

The Recent Development of China's System of Procuratorate Public Interest Litigation

by Cui Yu

Cui Yu is a Ph.D. candidate at the China University of Political Science and Law, and a visiting scholar at the University of California, Berkeley School of Law.

The establishment of the procuratorate public interest litigation system is not only a landmark achievement of [China's] major judicial reform measures, but also a primary innovative development of the litigation system, further enriching Chinese wisdom and the Chinese approach to protection of the public interest.

—Prosecutor Hu Weilie, director of the Civil and Administrative Procuratorial Department, Supreme People's Procuratorate, February 8, 2018¹

China is in a period of great readjustment, and its legal system is under various pressures and challenges.² Meanwhile, the spectacular economic growth in China has come at a high price, and the public interest has been infringed, especially in the environmental field.³ To address this alarming situation, China's laws⁴ emphasize the expanded role of the procuratorate (broadly speaking, akin to prosecutors in the United States)⁵ in protecting the public interest. "Procuratorate public interest litigation" refers to public interest litigation filed by the Chinese procuratorate, and the appli-

cation of procuratorate public interest litigation has gone through several stages in China.

After a two-year pilot program, the Standing Committee of the National People's Congress (NPC) formally established the Procuratorate Public Interest Litigation (PPIL) System on June 27, 2017. Since the courthouse door in China has been opened for the procuratorate to protect the public interest, the number of such cases has skyrocketed. The vastly expanded number and geographic scope of such cases demonstrates that the procuratorate plays a significant role in protecting the public interest. However, the PPIL System faces many pressing challenges that need to be addressed so that its effectiveness can be increased.

This Comment is composed of the following parts. Part I investigates the expanded role of the procuratorate in public interest litigation in China from a historical perspective; it then details the key features of the PPIL System "on the books." Part II analyzes the implementation of the PPIL System "on the ground," and describes the features and achievements of the juridical practice as it has thus far been implemented. Part III clarifies the urgent challenges that face the PPIL System, and provides some suggestions for further implementation of the system. Part IV concludes that as long as China adopts detailed and feasible measures, the PPIL System will be a viable solution to protect the public interest.

1. See Hu Weilie *Introduced the Implementation of 2017 Procuratorate Public Interest Litigation in China—Interview With the Director of the Supreme People's Procuratorate*, Feb. 8, 2018 [hereinafter *Hu Weilie Interview*], http://gjwft.jcrb.com/2018/1yue_47779/mxt/index.shtml.
2. See Qin Qianhong, *Several Issues on the Theory and Practice of Administrative Public Interest Litigation Field by Procuratorate*, 11 POL. SCI. & L. 83, 83 (2016).
3. Take air pollution, for instance: only 84 of the 338 prefecture-level and above cities in China met the air quality standard in 2016. See *The Bulletin of 2016 Chinese Environmental Statements*, <http://www.zhb.gov.cn/hjzl/zghjzkgb/lnzghjzkgb/201706/P020170605833655914077.pdf>.
4. For example, Article 25 of the Administrative Procedure Law (promulgated by the National People's Congress (NPC) Apr. 4, 1989, effective Oct. 1, 1990, revised Nov. 1, 2014, and June 27, 2017) states that the procuratorate has standing to bring administrative public interest litigation.
5. See HE JIAHONG & JON R. WALTZ, *CRIMINAL PROSECUTION IN THE PEOPLE'S REPUBLIC OF CHINA AND THE UNITED STATES OF AMERICA: A COMPARATIVE STUDY* (1995).

I. Overview of China's PPIL System

A. China's Application of the PPIL

As early as the 1990s, the procuratorate began to file public interest litigation in China.⁶ To some extent, since China lacked a mechanism for protecting the public interest, the procuratorate took on the role of “public interest defender.”⁷ Generally, procuratorate public interest litigation went through the following three stages in China.

1. Self-Exploration Stage (1997-2014)

In the late 1980s, China faced a financial predicament⁸ because of the planned economy (in contrast to an unplanned economy, specifically a market economy), resulting in inefficient resource distribution. Thus, in 1993, the Third Plenary Session of the 14th Central Committee of the Communist Party of China (CPC) planned to establish a socialist market economic system and made a decision, “Several Issues Concerning the Establishment of a Socialist Market Economic System,” which proposed that the general principle of economic reform is the “transformation of state-owned enterprise operational mechanism and establishment of the modern enterprise system.”⁹

Under the guidance of this principle, a large number of small and medium-sized enterprises had withdrawn from the state-owned system and become non-state-owned. In a short period of several years, the proportion of the output, employment, and taxation of the non-state-owned enterprises increased rapidly in the Chinese economy, which suggested a substantial transformation of the Chinese economic system.¹⁰ Meanwhile, due to the corruption within some administrative agencies, a large number of state-owned assets were lost, damaging the national interest, which is a form of public interest.¹¹ State-owned assets are the material basis for economic development, occupying an important position in China.

Faced with this situation, regardless of the lack of clear authority under Chinese law,¹² the procuratorates

initiated lawsuits to protect the public interest. The first such lawsuit was filed in Henan Province in 1997. In this case, the Industry and Commerce Bureau of Fangcheng County, Henan Province, sold state-owned assets to a private party at a price of Renminbi (RMB) 20,000 Yuan (around US\$3,150), which was below the legally stipulated price of RMB 60,000 Yuan (around US\$9,450). After receiving complaints from the public, the Procuratorate of Fangcheng County affirmed that even though this activity was not a crime, it did cause the loss of state-owned assets since state-owned assets were sold for less than the legally stipulated price. Then, in an unprecedented move, the Procuratorate filed a lawsuit against the local Industry and Commerce Bureau, asking the court to annul the sales contract. After trial, the court issued a judgment declaring that the sales contract was invalid.¹³ Since then, the procuratorates throughout China have initiated lawsuits to safeguard the public interest, making prominent achievements. For example, in Henan Province, the procuratorates handled 1,572 public interest litigation cases, recovering RMB 270 million Yuan (around US\$42.5 million) in economic losses.¹⁴

The experience of the Procuratorate of Fangcheng County gradually spread in the procuratorate system throughout China. However, in 2006, the Supreme People's Court (SPC) suspended the juridical practice of public interest lawsuits filed by procuratorates. Su Zelin, former vice president of the SPC, pointed out that “in recent years there have been cases in which the procuratorates, as the state's legal supervision organ, have brought civil lawsuits as plaintiffs; currently the people's courts have no legal basis to accept these types of lawsuits.”¹⁵ As a result, the Supreme People's Procuratorate (SPP) issued a “Notice on Several Issues Concerning Strictly Performing Legal Supervision in Accordance With the Law and Promoting Procuratorial Reform.” This judicial interpretation clearly stipulated that “given that there is no legal basis of the procuratorate public interest litigation, and the PPIL System needs further research and exploration, the procuratorate shall not file public interest litigation in the future without the approval of the SPP.”¹⁶

2. Authorized Pilot Stage (July 2015-June 2017)

As the leading political party, the CPC's policies have a dominant position in the formulation of government policies, law making, and law enforcement at both the national

6. See Shen Kaiju & Xing Xin, *Study on Pre-Trial Procedure of Procuratorial Organ Initiating an Administrative Public Interest Litigation*, 5 ADMIN. L. REV. 39, 40 (2017).

7. See Liu Yi, *The Judicial Practice and Theoretical Exploration of Public Interest Litigation Brought by the Procuratorate*, 25 J. NAT'L PROSECUTORS C. 3, 4 (2017).

8. See Fang Weizhong, *The Course of Economic Development in China During the 1980s and Chen Yun's Guiding Principles for Economic Development*, 12 CONTEMP. CHINA HIST. STUD. 27, 33 (2005).

9. Decision of the Central Committee of the Communist Party of China on Several Issues Concerning the Establishment of a Socialist Market Economic System (adopted by the CPC Central Committee Nov. 12, 1993).

10. For example, in 1989, the non-state-owned economy accounted for 44% of industry, 61% of retail commerce, and more than 95% of agriculture. See Guo Shuqing *Describes the Tortuous Development of China's Economic System Reform*, SOHU, Feb. 25, 2017, <http://news.sohu.com/20170225/n481727004.shtml>.

11. See Yi Ding, *More Than RMB 500 Billion Yuan of the State-Owned Assets Were Lost in 10 Years*, 3 SHAANXI AUDIT 47, 47 (1996).

12. For example, according to paragraph 1 of Article 108 of the Civil Procedure Law before its amendment in 2017, only “a citizen, legal person or any other

organization that has a direct interest in the case” could bring suit.

13. See Yang Lixin, *Prospects for the Development of Civil Administrative Prosecution in China*, 2 J. HENAN U. ECON. & L. 3, 11 (1999).

14. See Li Tao, *A Brief Analysis of the Scope and Procedure of Public Interest Litigation Brought by Procuratorates in Henan Province*, 6 CHINESE PROCURATORS 4, 4 (2005).

15. See Su Zelin, *Several Issues Regarding Specialization of Case Acceptance and Adjudication*, PEOPLE'S CT. DAILY, Nov. 30, 2006, http://oldfyb2009.china-court.org/fybpdf/2006_11/20061130_5.pdf.

16. See Xu Quanbing, *Study on Public Interest Litigation Brought by Procuratorial Authorities*, 24 J. NAT'L PROSECUTORS C. 156, 160 (2016).

and local levels.¹⁷ In past years, the CPC had adopted major policies related to public interest litigation. On October 23, 2014, the Fourth Plenary Session of the 18th Central Committee of the CPC clearly pointed out that it is necessary to “search for ways to build a system of procuratorates handling public interest litigation.”¹⁸ Xi Jinping, the general secretary of the Central Committee of the CPC, explained:

[I]n reality, some administrative agencies abuse their power or fail to perform their duties, thus infringing the public interests or risking infringement. However, the citizens, legal persons and other social organizations can't file public interest litigation because they don't have a direct interest. Owing to the lack of effective judicial supervision of administrative agencies' illegal activities, administrative agencies have been reluctant to strictly enforce the law, and to strengthen the protection of the public interest.¹⁹

Then, on July 1, 2015, the Standing Committee of the NPC issued the “Decision of the Standing Committee of the National People's Congress on Authorizing the Supreme People's Procuratorate to Launch the Pilot Program of Initiating Public Interest Litigations in Certain Areas,” which authorized a pilot program of procuratorate public interest litigation. Thirteen provincial procuratorates,²⁰ 87 municipal procuratorates, and 759 county procuratorates were authorized to file public interest litigation during the pilot term of two years (from July 2015 to July 2017). The implementation of the pilot program would adhere to the leadership of the CPC.

After the Standing Committee of the NPC authorized the launch of the pilot program, the SPC and SPP released a series of judicial interpretations related to public interest litigation, which serve to supplement the details of the pilot program. For example, on December 24, 2015, the SPP issued the “Measures for the Implementation of the Pilot Program of Initiating Public Interest Litigations by People's Procuratorates,” while on February 25, 2016, the SPC issued the “Measures for the Implementation of the Pilot Program of Trial by People's Courts of Public Interest Litigation Cases Instituted by People's Procuratorates.”

In brief, during this period, the pilot program of procuratorate public interest litigation was carried out under the authority of the NPC. The SPP and SPC implemented the pilot program and submitted reports to the NPC. It is worth mentioning that when the 18th Central Committee of the CPC explored the establishment of the PPIL System, it coincided with the revision of the Administrative Proce-

dures Law (after 25 years of operation). There were proposals from legal experts, scholars, and judges calling for relaxing strict standing requirements for initiating administrative public interest litigation.²¹ Unfortunately, due to strong opposition from the administrative authorities, these proposals were not accepted by the legislators.²² That is to say, administrative public interest litigation was not included in the 2014 Administrative Procedure Law.

3. Formal Legislation Stage (July 2017-Present)

Since the launch of the pilot program, the procuratorates in all pilot areas have made significant achievements in protecting the public interest, indicating the feasibility and effectiveness of procuratorate public interest litigation. The NPC was satisfied with the performance of the pilot program, enacting formal legislation as a result. On June 27, 2017, the 12th Standing Committee of the NPC made a decision to amend the Civil Procedure Law and Administrative Procedure Law to formally establish the PPIL System, which means all procuratorates in China are now permitted to initiate public interest litigation. The procuratorate public interest litigation provisions of the amended Administrative Procedure Law and Civil Procedure Law require the procuratorates to institute lawsuits against administrative agencies or violators to stop damage to the public interest. Henceforth, China's PPIL System has spread throughout the country instead of being limited to 13 provinces, thus strengthening the protection of the public interest. The courthouse doors in China were completely opened for procuratorates to institute public interest litigation.

B. The Key Features of China's PPIL System

The PPIL System has distinct Chinese characteristics and contains the following key features.

1. Who Has Standing to Sue

Before formal legislation on the PPIL System, scholars debated the standing of public interest litigation. Some scholars insisted that only the procuratorate has standing to sue, while others held that citizens, social organizations, and the procuratorate all have standing to file public interest litigation.²³ Standing to file a public interest lawsuit is different in a civil case and an administrative case. The Civil Procedure Law stipulates that the procuratorate is

17. See You Mingqing, *Annual Review of Chinese Environmental Law Developments: 2015*, 46 ELR 10387, 10387 (May 2016).

18. Decision of the CPC Central Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law (adopted by the CPC Central Committee Oct. 23, 2014).

19. See Xi Jinping's Explanation of the “Decision of the CPC Central Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law,” PEOPLE'S DAILY, Oct. 29, 2014, <http://cpc.people.com.cn/n/2014/1029/c64094-25927958-2.html>.

20. The 13 provincial-level jurisdictions include Beijing, Inner Mongolia, Jilin, Jiangsu, Anhui, Fujian, Shandong, Hubei, Guangdong, Guizhou, Yunnan, Shaanxi, and Gansu.

21. For example, Ying Songnian, emeritus professor of Political Science and Law at China University, suggests public interest litigation should be established in the Administrative Procedure Law. See Ying Songnian, *The Reform and Improvement of the Procuratorial Supervision System in Administrative Proceedings*, 23 J. NAT'L PROSECUTORS C. 60, 66 (2015).

22. See Jiang Tao, *The System of Administrative Public Interest Litigation Brought by the Procuratorial Organs: Thinking of a Chinese Problem*, Vol. 33, No. 6 TRIB. POL. SCI. & L. 15, 15 (2015).

23. See Huang Xuexian, *Several Issues on the Establishment of the Administrative Public Interest Litigation System*, J. SUZHOU U. (PHIL. & SOC. SCI.) 36, 36 (2018).

permitted to institute civil public interest litigation, but only when a social organization is reluctant to bring a case to court,²⁴ while the Administrative Procedure Law explicitly stipulates that only the procuratorate has the standing to bring administrative public interest litigation.²⁵

Public interest litigation is undertaken to protect the public interest, but it is not necessarily initiated by the public. The reasons for the narrow standing are as follows.²⁶ First, because public interest litigation is complicated, individuals may be faced with difficulties, such as gathering evidence, long-term litigation, and other issues, which they cannot solve by themselves. Second, there is a fear of potential abuse of litigation, which would interfere with administrative activity and detract from administrative efficiency. Moreover, this may result in an influx of cases, bringing a heavy burden to the court. Thus, legislators are very cautious about expanding the class of entities that have standing, for fear that it might substantially increase the number of such cases.

The procuratorate has standing to sue and serves as the “public interest litigant,”²⁷ highlighting the unique role of the procuratorate in public interest litigation. Under the People’s Republic of China (PRC) Constitution, the procuratorates along with the courts constitute the major judicial organs. The procuratorate in China, headed by the SPP, is separate from the administrative agencies, but falls under the jurisdiction of the NPC.²⁸ The procuratorate, modeled on the institution of the procuracy in the former Soviet Union, prosecutes criminal cases.

Besides its prosecutorial work, the procuratorate has a duty of legal supervision, which generally involves reviewing cases investigated by the police and supervising criminal, civil, and administrative trials.²⁹ This supervisory role over the courts distinguishes the procuratorate from government prosecuting organs in many other legal systems.³⁰ Procuratorates employ full-time legal professionals, have significant experience dealing with different types of cases, and enjoy statutory authority to conduct investigations and

collect evidence.³¹ Initiating public interest litigation is a new extension of its legal supervision duties.

2. What Suits May Be Brought and Who May Be Sued

The scope of public interest litigation is an important factor in the PPIL System, for it directly determines the extent to which the public interest can be protected through litigation initiated by the procuratorate. Ideally, all kinds of public interest should be protected through litigation, but there are a number of factors related to the scope of public interest litigation. From a theoretical perspective, the scope of the case shall satisfy the constitutional provisions about the relationship between state organs.³² From a practical perspective, it is necessary to consider the ability and resources of the procuratorate and the court.³³

In addition, the procuratorate, as the state organ, should respect the private interest and not interfere with private rights. The disputes about private rights can be solved through civil and administrative lawsuits, without the procuratorate’s interference. Thus, making the distinction between the public interest and private rights is crucial before the procuratorate intervenes in public interest cases.³⁴ Just as there is no clear definition of “justice,” there is no set definition of what constitutes the “public interest.” The scope of procuratorate public interest litigation is limited to certain fields of public interest, which the legislators have determined to be noncontroversial.

Civil public interest litigation and administrative public interest litigation are not the same. The former addresses the environment and natural resources, and consumers’ rights and interests in the field of food and drug safety,³⁵ while the latter addresses the environment and natural resources, food and drug safety, state-owned assets, and the transfer of state-owned land use rights.³⁶ In general, the scope of public interest litigation cases is relatively narrow—that is to say, it does not cover all kinds of public interest.³⁷ For example, some scholars have held that fields such as public security, dismantlement of houses, and land expropriation should be included in the PPIL System.³⁸

Civil public interest litigation also differs from administrative public interest litigation in that the defendant in a

24. The Civil Procedure Law art. 55 (promulgated by the NPC Apr. 9, 1991, effective Apr. 9, 1991, revised Oct. 29, 2007, Aug. 31, 2012, and June 27, 2017).

25. The Administrative Procedure Law art. 25 (promulgated by the NPC Apr. 4, 1989, effective Oct. 1, 1990, revised Nov. 1, 2014, and June 27, 2017).

26. See Ying Songnian, *Several Urgent Problems Related to the Pilot Program of Administrative Public Interest Litigation*, 24 PEOPLE’S TRIB. 64, 65 (2015).

27. See, e.g., Measures for the Implementation of the Pilot Program of Initiating Public Interest Litigations by People’s Procuratorates arts. 15, 42 (promulgated by the SPP Dec. 24, 2015).

28. Article 133 of the Constitution of the People’s Republic of China (promulgated by the NPC Dec. 4, 1982, effective Dec. 4, 1982, revised Apr. 12, 1988, Mar. 29, 1993, Mar. 15, 1999, Mar. 14, 2004, and Mar. 11, 2018) states that the SPP is responsible to the NPC and its Standing Committee. People’s procuratorates at various local levels are responsible to the organs of state power that created them and to the people’s procuratorates at higher levels.

29. The Organic Law of the People’s Procuratorates of the People’s Republic of China art. 5 (promulgated by the NPC July 1, 1979, effective Jan. 1, 1980, revised Sept. 2, 1983, and Dec. 2, 1986).

30. See DANIEL C.K. CHOW, *THE LEGAL SYSTEM OF THE PEOPLE’S REPUBLIC OF CHINA IN A NUTSHELL* 222 (3d ed. 2015).

31. See Sun Changchun & Tang Zishi, *Why the Procuratorate Has Standing to File Administrative Public Interest Litigation*, PEOPLE’S DAILY, Apr. 2, 2015, <http://opinion.people.com.cn/n/2015/0402/c1003-26786322.html>.

32. See Wang Wanhua, *Several Issues on Perfecting the System of Procuratorial Organ Initiating Administrative Public Interest Litigation*, 39 LAW SCI. MAG. 96, 97 (2018).

33. See Ying, *supra* note 21, at 67.

34. See Liu Ziyang, *Experts Say That the Scope of Public Interest Litigation Cannot Cover Everything*, LEGAL DAILY, July 6, 2015, http://www.spp.gov.cn/zdgl/201507/t20150706_100848.shtml.

35. The Civil Procedure Law art. 55 (promulgated by the NPC Apr. 9, 1991, effective Apr. 9, 1991, revised Oct. 29, 2007, and Aug. 31, 2012).

36. The Administrative Procedure Law art. 25 (promulgated by the NPC Apr. 4, 1989, effective Oct. 1, 1990, revised Nov. 1, 2014, and June 27, 2017).

37. See Qin, *supra* note 2, at 83.

38. See Jiang Mingan, *Promote the Procuratorate’s Supervision on Illegal Administrative Activities and Improve Legislation*, PROCURATORIAL DAILY, Mar. 7, 2016, http://www.spp.gov.cn/llyj/201603/t20160307_113859.shtml.

civil public interest case must be a citizen, a legal person, or other organization who potentially harms the public interest, while the defendant in an administrative public interest case is an administrative agency that illegally exercises its power or fails to adequately protect the public interest.

3. Pretrial Procedure Requirement

Xi Jinping noted that the procuratorate should make full use of prosecutorial advice before filing a lawsuit, since the lawsuit is the last defense in the protection of the public interest.³⁹ Pretrial procedure is the indispensable premise of lawsuit procedure, and the lawsuit cannot be filed without the pretrial procedure. According to the judicial interpretation issued by the SPP and SPC on March 1, 2018:

Before instituting an administrative public interest lawsuit, the procuratorate should offer prosecutorial advice to an administrative agency to urge it to correct its illegal activities or perform its duties according to the law. The administrative agency should perform its duties or correct its illegal activities within two months from the date of receiving the prosecutorial advice and reply to the procuratorate in writing. In an emergency situation, such as that the infringement of the public interest continues to expand, the administrative agency shall reply to the procuratorate in writing within 15 days.⁴⁰

The prosecutorial advice should include the following elements⁴¹: a description of the hidden risks or violations that should be eliminated; proposed solutions; the facts, laws, regulations, and other provisions that the procuratorate relies upon to issue the advice; and the time limit within which the advised entity shall send a written reply regarding implementation of the advice.

In essence, the prosecutorial advice is just a suggestion, not an order. Specifically, it serves as a recommendation and the administrative agency can decide whether to adopt this advice. Although prosecutorial advice is not mandatory for the administrative agency, it is an important method to encourage the advised entity to correct its activities. Hu Weilie points out that the purposes of the pretrial procedure requirement are to improve the effectiveness and efficiency of prosecutorial supervision, to urge the administrative agency to perform its duties, as well as to save judicial resources.⁴²

4. Lawsuit Procedure

If social organizations fail to institute a civil public interest lawsuit and the public interest remains damaged, the procuratorate may file a civil public interest lawsuit against the violator, such as a polluter.⁴³

If the administrative agency refuses to correct its illegal activity or perform its statutory duty and the public interest remains in danger, the procuratorate may institute an administrative lawsuit against the administrative agency.⁴⁴ A public interest lawsuit must comply with rigorous procedural restrictions. Specifically, when a local procuratorate decides to institute a public interest lawsuit, it must report potential cases step-by-step to the SPP, which makes the final decision on whether to bring a lawsuit.⁴⁵

When handling public interest litigation cases, the procuratorate should efficiently deal with the relationship between pretrial procedure and lawsuit procedure. The pretrial procedure can save judicial resources, while the lawsuit procedure can enhance the rigidity of the protection of the public interest. In other words, without lawsuit procedure as the subsequent measure, the effect of pretrial procedure cannot be guaranteed.⁴⁶ The combination of these two procedures ensures the efficiency and feasibility of the PPIL System.⁴⁷

5. The Remedies

In a civil public interest lawsuit, the procuratorate may seek remedies such as requiring the violator to: (1) cease the infringement; (2) eliminate obstructions; (3) eliminate danger; (4) restore to a previous condition; (5) compensate for losses; and (6) extend a formal apology.⁴⁸ In an administrative public interest lawsuit, the procuratorate may require the administrative agency to: (1) revoke or partially revoke its illegal administrative activities; (2) perform its duties within a prescribed time limit; and (3) confirm the illegality or invalidity of the administrative activities.⁴⁹

II. Implementation of the PPIL System

It is much easier to enact legislation in China than in some other countries because of its one-party system. The PPIL System has been well-organized formally, but it has not always been clear that its implementation has been effective. Although some local procuratorates have experimented with public interest lawsuits in the past, as discussed above, the cases have been sporadic. Now that the courthouse doors in China have been completely opened for procuratorates to protect the public interest, the num-

39. See SPP, *The Lawsuit Is the Last Defense and the Procuratorial Advice Should Be Strengthened*, http://www.spp.gov.cn/xwfbh/wsfbt/201607/t20160718_152659_1.shtml (last visited Apr. 27, 2018).

40. The Several Issues Concerning the Application of Law in the Procuratorate Public Interest Litigation art. 21 (promulgated by the SPP and SPC Mar. 1, 2018).

41. The Opinions on Issues Related to the Pilot Program of Public Interest Litigation art. 9 (promulgated by the SPP Dec. 22, 2016).

42. See Hu Weilie Interview, *supra* note 1.

43. The Civil Procedure Law art. 55 (promulgated by the NPC Apr. 9, 1991, effective Apr. 9, 1991, revised Oct. 29, 2007, and Aug. 31, 2012).

44. The Administrative Procedure Law art. 25 (promulgated by the NPC Apr. 4, 1989, effective Oct. 1, 1990, revised Nov. 1, 2014, and June 27, 2017).

45. Plan for the Pilot Project of Reform of Instituting Public Interest Litigations by the Procuratorial Organs (promulgated by the SPP July 2, 2015).

46. Notice of the Supreme People's Procuratorate on Effectively Preparing for Comprehensive Public Interest Litigation (promulgated by the SPP July 25, 2017).

47. See Xu, *supra* note 16, at 168.

48. Measures for the Implementation of the Pilot Program of Initiating Public Interest Actions by People's Procuratorates art. 16 (promulgated by the SPP Dec. 24, 2015).

49. *Id.* art. 43.

ber of such cases has skyrocketed and the implementation of the PPIL System has become much more systematic.

A. Overview of PPIL System's Performance

I. Juridical Practice in the Authorized Pilot Stage (July 2015-June 2017)

In the two-year pilot program of procuratorate public interest litigation,⁵⁰ the procuratorates in all 13 pilot areas handled 9,053 cases, which included the fields of the environment and natural resources, consumers' rights and interests in food and drug safety, state-owned assets, and transfer of state-owned land use rights. Among these cases, 7,903 were ended because of pretrial procedure, and 1,150 lawsuits were filed with the courts. Of the 7,903 pretrial procedure cases, 7,676 were administrative and 227 were civil. After receiving prosecutorial advice, administrative agencies corrected their illegal activities or performed their duties in 5,162 cases, and 35 lawsuits were filed by social organizations.

The procuratorates instituted 1,150 lawsuits because the pretrial procedure did not work—that is to say, the social organization failed to institute a civil public interest lawsuit or the administrative agency refused to correct its illegal activities or perform its statutory duties. Among the 1,150 lawsuits, 1,029 were administrative, 94 were civil, two were civil incidental administrative, and 25 were civil incidental criminal. The courts concluded 458 cases, of which 15 were withdrawn because the defendants corrected their illegal activities or performed their duties, six were mediated, and 437 were resolved by the courts in favor of the procuratorates' claims.

During the pilot period, the protection of the environment and natural resources was clearly enhanced. By June 2017, the procuratorates handled 6,527 public interest litigation cases in this area, accounting for 72.09% of the total cases. As a result, about 129,000 hectares of polluted farmland, woodland, wetlands, and grassland were recovered, 180 square kilometers of contaminated water were improved, and more than 1,700 enterprises were punished because of their illegal activities.

2. Juridical Practice in the Formal Legislation Stage (July 2017-November 2017)⁵¹

Since the NPC formally established the PPIL System, all of the procuratorates in China combined handled 7,346 public interest litigation cases, and 6,206 cases were ended because of pretrial procedure. Of the 6,206 pretrial procedure cases, 3,978 concerned the environment and natural resources, 536 concerned the transfer of state-owned land

use rights, and 1,399 dealt with the protection of state-owned assets.

B. Performance of the PPIL System

I. Most of the Cases Are Environmental

Although the topics covered by public interest litigation range from damaging the environment and natural resources, selling state-owned assets, and transferring of state-owned land use rights, to infringing consumers' rights and interests in the field of food and drug safety, environmental cases are the majority in juridical practice. Take Shandong Province for instance⁵²—since the pilot program launched in July 2015, the procuratorates resolved 571 cases through prosecutorial advice, and 101 lawsuits were filed with the courts. Among these, environmental cases were the majority. Specifically, 359 pretrial procedure cases concerned the environment and natural resources, while 52 lawsuits were in this field.

In juridical practice, the reasons for the procuratorates focusing on the protection of the environment and natural resources are as follows. First, China is faced with severe environmental problems. Second, this field has the characteristic of a wide coverage, which allows clues and evidence to be easily found by the procuratorates.⁵³ Third, the SPP directed that the procuratorates should focus on administrative public interest litigation concerning environmental and natural resource protection.⁵⁴

2. Administrative Cases Are the Majority, Mainly Because of Agency Inaction

The juridical practice shows that administrative cases far exceed civil cases, which suggests that administrative public interest litigation has become the main channel for the procuratorate to safeguard the public interest. Moreover, these administrative cases have arisen mainly due to agency inaction rather than illegal activities. Agency inaction is a universal and serious problem in China, and the notion of agency inaction might encompass any instance in which an administrative agency fails to take a desired action.⁵⁵ In public interest litigation, it specifically refers to an instance in which an agency refuses to enforce statutory

50. The information in this section is derived from the SPP. See Xu Ridan et al., *The Procuratorates Handled 9,053 Cases of Public Interest Litigation During Pilot Period*, PROCURATORIAL DAILY, July 1, 2017, http://www.spp.gov.cn/spp/zdgl/201707/t20170701_194471.shtml.

51. See Hu Weilie Interview, *supra* note 1.

52. On June 27, 2017, the People's Procuratorate of Shandong Province held a press conference and introduced the juridical practice of public interest litigation in the province; see Press Release, People's Procuratorate of Shandong Province, Prosecutor's Office in Shandong Province's Press Conference on Public Interest Litigation in 2017 (Aug. 8, 2017), http://www.sdjcy.gov.cn/html/2017/xwfb_0808/15776.html.

53. See Hu Weilie & Tian Kai, *Pilot Project of Procuratorial Organ Initiating Administrative Public Welfare Litigation*, 2 ADMIN. L. REV. 19, 25 (2017).

54. Plan for the Pilot Project of Reform of Instituting Public Interest Litigations by the Procuratorial Organs (promulgated by the SPP July 2, 2015).

55. See Hu Weilie & Chi Xiaoyan, *Study on the Procedure Before the Administrative Public Interest Litigation Based on the Cases of Experimental Unit*, 25 J. NAT'L PROSECUTORS C. 30, 47 (2017).

or regulatory requirements or prohibitions against known or suspected violators.

For example, in May 2016, the Yunyang District Procuratorate, Hubei Province, succeeded in a public interest lawsuit against the local Forestry Bureau, based on its failure to perform its legal duty to punish violators. It was the first administrative public interest lawsuit filed by a procuratorate in Hubei Province since the pilot program was launched.⁵⁶ The Yunyang District Procuratorate found that, in March 2013, the violators quarried in a forest without a permit from the local Forestry Bureau. The local Forestry Bureau ordered the violators to recover the forest vegetation and pay a fine, but the violators ignored the order and continued to quarry in the forest. According to the law, if the violators fail to satisfy the administrative order, the agency should adopt measures to punish the violators.⁵⁷

After it received prosecutorial advice from the Yunyang District Procuratorate in December 2015, the Yunyang Forestry Bureau turned a deaf ear, neither adopting measures to punish the violators nor replying to the procuratorate in writing. Because the pretrial procedure failed and the public interest remained in danger, the Yunyang District Procuratorate instituted an administrative public interest lawsuit against the Yunyang Forestry Bureau in February 2016. The senior officials of the Yunyang Forestry Bureau attended the trial, and the director of the agency bowed to demonstrate contrition. “[The agency] has decided to be a loyal guardian of the environment,” he promised. After the trial, the Yunyang Forestry Bureau performed its statutory duty of pushing the violators to restore the damaged forestland.

3. The Procuratorates Succeeded in Most Lawsuits

Up to November 2017, the courts concluded 827 public interest lawsuits. Among these cases, the procuratorates succeeded in 791 lawsuits; 20 cases were withdrawn by the procuratorates because the defendant corrected its illegal activities or performed its statutory duty, satisfying all claims of the procuratorates; 12 cases were mediated; and four cases were dismissed.⁵⁸ These results demonstrate that the procuratorates have advantages in investigating and collecting evidence, so they can successfully handle public interest lawsuits.

4. Most Cases Are Settled During Pretrial Procedure

During the pilot period (July 2015-June 2017), the procuratorates in all pilot areas handled 9,053 public interest

cases, among which 7,903 were settled during pretrial procedure (accounting for 87.29%). Since the PPIL System was formally established in July 2017, about 6,206 cases went through pretrial procedure (accounting for 84.42% of the total 7,346 cases). This suggests that most cases were ended during pretrial procedure, rather than proceeding to the courts. Compared with civil cases, pretrial procedure appears to be more effective in administrative cases, achieving favorable legal and social effects. Hu Weilie concluded that most of the prosecutorial advice was adopted by the administrative agencies, which shows the efficiency and superiority of the PPIL System.⁵⁹

5. Top-Down Assignment

Given that the PPIL System is quite different from the traditional litigation system, the procuratorates in some areas may not be acquainted with the key features of the system, and they will likely spend significant time and resources in researching the system before formally instituting public interest litigation. Therefore, it was necessary to implement the PPIL System through a top-down assignment, with “the specific schedule and route map . . . planned as a whole.”⁶⁰ On the basis of the principles of judicial reform and the differences between pilot areas, the SPP set “three steps” for the pilot program⁶¹: in the first half of 2016, every pilot area was directed to make a breakthrough in instituting public interest lawsuits; at the end of 2016, all the municipal procuratorates of the pilot areas were directed to institute public interest lawsuits; and in the first half of 2017, all the county procuratorates in the pilot areas were directed to institute public interest lawsuits.

Top-down assignment is the typical administrative measure to ensure progress in the PPIL System implementation. Modern China is, in form, a unitary state, and all power flows from the central government in Beijing.⁶² Top-down assignment is a natural path for China’s leaders to implement the PPIL System in juridical practice.

C. Achievements of the PPIL System

The vastly expanded number and geographic scope of procuratorate public interest litigation cases demonstrates that procuratorates play a significant role in the protection of the public interest. In particular, the reforms related to the procuratorate public interest litigation advocated by the NPC may prompt local procuratorates and administrative agencies to pay more attention to protecting the public interest. Though the PPIL System is in its formative stage,

56. See *The SPC Issued the Eighth Group of Guiding Cases*, JUST. NETWORK, Jan. 4, 2017, http://www.spp.gov.cn/zdgl/201701/t20170104_177546.shtml.

57. The Law of the People’s Republic of China on Administrative Penalty art. 51 (promulgated by the NPC Mar. 17, 1996, effective Oct. 1, 1996, revised Aug. 27, 2009, and Sept. 1, 2017).

58. See Hu Weilie Interview, *supra* note 1.

59. See *id.*

60. Plan for the Pilot Project of Reform of Instituting Public Interest Litigations by the Procuratorial Organs (promulgated by the SPP July 2, 2015).

61. See *Procuratorate Filed Public Interest Litigation in 13 Pilot Areas*, SUP. PEOPLE’S PROCURATORATE, July 18, 2016, http://www.spp.gov.cn/xwfbh/wsfbt/201607/t20160718_152659.shtml.

62. See Liu Jingjing, *China’s Procuratorate in Environmental Civil Enforcement: Practice, Challenges & Implications for China’s Environmental Governance*, 13 VT. J. ENVTL. L. 41, 43 (2011).

some of its intended benefits have already been achieved, as discussed below.

I. Protecting the Public Interest

The most direct effect of the implementation of the PPIL System is the protection of the public interest. According to the arrangement of the Central Committee of the CPC, the procuratorate should firmly emphasize the protection of the public interest when handling public interest cases. "Through the PPIL System, the administrative agency, court and procuratorate are linked together to form a powerful synergy for the protection of the public interest through supervision, coordination and cooperation," Hu Weilie said in an interview.⁶³

With the environment and natural resources, for example, which promotes the construction of a beautiful and healthy China, public interest litigation obviously improves the environmental quality within the country. A series of serious environmental incidents, such as the pollution of the Lianjiang River in Guangdong and the Wujiang River in Guizhou and the ecological destruction of Qilianshan in Gansu Province, have been handled by the procuratorates.⁶⁴

Another example involves the Changbai Mountain Nature Reserve, which is an important ecological protection area in Jilin Province. In 1980, it was included in the Man and the Biosphere Programme by the United Nations Educational, Scientific, and Cultural Organization (UNESCO), and it is one of UNESCO's 28 global environmental monitoring sites. Therefore, protecting the environment of Changbai Mountain is of great significance in maintaining the ecological environment in China. However, environmental and natural resource protection in the Changbai Mountain area involves several administrative regions, multiple enforcement agencies, fragmentation, and unclear responsibilities, making it difficult to protect ecological resources.

Since the pilot program launched in Jilin Province, the procuratorates in several areas have worked together to protect the environment and resources in Changbai Mountain. Up to May 25, 2017, the procuratorates in Jilin Province issued 266 prosecutorial advices, of which 199 were accepted by the administrative agencies. In addition, the procuratorates filed 42 public interest lawsuits, all of which were administrative. Also, 32 cases were resolved by the courts in favor of the procuratorates' claims. Through procuratorate public interest litigation, about 70,200 acres of woodland, 66,000 acres of wetlands, and 24,000 acres of cultivated land were recovered, RMB 7 million Yuan (around US\$1.1 million) of economic losses for mineral

resources were recovered, and around 78 enterprises were punished because of their illegal activities.⁶⁵ As a result, the environment and natural resources in Changbai Mountain have greatly improved.

2. Supervising Administrative Agencies' Performance of Their Duties

One of the long-standing problems in the protection of the public interest in China is the unwillingness of local agencies to correct violations. On the one hand, the vastly expanded number of procuratorate public interest litigation cases demonstrates significant achievement regarding the protection of the public interest; on the other hand, it suggests that a serious situation exists because of administrative agencies' inaction or illegal activities. In the process of performance of the PPIL System, most cases were resolved during pretrial procedure, rather than proceeding to the courts. It suggests that the procuratorate enhances the initiative and enthusiasm of the administrative agency in performing its legal duties.⁶⁶

For example, the Liuzhi Special District Procuratorate, Guizhou Province, filed an administrative public interest lawsuit against the government of Dingqi Town, Zhenning Buyi, and Miao Autonomous County.⁶⁷ This is the first case of cross-administrative divisions jurisdiction, which can relieve the pressure from a local administrative agency. In this case, the defendant used a mountain as a temporary garbage dump without a permit from the environmental sanitation administrative agency. Further, no measures were taken to prevent spreading or leaking or to control rainwater infiltration, which resulted in serious pollution from the disposed waste.

After receiving prosecutorial advice from the Liuzhi Special District Procuratorate in November 2015, the government of Dingqi Town was reluctant to correct its illegal activities. Thus, the Liuzhi Special District Procuratorate filed an administrative public interest lawsuit. Only during the trial did the defendant remove the garbage; however, it did not effectively improve the environment. Therefore, the court issued the following judgment: the site selection for the temporary garbage dump by the defendant was illegal and the defendant should continue to adopt remedial measures according to expert opinions to guarantee significant improvement to the environment within this area.

63. See Peng Bo, *The Procuratorates in Pilot Areas Handle More Than 9,000 Cases in Two Years, Promoting Administrative Agencies to Perform Their Legal Duties According to Law*, PEOPLE'S DAILY, Aug. 28, 2017, http://www.spp.gov.cn/zd gz/201708/t20170828_199274.shtml.

64. See *The Footprints of the Reform of the Public Interest Litigation*, DEMOCRACY & RULE L. WKLY., Feb. 7, 2018, http://www.spp.gov.cn/spp/zd gz/201802/t20180207_365299.shtml.

65. See Cai Changchun, *The Supreme People's Procuratorate Released 26 Typical Public Interest Litigation Cases*, LEGAL DAILY, July 1, 2017, http://www.spp.gov.cn/spp/zd gz/201707/t20170701_194484.shtml.

66. See Xue Gangling, *The Establishment of Administrative Public Interest Litigation System Promotes Administrative Agencies to Perform Their Duties According to Law*, PROCURATORIAL DAILY, July 22, 2015, http://newspaper.jcrb.com/html/2015-07/22/content_191442.htm.

67. See News Release, SPP, The Liuzhi Special District Procuratorate Filed an Administrative Public Interest Lawsuit Against the Government of Dingqi Town (Mar. 16, 2016), http://www.spp.gov.cn/xwfbh/wsfbh/201603/t20160316_114528.shtml.

3. Enhancing Judicial Activism

The PPIL System not only plays the role of improving the public interest, it further enhances judicial activism in protection of the public interest in China. Xi Jinping insightfully pointed out that the purposes of the PPIL System are to fully perform the legal supervision function of the procuratorate; to maintain the authority of the law, social fairness, and justice; and to protect the public interest.⁶⁸

According to the PRC Constitution, both the administrative power and the judicial power are created by the NPC.⁶⁹ According to traditional theory, the basic duty of an administrative agency is to actively protect the public interest and enforce public policy, while the judicial power is to passively resolve disputes. However, in recent years, this theory has weakened, and the concept of “judicial activism” has gradually strengthened.⁷⁰ According to the theory of judicial activism, in addition to safeguarding fairness and justice, judicial power also coincides with the overall plan of the CPP to proactively implement the guidelines and policies of the nation.⁷¹ In performing as the public interest litigant in the PPIL System, the procuratorate fully performs its duty of legal supervision. Besides, the PPIL System helps to optimize the allocation of judicial power and to advance the building of a government by law, an essential component in the modernization of China’s governance system.⁷²

III. Searching for a More Sustainable PPIL System

Although the PPIL System has seen many achievements, as discussed above, it still faces challenges that need to be addressed in order to fully implement its purpose. Given that the PPIL System in China is in its initial stage, a lot of pressing challenges have already arisen. This part highlights these challenges and offers suggestions to enhance implementation of the PPIL System.

A. Challenges to the PPIL System in China

As discussed above, even though the PPIL System transformed from a pilot project to formal legislation, there is still room for improvement. As the Chinese legal system

and political culture substantially differ from other countries, there is no relevant experience to which China can refer. Thus, the complete implementation of the PPIL System cannot run smoothly, as it faces many theoretical and practical challenges.

1. Narrow Standing

Proper standing is the core issue for further implementation of the PPIL System. Although the Civil Procedure Law stipulates that social organizations as well as procuratorates are permitted to institute civil public interest litigation, the Administrative Procedure Law states that only the procuratorate has standing to file administrative public interest litigation. For example, if a local administrative agency does not perform its legal duty to punish a polluter who has caused severe environmental damage, a social organization cannot institute administrative public interest litigation against the agency. Although there are many reasons for legislators to narrow public interest litigation standing as discussed in Part I, some scholars point out that it has actually lead the procuratorate to monopolize public interest litigation,⁷³ which indirectly weakens the concern and assistance from the public and goes against the protection of the public interest.

2. Limited Judicial Independence

Chinese scholars note that judicial independence in the Chinese context differs from the concept as elaborated in western legal systems.⁷⁴ In China, judicial independence does not refer to the independence of a particular collegial bench or individual judges, but to the independence of the court as a whole from the outside influence of other state organs and party pressures.⁷⁵ According to the PRC Constitution, the courts independently exercise judicial power, and are not subject to interference by any administrative organ, public organization, or individual.⁷⁶ Since the administrative authority in China has always been too powerful,⁷⁷ courts and procuratorates are subject to objective and invisible control by administrative organs.

Specifically, courts and procuratorates rely on the local administrative agency for staffing, funding, and career promotion.⁷⁸ Financial constraint will affect the progress and enthusiasm of the courts and procuratorates, while promotion will influence the political considerations when handling cases. Thus, the courts and procuratorates are subject to strong administrative influence from the local

68. See *The 12th Meeting of the Central Leading Group Comprehensively Deepen Reform*, XINHUA NEWS AGENCY, May 5, 2015, http://www.gov.cn/xinwen/2015-05/05/content_2857332.htm.

69. Article 3 of the Constitution of the People’s Republic of China (promulgated by the NPC Dec. 4, 1982, effective Dec. 4, 1982, revised Apr. 12, 1988, Mar. 29, 1993, Mar. 15, 1999, Mar. 14, 2004, and Mar. 11, 2018) states that all administrative, judicial, and procuratorial organs of the state are created by the people’s congresses to which they are responsible and by which they are supervised.

70. See Liu Ruichuan, *Grasp the Discipline of Justice and Persist in Judicial Activism*, PEOPLE’S CT. DAILY, Oct. 27, 2011, http://rmfbyb.chinacourt.org/paper/html/2011-10/27/content_35118.htm.

71. See Wang Mingyuan, *The Direction of Environmental Public Interest Litigation Development in China: Based on the Relationship Between Administrative Power and Judicial Power*, 2 CHINA LEGAL SCI. 49, 57 (2016).

72. See Jiang, *supra* note 22, at 15.

73. See Qin, *supra* note 2, at 87.

74. See CHOW, *supra* note 30, at 222.

75. See *id.* at 224-25.

76. The Constitution of the People’s Republic of China art. 131 (promulgated by the NPC Dec. 4, 1982, effective Dec. 4, 1982, revised Apr. 12, 1988, Mar. 29, 1993, Mar. 15, 1999, Mar. 14, 2004, and Mar. 11, 2018).

77. See Liu Yi, *The Evolution of American Private Prosecution Litigation and Its Enlightenment to China*, 5 ADMIN. L. REV. 63, 75 (2017).

78. See Zhou Yongkun, *The Holistic Route of Judicial Reform: The Localization, Administration, and Normalization of Judicature*, 6 J. SOOCHOW U. (PHIL. & Soc. Sci.) 59, 60 (2016).

administrative agency when they decide whether to handle a case. Moreover, even if the procuratorate receives a favorable judgment from the court, it is still very difficult to enforce the judgment,⁷⁹ because the courts have no recourse to effective sanctions against other state or government organs that do not obey court orders.⁸⁰ The PPIL System will suffer if court judgments and orders are not respected and obeyed.

3. Local Protectionism

The decentralization process of the Chinese political system shifted power from the central government to the local governments.⁸¹ In juridical practice, the powerful local governments tend toward local protectionism. There is no doubt that some local governments adopt an unsupportive and uncooperative attitude toward the PPIL System, applying pressure on procuratorates.⁸² Such local protectionism effectively undermines enforcement of the PPIL System.

Take environmental protection as an example: China's dual fiscal mechanism contributes to local governments' lack of incentive to enforce environmental policies that will slow down economic development.⁸³ Under the dual fiscal mechanism, local governments need to finance their public services as well as governmental expenses (such as government officials' salaries and benefits) through raising local taxes, which is directly linked to economic development.⁸⁴ Most of the polluting enterprises are the pillar industries of the local economy. Thus, local governments are reluctant to strictly enforce environmental regulation or enhance environmental public interest litigation, even where the industries cause serious pollution.

4. No Connection With Other Mechanisms

The United States has established a comprehensive system for citizen suits, which ranges from civil judicial enforcement to secure civil penalties and enforcement of court judgments, to other issues related to citizen suits. In contrast, the directives of the PPIL System in China that come from NPC legislation and judicial interpretations fail to connect with other mechanisms. For instance, although criminal law provides that certain environmental crimes and serious violations of environmental law should be

investigated and prosecuted, the percentage of serious violations being prosecuted as environmental crimes was quite low because of insufficient coordination.⁸⁵

In addition, the juridical practice shows that most administrative public interest cases result from agency inaction. In such cases, the administrative agencies should undertake their legal responsibility, such as internal discipline. Unfortunately, there are no provisions about the responsibility of the administrative agency in the Civil Procedure Law, the Administrative Procedure Law, and the judicial interpretations. Without legal responsibility, public interest litigation cannot deter an administrative agency, which will infringe the public interest again in the future.⁸⁶

B. Suggestions for Further Implementation of the PPIL System

The establishment of the PPIL System in China is significant for safeguarding the authority of the law, social fairness, and justice, as well as the promotion of the public interest. Given the challenges discussed above, this system can be improved if the following suggestions are adopted.

I. Public Participation

Protection of the public interest is a systematic project; thus, the state organs cannot thoroughly protect the public interest without external participation. The ongoing challenges require a broader system that includes procuratorate litigation and wider participation from the public. The United States long ago recognized that citizen suits represent far more than an expedient congressional solution to an enforcement resource problem. In a fundamental sense, they are the necessary capstone to the public participatory process.⁸⁷ China's procuratorates have many other duties besides filing public interest litigation and therefore could benefit from public participation. As the procuratorate, the legal supervision organ of China, becomes more aggressive in filing public interest litigation, the issue is raised as to "who will supervise the supervisor?" Public participation may be the key to the PPIL System, which not only supplements the procuratorate enforcement against those who violate laws, but also supervises the procuratorate.

The development of social organizations is an important standard of social maturity. Although social organizations in China are not as powerful as in the United States, there has been a recent surge in their growth. Behind this growth are changes in the political system, social economy, and cultural environment. According to the latest statis-

79. See Chi Xiaoyan, *The Claim and the Enforcement of the Civil Incidental Administrative Public Interest Litigation*, 8 CHINESE PROCURATORS 19, 21 (2017).

80. See CHOW, *supra* note 30, at 230.

81. See Ding Chengfei, *The Protection From New Plant Varieties of American Businesses in China After China Enters the WTO*, 6 DRAKE J. AGRIC. L. 333, 338 (2001).

82. See Xing Ting, *The First Administrative Public Interest Lawsuit in China: How the Procuratorate Intervene*, CHINA YOUTH DAILY, Sept. 13, 2016, http://www.spp.gov.cn/zdgz/201609/t20160913_166799.shtml.

83. See Li Jiangfeng, *Pollution Emission Trading: A Possible Solution to China's Enforcement Obstacles in Fighting Against Air Pollution?*, 34 UCLA J. ENVTL. L. & POL'Y 56, 68 (2016).

84. See Wang Jin & Yan Houfu, *Barriers and Solutions to Better Environmental Enforcement in China*, Presentation at the Ninth International Conference on Environmental Compliance and Enforcement 494, 496 (2011), http://inece.org/conference/9/proceedings/56_WangYan.pdf.

85. See You Mingqing & Wang Yan, *Annual Review of Chinese Environmental Law Developments: 2014*, 45 ELR 10419, 10423 (May 2015).

86. See Qin, *supra* note 2, at 83.

87. See David R. Hodas, *Enforcement of Environmental Law in a Triangular Federal System: Can Three Not Be a Crowd When Enforcement Authority Is Shared by the United States, the States, and Their Citizens?*, 54 MD. L. REV. 1552, 1577 (1995).

tics from the Ministry of Civil Affairs of the PRC,⁸⁸ by 2016, there were 702,000 social organizations in China, which involved health, education, the environment, law, social services, and other areas, and they received RMB 78.67 billion Yuan (around US\$12.46 billion) from various social donations.

Even though social organizations have faced many institutional obstacles in China, such as difficulties in registration, financing, and constraints on carrying out activities, these obstacles can be overcome with institutional and policy support from the government. Fortunately, the Chinese government has recently paid more attention to social organizations. Li Keqiang, premier of the State Council, emphasized that the government will “reform and improve the system for regulating social organizations, and promote the development of public interest activities.”⁸⁹ The procuratorate should cooperate with social organizations and provide for the disclosure of and access to public interest litigation information to ensure effective public participation.

2. Enhancing Judicial Independence

Since the Xi Jinping Administration, China’s top leadership has taken further measures to deepen judicial reform. For example, on March 30, 2015, the General Office of the Central Committee of the CPC and the General Office of the State Council made the decision “Issuing the Provisions on Recording, Notification and Accountability of Intervening Into Judicial Activities and in Handling of Specific Cases by Officials.” These measures range from establishing a judicial system that is separate from the administrative divisions to strengthening the responsibilities of judges and procuratorates.⁹⁰ In addition, judges and procuratorates cannot be dismissed without legal reasons and procedures.⁹¹ With these measures, local judges and procuratorates can independently and impartially exercise their judicial power. Judicial organs would then be free to enforce the public interest litigation laws and decide fair judgments against administrative agencies or violators, rather than be influenced by local protectionism.

3. Primary Role of Administrative Agencies in Protecting the Public Interest

Defining the relationship among the procuratorates, courts, social organizations, and administrative agencies is

important for an effective PPIL System. Which of these entities should play the primary role in protection of the public interest? Like many other problems in modern society, public interest issues are characterized by diversity, comprehensiveness, complex dynamics, and uncertainty. Given that administrative agencies are very powerful in China, with abundant enforcement resources and sufficient enforcement capabilities,⁹² public interest protection should mainly fall to these agencies instead of the legislature or the judiciary. Take environmental public interest litigation as an example: courts cannot handle complex technical issues related to environmental pollution because they lack the relevant expertise and experience.

Therefore, when dealing with the widespread violation of public interests, the primary solution should not be a judicial remedy. Rather, the administrative agencies should play a primary role in the protection of the public interest, as they can efficiently force violators to correct illegal activities. For the efficient protection of the public interest, administrative agencies should perform their duties through information disclosure, public hearings, and so on, while the procuratorates should make full use of prosecutorial advice before filing a lawsuit.

4. Connection With Other Mechanisms

Further, if detailed and feasible intragovernmental mechanisms can be promulgated to facilitate and guide the procuratorate’s work to achieve effective and efficient public interest litigation, it will push China one step closer to a long-term sustainable PPIL System. Specifically, mechanisms such as information-sharing, transfer of evidence, joint investigation, and joint law enforcement actions should be enhanced. For example, seamless coordination should be encouraged by strengthening the transfer of case information from administrative enforcement agencies, such as environmental protection as well as food and drug safety agencies, to the local procuratorates, and by making full use of information-sharing platforms.⁹³ Moreover, the administrative agencies should assume responsibility for their illegal activities. Li Keqiang pointed out that the State Council will “strengthen oversight and accountability, and take tough steps to punish the administrative agencies’ incompetence, inaction, and negligence.”⁹⁴

In addition, the SPP deepens the PPIL System through expert symposia, teleconferences, and active communications with other countries. For example, in December 2017, the Civil and Administrative Procuratorial Department of the SPP and ClientEarth⁹⁵ held a joint conference, the “International Seminar About the Role of Prosecutors

88. See *2016 Social Service Development Statistical Bulletin* (issued by the Ministry of Civil Affairs of the PRC on August 3, 2017), <http://www.mca.gov.cn/article/sj/tjgb/201708/20170815005382.shtml>.

89. See *Report on the Work of the Government (2017)*, XINHUA NEWS AGENCY, Mar. 16, 2017, http://www.gov.cn/premier/2017-03/16/content_5177940.htm.

90. Decision of the CPC Central Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law (promulgated by the Central Committee of the CPC Oct. 23, 2014).

91. Provisions on Protecting Judicial Personnel to Lawfully Perform Statutory Duties (promulgated by the General Office of the Central Committee of the CPC and the General Office of the State Council July 21, 2017).

92. See Liu, *supra* note 77, at 75.

93. See Xu Ying Wang, *The Supreme People’s Procuratorate Put Forward Four Measures to Intensify Public Interest Litigation*, JUST. NETWORK, Nov. 5, 2016, http://www.spp.gov.cn/zdgz/201611/t20161105_171749.shtml.

94. See *Report on the Work of the Government (2017)*, *supra* note 89.

95. ClientEarth is a nonprofit environmental law organization that works to protect the environment through advocacy, litigation, and science, on the basis of the best research and policy analysis. See ClientEarth, *Our Vision*, <https://www.clientearth.org/what-we-do/> (last visited Apr. 27, 2018).

in Environmental Governance.” Environmental experts from Britain, the United States, the Netherlands, and other countries, and more than 30 Chinese procuratorates, judges, experts, and scholars discussed the procuratorates’ duties and responsibilities in environmental governance, cross-regional and watershed pollution control, practical application of scientific and technological innovation in environmental governance, and other issues.⁹⁶

IV. Conclusion

China’s endeavors to create the PPIL System with distinct Chinese characteristics resulted in skyrocketing cases and

systematic implementation. However, the PPIL System is still developing and faces many challenges. While it is too early to predict the long-term results of the developments described in this Comment, China has the essential elements of the legal architecture to implement an effective PPIL System. Changes will not happen overnight; sustainable protection of the public interest requires persistence not only in filing public interest litigation by the procuratorates, but in public participation, judicial independence, administrative performance, and connection with other mechanisms. Therefore, as long as China adopts detailed and feasible measures, the PPIL System can be a viable choice to protect the public interest in China.

96. See Jin Yuanyuan, *Zhang Xueqiao: The Procuratorates Shoulder the Important Mission of Environmental Protection of the Public Interest*, PROCURATORIAL DAILY, Dec. 6, 2017, http://www.spp.gov.cn/spp/zd gz/201712/t20171206_206176.shtml.