of China Construction International Corporation, became the subject of “Shuanggui” for alleged serious violation of laws and regulations, and was under investigation at Qiluging Hotel in Haidian District of Beijing. His mistress, Liu Qian, in Shenzhen heard the news soon. She rushed to Beijing together with Yao Chuanrui’s brother and nephew, and promptly laid down four “rescue” plans: 1) bribe the security guards who are keeping watch on Yao and, once Yao is out, immediately take him away by the cars arranged by Liu Qian waiting outside the hotel; 2) break the window of the school right behind Yao’s room and get Yao out; 3) drug the guards watching Yao, then bring Yao out; 4) break into the room by disguising themselves as waiters who deliver meals to the room daily and seize Yao out of the room. Meanwhile, Yao had successfully incited an under-aged guard, Li Xiaolei, to collaborate with them from within as a plant. After discussions, they finally decided to use plan 4 to seize Yao. At 6 am on February 27, they arranged 3 cars to wait outside the hotel. A dozen of men followed the meal delivery guy into Yao Chuanrui’s room, and blocked the iron door and “quarreled” with the 5 security guards inside the room. Yao Chuanrui escaped in chaos and headed direct for Tianjin. He planned to flee to Shanghai the next day, but out of his expectation, Yao Chuanrui was re-captured on the train from Tianjin to Shanghai the next day. Please refer to “Present-day prison break: the first “Shuanggui” escape case” staged in Beijing” <http://www.c007.com/ffcl/8005.htm>.

⁶ On March 6, 2005, the discipline inspection commission of Hebei State Assets Management Commission decided to “Shuanggui” Liang Yuncai, former Chairman of International Trust & Investment Co., Ltd. of Hebei Province, for a period of two months due to his alleged economic problems. During the period of “Shuanggui”, two procuratorate participated in the investigation and withdrew all investigators for failing to find out any criminal facts. On April 14, 2005, the discipline inspection commission of Hebei State Assets Management Commission started to investigate this case alone after changing the location of “Shuanggui”. The discipline inspection cadres in-charged onsite were Zhang Zitao and Sun Wei. Liang was beaten to death on May 7, the following day after the expiry of the two-month “Shuanggui” period. Luo Changping: “Public Prosecution on the Death Case of Former Chairman of International Trust & Investment Co., Ltd. of Hebei Province”, *The Beijing News*, 2005-11-11

⁷ “The Manipulation of Power by Chenzhou Commission for Discipline Inspection in Hunan Province: Many Officials were Victimized by Means of ‘Shuanggui’”, *Democracy & Law*, October 2006, “http://news.xinhuanet.com/lianzheng/2006-10/08/content_5176342.htm” http://news.xinhuanet.com/lianzheng/2006-10/08/content_5176342.htm.

Two is that some investigation results of “Shuanggui” were not handled seriously. “Shuanggui” results in the subject being found either corrupted or clean. Normally a person wrongly arrested or wrongly detained by law enforcement officers can claim damages from the State, and the officers concerned may be subject to punishment. This, however, does not apply to “Shuanggui”, which is not covered by State compensation. Can a person wrongly made the subject of “Shuanggui” claim damages from the State, or can he pursue the responsibilities of the organs which ordered for “Shuanggui”? At present there is no explicit provision on that. This is unfair to the innocent and the irrational outcome may trigger undue resistance harmful to social stability.

For subjects of “Shuanggui” whose wrongdoings are uncovered, there can be two outcomes according to the nature and scale of such wrongdoings: either internal disciplinary action within the Party or being turned over to judicial organs for prosecution and punishment. But there exists a gray area between internal penalty and criminal punishment. In consideration of various factors, there is no unified standard for handling corrupt officials uncovered by “Shuanggui”. There are plenty of rooms for manipulation for the same corruption cases as to whether the corrupt should be turned over to the judicial organs for prosecution or what measure of punishment should be adopted after filing a prosecution.

As for the issue of unified standard of punishment for corrupt officials, we have found that corrupt officials arrested during anti-corruption movements are likely to receive severer punishment than those arrested normally; corrupt officials arrested from sensitive provinces, prefectures and positions are likely to receive severer punishment than those from other provinces, prefectures and positions; and corrupt officials who aroused public indignation are likely to receive severer punishment than other ordinary corrupt officials. As illustrated by the following table, officials taking fewer bribes got severer punishment due to their low ranking and limited influence from their positions.

Name	Former Position	Case Summary	Punishment
Zhou Liangluo	Haidian District, Beijing	Making use of office for the benefit of others, accepting RMB16.72 million in bribes	Sentenced to death with a two-year reprieve and deprived of political right for life
Wang Shouye	Deputy Commander of the PLA Navy	Corruption and abuse of power, embezzling public funds of RMB160 million, keeping at least 5 mistresses	Sentenced to death with a two-year reprieve and deprived of political right for life
Wang Wulong	Vice Chairman of the Standing Committee of Jiangsu Provincial People's Congress	Accepting RMB6.83 million in bribes	Sentenced to death with a two-year reprieve, deprived of political right for life, and all personal property confiscated
Hu Changqing	Deputy governor of Jiangxi Province	Accepting RMB5.4425 million in bribes, and keeping RMB1.6177 million of property with unidentified sources	Sentenced to death, deprived of political right for life, and all personal property and illegal gains confiscated

Name	Former Position	Case Summary	Punishment
Pan Guangtian	Vice Chairman of Shandong Provincial Committee of the Chinese People's Political Consultative Conference	Making use of office for the benefit of relevant enterprises and individuals, accepting illegal property for 31 times from 11 individuals and organizations, the total value of which amounts to RMB1.57 million.	Sentenced to death and deprived of political right for life
Liu Fangren	Secretary of the CPC Guizhou Provincial Committee	Making use of office for the benefit of others, accepting alone or with his daughter-in-law RMB6.61 million and USD 19,900 in bribes, amounting to RMB6.77 million in total	Life imprisonment, deprived of political right for life, and all property confiscated
Du Shicheng	Deputy secretary of the CPC Shangdong Provincial Committee, secretary of the CPC Qingdao Municipal Committee	Making use of office for the benefit of relevant enterprises and individuals, accepting illegal property amounting to RMB6.26 million in value	Life imprisonment, deprived of political right for life, and all property confiscated

In general, in order to establish and perfect the legal system, effective policies and measures in anti-corruption practice should be transformed into State laws through legislation, making them more authoritative and consistent in national enforcement. Meanwhile, a code of conduct should be defined timely by addressing the development situation for party members and cadres to follow. In particular, strict disciplinary requirements should be laid down in the form of party rules by making full use of their timely, flexible and tailor-made features when it is inconvenient to stipulate certain acts by State laws.

(3) Coordination of enforcement organs

The current anti-corruption organs in our country are the discipline inspection organ of the ruling party, the administrative supervision organ and the procuratorial organ, with the former two sharing the same offices and resources. Owing to the differences in leadership hierarchy and functions as vested by law, each of the above three organs under the ruling party, government and judiciary respectively has its own duty while the discipline inspection organ of the ruling party looks after the overall organization and coordination. In respect of the judicial organ, the procuratorate is the body vested by the Constitution to supervise the enforcement of law. It is responsible for functions such as criminal prosecution, investigation and supervision, and crime prevention, and is therefore not a specialized organ for anti-corruption. There is indeed an anti-corruption department in the procuratorate but it is known for its limited independence.

International anti-corruption laws call for the establishment of a specialized anti-corruption institution with vested independence. In the case of China, however, there is something discordant in power and functions among these major anti-corruption institutions.

Most importantly, “the officers in charge of anti-corruption cases are under the substantial influence of the party commission.” Pursuant to the “Regulations on Case Investigation Undertaken by CPC Discipline Inspection Organs”, all violations of party rules involving members of the CPC Central Committee or Central Commission for Discipline Inspection of the CPC shall be submitted to the Central Committee by the Central Commission for Discipline Inspection for approval before case opening; violations involving members of party committees or discipline inspection commissions below the central level shall be submitted to the immediate supervisory committee or commission for approval before case opening. Before determining whether or not to open a case, the immediate supervisory discipline inspection commission shall always consult the party committee at the same level. Violations involving other members shall be submitted to the party committee at the same level by the discipline inspection commission at the same level for approval. Although the punishment to be imposed on officials in question are determined by courts, the above practice has in fact empowered the party committees to exercise their influence over their measurement of penalty, and retain to a considerable extent the right to punishing corrupt officials.

The political system in China is characterized by the fact that a higher organ retains control of its subordinate organ through assessment. Should the officers in charge of the subordinate organ fail to finish the allocated tasks or achieve specific political missions, it is fully possible to make administrative adjustment by means of organizational behaviour. The responsibility system of construction of the Party’s style of work and a clean government is a typical case in point here. Pursuant to the “Provisions on Practising the Responsibility System of Construction of the Party Style of Work and A Clean Government” promulgated by the CPC in 1998, “the leading teams and leading cadres of party committees (leading party members’ group) and governments (administrations) at all levels and their functional departments shall bear the responsibility in construction of the Party’s style of work and a clean government. The subject of responsibility in construction of the Party’s style of work and a clean government is the leading group of the party and governments at all levels, as well as members of the leading group, and the top leader of each leading team of the party and government at all levels is the first person to be held responsible for the construction of the Party style and a clean government at the corresponding prefectures, departments and working units.” This responsibility system aims to connect the anti-corruption construction with the assessment of leading cadres, so as to require leading cadres to strengthen anti-corruption construction by means of organizational behaviour. Officers failing to meet the construction targets shall have to bear responsibilities. Undoubtedly this ensures the implementation of the responsibility system for anti-corruption construction within the organizations and working units. Nevertheless owing to some defects in the design and implementation of this specific system, there is still room for the improvement in its effectiveness. For instance, when the top leader of a party committee is held responsible for the anti-corruption construction in the corresponding organization or working unit, he is the one to blame in case a corruption case is uncovered. If a real problem emerges, he may choose to go through internal disciplinary penalty to minimize the impact, and not to tackle the problem in public by reason of maintaining the stability of the unit in question. In that sense, the discipline inspection and supervision organ can only play a review role afterwards, rather than a steering role right from the exposure of the case. Thus discipline inspection and supervision organs are put in a sideline position and rendered powerless in stemming law breaking and discipline violation acts in a timely manner. A party secretary shall not be made the person in charge of discipline inspection and supervision, and neither should the “person supposed to be supervised be empowered to supervise his supervisor”.



Scholars have different point of views on the existing anti-corruption regime. Some favour the “Perfection Theory”, arguing that “the organizational structure of the anti-corruption system in China has its typical national features.” The powers are not invested in a single specialized organ, but jointly held by the CPC discipline inspection organ, the administrative supervision organ and the judicial organ (mainly the procuratorate), thereby forming a specialized organizational system with well-defined division of work and distinctive terms of reference yet harmonious coordination and collaboration.” They believe that “the best thing to do now is to perfect the existing system, instead of establishing a brand-new independent specialized organ.”⁸ Others propose the “Reform Theory”, arguing that the present anti-corruption mechanism of “three organs in coexistence” fails to establish a core organ among the three, not to mention putting them in proper positions. As to the supervision targets, there is no unified standard in the division of work among the three, resulting inevitably in certain “overlapping zones” or “blank zones”. In their fight against corruption, each of the three organs has some organizational defects. Such reflections point to a reform for the existing system. Some favour the adoption of the people’s congress system, i.e. by making anti-corruption organs subordinated to the People’s Congress; some prefer the procuratorate system by vesting anti-corruption inspection and investigation power in the procuratorial organs; and some incline to the adoption of administrative system by vesting anti-corruption inspection and investigation power in the public security organ or supervision organ. And yet some others put forward the “Coordination Theory”, arguing that a new coordination organ should be established while the system of “three organs in coexistence” is to be kept intact.⁹

(4) Dispute on stipulations of specific laws and regulations

Apart from the above-mentioned systematic constraints in the macro sense, to establish and implement an anti-corruption and integrity upholding law system in China, certain specific laws and regulations will need to be perfected.

(i) The crime of huge unidentified property

The 7th session of the Standing Committee of the 11th National People’s Congress promulgated the “Amendment VII to the Criminal Law of the People’s Republic of China” on February 28, 2009, which raised the legally-prescribed punishment of crimes of holding a huge amount of property with unidentified sources from 5 years to 10 years of imprisonment. Since then, years of public debate over the amendment to the “crimes of huge unidentified property” has been resolved.

In 1997, Article 395 of the “Criminal Law” stipulated that, regarding the “crime of huge unidentified property”, “a State public servant whose property or expenditure apparently exceeds his/her lawful incomes may, if the difference is huge, be ordered to explain the sources of his/her property. If he/she fails to explain the lawful sources of his/her property, the exceeding portion shall be treated as illegal gains. The public servant shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention, and the amount exceeding his/her lawful income shall be taken over...” The reason to amend this article is that some NPC deputies, the Supreme People’s Court and Supreme People’s Procuratorate consider the penalty for this crime too light and suggest enhancing the penalty.

⁸ Cheng Weiqiu. *Selected Works of Cheng Weiqiu — Comparison and Reference to Sino-foreign Criminal Litigations* [M]. Beijing: China Legal Publishing House, 2001.

⁹ Yao Wensheng. *Brief Discussion on the Construction of Specialized Anti-corruption Mechanism* [J]. China Legal Science, 1995(4).

It is true that the penalty for the crime of huge unidentified property is too light, which can be shown in the following aspects: First, the penalty cannot catch up with the economic development. In 1988, the NPC Standing Committee defined “holding a huge amount of property with unidentified sources” as a crime for the first time. Later, when the “Criminal Law” was amended in 1997, “the crime of huge unidentified property” was included in the Law. More than 10 years have lapsed now since 1997, China’s economy has boomed and goods prices have soared. The Chinese people’s income today and that of some 10 to 20 years ago cannot simply be mentioned in the same breath. The annual per capita disposable income of all urban households was 13,786 yuan in 2007, which is more than 5 times of that in 1997. In 1989, the following year after the crime was written into law, a person named Jin from Yunnan Province was convicted of this crime with unidentified property of only some 10,000 yuan, whereas the unidentified properties of recent convictions were often in millions and 10 million yuan. In the past, 10,000 yuan could be considered “huge” for penalty while at present, unidentified property of 10 times or 100 times of that may be sentenced for the same penalty. The legislature should consider how to distinguish crimes scientifically.

Second, the punishment is lighter than that of other crimes. According to the “Criminal Law”, the legally-prescribed punishment of the “crime of huge unidentified property” is very different from that of crimes of corruption and accepting bribes (the maximum penalty for crimes of corruption and accepting bribery is death penalty, while that for holding unidentified property of million yuan or even 10 million yuan is imprisonment of under 5 years only). Some even make jokes of this by referring to it as the “safe shelter”, “death penalty waiver” for corrupt officials who may deliberately conceal their activities of corruption or accepting bribes and refuse to explain the source of their huge amount of illegally acquired property. This is because of the fact that no matter how much money is involved, the maximum punishment for crimes of huge unidentified property is less than 5 years of imprisonment, which is relatively speaking quite a “bargain”. As for case filing standards, a case will be placed on file for investigation and prosecution when the amount of corrupted money of an individual exceeds 5,000 yuan; and death sentence may apply if the amount exceeds 100,000 yuan. Meanwhile, the starting point for crimes of huge unidentified property is 300,000 yuan, showing a great difference in the measurement of punishment between the two types of crime.

The amendment to the criminal law has doubled the fixed-term imprisonment for the “crime of huge unidentified property”, yet there remains a great difference in the legally-prescribed punishment as compared to crimes of corruption and accepting bribes. Nor can this amendment prevent offenders from refusing to admit crimes of corruption and accepting bribes but being “willingly” convicted of holding huge unidentified property. We must therefore consider formulating laws forthwith on the declaration of property by civil servants, so as to form a complete and systematic property declaration system in legal senses; and treat the crime of holding huge unidentified property as a crime of inaction and take refusals to declare or false declaration as the basis for pursuing criminal liabilities, i.e. to define crimes of refusing to declare, false declaration and others.

(ii) Property declaration system for officials yet to be established

When defining the crime of huge unidentified property, many countries and regions have established a property declaration system for civil servants who are closely related to the crime by means of specialized legal provisions, i.e. the so-called “Sunshine Law”. In my opinion, the reason for the powerful effect of defining crimes of huge unidentified property lies in the fact that the stipulation of this crime is based on the precondition of the establishment of a property declaration system for officials. China is yet to establish a real property declaration system in legal senses. This has given rise to the many insuperable defects in the legislation, both legitimately and technically, of the crime of huge unidentified property under the existing criminal law.

As early as in 1987, some people realized that the crime of huge unidentified property must be established upon such a property declaration system¹⁰. In 1988, the NPC drafted a bill for setting up a property declaration system. Six years later, the NPC put the first ever property declaration law into its agenda of legislation. Since then, the Central Committee of CPC had issued the “Provision on Income Declaration for Leading Cadres of the Party and Administration Organs at County and Upper Levels”, the “Provisions on Household Property Declaration for Leading Cadres Holding Current Positions at Provincial and Ministerial Level (Trial Implementation)”. It is to be regretted, however, that since these policy documents lack the authority of laws, the scope of property declaration is limited and inadequate and the organ supervising the property declaration system lacks the competent authority, the establishment of a definite and comprehensive property declaration system for officials in China remains as an appeal from all sectors of society.

In the afternoon on February 28 this year, Premier Wen Jiabao talked online with net users from home and abroad. When asked about anti-corruption, Premier Wen said that the establishment of a property declaration system for officials was an important measure to fight against corruption. He also disclosed that the preparation work for this system was well under way. The system of property declaration for officials is the sword of Damocles hanging over head, giving warnings to those officials who tempted to cross boundaries. The establishment of a property declaration system for officials is an important mechanism to curb corruption from its source. As such, China is in desperate need of a comprehensive property declaration system for officials at the institutional level, which brings the “Sunshine Law” into full play.¹¹

(iii) Debate over the abolishment of death penalty for corrupt officials

As corrupt officials can be sentenced to death according to laws in China, some countries refuse to deport corrupt officials fleeing abroad for human rights considerations. In view of that, calls for abolishing death penalty were put forward, so as to put criminal laws in line with international practice. It is my opinion that death penalty should not be easily abolished under the current corrupt situation; otherwise this could enable unbridled corruption activities by corrupt officials.

Whether the death penalty is legitimate or not and whether the death penalty should be abolished or not have triggered years of debate. Death penalty, permitting the deprivation of life, has become the capital punishment. At the annual sessions of NPC and CPPCC in 2006, some NPC deputies proposed that the criminal law be amended to reduce the charges of death penalty, limit the application of death penalty and set up a death penalty absolution system, and to abolish death penalty for most illegal gain of property and

¹⁰ On November 17, 1987, when Wang Hangbin, the then Secretary-General of the Standing Committee of the NPC and Chairman of the Commission of Legislative Affairs, elaborated on the “Supplementary Provisions on Punishment over Crime of Corruption and Bribery” to be adopted at the 23rd session of the Standing Committee of the 6th National People’s Congress, he pointed out that, “It should be stated that in some countries, officials are required to make property and income declaration. The issue of whether a property declaration system is to be set up for State personnel in China should be addressed and resolved in other relevant laws”.

¹¹ It is my opinion that the property declaration system for officials should be established in the following manner: it is suggested that the system be identified as an institution in the form of fundamental law by way of amendment to the constitutional law. The property declaration system should be introduced into the “Civil Servant Law” by revising the Law, and other supporting laws and regulations should be formulated. A comprehensive financial real name system should be set up; and laws and regulations to prevent capital flights, to perfect estate tax, gift tax and others should also be formulated. An operational mechanism should be established to address the following issues: 1) enlarge and define the scope of property declaration; 2) define the statutory entity in charge of the system; 3) broaden the scope of making declaration public; and 4) apply strict supervision and punishment, so as to ensure true and accurate declarations made by officials.

corruption crimes. The essence of the debate on “death penalty for corrupt officials” is the discussion of the legitimacy of death penalty on one hand and, on the other, the question of how to treat corruption activities and combat corruption.

At present, a new development trend is shown in corruption crimes, with the amount of money involved becoming higher and higher, and the number of corruption cases soaring at staggering pace. Corrupt officials, regardless of their ranks, are involved in millions, 10 million or even 100 million of illegal money. All these happen even when death penalty is in place, let alone when death penalty is abolished and corrupt officials would make no scruple to commit corruption crimes. Corrupt officials should pay high prices for the crimes they have committed for the sake of social justice. If there is no such capital punishment in place, the officials will tend to pursue more personal profit and material gain. The profitable return would mean the more illegal gains they make, the more worthwhile it would be; and the concept of “official worship” and holding the official position for making more money would even be more deep-rooted. This will impose a negative counter effect on the rule of law culture and legal system.

III. Development of a legal system to combat corruption and uphold integrity

1. Scientific development of an anti-corruption legal system

Since the adoption of reform and opening-up policy, China’s development of combating corruption and upholding integrity has transformed from anti-corruption campaigns and anti-corruption by power and authority to anti-corruption by the rule of law, which has become more and more scientific, systematic and forward-looking. To further enhance the effectiveness of anti-corruption efforts, it is necessary to strengthen the orientation of the anti-corruption legal system from the perspective of the rule of law.

The relationship between the formulation of Party rules and regulations and State legislation must be attended to. Party committee and discipline inspection commissions at all levels should study and decide carefully which provisions could continue to be stipulated in the form of party rules and regulations, and which could be transformed into State laws; and through legal procedures propose to the NPC or the government in due course any proven and mature regulations that could be transformed into State laws. Clearly define Party rules and regulations and their relationship with State laws, and let them both play their roles in their respective area. To strengthen the State legislation on anti-corruption, and let the Party’s advocacy of anti-corruption be the State will to ensure the sustainable, in-depth and healthy development of anti-corruption work, thus forming a well-organized network of systems.

To formulate a specialized “State Law of Clean Administration” or “State Anti-corruption Law”. Although some specific corruption activities are stipulated in the existing relevant laws and regulations in China, these laws and regulations cannot replace the specialized anti-corruption law or law of clean administration. Moreover, the punishments stipulated in the existing “Criminal Law” for eight types of crime of taking advantage of duty for illicit gains, including corruption, are arbitrary. This enables corrupt officials to make use of the loopholes and escape from legal punishment through various channels. At present, it is necessary to sum up the experience of anti-corruption practices and, through reviewing and refining, to standardize among other things the subject and procedure of anti-corruption and the related punishment, and to enhance the relevant work of legislative and judicial interpretation. The general principles of this law should stipulate the State anti-corruption system, and define the legal status and terms of reference of various specialized organs, international cooperation, and the principle of special litigation procedures. To go in line with this, the “Property Declaration Law for Civil Servants” should be formulated to supervise the property and income sources of civil servants. The “Ethical Law for Civil Servants” should also be formulated to include such areas as moral standards, disciplinary standards and important personal affairs reporting system for public servants, as well as to prohibit giving treats and gifts. Furthermore, a civil confiscation system for corruption gains should be set up, allowing the People’s Procuratorate to file civil cases so as to realize the rights of “confiscating such property without criminal trial or sentences”.

2. Scientific development of anti-corruption control

“The main issue in China’s anti-corruption system lies not in its institutional organization, but in how to legalize the system. According to the principles of rule of law, the law enforcement authority in anti-corruption must be set up by the NPC, and its rights and responsibilities, and terms of reference stipulated by law. Its law enforcement procedures should follow the basic principles of human rights protection”.¹² At present, the principle of “law enforcement having priority over disciplinary sanctions” should be included in the framework of State laws. The investigation of corruption crimes and the relevant punishment should be based on the law, avoiding any influence from human factors. This principle will not lower the status of discipline inspection and supervision organs but, on the contrary, will make their work more creditworthy and authoritative. This is because the objectives of these organs will be in line with the provisions of laws and regulations, which helps to enhance the overall standard and scientific nature of the anti-corruption work in China. By giving priority to law enforcement over disciplinary sanctions, the punishment for corruption is enhanced since interferences such as pleading and threats from stakeholders of corrupted officials can be avoided in the course of investigation, so as to ensure the fairness and objectiveness of the anti-corruption work.

The judicial procedure applicable to corrupt officials should be scientific and consistent to avoid variations in the measurement of penalty and inconsistency in implementation. The anti-corruption law must not become an elastic rope; and there must be an authoritative and unified standard for law enforcement. Timely punishment must be imposed on corrupt officials in a determined manner. No corruption crime should be tolerated. Penalties, regardless of severity, must be implemented on corrupt official. By reference to the seriousness in the implementation of criminal laws and other laws, the person who is responsible for the implementation of penalty should be charged with delinquency of duty if found to be tolerant and indulgent towards corruption. For corruption activities subject to criminal punishment, the same categories of corruption cases shall receive the same punishment.

To set up a cooperative investigation network, pursuant to the provisions of relevant laws, a joint meeting coordination mechanism should be built among departments such as public security, procuratorate, court, auditing, customs and etc, together with organizations such as taxation, grain, finance, construction, railway, power supply, merchandizing, sales and distribution, industrial and commerce administration, immigration, grass-root judicial organs, to form an integrated investigation network. People from all sectors should also be encouraged to crack down on corruption in accordance with laws, so as to put the entire coordinated anti-corruption investigation network in place in an orderly manner.

3. Scientific development of State anti-corruption system

Anti-corruption and upholding integrity is an international endeavor. The experience of international anti-corruption practices can be used as reference in the policy making process of China. For example, the State anti-corruption system theory proposed by Transparent International provides a framework for anti-corruption construction across different political systems and social cultures. The advocate of the Chinese government that “anti-corruption and upholding integrity is a social system engineering work” has become the fundamental of the State anti-corruption system construction in China. To build a clean State administration in China is to establish and perfect the anti-corruption punishment and prevention system by attaching equal importance to education, institution and supervision which play a different yet supplementary role in the system, where “education” lays the foundation; “institution” provides the assurance, and “supervision” acts as the key. By attaching equal importance to them, they will supplement with one another and enhance the overall efficiency of all aspects of the anti-corruption work.

¹² Guo Guosung: *Combat Corruption by Institution: Clean Administration and Legislation About to Begin* (《制度阻斷腐敗：廉政立法在即》), *21st Century Economic Report*, 2005-21(5).

To establish and perfect such punishment and prevention system is to carry out a huge social system engineering project. As for the specific system, the Chinese Communist Party will play a pivotal role in the State anti-corruption system by adhering to the principle of serving people wholeheartedly. The discipline inspection and supervision organs will assist the Party committee to strengthen the anti-corruption construction and to coordinate anti-corruption efforts. It will also be responsible for the supervision on the compliance and implementation of State administrative organs in accordance with laws, and to investigate and handle cases of administrative discipline violation. Judicial organs will be responsible for handling the crime of taking advantage of duty and to make decisions on the arrest and prosecution of the corrupt suspects, and the trial and sentence of the cases. Auditing organs, news media and the public will all play an indispensable role in the anti-corruption work. At the specific operation level, education programs on anti-corruption, ethics, laws and regulations, and alert and caution education should be carried out thoroughly to promote the awareness of self-discipline and integrity among civil servants. Moreover, China should also further its institutional construction and innovation, deepen the reform of the administrative approval system, and perfect the institution of disclosing administrative affairs related to the government, factories and villages; deepen fiscal, financial and investment structural reforms; strengthen the supervision on fiscal and bank funds; prevent from losing control over State-owned assets; standardize and improve the mechanisms for bidding and tendering for construction projects, assignment of land use rights, trading of property rights and government procurement to prevent the abuse of power for personal benefits; and unify the e-administration and anti-corruption construction through technological innovation, realising the modernization of anti-corruption construction. Regarding the prevention mechanism, it is a new issue as for how to build a scientific and effective early warning system against corruption. To curb corruption from its source, an overall monitor and supervision on the integrity of State personnel is necessary, which will become a scientific index and evaluation benchmark. At present, it is necessary to combine systematic method with performance assessment method and management engineering method to formulate an innovative anti-corruption construction mechanism.



To conclude, China is taking on an arduous yet critical task to embark on the road of combating corruption and upholding integrity. We look forward to working in close collaboration with governments from all over the world to address the severe challenge of corruption in the pursuit of effective means to remove this political cancer. ©