The Practice of 'Criminal Reconciliation' (*xingshi hejie*) in the PRC Criminal Justice System

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This thesis examines the practice of 'criminal reconciliation' (*xingshi hejie*) in the People's Republic of China by means of empirical research. 'Criminal reconciliation' is officially understood as a mechanism to promote a 'harmonious society' (*hexie shehui*) through voluntary offender-victim reconciliation and bringing 'closure' (*an jie shi liao*) to criminal case in a way that empowers the parties. It has been designed as a mechanism that overcomes perceived deficiencies of the ordinary, in principle adversarial criminal justice process.

Based on case examples and interviews conducted in three localities in mainland China in 2008 and 2010, however, this thesis argues that this mechanism may infringe the rights of suspects and defendants as well as of alleged victims (summarily referred to as 'the parties') in criminal cases, and that it may lead to injustice. While the case files accessed for the purpose of this research purport to document a well-functioning process of criminal reconciliation in accordance with the rules and principles supposed to govern it, interviews provide a drastically different picture. In practice, the criminal justice process was not characterized by the principle of voluntariness supposed to be one of its main advantages; rather, the officials in charge dominated the process. In addition, the entire process exclusively focused on compensation, so it was potentially unfair to economically weak suspects and defendants. It was also found in some cases that the conflict between the parties

still existed or had worsened at the end of the criminal reconciliation programmes.

On the basis of these findings, it is argued that criminal reconciliation throws light on fundamental problems with the wider criminal justice system. First, officials in the criminal justice system, routinely ignore certain legal rules protecting the parties' rights and to some extent replace these rules with 'hidden rules' (*qian guize*), whose content is largely shaped by politically driven performance assessment criteria, as well as in some cases by intervention from other entities such the Political-Legal Committee. Second, the criminal proceedings in China reflect an authoritarian, paternalistic and educational (thought-reform-based) approach to criminal justice; the parties' rights are regarded as secondary to this political end. Third, the State does not take sufficient responsibility to protect the victim's right to get compensation in the civil litigation collateral to criminal proceedings.

In conclusion, this thesis argues that resolving criminal cases through 'criminal reconciliation' may aggravate the problems already affecting the ordinary criminal justice process, because it is a mechanism designed to weaken procedural rights protections, and eliminate the adversarial character of the criminal justice process. Thus the promotion of 'criminal reconciliation' may be one of several signs that China is deviating from the path of rule of law development that was once the leadership's clearly stated goal.

摘要

论文对中国的刑事和解制度进行了实证研究。刑事和解被官方视为通过加害方同受害方自愿达成和解促进社会和谐，并通过赋予案件当事人解决案件的权力实现“案结事了”。这一程序也被认为弥补了以对抗制为基础的普通刑事司法程序的所谓的不足。

基于 2008 年和 2010 年在中国三个地区进行的案卷调查和访谈，论文指出这项制度严重侵害犯罪嫌疑人、被告人及被害人（统称“当事人”）的权利并损害公平正义。虽然案卷显示刑事和解遵循为其设计的程序及确立的原则并取得了良好效果，访谈却揭示了完全相反的情况。访谈显示，自愿性，这一被视为刑事和解的主要优势的原则，遭到严重破坏。实践中，官员们主导着刑事和解全过程。此外，赔偿成为了这一程序的唯一焦点，造成其对经济上处于弱势地位的犯罪嫌疑人或被告人的不公平。研究发现在一些案件中，刑事和解程序结束后，矛盾依然存在甚至恶化了。

这些发现令刑事和解呈现出中国刑事司法制度的三个根本性问题。首先，保护当事人权利的法律规则常常被执行这些规则的法官或检察官忽视并取而代之“潜规则”。 这些“潜规则”主要是由政治目标驱动的绩效考核标准和来自诸如政法委的其他组织的干预而形成。此外，中国的刑事司法程序反映了专制主义、家长制及教育型（以思想改造为目的）的刑事司法体制，而当事人的权利被视为次于这一政治目的。最后，国家在保护当事人获得刑事附带民事诉讼赔偿的权利方面亦未承担应负的责任。

论文指出，依靠和解来解决刑事案件会令这些已影响普通刑事司法程序的问题更加严重，因为这一程序旨在弱化对程序性权利的保障及削弱刑事司法程序的对抗性。因此，刑事和解制度或是中国正逐渐远离其领导者曾明确确立的法治目标的一个信号。

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Chapter I: The Criminal Reconciliation System (*xingshi hejie*) In China

In August 2011, the People's Republic of China (China) launched the second major revision of its Criminal Procedure Law (CPL) after its first major revision in 1996. In the revision draft which was later passed in the fifth meeting of the 11th National People's Congress in March 2012, articles 277 to 279 provide statutory basis for a new 'special procedure', which allows the alleged victims and suspects/defendants of certain crimes to 'reconcile' (*hejie*) and thereby close criminal cases.

Article 277 stipulates the 'requirements' and 'scope' of cases eligible for this process. It *may* (but does not have to) be initiated in the case of a suspected crime under Chapters Four and Five of the Criminal Law[1] if the crime has 'arisen' from what is characterized as 'disputes among the people' (*minjian jiufen*) which could lead to sentences of no more than three years' imprisonment, and in the case of a negligent 'crime' with a potential sentence of no more than seven years' imprisonment.[2] In addition, in these cases, the suspect/defendant should have 'regretted sincerely' and 'obtained the victim's forgiveness through compensation, apology, and other methods'; the law also requires that mediation must be initiated on the basis of *the victim*'s (not both parties') voluntariness.[3]

Article 278 articulates the public authorities' role in this process: the Public Security Bureau, the People's Procuratorate, or the People's Court should hear the parties' and other relevant people's opinions, review the reconciliation with regard to its voluntary nature and compliance with the law, and produce reconciliation agreements.[4]

Article 279 is about the outcomes of this process. It provides that the police may make suggestions for a lenient disposition to the People's Procuratorate; the

[1] Chapter Four of the PRC Criminal Law is about 'crimes infringing upon citizens' rights of the person and democratic rights'; Chapter Five is about 'crimes of property violation'.
[2] There is an exception for 'malfeasance crimes'; and suspects/defendants who committed an intentional crime within five years prior to the case at hand are excluded from this process.
[3] *Ibid.*
[4] Article 278 CPL.

prosecutor may also make such suggestions to the People's Court or decide not to prosecute; the judge may give a lenient sentence to the defendant according to the law following a successful criminal reconciliation process.[5]

Overall, this revision means that reconciliation, which under the 1996 CPL could only be used in 'private prosecution (*zisu*) cases'[6] and 'civil litigation collateral to criminal proceedings (*xingshi fudai minshi susong*)'[7], is now legally allowed in public prosecution cases.

Nevertheless, before it was added in the revised 2012 CPL as a 'special procedure', this procedure, generally called 'criminal reconciliation' (*xingshi hejie*) and referred to as a 'procedure for reconciliation among the parties in public prosecution cases', had been widely used by the Public Security Bureau, the People's Procuratorate and the People's Court in China. From around 2004, reconciliation was practiced in the context of 'pilot projects' without any clear basis in statutory law. These 'pilot projects', as well as comments and debates around them, require examination in terms of their relationship, if any, to the 'special procedure' added by the 2012 CPL.

This chapter first addresses the practice of criminal reconciliation the introduction of which is connected closely with the Chinese Communist Party (the Party)'s policies of 'establishing a harmonious society (*hexie shehui*)' in 2004 and 'combing severity with leniency (*kuan yan xiang ji*) in dealing with criminal cases' in 2006. Against this background, criminal reconciliation emerged and was officially

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[5] Article 279 CPL.

[6] 'Private prosecution (*zisu*) cases', according to article 170 of the 1996 CPL and article 204 of the 2012 CPL, refers to cases 'to be handled only upon complaint', cases 'for which the victims have evidence to prove that those are minor criminal cases' and 'cases for which the victims have evidence to prove that the defendants should be investigated for criminal responsibility according to law because their acts have infringed upon the victims' personal or property rights, whereas, the public security organs or the People's Procuratorates do not investigate the criminal responsibility of the accused'. According to article 172 of the 1996 CPL and article 206 of the 2012 CPL, 'the People's Court may conduct mediation in a case of private prosecution'. See the translation of the 1996 CPL at http://www.cecc.gov/pages/newLaws/criminalProcedureENG.php

[7] According to article 77 of the 1996 CPL and article 99 of the 2012 CPL, 'if a victim has suffered material losses as a result of the defendant's criminal act, he/she shall have the right to file an incidental civil action during the course of the criminal proceeding'. See the English translation of the 1996 CPL at http://www.cecc.gov/pages/newLaws/criminalProcedureENG.php Article 96 of the judicial interpretation on CPL issued by the Supreme People's Court [最高人民法院关于执行《中华人民共和国刑事诉讼法》若干问题的解释] in 1998 further provides that 'the People's Court can conduct mediation in the civil litigation collateral to criminal proceedings, except for those cases lodged by the People's Procuratorate'.

valued as a mechanism for promoting a 'harmonious society' by means of bringing 'closure' (*an jie shi liao*) to criminal cases and 'preventing new petitioning related to judicial cases (*she fa shangfang*)'[8].

The Chapter then examines the type of criminal reconciliation designed by the State authorities (namely, the Public Security Bureau, the People's Procuratorate or the People's Court) operating through 'pilot projects'. Following a very similar style, criminal reconciliation in these local regulations or guidelines was designed to include four steps (the last one being optional): initiation; criminal reconciliation meeting; the official's decision; and follow-up programmes. Designed as a process mainly based on the parties' (namely, the victim and the suspect/defendant's) reconciliation, criminal reconciliation is essentially distinct from the normal criminal procedure, which is set as an adversarial system in the 1996 CPL. These differences raise questions concerning the roles of the officials and the parties and the protection of the parties' rights in criminal reconciliation.

After showing the procedure designed for (pre-revision) criminal reconciliation practices, the overall implementation of this process as 'pilot projects' nationwide in China is discussed. On the one hand, data provided by many news reports and academic work show that criminal reconciliation was not used very often by the Public Security Bureaus, the People's Procuratorates and the People's Courts in China before it was laid down in the 2012 CPL. On the other hand, the state authorities delivered data to illustrate the success of this process in bringing 'closure' and helping the promotion of a 'harmonious society'. The Chapter raises doubts as to the credibility of the publicly available information in these two aspects.

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[8] 'Petitioning' (*shangfang* or *xinfang*) is a system established in the 1950s in China by which a citizen, legal person or any other organization reports facts, submits suggestions, or files complaints to the Xinfang (literally: 'Letters' and 'Visits') offices, which are established at all levels of administration and in all branches of the Party and State. 'Petitioning related to judicial cases' (*she fa shangfang* or *she su shangfang*) in a broad sense refers to the petitioning that concerns cased handled by the People's Courts, the People's Procuratorates and the Public Security Bureaus. In a narrow sense, it only refers to petitioning concerning cases handled by the People's Courts (In some instances, what petitioners complain about is inaction on the part of these authorities, i.e. they complain that a case has not been handled properly). See: Carl F. Minzner, 'Xinfang: An Alternative to Formal Chinese Legal Institutions' (2006) Vol. 42, *Stanford Journal of International Law;* 李银芳 [Li Yinfang], 李金富 [Li Jinfu], 涉法上访案件的成因及对策 [Reasons and Strategies of Petitioning Related to Judicial Cases] http://www.dffy.com/fayanguancha/sh/200409/20040916085512.htm (8 February 2012)

From around 2007, in the context of the Party's 'general mediation' (*da tiaojie*) initiative, criminal reconciliation has been further promoted and developed in China. There are three main aspects to this: first, although neither the procedural regulations or guidelines governing criminal reconciliation as pilot projects nor articles 277 to 279 of the 2012 CPL allow this, criminal reconciliation has been increasingly used in suspected serious crimes and death penalty cases. Second, there has been more collaboration in conducting criminal reconciliation. The collaboration can be among the Public Security Bureau, the People's Procuratorate and the People's Court, or between these state authorities and the People's Mediation Committee (*renmin tiaojie weiyuanhui*) [9]. Third, criminal reconciliation (meetings) has involved increasingly wider participation (i.e. involving members of the People's Mediation Committee and the People's Congress).

Nevertheless, although these developments have gained official sanction as raising efficiency or promoting fairness of criminal reconciliation, the author raises concerns that they may actually infringe upon the parties' rights.

1.1 The idea of 'criminal reconciliation' (*xingshi hejie*)

An account of the introduction of 'criminal reconciliation' in China must first address the concept of 'harmonious society' (*hexie shehui*), a political goal embedded in the concept of this process.

This political goal was formulated when the Party found that there had been increasing social unrest in China since the early 21st century. The 'Central Commission of Comprehensive Governing (*zhongyang zonghe zhili bangongshi*) stated that 'currently, China is at the very point of social and economic transition, so

[9] The People's Mediation Committee or *renmin tiaojie weiyuanhui* in Chinese, according to the second chapter of the PRC Mediation Law promulgated in 2010 is a 'mass-based organization legally formed to settle disputes among the people'. See the English version of this Law at LawInfoChina: http://www.lawinfochina.com.easyaccess1.lib.cuhk.edu.hk/display.aspx?id=8266&lib=law&SearchKeyword=&SearchCKeyword=调解法

contradictions among the people (*renmin neibu maodun*)[10] are sharp, criminal offences are frequent, and fights against enemies[11] are complicated'.[12] Consequently, in 2004, the Party formally announced a policy of 'establishing a socialist harmonious society' at the fourth plenary session of the 16th Central Committee of the Chinese Communist Party.

According to the 'Decision' published after this meeting, there were six main requirements or features of a 'socialist harmonious society'. They were 'democracy and rule of law' (*minzhu fazhi*), 'fairness and justice' (*gongping zhengyi*), 'integrity and friendship' (*chengxin you'ai*), 'stability and order' (*anding youxu*), 'great dynamism' (*chongman huoli*), and 'men living in harmony with nature' (*ren yu ziran hexie xiangchu*).[13] Obviously, the former two requirements ('democracy and rule of law' and 'fairness and justice') were directly targeting the legal system.

Later in 2006, the Party issued the 'Resolution of the CPC Central Committee on Major Issues Concerning the Building of a Socialist Harmonious Society'. In this 'Resolution', the Party set nine goals for a 'harmonious society'.[14] These goals actually covered almost all aspects of society, ranging from economy, education,

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[10] 'Contradictions among the people (*renmin neibu maodun*)' was a concept initiately advanced by Mao Zedong in 'On the Correct Handling of Contradictions among the People' in 1957. In this article, conflicts in society were catagrized into two different types – 'contradictions among the people (*renmin neibu maodun*)' and 'contradictions between the people and the enemies (*di wo maodun*)', which, according to Michael Palmer, also resembled the distinction made by Lenin as 'antagonistic contradictions' (*duikangxing maodun*) and 'non-antagonistic contradictions'(*fei duikangxing maodun*). Such a distinction was mainly for mobilzing people in class struggle. Contradictions among the people are 'the everyday disputes between people that arise in the course of work, prodcution, and domestice life'. 'Contradictions among the people' are 'non-antagonistic' so they are best handled through non-coercive ways such as mediation. See: Michael Palmer, 'The Revival of Mediation in the People's Republic of China: (1) Extra-judicial Mediation' in W.E. Butler (ed.), *Yearbook on Socialist Legal Systems*, New York, Transnational Publishers 1987, 227-228.

[11] According to Mao Zedong's expression in 'On the Correct Handling of Contradictions among the People' in 1957, the 'contradictions between the enemy and the people are antagonistic contradictions'. See: some translation of this work at http://www.peopleofcolororganize.com/wp-content/uploads/pdf/poco/contradictions.pdf. Enemies are mainly 'former exploiting classes and counterrevolutionaries' and conflicts between the enemy and the people should be handled through coercive methods, including 'punishment according to law'. See: Stanley Lubman, Mao and Mediation: Politics and Dispute Resolution in Communist China, Vol. 55:1284, *California Law Review*, 1302; Fu Hualing, Access to Justice in China: Potentials, Limits, and Alternatives (draft) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1474073 (6 September 2012)

[12] 中央社会治安综合治理委员会办公室编 [the Central Commission of Comprehensive Governing (ed.)] *长治久安之策 [Strategies for the Long-term Peace and Stability]*Beijing, 中国长安出版社 [China, Chang'an Press] 2009, 295.

[13] See relevant reports on Xinhua.net: http://news.xinhuanet.com/politics/2006-08/09/content_4939383.htm (4 January 2011)

[14] Susan Trevaskes, Restorative Justice or McJustice with Chinese Characteristics? http://www98.griffith.edu.au/dspace/downloaduriredirect?itemId=29444&bitstream=20758 (5 March 2012)

culture, public welfare system, environment protection, to legal system and judicial work.[15]

Also in 2006, in order to provide, as it were, a more detailed 'guide' to the reform of the legal system towards establishing a 'harmonious society', the Party announced the policy of 'combining severity with leniency' (*kuan yan xiangji*) in dealing with criminal cases in the sixth plenary session of the 16th National CPC Congress.[16] This criminal policy called for 'striking hard' against serious crime but leniency towards 'first offence, causal offence, juvenile crimes and crimes where the suspects/defendants' subjective culpability was not serious'.[17] This policy was stated by the Party to be an essential mechanism for sustaining social stability and establishing a 'socialist harmonious society'.[18]

The People's Procuratorates and the People's Courts then made further efforts to concretise the policy of 'combining severity with leniency' and spell out what it meant for its work. For instance, on the 'severity' side, after three 'strike hard' (*yanda*) campaigns[19] in 1983, 1996 and 2001, China launched the fourth one in 2010[20]; on the 'leniency' side, one prominent sign is that reconciliation and mediation were especially highlighted by the Supreme People's Procuratorate and the Supreme People's Court.

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[15] See the full text of the 'Resolution of the CPC Central Committee on Major Issues Concerning the Building of a Socialist Harmonious Society' [中共中央关于构建社会主义和谐社会若干重大问题的决定] at http://news.xinhuanet.com/politics/2006-10/18/content_5218639.htm (5 March 2012)

[16] *Ibid.* See also appendices V and VI.

[17] See the interpretation of the 'Decision' on Xinhua.net: http://news.xinhuanet.com/legal/2006-12/09/content_5459413.htm (7 April 2011)

[18] *Ibid.*

[19] 'Strike hard' campaign, or *yanda*, was originally launched in 1981 as a policy to deal with emerging social order crimes, particularly crimes committed by juveniles and 'hooligans' (*liumang*). In 1983, it developed to an anti-crime campaign that lasted for three years which resulted in a 'brutalizing effect' as described by Borge Bakken. The 'strike hard' campaign was defined as a political struggle in which the whole society must participate. And death penalty and imprisonment were rampantly used. Afterward, there were other two 'strike hard' campaigns in 1996 and 2001. See: Borge Bakken, *The exemplary Society: Human Improvement, Social Control and the Dangers of Modernity in China* New York, Oxford University Press 2000, 394, and Susan Trevaskes, *Courts and Criminal Justice in Contemporary China* U.K., Lexington Books 2007, 1, 83-87. In June 2010, the fourth 'strike hard' was launched nationwide resulting from 'the mass's drop of sense of security'. See: 南方周末 [Southern Weekend] 第四次严打：能像过去一样打吗? [The Forth Strike Hard: Can It Be Like The Previous Ones?] http://nf.nfdaily.cn/epaper/nfzm/content/20100701/ArticelB10005FM.htm (29 November 2010).

[20] 南方周末 [Southern Weekend] 第四次全国"严打"成果越大越可怕 [The Fourth 'Strike Hard' Campaign: The More We Gain, The More Horrible It Is] http://news.qq.com/a/20100702/000470.htm (21 March 2012)

In 2006, the Supreme People's Procuratorate issued the 'Opinions of the Supreme People's Procuratorate on Implementing the Criminal Policy of Combining Severity with Leniency in Procuratorial work' [21] (hereafter the '2006 SPP Opinions').[22] This document states that 'the criminal policy of "combining severity with leniency" is an important policy of the Party and the State, and is an important guide of the People's Procuratorate to implement the laws of the State'.[23] Therefore, 'the Procuratorates shall strengthen resolution of the conflict and mediation of the dispute related to the crime, shall take the outcome of dispute resolution and the implementation of any agreement [related to the dispute] as a significant factor in considering a lenient disposition'.[24] 'The People's Procuratorates shall adopt the promotion of social harmony as a significant criterion in the examination of procuratorial work.'[25]

Article 12 of the '2006 SPP Opinions' further sets out the 'scope' of cases suitable for 'reconciliation' and 'lenient dispositions'. According to this article, 'we (the People's Procuratorates) shall be lenient in cases of crime triggered by conflicts among the people (*minjian jiufen*)'.[26] 'In the case of a minor crime arising from disputes among relatives, neighbors or schoolmates, we shall correctly handle case based on the spirit of "better making friends than enemies" and from the angle of conflict resolution'.[27] 'In the case of a minor crime in which the suspect has admitted guilt, repented, apologized, actively compensated the loss and obtained the victim's

[21] Article 20 of the 'Opinions of the Supreme People's Procuratorate on Implementing the Criminal Policy of Combining Severity with Leniency in Procuratorial work' [最高人民检察院关于在检察工作中贯彻宽严相济刑事司法政策的若干意见] states that 'we shall stress conflict resolution in dealing with criminal cases. The Procuratorate shall strengthen resolution of the conflict and mediation of the dispute related to the crime, shall take the outcome of dispute resolution and the implementation of any agreement [related to the dispute] as a significant factor in considering a lenient disposition. In a case where there is a direct victim, the People's Procuratorate may request the suspect to apologize to the victim and compensate the victim if it gives a lenient disposition or decides not to prosecute. The People's Procuratorate shall also well explain the decision to the victim to avoid any further petitioning to the judicial authorities [on the part of the victim in this case].'

[22] The English version of these 'Opinions' translated by the author is provided as the Appendix V of this thesis.

[23] Article 2 of the 'Opinions of the Supreme People's Procuratorate on Implementing the Criminal Policy of Combining Severity with Leniency in Procuratorial work' [最高人民检察院关于在检察工作中贯彻宽严相济刑事司法政策的若干意见].

[24] Article 20, *ibid*.

[25] Article 1, *ibid*.

[26] Article 12, *ibid*.

[27] *Ibid*.

forgiveness or where the two parties have reached and implemented a reconciliation agreement, and where the harm done to society is not serious, we shall make the decision not to arrest or prosecute in accordance with the law'.[28] 'If prosecution is necessary, we may suggest a lenient sentence to the People's Court'.[29]

Later in 2010, the Supreme People's Court also issued its 'Opinions of the Supreme People's Court on Implementing the Criminal Policy of Combining Severity with Leniency' (hereafter the '2010 SPC Opinions').[30] Article 40 of the SPC Opinions says that 'in the case of a minor crime such as minor injury crime arising from disputes among the people (*minjian jiufen*), if the parties reach reconciliation after public prosecution has been initiated and the case been transferred to the Court, the Court shall (*yingdang*) approve [the reconciliation agreement] and keep it on record.'[31] 'The People's Court may (*keyi*) also try to conduct work to facilitate reconciliation in such cases as long as doing so would not violate any legal provisions.'[32] Article 23 provides that 'if the defendant compensates the victim promptly, admits guilt and shows repentance after committing the crime, this may (*keyi*) be taken into consideration according to law as circumstances affecting the discretionary sentencing considerations (*zhuoding liangxing qingjie*)'.[33] 'In a crime arising from disputes among the people (*minjian jiufen*) such as marriage or family disputes, if the victim and his family have forgiven the defendant, this shall (*yingdang*) be considered as circumstance under which discretional sentencing is allowed'.[34] Additionally, 'the People's Court shall mediate as much as possible to eliminate disputes and facilitate both parties' reconciliation in private prosecution cases' and in 'civil litigation collateral to criminal proceeding'.[35]

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[28] *Ibid*..
[29] *Ibid*.
[30] The English version of these 'Opinions' translated by the author is provided as the Appendix VI of this thesis.
[31] Article 40 of the 'Opinions of the Supreme People's Court on Implementing the Criminal Policy of Combining Severity with Leniency'.
[32] *Ibid*.
[33] Article 23, *ibid*.
[34] *Ibid*.
[35] Articles 40 and 41, *ibid*.

According to the '2006 SPP Opinions', the emphasis on reconciliation serves three ends. It aims to resolve conflicts between suspects and victims, to 'prevent new "petitioning related to judicial cases" (*she fa shangfang* or *she su shangfang*)'[36], and thereby to be helpful for establishing a 'harmonious society'.[37] The '2010 SPC Opinions' also characterize as desired outcomes of reconciliation or mediation that it should bring a sense of closure (*an jie shi liao*) and promote a harmonious society.[38]

Some new criminal justice practices developed in the context of these 'Opinions'; they were called 'criminal reconciliation' (*xingshi hejie*)[39] by domestic Chinese scholars.

Announcing the establishment of a 'socialist harmonious society', the Party seemed to follow its political discourse in the 1990s of establishing 'socialist rule of law' – for instance, as noted by Leïla Choukroune and Antoine Garapon, the Party stressed that 'a harmonious society is a society governed by law'; 'a harmonious society depends on rule of law'; 'a harmonious society needs a stronger legal system that wields greater authority'.[40] However, reforms in the Chinese judiciary under the policy of 'promoting a socialist harmonious society', ranging from guidelines have shown that mediation and reconciliation have been recognized by the authorities as the most effective way in judiciary to address [perceived 'factors of instability' in the

[36] Petitioning (*shangfang* or *xinfang*), a system established in the 1950s, means that a citizen, legal person or any other organization reports facts, submits suggestions, or files complaints to the Xinfang (literally: 'Letters' and 'Visits') offices, to be established at all levels of administration and in all branches of the Party and State. Technically, the 2005 Regulation on Letters and Visits issued by the State Council has allowed the Xinfang office to handle petitioning related to any kind of complaint. See the English version of the 'Regulation on Letters and Visits' [信访条例] (2005) at LawInfoChina: http://www.lawinfochina.com.easyaccess1.lib.cuhk.edu.hk/display.aspx?id=3920&lib=law&SearchKeyword=&SearchCKeyword=信访条例. Scholars have pointed out that in recent years, petitioning included two main categories - petitioning related to judicial cases and administrative grievances against the government. Petitioning related to judicial cases in a broad sense refers to the petitioning that concerns cased handled by the People's Courts, the People's Procuratorates and the Public Security Bureaus. In a narrow sense, it only refers to petitioning concerning cases handled by the People's Courts. (In some instances, what petitioners complain about is inaction on the part of these authorities, i.e. they complain that a case has not been handled properly.) See: Carl F. Minzner, Xinfang: An Alternative to Formal Chinese Legal Institutions (2006) Vol. 42, *Stanford Journal of International Law* 349. 李银芳 [Li Yinfang], 李金富 [Li Jinfu] 涉法上访案件的成因及对策 [Reasons and Strategies of Petitioning Related to Judicial Cases] http://www.dffy.com/fayanguancha/sh/200409/20040916085512.htm (8 February 2011)

[37] Article 20, *ibid.*

[38] Article 41, *ibid.*

[39] 何永军 [He Yongjun] 论刑事和解的合法性与合法化 [On Legitimacy and Legalization of Criminal Reconciliation] (2009) 3, *昆明理工大学学报（社会科学版）[Journal of Kunming University of Science and Technology (Social Science)]* 83.

[40] *Ibid.*

judicial process, such as petitioning, appeals and protests by dissatisfied parties to a legal dispute.[41] Judiciary largely based on mediation and reconciliation is called 'harmonious judiciary' (*hexie sifa*)[42]. All shows that the Chinese judiciary under the policy of 'establishing a socialist harmonious society' has changed its direction from the reforms in the 1990s.

This judicial reform has triggered much debate in domestic and abroad. Some have characterized these judicial reforms as the Chinese judicial system's adjustment in accordance with 'Chinese characteristics'.[43] To people holding this opinion, mediation and reconciliation in the form now increasingly practiced in China are based on the people's real needs and emotions, which is lacked in the formal legal system, so that it can resolve conflicts and bring about 'harmony'.

For instance, Su Li has argued that the 'liberal reforms of the judiciary since the 1990s are not feasible in China – a country where more than half of the population live in rural places with stable relationships and a very strong tradition of mediation'.[44] Adjudication cannot resolve disputes, which might further cause difficulties with the enforcement of verdicts, in turn leading to the parties' petitioning.[45] In this context, mediation was mainly 'the Party's response to the Chinese people's needs and China's reality'.[46] Similarly, Fan Yu said that 'litigation or law is transplanted from western jurisdictions, so they are somewhat conflicting with China's conditions and traditional culture'.[47] For instance, as maintained by Fan Yu, the value of 'procedural justice' is contradictory to the value of the Chinese traditional justice, which prefers efficiency and convenience, and is also

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[41] 张卫平 [Zhang Weiping] 诉讼调解：时下时态的分析与思考 [Judicial Mediation: Analysis and Thoughts In the Current Context] (2007)5 *法学 [Legal Science]* 21.
[42] See more information on this concept of 'harmonious judiciary' at http://news.163.com/07/0107/11/347SD32N000122EH.html (9 March 2012)
[43] 夏敏 [Xia Min] 案结事了：一个不轻松的审判课题 [Closure: A Not Easy Task in Trial] 2007(2) *中国审判 [China Trial]* 13.
[44] 苏力 [Su Li] 关于能动司法与大调解 [Deliberative Justice and the General mediation System] http://article.chinalawinfo.com/Article_Detail.asp?ArticleId=53760 (9 March 2012)
[45] *Ibid*
[46] *Ibid*
[47] 范愉 [Fan Yu] *纠纷解决的理论与实践 [The Theory and Practice of Dispute Resolution]* Beijing, 清华大学出版社 [Tsinghua University Press] 2007, 295.

contradictory to the Chinese people's pursuit of 'substantial justice'.[48] In addition, according to Fan, the problems of the judicial system, such as the difficulty with enforcement, judicial unfairness and corruption, which have led to 'disharmony' in society, were to a certain extent caused by the establishment of the 'modern' judicial system; the increasing social unrest have actually shown the public's dissatisfaction with the current judicial system.[49] In the same vein, Xia Min especially praised mediation's positive effects to society (*shehui xiaoguo*) – as argued by Xia, 'in some cases, a modest mediation can have better social effects than a good verdict'.[50]

Other scholars have argued that such reforms in judiciary under the policy of 'promoting a harmonious society' showed resemblances to the judicial style adopted in the Mao era and warned it as the Chinese judiciary's retrogression. For example, Jerome A. Cohen commented on it as the Party's 'renewal of the simple "mass line" prevailed in the Mao era, which had 'discouraged most professional progress' the Chinese legal system made towards 'rule of law' since the late 1970s.[51] Li Site, in a similar vein, has argued that judicial practices under 'harmonious judiciary' today 'very much resemble' the 'people's judiciary' under the 'mass line' in the Mao era in the sense of largely relying on judicial mediation, calling for judicial activism in mediating disputes, and purportedly meeting the people's needs and emotion.[52] Yet, as further pointed out by Li, the essential feature of 'people's judiciary' in the Mao era was its 'disregard of law and rule of law'.[53] And the essential characteristic of the 'people's judiciary' (*renmin sifa*), the conception of judiciary in the Mao era is the Party's intense and comprehensive control over judiciary.[54] In this sense, he also

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[48] *Ibid*, 297.
[49] *Ibid*, 294-295.
[50] 夏敏 [Xia Min] 案结事了：一个不轻松的审判课题 [Closure: A Not Easy Task in Trial] 13.
[51] Jerome A. Cohen, The PRC Legal System at Sixty http://www.eastasiaforum.org/2009/10/01/the-prc-legal-system-at-sixty/ (9 March 2012)
[52] 李斯特 [Li Site] '人民司法群众路线的谱系 [The Context of the People's Judiciary and the Mass Line]' in 苏力 [Su Li](ed.) *法律和社会科学 [Law and Social Science]Vol.1* Beijing, 法律出版社 [The Law Press] 2006, 289, 302.
[53] *Ibid*.
[54] See relevant discussions in e.g. 高其才 [Gao Qicai] 左炬 [Zuo Ju] 黄宇宁 [Huang Yuning] *政治司法：1949-1961 年的华县人民法院 [Political Judiciary: the People's Court of Hua County in 1949-1961]* Beijing, 法律出版社 [Law Press] 2009.

assessed the current judicial reforms towards 'harmonious judiciary' as an obvious retrogression of the Chinese judiciary, especially in the aspects of judicial independence and judicial professionalism.[55] Carl Minzner also observed these reforms as 'Chinese authorities drawing on their Maoist heritage' and appraised this as 'China's turn against law'.[56]

Some studies have shown that nowadays, mediation and reconciliation may not be preferred by the Chinese people compared with litigation when there arises disputes. An empirical research conducted by a Chinese scholar Liang Ping in 2008 may shed some light on this point. Liang undertakes a survey concerning the various dispute resolution mechanisms in China today, including negotiation with the other party privately, mediation under the village or residence committee, mediation under the basic-level judicial office, mediation under the local level police, the town government of street office (*jiedao banshichu*), bringing complaint to the relevant administrative department for mediation, and directly bringing lawsuit and petitioning in urban, suburban and rural places.[57] The result of this survey shows that although 'negotiation with the other party privately' is still the first choice for the respondents in all the studied areas, 'litigation' has been the second choice for the respondents in both urban and suburban areas (only, mediation under the village committee is the rural respondents' second choice).[58]

Furthermore, Liang Ping's research argues that the judicial system built since the 1970s in the liberal direction may not be the real reason for the increasing social unrest and the parties' dissatisfaction. As shown in Liang's research, in total 63.1 per cent of the respondents in all the areas expressed themselves 'satisfied' or 'generally satisfied' about litigation and the percentage of 'satisfied' or 'generally satisfied'

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[55] *Ibid*, 309, 310.
[56] Carl F. Minzner, China's Turn against Law, Vol. LIX, Fall 2011 No. 4 *The American Journal of Comparative Law* 944-947.
[57] See: Choice of dispute resolution mechanisms in China http://lawprofessors.typepad.com/china_law_prof_blog/2011/08/choice-of-dispute-resolution-mechanisms-in-china.html
[58] *Ibid.*

respondents is just slightly higher in mediation, which is 67 per cent.[59] Concerning the effectiveness of the various mechanisms in resolving disputes, 69.9 per cent of the respondents has assessed 'litigation' as 'useful' or 'generally useful' (though the researcher did not explain the meaning of 'useful' in the report), and such percentage was 64.4 per cent in mediation.[60] In conclusion, according to Liang, his research shows that 'litigation has played the leading role in the whole dispute resolution system'.[61] In this regard, the so-called 'Chinese characteristics' cited by Su Li and Fan Yu as the justification of the increasingly wide use of reconciliation and mediation in judiciary now may actually not correspond to the reality in China today – insteadm, there is a greater social need for well-functioning litigation.

These scholars further explore the reason for the change of attitudes towards mediation or reconciliation and litigation among Chinese people. For instance, according to Li Site, different from the view held by Su Li that the majority of China remains an 'acquaintance-based society' or a 'close-knit' society, Chinese society today has changed to a 'society of strangers' based on market economy.[62] This means that a formal and independent judicial system is more suitable than mediation in resolving (most) disputes.[63] In the same vein, Li Jianshu argues that the values underlying traditional Chinese culture that support mediation and reconciliation are collapsing and have largely collapsed in China today along with China's open up, adoption of market economy, and significant changes in society including more and more mobile population and the increasingly sharp social contradictions.[64] In addition to the changes in economics, some scholars state that legal reforms promulgated by the Chinese leadership in the 1980s and 1990s in liberal direction

[59] 梁平 [Liang Ping] 多元化纠纷解决机制的制度构建 [The Establishment of A Diverse Dispute Resolution System] 2011(3) *当代法学 [Contemporary Law Review]* 122.
[60] *Ibid*, 124.
[61] *Ibid*, 123.
[62] Above 52, 309.
[63] *Ibid*.
[64] 李剑书 [Li Jianshu] '中国刑事和解制度构建的三重瓶颈 [Three Bottle-necks in the Establishment of the Criminal Reconciliation System in China]' in 卞建林 [Bian Jianlin] and 王立 [Wang Li](ed.) *刑事和解与程序分流 [Criminal Reconciliation and An Alternative Procedure]* Beijing, 中国人民公安大学出版社 [The Chinese People's Public Security University Press] 2010, 175-178.

have already given rise to 'rights consciousness' and 'legal professionalism' in Chinese society.[65]

These arguments on the characteristics of China today, however, also imply that a 'simpl renewal of' or 'retrogression to' the conception of judiciary in the Mao era would not be appropriate to understand the recent judicial reforms under the policy of 'promoting a harmonious society'. Because of the above mentioned changes in Chinese society, the real influence of these reforms to China may be complicated and mixed. Some scholars have also noticed this. For example, Fu Hualing has argued that despite political difficulties, public interest lawyers in China have become 'more demanding and more challenging.'[66] Eva Pils observes that even though there are increasing 'dilution and hostility to rights' under the current legal reforms, the rights movements in China show new features of more alignments and refined practices of *weiquan*.[67] Even at the central level, as noted above, the policy of 'establishing a socialist harmonious society' is advocated together with the notion of 'rule of law' (even if, as discussed by Leïla Choukroune and Antoine Garapon, there exists obvious contradictions in these conceptions)[68].

Therefore, according to scholars holding such views on the recent judicial reforms, the judicial reforms today signal the Party's more direct and tight control over judiciary. For instance, as argued by He Weifang, the authorities' launch of the current judicial reform is due to the Party's recognition that judicial reform in the 1990s towards a liberal direction is likely to form threat to the Party's dominant rule.[69] Hence, it is 'the politics' counteroffensive to law'.[70] In this context, as

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[65] Fu Hualing, 'Challenging Authoritarianism through Law' in in Jean-Philippe Béja, Fu Hualing and Eva Pils (editors), *Liu Xiaobo, Charter 08 and the Challenges of Political Reform in China* Hong Kong, Hong Kong University Press 2012, 185; Eva Pils, The Dislocation of the Chinese Human Rights Movement in Stacy Mosher, Patrick Poon (ed.) *A Sword And A Shield: China's Human Rights Lawyers* Hong Kong, China Human Rights Lawyers Concern Group 2009, 143-144. See also Rebecca Lowe, 'Leading Law Professor Fu Hualing optimistic about China's potential for change' http://www.ibanet.org/Article/Detail.aspx?ArticleUid=8ca250bc-00d4-4369-85f9-f9ba4b18b163 (6 September 2012). For a view critical of the supposed rise of rights consciousness, see e.g. Elizabeth Perry, 'China Since Tiananmen: A New Rights Consciousness?', *Journal of Democracy* (July 2009).

[66] *Ibid.* 186, 196.

[67] *Ibid.* 155-156.

[68] Leïla Choukroune and Antoine Garapon, The Norms of Chinese Harmony, 2007 (3) *China Perspectives* 37.

[69] 张洁平 [Zhang Jieping] 中国法治大倒退 再现运动式执法 [The Serious Retrogression of Rule of Law in China; The Campaign-Style Law Enforcement Emerged Again]

commented by Zhang Weiping, mediation is 'a political conduct to meet political needs', so 'political effects have precedence over legal issues for mediation in this context'.[71] Leïla Choukroune and Antoine Garapon even mentioned the trick of the authorities' claim of 'the people' as the orientation of judicial reforms or the judicial system. According to them, by proposing the idea of 'One People', it was virtually the 'softer version of something common to totalitarian systems'[72], because it is impossible to say that there exists something like 'One People'.

Taking into account these contrasting opinions in the debate, research on the systems launched in the recent judicial reforms under the policy of 'promoting a harmonious society' like criminal reconciliation, may be of great importance to understand the influences and implications of the current judicial reforms.

1.2 The implementation of criminal reconciliation

What the author discusses in this section is how the policy of 'combining severity with leniency' has affected the crimninal process in practice. The discussion here is not limited to practices explicitly called 'criminal reconciliation'(*xingshi hejie*), because at the point when 'criminal reconciliation' programmes started to be used in some localities in China around 2004, names given to such practices varied from place to place.[73] According to Song Yinghui, most places called it '*xingshi hejie*' (i.e. Hunan province, Beijing municipality, Shanghai municipality, and Hainan province)[74]; some called it '*pinghe sifa'* ('peaceful judiciary') (i.e. Yantai city in

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http://www.yzzk.com/cfm/Content_Archive.cfm?Channel=ae&Path=2292637042/32ae1a.cfm (23 April 2012)

[70] *Ibid*.

[71] Above 41, 21.

[72] Above 68, 39.

[73] 宋英辉 [Song Yinghui] 公诉案件刑事和解的实证分析 [Empirical Analysis on Criminal Reconciliation in Public Prosecution] http://www.sqxb.cn/blog/blog.aspx?id=309&zuozeid=83 (27 July 2010)

[74] "恢复性司法与中国刑事诉讼法改革实证研究"课题组 [Research Group of 'Empirical Study of 'Restorative Justice and The Reform of the PRC Criminal Procedure Law'] '我国刑事和解适用现状之概览 [An Overview of the Current Implementation of Criminal Reconciliation in China]' in 宋英辉 [Song Yinghui], 袁金彪 [Yuan Jinbiao] (ed.) *我国刑事和解的理论与实践 [Theory and Practice of Criminal Reconciliation in China]* Beijing, Peking University Press 2009, 35.

Shandong province)[75]; also some called it '*huifuxing zhengyi*' or '*huifuxing sifa,*' translating from a popular concept in western jurisdictions - restorative justice (i.e. Wuxi city in Jiangsu province)[76]. Nevertheless, according to the author's observation, along with the development of this practice, '*xingshi hejie*' (criminal reconciliation) has become the most widely accepted and used name for this practice in China.

When it emerged in China, criminal reconciliation was mainly conducted at the stage of examination for prosecution (*shencha qisu*) by the People's Procuratorate.[77] Gradually, it came to be conducted at the stage of filing a case for investigation (*li'an zhencha*) by the Public Security Bureau and the trial stage by the People's Court.[78]

1.2.1 The procedure and scope of application of criminal reconciliation

Although for a long period there were no procedural regulations or guidelines on the operation of criminal reconciliation at the central level, as is common in Chinese legal practice, a number of regulations or guidelines were issued by local authorities, most often the People's Procuratorates and in some places jointly by the Public Security Bureau, the People's Procuratorate, the People's Court and the Justice Bureau.[79]

Some local regulations or guidelines can be accessed on the internet[80] or have been appended to monographs or books[81]. Yet some of them are still not publicly

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[75] 王成铎 [Wang Chengduo] 烟台：走在"平和司法"的大道上 [Yantai: On the Way of "Peaceful Judiciary"] http://www.jcrb.com/n1/jcrb904/ca477942.htm (24 October 2011)

[76] 江苏省无锡市人民检察院 [The People's Procuratorate of Wuxi City in Jiangsu Province], 无锡市检察机关恢复性司法工作总结[A Summary of Restorative Justice Work in The People's Procuratorates of Wuxi City] in 宋英辉 [Song Yinghui] 袁金彪 [Yuan Jinbiao] (ed.) *我国刑事和解的理论与实践 [Theory and Practice of Criminal Reconciliation in China]* Beijing, Peking University Press 2009, 97.

[77] 蔡国芹 [Cai Guoqin] *刑事调解制度研究 [Research on Criminal Mediation System]*Beijing, 中国人民公安大学出版社 [The Chinese People's Public Security University Press] 2010, 233.

[78] *Ibid*.

[79] Above 74, 35-39.

[80] For instance, the Regulation issued by Zhuhui district People's Procuratorate of Henyang city in Hunan province can be found at http://www.hyzhq.gov.cn/ZWXX/StandAuthorityColumInfo.aspx?id=475 (1 November 2011)

[81] For instance, the Procedural Regulation on the Implementation of Criminal Reconciliation issued by Chaoyang district and Haidian district People's Procuratorates in Beijing were enclosed as appendix of the book '刑事和解' [Criminal Reconciliation] by 王一俊 [Wang Yijun] Beijing, 中国政法大学出版社 [China University of Politics and Law Publishing] 2010.

available, and are not permitted to be made publicly available. Taking the author's experience by way of example, in two fieldwork locations, the officials approached for copies of their local guidelines on criminal reconciliation simply declined to make them available, even for the purpose of anonymous research. The author was informed that 'these are internal documents' (*neibu wenjian*) so that they should be 'kept secret' (*baomi*). However, according to article 2 of the 'Law of the People's Republic of China on Guarding State Secrets', state secrets are defined as 'matters that have a vital bearing on state security and national interests and, as specified by legal procedure, are entrusted to a limited number of people for a given period of time'. It is difficult to believe that guidelines for criminal reconciliation can be said to fall within these 'matters'. On the contrary, procedural regulations for criminal reconciliation process, as a regulation over a legal process, should be open.[82] This belongs to 'access to all relevant information', which is one of the minimum requirements for the 'right to a fair trial' as confirmed in the Universal Declaration of Human Rights and ICCPR.[83] In practice, given the abovementioned restrictions, it is likely that the parties participating in this process may have detailed knowledge and now way of obtaining information about the procedure of criminal reconciliation, as well as their rights during this process. This raises questions as to the process and effect of criminal reconciliation concerning the parties' roles and rights.

Based on their knowledge of available regulations and guidelines on criminal reconciliation in various locations across China, many Chinese scholars have interpreted the procedure as following a similar style and including four steps - initiation, criminal reconciliation meeting, the officials' decision and follow-up programmes (optional).[84] These steps or stages in the procedure are now also

[82] 许斌 [Xu Bin] 法律法规应该是公开博弈的产物 [Laws and Regulations Should be the Products of Open Game] http://www.china.com.cn/news/comment/2010-07/30/content_20607709.htm (6 March 2012)
[83] http://www.equalityhumanrights.com/advice-and-guidance/before-the-equality-act/guidance-for-service-users-pre-october-2010/criminal-justice-system/the-right-to-a-fair-trial/ (6 March 2012)
[84] At present, almost all the places with the practice of criminal reconciliation have stipulated local regulations governing the procedure of this practice. See: 宋英辉 [Song Yinghui] 袁金彪 [Yuan Jinbiao] (ed.) *我国刑事和解的理论与实践 [Theory and Practice of Criminal Reconciliation in China]* 35-39. Some of them can be searched on the internet like the 'Regulation on the Implementation of Criminal Reconciliation in Hunan Province' at http://www.fgw.czs.gov.cn/jcy/lwxjcy/wjfb/content_988.html (13 December 2010). Some are shown

reflected in the Supreme People's Procuratorate's 'Opinions of the Supreme People's Procuratorate on the Handling of Minor Criminal Cases When the Parties Have Reached Reconciliation' issued in December 2010.[85] These four steps are set out below where the term 'party' refers to the suspect/defendant and the victim (or alleged victim) in a case.

The stage of initiation. Criminal reconciliation can be initiated in three situations. First, the Public Security Bureau/People's Procuratorate/People's Court initiates it based on examining the circumstances of the case and asking both parties whether they agree to participate in criminal reconciliation.[86] This means that *both parties* should voluntarily participate in this process.[87] This type, mainly dependent on official initiation, is the one currently implemented in most places in China[88] and also the one laid down in the 2012 CPL (except, that the 2012 CPL requires only *the victim's* voluntary participation).

Second, the Public Security Bureau/People's Procuratorate/People's Court initiates it according to either party's application. Upon this application, the police/prosecutors/judges should examine the case and make sure that *the other party* (in other words, it also requires that criminal reconciliation should be based on both parties' voluntary participation) also agrees to participate voluntarily.[89] An example of this situation is the one adopted in Shanghai municipality.[90]

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in academic work like the Regulations in Nanjing and Changzhou city, which are enclosed in狄小华 [Di Xiaohua] 刘志伟 [Liu Zhiwei] (ed.) *恢复性少年司法理论与实践 [The Theory and Practice of Restorative Justice of Juvenile Cases]* Beijing, 群众出版社 [People Publishing] 2007.

[85]《最高人民检察院关于办理当事人达成和解的轻微刑事案件的若干意见》See the interview with Bai Quanmin, the spokesman of the Supreme People's Procuratorate about the 'Opinions' at http://www.lianghui.org.cn/2011/2011-03/12/content_22119264_2.htm (15 March 2011). See the English version of these 'Opinions' translated by the author as the Appendix IV of this thesis.

[86] 蔡国芹 [Cai Guoqin] *刑事调解制度研究 [Research on Criminal Mediation System]* Beijing, 中国人民公安大学出版社 [The Chinese People's Public Security University Press] 2010, 232.

[87] 宋英辉 [Song Yinghui] 公诉案件刑事和解的实证分析 [The Empirical Analysis on the Criminal Reconciliation System in Public Prosecution Cases] http://www.sqxb.cn/blog/blog.aspx?id=309&zuozeid=83 (13 February 2011)

[88] Above 86, 232.

[89] 李萍 [Li Ping] 刘宇 [Liu Yu] 检察机关构建未成年人刑事和解制度探讨 [Discussion on the Establishment of Criminal Reconciliation System in Juvenile Cases in the People's Procuratorate]: http://www.shjcy.gov.cn/njcgyd2007/llsj/t20070809_33593.htm (11 February 2011)

[90] *Ibid.*

Third, the parties have reached an agreement themselves, and submit the agreement to the Public Security Bureau/People's Procuratorate/People's Court for examination.[91] In this third case, initiation is not really triggered by the authorities; they merely confirm the result of a negotiation process carried out by the parties themselves. An example of this situation is the one adopted in Hunan province.[92]

Not all cases are susceptible of criminal reconciliation. Official examination of cases centres on:

(i) whether or not the case is suitable for reconciliation. Normally, the case ought to concern a suspected 'minor crime' according to the PRC Criminal Law[93] and the suspect/defendant should not be a recidivist (in the event of conviction of the crime of which she/he is suspected).[94] It could be seen that the 'scope' of the cases eligible for criminal reconciliation stipulated in these local regulations or guidelines is wider than that in the 2012 CPL. Usually, criminal reconciliation is preferred in juvenile cases and cases in which the parties have some relationship established prior to the 'crime', for instance because they are classmates, neighbour s or relatives;[95]

(ii) whether or not the parties' application or personal agreement is legitimate, namely it should be both parties' true intentions;[96] and

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[91] Above 86, 232..

[92] 三湘都市报 [San Xiang Municipal Newspaper] 湖南试行刑事和解制: 轻微刑事案件可私下和解 [Hunan Tried Criminal Reconciliation: Minor Criminal Cases Can Be Reconciled Privately] http://www1.china.com.cn/policy/txt/2006-11/22/content_7393033.htm (11 February 2011)

[93] According to Article 1 of the 'Explanations of the Supreme People's Court on Enforcing the PRC Criminal Law [最高人民法院关于执行《中华人民共和国刑事诉讼法》若干问题的解释] stipulated in 1998, eight categories of crimes are 'minor crime'. They are: intentional injury crime according to Section 1, Article 234 of the PRC Criminal Law; illegal intrusion into others' residence according to Article 245 of the PRC Criminal Law; infringement of other citizens' right of communication freedom according to Article 252 of the PRC Criminal Law; bigamy according to Article 258 of PRC Criminal Law; abandonment according to Article 261 of the PRC Criminal Law; manufacturing and selling fake and shoddy goods according to Section 1, Chapter 3 of the PRC Criminal Law (expect those seriously undermine social order and state interest); infringement of intellectual property rights according to Section 7, Chapter 3 of the PRC Criminal Law (expect those seriously undermine social order and state interest); crimes stipulated in Chapters 4 and 5 of the PRC Criminal Law which could be sentenced with the penalty lighter than imprisonment under three years.

[94] But in some places, criminal reconciliation has been also applied to felonies like serious intentional injury crimes and even death penalty cases. See: 宋英辉 [Song Yinghui] 我国刑事和解实证分析 [the Empirical Analysis on Criminal Reconciliation in China] (2008)5, *中国法学 [China Legal Science]* 124-125.

[95] 宋英辉 [Song Yinghui], *ibid*.

[96] Above 86, 233.

(iii) the suspect/defendant has to admit guilt (*renzui*) before entering criminal reconciliation programme.[97] In some places, the suspect/defendant has also to show remorse (*huizui biaoxian*) towards the accused crime.[98]

Criminal reconciliation meeting. When criminal reconciliation is initiated by one of the State institutions, a criminal reconciliation meeting is expected to be held (arranged for and presided over) by the official.[99] Most of the regulations or guidelines explicitly emphasize that the criminal reconciliation meeting should proceed on the basis of fairness and voluntariness.[100] The potential tension arising from official roles and the principle of voluntariness turned out to be a major issue in the empirical study whose results are discussed in later chapters.

The criminal reconciliation meeting can be presided over by the responsible official (that is, the police/prosecutor/judge concerned with handling this case) or by a People's Mediator assigned by the responsible official.[101]

The main work of the official or mediator is to *guide* and *facilitate* the parties to reach an agreement. The official or mediator is forbidden to interfere with the parties' own wishes in criminal reconciliation meetings.[102] The criminal

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[97] 蔡国芹 [Cai Guoqin], *ibid.* 232. In practice, it was required in some local regulations or guidelines (i.e. the one stipulated by the People's Procuratorate of Chaoyang district in Beijing and the one stipulated by the People's Procuratorate of Yuhua district in Shijiazhuang). See: the empirical research reports collected in 宋英辉 [Song Yinghui] *刑事和解实证研究 [Empirical Research on Criminal Reconciliation]* Beijing, 北京大学出版社 [Peking University Press] 2010, 25, 219, 237. It can also be found as the premise of initiating a criminal reconciliation programme in the Guidelines on the Implementation of Criminal Reconciliation in Wuxi city. See the full text of this Guideline in 卞建林 [Bian Jianlin] and 王立 [Wang Li] (ed.) *刑事和解与程序分流 [Criminal Reconciliation and An Alternative Procedure]* Beijing, 中国人民公安大学出版社 [The Chinese People's Public Security University Press] 2010, 452.

[98] An example is the Regulation on the Criminal Reconciliation Programme in Changzhou city enclosed in 狄小华 [Di Xiaohua], 刘志伟 [Liu Zhiwei](ed.) *恢复性少年司法理论与实践 [The Theory and Practice of Restorative Justice of Juvenile Cases]* Beijing, 群众出版社 [People Publishing] 2007.

[99] 肖仕卫[Xiao Shiwei] 刑事法治的"第三领域": 中国刑事和解制度的结构定位与功能分析 ['The Third Realm' in Criminal Justice: An Analysis of the Structural Position and Function of Criminal Reconciliation in China] (2007) Vol19 No.6,*中外法学 [Peking University Law Journal]* 724-725.

[100] Above 86, 236.

[101] 陈瑞华[Chen Ruihua] 刑事诉讼的私力合作模式：刑事和解在中国的兴起 [Private Cooperation in Criminal Proceedings: The Emergence of Criminal Reconciliation in China] (2006)5 *中国法学 [China Legal Science]* 16-18.

[102] *Ibid.*

reconciliation meeting can be attended by both parties (*or* their agents[103]); it can also be attended by their relatives and other people (i.e. other officials and the parties' friends, teachers, employers, neighbour s, or *lingdao*[104] ['leadership']).[105]

Generally, a criminal reconciliation meeting is expected to be conducted according to the following four steps.[106] First, the official or mediator briefly introduces the case to the participants. Second, the suspect/defendant states his/her attitudes to and feelings on the alleged offence, and then admits guilt, expresses regret, apologies and expresses his/her willingness to compensate the victim *voluntarily*. Often, as indicated by some scholars, the official would also ask the suspect/defendant to indicate his/her resolutions for the future in the meeting. Third, the victim expresses his/her feelings and describes the harm and loss caused by the accused crime and then shows forgiveness and the *voluntary* acceptance of the compensation offered by the suspect/defendant. Finally, the parties sign an agreement that reflects the oral agreement reached in the meeting (or that may factually have been reached prior to the formal criminal reconciliation meeting).

It appears that the pre-revision criminal reconciliation processes for criminal reconciliation meetings as designed in the local regulations or guidelines were much more detailed and stressed both parties' participation and communication based on their voluntariness, yet these were missed in the 2012 CPL.

The official's decision After the suspect/defendant has paid up, the officials in question have different options, depending on the stage at which criminal reconciliation was carried out. The police (Public Security Bureau) can 'dismiss' (*chexiao*) the case.[107] The People's Procuratorate *may* make a decision not to

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[103] 'Agents' mean persons entrusted by victims, or victims' legal representatives or near relatives.

[104] The phrase 'leadership' (*lingdao*) is closely related to another phrase '[Party] cadre' (*ganbu*). The Chinese call people donating leadership skill and capability (or more precisely it is expected that *lingdao* are skilled/capable persons) in an organizational setup. 'Leader' (*lingdao*) or 'cadre' (*ganbu*) is the functionary who staff the various Party and government bureaucracies and has authority to conduct Party or government affairs. In general, there are three categories of 'leader'(*lingdao*) or 'cadre' (*ganbu*): State, local and military. See: James C.F. Wang *Contemporary Chinese Politics* New Jersey, Prentice Hall 1995, 119-120.

[105] Above 87.

[106] Based on the summary in 蔡国芹 [Cai Guoqin] *刑事调解制度研究 [Research on Criminal Mediation System]* 235-236.

[107] *Ibid.*

prosecute and to erase the suspect's criminal record, or suggest to the Public Security Bureau that it 'dismiss' the case, or suggest a lenient sentence to the People's Court.[108] The People's Court can give the defendant a lenient sentence.[109] The 2012 CPL follows these options, except that the police are not allowed to directly 'dismiss' the case.

If the parties cannot reach or comply with the criminal reconciliation agreement, the case is transferred back to the normal criminal procedure.[110]

Follow-up programmes. After the criminal reconciliation meeting, the official in charge *may* arrange for some follow-up work. This may consist in a programme called 'community correction' (*shequ jiaozheng*) or in a programme called 'help and teaching' (*bangjiao*) for the suspect/defendant.[111] In the follow-up work, the official continues to gather information about the suspects/defendants' conduct in daily life, for instance by visiting or calling them or their families regularly.[112]

'Community correction', according to the 'Opinions on the Nationwide Trial Implementation of Community Correction' issued jointly by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice, is a type of non-custodial criminal punishment.[113] According to these Opinions, it means 'correcting the criminals in their respective community[114]

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[108] *Ibid*.

[109] See: '我国刑事和解适用现状之概览 [An Overview of the Criminal Reconciliation Practices in China]' in 宋英辉 [Song Yinghui] and 袁金彪 [Yuan Jinbiao] (ed.) *我国刑事和解的理论与实践 [The Theory and Practice of Criminal Reconciliation in China]*, 38-39.

[110] Above 86, 236.

[111] 宋英辉 [Song Yinghui] 我国刑事和解实证分析 [An Empirical Analysis of Criminal Reconciliation in China] (2008)5 *中国法学 [China Legal Science]* 134.

[112] Above 86, 310.

[113] According to Article 1 of the 'Opinions on the Nationwide Trial Implementation of Community Correction' [最高人民法院、最高人民检察院、公安部、司法部关于在全国试行社区矫正工作的意见]. See the English translation of the 'Opinions' at LawInfoChina: http://www.lawinfochina.com.easyaccess1.lib.cuhk.edu.hk/display.aspx?id=8265&lib=law&SearchKeyword=&SearchCKeyword=最高人民法院、最高人民检察院、公安部、司法部关于在全国试行社区矫正工作的意见

[114] In China, although there are still debates on the criteria to divide community, ordinarily, a certain number of residences that subordinate to a residence committee (*juweihui*) or sub-district office (*jiedao banshichu*) can be viewed as a community. See: 夏建中 [Xia Jianzhong] 社区概念与我国城市社区建设 [The Concept of Community and the Establishment of Community in Urban China] http://www.ccpg.org.cn/Article/ShowArticle.asp?ArticleID=272 (8 December 2010). According to the 'Opinions on Improving the Establishment of Urban Community' issued by the Ministry of Civil Affairs [民政部关于在全国推进城市社区建设的意见] in 2000, 'community' refers to the area under a residence committee (*juweihui*). According to Article 7 of the 'Organic Law of The Urban Residences Committees of the People's Republic of China' [城市居民委员组织法], a residents committee shall be established for an area inhabited by 100-700

with the assistance of social organizations (*shehui tuanti*)[115], non-governmental organizations (*minjian zuzhi*)[116] and volunteers to correct their criminal minds and bad behavior within the period determined by the judgment or decision, and to help them return to the society'.[117]

'Help and teaching' programmes are arranged by the responsible official using various resources in society (like volunteers and community workers) to 'educate, help, and supervise' the suspect/defendant.[118] In the programme, the suspect/defendant is often required to do some voluntary work and keep communicating with the people responsible for the programme.[119] The person

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households on the basis of the distribution of residents and the principle of facilitating their self-government. The definition of sub-district office (*jiedao banshichu*), however, is unclear at present. The 'Organic Law of the Sub-District Office' [城市街道办事处组织条例] issued in 1954 provides that 'sub-district office (*jiedao banshichu*) is set in order to strength residential work in cities and the connections between the government and the residents'. And 'the municipality with more than one million population and city without districts should establish sub-district office'. 'The municipality with more than fifty thousand but less than one million population can establish sub-district office if necessary'. Yet this regulation expired in 2009 and there is no new regulation on sub-district office ever since. See 昆明日报 [Kunming Daily]: '50 多岁' 的 《城市街道办事处组织条例》已被废止, 但新职责依然不明确; 街道办身份越来越尴尬 [The Organic Law of the Sub-District Office over '50 Years Old' Was Banned, Yet New Responsibility Has Not Been Clear Yet: the Sub-District Office Is More and More Embarrassed] http://szcg.km.gov.cn/ggxx/news.aspx?id=5371 (28 March 2011)

[115] According to the 1998 Regulations on Registration and Administration of Social Organizations [社会团体登记管理条例], 'social organization' (*shehui tuanti*) means 'non-profit groups voluntarily organized by Chinese citizens in order to realize a shared objective according to their rules'. 'All organizations other than state organs may join social organizations as institutional members.'

[116] Non-governmental organization (*minjian zuzhi*) means non-profit non-government organization. It includes social organization (*shehui tuanti*), non-governmental non-enterprise entity (*minban fei qiye danwei*) and foundation. See: 洪大用 [Hong Dayong] 中国民间组织扶贫工作的初步研究 [An Initial Research on The Poverty Relief Work by Chinese Non-Governmental Organizations] 2002(2), *江海学刊 [Jianghai Academic Journal],* 100. Non-governmental non-enterprise entities (*minban fei qiye danwei*), according to the 1998 'Temporary Regulations on Registration and Administration of Non-profit Non-government Organizations' [民办非企业单位登记管理暂行条例], are 'non-profit social organizations established by social organizations, citizens, enterprises and other institutions by means of non state owned property in order to conduct non-profit social service activities'. Foundation, according to the 2004 'Regulation on Foundation Administration' [基金会管理条例], is 'non-profit legal person established according to this Regulation and through making use of the property donated by persons, legal persons, or other organizations with the purpose of pursuing welfare undertakings'.

[117] Article 1 of the 'Opinions on the Trial Implementation of Community Correction in the Whole Country' [最高人民法院、最高人民检察院、公安部、司法部关于在全国试行社区矫正工作的意见]. See the English Translation at LawInfoChina: http://www.lawinfochina.com.easyaccess1.lib.cuhk.edu.hk/display.aspx?id=8265&lib=law&SearchKeyword=&SearchCKeyword=最高人民法院、最高人民检察院、公安部、司法部关于在全国试行社区矫正工作的意见

[118] 宋英辉 [Song Yinghui] 我国刑事和解实证分析 [An Empirical Analysis of Criminal Reconciliation in China] (2008)5 *中国法学 [China Legal Science]* 134.

[119] 张洁 [Zhang Jie] '恢复性司法、刑事和解、社区矫正': 少年司法中的三项重要制度 ['Restorative Justice, Criminal Reconciliation, Community Correction': Three Crucial Systems in Juvenile Justice System], http://www.yffz.org/E_ReadNews.asp?NewsId=1249&page=2 (13 February 2011)

undertaking the programme needs to report on the suspect/defendant's performance to the official.[120]

The time stipulated for these follow-up programmes varies from place to place. Usually it lasts for several months. If the suspect/defendant gets favorable assessments at the end of this period, the decision made after the criminal reconciliation meeting may be confirmed; otherwise, the decision will be revoked.[121]

Although this stage is designed as an option (decided by the officials) for the procedure of criminal reconciliation in these local regulations or guidelines, it is not mentioned at all in the 2012 CPL. Whether this omission could affect the future conduct of follow-up programmes and its effect and importance on the process is further discussed in Chapters Four and Five.

Overall, the procedure designed for criminal reconciliation as shown in the local regulations or guidelines is much more detailed and complicated than in the 2012 CPL. Articles 277 to 279 did not even ask for the suspect/defendant's voluntary participation in this 'reconciliation' process, which is stressed in these local regulations or guidelines and may be the foundation of a genuine reconciliation process. It will be interesting to see how this 'contradiction' is 'resolved' in practice after the revision of the CPL takes effect (from 1 January 2013).

1.2.2 Criminal reconciliation and the normal criminal procedure

The procedure of criminal reconciliation is different from the normal criminal procedure. The difference is shown in the principles and values underlying these two systems.

The normal criminal procedure in the Chinese legal framework, according to the PRC Criminal Procedure Law, includes five stages, namely 'filing a case', 'investigation', 'prosecution', 'trial', and 'execution'. According to the procedure

[120] *Ibid.*
[121] *Ibid.*

designed for criminal reconciliation, except for the last stage of execution, criminal reconciliation can be initiated at each of the four stages of the normal criminal procedure. It has the effect of ending the normal procedure at one stage (i.e. the police can 'dismiss' the case at the stage of 'filing a case' or 'investigation'; the prosecutor can decide not to prosecute). It can also continue with the normal procedure after the end of the criminal reconciliation process (i.e. the police/prosecutor makes suggestions about lenient dispositions to the prosecutor/judge; the judge give a lenient sentence).

Yet essentially, the process of criminal reconciliation is different from the normal criminal procedure because the 1996 PRC Criminal Procedure Law has set the normal procedure as an adversarial system (or a more adversarial system compared with the inquisitorial system as set in the 1979 PRC Criminal Procedure Law[122]). This design as an adversarial system has also been on principle preserved by the new CPL, to become effective in 2013.

In designing an adversarial system, the 1996 CPL imposes restrictions on public power and provides protection for the suspect/defendant's rights. For example, Fu Hualing provided a review on the crucial progress the 1996 PRC Criminal Procedure Law had made towards an adversarial system.[123]

> 'In many aspects, the [CPL] Amendment introduces important changes to the previous procedures and significantly redistributes the existing division of powers within the criminal justice system. It restricts police power and the prosecution's discretion. It enhances the position of the court and differentiates the role of judges. It also offers more protection for the rights of the accused and enhances the position of defence lawyers in the criminal process in substantive

[122] Randall Peerenboom, What Have We Learned about Law and Development? Describing, Predicting and Assessing Legal Reforms in China Spring 2006 Vol. 27, *Michigan Journal of International Law*, 844.
[123] Fu Hualing, Criminal Defence in China: The Possible Impact of the 1996 Criminal Procedural Law Reform No. 153 (Mar. 1998) *the China Quarterly*, 31.

and procedural aspects. Consequently criminal lawyers are expected to play a more active and meaningful role in criminal defence.'

At trial, in contrast to the very active role to 'pursue truth' (through pre-trial investigation etc.) under the more inquisitorial system in the 1979 CPL[124], the judge under the current (more) 'adversarial system' serves as a 'more neutral and independent role' during the process.[125]

Although there remain deficiencies in the design of an adversarial system in the 1996 CPL (i.e. no 'presumption of innocence'), and judicial practices in China have been disappointing (or even displaying a reverse picture) in enforcing the 1996 CPL (as an adversarial system)[126], it could still be said that the normal criminal procedure is very different from criminal reconciliation.

The description above shows that criminal reconciliation is essentially based on the two parties' communication and negotiation. That is to say, the two parties are not supposed to stand in 'adversarial' positions in criminal reconciliation processes. As a 'reconciliation' process, voluntariness (from both parties, or only the victim as problematically stipulated in the 2012 CPL) is the basic and core principle underlying criminal reconciliation. The officials' role is also very different: they still have power (i.e. in initiating this process, presiding over criminal reconciliation meetings and deciding the case), so that rather than restricting their discretion as required in the normal procedure, the proceeding of criminal reconciliation heavily relies on their discretion. Furthermore, criminal reconciliation is based on the suspect/defendant's admission of guilt (or showing remorse) beforehand, which is the key issue to establish in the normal procedure.

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[124] Mike McConville *et al*, Criminal Justice in China: An Empirical Inquiry, *Edward Elgar Publishing* 2011, 10-11.

[125] Jennifer Smith and Michael Gompers, Realizing Justice: The Development of Fair Trial Rights in China http://www.law.upenn.edu/journals/ealr/articles/volume2/issue2/SmithGompers2ChineseL.&Pol%E2%80%99yRev.108(2007).pdf (6 March 2012)

[126] Above 124, 10-12.

In sum, criminal reconciliation is essentially different from the normal procedure. The difference may have two further implications: first, it seems that the roles of the official and the parties are distinct from that in the normal criminal procedure. Then, what exactly are their roles in criminal reconciliation processes and the interaction between their roles? Second, without the mechanisms involved in the adversarial system serving to restrict public power and protect the rights of the accused, can the suspect/defendant (and the victim)'s rights be protected in criminal reconciliation processes? Especially, could the most basic principle of voluntariness be guaranteed? These questions indicate the need to further examine the operation of this procedure in practice.

1.2.3 The involvement of lawyers in criminal reconciliation processes

Although criminal reconciliation is essentially different from the normal procedure, news reports and academic work have shown that one mechanism critical for protecting the parties' rights in the adversarial system, namely the lawyer's representation, also exists in criminal reconciliation. In general, lawyers represent cases as they do in the normal criminal procedure.[127]

In some areas, reports suggest that lawyers have been more and more involved in this process. For example, the People's Procuratorate of Haidian district in Beijing signed contracts with the legal aid centre within the Justice Bureau of Hiadian district to confirm that the legal aid centre would provide lawyers to suspects/defendants in criminal reconciliation cases.[128]

Yet a lawyer based in Beijing told the author in an interview that in fact lawyers were always 'involved' in practices like 'criminal reconciliation'; the difference was that previously such practices were not necessariuly characterized as 'criminal

[127] 葛琳 [Ge Lin] *刑事和解研究 [On Criminal Reconciliation]* Beijing, 中国人民公安大学出版社 [The Chinese People's Public Security University Press] 2008, 243.
[128] 李松 [Li Song] 黄洁 [Huang Jie], 北京首推法援与刑事和解对接 [Beijing Promote Cooperation Between Legal Aid and Criminal Reconciliation For The First Time] http://www.qh.xinhuanet.com/qhpeace/2010-09/10/content_20868110.htm (25 October 2011)

reconciliation' by the State; and that there was no propaganda seeking to promote such practices.[129]

> 'Practices similar to "*xingshi hejie*", in which the parties achieve some reconciliation and reach agreements by themselves with the help of us lawyers, were what we lawyers always did for our clients, because getting the other party's forgiveness was fairly useful to obtain a lighter sentence. Only, a couple of years ago, such practices were suddenly given a uniform name of "*xingshe hejie*" by the authorities and were propagated in a high-key tone.'

Concerning the reasons for this 'sudden notice and emphasis' of this practice by the authorities, this lawyer attributed it to the government's thus far unfriendly and distrustful attitude towards lawyers. 'How could such a system beneficial for conflict resolution and the establishment of a "harmonious society" be initiated and conducted by you lawyers? – it, without any doubt, should be conducted and controlled by the government', said this lawyer.[130] He then expressed his concerns about the future of criminal reconciliation now that it had gained the State's attention and approval: the parties' rights might be more easily infringed by public power, as compared with the practices used before without 'explicit enphasis' and 'oversight' from the authorities.[131] Whether or not this lawyer's concerns are well founded calls for further study. His concerns notwithstanding his account suggests also that he, as a lawyer, views criminal reconciliation as potentially beneficial for the parties.

In fact, it seems that criminal reconciliation has been widely welcomed by lawyers. For example, lawyer Chen Deling of JiaxingCcity in Zhejing Province, who represented a person accused of robbery, rape and murder, expressed her strong enthusiasm for and appreciation of the use of criminal reconciliation in this case on

[129] Interview with lawyer Z in Beijing in August 2010.
[130] *Ibid*.
[131] *Ibid*.

her blog. According to lawyer Chen, 'a lighter sentence, mainly resulting from prompt compensation and the defendant's remorse [expressed] in criminal reconciliation, is indeed in the best interests of my client'.[132] Another lawyer, Li Shilin, also praised criminal reconciliation as 'beneficial for both parties' interests, especially in terms of correcting (*jiaozheng*) the juvenile suspects/defendants' [attitude] after he had represented suspects or defendants in two criminal reconciliation cases.[133]

Lawyers' attitudes toward criminal reconciliation are further illustrated in Chapter Five through the author's fieldwork interviews. Yet both the lawyers' positive attitudes toward criminal reconciliation as shown in their comments mentioned above, and reflected in the literatue[134], and the concern expressed by the lawyer interviewed as to public power's infringement upon the parties' rights may raise questions concerning the lawyer's role in this process. It is in doubt if, for example, lawyers still perform the role of checking and potentially restratining public power in criminal reconciliation in the same way they are expected to do in the adversarial system. This issue will be taken up in the next chapter.

1.2.4 Different criminal reconciliation practices nationwide

According to a study conducted by Feng Liqiang and Cui Yang, '*xingshi hejie*' (criminal reconciliation) was first (and experimentally) conducted by the People's Procuratorate of Chaoyang district in Beijing from 2002.[135] Following this so-called

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[132] 陈德玲 [Chen Deling] 死刑案件中举步维艰的刑事和解 [The Hard Criminal Reconciliation in Death Penalty Cases] http://blog.sina.com.cn/s/blog_51dd87c10100gkdg.html (2 August 2010)

[133] 李诗林[Li Shilin] 刑事和解协议书 [Criminal Reconciliation Agreements] http://lishilin1982.fyfz.cn/art/636321.htm (25 October 2011)

[134] See e.g. 钱列阳 [Qian Lieyang] 张志勇 [Zhang Zhiyong] '律师参与刑事和解的制度设计 [Design of A Criminal Reconciliation System Involving Lawyers' Participation]' in 卞建林 [Bian Jianlin] 王立 [Wang Li] (ed.) 刑事和解与程序分流 [Criminal Reconciliation and Procedural Alternative] Beijing, 中国人民公安大学出版社 [The Chinese People's Public Security University Press] 2010

[135] 封利强 [Feng Liqiang] 崔杨 [Cui Yang], 刑事和解的经验与问题 — 北京市朝阳区刑事和解现 [Experience and Problems of Criminal Reconciliation: An Investigation on the Implementation of Criminal Reconciliation in Chaoyang district in Beijing] http://article.chinalawinfo.com/Article_Detail.asp?ArticleID=42834 (24 October 2011)

'pioneer' programme,[136] and especially after obtaining support from the Party's policy of 'promoting a harmonious society' and from the Supreme People's Procuratorate and the Supreme People's Court, more and more places in China started to conduct this programme.

Subsequently, numerous internet reports emerged in China about the growth of this programme. to give some examples, it was reported that from November 2006 to October 2011 that the People's Procuratorates in Hunan Province had resolved 4,232 cases through criminal reconciliation; that 6,000 suspects had reached reconciliation with victims; and that 99.5 per cent of the agreements reached in criminal reconciliation programmes had been 'smoothly enforced'.[137] In Hebei Province, the police had successfully mediated 3,438 minor injury cases in one year since 2008.[138] Additionally, the police of Ji'an county in Jiangxi province had already resolved 89 minor intentional injury cases through criminal reconciliation from 2006 to 2009 and was considering expanding this programme to more kinds of cases involving juvenile crimes, traffic accident related crimes and crimes conducted by the elderly.[139] The People's Court of Chaoyang district in Beijing started to use criminal reconciliation mainly in the civil litigation proceedings collateral to criminal proceedings since 2005 and formulated its own rules for this programme.[140] In 2006, the No. 1 Criminal Court Division[141] of the People's Court of Chaoyang district resolved 327

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[136] *Ibid.*

[137] 陈暄 [Chen Xuan] 4243 件案子"私了",湖南刑事和解案件赔偿履行率达 99.5% [4243 Cases Resolved 'Privately'; The Enforcement Rate of Criminal Reconciliation in Hunan Reached 99.5%] http://hn.rednet.cn/c/2009/12/13/1871544.htm (27 July 2010)

[138] 马竞 [Ma Jing] 曹天健 [Cao Tianjian] 河北警方试水轻伤害案件调解处理，近一年成功调解 3438 起 [Hebei Police Successfully Mediated 3438 Minor Injury Cases in Nearly One Year] http://www.criminallaw.com.cn/article/default.asp?id=2146 (27 July 2010)

[139] 欧阳芳 [Ouyang Fang] 江西吉安公安局试行刑事和解制度,促社会和谐 [the Police of Ji'an City in Jiangxi Province Experimentally Conducted Criminal Reconciliation to Promote Social Harmony] http://www.chinapeace.org.cn/zhzl/2009-08/24/content_82878.htm (27 July 2010)

[140] 孙瑜 [Sun Yu] 陈磊 [Chen Lei] 刑事案件私了: 在争议中前行 [Solving Criminal Cases Privately: Moving on in Debates] http://news.sina.com.cn/c/l/2007-03-21/160612576540.shtml (26 August 2008)

[141] According to the Organic Law of the People's Courts of the People's Republic of China, the People's Courts may set up a criminal division, a civil division and an economic division, each with a chief judge and associate chief judges. Normally, in the basic People's Courts and intermediate People's Courts, criminal division is often divided into No. 1 and No. 2 criminal divisions with division of work. For example, in the No. 2 intermediate People's Court of Tianjin municipality, the No. 1 criminal division is mainly in charge of the first instance trial, and the No. 2 criminal division is mainly in charge of the second instance trial and counter-appeal cases and cases for 'instructions' (*qingshi*) sent by the lower level People's Courts. See: http://www.huanglawyer.net/Article/ShowArticle.asp?ArticleID=435 (27 October 2011)

cases through criminal reconciliation, and 60 thousand Yuan of compensation had been enforced in these cases.[142]

Of course, such data are far from sufficient to draw general conclusions about the proportion of criminal reconciliation cases handled by these various institutions. According to available reports, they still represent only a very small part of total cases. In the People's Courts of Aletai city in Xinjiang Uyghur Autonomous Region, to give another example, criminal reconciliation was used in only five out of a total of 16 private prosecution (*zisu*) cases the Court heard in 2011.[143] The People's Procuratorate of Chaoyang district in Beijing, according to the statistics provided by Feng Liqiang and Cuiyang, used criminal reconciliation in less than three per cent of all the (suspected) minor injury cases in 2006.[144] The People's Courts of Fukang city in Xinjiang Uyghur Autonomous Region started to use criminal reconciliation in 2005, but it only resolved seven more cases through this programme in 2009 than in 2007.[145] From 2007 to 2008, the People's Procuratorates in Hunan province adopted 2,901 criminal reconciliation programmes, which only represented 3.55 per cent of all the cases dealt with by the Procuratorates.[146] This not frequent use of criminal reconciliation in practice, according to Ge Lin, indicated that there was a big gap between its use in practice and its image in the media.[147] However, as seen, anecdotal reports indicate that reconciliation has been used *de facto*, without being called 'criminal reconciliation,' in a larger number of cases outside the scope of 'criminal reconciliation' programmes.

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[142] Above 140.

[143] 张国臣 [Zhang Guochen] 市法院充分运用刑事和解; 积极化解社会矛盾 [The People's Courts in Our City Implemented Criminal Reconciliation Actively to Resolve Social Conflicts] http://www.alt.gov.cn/Article/ShowArticle.aspx?ArticleID=44190 (27 October 2011)

[144] Above 135.

[145] 隋云雁 [Sui Yunyan] 阜康市法院刑事和解促和谐 [The People's Courts of Fukang City Used Criminal Reconciliation to Promote Social Harmony] http://big5.xjts.cn/news/content/2010-08/06/content_5143642.htm (24 October 2011)

[146] 谭泽林 [Tan Zelin] 赵秋生 [Zhao Qiusheng] 我国刑事和解实施中的问题与相应实体、程序法完善 [Problems and Improvements of Laws Accordingly in Implementing Criminal Reconciliation in China] (2009)9 *政治与法律 [Politics and Law],* 149.

[147] 葛琳 [Ge Lin] 刑事和解的现实困境解析 [An Analysis of the Practical Predicament of Criminal Reconciliation] 2010(5), *中国司法 [Justice of China],* 19.

Ge attributes the reasons for the comparatively rare use of this programme in practice (as shown in the publicly available resources) to the internal performance assessment (*jixiao kaohe*) system and the wrongful conviction investigation (*cuo'an zhuijiu*) system.[148]

The internal performance assessment system. The performance assessment system (*jixiao kaohe*) is an internal management method adopted in the Public Security Bureaus, People's Procuratorates and People's Courts nationwide in China.[149] This system varies between different Public Security Bureaus/People's Procuratorates/People's Courts and the criteria of assessment usually include a number of factors. Nevertheless, in all organs all the requirements included in such a system directly affect the rewards, discipline, and promotion of the officials through awarding or deducting marks.[150]

Academic works indicate that in the Public Security Bureau, criteria of assessment could involve the rate of 'solved' or 'cracked' (i.e. successfully investigated) cases (*po'an lü*), 'the number of cases investigated', 'the number of cases in which arrest has been approved' (*pibu lü*) and 'in which the Procuratorate decide to prosecute' (*qisu lü*) etc.[151] Article 26 of the 2001 PRC Public Procurators Law[152] provides that the criteria used in performance assessment system in the People's Procuratorates may include 'achievements in procuratorial work' (*gongzuo shiji*), 'thought and moral character' or 'intellectual and moral character' (*sixiang pinde*), 'competence in procuratorial work' (*jiancha yewu*) and 'mastery of legal theories' (*faxue lilun shuiping*), 'work attitude' and 'work style' (*gongzuo taidu, gongzuo zuofeng*). In this context, almost all the stages of processing a case in the

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[148] 葛琳 [Ge Lin] *刑事和解研究 [Research On Criminal Reconciliation]* Beijing, 中国人民公安大学出版社 [The Chinese People's Public Security University Press] 2008, 311.
[149] 万毅 [Wan Yi] 施清正 [Shi Qingzheng] 检察院绩效考核实证研究 [An Empirical Study of the Performance Assessment System in the People's Procuratorate] 2009(1), *东方法学 [Eastern Law]* 35-37.
[150] 朱桐辉 [Zhu Tonghui] 绩效考核与刑事司法环境之辩 [Performance Assessment System and the Judicial Context] 2007(2) *刑事法评论 [Criminal Law Review]* 272-273.
[151] *Ibid*.
[152] See the English translation of the PRC Public Procurators Law [中华人民共和国检察官法] at Law InfoChina at: http://www.lawinfochina.com/display.aspx?id=1913&lib=law&SearchKeyword=&SearchCKeyword=%D6%D0%BB%AA%C8%CB%C3%F1%B9%B2%BA%CD%B9%FA%BC%EC%B2%EC%B9%D9%B7%A8

People's Procuratorate are imposed on certain tasks to be assessed such as 'arrest rate', 'prosecution rate', 'the number of protests lodged against the Court's adjudications', 'the number of cases supervised' etc[153] In the People's Courts, criteria used for assessment are similarly comprehensive. They comprehend all the aspects of the judges' work and persons, ranging from how they acquit themselves in holding hearings, enforcing judicial decisions, documenting their judicial work, to their performance in the context of judicial propaganda work, judicial mediation work, and the judge's individual 'moral character' (*sixiang pinde*).[154]

The performance assessment (*jixiao kaohe*) system has been subject to criticism in the literature. Since the Court's system for assessing mediation work, in particular, directly affects judges' interests, the Court have produced some 'strategies', which are likely to coerce the parties into 'reaching agreements'.[155] As alleged at a netizen's blog, judges in individual cases even go so far as to fake data, just to meet the requirements set in this system.[156] This netizen disclosed in his/her blog that he/she heard and saw that some Courts just 'created a number of cases which factually did not happen and closed all those cases through *nolle prosequi*'.[157]

A scholar has argued that this system also leads to extraordinary cooperation among members of the Public Security Bureau, the People's Procuratorate and the People's Court for the purpose of boosting individual officials' or institutional performance records in terms of the performance assessment system, which might adversely affect the criminal procedure and infringe upon the parties' rights.[158]

In terms of the connection between the performance assessment system and the rare use of criminal reconciliation, Ge Lin says that there is contradiction between these two systems. For example, a criminal reconciliation case is usually closed with the police's decision of dismissing the case, and this is contradictory to the

[153] Above 149, 35-37.
[154] 魁魁 [Kui Kui] 法院：绩效考核是万恶之源 [The People's Court: Performance System is the root of all evil] http://www.dffy.com/faxuejieti/zh/200911/20091122160353.htm (13 May 2011)
[155] *Ibid.*
[156] *Ibid.*
[157] *Ibid.*
[158] Above 149, 37.

performance assessment system normally adopted in the Public Security Bureaus, which requires arresting a certain number of and more offenders (*daibu lü*) and solving a certain number of and more cases (*po'an lü*).[159] Criminal reconciliation, according to Ge, is also contradictory to the strictly limited number and rate of non-prosecution cases (*buqisu lü*), which is normally set as the assessment criteria in the People's Procuratorates.[160] Yet Ge did not mention the conflict between criminal reconciliation and the performance assessment system adopted in the People's Court.

The wrongful conviction investigation. Another reason observed by Ge Lin for the somewhat rare use of criminal reconciliation in practice is the wrongful conviction or decision investigation (*cuo'an zhuijiu*) system. This system has been implemented in China's Courts and Procuratorates since the end of the 1980s.[161] Yet there has not been a uniform definition of this system and various places have their own specific ways to implement it.[162] Actually, as argued by Feng Jialin, in the People's Court, 'as long as a case in which the sentence is amended (by the higher level People's Court) (*gaipan*)[163]or is sent back for re-trial (*fa hui chongshen*)'[164], it

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[159] Above 148, 312.
[160] *Ibid*.
[161] 周永坤 [Zhou Yongkun] 错案追究制与法治国家建设 – 一个法社会学的思考 [Wrongful Conviction/Decision Investigation System and the Establishment of A Rule of Law Country – Thoughts of Law-sociology] (1997)9 *法学 [Legal Science]* 6.
[162] *Ibid*.
[163] Article 153 of the PRC Civil Procedure Law says that 'after hearing an appellate case, the People's Court of the second instance trial shall handle the case according to the following circumstances: (1) if the facts were clearly found and the law was correctly applied in the original judgment, the appeal shall be rejected and the original judgment shall be sustained; (2) if the law was incorrectly applied in the original judgment, the judgment shall be amended according to law; (3) if the facts were incorrectly found or were not clearly found and the evidence was inconclusive, the judgment shall be rescinded and the case shall be remanded by an order to the original People's Court for a retrial, or the People's Court of second instance trial may amend the judgment after investigating and clarifying the facts; or (4) if in the original judgment a violation of the prescribed procedure may have affected the correctness of the judgment, the judgment shall be rescinded and the case shall be remanded by an order to the original People's Court for a retrial.' See the English translation of this article at LawInfoChina: http://www.lawinfochina.com/display.aspx?id=6459&lib=law&SearchKeyword=&SearchCKeyword=%C3%F1%CA%C2%CB%DF%CB%CF%B7%A8. Article 189 of the 1996 PRC Criminal Procedure Law stipulates that 'after hearing a case of appeal or protest against a judgment of the first instance, the People's Court of second instance trial shall handle it in one of the following manners in light of the different situations: (1) if the original judgment was correct in the determination of facts and the application of law and appropriate in the meting out of punishment, the People's Court shall order rejection of the appeal or protest and affirm the original judgment; (2) if the original judgment contained no error in the determination of facts but the application of law was incorrect or the punishment was inappropriately meted out, the People's Court shall revise the judgment; (3) if the facts in the original judgment were unclear or the evidence is insufficient, the People's Court may revise the judgment after ascertaining the facts, or it may rescind the original judgment and remand the People's Court which originally tried it for retrial.' See the English of this article at LawInfoChina: http://www.lawinfochina.com/display.aspx?id=347&lib=law&SearchKeyword=&SearchCKeyword=%D0%CC%CA%C2%CB%DF%CB%CF%B7%A8 (3 November 2011)

will be defined as a case 'wrongfully decided' or 'wrongfully handled' by the lower ranking authority.[165]

In the People's Procuratorate, wrongful decision refers to cases in which it is later found that there should not have been an arrest or prosecution.[166] In some cases, the criterion for assessing a 'wrongful conviction or decision' is even absurd. For instance, Zou Jianzhang and Liu Fengrui cite in their work an internal regulation of an unnamed County People's Procuratorate according to which 'cases that are withdrawn exceeding half of the cases registered shall be assessed as wrong cases'.[167] Thus, according to Zou and Liu, the essential feature of this wrongful decision or conviction investigation system is that 'regardless of the reason leading to the change of the original conviction or decision', the judge/prosecutor in charge of such cases will need to take liability.[168] The liability ranges from depriving qualification in some election, deducting salary or other bonus, to disciplining or punishing.[169]

Ge Lin argues that 'criminal reconciliation can and usually leads to exemption from criminal liability or punishment for the suspect/defendant, so the judge/ prosecutor/police is under great pressure since they have every reason to worry that the suspect/defendant may apply for an investigation into his having been 'wrongfully arrested or prosecuted' after the end of criminal reconciliation programme.[170] This is directly caused by the vague and problematic criteria for assessing a 'wrong case or decision' adopted in the current wrongful conviction or decision investigation system.

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[164] *Ibid.*
[165] 冯嘉林 [Feng Jialin] 取消个案请示应以改革现行错案追究制度为基础 [Abolishing the Instruction System Should be Based on the Reform of the Current Wrongful Conviction/Decision Investigation System] 2006(9) *法律适用 [National Judges College Law Journal]*.
[166] 潘力 [Pan Li] 关于错案追究制度的若干问题 [Several Issues Concerning the Wrongful Conviction/Decision Investigation System] (1994)8 *人民检察 [People's Procuracy]* 9.
[167] 邹建章 [Zou Jianzhang] 刘丰瑞 [Liu Fengrui] 刑事错案责任追究制度刍议 [Research on Wrongful Conviction/Decision Investigation System] 1995(2) *现代法学 [Modern Law Science]* 71.
[168] *Ibid.*
[169] *Ibid.*
[170] Above 148, 313.

Yet Ge fails to point out that this might not be an obstacle to the Court's use of criminal reconciliation, since in order to avoid such an investigation, the Court can just give a lenient sentence to the defendant, which has no relevance to exemption from criminal liability or punishment.

Moreover, the two reasons given by Ge Lin may be far-fetched in explaining the seemingly rare use of criminal reconciliation by the Public Security Bureau and the People's Procuratorae because according to the regulations or guidelines, the police and the prosecutors may just suggest a lenient disposition to the People's Procuratorate/Court.

The author found from some news reports that the lack of statutory basis (prior to the 2012 CPL) might be a reason leading to this seemingly rare use of criminal reconciliation (as pilot practices). For example, a comment on the revision of adding 'criminal reconciliation' in the 2012 CPL said that the lack of statutory basis had adversely affected the state authorities' 'proactivity' to conduct this programme.[171] According to this comment, the formal incorporation of criminal reconciliation in the 2012 CPL helped to remove confusion and uncertainty that had prevailed while it was still only being used on an experimental or pilot project basis. 'Finally, criminal reconciliation has got a statutory basis,' several officials were quoted as saying.'[172] This tone was also apparent in the author's interviews with some officials conducted before the revision of the CPL.

In addition, the author thinks that the lack of statutory basis may not only affect the real use of criminal reconciliation in practice; it may also affect the data provided by the State authorities in those public reports, especially considering the example shown above about the Court faking the data of 'mediation rate'. Yet whether or not this is the real cause, or the main cause, may still depend on more information on the implementation of this process after it has statutory basis in the CPL.

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[171] 李娜 [Li Na] 司法机关热衷刑事和解并非赶时髦 [The Judicial Institutions' Enthusiasm on Criminal Reconciliation Is Not Following the Fashion] http://roll.sohu.com/20120326/n338853384.shtml (26 March 2012)

[172] *Ibid.*

The success of criminal reconciliation. In addition to the use of criminal reconciliation, the Public Security Bureaus, People's Procuratorates and People's Courts nationwide have also produced a wide variety of reports stating that criminal reconciliation practices are successful in reducing discontent with the Courts on the part of the public or – especially - the parties. For example, criminal reconciliation in Dongyang city in Zhejiang province was praised as successfully leading to a situation of 'zero appeals and petitioning' from 2007 to 2009.[173] According to an interview with the chief judge of Beijing First Intermediate People's Court Zheng Weidong, from 2009 to 2010 this Court resolved 30 cases through criminal reconciliation at the second instance trial; the victims in these cases received 1.57 million Yuan compensation.[174] Based on the payment of compensation by the defendants, 26 defendants received suspended sentences and five were exempted from criminal punishment. According to Judge Zheng, this 'to a large extent eliminated unstable factors and promoted harmony in society.'[175] It was also reported that the People's Procuratorates in Jiangyong County in Hunan province had adopted a 'monitoring mechanism for petitioning' in criminal reconciliation cases since 2009 and found that all the criminal reconciliation cases have reached 'closure' and 'zero petitioning'.[176] In Tianjin municipality, the victim of an intentional injury case resolved through criminal reconciliation even sent a commemorative pennant reading 'a Procuratorate that promotes harmony, a litigation process that shows care for the masses' to the People's Procuratorate of Jinghai County to express his/her gratitude.[177]

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[173] 都市快报 [Metropolitan Express] 刑事和解：东阳实施两年多无一人申诉上访 [No Appealing or Petitioning in Dongyang Throughout the Two Years of the Implementation of Criminal Reconciliation] http://news.163.com/09/1109/07/5NLNMDJD000120GR.html (28 July 2010). For a discussion of the practice of petitioning see also Chapter Two.

[174] 李忠勇 [Li Zhongyong] 李佳 [Li Jia] 刑事和解消怨恨, 法官全力促和谐 [Criminal Reconciliation Eliminated the Resentment and the Judge Positively Facilitated Harmony] http://bj1zy.chinacourt.org/public/detail.php?id=702 (28 July 2010)

[175] *Ibid.*

[176] 谢永峰 [Xie Yongfeng] 蒋成柳 [Jiang Chengliu] 湖南江永检察院构建信访风险导向的刑事和解新机制 [Jiangyong Procuratorates Established New Criminal Reconciliation Mechanism Directing Towards Petitioning] http://www.jcrb.com/jcpd/jckx/201007/t20100707_383312.html (9 March 2012)

[177] 张宁 [Zhang Ning] 孙颖 [Sun Ying] 孙旭 [Sun Xu] 邻里纠纷造祸端 刑事和解促和谐 [Disputes Among Neighbour s Caused Harm, Criminal Reconciliation Promoted Harmony]

Public concern over criminal reconciliation. On the other hand, it seems that criminal reconciliation has started to trigger public's outrage, as shown especially in some high profile cases involving the rich and powerful. A high profile traffic accident related crime case in Baoding city in Hebei province in 2010 is an example. In this case, a man Li Qiming drove into Hebei University campus at a very high speed, causing an accident that resulted in one student's death and another student's serious injury.[178] According to a police report, the two victims had no responsibility in that accident and Li Qiming was heavily drunk when he drove at that night.[179] But what made this traffic accident attract so much public attention and discussion was Li Qiming's reaction immediately after the accident: according to media reports, he got out of his car without any regretful look and just shouted loudly to people around: 'go to sue me if you dare; my father is Li Gang!' ('有本事你们告去, 我爸爸是李刚').[180]

According to the investigation and disclosure by the media, this 'Li Gang' mentioned by Li Qiming was the deputy director of the local Public Security Bureau.[181] This, consequently, triggered a stormy debate in Chinese society (especially on the internet) on the increasing gap between the rich and powerful on the one hand, and ordinary people on the other, since Li Qiming's words sounded as though he expected to be exempt from legal liability just because of his father's position. Public outrage boiled over at that point, and it became more acute after the news media disclosed that Li Gang insisted on meeting the deceased's family and proposed reconciliation through paying a large sum of compensation (fifty to sixty hundred thousand Yuan).[182] But the victim's family also insisted that they would not

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http://www.chinareports.org.cn/tianjin/Article/lanmu19/201202/329200.html (9 March 2012)

[178] 新闻晚报 [Shanghai Evening Post] 撞死女生 司机狂言"我爸是李刚" [Hitting Girl to Death, The Driver Yelled 'My Father Is Li Gang'] http://news.163.com/10/1019/13/6JC2FKS700014AED.html (8 November 2011)

[179] 王克勤 [Wang Keqin] 冯军 [Feng Jun] 河北大学车祸案件调查：事件进展存十大疑点 [An Investigation On The Traffic Accident Related Crime Case in Hebei University: Ten Doubts] http://news.sina.com.cn/c/sd/2010-10-25/113521346535.shtml (8 November 2011)

[180] Above 178.

[181] Above 179.

[182] 新华网 [Xinhua Net] 河北大学车祸案续 肇事者欲花钱私了遭拒 [Following The Traffic Accident Related Crime Case in Hebei University: the Offender Wants To Resolve It Privately With Money But Was Refused] http://www.sx.xinhuanet.com/rdsp/2010-10/21/content_21195534.htm (8 November 2011). But the

meet him and accept such an offer.[183] Later, Li Gang even appeared in an exclusive television interview conducted by China's largest state-owned media CCTV (China Central Television) to apologize tearfully and with a deep bow to the camera.[184] Even so, some members of the public viewed this as a mere 'show', put up in order to alleviate public anger and obtain the victim's family's acceptance of the proposed reconciliation.[185]

In the following, it was reported in some online forums and blogs that students of Hebei University had been forbidden by the University to talk about this accident and to act as witnesses in this case.[186] The lawyer hired by the deceased student's family was suddenly fired by this family without any reason and was even later chased at night in Beijing by three cars and attacked by more than ten people, whom the lawyer suspected were 'mafia with official backgrounds'.[187] The victim's family finally accepted the 'proposal' of reconciliation yet the lawyer revealed that they did this under great pressure coming from their village head as well as some other official.[188]

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police said that it was merely an agreement on civil compensation; this case was under trial and Li Gang would still assume criminal responsibility. See: 朱峰 [Zhu Feng] 河北警方否认"李刚门"和解; 称凶犯必受处罚 [The Hebei Police Denied that 'Ligang Case' was Reconciled and Said the Offender Must be Punished] http://view.news.qq.com/a/20101223/000002.htm (8 November 2011)

[183] 新华网 [Xinhua Net] 河北大学车祸案续 肇事者欲花钱私了遭拒 [Following The Traffic Accident Related Crime Case in Hebei University: the Offender Wants To Resolve It Privately With Money But Was Refused] http://www.sx.xinhuanet.com/rdsp/2010-10/21/content_21195534.htm (8 November 2011)

[184] 中央电视台法治在线视频：李刚痛哭流涕数度哽咽; 俯身鞠躬 30 秒致歉 [CCTV: Li Gang Cried and Bowed For 30 Minutes to Apologize] http://news.qq.com/a/20101022/001308.htm (8 November 2011)

[185] 逐影侠 [Zhu Yingxiao] 用 'Lie to Me' 的方法揭穿李刚父子在镜头面前的表演 [Disclosing Li Gang And His Son's Performance With Methods in 'Lie to Me'] http://www.douban.com/note/96832320/ (8 November 2011)

[186] 新华网 [Xinhua Net] 河北大学车祸目击者集体沉默 学生称怕学校处分 [The Witness in The Traffic Accident Related Crime Case In Hebei University Keeps Silence: The Students Said They Were Afraid of Being Disciplined by the University] http://news.xinhuanet.com/society/2010-10/21/c_12683495.htm (8 November 2011)

[187] 新华网 [Xinhua Net] 李刚门结局：不能说的秘密 [The Outcome of Li Gang Case: A Secret] http://opinion.cn.yahoo.com/2010ligang.html (8 November 2011); 凯文 [Kai Wen] 李刚门代理律师张凯遭人袭击 [Zhang Kai The Lawyer Delegating in Li Gang Case Was Assaulted] http://www.chinese.rfi.fr/%E4%B8%AD%E5%9B%BD/20101216-%E6%9D%8E%E5%88%9A%E9%97%A8%E4%BB%A3%E7%90%86%E5%BE%8B%E5%B8%88%E5%BC%A0%E5%87%AF%E9%81%AD%E4%BA%BA%E8%A2%AD%E5%87%BB (8 November 2011) ; 吴平 [Wu Ping] "李刚门"受害人律师：袭击为拥有官方背景的黑恶势力所为 [The Lawyer Delegating in Li Gang Case: The Attack Was Made by Mafia with Official Background] http://news.ifeng.com/society/special/ligangmen/content-2/detail_2010_12/16/3539907_0.shtml (8 November 2011)

[188] 刘小英 [Liu Xiaoying] "李刚门"受害者律师称当事家庭已被迫与李刚和解 [The Lawyer Delegating in Li Gang Case Said The Victim's Family Had Been Coerced to Reconcile With Li Gang] http://www.nbd.com.cn/newshtml/20101218/20101218090550130.html (8 November 2011)

Yet it seemed that the forced 'criminal reconciliation' was accepted by the judge and took effect. In the following trial, the judge gave Li Qiming a sentence of six years of imprisonment considering his 'good attitude in confessing and prompt compensation paid to the victims' families'.[189] Such an outcome was unacceptable to lots of people who considered the sentence inappropriately light, and 'my father is Li Gang' has become a popular phrase (especially on the internet) to show their mockery and resentment towards the rich and powerful elites who seem to enjoy privileges even before the law.[190] It has also triggered much concern that criminal reconciliation or ways of handling cases similar to criminal reconciliation can provide the rich and powerful with opportunities to avoid punishment, through sacrificing the comparatively poor victims' legitimate interest in a regular criminal process.

Considering this adverse response towards criminal reconciliation and related practices, and considering the incoroporation of this practice into criminal procedure law through adoption of articles 277 to 279 of the 2012 CPL, it is worthwhile to conduct an in-depth study of the practice of this process. The effect of criminal reconciliation practices, as well as the public's response to it, has also been noticed by many scholars and triggered much scholarly debate. This is addressed in the following chapter.

1.3 Further reported practices in criminal reconciliation

Before being added as a 'special procedure' in the 2012 Criminal Procedure Law, criminal reconciliation had actually already developed significantly in China. In the context of pilot projects, its uses extended to situations stipulated neither in the local

[189] 白明山 [Bai Mingshan] 岳文婷 [Yue Wenting] 河北大学交通肇事案宣判 李启铭被判刑 6 年 [The Traffic Accident Related Crime Case Happened in Hebei University Was Sentenced: Li Qiming Was Given A Sentence of Six Years of Imprisonment] http://news.sohu.com/20110130/n279161518.shtml (8 November 2011)
[190] 忠言 [Zhong Yan] 不服不行，他爸果然是李刚 [Can Only Be 'Convinced': His Father Is Indeed Li Gang] http://bbs.finance.ifeng.com/viewthread.php?tid=5923610 (8 November 2011)

procedural regulations or guidelines nor envisaged articles 277 to 279 of the 2012 CPL (to come into force in 2013). In general, there were three main developments.

First, criminal reconciliation has been used in suspected cases of 'serious crimes' including even death penalty cases. Second, there has been a '*duijie*' or '*liandong*' (collaboration or coordination) mechanism in conducting criminal reconciliation. Third, there has been participation from an increasingly widening circle of persons in the criminal reconciliation meeting. With regard to the background of these three developments, it may be part of a general reform within the Chinese judicial system since 2007 - the promotion of what was termed 'General mediation' (*da tiaojie*).

It was also initiated and promoted by the Party in the face of increasing social conflicts. According to the 'Opinions on Deeply Promoting the Resolution of Social Conflicts, the Innovation of Social Management, and the Fairness and Integrity of Law Enforcement' issued by the CCP Central Political and Judicial Committee (*zheng fa wei*) and the CCP Central Leading Group of Stability Maintaining Work, '*da tiaojie*' refers to mechanisms 'established by Party Committees and governments at all levels' to coordinate political, legal, comprehensive governance (*zonghe zhili*), stability maintenance, petitioning departments for involving the participation of society, and thereby to allow people's mediation, administrative mediation and judicial mediation fully to play their roles and cooperate with each other'.[191] Accordingly, 'general' in this mechanism refers to the mobilization of all elements and resources in society with the aim of using meditation to resolve cases as much as

[191] 《中央政法委员会、中央维护稳定工作领导小组关于深入推进社会矛盾化解、社会管理创新、公正廉洁执法的意见》[Opinions of the Central Political-Legal Committee, the Central Leading Group of Maintaining Stability On Promoting Social Conflicts Resolution, Innovating Social Management and Fair and Incorrupt Legal Enforcement], See the full text (Chinese version only) at http://www.dffy.com/faguixiazai/ssf/201105/22812.html (8 November 2011)

possible.[192] This asks for a very wide coverage of mediation in the Chinese judicial system.[193]

1.3.1 Practice of criminal reconciliation outside its stipulated scope

Although the local procedural regulations or guidelines and articles 277 to 279 of the 2012 CPL both limited criminal reconciliation to suspected 'minor crimes', it was reported that in a few places, criminal reconciliation had started to be used in suspected serious crimes and even death penalty cases.[194]

For instance, official media reported that in Jiangsu province, criminal reconciliation had been used to deal with serious intentional injury crimes occurring among inmates in prison.[195] Additionally, a report showed that a suspected forced prostitution crime in Foshan city in Guangdong province was closed through criminal reconciliation by the People's Court.[196] In Zhengzhou city in Henan province, a 23-year-old young man who was accused of murder gained a lenient verdict of suspended sentence due to his 'reconciliation with the victim's family and his paying of a large sum of compensation'.[197] It was further reported that Dongguan city in Guangdong province, Jinhua city in Zhejiang province and Shanghai municipality had all used criminal reconciliation in death penalty cases, in which the judges gave the defendants lighter sentences due to their reconciliation with the victim's families and prompt payment of compensation.[198]

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[192] 吴志明 [Wu Zhiming] 林化宾 [Lin Huabin] 吴军营 [Wu Junying] (ed.) *大调解 – 应对社会矛盾凸显的东方经验 [The General mediation System – the Orient Experience of Responding To Social Conflicts] Beijing,* 法律出版社 [Law Press], 30-31.

[193] *Ibid.*

[194] 宋英辉 [Song Yinghui] 我国刑事和解实证分析 [An Empirical Analysis on Criminal Reconciliation in China] (2008)5 *中国法学 [China Legal Science]* 124-125.

[195] 蒋德 [Jiang De] 万众 [Wan Zhong] 狱内伤害案引入刑事和解, 检察官称绝非法外施恩 [Criminal Reconciliation Has Been Introduced Into Prison, The Judge Says That It Is Not Illegal Leniency] http://news.sohu.com/20090721/n265364272.shtml (22 July 2009)

[196] 强迫卖淫案: 佛山法院促刑事和解 [The People's Court of Foshan City Used Criminal Reconciliation in A Forced Prostitution Case] http://news.cntv.cn/program/lawonline/20100803/102472.shtml (30 October 2011)

[197] 韩景瑋 [Han Jingwei] 河南首次轻判故意杀人者, 法院推出刑事和解制度 [Murderer Got A Lighter Sentence for the First Time in Henan Province; the Court Proposed Criminal Reconciliation] http://news.eastday.com/c/20091015/u1a4728228.html (26 July 2010)

[198] 孙万怀 [Sun Wanhuai] 死刑案件可以并需要和解吗? [Do Death Penalty Cases Need Reconciliation and

In fact, there has been controversy in China around whether or not criminal reconciliation could be used to deal with all 'crimes'.[199] This 'extension' has also attracted much comment and debate among the Chinese scholars. They are addressed in Chapter Two.

1.3.2 Cooperation among authorities: '*duijie*' and '*liandong*' mechanisms

Another notable development of criminal reconciliation practice in the context of pilot projects beyond the local regulations or guidelines and the 2012 CPL is the creation of '*duijie*' or '*liandong*' (collaboration or coordination) mechanisms. These terms are used interchangeably, and they refer to mechanisms whereby different State authorities collaborate in implementing criminal reconciliation programmes.

In one form of *duijie* or *liandong*, the Public Security Bureau, the People's Procuratorate and the People's Court work together in conducting criminal reconciliation. This means that a case may be mediated by the police, the prosecutors and the judges throughout the criminal process from investigation, prosecution to trial and execution. If reconciliation cannot be reached by one organ or in one phase, efforts to achieve reconciliation will be continued after the case proceeds to another phrase. According to the saying of the Public Security Bureau/the People's Procuratorate/the People's Court implementing this form of *duijie* or *liandong*, this collaboration aims to provide the parties concerned with every opportunity to reach a reconciliation agreement at any point during the criminal procedure.[200]

Can They Be Reconciled?] (2010)1 *中国法学 [China Legal Science]* 180-181.

[199] See e.g. http://www.yadian.cc/paper/79793/ (26 March 2012)

[200] 欧阳芳 [Ouyang Fang] 江西吉安公安局试行刑事和解制度促社会和谐 [The Police in Ji'an Cirty of Jiangxi Province Experimentally Used Criminal Reconciliation to Promote Social Harmony] http://www.chinapeace.org.cn/zhzl/2009-08/24/content_82878_2.htm (27 July 2010); 昆明市五华区检察院 [The People's Procuratorate of Wuhua District in Kunming City] 我院 "部门联动检调对接" 积极促进刑事和解 [Cooperation Among Departments and Between the People's Procuratorate and the People's Court Promotes Criminal Reconciliation in Our Court] http://www.kmwh.gov.cn/kmwh/web/jwb/j5/jcy/showdoc.jsp;jsessionid=Ot51m9BDkebtjnp8RzU7mU9Qmv9bnuDjlMTimcwXMvfFgfOVXroz!742181009?docid=D105138&fieldid=F3792 (25 October 2011)

The reason and advantage of this form of *duijie* or *liandong* are further officially attributed to the need of raising efficiency. For example, Xu Guoping commented on the coordination among the three State authorities in criminal reconciliation as beneficial for addressing delays and low efficiency caused by mutual checks between these authorities (i.e. the police, the Procuratorates and the Courts;[201] However, it would appear that these mechanisms violate the principle of 'mutual checks' amongst these authorities that has been articulated in the PRC Constitution.[202] This may harm to the Chinese judicial system, which has been long criticized as lacking judicial independence. This problem is further elaborated in Chapter Six.

In the other form of *duijie* or *liandong,* the Public Security Bureau/the People's Procuratorate/the People's Court coordinate with the People's Mediation Committee (*renmin tiaojie weiyuanhui*), an entity that exists outside the formal court system and is generally used to mediate civil disputes, in conducting criminal reconciliation. Normally, the official informs the parties of the choice of criminal reconciliation if he/she thinks that the case concerned is eligible for this programme. If the parties agree, the case will be transferred to the People's Mediation Committee (this may be the one where the case occurred, or where the victim/suspect is based[203]). The Mediation Committee will conduct mediation in a certain period of time; wherever an agreement can or cannot be reached within this period of time, the case concerned would be transferred back to the State authorities for review and decision.[204]

According to the officials, the reason for such collaboration is a concern with fairness in criminal reconciliation. It is regarded as potentially problematic that, for instance, prosecutors involved in criminal reconciliation have 'dual roles' as both

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[201] 徐国平 [Xu Guoping] 当前刑事和解试点工作的问题及建议[Problems and Suggestions Concerning the Current Criminal Reconciliation Work] http://www.ningbo.jcy.gov.cn/006/003/680.html (28 July 2010)
[202] Article 135 of the PRC Constitution.
[203] 海曙区司法局 [The Justice Bureau of Haishu District] 海曙区实现刑事和解与人民调解工作无缝对接 [Haishu District Has Reached Perfect Collaboration Between Criminal Reconciliation and The People's Mediation] http://www.zjsft.gov.cn/art/2011/8/8/art_61_31321.html (25 October 2011)
[204] 山东省临沂市费县 [Fei County of Linyi City in Shandong Province] 关于建立刑事和解与人民调解对接机制的实施办法 [Measures on The Implementation of Establishing Collaboration Between Criminal Reconciliation and People's Mediation] http://fxzfw.cn/News_View.asp?NewsID=438 (25 October 2011)

'athlete' and 'umpire' in this process.[205] That is to say, the prosecutor's statutory roles of 'supervision' (*jiandu*) and 'prosecution' may be in conflict with its work as mediator in criminal reconciliation processes, which requires the prosecutor to remain neutral.[206] Accordingly, in this form of *duijie* or *liandong*, prosecutors merely undertake the work of overseeing that the principles of voluntary participation and the legality of the process and outcomes of criminal reconciliation are respected. Criminal reconciliation is conducted by the People's Mediation Committee, rather than by the Procuratorates.[207]

This *duijie* or *liandong* was also officially claimed as helpful for raising efficiency in conducting criminal reconciliation. Given the heavy workload of the prosecutors (especially those at basic level Procuratorates), criminal reconciliation, as a programme requiring much energy and time, is more suitable to be conducted by another organization like the People's Mediation Committee.[208] This was also officially explained as for the purpose of guaranteeing the quality of criminal reconciliation.[209]

Nevertheless, there might be two problems with this form of collaboration. First, it violates the PRC Constitution in that the People's Mediation Committee has no power over criminal cases. According to article 135 of the Constitution, in China the institutions that have power to handle criminal cases are only the Public Security Bureau, the People's Procuratorate and the People's Court. This sharing of workload may be beneficial for lightening the State authorities' burden and raising efficiency in conducting criminal reconciliation, but these benefits should not be based on the violation of the Constitution.

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[205] 成都商报 [Chengdu Business Daily] 四川首尝刑事和解由人民调解员主持 [The People's Mediator Firstly Presided Over Criminal Reconciliation in Sichuan Province] http://news.163.com/09/0610/00/5BDIK7CL000120GR.html (28 July 2010)

[206] *Ibid.*

[207] 向孙连 [Xiang Sunlian] 洪江市建立刑事和解与人民调解对接机制 [Hongjiang City Established Collaboration between Criminal Reconciliation and People's Mediation] http://www.0745news.cn/2010/0820/81389.html (25 October 2011)

[208] 骆福林 [Luo Fulin] 周劼 [Zhou Jie] 刑事和解不宜由检察机关主持 [It Is Inappropriate That Criminal Reconciliation Is Presided Over By The People's Procuratorate] http://www.lawtime.cn/info/xingfa/xfnews/2010031539572.html (28 July 2010)

[209] *Ibid.*

Second, whether or to what extent this mechanism (the People's Mediation Committee) could successfully reduce the actual influence of the State authorities is in question. The People's Mediation Committee, according to the PRC Constitution, is what is termed a 'self-governing organization of the People', which means that it has no share in the State's power.[210] Taking into account the power the Public Security Bureau/People's Procuratorate/People's Court possesses, it may be extremely hard for the People's Mediation Committee to conduct criminal reconciliation without interference from these State authorities, or without relying on the State authorities' power to bring about 'reconciliation'.

1.3.3 Wider involvement of participants in criminal reconciliation

In addition to the *duijie* or *liandong* mechanism, criminal reconciliation has in recent years involved more and more institutions and persons. For instance, the People's Court in Foshan city in Guangdong province invited prosecutors, members of the National People's Congress, and public media to attend criminal reconciliation meetings.[211] This wide participation in criminal reconciliation meetings, according to an official of this Court, was to oversee (the judges' conduct) in criminal reconciliation.[212] It was also reported that the People's Procuratorate in Suining city in Sichuan province authorised victims to select and nominate members of the People's Congress they trusted as supervisors in their criminal reconciliation programmes.[213] This was done, according to the official reports, also for the purpose of supervising (*jiandu*) the official's use of power in criminal reconciliation processes. The prosecutors in charge in Suining said that the involvement of

[210] Article 111 of the PRC Constitution.
[211] 闫晓光 [Yan Xiaoguang] 广东佛山法院刑事和解引争议，被指'以钱买刑' [Criminal Reconciliation Conducted by the People's Court in Foshan City of Guangdong Province Triggered Debates: It Was Criticized as 'Avoiding Punishment With Money] http://news.163.com/10/0730/00/6CQ5UU5R0001124J.html (28 July 2010)
[212] *Ibid.*
[213] 刘德华 [Liu Dehua] 王莉 [Wang Li] 简华 [Jiang Hua], 哪位代表介入刑事和解？被害人点名 [The Victim Can Norminate National People's Congress Deputy to Participate in The Criminal Reconciliation Process] http://news.china.com.cn/rollnews/2010-07/05/content_3023494.htm (28 July 2010)

members of the People's Congress could 'expose their work and power to the sunshine' and 'connect work of the People's Procuratorate with the People's Congress's oversight', which was 'helpful to obtain the parties' as well as the public's support and trust in implementing criminal reconciliation'.[214]

According to media reports, such extensive participation in criminal reconciliation might also serve the purpose of education. For instance, it was reported that in Xuzhou city in Jiangsu province, the responsible prosecutor, Prosecutor Ming, had held meetings attended by the juvenile offender, members of the People's Congress, the offender's teachers and parents in order to 'better educate the juvenile suspect'.[215]

This wide involvement of participants in criminal reconciliation has also been laid down in the judicial interpretation issued by the Supreme People's Court to solicit opinions in the courts nationwide. Article 513 of this interpretation says that 'The People's Courts may, according to the specific circumstances of the case, invite People's mediators, criminal defender, legal representative [of either of the parties], the parties' relatives or friends to participate to facilitate the parties' reconciliation.'[216]

Yet there might be two problems with such an extensive participation in criminal reconciliation programmes. For one thing, will such an extended observation produce any adverse influence on the parties? For instance, perhaps the parties would feel uncomfortable or embarrassed in expressing their true feelings and intentions facing so many people. This might affect their voluntariness in the criminal reconciliation processes and the purported goal of 'education' as well. For another, it is questionable whether or to what extent such a mechanism could control and restrict abuse of power. None of the reports has mentioned what if any

[214] *Ibid.*

[215] 许驰 [Xu Chi] 刘晓晗 [Liu Xiaohan] 明广超: 点亮失足少年心中的灯 [Ming Guangchao: Lighting Up the Light in Juvenile Delinquent's Heart] http://js.jcrb.com/rwgs/201010/t20101014_454600.shtml (19 March 2012)

[216] Supreme People's Court Judicial Interpretation on Some Issues Concerning the Implementation of the Criminal Procedure Law (Draft Issued to Solicit Opinions). See: http://vdisk.weibo.com/s/aV3IN/1345471206 (Chinese version only); the chapter about criminal reconciliation is translated by the author in the Appendix III.

consequence attaches if official misconduct is seen by these participants. These questions call for an examination of criminal reconciliation practices and are addressed in Chapters Four and Five, which discuss the results of the author's empirical study.

1.4 Summary

This chapter, based on information obtained from publicly available sources, shows that the practice of criminal reconciliation operated as 'pilot projects' in China prior to the second major revision of the CPL in 2012. The address of these pilot projects may be of great significance to understand the background and implication of this process, laid down as a 'special procedure' in the 2012 CPL.

This 'pilot project', which emerged under the Party's policy of 'promoting a harmonious society' in 2004 and 'combining severity with leniency' in 2006, was officially expected to bringing 'closure' to criminal cases and relieve the problem with petitioning. To conduct this programme, a number of local authorities (i.e. the Public Security Bureau, the People's Procuratorate and the People's Court) in China have issued regulations or guidelines concerning the procedure of this process. The procedures developed in various locations have been described by academics as following a similar style, and involving three or four steps: initiation, criminal reconciliation meeting, the official's decision and (optional) follow-up programmes. This design is much more detailed than the stipulation of this process as a 'special procedure' in the 2012 CPL - The 2012 CPL does not even ask for the suspect/defendant's voluntary participation in this process which, it is argued, is a violation of the suspect/defendant's rights as well as the genuine reconciliation. In turn, this raises doubts concerning the practice of criminal reconciliation after the 2012 CPL takes effect, especially concerning these 'conflicting' provisions.

Furthermore, through comparison, it could be seen that criminal reconciliation - which is based on the parties' reconciliation, the suspect/defendant's admission of guilt beforehand and relying greatly on the official's discretion - is a process essentially different from the normal criminal procedure, which was designed as an adversarial system in the 1996 CPL. This means that mechanisms for protecting the suspect/defendant's rights in the adversarial system may not be present in criminal reconciliation, though some news reports have shown that one system critical for protecting the suspect/defendant's rights – the lawyer's representation is 'kept' in this process.

The design of the procedure of criminal reconciliation and its essential divergence from the normal procedure raises more questions. First, could such a design make this process reach the official expectation? Second, how has the procedure of criminal reconciliation been used in practice? Namely, could it be followed by the officials? Third, as a process essentially different from the adversarial system, what are the roles of the officials and the parties in criminal reconciliation? Could the parties' rights be protected since this process relies heavily on the officials' discretion? Fourth, is the lawyer's role in criminal reconciliation the same as that in the adversarial system? All these questions call for further examination of the practice of this process.

Notwithstanding official data showing that criminal reconciliation is not used in many cases in the context of existing pilot projects the Party's promotion of 'General mediation' around 2007, has prompted three further developments discussed above : it has been increasingly used in suspected serious crimes and death penalty cases; there has been a '*duijie*' or *'liandong*' (collaboration or coordination) mechanism in conducting criminal reconciliation; more and more people, such as the parties' teachers and members of the People's Congress, have participated in this process. Yet none of these developments was allowed in the local regulations or guidelines (according to the publicly available information) and the 2012 CPL. These

developments, including in particular the '*duijie*' or '*liandong*' mechanisms, which are *prima facie* in tension with constitutional principles. .

The issues raised in this chapter call for a deeper engagement with the scholarly discussion of criminal reconciliation, such as is provided in the next chapter, as well as for an empirical study of the practice of criminal reconciliation.

The remaining chapters of this dissertation are organized in a way that reflects these aforementioned needs for further study. Chapter 2 addresses the scholarly debates around criminal reconciliation, examining in particular the various theories that have been advances to support this practice, and critical scholarly discussions of shortcomings in criminal reconciliation practice. It argues against facile endorsements of criminal reconciliation that can be found in part of the literature, and argues that some accounts critical of criminal reconciliation 'excesses' fail to appreciate the further implications of their own arguments. This discussion helps the author to identify open questions that have been addressed through the empirical study project. Chapters Three, Four, and Five present the findings from the empirical study undertaken as part of this reseach project. While Chapter Three provides a discussion of the – on the whole positive - picture of criminal reconciliation practice that emerges from case files kept by the authorities in charge of the process, Chapters Four and Five engage with findings from interviews with various participants in criminal reconciliation, and urge an on the whole more skeptical assessment of these practices. Drawing on these findings and initial analysis, Chapter Six argues that criminal reconciliation reflects and threatens to consolidate some of the structural and institutional problems that also affect the ordinary criminal process, and further analyses the idelogical and political underpinnings of these problems. Chapter Seven concludes.

Chapter II: The Scholarly Debate Around Criminal Reconciliation

Scholarly debates in China on criminal reconciliation have addressed two principal aspects. Firstly, the effects of this programme, namely whether it is a programme helpful for promoting a 'harmonious society' in accordance with officially set aims or beneficial in other ways, or whether it is actually an unfair and involuntary programme doing harm to the parties' rights and justice in the criminal justice processes. Secondly, the nature of and possible justifications for criminal reconciliation, in particular the question of whether to understand it as a transplant of restorative justice or as an indigenous concept, a practice that may be justified by the Chinese tradition.

This chapter discusses these debates, and suggests that they fail fully to address the problems surrounding criminal reconciliation. In the first section, the author outlines how Chinese scholars have praised criminal reconciliation in terms of its positive effects in protecting the parties' rights, interests of society and the State. Notwithstanding this, many scholars have described criminal reconciliation as an unfair and unjust process posing serious risks to rights and justice and have argued that officials are likely to abuse their power to pressurize the parties in this process.

In the second section, concerning the scholarly debate about the definition of and justifcations for criminal reconciliation, the author argues that it is not a transplant of restorative justice due to the essential differences in rationales, goals and roles of the participants between these concepts and practices. Additionally, none of the three main theories viewing criminal reconciliation as an indigenous practice, namely, the theories of 'private cooperation' (*si li hezuo*), of 'the third realm' (*di san lingyu*) and of 'civil mediation', defines or justifies this programme in China in an appropriate way. This is due to the misinterpretation of the role of public power or the relationship between public power and individuals in this process. The author argues that, the historical experience with Chinese mediation practices since the Mao

era shows that the parties' rights are likely to be infringed, and that parties are likely to be subject to coercion in a variety of ways. On the basis of historical experience, criminal reconciliation is better understood as a tool for the Party to reach its political goals.

The above argument, however, is thus far only advanced on the basis of a critical review of the literature. Both the praise and the concerns expressed in domestic scholarly work is based on 'second-hand information', namely, information provided by other literature or reports; some is even derived directly from official websites. In-depth empirical study of the practice of criminal reconciliation in China based on 'first-hand information' is of great significance in examining whether or not, or to what extent, the interaction between public power and individuals in this process resembles that in mediation since the Maoist time. Moreover, an empirical study can help to examine whether this programme is helpful to promote a 'harmonious society' or doing harm to rights and justice.

2.1 Scholarly debates of criminal reconciliation practices

2.1.1 Positive appraisals

Praise in the scholarly work mainly revolves around criminal reconciliation's evident benefits to all the three parties to the criminal procedure, namely the suspect/defendant, the victim and the officials or state authorities. For instance, according to Ge Lin, criminal reconciliation has effectively allowed the victim to obtain satisfactory (monetary) compensation, largely eased the tension between the parties, and raised efficiency in dealing with criminal cases.[217]

In order to support these positive assessments, Ge Lin draws on some data from studies sponsored by State authorities[218]; some of her information was taken from

[217] Above 127, 301-302.
[218] As noted, Ge Lin used the information and data provided in the suveys conducted by Beijing Dongcheng

media reports[219]. For example, according to Ge, a study of seven basic level People's Procuratorates in Beijing indicates that the average amount of compensation in criminal reconciliation cases is 18,200 Yuan, far more than the amount in minor injury cases decided by the Courts, which is only 6,300 Yuan.[220] Ge praises the larger amount of compensation in criminal reconciliation cases as the main reason leading to 'victim satisfaction' and as reducing the tension between the suspect/defendant and the victim.

Moreover, Ge says that according to a study conducted by a Procuratorate of Yima city in Henan province, normally a minor injury case in takes 115 to 135 days at the prosecution stage of the criminal process, while it only takes about 90 days in criminal reconciliation if the People's Procuratorate decides not to prosecute, and on average 30 days if the Public Security Bureau decides to withdraw the case directly after it has been mediated successfully.[221]

Some other scholars have also addressed these two aspects of criminal reconciliation. For example, Chen Qi applauds the smooth 'enforcement' of compensation in criminal reconciliation cases (that is, the fact that suspects/ defendants will not get lenient treatment until they have paid the compensation they have promised as part of the compensation agreement) as leading to a resolution of the difficulty with enforcing sentences.[222] Also addressing the raising of efficiency in dealing with criminal cases, Chen Ruihua says that in some minor criminal cases, like intentional injury 'crime', usually evidence is very hard to collect, and collecting it requires a great many resources.[223] Limited resources and the increased number of

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district People's Procuratorate and Beijing Chaoyang distric People's Procuratorate and the People's Procuratorate of Yima City in Henan Province. See above 127, 301-302.

[219] Ge Lin provides examples taken from the Procuratorial Daily [检察日报] and Chongqing Evening News[重庆晚报]. See above 127, 302.

[220] The study used by Ge Lin here is conducted by Beijing Dongcheng district People's Procuratorate. See above 127, 302.

[221] *Ibid*, 302.

[222] 陈颀 [Chen Qi] '"赔钱减刑"的激励机制 [The Incentive Mechanism of "Reducing Punishment With Money]' in 苏力 [Su Li] (ed.)*法律和社会科学 [Law And Social Sciences]*Beijing 法律出版社 [Law Press] 2009, 30.

[223] 陈瑞华 [Chen Ruihua] *刑事诉讼的中国模式 [Criminal Proceedings: the Chinese Model]* Beijing 法律出版社 [Law Press] 2008, 17-19.

criminal cases require a more reasonable allocation of existing resources.[224] A system that could alleviate the prosecutor's and the judge's workload and allow them to put more efforts into more serious cases is therefore needed.[225] Criminal reconciliation, which is able to close minor criminal cases in a shorter period of time (and with less effort spent), according to Chen, is a system serving this end.[226]

Ge Lin further praises criminal reconciliation's effect of educating and rehabilitating the suspect/defendant[227], a point also supported by many other scholars.[228] For example, Sun Qin says that in criminal reconciliation cases handled by the People's Procuratorate, the suspect could get the official's decision not to prosecute and thus avoid a criminal record. In cases that have already been transferred to the People's Court, the defendant could normally get a non-custodial sentence if criminal reconciliation is successful.[229] This, according to Sun, means that the suspect/defendant could be rehabilitated in society whereas, by contrast, time in prison would make rehabilitation very difficult.[230] Zhou Shixiong observes that

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[224] 马明亮 [Ma Mingliang] *协商性司法：一种新程序主义理念 [Negotiated Justice: A New Procedural Idea]* Beijing, 法律出版社 [Law Press] 2007, 1-5.
[225] Above 223, 16-17.
[226] *Ibid.*
[227] Above 127, 302.
[228] This viewpoint can be found in many articles discussing the values of criminal reconciliation. See: e.g. 孙勤 [Sun Qin] *刑事和解价值分析 [An Analysis of The Values of Victim-Offender Reconciliation]* Beijing, 中国人民公安大学出版社 [The Chinese People's Public Security University Press] 2009, 154; 葛琳 [Ge Lin] *刑事和解研究 [On Criminal Reconciliation]* Beijing, 中国人民公安大学出版社 [The Chinese People's Public Security University Press] 2008, 45; 武小凤 [Wu Xiaofeng] *冲突与对接—刑事和解刑法制度研究 [Conflict and Compromise - On Criminal Reconciliation System] Beijing*, 中国人民公安大学出版社 [The Chinese People's Public Security University Press] 2008, 180-181; 缪伟辉 [Miu Weihui] 刑事和解的价值提取 [The Values of Criminal Reconciliation] 2010 (10) *法制与社会 [Legal System and Society]* 20; 向朝阳 [Xiang Chaoyang] 马静华 [Ma Jinghua] 刑事和解的价值构造及中国模式的构建 [The Establishment of the Values of Criminal Reconciliation and Its Chinese Pattern] 2003 (6) *中国法学 [Chinese Legal Science]* 115.
[229] Ordinarily, in a case with the prosecutor's decision not to prosecute, the suspect will still have a criminal record which will affect his/her employment and education etc. Also, a person with a criminal record is not qualified for the civil service examination and army enlistment. Article 100 of the PRC Criminal Law stipulates that 'when people join the military, or seek employment, those who received criminal punishments according to law should honestly report the punishments they received to the relevant units and should not conceal them'. See the English translation at: http://www.lawinfochina.com.easyaccess1.lib.cuhk.edu.hk/display.aspx?id=354&lib=law&SearchKeyword=&SearchCKeyword=刑法 Article 24 of the Civil Servant Law of the People's Republic of China stipulates that 'anyone who has been imposed on a criminal punishment shall not be employed as a civil servant.' Criminal record system is long deemed as to be helpful for recidivism prevention'. See the English translation at: http://www.lawinfochina.com.easyaccess1.lib.cuhk.edu.hk/display.aspx?id=4123&lib=law&SearchKeyword=&SearchCKeyword=公务员法 But in criminal reconciliation, the suspect's criminal record will be expunged together with the decision of non-prosecution, so that the suspect's future life will not be influenced by the record/his past wrongdoing. See: 孙勤 [Sun Qin] *刑事和解价值分析 [An Analysis of The Values of Victim-Offender Reconciliation]* 154.
[230] 孙勤 [Sun Qin] *ibid.*

according to follow-up interviews with juvenile suspects after the conclusion of criminal reconciliation programmes in Hunan province, 100 per cent of the juvenile suspects were assessed as 'performing well' in school, and 86 per cent of them had made obvious progress in study.[231]

Based on the above, Xiang Chaohua and Ma Jinghua suggest that criminal reconciliation serves the 'value of justice' (*gongzheng jiazhi*).[232] This 'value of justice', according to Xiang and Ma, means that criminal reconciliation 'has balanced the protection of the interests of the [participants in] three roles in criminal procedure, namely the [interests of the] victim, the suspect and the state authorities. This is different from the normal criminal procedure in which the victim is often ignored'.[233]

In addition to the benefits to the parties and the state authorities, criminal reconciliation is also praised by scholars for meeting the expectations articulated by the Supreme People's Procuratorate and the Supreme People's Court, namely the expectations of bringing 'closure' to criminal cases and preventing 'petitioning related to judicial cases'. Scholars like Chen Ruihua argue that the traditional core goals of the PRC Criminal Law, which he identifies as combating crime and punishing criminals, cannot resolve the conflict between the victim and the suspect/defendant caused by the crime.[234] Under the traditional goals, the conflict still exists after the case has been closed, so the parties may be dissatisfied with the judicial system.[235] The victim would feel more dissatisfied facing a long-standing problem with the Chinese judicial system, namely, it is extremely hard to enforce the Court sentence in cases where a civil dispute about compensation has been joined to the criminal litigation.[236] These two elements, according to Chen, are the main cause

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[231] 周世雄 [Zhou Shixiong] 也论刑事和解制度 – 以湖南省检察机关的刑事和解探索为分析样本 [On Criminal Reconciliation – Taking the Exploration of Criminal Reconciliation in Hunan Province as An Analytic Sample] (2008)3 *法学评论 [Law Review]* 21.

[232] 向朝华 [Xiang Chaohua] 马静华 [Ma Jinghua] 刑事和解的价值构造及中国模式的构建 [The Building of Values of Criminal Reconciliation and Its Chinese Model] 114.

[233] *Ibid*.

[234] Above 223, 19.

[235] *Ibid*.

[236] Article 77 of the 1996 PRC Criminal Procedural Law provides that 'if a victim has suffered material losses as a result of the defendant's offence, he shall have the right to file an collateral civil appeals during the course of the criminal proceeding'. However, due to various reasons, usually the victim with the court sentence concerning

leading to 'petitioning related to judicial cases' (*she fa shangfang* or *she su shangfang*), which has been viewed by the government as a symptom of lack of 'harmony' in society and therefore a phenomenon that needed to be tackled.[237] Criminal reconciliation, possessing the afore-mentioned advantage of 'enforcing' compensation obligations, is then praised by these scholars for having the function of closing cases and preventing the parties (mainly the victim) from petitioning.[238]

Based on this effect, Chen Ruihua suggests that criminal reconciliation serves 'the value of harmony' (*hexie jiazhi*), which, according to Chen, comes from its function of restoring relationships in society.[239] As interpreted by Chen, the 'value of harmony' has nothing to do with either the procedure or outcome of the criminal process; rather, 'it is a wholly new value in addition to, as well as "challenging" the traditional two values of procedural fairness and justice of outcomes'.[240]

Without further elaboration, however, such a view of a new value is too vague to understand. As a 'challenge' to the values of procedural fairness and justice of outcomes according to Chen Ruihua, is this third value of 'harmony' in contradiction with the other two values (or can it be)? If this is the case, how should we understand the relationship between criminal reconciliation and a rights-centered conception of justice?

Xiao Shiwei and Ma Jinghua argue that criminal reconciliation has shown 'communication between State law and customs in society' by absorbing the practice of 'resolving crimes privately' (*xing'an si liao*) that is common in Chinese society into the legal framework.[241]

'civil compensation' cannot get the sentence enforced. See: 陈瑞华[Chen Ruihua] *ibid*.

[237] Above 86, 251-253.

[238] *Ibid*.

[239] Excerpted from陈瑞华 [Chen Ruihua]'s talk collected in刑事和解: 法律家与法学家对话录 [Criminal Reconciliation: A Conversation Between Legal Experts and Legal Scholars] http://www.procedurallaw.cn/xsss/zdwz/200807/t20080724_51763.html (24 October 2011)

[240] *Ibid*.

[241] 肖仕卫 [Xiao Shiwei] 马静华 [Ma Jinghua] 中国刑事和解的独特功能 - 以刑事案件"私了"问题之解决为起点的分析 [The Unique Function of Criminal Reconciliation in China: From the Perspective of Resolving the Problem of 'Solving Criminal Cases Privately'] (2010)2 *中国刑事法杂志 [Criminal Science]* 63.

'Resolving crimes privately' refers to situations in which 'issues of alleged criminal responsibility that should be processed by judicial organs are simply sorted out by the parties privately'.[242] Many scholars, including Xiao and Ma, view this as an ultimately problematic practice. For instance, according to Xiao and Ma, *'xing'an si liao'*, even if it could in some cases satisfy both parties, has harmed the interests of the State, since it 'excludes the State's participation in (suspected) criminal cases'.[243] Li Lianfeng and Shang Shumin characterize such 'exclusion' of the State in handing criminal cases as a '[sign of] disregard for and a challenge to the State law and legal policies'.[244] Chen Yufan and Qu Guangchen express the concern that *'xing'an si liao'* may lead to 'hidden trouble' for society by leaving unpunished 'offenders' in society.[245] Some other scholars note the potential harm of '*xing'an si liao'* to the individual parties. For example, Chen Yufan and Qu Guangchen say that coercive 'reconciliation' is very likely to happen in '*si liao'* (i.e. when one party has more power and influence).[246] Zhang Shuqin claims that it has been found that in practice, officials, in particular the police, also play some role in '*si liao'*, which might result in rent-seeking, judicial corruption and encourage coercive 'reconciliation'.[247]

Yet scholars acknowledge that *'xing'an si liao'* is very popular in China.[248] According to Zhang Shuqin, it has been found that in 2001, 70 per cent of the intentional injury cases, theft cases, and bigamy cases in Leping city in Jiangsu province were solved privately.[249] Another study conducted by a law firm in Shandong province in 2003 indicates that 25 per cent of 'crimes' in rural China have

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[242] 陈玉范 [Chen Yufan] 屈广臣 [Qu Guangchen] "私了"问题的法律思考 [Thoughts on 'Private Resolution'] (1995)1 *当代法学 [Modern Legal Science]* 24.
[243] Above 241, 65.
[244] 李连峰 [Li Lianfeng] 尚淑敏 [Shang Shumin] 论我国刑事和解制度的构建 – 以民间"私了"传统为基础的构建模式 [On the Construction of Criminal Reconciliation System – On the Basis of 'Private Resolution' Among the People] 2009(12) *学术交流 [Academic Exchange]* 83.
[245] Above 242, 24.
[246] *Ibid*.
[247] 张书琴 [Zhang Shuqin] 理性对待刑事和解 [Treating Criminal Reconciliation Rationally] (2007)3 *河北法学 [Hebei Law Science]* 120.
[248] Above 242, 24.
[249] Above 247, 120.

been resolved through this way.[250] It should be noted, however, that neither of these studies mentions the way in which they collected their data.

Xiao Shiwei and Ma Jinghua do not attribute the popularity of '*xing'an si liao*' to the Chinese citizen's ignorance of or disregard for law, as is often done; they argue that it is due to what they view as incoherence between the State law and social customs, and this needs to be addressed.[251] The way to address it, according to Xiao and Ma, is for the State law to 'critically acknowledge this custom', which is reached by criminal reconciliation.[252]

Some other scholars praise the value of criminal reconciliation from the perspective of traditional Chinese culture. For example, Li Lianfeng and Shang Shumin say that 'the popularity of '*xing'an si liao*' reflects a value of Chinese culture and embodies Confucian ideas of "no litigation" (*wu song*) and "valuing peace' or 'valuing harmony' (*he wei gui*)', so it is worthwhile to have a system like criminal reconciliation in the legal framework to address such practices.[253] Several scholars even suggest learning from what they describe as a customary Tibetan law:[254]

> 'After offences like murder and intentional injury, the parties do not resort to any judicial authority; they would invite agencies with [high social] standing to help them communicate with each other and invite members of their families to discuss and assess the loss in the case, and then to resolve the cases through reconciliation and compensation.'

This compensation is aptly called '*pei ming jia*' ('赔命价'or literally 'the price for [a] life') or '*pei xue jia*'('赔血价'or literally 'blood price') in the work just cited.[255]

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[250] *Ibid*.
[251] Above 241, 24.
[252] *Ibid*.
[253] Above 247, 83.
[254] 藏族习惯法之现代恢复性司法理念审查 [An Examination of the Idea of Restorative Justice Embodied in the Customary Tibetan Law] http://www.daixie.org.cn/faxue/sifazhidu/48033.html (4 November, 2011)
[255] *Ibid*.

Therefore, in these scholars' opinions, criminal reconciliation is a system showing the State law's adoption of customs that have always existed in Chinese society, while at the same time 'overcoming the shortcomings of *xing'an si liao'* with participation from and oversight by state authorities.[256] It is, according to them, of great significance to the establishment of 'socialist rule of law with Chinese characteristics' and the 'increase of State's capacity of ruling society at the grassroots'.[257]

Nevertheless, there might be three problems with this praise. First, as noted in Chapter One, criminal reconciliation was initially implemented in comparatively developed locations in China such as Beijing and Jiangsu province, not rural China where the State law is much weaker and customs are much stronger. This calls into question this purported function of 'connecting the State law and customs in society' through criminal reconciliation. Second, criminal reconciliation is conducted in cases handled by the Public Security Bureau/People's Procuratorate/People's Court, namely in cases that have already come into the hands of state authorities. These scholars did not indicate whether this mechanism was able to attract matters potentially to be resolved privately into the state authorities. Therefore, it might be far-fetched to appraise criminal reconciliation as helpful to address the problem of '*xing'an si liao*'. Third, the enthusiasm for adopting 'customs' such as '*pei ming jia*' or '*pei xue jia*' without careful and in-depth examination of these customs and the context in which these customs emerged and exist, might be too facile. Also, it might be too facile to assert the value of traditional culture, namely Confucian ideology in the legal framework.

In addition, there is a key problem with all these positive appraisals expressed by the scholars – they all build their praise largely on information provided in the Procuratorate/Court's own reports. The heavy reliance on official sources raises doubts as to the reliability of the factual basis upon which they make such

[256] Above 241, 67.
[257] *Ibid.*

assessment, given especially that these data were collected at a time when the Procuratorates/Courts in question were expected to participate in the promotion of the Party's 'harmonious society' policies through their contribution to criminal reconciliation.[258]

2.1.2 Criticisms

In general, criticism and concerns over criminal reconciliation in domestic scholarly work focus on two main points: fairness and voluntariness.

The scholarly debate around whether or not criminal reconciliation is unfair to economically weak suspects/defendants. Perhaps the most serious concern about criminal reconciliation has been that the main focus of this process is on the amount of compensation to be paid to the victim.[259]

For instance, Ge Lin observes that in practice the payment of compensation has been normally adopted by the official as the most important, or even the only standard to assess whether or not the parties have achieved mutual understanding, the suspect/defendant is remorseful and has obtained the victim's forgiveness etc..[260] According to Ge, rarely could we find that a criminal reconciliation programme ends without the payment of compensation.[261]

Therefore, some comments on criminal reconciliation are along the lines of 'if you have money, you will get a lenient sentence; if you are poor, you will go to prison'.[262] Criminal reconciliation programmes have accordingly been criticized as unfair to the poor, since 'the rich can pay money to avoid punishment' (*yi qian shu xing* or *pei qian jian xing*).[263] Compensation agreed upon in the context of criminal reconciliation has tellingly been called 'reconciliation fee' (*hejie fei*), and criminal

[258] Further discussion of the issue of reliability of official sources can be found in Chapter 3.
[259] Above 147, 19.
[260] *Ibid*.
[261] *Ibid*.
[262] 李洪江 [Li Hongjiang] 刑事和解应缓行 [The Implementation of Criminal Reconciliation Should be Slowed Down](2006)5 *中国检察官 [Chinese Prosecutors]* 13.
[263] *Ibid*.

reconciliation has been characterized as a 'trade-off between money and [the victim'] rights' (*quan qian jiaoyi*).[264] It has been further warned by some scholars that criminal reconciliation like this is actually harmful for the establishment of a 'harmonious society', since it is likely to sharpen contradictions and trigger discontent in society (which might be evidenced by the public's response in some high-profile cases like the one, 'Li Gang case' shown in Chapter One).[265]

Li Ming characterizes criminal reconciliation as a mechanism 'all about money'.[266] Li says that 'criminal reconciliation like this is welcomed a lot by the rich suspects/defendants'.[267] Yet, according to Li, those who like it most are officials, since it could largely facilitate rent-seeking and corruption.[268] For instance, Li believes that the reason why Bai Yuling, the head of the Public Security Bureau of Haozhou city in Anhui province, did not transfer any case he handled to the Procuratorate for prosecution during the past 20 years may be due to rent-seeking or corruption in his use of some mechanism like criminal reconciliation.[269]

Chen Guangzhong has also acknowledged the problem of unfairness in criminal reconciliation caused by the almost exclusive focus on compensation. Although he views that 'the gap between the rich and the poor is fairly normal in the market economy', he proposes to 'address this problem step by step'.[270] In particular, he proposes to provide other means such as community service for the suspect/defendant who cannot afford compensation to help criminal reconciliation avoid this exclusive emphasis on compensation.[271] Nevertheless, whether or not such means could have this effect or the same effect as compensation for criminal reconciliation (let alone its feasibility) may need further examination.

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[264] 单士兵 [Shan Shibing] 刑事和解背后的 "和谐幻觉" [The 'Illusion of Harmony' Behind Criminal Reconciliation] http://gb.cri.cn/9083/2006/11/23/2165@1317252.htm (24 February 2012)
[265] *Ibid.*
[266] 黎明 [Li Ming] 耍钱的刑事和解是祸水 [The 'All-About-Money' Criminal Reconciliation Is Damage] http://news.ifeng.com/opinion/society/detail_2009_08/18/1303072_0.shtml (5 November 2011)
[267] *Ibid.*
[268] *Ibid.*
[269] *Ibid.*
[270] 陈光中 [Chen Guangzhong] 刑事和解应当推动和规范 [Criminal Reconciliation Should be Promoted and Standardized] (2010)1 *法学研究[Legal Research]* 164.
[271] *Ibid.*

Yet in the meantime, there are scholars arguing that there is no such problem of unfairness in criminal reconciliation. For instance, Zhang Fuxiong, says that an exclusive focus on compensation in criminal reconciliation is similar with '*shuxing*' (赎刑), a practice which was adopted in laws in ancient China since Qin and Han dynasties.[272] *Shuxing* translates roughly as 'redemption of punishment' and it was always closely connected to the making of payments by the culprit. Although *'shuxing'* is different from criminal reconciliation since it only allows certain privileged categroies of persons 'pay money to avoid punishment', Zhang argues that the exclusive focus on compensation in criminal reconciliation could be justified by this ancient system in China for its 'absorption of the traditional system'.[273] Yet by saying this, Zhang does not discuss whether '*shuxing*' is a fair and just system. The simple 'absorption' of a traditional system cannot justify the (potential problem of) unfairness of criminal reconciliation.

Du Yu also defends criminal reconciliation as a fair process by arguing that 'equality in the sense of law refers to equality of opportunity' and 'criminal reconciliation actually provides this equality of opportunity to all the suspects/defendants'.[274] Besides, the outcomes in criminal reconciliation cases (i.e. withdrawing the case, non-prosecution, or suspended sentence) are 'the results of compensating the loss, which indeed shows the suspect/defendant's attitudes and inclination to be good, not of the wealth he/she possesses'.[275]

Likewise, Wang Zhixiang and Zhang Weike argue that in criminal reconciliation, 'money is no more than a signal to show the suspect/defendant's attitudes and "harmfulness to society" (*shehui weihaixing*)'.[276] And 'whether or not the suspect/defendant can get a lighter sentence is absolutely up to the judge', who

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[272] 张孚雄 [Zhang Fuxiong] 重罪案件刑事和解的理论思考 [Thoughts on The Use Of Criminal Reconciliation in Serious Crimes] (2011)2 *法制与经济 [Law and Economy]* 185.
[273] *Ibid*.
[274] 杜宇 [Du Yu] "刑事和解": 批评意见与初步回应 ["Criminal Conciliation": Critics and Preliminary Response] (2009)8 *中国刑事法杂志 [Chinese Criminal Science]* 8.
[275] *Ibid*.
[276] 王志祥 [Wang Zhixiang] 张伟珂 [Zhang Weike] 死刑案件中刑事和解的正当性探究 [On the Legitimacy of Criminal Reconciliation in Capital Cases] (2011)4 *北方法学[Northern Legal Science]* 52.

will 'not only oversee the criminal reconciliation process, but also the other facts and evidence in the case concerned to guarantee the legality of criminal reconciliation cases'.[277]

In the author's view, however, these justifications are far-fetched and unacceptable. For one thing, it is hard to assert that the suspect/defendant who is too poor to compensate does not truly feel regretful (or even that the poor suspect/defendant is less 'inclined to be good') or has more 'harmfulness to society', and vice versa. For another, the argument concerning the 'outcome' in compensation is hard to understand - how to make the link between the wealth the suspect/defendant possesses and the amount of compensation he/she ought to pay?

The scholarly concern about power abuse in criminal reconciliation. The second main concern with criminal reconciliation is the public power's infringement upon the parties' voluntariness in this process.

For instance, Du Yu claims that there are two forms of 'coercion' in criminal reconciliation – one is defined by him as 'obvious coercion', which means that 'one party with advantages in status, influence or economic conditions may pressurize the other party to "reconcile" through threatening or intimidating [the other party], or buying [them] off etc.'[278] Yet Du thinks that this form of coercion could be effectively addressed through the supervision (*jiandu*) and examination of the parties' real intention by the officials.[279]

The other form of coercion the parties may be confronted with in criminal reconciliation is named by Du as 'subtle coercion'.[280] This 'subtle coercion', according to Du, may first come from the 'harsh treatment the suspect/defendant thinks may be imposed in the normal criminal procedure' such as arrest and imprisonment.[281] It may also come from the (negative) comments from other people

[277] *Ibid*, 44.
[278] Above 274, 12.
[279] *Ibid.*
[280] 杜宇 [Du Yu] "刑事和解": 批评意见与初步回应 ["Criminal Conciliation": Critics and Preliminary Response] http://article.chinalawinfo.com/Article_Detail.asp?ArticleID=52142 (18 February 2012)
[281] *Ibid.*

living around the parties or the public opinion.[282] The third form of 'subtle coercion' in criminal reconciliation processes, according to Du, comes from the officials' 'inducement' (i.e. through exaggerating the risk and adverse impact of the normal procedure, and fabricating information)'.[283]

Du Yu further contends that the first two forms of 'subtle coercion' could not be said to violate the parties' voluntariness in criminal reconciliation. Because 'in the first case, the parties make their decisions based on a balance of costs and benefits (i.e. 'how much reconciliation is worth for me to avoid criminal record and punishment'); and in the second case, Du argues that 'although the parties' may be influenced, after all they can still make decisions freely'.[284] Only the third form of 'subtle coercion' according to Du, has violated the parties' voluntariness.[285] Because, 'the officials possess absolute advantages in knowledge, information and experience etc. in comparison with the parties in criminal reconciliation', and in practice, 'the parties are facing the same official if they refuse the officials' "suggestions" in criminal reconciliation', which is very likely to make the parties feel worried about any negative outcomes in the criminal case.[286] Therefore, as argued by Du Yu, it is very hard for the parties to resist the officials' intentions in criminal reconciliation processes, even though they do not want to accept them.[287]

Other scholars also suggest reasons to worry about public power's infringement upon the parties' rights in criminal reconciliation. For example, Chen Weidong observes that criminal reconciliation has actually given 'added power to the officials', which 'may provide the officials with another opportunity of rent-seeking'.[288] Xu Yang expresses concern that this infringement upon the parties' rights and voluntariness by public power is very likely to happen in criminal reconciliation,

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[282] *Ibid.*
[283] *Ibid.*
[284] *Ibid.*
[285] *Ibid.*
[286] *Ibid.*
[287] *Ibid.*
[288] 刑事和解: 法律家与法学家对话录 [Criminal Reconciliation: A Conversation Between Legal Experts and Legal Scholars] http://www.procedurallaw.cn/xsss/zdwz/200807/t20080724_51763.html (24 October 2011)

because 'this programme is now promoted strongly by the government and has been connected with so many political goals'.[289] These, according to Xu, are strong incentives for the officials to abuse their power in criminal reconciliation that would harm the parties' voluntariness and rights.[290]

In order to address this problem, scholars are keen on an effective supervision (*jiandu*) mechanism to curb the officials' power in criminal reconciliation.[291] For example, Ge Lin writes that[292]

> 'Criminal reconciliation leads to particular needs of checks (on the officials' power) and the passive role (of the officials' role in this programme). The initiative in criminal reconciliation programmes should be on the parties' side. Even so, public power has been so strong in criminal reconciliation, now that officials can decide to initiate this programme entirely by themselves. Therefore, checks from inside and outside of this system are of great significance to curb the abuse of power and prevent judicial corruption.'

Yet such a supervision system to curb public power in criminal reconciliation processes is not addressed in the 2012 CPL. Furthermore, it would be difficult to create an effective supervision system in the Chinese criminal justice system taking into account the problems and 'malfunctioning' of the current supervision system stipulated in the Criminal Procedure Law. Indeed, the very idea of 'supervision' in the Chinese context may be in itself problematic. These are discussed in detail in Chapter Six.

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[289] 徐阳 [Xu Yang] 刑事和解中权力过度推进之危害及其防范 [Harmfulness Of and Safeguard Against Power Abuse in Criminal Reconciliation Programmes] (2009)6 *法学评论[Legal Review]* 134.
[290] *Ibid*.
[291] 陈卫东 [Chen Weidong] 关于刑事和解的几点看法 [Several Opinions On Criminal Reconciliation](2009)3 *中国法律[Chinese Laws]* 12.
[292] Above 127, 303.

2.1.3 The debate concerning uses of criminal reconciliation outside its stipulated scope

As described in Chapter One, although neither the local regulations or guidelines nor the 2012 CPL allow it, the use of criminal reconciliation in practice has been extended from suspected minor crimes to felonies and capital cases. This 'development' has triggered much debate and concern in Chinese academia. Scholars who are generally supportive of the practice may still be critical of what they see as its excessive uses.

The main justification for the use of criminal reconciliation in capital cases is concerned with its intended function of implementing the Party's policy of 'killing less, killing with restraint' (*shao sha, shen sha*) and an effective way to restrict the use of death penalty in China.[293] Nevertheless, it has been heavily criticized by the scholars.

Scholars such as Liang Genlin and Sun Wanhai argue that 'the control of [uses of the] death penalty should not rely on criminal reconciliation which almost upgrades compensation as the unique element in judges' consideration in capital sentence'.[294] That is to say, if the payment of compensation by the victim can lawfully become a major consideration affecting the judge's sentence in capital cases, this might reinforce the impression that life could also be 'bought' with money, and if you were too poor to afford compensation, you would have to face the death penalty.

Is criminal reconciliation in capital cases and suspected serious crimes legitimate, then, if it does *not* focus on compensation? Liang Genlin sees this 'extension' as an 'erosion of the State's power to impose criminal punishment', because it has 'privatized the Criminal Law to an extreme', and is actually an 'excuse

[293] Above 276, 53.
[294] 梁根林 [Liang Genlin] 死刑案件被刑事和解的十大证伪 [Ten Falsification in Using Criminal Reconciliation in Death Penalty Cases] 2010(4) *法学 [Legal Science]* 18.

for the state to evade its responsibility in addressing the damage caused by crime'.[295] According to Liang, compensating the victim's loss caused by the crime should not only be the offender's responsibility; rather, the state should also take this responsibility through, for instance, establishing a national compensation system (to redress the loss of the victim).[296] Moreover, Liang claims that the use of criminal reconciliation in capital cases has seriously violated the 'passive nature of the judiciary' (*sifa de beidong xing*) due to its great reliance on the officials' discretion, which is very likely to cause judicial corruption.[297]

Another scholar, Sun Wanhuai also criticizes the use of criminal reconciliation in homicide cases on the grounds that the implementation of criminal reconciliation in these cases makes the victim's lost life part of a bargaining process, in which the victim's relatives, who bargain for compensation, have necessarily replaced the (direct) victim.[298] This is, according to Sun, 'also a violation of [the principle of] criminal reconciliation in itself, since this process calls for communication and negotiation between the (direct) parties themselves in resolving the case'.[299]

The arguments advanced by Liang and Sun seem more persuasive and may not be limited to criminal reconciliation used in death penalty cases and suspected serious crimes. As already mentioned, Liang criticizes the official's discretion in this process as a violation of the 'passive nature of judiciary' that potentially harms the parties' rights. However, as mentioned earlier, this might also be a problem with the use of criminal reconciliation in suspected minor crimes and Liang offers no reason for why this problem exists only in major cases. Likewise, Sun's argument may have ignored the point that in traffic accident related crime cases (which belong to 'minor crime'), the (direct) victim may also be dead when criminal reconciliation is initiated so there is also no communication between the direct parties. In sum, Liang and Sun's criticism sounds as though criminal reconciliation is justifiable in suspected

[295] *Ibid 15*-17.
[296] *Ibid*.
[297] *Ibid* 19.
[298] Above 198, 185.
[299] *Ibid*.

minor crimes (as provided in the local regulations or guidelines governing criminal reconciliation as pilot practices and the 2012 CPL). Yet they do not explain why these concerns around criminal reconciliation in serious 'crimes' and death penalty cases can be set aside in minor criminal cases.

Furthermore, the support for the availability of criminal reconciliation expressed by many people (concerning its outcome of a lenient sentence), in particular defendants and their lawyers, is understandable considering what a severe criminal justice system they are facing[300], and their support might be more the result of this flawed criminal justice system. Yet given these problems with this process, this goal, while understandable in individual cases, should not blind us to the potential injustice of this system.

2.1.4 The debate concerning lawyers' role in criminal reconciliation processes

As noted in Chapter One, criminal reconciliation, mainly based on the parties' communication and reconciliation, the suspect/defendant's admission of guilt, and the officials' discretion, is essentially different from the adversarial system, while it may be good for the protection of the suspect/defendant's rights that there is still the lawyer's participation in this process.

There have also been debates in the scholarly work over the lawyer's role. On the one hand, the domestic scholarly work inclines to attribute the reason and significance for involving lawyers in criminal reconciliation to 'protecting the parties' rights by means of the lawyer's professionalism in law'.[301] For example, Song Yinghui claims that there are three main advantages to lawyers' participation in

[300] See, e.g. Dui Hua, a nonprofit humanitarian organization, estimates that there are around 4,000 executions of death penalty in China every year. https://sna.etapestry.com/prod/viewEmailAsPage.do?databaseId=DuiHuaFoundation&mailingId=22213781&personaRef=11073.0.152691&jobRef=2967.0.31681565&memberId=789166155&erRef=11073.0.152697&key=e2eacaff46787bfeefcaa24cf35264c7 (1 March 2012)

[301] 钱列阳 [Qian Lieyang] 张志勇 [Zhang Zhiyong] '律师参与刑事和解的制度设计 [Design of A Criminal Reconciliation System Involving Lawyers' Participation]' in 卞建林 [Bian Jianlin] 王立 [Wang Li] (ed.) *刑事和解与程序分流 [Criminal Reconciliation and Procedural Alternative]* Beijing, 中国人民公安大学出版社 [The Chinese People's Public Security University Press] 2010, 461-462.

criminal reconciliation. First, it can ease tension between the suspect/defendant and the victim.[302] Second, it can help to avoid the awkward situation in which the victim asks for too much compensation and the suspect/defendant may have overly high expectations as to the outcome of criminal reconciliation.[303] Third, the lawyer could 'assist the officials or mediators to conduct mediation or reconciliation'.[304] Ge Lin also mentions the lawyer's role in this third respect by saying that 'in practice, reconciliation may not be reached even though the judge has done lots of work, yet it is easy to be reached with the lawyer's explanation and persuasion (to the parties), if the parties trust the lawyer'.[305]

On the other hand, there is concern around lawyers' participation in this process as to the problem of 'fairness'. For example, Ye Qing and Xu Chong express concern that it might increase the gap in bargaining power between the parties with and without the ability to afford lawyers.[306] It is also a concern that lawyers may not really represent the parties' interests and intentions in accepting criminal reconciliation.[307] That is to say, the lawyers may think that criminal reconciliation is in the best interests of their clients even though the parties do not want to participate in this process; this infringes upon the parties' rights. According to Ge Lin, this may happen easily also since the lawyers have their clients' trust.

On balance, however, the lawyer's participation in criminal reconciliation is advantageous in protecting the parties' rights in this process, because as noted in Chapter One, as a process essentially different from the adversarial system, criminal reconciliation lacks mechanisms for protecting the parties' rights. Nevertheless, the above concerns should not be neglected because, as discussed in Chapter One,

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[302] 宋英辉 [Song Yinghui] '刑事和解实证研究总报告 [An Overall Report on the Empirical Work on Criminal Reconciliation]' in 宋英辉 [Song Yinghui] (ed.) *刑事和解实证研究 [Empirical Research on Criminal Reconciliation]* Beijing, 北京大学出版社 [Peking University Press] 2010, 27.
[303] *Ibid*.
[304] *Ibid*.
[305] Above 127, 243.
[306] 叶青 [Ye Qing] 许翀 [Xu Chong] '刑事和解机制配套措施若干问题研究 [Research on Several Issues Concerning The Supporting Measures For Criminal Reconciliation]' in 宋英辉 [Song Yinghui] (ed.) *刑事和解实证研究 [Empirical Research on Criminal Reconciliation]* Beijing, 北京大学出版社 [Peking University Press] 2010, 182.
[307] Above 127, 243.

criminal reconciliation has to some extent eroded the adversarial and rights-centered conceptions of justice. The lawyer's role in this sense may be changed in criminal reconciliation as well. Thus, it is very crucial that the lawyers should still represent their clients in criminal reconciliation and should not serve as the officials' assistants in facilitating the parties' reconciliation agreements. Importantly, they should still protect their clients' rights against power public's infringement. The lawyer's role in the practice of criminal reconciliation is further illustrated in Chapter Five.

2.2 Scholarly debates of justifications for criminal reconciliation

Another major issue debated among domestic Chinese scholars is the nature of criminal reconciliation. By discussing the nature of criminal reconciliation, the Chinese scholars are actually seeking justifications for this process. In general, they have suggested two ways to understand this programme: as a transplant of restorative justice; or alternatively as a purely indigenous or native Chinese practice.

Viewing criminal reconciliation as China's transplant of restorative justice (translated as '*huifuxing sifa*' or '*huifuxing zhengyi'*), scholars define criminal reconciliation with reference to 'Victim-Offender-Reconciliation', one of the typical forms of restorative justice. Scholars taking this view say that 'criminal reconciliation' equals "Victim-Offender-Reconciliation" in restorative justice, which means that crimes and contradictions are resolved through negotiation and reconciliation in an attempt to restore relationship and social order, repair harm and rectify offenders'.[308] Criminal reconciliation is then highly valued by these scholars with reference to the advantages of 'Victim-Offender-Reconciliation', including restoring relationship, repairing harm and rectifying offenders etc..[309] These

[308] See: 刘凌梅 [Liu Lingmei] 西方国家刑事和解理论和实践介评 [Introduction and Assessment on Criminal Reconciliation in Western Jurisdictions] 2001 Vol.23 (1) *现代法学 [Modern Law Science]* 152-153 and 马静华 [Ma Jinghua] 刑事和解的理论基础及其在我国的制度构想 [The Theoretical Basis of Criminal Reconciliation and the Construction of This System in China] 2003(4) *法律科学(西北政法大学学报) [Legal Science]* 81.

[309] 张辉华 [Zhang Huihua] 王媛 [Wang Yuan] 从恢复性司法看刑事和解在我国的引入和应用 [On the

advantages, it is said, address deficiencies of the Chinese criminal justice system and ultimately help to promote a harmonious society.[310] By characterising it as a form of 'Victim-Offender-Reconciliation', these scholars also suggest that the use of criminal reconciliation conforms to 'the global trend of restorative justice'.[311]

Yet some other scholars have claimed that there are a few differences between restorative justice and criminal reconciliation. For example, Zhang Zhaoxiao and Xie Caineng argue that restorative justice is an alternative to the normal criminal justice system, while criminal reconciliation is conducted in the context of the normal criminal justice system and also supported by the normal criminal justice system.[312] Chen Ruihua observes that restorative justice stresses *real* communication and exchange between the victim and the suspect/defendant in order to reach restoration, in particular psychologically, while criminal reconciliation mainly focuses on (financial) compensation.[313] Ge Lin notices the significance of the community in restorative justice, which, according to Ge, is often missing in criminal reconciliation programmes in China.[314]

Based on discussing the distinctions between restorative justice and criminal reconciliation, these scholars criticize the understanding of criminal reconciliation as a transplant of restorative justice as '[displaying] unnecessary enthusiasm for transplanting systems from western jurisdictions without seriously considering the

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Introduction and Implementation of Criminal Reconciliation in China from the Perspective of Restorative justice] http://www.chinacourt.org/html/article/200411/02/137288.shtml (22 July 2008)

[310] 人民法院报 [The People's Court Daily] 从对抗走向和谐：恢复性司法的本土移植 [From Controversy to Harmony: the Transplant of Restorative Justice to China] http://news.xinhuanet.com/legal/2007-05/10/content_6080026.htm (2 March 2012)

[311] See e.g. 吴建新 [Wu Jianxin] '恢复性司法中国化中的困惑与思考 [Confusion and Thoughts during the Chinization of Restorative Justice]' in 王平 [Wang Ping] (ed.) 恢复性司法论坛 [Forum on Restorative Justice] Vol. 2007, Beijing, 中国检察出版社 [China Procuratorial Press] 85; 狄小华 [Di Xiaohua] '复合正义和刑事调解 [Restorative Justice and Criminal Mediation]' in 王平 [Wang Ping] (ed.) 恢复性司法论坛 [Forum on Restorative Justice] Vol. 2005 Beijing, 群众出版社 [Qunzhong Publishing] 126-129.

[312] 张朝霞 [Zhang Zhaoxia] 谢财能 [Xie Caineng] '刑事和解: 误读与澄清 [Criminal Reconciliation: Misunderstanding and Clarification]' in 卞建林 [Bian Jianlin] 王立 [Wang Li] (ed.) *刑事和解与程序分流 [Criminal Reconciliation and An Alternative Procedure]* Beijing 中国人民公安大学出版社 [The Chinese People's Public Security University Press] 2010, 202-203.

[313] 陈国庆 [Chen Guoqing] 陈瑞华 [Chen Ruihua] 汪建成 [Wang Jiangcheng] 张志铭 [Zhang Zhiming] *et al* '刑事和解的理论基础 [Theoretical Basis of Criminal Reconciliation]' in 宋英辉 [Song Yinghui] 袁金彪 [Yuan Jinbiao] (ed.) *我国刑事和解的理论与实践* [*The Theory and Practice of Criminal Reconciliation in China]* Beijing 北京大学出版社 [Peking University Press] 2009, 6.

[314] Above 127, 26-27.

domestic reality' which in their view indicates 'some Chinese scholars' lack of confidence in native judicial practices'.[315] In general, these scholars hold that criminal reconciliation emerged entirely due to the Chinese judicial system's striving to resolve its problems by itself, a movement unconnected to any theory or practice, such as restorative justice, in western jurisdictions.[316] In their view, criminal reconciliation, as an indigenous practice, is also able to draw on the problems with the Chinese criminal justice system and thereby help to promote a 'harmonious society'.

The author agrees that criminal reconciliation in China is different from restorative justice and argues below that there are three further major discrepancies between these two systems, which previous scholarly debate has neglected. Importantly, these discrepancies are likely to account for some of the failures of criminal reconciliation, and make criminal reconciliation impossible to possess the advantages of restorative justice.

2.2.1 Differences between criminal reconciliation and restorative justice

The different roles of community/society. Since the 1970s, there has been a trend of 'diversion', which is to move the offender away from the formal criminal process including prosecution and imprisonment.[317] One of the reasons for this trend is the ideology of 'community treatment' or 'community control' of crime and delinquency, which was advanced by Donald Black as a 'social control' theory.[318] 'Social control' theory views the origins of crime in social conditions (i.e. family, community, school,

[315] 肖仕卫 [Xiao Shiwei] 刑事法治的"第三领域"：中国刑事和解制度的结构定位与功能分析 [the Third Realm in Criminal Justice: On the Structural Position and Function of Criminal Reconciliation in China] (2007) Vol19 No.6 *中外法学 [Peking University Law Journal]* 721-722.
[316] 陈瑞华 [Chen Ruihua] 刑事诉讼的私力合作模式：刑事和解在中国的兴起 [Private Cooperation in Criminal Procedure: The Emergence of Criminal Reconciliation in China] (2006)5 *中国法学 [China Legal Science]* 19.
[317] Preston Elrod and R.Scott Ryder *Juvenile Justice: A Social, Historical, and Legal Perspective* Sudbury, Massachusetts, Jones and Bartlett Publishers 2005, 180.
[318] Allan V. Horwitz 'Diversion in the Juvenile Justice System' in Gunter Albrecht & Wolfgang Ludwig-Mayerhofer (ed.) *Diversion and informal Social Control* Berlin, Walter de Gruyter 1995, 17.

economic system), so crime prevention and cure must also depend on communities taking responsibility for remedying the conditions causing crime.[319] This theory of 'social control' also arose in the context that the State-centered control (i.e. prison) has been found ineffective, and the 'community alternative is viewed as less costly and more humane'.[320] Restorative justice theory is built on the theory of 'social control'.

Accordingly, in restorative justice not only the offender but also the community/society has the responsibility for the loss caused by crime.[321] Accordingly, restorative justice asks not only the offender but also the community/society to 'remedy the conditions leading to crime', to 'support the offender's reintegration', and to 'provide general welfare in an attempt to redress the (victim's and offender's) harm caused by the crime', and to 'strengthen the community to prevent re-offending'.[322]

Moreover, in restorative justice, community members are recognized as 'indirect victims', who are harmed by the crime and need reparation as well.[323] So they are also invited to participate in restorative justice programmes to resolve the problem together with those 'direct parties' (namely, the victim and the offender in the case concerned) and to get reparation.[324]

It seems that this theory can be found in criminal reconciliation in China: the decisions officials suggest lenient decisions to the suspect/defendant if they can comply with the reconciliation agreements – at the most, non-custodial sentences will be given, or there will be a decision to withdraw the case, not to prosecute, or to give a suspended sentence). Besides, criminal reconciliation values rehabilitating and correcting offenders in society through follow-up programmes. Therefore, it seems

[319] Tony F Marshall *Restorative Justice: An Overview* Minnesota, Centre for Restorative Justice& Mediation 1998, 2.
[320] *Ibid*.
[321] *Ibid*.
[322] Allan V. Horwitz 'Diversion in the Juvenile Justice System' in Gunter Albrecht & Wolfgang Ludwig-Mayerhofer (ed.) *Diversion and informal Social Control*, 17.
[323] Susan Sharp *Restorative Justice: A Vision for Healing and Change* Alberta, Edmonton Victim Offender Mediation Society 1998, 7-12.
[324] Howard Zehr and Harry Mika 'Fundamental Concepts of Restorative Justice' in Declan Roche (ed.) *Restorative Justice* England, Dartmouth Publishing Company 2004, 78.

that community and society also play a vital role in criminal reconciliation programmes.

Nevertheless, the author argues that in fact there are tremendous differences of the roles of community/society in criminal reconciliation and restorative justice. In criminal reconciliation, society is mainly set as a place to (help the officials) educate and correct the suspect/defendant. Technically, concerned members of the community are expected to help the officials with the resolution of the case concerned, e.g. by persuading the immediate parties to the process to accept a solution suggested by the official (see further Chapters Four and Five *infra*). All the other accountabilities of the community or of wider society addressed above in restorative justice are missing in criminal reconciliation. Members in the community are also not viewed as 'indirect victims' seeking reparation in criminal reconciliation programmes.

'Reintegrative shaming' is missing in criminal reconciliation. 'Reintegrative shaming' was put forward by John Braithwaite in his book '*Crime, Shame and Reintegration*'. Braithwaite defines 'reintegrative shaming' as an 'expression of community disapproval, which may range from mild rebuke to degradation ceremonies, followed by gestures of reacceptance into the community of law-abiding citizens'.[325]

'Reintegrative shaming' is distinguished from the ideology of 'stigmatic shaming' and 'labeling' in retributive justice. According to Braithwaite, from the perspective of 'stigmatic shaming' and 'labeling' theories, the offender is 'bad' and 'evil'. [326] Retributive justice aligned with these theories imposes shame on the offender's personality.[327] Yet such shame is a barrier for the offender to reintegrate into society/community afterwards.[328] Moreover, as argued by Braithwaite, under the

[325] John Braithwaite *Crime, Shame and Reintegration* Cambridge, Cambridge University Express 1989, 55.
[326] John Braithwaite (1999) Crime, Shame and Reintegration http://www.ciaj-icaj.ca/english/publications/DP1999/braithwaite.pdf (20th January 2008)
[327] *Ibid*.
[328] *Ibid*

ideas of 'stigmatic shaming' and 'labeling', 'the offender's sense of shame may be further lost and animosity may be created', which is likely to cause re-offending.[329]

On the contrary, in 'reintegrative shaming' as proposed by Braithwaite, the object for 'shaming' is only the offender's *bad action.*[330] That is to say, the offender is still viewed as a 'good person worth respect' by the victim and other members in the community.[331] Because of this, according to Braithwaite, the offender can return to the community again much more easily.[332]

The author argues that this rationale of 'reintegrative shaming' is not embodied in criminal reconciliation in China either. This could be reflected in criminal reconciliation's different attitude towards the suspect/defendant compared to that in restorative justice.

As noted in the preceding chapter, in criminal reconciliation programmes, the suspect/defendant is mainly viewed as an object to be educated and corrected, which is one of the officially purported goals for this programme. The biggest benefit the suspect/defendant could obtain in criminal reconciliation programmes, as stated by officials and many academics, is lenient dispositions such as non-prosecution or suspended sentence. Although suspects/defendants, according to the officially claimed aims, are granted power and a voice in the process of criminal reconciliation, without the support of 'reintegrative shaming', this process may still be 'stigmatic' for them. Moreover, the particular stress on 'education' may not only focus on the suspect/defendant's past wrongdoings, but also on their personalities. This problem is not addressed in domestic literature on criminal reconciliation; it is shown and discussed in Chapters Four and Five when the author describes the findings in empirical study of criminal reconciliation practices in China.

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[329] *Ibid.*
[330] Barbara Hudson, Restorative Justice and Gendered Violence: Diversion or Effective Justice? (2002) 42, 3, *The British Journal of Criminology* 619.
[331] *Ibid*.
[332] John Braithwaite & Stephen Mugford 'Conditions of Successful Reintegration Ceremonies: Dealing With Juvenile Offenders' in Declan Roche (ed.) *Restorative Justice* England, Dartmouth Publishing Company 2004, 5.

'Political goals' set for criminal reconciliation are not involved in restorative justice. Tony Marshall defines five objectives for restorative justice. These objectives include benefits to the victim, the offender, the community as well as the criminal justice system. To the victim (including both direct and indirect victims), restorative justice is to 'fully attend' to their needs, which may involve 'expression, information, participation, empathy, reparation of the sense of security'.[333] With regard to the offender, it is to 'facilitate their undertaking of accountabilities caused by crimes and their reintegration into the community afterwards'. [334] With regard to the community, it is to 'prevent recidivism through rehabilitating the victim and the offender'.[335] With regard to the criminal justice system, restorative justice 'aims to raise its efficiency through resolving cases in an alternative means'.[336]

It seems that many similarities could be seen between the claimed aims of criminal reconciliation and those of restorative justice. For example, they both aim to protect the parties' rights as to a voice and participation in criminal justice processes; they are both purported to redress the victim's material loss and psychological harm through the parties' communication and discussion and the suspect/defendant/offender's apology and compensation.

Nevertheless, it is appears that some of the officially stated goals of criminal reconciliation in China, such as eliminating petitioning, and promoting a 'harmonious society' in the sense of the political theory developed by the CCP are not involved in restorative justice. This may indicate another critical difference between these two systems: in contrast to restorative justice which pays absolute attention to the parties (and other people who are also affected by crime), criminal reconciliation has been 'imposed' with many 'large goals' or actually political goals, that mainly serve the interests of the authorities.

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[333] Tony F Marshall *Restorative Justice: An Overview* http://library.npia.police.uk/docs/homisc/occ-resjus.pdf (16 February 2008)
[334] *Ibid.*
[335] *Ibid.*
[336] *Ibid.*

Most importantly, as also noted by Chen Ruihua, compensation plays quite different roles in these two systems. Compensation neither displays any special status nor is particularly stressed in restorative justice. Although it is also characterised in restorative justice as a way of making the offender accept accountability and reach restoration, it is not the only way or a way more important than other ways (i.e. apology, communication, and community service) in reaching these goals. It is even viewed as secondary to the process of restorative justice, which includes the parties' dialogue and relationship.[337] Yet in criminal reconciliation in China, compensation is officially stated to be a very significant element to address the long standing problem with enforcing the sentence in the normal criminal procedure. This is officially viewed as a way to satisfy the victim, to prevent their petitioning, and to achieve 'closure', which are all for establishing a 'harmonious society'. As a result, compensation is ultimately crucial in criminal reconciliation programmes.

The above analysis shows that criminal reconciliation in China is not a transplant of restorative justice. Can this process be understood as an indigenous practice, then? Some Chinese scholars have proposed three ways of understanding and justifying it as an indigenous practice: as 'private cooperation' (*sili hezuo*) in criminal procedure; as a 'third realm' (*di san lingyu*), which exists besides and between the areas of the State and society; and as merely civil (private) mediation on compensation. In the following, the author critically discusses these three opinions and argues that none of them has appropriately understood criminal reconciliation in China.

2.2.2 A critique of the theory of 'private cooperation' (*sili hezuo*)

Chen Ruihua has advanced the view that criminal reconciliation should be understood as a form of 'private cooperation' (*sili hezuo*). According to Chen,

[337] *Ibid.*

criminal reconciliation is a programme that 'mainly involves cooperation between the suspect/defendant and the victim'.[338] This kind of cooperation makes criminal reconciliation different from the normal criminal procedure in which 'the suspect/defendant stands opposite to the victim'.[339] It is also different from 'cooperation by public power' (*gongli hezuo*) which typically happens between the Procuratorate and the suspect/defendant in plea bargaining.[340]

In criminal reconciliation, as maintained by Chen, 'the suspect/defendant and the victim communicate with, not argue against each other, to reach an agreement in their own case.'[341] What the judicial institutions do is only to *receive* the parties' agreements, or to conduct some mediation as a neutral mediator to *facilitate* the agreement, while this process excludes any interference on the part of officials with the parties' communication and negotiation.[342]

This justification of criminal reconciliation met with some criticism from other scholars. For example, Shi Limei argues that there is also 'cooperation by public power' besides 'private cooperation' in criminal reconciliation processes.[343] That is to say, according to Shi, defining criminal reconciliation as 'private cooperation' neglects the significant role of public power in this programme. According to Shi, then, "'private cooperation" between the parties does not have the effect of closing a case'; rather, 'it has to wait for the disposition and confirmation of public power'.[344]

The author also thinks that 'private cooperation' is not an appropriate way to define criminal reconciliation in China. 'Private cooperation' would suggest the parties' dominance and active roles in criminal reconciliation. However, as also pointed out by Shi Limei, it does not correctly address the role of public power in this process. Chen Ruihua highlights the very passive role of public power in

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[338] Above 101, 16-18.
[339] *Ibid*.
[340] *Ibid*.
[341] *Ibid*.
[342] *Ibid*.
[343] 史立梅 [Shi Limei] 刑事和解：刑事纠纷解决的"第三领域"[Criminal Reconciliation: the Third Approach to Resolve Criminal Conflicts] (2007) 11 *政法论坛 [Tribune of Political Science and Law]* 85.
[344] *Ibid*.

criminal reconciliation as to '*receive* the parties' reconciliation agreements' or '*facilitate* the parties' negotiation as a neutral party', but the very design of this programme already implies that the officials possess great power to do far more than this. For example, as shown in the procedural regulations or guidelines designed for criminal reconciliation, the official in charge has the power to decide whether or not to initiate this programme, to hold criminal reconciliation meetings and to make corresponding decisions for the case concerned and to conduct follow-up supervision. Furthermore, the author argues (as discussed below and shown in Chapters Four and Five) that rather than playing a 'passive role' as articulated by Chen, the officials play a dominant and proactive role in this process.

2.2.3 A critique of the theory of 'third realm' (*di san lingyu*)

In criticizing Chen Ruihua's view of 'private cooperation', Shi Limei as well as another scholar, Xiao Shiwei, have suggested that criminal reconciliation should be understood as occurring in a 'third realm' (*di san lingyu*), which exists between the State and society.

This conception of 'third realm' (*di san lingyu*) was developed by Philip Huang in analyzing the mechanisms of conflict resolution in civil cases in the Qing dynasty.[345] Huang said that there were three approaches to dealing with civil disputes in the Qing dynasty. They were mediation in society, trial by imperial officials, and a third area between mediation in society and official trial. In this third area, there was much interaction between these two systems, and a large number of lawsuits formally disposed of through the official trial mechanism were actually resolved before the official trial in this 'third realm'.[346] Thus, formal systems created by the State were in a dialogue with informal systems existing in society; and the

[345] Philip C. C. Huang, Between Informal Mediation and Formal Adjudication: The Third Realm of Qing Civil Justice, Vol. 19, No. 3 (July 1993) *Modern China*, 251-298.
[346] *Ibid*, 252.

State's need to achieve 'closure and bringing peace' (*xi shi ning ren*) could be satisfied in spite of the limitation of legal rules. According to Huang, a large proportion of lawsuits at that time had been handled in this way.[347]

Xiao Shiwei, defines the 'third realm' as an area in which both the State and society participate to handle lawsuits, while neither of them has monopolistic power in resolving these matters; rather, they communicate and negotiate with each other to reach a resolution of the dispute.[348] Criminal reconciliation, as far as these scholars are concerned, embodies this 'third realm'. In a similar vein, Ge Lin writes[349]:

> 'It [criminal reconciliation] respects the parties' will, while the parties' conduct and the outcome of their reconciliation are subject to public power's supervision and confirmation. In addition, in fact, the Criminal Law is never absent during the whole process of criminal reconciliation: since criminal reconciliation happens within the criminal justice system, which is different from "private resolution" (*si liao)*, it is very hard for the parties to avoid the influence of the Criminal Law. Hence, in reconciliation the parties actually make compromises and concessions by also taking into account the possible outcomes of their conduct and decisions in the Criminal Law. So this process shows the influence of the State law and interaction between the State law and the parties' intentions.'

This theory of the 'third realm' is an attempt to capture the roles of both the State and individuals that is closer to the practice of criminal reconciliation described in the following chapters of this dissertation. To that extent, the author considers it a better account than, for instance, that provided by Chen Ruihua. However, the 'third realm' theory is largely descriptive and rooted in an inappropriate understanding of the

[347] Above 343, 83.
[348] Above 99, 728.
[349] Above 127, 28.

relationship between the State and individuals in criminal reconciliation processes. Although both Xiao Shiwei and Shi Limei noticed the potential risk that public power may violate the (officially recognized) principle of voluntary participation in criminal reconciliation, they argue that this problem can be addressed by 'a better design' and 'better operation' of this process, such as making other institutions instead of the Public Security Bureau/People's Procuratorate/People's Court preside over criminal reconciliation meetings.[350] Nevertheless, this suggestion may have indicated that their definition of criminal reconciliation as a 'third realm' is inappropriate to understand this system, since the current practices of criminal reconciliation are mostly conducted by the police/prosecutors/judges. Therefore, this is still an inappropriate way to define or - perhaps even seek to justify - criminal reconciliation as its main proponents fail to engage properly with the question of whether the state-citizen relationship they describe is equitable and morally acceptable, or potentially coercive and unfair.

Moreover, the relationship and interaction between the State and society as described by Philip Huang in his analysis of 'the third realm' in late imperial China is very different from what happens in criminal reconciliation in China today. According to Huang, in the Qing dynasty, most of the civil cases were closed at the stage after the parties lodged their indictment and before the imperial magistrate, the *yamen,* issued its verdict.[351] At this stage, on the one hand, the community (*shequn*) or clan was more active in trying to resolve the dispute through mediation; on the other hand, the *yamen* would provide initial opinions as to the indictment received, and this would directly influence the ongoing mediation conducted by the

[350] 肖仕卫 [Xiao Shiwei] 刑事法治的"第三领域"：中国刑事和解制度的结构定位与功能分析 [The Third Realm of Criminal Justice: An Analysis on Structural Position and Function of Criminal Reconciliation in China] 734. 史立梅 [Shi Limei] 刑事和解：刑事纠纷解决的"第三领域" [Criminal Reconciliation: the Third Approach to Resolve Criminal Conflicts] 86.

[351] 黄宗智 [Philip C. C. Huang] *清代的法律、社会与文化 [Law, Society and Culture in Qing Dynasty]* 上海书店出版社 [Shanghai Shudian Publishing] 2001, 107.

community or clan.[352] In this way, the formal verdict and law were in interaction with the informal mediation process.[353]

Importantly, a critical feature of this 'third realm' is the 'equal position' of formal law and informal mediation. According to Huang, although there is the potential for abuse of power, since persons in the rather lowly roles of *xiangbao*, an 'unsalaried quasi-official nominated by the local community and confirmed by the State'[354] and runners of the *yamen* (*yayi*) acted as go-betweens in this process, 'formal and informal methods [of handling the case] were in an equal position in this 'third area'. Moreover, the 'official ideology was that civil mediation had priority in solving these cases'.[355] Xiao Shiwei also noticed this feature and argued that 'the third realm' as characterised by Huang meant that 'both the State and society participate…, while neither has monopolistic power in resolving these disputes'.[356]

The uses of interaction and compromise which according to these authors charactise dispute resolution in late Qing China are different from the relationship between public power and individuals in criminal reconciliation programmes today. An 'equal position' of public power and individuals, of formal system and informal system, or of the State and society, is nearly impossible in a system in which the legacy of the Mao era remains important. This point could be supported through an in-depth examination of the Chinese mediation system since the Mao era. Studies of mediation in and after the Mao era consistently indicate that in these systems, the principle of voluntary participation is generally violated due to the intense involvement of public power in this system. Moreover, if criminal reconciliation really represents a dialogue between State law and social customs, it is hard to explain the fact that criminal reconciliation was first implemented (through pilot projects) in comparatively developed locations like Jiangsu province and big cities like Beijing and Shanghai in China, rather than in rural places which are widely

[352] *Ibid*. 109-201.
[353] *Ibid*. 109-201.
[354] Above 345, 10.
[355] Above 351, 130.
[356] Above 99, 728.

recognized as having comparatively stronger customs such as mediation and reconciliation and weaker legal rules.

Mediation in the Mao era: suppressing disputes in an attempt to serve the Party's policies. In 1957, along with Mao Zedong's article of 'On the Correct Handling of Contradictions', contradictions in society were divided into two kinds - contradictions within the people and contradictions between the people and the enemies.[357] Conflicts within the people can be resolved through the use of 'democracy' such as mediation, whereas conflicts between the people and the enemies should only be resolved through the methods of dictatorship such as 'punishment according to law'.[358]

Nevertheless, mediation in the Mao era had other functions apart from dispute resolution.[359] Stanley Lubman has argued that mediation in the Maoist time mainly served to 'articulate and apply the ideological principles, values, and programmes of the Chinese Communist Party and help mobilizing China's people to increase their commitment to Party policies and goals'.[360]

This function characterized mediation as a process suppressing rather than settling disputes between individuals.[361] Because, according to Lubman, disputes that the disputants themselves regarded as personal matters were imbued with political significance.[362] The resolution of disputes is thus seen as assisting the implementation of the Party's policies ranging 'from national unity [and] collective living to increased production'.[363] In mediation, the parties' own intentions and grievances were likely to be overwhelmed by those political goals, and this could easily happen due to the power mediators possessed, which came from their 'belonging to the State and Party apparatus' and their close relation with the

[357] Stanley Lubman, Mao and Mediation: Politics and Dispute Resolution in Communist China (1967) Vol.55, *California Law Review* 1306.
[358] Stanley B. Lubman *Bird in a Cage: Legal Reform in China After Mao* Stanford, Stanford University Press 1999, 42.
[359] Above 357, 1339.
[360] *Ibid*.
[361] *Ibid*.
[362] *Ibid*., 1342.
[363] *Ibid*.

police.[364] As a result, disputes could not be really settled and the original problems remained after the end of the mediations.[365]

Mediation in the post-Mao era: 'plastering over' disputes and serving the Party's policies. During the Cultural Revolution (1966-1976), the mediation system was viewed as a method of 'harmonizing classes' (*jieji tiaohe*), and so it was abolished.[366] The end of the Cultural Revolution led to an era of reform, in which 'law has risen to greater prominence in the governance of Chinese society than ever before in Chinese history'.[367] In this era, mediation developed in parallel with the legal system and was integrated into the legal framework dispute resolution.[368] However, according to Stanley Lubman, mediation in the post-Mao era was still 'sporadically linked to specific policies', only this connection was 'less noticeable than in the Maoist era'.[369] This continuing connection with the Party's policies characterized mediation as a programme in which addressing conflicts remained subordinate to abstract and larger political goals.[370]

In a similar vein, Michael Palmer has shown that mediation in the post-Mao era was used to resolve novel problems and conflicts triggered by the Party's new policies in order to maintain social stability and unity, under the expectation of 'nipping trouble situations in the bud' and 'preventing civil cases and minor criminal cases to upgrade to be serious crimes'.[371] Mediation was also used to popularize law (*pufa*) as the Party's goal.[372] Mediation was used by the Party to educate disputants with relevant laws and policies.[373] However, according to Palmer, the propagation of

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[364] *Ibid*.
[365] *Ibid*.
[366] 刘广安[Liu Guang'an] 李存捧 [Li Cunpeng] '民间调解与权利保护 [People's Mediation and Rights Protection]' in 夏勇 [Xia Yong] (ed.) *走向权利的时代 [Towards An Age of Rights]* Beijing, 中国政法大学出版社 [China University of Political Science and Law Press] 1995, 290.
[367] Stanley Lubman, Dispute Resolution in China after Deng Xiaoping: 'Mao and Mediation Revisit' (1997) Vol.11 no.2, *California Law Review* 235.
[368] Michael Palmer 'The Revival of Mediation in the People's Republic China (1): Extra-Judicial Mediation' in W.E. Butler (ed.) *Yearbook on Socialist Legal Systems*, New York, Transnational Publishers 1989, 220.
[369] Above 367, 294.
[370] *Ibid,* 293.
[371] Above 368, 246.
[372] *Ibid*, 247.
[373] *Ibid*.

laws and policies and legal education were actually mostly for 'encouraging social conformity' and conformity with the Party's goals.[374]

Mediators still had the power to coerce the parties to 'mediate' because, according to Palmer, they were 'nominated' by the chairman of local residents' and village committees and were controlled and supervised by the Party.[375] In mediation, as further argued by Palmer, 'the democratic principles such as voluntary participation, are subordinate to the political priority of maintaining order and discipline', now that it was much more important for the Party's governance.[376]

Mediation today: a (still) coercive process. In the 1990s, although the function of People's Mediation was lessened,[377] in cities the People's Mediation Committee was still positioned as 'eyes of the government'.[378] This means that besides mediating disputes, it was expected to also undertake work relating to almost all the aspects of a person's ordinary life.[379] In rural China, mediation remained popular and strong.

In his study of dispute resolution in a Chinese county, Fu Hualing discusses the popularity of mediation and the strong power of mediators in rural China. According to Fu, with the goal and principle of 'stability overwhelming everything', the Chinese Communist Party required that 'all the conflicts should be controlled and solved within the localities where the conflicts arise'.[380] Otherwise, officials of that place would be disciplined and their future promotion would be adversely affected.[381] Mediators, appointed by the local government, therefore had strong

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[374] *Ibid*, 248.
[375] *Ibid*, 249-251.
[376] *Ibid*.
[377] 范愉 [Fan Yu] *非诉讼纠纷解决机制研究 [Research on Alternative Dispute Resolution]* Beijing, 中国人民大学出版社 [Renmin University of China Publishing] 2000, 505.
[378] 康怀宇 [Kang Huaiyu] 现状与前瞻: 人民调解的微观考察 [The Current Situation and the Future: An investigation on People's Mediation from the Microscopic View] in 左卫民 [Zuo Weimin] (ed.) *变革时代的纠纷解决 [Dispute Resolution in the Age of Transformation]* Beijing, 北京大学出版社 [Peking University Press] 135.
[379] *Ibid*.
[380] Fu Hualing, The Politics of Mediation in a Chinese County: The Case Study of Luo Lianxi (2003) Vol.5 no.2 *Australian Journal of Asian Law* 110.
[381] *Ibid*, 111.

motivation deriving from their tasks in politics, to 'quarantine conflicts in the locality'.[382]

In this context, they made every effort to 'persuade' (*zuo gongzuo*) the disputants to accept their suggested settlement and not to take their case to the courts or the higher level of governments.[383] Benefiting from their status as 'state agents' with power, mediators in rural China could easily put pressure on the disputants.[384]

Power and coercion are (even) more obvious in judicial mediation conducted by the Courts. As argued by Wu Hongyu, judicial mediation in China is neither an alternative to trial, nor an independent system.[385] Rather, its operation is 'backed up by Courts, and the possible initiation of trial any minute', so that 'it almost shares everything with the formal proceedings in Courts', yet lacks the protection of rights required in the trial procedure.[386] Among all the shared characteristics, the judges' power or authority in the trial, since it stems from his function as a State official exercising public power, is most influential for the parties during mediation.[387] In addition, according to Wu, as 'closure' or 'closing the case' (*an jie shi liao*), not 'closing the case in accordance with law' is made as the ultimate goal of judicial mediation, judges may sacrifice fairness and voluntariness stipulated by law in order to achieve this ultimate end.[388] Wu argues that in fact, 'blurring right and wrong in disputes', 'plastering over' disputes, and 'oppressing the comparatively weak or "tractable"' party are all commonly adopted ways in mediation as to suppress disputes and to reach 'closure'.[389] As a result, judicial mediation is actually controlled and dominated by judges, and the parties' rights are easily infringed.[390]

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[382] *Ibid*, 122.
[383] *Ibid*, 117.
[384] *Ibid*, 123.
[385] 武红羽 [Wu Hongyu] *司法调解的生产过程: 以司法调解与司法场域的关系为视角 [The Process of Judicial Mediation: From the Perspective of the Relationship between Judicial Mediation and Judicial Realm]* Beijing, 法律出版社 [Law Press] 2010, 59.
[386] *Ibid*.
[387] *Ibid*, 146-147.
[388] *Ibid*, 149.
[389] *Ibid*, 150.
[390] *Ibid*, 38.

The reason of public power's violations of individual rights and voluntariness in mediation in China. From the discussion above, it is clear that the Chinese mediation system since the Mao era has always been connected closely with State power and the Party's policies. Mediators also always have power coming from their status as state agents or their status in the Party organisation.

Donald Clarke argues that once a system is institutionalized, it is almost impossible for it to avoid being controlled by state power, because, according to Clarke, Chinese authorities are 'uncomfortable with the existence of any organization'.[391] Hence, as argued by Clarke, it is actually not possible for the Chinese government to allow the parties to truly dominate in mediation, to 'revoke rules as they like', or to come to an agreement that does not conform to state norms.[392] Stanley Lubman argues that as long as 'mediation remains available to the Party-state as an instrument of policy, mediators may subordinate the parties' rights to some larger political objectives'.[393]

The features of the mediation system in China since the Mao era raise the question as to whether or not, or to what extent, criminal reconciliation could reach the officially purported aims, in particular those concerning the rights and interests of the parties. These aims, as set out above, range from empowering the parties and protecting the parties' rights to giving them a voice in the criminal justice process, to repairing the victim's (psychological) harm and satisfying the parties' expectations. It is also unclear whether or not criminal reconciliation could operate on the basis of voluntariness, and whether or not this process could reach 'harmony' in the Confucian sense, or it is still mainly a tool the Party uses to suppress visible conflicts. All these questions call for an in-depth examination of criminal reconciliation practices in China.

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[391] Donald C. Clarke, Dispute Resolution in China (1991) Vol.5 No.2 *Journal of Chinese Law* 295.
[392] *Ibid*.
[393] Above 367, 293.

2.2.4 A critique of the theory of 'civil mediation'

Scholars who have characterized – and possibly sought to justify - criminal reconciliation as 'private cooperation' or the 'third realm' have implicitly acknowledged the involvement of criminal responsibility in this programme. By contrast, according to scholars who understand criminal reconciliation as merely a form of civil mediation, criminal reconciliation only deals with the compensation issue in the criminal case concerned.[394] The criminal part of a case, including the question of whether or not the suspect/defendant could be exempted from prosecution or obtain a lenient sentence, is absolutely excluded from this process, since it is dependent upon the decision of the Procuratorate or Court.[395] For instance, Song Yinghui states that[396]

> 'Criminal reconciliation is not reconciliation on the criminal part of a case; instead, it is the parties' reconciliation on the civil part of a case. They may only propose some opinions concerning the criminal part, and the judicial organs would deal with and decide the criminal part according to the specific circumstances of the case at hand.'

Thus, according to Song, in criminal reconciliation processes, the parties can only deal with their civil rights, which may '*influence* the criminal part of the case indirectly', whereas 'the power to punish (*xingfa quan*) is absolutely controlled by the State'.[397]

The key problem with this view is that it also neglects the role of the official and public power in actual criminal reconciliation processes. Their actual involvement makes the claim that criminal reconciliation is a process merely

[394] Above 86, 9.
[395] *Ibid*.
[396] 宋英辉 [Song Yinghui] *刑事和解实证研究 [Empirical Research on Criminal Reconciliation*] 131.
[397] *Ibid*, 132.

involving the parties' discussion and negotiation on compensation implausible. As argued earlier, the officials play a crucial role in this process.

Moreover, if criminal reconciliation equals civil mediation (on compensation), there is no explanation for the initiation of reconciliation at all stages of the criminal procedure, in particular the stage of investigation by the police and the stage of examination with a view to public prosecution by the prosecutors, when the criminal part of a case, namely whether or not the suspect/defendant is guilty, has not been decided by the Court yet. Nor indeed could this theory provide a satisfactory explanation for the incorporation of criminal reconciliation in the 2012 CPL. Therefore, the author thinks that criminal reconciliation cannot be simply equated with civil mediation on compensation. By recognising this, we are also able to distinguish criminal reconciliation from mediation in civil litigation collateral to criminal proceedings, already provided for in the 1996 CPL. The latter is only about the issue of civil responsibility in the context of a criminal case.

2.3 Summary

Following a description of the basic structure and function of criminal reconciliation in China, as well as officials and popular attitudes towards it, this chapter has provided an overview of the scholarly debates around this programme.

Some domestic Chinese scholars regard criminal reconciliation as a beneficial mechanism that can promote a 'harmonious society'. The author finds these assessments questionable. So far as they are based on publicly available sources, their reliability is somewhat doubtful; and even so far as the data used in this context are reliable, a positive assessment of criminal reconciliation mechanisms based on the fact that they better ensure the payment of compensation raises great concerns about the fairness of this mechanism to poor suspects and defendants, also discussed in this chapter. Other scholars argue that criminal reconciliation can involve rights

infringement, unfairness and violations of the principle of voluntariness (caused by power abuse). While these concerns and criticism are plausible, they need more support from 'first-hand' information based on the practice.

The author agrees with the argument that concerns about criminal reconciliation might be supported to some extent by referring to China's mediation system as it has evolved since the Mao era. Mediation has similarly involved both public power and individuals, and is always connected closely with the Party's policies. Mediation in China is also always officially described as a process empowering the parties in resolving disputes; but according to the analyses by some scholars discussed here, it is actually a tool of the Party to serve its political goals. If this is analysis is correct, mediation is a process largely serving the (not genuinely valuable) purpose of suppressing visible conflict. However, despite the plausibility of critical arguments, the actual functioning of criminal reconciliation is too little understood to allow the assertion that criminal reconciliation is just like mediation under Mao or mediation in the post-Mao era.

The empirical study whose results are presented in the next three chapters shed some light on this question and related questions, through discussion the operation of this process in practice and the participants' (namely the officials' and the parties') roles in this process.

Chapter III: Criminal Reconciliation In Practice: Evidence From Official Case Files

3.1 The motivation for the empirical study

3.1.1 The deficiencies of doctrinal research

As noted in Chapters One and Two, the information on the implementation and development of criminal reconciliation in China as 'pilot projects' before the 2012 CPL, as well as comments and debates around this practice as shown in the literature, are all based on 'second-hand' information from doctrinal research.

Doctrinal research is the traditional approach in legal studies.[398] It focuses on reading and analyzing primary (i.e. legislations and cases) and secondary materials (i.e. legal dictionaries, textbooks, journal articles, case digests and legal encyclopedias).[399] As a 'historically most accepted' approach, in general, it has three major advantages – it can save time and money; it can 'broaden the base from which scientific generalizations can be made;' and can 'verify findings obtained in primary research.'[400]

Yet based on 'second-hand' information, this research method may be criticized as 'rigid, dogmatic, formalistic, and close-minded', and 'producing less valuable knowledge on law about what law is and what it does as a social phenomenon'.[401] Due to these deficiencies, research methods adopted in other subjects including sociology, political science, psychology and anthropology started to be introduced in legal scholarship to 'aid' traditional doctrinal research.[402] Empirical research is one

[398] Mike McConville and Wing Hong Chui 'Introduction and Overview', in Mike McConville and Wing Hong Chui (ed.) *Research Methods for Law* Edinburgh, Edinburgh University Press, 2007, 1.
[399] Wing Hong Chui 'Quantitative Legal Research' in Mike McConville and Wing Hong Chui (ed.) *Research Methods for Law*, 47.
[400] James A. Black and Dean J. Champion *Methods and Issues in Social Research* New York: John Wiley & Sons, 1976, 419-420.
[401] Michael Salter and Julie Mason *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* Pearson/Longman, 2007, 112, 119.
[402] *Ibid*.

of these research methods. In contrast to doctrinal research that pays absolute attention to 'law in the books', empirical research focuses on 'law in practice', 'role of the ideological policies', 'legal officials' behaviour' etc.[403] Hence, the goal of empirical research is to study not only 'law in books', but also 'law in action', and perhaps also to find out the reason leading to the gap between these two dimensions.[404]

Generally, empirical research employs quantitative and qualitative methods.[405] Qualitative research, also called field study or observational studies, refers to the methodology with which 'the researchers directly observe what is happening, listen and record what is occurring together with what is being said by the participants'.[406] Specifically, methods of qualitative research involve such approaches as 'participant observation', 'field notes', 'structured interviews', 'semi-structured interviews' and 'unstructured interviews.'[407]

Providing 'original data' may be the most obvious merit of qualitative research.[408] The disadvantages of it may be that it typically can study of only a comparatively small sample, so the data obtained from qualitative research may not form an adequate basis to 'generalize and theorize'.[409] Additionally, qualitative research is heavily reliant on the researcher's abilities such as observation, interaction and communication.[410] It has to rely on the participants' response in research as well.[411] Moreover, the researcher might have 'personal bias' during research.[412] And, by its very nature, replication (a traditional method of testing generalizability) may be impossible.

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[403] Above 401, 119-131.
[404] *Ibid.*125.
[405] Wing Hong Chui 'Quantitative Legal Research' in Mike McConville and Wing Hong Chui (ed.) *Research Methods for Law* 47.
[406] David A. Yeboah *Research Methodologies in Criminologies* New York: Nova Science Publishers, 2008, 17.
[407] Principles Supporting Qualitative Research http://www.cedu.niu.edu/~sorensen/502/powerpoint/topicD/qlnotes.htm (28 December 2011)
[408] Above 406, 33.
[409] *Ibid*. 34.
[410] *Ibid*.
[411] *Ibid*.
[412] *Ibid*.

Quantitative research often adopts the approach of experimental method in natural science.[413] It seeks to 'quantify (cause-and-effect) relationships between variables' through 'numbers, data and statistics'.[414] Thus, unlike the flexibility introduced by the researcher's abilities and values in qualitative research, quantitative research, in its ideal form, is marked by its 'objectivity' and the researcher's neutrality in reporting research findings.[415]

The deficiencies and features of doctrinal research and empirical research mentioned here are also applicable to the examination and understanding of criminal reconciliation in China. Thus, a study of the practice of criminal reconciliation based on first-hand information obtained through empirical study is of great importance in understanding whether or not there is gap between the procedure of criminal reconciliation set out in the local regulations or guidelines as shown in Chapter One and the practice of this process. Moreover, as also noted in the preceding two chapters, it is important to understand the roles of the officials and the parties in this process and the relationship between them.

The scholars cited in Chapter Two believe that the criminal reconciliation process as set out in the local regulations or guidelines has beneficial effects. For example, as a process empowering the victim and the suspect/defendant to resolve their case mainly by themselves, criminal reconciliation was viewed by these scholars as having protected the victim's and the suspect/defendant's rights to participate in the procedure.[416] Since criminal reconciliation focused on negotiation and discussion between the parties, the abovementioned scholars further claimed that it might result in 'psychological reparation' for the victim as well as having beneficial educational effects for the suspect/defendant.[417] Communication between the parties is viewed as helpful in terms of making the suspect/defendant reflect and

[413] Above 401, 48.
[414] *Ibid*.
[415] *Ibid*.
[416] Above 86, 198.
[417] Above 127, 44.

feel remorseful, which is beneficial for rehabilitation and the prevention of recidivism, according to many scholars.[418]

Despite what appears to be an overwhelmingly positive account of criminal reconciliation programmes, many questions remain. If the procedure is well-observed, can a criminal reconciliation programme achieve all the claimed outcomes? Are those purported outcomes really so good (to the parties and the officials as claimed by many scholars)? Is it possible that these purported outcomes conflict with each other? And if they conflict, how will such conflict be resolved? These questions also indicate the need for a better understanding of the practice of criminal reconciliation. An empirical study, therefore, is of great significance for gaining a better understanding of the process and outcomes of the criminal reconciliation programme in practice.

3.1.2 Existing empirical studies: findings and remaining concerns

In addition to the description, analysis and debate around criminal reconciliation based on second-hand information shown in Chapters One and Two, there have been fieldwork reports describing the processes, outcomes and problems of criminal reconciliation practices in selected locations in China. Some of these reports have been produced by prosecutors or judges purporting to describe criminal reconciliation practices in their Procuratorates or Courts. Some have been conducted jointly by scholars and prosecutors or judges. Very few have been conducted solely by scholars.

In general, these reports have covered the procedure designed for criminal reconciliation (in some selected Procuratorates or Courts) as shown in Chapter One. Some of the reports also provide statistics concerning the number of criminal reconciliation cases in the institutions studied. Such data are in accordance with the

[418] 武小凤 [Wu Xiaofeng] *冲突与对接—刑事和解刑法制度研究 [Conflict and Compromise - On Criminal Reconciliation]* 298-302.

analysis in Chapter One - as shown in these reports, criminal reconciliation, as pilot projects before the revision of the CPL in 2012, was not often used by the State authorities.

For instance, a report produced by the research office based in the People's Procuratorates of Wuxi city in Jiangsu province showed that in 2006, in the People's Procuratorates of Wuxi city, only 8.8 per cent of the minor criminal cases had been resolved through criminal reconciliation.[419] Two prosecutors, Tan Zelin and Zhao Qiusheng revealed in their report that from 2007 to 2008, among all the cases solved by the People's Procuratorates in Hunan province, only 3.55 per cent had been resolved through criminal reconciliation.[420] Even in the People's Procuratorate of Chaoyang district in Beijing that started this programme early in 2002, criminal reconciliation was found to have been used in only 2.9 per cent of all the minor criminal cases.[421] A survey mainly presided over by scholar Song Yinghui and undertaken in eight cites in China implied that in the basic level People's Procuratorates studied, on average only nine cases had been resolved through criminal reconciliation each year, which amounted to about 17 per cent of all cases dealt with by these Procuratorates.[422]

Empirical reports showed that criminal reconciliation was rarely initiated by Courts as well. For example, a judge stated in his report that in the studied Court in Foshan city in Guangdong province, only 1.6 per cent of the cases under the first instance trial had been resolved through criminal reconciliation from 2008 to 2009.[423]

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[419] 江苏省检察院研究室 [the Research Office of the People's Procuratorate in Jiangsu Province] 无锡市检察院研究室 [the Research Office of Wuxi City People's Procuratorate] '创新司法理念探索刑事和解 [Innovating Judicial Ideas and Exploring Criminal Reconciliation]' in 卞建林 [Bian Jianlin] 王立 [Wang Li] (ed.) *刑事和解与程序分流 [Criminal Reconciliation and An Alternative Procedure]* 447.

[420] Above 146, 149.

[421] Above 135.

[422] 葛琳 [Ge Lin] 刑事和解的现实困境解析 [An Analysis of the Practical Predicament of Criminal Reconciliation] 2010(5) *中国司法 [Justice of China]* 19.

[423] 王学堂 [Wang Xuetang] 刑事和解的民众认同：基于三起新闻事件的实证分析 [Popular Identification on Criminal Reconciliation: An Empirical Analysis Based on Three Reportings] http://www.dffy.com/faxuejieti/ss/201101/20110110150022.htm (19 December 2011)

The empirical studies conducted by these officials and scholars also inclined to show the success or satisfactory effects of criminal reconciliation practices. For example, Song Yinghui, who held and conducted fieldwork on criminal reconciliation practices in the People's Procuratorates in four provinces in mainland China from 2006 to 2008, claimed in his report that criminal reconciliation produced three main effects in practice.[424] First, it resolved the conflicts between the parties.[425] According to Song, the questionnaires distributed to the parties of criminal reconciliation cases showed that all the parties were satisfied with criminal reconciliation programmes and there was no petitioning, appealing or 'ravelment' (*jiuchan*) after the end of criminal reconciliation programmes.[426]

Second, criminal reconciliation, according to Song, better protected the victim's rights. For one thing, Song's study showed that the victims had obtained a larger sum of compensation and more swiftly.[427] In the criminal reconciliation cases in Song's empirical study, the largest amount of compensation was 60 thousand Yuan, with the average standing at 78029.2 Yuan.[428] Some 88.1 per cent of the compensation had been paid immediately the criminal reconciliation programmes ended, and 91.4 per cent of the compensation agreements were enforced; this enforcement rate was much higher than that in normal criminal procedure which ranged from 33.2 per cent to only 0.5 per cent in the studied locations.[429]

Third, Song concluded that criminal reconciliation was more beneficial in educating offenders, helping them return to society and thereby reducing re-offending.[430] According to Song's visit to some offenders in criminal reconciliation cases, only 11.2 per cent of them failed to find a new job after the end

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[424] 宋英辉 [Song Yinghui] '四省检察机关适用刑事和解调查报告 [Empirical Report on the Implementation of Criminal Reconciliation by the People's Procuratorates in Four Provisions]' in 宋英辉 [Song Yinghui] (ed.) *刑事和解实证研究 [Empirical Research on Criminal Reconciliation]* 72.
[425] *Ibid*.
[426] *Ibid*, 73.
[427] 宋英辉 [Song Yinghui] 公诉案件刑事和解实证研究 [Empirical Research on Criminal Reconciliation in Public Prosecution Cases] 12.
[428] *Ibid*.
[429] *Ibid*.
[430] Above 424, 73.

of criminal reconciliation programmes and none offended again.[431] In this sense, Song further argued that although criminal reconciliation would cost more time and effort on the part of the officials in individual cases, it could promote judicial efficiency in a general way, since it could reduce recidivism.[432]

Another report produced by two prosecutors from their field study in the Procuratorate they worked at has shown similar beneficial effects of criminal reconciliation. For instance, they found in their study that none of the victims and suspects expressed dissatisfaction with the *outcome* of criminal reconciliation programmes.[433] Their reports also mentioned that, normally, the victims said that they viewed criminal reconciliation as a 'very humanistic' process; the juvenile suspects found it a 'fair programme', which made them 'realize their faults and the victims' feelings'.[434] Also, in the studied Procuratorate, 96 per cent of the compensation agreements had been enforced in 2007 and the rate even reached 98 per cent in 2008.[435] Meanwhile, the recidivism rate of the criminal reconciliation cases in 2007 and 2008 was zero.[436]

Accordingly, in these empirical reports, criminal reconciliation practices have been praised as successfully achieving the officially stated goals and benefitting the establishment of a harmonious society.[437]

However, the author is skeptical of the findings and conclusions for three principal reasons. First, the researchers carrying out these projects had some stake in the reports. Often, such reports were conducted collaboratively by scholars and judges/prosecutors, or wholly carried out by officials. The possibility that the officials, as the ones responsible for criminal reconciliation at the point it was being strongly promoted as successful by the Supreme People's Court and Supreme

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[431] *Ibid.*
[432] *Ibid.*
[433] Above 147, 150.
[434] *Ibid.*
[435] *Ibid.*
[436] *Ibid.*
[437] 张星川 [Zhang Xingchuan] 浅议当前刑事和解工作中存在的问题及对策 [An initial Analysis of the Problems and Strategies for the Current Criminal Reconciliation Work] http://www.jcrb.com/jcpd/jcll/201008/t20100803_394537.html (12 December 2011)

People's Procuratorate, were biased in favour of these programmes cannot be precluded.

Second, the methods these researchers adopted to collect data and information are problematic. According to the accounts in these reports, most of the researchers collected data and information by means of panel discussions which were attended by officials, parties, and the researchers. In such settings, it is likely that the parties were reluctant to deliver negative information or comments on a programme which had already secured official endorsement. Moreover, the panel members are likely to have withheld any criticisms that they might have had considering the fact that they were likely to have been informed that what they said would be published.

Third, these researchers failed to provide important information regarding the methods they adopted. For instance, they did not mention the circumstances in which they had distributed their questionnaires, how they identified parties in their surveys and what questions were included in their questionnaires. Such information is crucial to assessing the contribution that the studies might make as decisions taken by the researchers in this regard might affect the findings of the study. For example, the parties' attitudes and answers to the question 'are you satisfied with the *outcome* of criminal reconciliation?' could be quite different from their response to the question 'are you satisfied with criminal reconciliation?'

These problems suggest that the conclusions of the researchers cannot properly be assessed because the affect of the undisclosed methods on the findings is unknowable. This alone calls for further examination and independent verification. In order to test the official accounts and publicly available resources, and for the reasons explained above, the author conducted fieldwork in three selected places in China, namely: Changzhou in Jiangsu province; Chongqing Municipality; and Xi'an in Shaanxi province. This study has two distinct aspects: (i) the examination of case files; and (ii) interviews conducted with the public officials, the parties and other people participating in the criminal reconciliation programmes.

The first two empirical studies were conducted in two district People's Procuratorates in Changzhou and Chongqing in May and June 2008, at a time when criminal reconciliation started expanding in China and when its practice was extended from several cities in eastern China such as Changzhou to western cities such as Chongqing.[438] The two cities were chosen as representative of places with varying degrees of experience with criminal reconciliation, in order to get a better picture of criminal reconciliation in China.

Another consideration motivating the choice of research sites was ease of access. Criminal justice is one of the most sensitive fields in the area of Chinese law, because of its close relationship with politics and the interests of the State.[439] Given that criminal reconciliation had been heralded as a beneficial reform, it is unsurprising that those who entrusted with promoting it, namely the prosecutors and judges, tend to repel outsiders' investigation. Securing access in sites which were hospitable to the idea of research was, accordingly, a critical factor in choice of location notwithstanding that, in other circumstances, different considerations would be more influential in determining where the research would be undertaken and despite the limitation that interviews with the parties had to be conducted in the presence of prosecutors. In regard to the latter, the examination of case files was undertaken as a cross-check and as a means of identifying bias introduced by the presence of officials at the interviews.

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[438] The People's Procuratorates in Changzhou were among the first groups in China to implement criminal reconciliation. It had implemented this practice for almost five years before 2008. Chongqing Municipality was a place which initiated criminal reconciliation in the procuratorates on an experimental basis in 2006.

[439] According to Article 2 of the 1996 PRC Criminal Law, the tasks of the PRC Criminal Law are 'to use punishment to crack down crime and to defend national security, the political power of the people's democratic dictatorship, and the socialist system'. 'It is to protect state-owned property, property collectively owned by the laboring masses, and citizens' privately owned property'. 'It is also to protect citizens' individual rights, democratic rights, and other rights to maintain social and economic order, and to safeguard the smooth progress of the socialist construction.' Article 1 of the 1996 RPC Criminal Procedural Law provides that 'this law is enacted in accordance with the Constitution and for the purpose of ensuring correct enforcement of the Criminal Law, punishing crime, protecting the people, safeguarding State and public security and maintaining socialist public order'. See the English translation at:
http://www.lawinfochina.com.easyaccess1.lib.cuhk.edu.hk/display.aspx?id=354&lib=law&SearchKeyword=&SearchCKeyword=刑法;
http://www.lawinfochina.com.easyaccess1.lib.cuhk.edu.hk/display.aspx?id=347&lib=law&SearchKeyword=&SearchCKeyword=刑事诉讼法

The third empirical study was conducted in August and September 2010 in Courts and Procuratorates of two districts in Xi'an, the capital city of Shaanxi province in northwestern China. In contrast to the first two studies, the author set out to contact participants personally to arrange interviews without the presence of officials in order to avoid any potential interference. This research method provided a means to eliminate the direct influence of officials on the parties in this site and provided a basis for comparison with the two other sites in which the presence of officials at interviews had to be tolerated.

3.2 An overview of criminal reconciliation practices in the three fieldwork locations

The author started this empirical work through the examination of case files. The purpose of this was to understand criminal reconciliation as set down on paper in the places selected, and to see if criminal reconciliation practices in these locations met the ends it was expected and claimed to serve. The case files allow us to see what the officials and authorities concerned with the criminal reconciliation process regard as important for official documentation purposes. They are not public and are often, as explained, designated 'internal' or 'secret.' They provide us with what might be called an official picture of criminal reconciliation which has been prepared for official not research purposes.

Accordingly, the author first provides an overview of the basic statistical facts, processes and outcomes of criminal reconciliation programmes in these three locations, based on the information gathered from the case files. Following it, the author analyzes the findings of the case files in an attempt to address the questions raised in the first part of this chapter. Meanwhile, the author points out several questions that were implied in the case files studied but cannot be answered by those files.

3.2.1 Selection of cases

One limitation of this study is that the author was unable to secure permission to randomly select cases to study for the purpose of this project. It is therefore possible that officials provided access only to case files selected as 'the best examples' of criminal reconciliation. Indeed, it is a fair inference that this was the case since the officials were supposed to be promoting reconciliation as a successful innovation. In Changzhou, the prosecutors allowed me to read ten out of the fifty available case files. All ten cases shared one characteristic: the parties were local residents (that is, people who possessed local *hukou*).[440] The author was told by the chief prosecutor that the choice of files was made on the basis that it would be more convenient to contact parties who had a local registration for interview. Of course, while acknowledging the logic of this official explanation and its apparent understanding of the needs of the researcher, it cannot preclude the possibility that the choice was actually made on other grounds, for example because the officials thought that those ten cases were the most successful in the criminal reconciliation programme.

Likewise, in Chongqing, it was hard to get the prosecutors' permission to examine case files since the files were all labeled 'secret' (*mimi*). After negotiation and promising to limit myself to academic use in an anonymous fashion, the author was given eight files to examine. The author was not allowed to choose files at

[440] Residence registration system or *hukou zhidu* was established in China in the 1950s. It is an administrative system by which the government manages citizens through recording almost all the information about a citizen including name, birth date, dwelling place, occupation, education, marriage, death, movement etc. Although population management is widely implemented by governments worldwide, China's *hukou* system is characterized by its close connection with a person's rights concerning education, career, medical treatment and welfare as such resources are distributed in an unbalanced fashion to different areas, and its essential function to divide urban residence and rural residence and thereby to control or restrict rural residence's migration to cities. So it is actually a system the government used to effectively control the citizens and the distribution of resources within the country. Although being criticized long and undergoing various reforms, this system has not been cancelled or changed essentially until now. See 王飞凌 [Wang Feiling] 中国户口制度的转型 [The Transformation of China's Hukou System] http://www.chinaelections.org/newsinfo.asp?newsid=185108 (6 December, 2010) and 陈春龙 [Chen Chunlong] 中国 "户口制度" 的现状与改革 [The Current Situation and Reform of China's *Hukou* System] http://www.iolaw.org.cn/showArticle.asp?id=1729 (6 December 2010)

random. Again, it seems possible, indeed likely that those eight cases were selected by the prosecutors as 'the best ones' in their opinion.

Access to case files was even harder in Xi'an. The 'secret' nature of the files was given by the officials as the refusal ground as well. Access to judges and prosecutors was also harder in comparison with the previous two studies.

There were iron gates on the first or second floor of the Court and Procuratorate in Xi'an. After registration at the main gate, which the Procuratorates in Changzhou and Chongqing also required, any outsider who wanted to go upstairs to visit the officials had to call them through a phone supplied by an officer guarding that gate. Personal permission from the officials confirmed by that gatekeeper was necessary to go any further. From anecdotal evidence the author collected while in Xi'an, it appeared that sometimes, even citizens who had appointments with the officials behind the gate could not get them to answer the guard's call. Although there were offices on the first floor of the Courts/Prcuratorates and each judge/prosecutor was scheduled to receive petitioners every day, according to the author's observation, usually those offices for receiving petitioners were closed. And petitioners had to wait outside for long periods (sometimes they were waiting at the point when I arrived, and still waiting when I finished a day's work). Through chats with several of them, the author learned that they were all here with appointments with the judges/prosecutors. It was even absurd that the author was once introduced to a judge who was just the one a petitioner was waiting for beside the iron gate and always got the reply from the gatekeeper that 'he is not around'. As to the reason of petitioning, all the persons the author chatted with referred to the judges/prosecutors' delinquencies during prosecution, sentence enforcement or litigation. Yet according to the author's interviews with the officials, many of them said that the petitioners were just making trouble and being bad (*taoyan*). So they might want to use the iron gate and gatekeeper to get rid of the petitioners. It seemed that the officials intended to get rid of trouble and avoid risk. This had the effect of blocking access by citizens

who were trying to exercise their rights to appeal, petition, or to meet the presiding prosecutors/judges of their cases[441]. This also illustrates the somewhat tense atmosphere at the time of the visit, which was probably caused by the large number of petitioners waiting in and outside the Court/Procuratorate, and some extremely sharp conflicts between judges and individual parties that had occurred recently elsewhere.[442]

In this situation, negotiation with judges and prosecutors for case file examination was especially difficult. Finally, in Y district, the author got to examine three traffic accident related crime cases in the People's Court, and one juvenile robbery case in the People's Procuratorate; in B district, the author examined two juvenile robbery cases in the People's Court, together with four traffic accident related crime cases and one juvenile robbery case in the People's Procuratorate. Those cases were selected by the prosecutors, so the possibility that they were picked out as 'the best criminal reconciliation cases' still could not be excluded. Moreover, it seemed that case files the author was given in the People's Procuratorate of Y district were incomplete as there was only the suspects' contact information in the files.

3.2.2 The basic statistical facts

[441] Article 32 of the PRC Judges Law says that 'judges are forbidden to meet the party concerned or his/her agent privately and attend dinners or accept presents given by the party concerned or his/her agent'. However, the vague phrase of 'meeting privately' (*sizi huijian*) is debatable. There is an argument that this provision only forbids the judge's meeting with the party or his/her agent beyond the judge's working place, time and responsibility. See the English translation at LawInfoChina: http://www.lawinfochina.com.easyaccess1.lib.cuhk.edu.hk/display.aspx?id=1861&lib=law&SearchKeyword=&SearchCKeyword=法官法; See 孙明 [Sun Ming] 法官私自会见当事人及委托律师之我见 [My Views on The Judge's Private Meeting with the Parties and Their Lawyers] http://www.dffy.com/sifashijian/sw/200601/20060104221654.htm (9 April 2011). Besides, article 35 of the PRC Prosecutors Law also only forbids the prosecutors' meeting with the party or his/her agents privately(*sizi huijian*).

[442] As to recent conflicts between individual parties and judges, a very notable one was an incident in Yongzhou city in Hunan province. In June 2010, an unsatisfied victim who had won the litigation but could not get the sentence enforced shot three judges to death and seriously wounded three other judges. See: 南方周末 [Southern Weekend] 湖南永州致三法官死枪击案：凶手身患绝症 [A Shooting Case Resulting in Three Judges' Death in Yongzhou, Hunan Province: The Murder Has An Incurable Disease] http://www.infzm.com/content/45861 (15 November 2010).

Criminal reconciliation was rarely used in the three locations. Even though the People's Procuratorate of X district in Changzhou had been implementing the criminal reconciliation programme for over five years, only about 50 cases were handled through criminal reconciliation from 2003 to 2008.[443] According to the Yearbook (*nianjian*) of X district[444], the Public Security Bureau transferred 864 cases to the People's Procuratorate of X district for examination before prosecution and of which 851 were prosecuted from 2003 to 2005; the Public Security Bureau transferred 1179 cases, of which 1120 cases were prosecuted from 2006 to 2008.[445] It is unclear what happened to the remaining cases. Some of them may have been handled through criminal reconciliation. In others, the Procuratorate may have decided that charges should be dropped altogether. Direct statistical information on how many cases were handled through criminal reconciliation in Changzhou is not available in the Yearbook.

In the People's Procuratorate of D district in Chongqing, fewer than 20 cases were resolved through criminal reconciliation from 2006 to 2008.[446] The total number of cases transferred and prosecuted in 2006 was not available from public sources. But according to the statistical bulletin of D district, the People's Procuratorate of D district prosecuted 199 cases in 2007 and 327 cases in 2008.[447]

In Xi'an, as criminal reconciliation had only been practiced since 2008, the judges and prosecutors of the two districts studied told the author that no statistics on criminal reconciliation were available at that time. The author was unable to obtain information on how many cases out of the cases transferred by the Public Security

[443] According to the introduction by the chief prosecutor of the People's Procuratorate of X district in Changzhou.
[444] Yearbook, or *nianjian*, according to '现代汉语词典' (Modern Chinese Dictionary) published by 商务印书馆[the Commercial Press] (the 1977 edition), is 'the publication of the collection of the information and data that cover economy, technology, education, politics etc. or only one area of a place in the last year'.
[445] See: Almanac of Xinbei district, Changzhou city 2003-2005 at http://www.cznd.gov.cn/nj2005/zfrw/4.htm; Almanac of Xinbei district, Changzhou city 2006-2008 at http://www.cznd.gov.cn/nj2008/Templates/zhengfa/html5-6.html (15 November 2010)
[446] According to the introduction by a prosecutor in the People's Procuratorate of D district in Chongqing.
[447] See the 2007 Statistical Bulletin of the National Economic and Social Development of D District in Chongqing at http://www.ddktj.gov.cn/wwweb/sjck/tjgb/20091223/1950.html (7 February 2011); the 2008 Statistical Bulletin of the National Economic and Social Development of D District in Chongqing at http://www.ddktj.gov.cn/wwweb/sjck/tjgb/20091223/1951.html (7 February 2011)

Bureau for examination before prosecution had been handled through criminal reconciliation.

This data suggest that although criminal reconciliation was promoted by the Supreme People's Court and the Supreme People's Procuratorate as a system embodying the idea of 'combining severity with leniency' (*kuan yan xiangji*) and was described by the publicly available literature as developing rapidly in China, it was in fact rarely implemented in practice in the locations studied. Except for the discussion of the performance assessment system and wrongful conviction and decision investigation system proposed by Ge Lin in Chapter One, the reasons of this will be further analyzed in Chapter Five based.

3.2.3 The cases eligible for criminal reconciliation

All the case files involved suspected 'minor crimes' and juvenile crimes. In all the cases the author was allowed to study, the alleged crimes in criminal reconciliation cases were limited to 'minor crimes' including traffic accident related crimes and minor intentional injury crimes, and some juvenile crimes such as robbery and theft.

Of the ten cases the author examined in Changzhou, there were four traffic accident related crime cases, four theft cases and two intentional injury cases. All the eight cases in Chongqing were also suspected 'minor crimes' including seven intentional injury cases and one traffic accident related crime case. Yet these files represented only the minority of all criminal reconciliation cases, there being 50 criminal reconciliation cases in Changzhou and 20 in Chongqing. In Xi'an, the author was told that cases of suspected traffic accident related crime and juvenile robbery constituted the 'absolute majority' of criminal reconciliation cases there; and the case files the author was given access to, as shown above, all concerned such crimes.

3.2.4 The suspects/defendants eligible for criminal reconciliation

No preference for juvenile suspect/defendants was evident. Suspects in half of the cases the author examined in the People's Procuratorate of X district in Changzhou were between 18 and 29 years old. The others, namely suspects in the four traffic accident related crime cases and one theft case were between 30 and 50 years old. In the People's Procuratorate of D district in Chongqing, suspects in seven of the eight cases examined were aged over 30. In Xi'an, only four among the eleven cases concerned juvenile suspects/defendants.

3.2.5 The procedure of criminal reconciliation and follow-up programmes

The criminal reconciliation procedure in the fieldwork locations followed the pattern summarized by Chinese scholars. A typical criminal reconciliation programme without follow-up supervision progressed as follows:[448]

> 14 February 2007: a woman allegedly knocked down two pedestrians at night in her car. One of the pedestrians died on the way to hospital; the other received serious injuries.[449]
>
> 5 March 2007: the case was filed for investigation by the Public Security Bureau.

[448] From the case file of case no. 2, a suspected traffic accident related crime case, in location A.

[449] The PRC Criminal Law only stipulates traffic accidents giving rise to serious injuries, deaths, or great losses of public and private properties as crimes. Otherwise, they can only be recognized as traffic accident related behaviours and be given administrative punishment by traffic management department of the Public Security Bureau according to the Law of the People's Republic of China on Public Security Administration Punishments, Law of the People's Republic of China on Road Traffic Safety, and Provisions on the Procedure of Handling Traffic Accidents. Traffic accident related crime was thought to involve negligence and hence to be a 'minor crime'.

15 January 2008: the case was transferred to the People's Procuratorate for examination before prosecution.

10 March 2008: the prosecutor informed the parties of their rights and obligations in criminal reconciliation.

12 March 2008: the parties signed statements to the effect that they agreed to participate in criminal reconciliation 'voluntarily'.

21 March 2008: a criminal reconciliation meeting was held in the People's Procuratorate and an agreement was achieved; the prosecutor reported the case to the procuratorial committee.[450]

15 April 2008: the procuratorial committee worked out a discussion report expressing agreement with the presiding prosecutor's proposal not to prosecute.

18 April 2008: the prosecutor announced the decision not to prosecute the suspect.

A typical criminal reconciliation process and its follow-up supervision are described below:[451]

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[450] The Organic Law of the People's Procuratorates of the People's Republic of China stipulates that 'the People's procuratorate at any level shall set up a procuratorial committee (检察委员会)'. 'The procuratorial committee shall apply the system of democratic centralism and, under the direction of the chief prosecutor, hold discussions and make decisions on important cases and other major issues. In the case where the chief prosecutor disagrees with the majority's opinion on the decision concerning an important issue, this matter may be reported to the standing committee of the People's Congress at the corresponding level for final decision'. See the English translation at http://www.lawinfochina.com.easyaccess1.lib.cuhk.edu.hk/display.aspx?id=122&lib=law&SearchKeyword=&SearchCKeyword=检察官法 The Organic Regulation of the Procuratorial Committee of the People's Procuratorate [检察委员会组织条例] further stipulates that 'the procuratorial committee of the people's procuratorate at any level shall comprise the chief-prosecutor, deputy chief-prosecutor, specialized members of the procuratorial committee, and persons in charge of the relevant internal bodies of the same procuratorate'. See the English translation at http://www.lawinfochina.com.easyaccess1.lib.cuhk.edu.hk/display.aspx?id=6742&lib=law&SearchKeyword=&SearchCKeyword=检察委员会组织条例

[451] From the case file of case no. 6, a suspected theft case, in location A.

27 November 2006: a 20-year-old young man was suspected of having stolen a crime prevention team (*zhi'an lianfangdui*) member's motorbike.[452] Later the case was filed for investigation by the Public Security Bureau.

19 October 2007: after investigation, the case was transferred to the People's Procuratorate for examination before prosecution.

24 October 2007: the prosecutor informed the victim and suspect of their rights and obligations with regard to criminal reconciliation; the victim and suspect provided signed statements indicating their willingness to participate in criminal reconciliation; the prosecutor heard the victim's opinions about the case.

28 October 2007: the prosecutor wrote a report about the decision to use criminal reconciliation in the case.

8 November 2007: a criminal reconciliation meeting was held and achieved three 'agreements'. First, the suspect apologized to the victim. Second, the suspect paid compensation in the amount of one thousand Yuan to the victim.

[452] Crime prevention team (*zhi'an lianfangdui*) is a citizens' self-management and self-service public security organization that is subordinate to the villagers committee (*cunmin weiyuanhui*) and urban residents committee (*chengshi jumin weiyuanhui*). According to Article 2 of the 'Organic Law of the Villagers Committees of the People's Republic of China' [村民委员会组织法], a villagers'committee is a mass organization for self-government at the grass-roots level, in which villagers administer their own affairs, educate themselves and serve their own needs. and in which election is conducted, decision is adopted, administration is maintained and supervision is exercised democratically. See the English translation at http://www.lawinfochina.com.easyaccess1.lib.cuhk.edu.hk/display.aspx?id=8445&lib=law&SearchKeyword=&SearchCKeyword=村民委员会组织法 According to Article 2 of the 'Organic Law of the Urban Residents Committee of the People's Republic of China' [城市居民委员组织法], an urban residents committee is a mass organization for self-government at the grass-roots level, in which the residents manage their own affairs, educate themselves, and serve their own needs. The Organic Law of the Villagers Committees of the People's Republic of China provides that 'a villagers committee shall, when necessary, establish sub-committees for people's mediation, public security, public health, etc.' The Organic Law of the Urban Residents Committee of the People's Republic of China provides that 'a residents committee shall, when necessary, establish sub-committees for people's mediation, public security, public health and other matters'. See: 李克杰 [Li Keji], 素质与任务的矛盾制度与现实的断裂 [A contradictory system of quality and task and its gap from the reality] http://epaper.timedg.com/html/2010-07/12/content_492444.htm (20 December 2010)

Third, there would be a rehabilitation programme undertaken by the community the suspect was living in.

9 April 2008: the prosecutor inquired about the suspect's performance of the community volunteers and the suspect's 'leadership (*lingdao*)' in work.

18 April 2008: the community volunteers and the suspect's leader submitted final reports about the suspect's performance during the rehabilitation period to the prosecutor. The suspect submitted a 'thought report' (*sixiang huibao*) to the prosecutor.

'Thought reports', or, *sixiang huibao,* are supposed to be written, for instance, by the members of the Chinese Communist Party or people who intend to join the Chinese Communist Party.[453] The content often covers their opinions on the Party's policies and political events, and any problem in personal life, etc. The Chinese Communist Party intends to thereby understand the political positions and thoughts of the writers of *sixiang huibao*. The phrase used here in criminal reconciliation indicates that what the suspects are asked to write is similar to thought reports written for the purpose of joining the Chinese Communist Party and Party members: the report will be about the writer's thoughts and experience, and it is written for the People's Procuratorate's acknowledgement and review. More in-depth analysis on 'thought report' can be found in Chapter Six.

As a consequence of the follow-up period having been successfully concluded, the prosecutor made the decision not to prosecute the suspect.

It could be seen that the criminal reconciliation procedure in the fieldwork locations had also gone through the stage of initiation, criminal reconciliation

[453] See some introduction for the thought report system in the Chinese Communist Party at http://www.whci.gov.cn/whjszx/shownews_dj.asp?newsid=20 (27 January 2011) and some introduction for the thought report system in school at http://www.csust.edu.cn/pub/wfxy/xsgz/xsdj/t20081121_83308.htm (27 January 2011).

meeting and a criminal reconciliation agreement at the end of the meeting, the official's decision (e.g. not to prosecute) and in some cases, a subsequent 'follow-up' programme. In the following, the author shows each stage with the documents enclosed in the case files to elaborate the criminal reconciliation procedure in the three locations as depicted by the case files.

At the initiation stage of the criminal reconciliation programme.

In all three locations, the author saw statements written by the victims or suspects/defendants in which they stated that they had participated in criminal reconciliation programmes voluntarily. In Chongqing, the author also saw statements signed by both parties about their voluntary acceptance of criminal reconciliation. It is important to remember here that 'the parties' to a criminal reconciliation case were not necessarily the suspect and victim, but might be their representatives, such as the juvenile parties' parents.

Immediately before the meeting, the procedure was that the prosecutor/judge would merely ask the parties if the statements reflected their true intentions, and their replies would be written down by the prosecutor/judge and enclosed in the case files. If the parties confirmed that those statements reflected their true intentions, a criminal reconciliation meeting would be held and a compensation agreement might be reached.

In a few cases, before a criminal reconciliation meeting could be initiated, the suspect/defendant had also been required by the official to provide a written apology, addressed to the victim, in advance of the meeting. The victim or victim's family had also been required by the official to provide a statement expressing acceptance of the suspect/defendant's apology and criminal reconciliation. These documents showed that much negotiation (undocumented or documented but not available to the author) must have gone on before the formal criminal reconciliation procedure was initiated. Below the author provides an example of such a document written by the victim of a

suspected theft case in Changzhou.[454] Actually, it was a form that had been supplied by the Procuratorate. The victim only needed to fill in the suspect's name and the suspected crime.

> To the People's Procuratorate of X district in Changzhou:
> As to the _____ case being examined for prosecution by you, I accept the apology extended by_____ and agree to the use of criminal reconciliation in this case.
> The party: Date:

The very existence of such forms no doubt assists the bureaucratic management of this process but also raises questions as to the 'voluntariness' of the participating parties and as to whether such pro-forms capture the real feelings and motivations of the participants.

The criminal reconciliation meeting.

In Changzhou, the case files showed that except for one case, the prosecutors had held one or more criminal reconciliation meetings in each of the nine cases. Those participating in these meetings varied, as shown in the table below. Some meetings were attended by one party in the sense defined above, some by both, and some also by other persons who could not be regarded as parties to the conflict that was at issue in the reconciliation process. In the tenth case, the parties had reached an agreement solely through the prosecutor's persuasion in separate meetings with the suspect and the victim (and their representatives), and these parties had in fact never met.[455]

Table 1 Criminal reconciliation meetings in the People's Procuratorate of X district, Changzhou (hereafter cited as location A)

[454] Translated from the form enclosed in the case file of case no. 6, a suspected theft case in location A.
[455] From the conversation with the presiding prosecutor of this case.

Case	Participants of the first meeting	Participants of the second meeting (if any)	Meeting place
Case no. 1: suspected traffic accident related crime	The prosecutor; the suspect; the victim's family; the police officers concerned with the case; officials of the Justice Bureau	No second meeting	The People's Procuratorate of X District
Case no. 2: suspected traffic accident related crime	The prosecutor; the suspect; the victim's family	The prosecutor; the suspect; the victim's family; officials of the Justice Bureau; official of the Community Correction Office of Jiangsu Province[456]	The People's Procuratorate of X District (both meetings)
Case no. 3: suspected traffic accident related crime	The prosecutor; the suspect; the victim's family	No second meeting	The People's Procuratorate of X District
Case no.4: suspected traffic accident related	The prosecutor; the suspect; the victim's family; the police officer concerned with the case; officials of the Justice Bureau	No second meeting	The People's Procuratorate of X District

crime			
Case no.5: suspected theft crime	The prosecutor; the suspect; the victim; both parties' parents; the suspect's teachers and some students' representatives from the parties' school; the police officer concerned with this case	No second meeting	The suspect and the victim's school (they are from the same school)
Case no.6: suspected theft crime	The prosecutor; the suspect; the victim; the officials of the Justice Bureau	No second meeting	The Justice Bureau of X District
Case no.7: suspected theft crime	The prosecutor; the suspect	No second meeting	The People's Procuratorate of X District
Case no.8: suspected theft crime	No criminal reconciliation meeting	No criminal reconciliation meeting	N/A

Case no.9: suspected intentional injury crime	The prosecutor; the suspect; the victim; both parties' parents	The prosecutor; the suspect; the victim; both parties' parents; both parties' teachers; student representatives	The first meeting: the People's Procuratorate of X District; the second meeting: the parties' school
Case no.10: suspected intentional injury crime	The prosecutor; the suspect; the victim; both parties' parents; both parties' teachers	No second meeting	The parties' school

As for the meeting place, six of the meetings were held in the Procuratorate (often in the responsible officials' offices); three were held in the parties' schools; one was held in the Justice Bureau, as is shown in the table below.

In Chongqing, each of the eight cases studied had one criminal reconciliation meeting presided over by the prosecutor and attended by both parties, or one party, or some other participants, as can be seen in detail from the table below. All the meetings were held in the prosecutors' offices.

Table 2 Criminal reconciliation meetings in the People's Procuratorate of D district, Chongqing (hereafter cited as location B)

Case	Participants of the criminal reconciliation meeting	Meeting place
Case no.1: suspected intentional injury crime	The prosecutor; the suspects; the victim	The People's Procuratorate of D District
Case no.2: suspected intentional injury crime	The prosecutor; the suspect; the victim; the victim's family	The People's Procuratorate of D District
Case no.3: suspected intentional injury crime	The prosecutor; the suspect	The people's Procuratorate of D District
Case no.4: suspected intentional injury crime	The prosecutor; the suspect; the victim	The people's Procuratorate of D District
Case no.5: suspected intentional injury crime	The prosecutor; the suspects; the victim	The people's Procuratorate of D District
Case no.6: suspected intentional injury crime	The prosecutor; the suspects; the victim	The people's Procuratorate of D District
Case no.7: suspected intentional injury crime	The prosecutor; the suspects, the victim; the suspects' parents; the victim's parents; both parties' teacher	The People's Procuratorate of D District

Case no.8: suspected traffic accident related crime	The prosecutor; the suspect; the victim's son (the victim died in the alleged traffic accident related crime)	The people's Procuratorate of D District

In all the cases examined in Xi'an, one criminal reconciliation meeting had been held by the prosecutors/judges in their offices. Some meetings were attended by both parties, some by the parties' families, and some also by other participants such as the parties' teachers or employers or the officials from the Justice Bureau. The detailed information is presented in the table below.

Table 3 Criminal reconciliation meetings in the People's Courts and Procuratorates of Y and B districts in Xi'an (hereafter cited as location C)

Spot	Case	Participants of the first meeting	Participants of the second meeting (if any)	Meeting place
he People's Court of Y District	Case no.1: suspected traffic accident related crime	The judge; the defendant; the victim's family	No second meeting	The People's Court of Y District
	Case no. 2: suspected traffic accident related crime	The judge; the defendant; the victim's family	No second meeting	The People's Court of Y District
	Case no. 3: suspected traffic accident related crime	The judge; the defendant; the victim's family; The defendant's leader at his work unit	No second meeting	The People's Court of Y District
The People's Procuratorate of Y District	Case no. 4: suspected juvenile robbery	The prosecutor; the suspects' parents; the victim's parents	The prosecutor; the suspects' parents; the victim's parents	The People's Procuratorate of Y District
The People's Court of B District	Case no.5: suspected juvenile robbery	The judge; the defendants' parents; the victim's parents	The judge; the defendants' parents; the victim's parents; an official from the	The People's Court of B District

			Justice Bureau	
	Case no. 6: suspected juvenile robbery	The judge; the defendants' parents; the victim's parents	No second meeting	The People's Court of B District
The People's Procuratorate of B District	Case no.7: suspected traffic accident related crime	The prosecutor; the suspect; the victim's family	No second meeting	The People's Procuratorate of Y District
	Case no. 8: suspected traffic accident related crime	The prosecutor; the suspect; the victim's family	No second meeting	The People's Procuratorate of Y District
	Case no. 9: suspected traffic accident related crime	The prosecutor; the suspect; the victim's family	No second meeting	The People's Procuratorate of Y District
	Case no.10: suspected traffic accident related crime	The prosecutor; the suspect; the victim's family	No second meeting	The People's Procuratorate of Y District
	Case no. 11: suspected	The prosecutor; the suspect; the victim;	No second meeting	The People's

	juvenile robbery	the parties' teacher and classmates		Procuratorate of Y District

The meeting records in these three locations contained additional information or description: they stated, for instance, that there had been 'active communication between the parties in a peaceful atmosphere which focused on apology and compensation'. Some meeting records also stated that the prosecutors/judges were engaged in 'an effort to provide the suspects/defendants with legal knowledge'. For instance, in one robbery case, the prosecutor had read Article 264 of the 1996 PRC Criminal Law which concerned robbery in the meeting, and advised the suspect to treasure this opportunity and change his mistaken idea of 'reaping without sowing' and to strive to be a person contributing to society.[457]

The criminal reconciliation agreement.

All the cases examined had a criminal reconciliation agreement enclosed. In terms of the content of the agreement, it was drafted in simple terms and mainly involved a requirement that the suspect/defendant provided an apology and compensation. Here is an example taken from Changzhou:[458]

> Party A: the suspect
>
> Party B: the husband and son of the victim (who died in the suspected traffic accident related crime)
>
> At 19:16pm on 14 January 2007, a traffic accident happened on 332th street next to X Factory in which the suspect's car (with the license plate number: xxx) hit the victim, who died the same night in hospital. Through negotiation, the two parties reached an agreement on compensation: the suspect is to pay 390,000 Yuan to the victim's husband and son in one installment. After the payment has been made, the two parties agree not to trouble each other any further. Since the suspect has taken care of the financial needs of the victim's family, the victim's family decided to request the judicial system not to investigate the suspect's criminal liability.

Party A (signature): Party B (signature):

The official's decision after the criminal reconciliation programme.

The outcome of all the criminal reconciliation cases examined in the three People's Procuratorates took the form of the prosecutor's decision not to prosecute and to expunge the suspect's criminal record. The outcome of the three resolved cases conducted in People's Courts in Xi'an was a suspended sentence. According to the records contained in the case files, such decisions were made by the presiding prosecutor or judge, which had to be discussed by the procuratorial committee/judicial committee[459] beforehand for approval.[460] Yet the record of the procuratorial committee/judicial committee discussion was, as noted earlier, 'secret', which meant that the non-judicial parties themselves could not review it. The final decision was written and signed by the presiding prosecutor/judge alone with some reasons given to support it. The reasoning supporting the decision not to prosecute in all the observed cases was similar to the example below taken from the file of a suspected traffic accident related crime studied at the People's Procuratorate of B district in Xi'an:[461]

A decision not to prosecute was made based on the following reasons:

i. Traffic accident related crime was a delinquency; and the suspect had expressed regret and repentance to the victim's family.
ii. In this case, the victim also had some faults.
iii. The victim's family had forgiven the suspect. The two parties had reached an agreement which was fully complied with by them.
iv. This decision was in accordance with the spirit of criminal reconciliation and judicial resources saving.

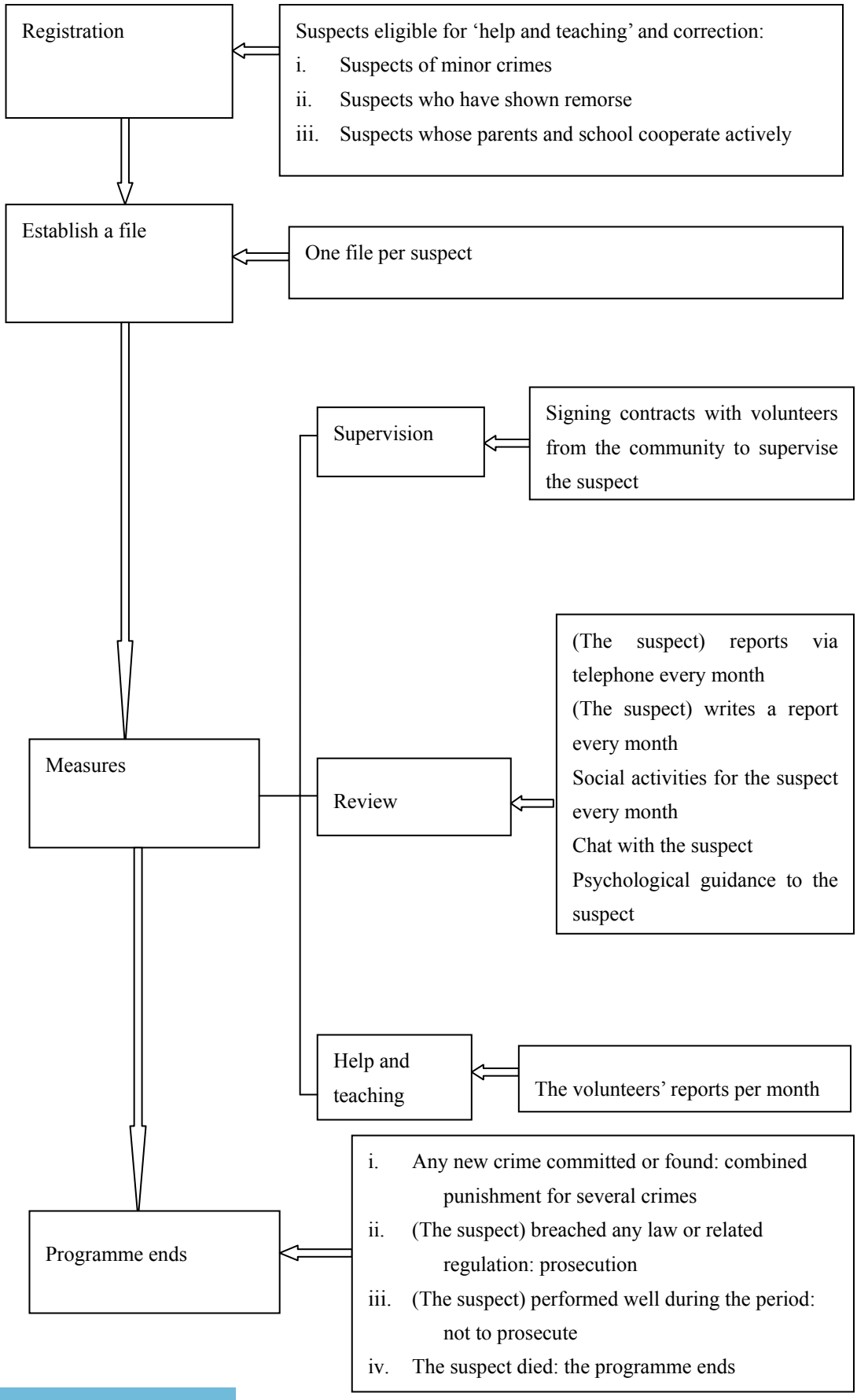
Follow-up programmes.

Half of the ten cases in Changzhou included follow-up programmes. In Chongqing, there was only one intentional injury crime case with follow-up 'supervision work'. In Xi'an, the officials' reconciliation decisions for all the four juvenile robbery cases demanded that the suspects participated in follow-up programmes called 'help and teaching' (*bangjiao*).

A 'help and teaching' programme, or *bangjiao* was effectively a supervision period, in most observed cases of half a year. It involved a series of activities arranged by the officials for the suspects/defendants. Usually, those activities were undertaken by volunteers from the universities or communities the suspects/defendants dwelled in, or by the officials themselves. In the 'help and teaching' programmes, the suspects/defendants were asked to participate in some voluntary activities or activities organized by the Courts/Procuratorates like art performance or basic legal knowledge workshops. In addition, the people responsible for such a programme would visit the suspects/defendants' families to have conversations with them, and take them for an outing. In the cases the author studied, two of the 'help and teaching' programmes (*bangjiao*) were undertaken by volunteers serviced by some university students, while the other two were handled personally by the presiding judges.

Below is a flowchart showing the envisaged stages of a 'help and teaching' programme (*bangjiao*) obtained from the People's Procuratorate of Y district in Xi'an.

Chart 1 Correction procedure of the People's Procuratorate of Y district, Xi'an



In the follow-up programme, the official had to assess the suspect/defendant's 'rehabilitation' or 'correction situation' (*jiaozheng qingkuang*). What was meant by this was an account of the suspect/defendant's performance in the school or work unit after a criminal reconciliation meeting had been successfully held and the victim and suspect had formally agreed to 'reconcile'. It was made on the basis of the volunteer's reports, the suspect/defendant's teacher or leader's reports, and the suspect/defendant's 'thought reports' (*sixiang huibao*) which were all about the suspect/defendant's performance and made every month, or once several months. If the suspect/defendant performed well according to those reports, a decision not to prosecute (or a lenient sentence in the Court) would be confirmed by the official and the case closed; otherwise, the suspect would be prosecuted again (or the lenient sentence for the defendant would be revoked).

According to the supervision reports reviewed in the context of this research project, whether supplied by the prosecutors/judges, or the volunteers from the communities and universities, or the juvenile suspects/offenders' schools and parents, the suspects/defendants all performed well after criminal reconciliation meetings. The reports demonstrated a satisfactory 'correction' or 'rehabilitation situation' of the follow-up programme. Usually, such positive assessments took the form that 'x studied much harder than before'[462], or 'x worked very hard and the superiors were now very satisfied'[463], or 'x became more mature'[464], or 'x helped doing housework and did not indulge in playing online games'[465], or 'x stayed away from his "bad friends" and got along well with his classmates and teachers'[466]etc. Furthermore, the suspects/defendants' 'thought reports' always mentioned their gratitude for the officials and criminal reconciliation (as it gave them a chance to rectify their faults), their deep reflection, sincere regret, and positive resolutions for the future, together with a description of their satisfactory recent situation. According to the final reports enclosed in the case files, the prosecutors/judges evaluated all such information as criminal reconciliation's outcome of effective suspect/defendant rehabilitation.

3.2.6 Duration of criminal reconciliation programmes

It was noted in the first chapter that criminal reconciliation was officially predicted to close a case more efficiently, compared to the normal criminal processes, in an attempt to save judicial resources. Yet the practices in the fieldwork locations as shown in the case files did not supply evidence of this.

Counting from the point in time at which the alleged criminal offence had happened, half of the studied cases in Changzhou lasted for less than one year until the official announced the decision, while the rest lasted for up to two years, as can be seen from table 4. What can also be noticed from this table is that criminal reconciliation processes in which two meetings were held, lasted longer than processes with only one meeting or without any meeting. Processes with more participants attending the meeting or meetings lasted longer than those in which only one party and the prosecutor attended the meeting or meetings.

Table 4 Timetable of criminal reconciliation cases in the People's Procuratorate of X district, Changzhou

Case	Timeline
Case no.1: suspected traffic accident related crime	Duration: one year 14 April 2007: the alleged criminal offence occured; 24 March 2008: the criminal reconciliation meeting was held; 18 April 2008: the prosecutor announced the decision not to prosecute the suspect
Case no. 2: suspected traffic accident related crime	Duration: one year and two months 14 February 2007: the alleged criminal offence occured; 11 March 2008: the first criminal reconciliation meeting was held; 21 March 2008: the second criminal reconciliation meeting was held; 18 April 2008: the prosecutor announced the decision not to prosecute the suspect
Case no. 3: suspected traffic accident related crime	Duration: three months 16 November 2006: the alleged criminal offence occured; 26 January 2007: the criminal reconciliation meeting was held; 12 February 2007: the prosecutor announced the decision not to prosecute the suspect
Case no. 4: suspected traffic accident related crime	Duration: six months 14 January 2007: the alleged criminal offence occured; 4 July 2007: the criminal reconciliation meeting was held; 9 July 2007: the prosecutor announced the decision not to prosecute the suspect
Case no.5: suspected theft	Duration: one year

crime	20 April 2007: the alleged criminal offence occured; 8 April 2008: the criminal reconciliation meeting was held; 21 April 2008: the prosecutor announced the decision not to prosecute the suspect
Case no.6: suspected theft crime	Duration: one year and five months 17 November 2006: the alleged criminal offence occured; 8 November 2007: the criminal reconciliation meeting was held; 18 April 2008: the prosecutor announced the decision not to prosecute the suspect
Case no.7: suspected theft crime	Duration: three months 8 December 2006: the alleged criminal offence occured; 2 February 2007: the criminal reconciliation meeting was held; 8 February 2007: the prosecutor announced the decision not to prosecute the suspect
Case no.8: suspected theft crime	Duration: six months 11 July 2006: the alleged criminal offence occured; 8 February 2007: the prosecutor announced the decision not to prosecute the suspect
Case no.9: suspected intentional injury crime	Duration: one year and four months 5 January 2006: the alleged criminal offence occured; 18 July 2006: the first criminal reconciliation meeting was held; 9 May 2007: the second criminal reconciliation meeting was held; 19 May 2007: the prosecutor announced the decision not to prosecute the suspect
Case no.10: suspected intentional injury crime	Duration: eight months 7 April 2007: the alleged criminal offence occured; 28 November 2007: the criminal reconciliation meeting was held; 6 December

	2007: the prosecutor announced the decision not to prosecute the suspect

Five of the eight cases the author examined in Chongqing lasted for less than one year from the initial incident until the prosecutor announced the decision not to prosecute. The rest lasted for one year and over, as shown in the following table.

Table 5 Timetable of criminal reconciliation programmes in the People's Procuratorate of D district, Chongqing

Case	Timeline
Case no.1: suspected intentional injury crime	Duration: four months 3 January 2006: the alleged criminal offence occured; April 2006: the criminal reconciliation meeting was held; May 2006: the prosecutor announced the decision not to prosecute the suspects
Case no.2: suspected intentional injury crime	Duration: one year and one month 24 June 2006: the alleged criminal offence occured; July 2007: the criminal reconciliation meeting was held; July 2007: the prosecutor announced the decision not to prosecute the suspect
Case no.3: suspected intentional injury crime	Duration: six months January 2007: the alleged criminal offence occured; June 2007: the criminal reconciliation meeting was held; July 2007: the prosecutor announced the decision not to prosecute the suspect
Case no.4: suspected intentional injury crime	Duration: eleven months January 2007: the alleged criminal offence occured; 19 November 2007: the criminal reconciliation meeting was held; 4 December 2007: the prosecutor announced the decision not to prosecute the suspect

Case no.5: suspected intentional injury crime	Duration: one year and two months October 2006: the alleged criminal offence occured; December 2007: the criminal reconciliation meeting was held; 21 December 2007: the prosecutor announced the decision not to prosecute the suspects
Case no.6: suspected intentional injury crime	Duration: eleven months 23 June 2006: the alleged criminal offence occured; May 2007: the criminal reconciliation meeting was held; May 2007: the prosecutor announced the decision not to prosecute the suspects
Case no.7: suspected intentional injury crime	Duration: one year and two months 9 September 2006: the alleged criminal offence occured; October 2007: the criminal reconciliation meeting was held; November 2007: the prosecutor announced the decision not to prosecute the suspect
Case no.8: suspected traffic accident related crime	Duration: five months December 2007: the alleged criminal offence occured; 25 April 2008: the criminal reconciliation meeting was held; 19 May 2008: the prosecutor announced the decision not to prosecute the suspect

In Xi'an, except for one case that had not yet been resolved at the point the author conducted the fieldwork, those criminal reconciliation programmes with two meetings lasted for over a year, while those with one meeting closed within one year. The detailed information is presented in the table below.

Table 6 Timetable of criminal reconciliation programmes in the People's Courts and Procuratorates of Y and B districts in Xi'an

Spot	Case	Timeline
The People's Court of Y District	Case no.1: suspected traffic accident related crime	Duration: five months May 2008: the alleged criminal offence occured; September 2008: the criminal reconciliation meeting was held; October 2008: the judge announced the suspended sentence
	Case no. 2: suspected traffic accident related crime	Duration: ten months November 2008: the alleged criminal offence occured; July 2009: the criminal reconciliation meeting was held; September 2009: the judge announced the suspended sentence
	Case no.3: suspected traffic accident related crime	Duration: four months January 2010: the alleged criminal offence occured; May 2010: the criminal reconciliation meeting was held; May 2010: the judge announced the suspended sentence
The People's Procuratorate of Y District	Case no.4: suspected juvenile robbery	Duration: one year and three months February 2009: the alleged criminal offence occured; January 2010: the first criminal reconciliation meeting was held; May 2010: the second criminal reconciliation meeting was held; May 2010: the prosecutor announced the decision not to prosecute

The People's Court of B District	Case no. 5: suspected juvenile robbery	Duration: one year August 2009: the alleged criminal offence occured; May 2010: the first criminal reconciliation meeting was held; 28 July 2010: the second criminal reconciliation meeting was held; August 2010: the judge announced the suspended sentence
	Case no. 6: suspected juvenile robbery (unresolved)	Duration: one year and seven months (unresolved) February 2009: the alleged criminal offence occurred ; February 2010: the criminal reconciliation meeting was held
The People's Procuratorate of B District	Case no. 7: suspected traffic accident related crime	Duration: four months January 2009: the alleged criminal offence occured; April 2009:the criminal reconciliation meeting was held; April 2009: the prosecutor announced the decision not to prosecute
	Case no. 8: suspected traffic accident related crime	Duration: eleven months January 2009: the alleged criminal offence occured; December 2009:the criminal reconciliation meeting was held; December 2009: the prosecutor announced the decision not to prosecute
	Case no. 9: suspected traffic accident related crime	Duration: ten months March 2009: the alleged criminal offence occured; January 2010: the criminal reconciliation meeting was held; January 2010: the prosecutor announced the decision not to prosecute

	Case no.10: suspected traffic accident related crime	Duration: six months February 2009: the alleged criminal offence occured; July 2009: the criminal reconciliation meeting was held; August 2009: the prosecutor announced the decision not to prosecute
	Case no. 11: suspected juvenile robbery	Duration: ten months April 2008: the alleged criminal offence occured ; January 2009: the criminal reconciliation meeting was held; February 2009: the prosecutor announced the decision not to prosecute

The cases studied in the three locations indicated that most of the criminal reconciliation programmes lasted for less than one year from the initial incident to the officials' confirmation of the decision, while some, especially those with two criminal reconciliation meetings, took up to two years. As indicated by some officials, this was no shorter than the average time needed in the formal criminal justice procedure to dispose of such kinds of minor crimes, which ordinarily took three to six months. Most of the officials interviewed also commented that criminal reconciliation took much more of their time and energy compared to formal criminal justice processes. This situation is in contradiction to the official expectation that criminal reconciliation would take less time than the formal criminal justice processes.

3.3 An analysis of the practice of criminal reconciliation relying on the evidence from official case files

The information provided in the case files, from the official perspective notwithstanding, sheds some light on the questions raised in the first part of this chapter that were concerned with the process and outcomes of this programme. In this part, the information described in the previous section is analyzed to address those questions. We begin by looking into the procedure of this programme to see whether it operated in practice in accordance its design as set out in Chapter One. Since my access to the procedures and guidelines in Chongqing and Xi'an was denied, the procedure summarized by scholars, as shown in Chapter One, is adopted as a criterion here.

3.3.1 The procedure of criminal reconciliation in practice

The initiation stage. As shown in the case files, the criminal reconciliation programme in all the three locations studied had adopted the mode that 'the People's

Procuratorate/People's Court initiates criminal reconciliation based on examining the case and asking for the parties' opinions as regards if they agree to participate'.

As to the requirements of eligible cases which should be examined by officials, it appears that all the cases studied in the three places comply with the stipulated requirements. With regard to the kind of suspected crime, all the studied cases concerned 'minor crimes'. With regard to the suspect/defendant, no preference for juvenile suspect/defendant could be found and this was not a compulsory premise of initiating this programme. With regard to the parties' voluntary participation, all the case files I was given access to had enclosed documents such as letters written by the parties or forms filled out by the parties that explicitly provided such information. Additionally, all the interrogation records enclosed in the case files included the prosecutors/judges' question to the suspects/defendants as to whether or not they admitted guilt, and the answer was invariably 'yes'.

The criminal reconciliation meeting. So far as the officials' presiding and the parties' attendance is concerned, the practices in the three places were generally in accordance with the requirements. As shown in the above tables, in most of the examined cases, the criminal reconciliation meeting was presided over by an official and attended by both parties or their agents (or also by other people such as the parties' leaders, bosses, teachers and classmates). Yet there is one case in Changzhou and Chongqing respectively in which only one party attended the meeting, and one case in Changzhou that did not hold any criminal reconciliation meeting.

It is also a requirement that in the meeting, the prosecutor/judge provide the parties with sufficient communication and negotiation without interfering with the discussion or commenting on any party's statements. In other words, it was required that the case should be fully discussed and primarily resolved by the parties themselves. As mentioned above, documents contained in the case files also showed that the communication in the criminal reconciliation meetings was sufficient, that it addressed all relevant questions and was conducted in a 'peaceful' atmosphere. Although a few presiding officials had delivered some 'educational comments' in the meetings, it would be far-fetched to say that they had interfered with the process.

To that extent, participation in and contributions to the criminal reconciliation meetings could be characterized as voluntary.

In terms of the issue of 'fairness' stressed in the local regulations or guidelines as summarized by the scholars, although there was no document in the case files directly on this point, there was no hint of 'unfairness' in those files.

The official's decision. As required, in the People's Procuratorate, the prosecutor's decision for a case closed through criminal reconciliation could be non-prosecution, suggesting the Public Security Bureau to withdraw the case, or suggesting a lenient punishment for the suspect to the People's Court. In the People's Court, the judge's decision could be a lenient sentence for the defendant. As presented above, these possible outcomes were precisely what the case files demonstrated.

Moreover, as exemplified, in all the cases studied, the prosecutors'/judges' decisions were supported by many reasons and had been discussed by the procuratorial committee or judicial committee before being announced.

The procedural regulation also provided that in a criminal reconciliation programme if an agreement could not be reached, or either party regretted prior to signing the agreement, the case should be transferred to the normal procedure immediately, but no case file the author examined embodied that situation.

The follow-up programmes. As shown above, in the three fieldwork places, a follow-up programme was conducted in some cases. Since this was not a compulsory requirement, the practices in these locations were in accordance with the procedural regulations or guidelines.

In conclusion, by and large, the practice of criminal reconciliation in the places studied had complied with the procedure designed for criminal reconciliation. Yet as pointed out in the previous parts as well, there were still some circumstances in which the procedure was not followed (i.e. no criminal reconciliation meeting was held at all in a case in Changzhou). The reason of the incidental violations of the requirements further is discussed in Chapters Four and Five, along with the description of the officials on their incentives and considerations of these violations.

The next question was concerned with the outcomes of the criminal reconciliation practices. Putting aside the situation in which the procedure was violated, can the practices complying with the procedure produce the purported outcomes or aims?

3.3.2 Achievements and failures of the official goals in practice

The Supreme People's Procuratorate and the Supreme People's Court, as shown in Chapter One, have predicted some further outcomes for criminal reconciliation, namely reducing petitioning related to judicial cases (*she fa shangfang* or *she su shangfang*), providing closure (*an jie shi liao*) and promoting a harmonious society. Yet these outcomes cannot be observed through a study of the case files accessed.

As displayed in the case files, criminal reconciliation had addressed the problem with compensation enforcement which was viewed by the authorities as the main cause of petitioning related to judicial cases (*she fa shangfang* or *she su shangfang*) and the main obstacle to closure (*an jie shi jiao*). Compensation, as the focus of the criminal reconciliation agreement, was provided by the suspect/defendant in full and usually on the spot. And it was also explicitly indicated in some agreements that the compensation amount was negotiated freely and autonomously by the parties, and that it involved some 'psychological compensation'. Nevertheless, the author thinks it is still hard to assert that such agreements or this programmme has given a final resolution to the conflict triggered by crime and satisfied the parties (or the victim at least), and thereby effectively tackled the issue of petitioning. Such messages were not provided in the official case files and could only be directly obtained from the parties.

As to better rehabilitating and correcting the suspect/defendant by means of non-prosecution or non-custodial punishments for the suspects/defendants, it appears to have been largely achieved in the cases with follow-up programmes. As shown above, all the reports provided by the officials and volunteers responsible for the follow-up programmes, and the 'thought reports' written by the suspects/defendants

themselves, indicated a satisfactory situation of suspect/defendant rehabilitation. Nevertheless, such information could not be observed in the cases without follow-up programme. In this regard, it can be said that follow-up programme is of great significance for suspect/defendant rehabilitation. Yet cases without follow-up programme constituted a very large part of the cases the author examined.

As also shown in Chapter One, criminal reconciliation was also expected in academic work to promote the efficiency of the Chinese judicial system.[467] Judging from the cases studied, however, this process does not display much advantage in this aspect: most of the cases lasted for around one year (and some were up to two years). Only four among the ten cases examined in Changzhou lasted for less than half a year; only three of the eight cases examined in Chongqing lasted for less than half a year; and in Xi'an, except for one case that had not been resolved when the author conducted the empirical work, the equivalent figure is four out of eleven cases. Moreover, none of the suspected minor injury crime cases in those locations lasted less than 135 days. Hence, it seems that as compared with the normal criminal procedure, overall criminal reconciliation does not obviously promote judicial efficiency as commonly claimed.

Regarding the effects expected to be produced by the criminal reconciliation meeting, it seems that criminal reconciliation has made the parties participate and empowered them to resolve cases mainly by themselves. The criminal reconciliation meeting records showed that the victims and the suspects/defendants had been given sufficient opportunity to express their feelings and needs in the meetings and reached agreements based on their intentions.

It could also be seen from the case files studied that the educational effect of criminal reconciliation meetings was often highlighted by the officials. In the reports on criminal reconciliation meetings, which were enclosed in the case files, the officials liked describing the suspects/defendants as having expressed their remorseful feelings, and then apologized to the victims (or their families and representatives) in the criminal reconciliation meetings. Yet no information concerning the criminal reconciliation meeting's long-term impact on

suspects/defendants (especially recidivism prevention) can be observed from the case files.

For the victim, however, no message indicating this process's psychological reparation effect appears in the case files studied. Although the criminal reconciliation meeting records showed that the victims had expressed some negative emotions and communicated with the suspects/defendants actively in the meetings, and they had often obtained 'psychological compensation' as specified in the agreements, the effect of these arrangements to the victims cannot be assessed.

To sum up, it appears from the case files that the criminal reconciliation practices in the fieldwork places have produced the purported effects of resolving the problem with compensation enforcement and empowering the parties to resolve the cases mainly by themselves. In the cases with criminal reconciliation meeting, the communication between the parties is sufficient and voluntary, and the goal of educating the suspect/defendant is achieved. In the cases with follow-up programmes, the effect of correcting the suspect/defendant is positive. Yet the officially stated aims concerning the parties' feelings and those somewhat long-term goals like preventing recidivism and facilitating a 'harmonious society' cannot be evaluated from the case files. The goal of judicial efficiency promotion has generally failed in the three fieldwork locations.

It seems therefore that complying with the procedure does not guarantee the expected outcomes. Moreover, it is worth noting that the case files can only show how criminal reconciliation operated from the accounts on paper, and actually it was chiefly described by the officials who had conducted it and very likely was selected as 'the best practices' by them. That is to say, the actual practice might be very different from the information presented in this chapter.

3.3.3 Questioning the official design of the criminal reconciliation procedure

Nevertheless, there arises a question that why did complying with the procedure not produce the predicted outcomes? In the author's opinion, this is first concerned with

the procedure in itself. This is to say, many provisions in the local procedural regulations or guidelines have embodied the danger that some expected outcomes might fail in practice. Some of the failures had been shown in the cases the author was permitted to examine as listed above, while others might not be shown in the case files.

For example, it was stipulated in the regulations or guidelines that the criminal reconciliation meeting could be attended by the representatives of the parties. However, it was hard to expect such a meeting without the parties' presence to produce the outcomes expected through participation and sufficient communication between the parties. AS analyzed by some scholars like Cai Guoqin, the victim could feel relieved only or best through expressing the feelings and emotions related to the alleged crime to the person causing it (in his/her mind) and through sufficient and free communication with the suspect/defendant.[468] Hearing the suspect/defendant's apology was also of great significance for psychological reparation to the victim.[469] The victim's expression as such in a face-to-face meeting, according to Cai, could better educate the suspect/defendant and make them reflect and feel remorseful.[470]

Furthermore, the regulation and guidelines provided that many other people like the parties' employers, their 'leadership' or their teachers could also attend the criminal reconciliation meeting. Yet it was likely that their presence would place pressure on the suspect or victim (depending on the case) or at least make them uneasy, yet they had to accept this, as they might be reluctant to offend the officials as well as those people. More importantly, in this situation, it might be difficult to prevent the communication and discussions between the parties being impaired by this pressure and those 'powerful' persons for them.

The meeting place was also problematic. Although it was not specified in the procedural regulations, the author found in the case files that most of the criminal reconciliation meetings were held in the prosecutors/judges' offices. Such a meeting place might also create some pressure for the parties as it could give them the impression that the criminal reconciliation process was still dominated by the officials rather than themselves. In addition, since the parties knew that the

prosecutors/judges played a key role in their cases, it was possible that they might subject themselves to the officials' wishes.

In all these situations, the parties' voluntariness or autonomy could be easily violated. If the parties were coerced into participating in the criminal reconciliation programme, the outcomes of satisfying the parties, psychological reparation, and closure (*an jie shi liao*) were unlikely to be produced. More importantly, such a process driven by official pressure is difficult to view as a process that empowers the parties to resolve the cases by themselves.

3.3.4 Conflicting official goals

Another reason causing the failure of some officially stated aims as shown in the case files is that the official goals set for criminal reconciliation conflict with each other.

As demonstrated in this chapter, criminal reconciliation in these three fieldwork locations failed to promote judicial efficiency. Yet it was actually very hard to close a case in a short time if the official properly observed the procedure, which asked for his/her explanation of the programme to the parties for their voluntary participation, arrangement for a meeting or meetings that were expected to produce so many outcomes and some follow-up programmes. These claimed goals were in conflict with each other because it was impossible to complete so many tasks in a short period. Perhaps this was also one reason why most of the cases examined did not have any follow-up programme. This further helps to address a question raised in the first part of this chapter in terms of the resolution when the aims conflicted with each other. In cases of conflicted aims, very likely, officials would choose those immediately beneficial for themselves, such as closing the case quickly, rather than those beneficial for the parties, such as conducting follow-up programmes.

This point may be supported by the finding that much negotiation and communication between the parties that ought to be an essential part of the criminal reconciliation meeting was in fact done before this programme was formally initiated.

This suggested that in this case, criminal reconciliation programmes were purely formal, empty processes allowing the officials to confirm agreements reached previously by the parties. This raised a suspicion of further, more serious, problems such as coercion or unfair deals. Those problems were hard to discover because on paper officials entered the process at a rather late stage, even assuming that they were interested in investigating. In fact, the case files suggested that the officials concerned would simply ask the parties whether the letters of apology or forgiveness were their true intentions as recorded in the case files. It seemed possible that the officials did not wish to find out those potential problems, which stem from what has been identified as conflicting goals of efficiency and voluntariness.

The above analysis showed that some of the official goals of criminal reconciliation might impair the interests of the parties concerned in this programme. Because of to this, criminal reconciliation may not produce the outcomes of satisfying the parties and 'closure'.

Nevertheless, many questions or questions raised above, especially if the parties were satisfied and if they were really coerced by the officials, can only be addressed through understanding the parties' feelings. The doubts and further questions cannot be answered through further examination of the case files. Of course, it is unreasonable to expect the case files to include all the information. Moreover, as a picture chiefly drawn by the officials, the case files were likely to have concealed some problems with the practice of criminal reconciliation. Perhaps there were more deficiencies in the procedure and the claimed outcomes (especially from the rights' perspectives). Therefore, it is important to conduct interviews with persons who had experience of criminal reconciliation to understand from them how it operated in practice.

Chapter IV: The Process Of Criminal Reconciliation Programmes: Evidence From Interviews

In Chapter Three, the practice of criminal reconciliation designed according to local regulations or guidelines in Changzhou, Chongqing and Xi'an was described based upon the documents enclosed in the case files and the extent of these practices' were in compliance with the procedures was analyzed. Nevertheless, case files could only show the practice as described 'on paper' and from an official perspective which might be skewed towards a favourable picture. Further investigation seemed both justified and indeed necessary to gain a more complete understanding.

Because of deficiencies involved in the case file examination, further inquiry necessarily involved the utilization of other research methods. One obvious way was to interview people who had experience of this programme, especially the parties (the victim and suspect/defendant of the criminal reconciliation case concerned). Their feelings and comments on this programme were important to answering the questions raised by the case file examination.

In addition, the process of criminal reconciliation as described by them might be different from the one shown in the case files.

Therefore, interviews with people who had experienced criminal reconciliation programmes were conducted subsequent to the case file examination. Specifically, interviewees included judges and prosecutors who had been involved in conducting this programme, victims and suspects/defendants ('parties') who had participated in this programme, lawyers who had represented their clients in this programme, and some other people like the parties' parents or teachers who had also attended criminal reconciliation meetings. Questions designed for the interview centered on their experience, feelings and general comments on this programme.

In the first two interview series conducted in Changzhou and Chongqing, all the parties of the criminal reconciliation cases were contacted by the prosecutors and the author mostly had to interview them in the prosecutors' offices under the prosecutor's observation. This necessarily had the limitation that other parties might

not feel free to share their true opinions in the presence of the prosecutor/judge who had presided over the reconciliation agreement. That would be especially so if the other party's 'consent' had been in any way forced or involuntary. Nevertheless, it was considered that there might be advantages to conducting interviews even under such constraints. In the third interview series in Xi'an, all the parties were contacted, approached and interviewed by the author alone without any official being present. It was felt that it would be easier for parties to speak freely by interviewing them alone as it could convince them, under guarantees of confidentiality and anonymity, that what they said would not adversely affect the outcome of their cases or their relationship with the officials.

As it transpired, information obtained in the interview, whether it was conducted with an official present or alone by the author, depicted a picture of criminal reconciliation different from what the case files had shown. In this chapter, the author describes the process of criminal reconciliation arising out of the interviewees' accounts. Differences between it and the process shown in the case files are pointed out along with the description. This description shows that more violations of the official procedures occurred; and it provides some insight into the tension between conflicting goals of criminal reconciliation as discussed in the preceding Chapter. At the end of this Chapter, further questions, mainly concerned with the parties' feelings and motivations and the officials' feelings and motivations during this process are raised to be addressed in the following chapter.

The discussion of the process of criminal reconciliation programmes in this chapter also tracks four stages: initiation of criminal reconciliation; criminal reconciliation meeting; official decision; and follow-up programmes.

4.1 The initiation stage

4.1.1 Violations of eligibility requirements

Local procedural regulations or guidelines stipulate that at the initiation stage of a

criminal reconciliation programme, the responsible prosecutor/judge should examine the case to see whether it was eligible for criminal reconciliation. As regards an eligible case, it was further provided that criminal reconciliation could be initiated only in cases of 'minor crimes' according to the PRC Criminal Law, and was encouraged in juvenile crimes. In addition, in cases being considered for criminal reconciliation, the suspects/defendants had to admit guilt (*renzui*) or show remorse (*huizui*) (in 'Changzhou Regulation').

The case files examined implied that these requirements were fully observed by the officials. This finding was substantiated by several officials' accounts in the interview. For example, prosecutor L from the People's Procuratorate of B district in Xi'an summarized the factors the officials would consider to initiate criminal reconciliation.[471]

> 'Basically, we are inclined to initiate criminal reconciliation in a case with the following factors: first, it should be a case of "minor crime". The contradiction between the parties in "minor crime" cases is often not very sharp and deep and therefore can be more easily resolved through reconciliation. This is a compulsory requirement. Second, it is desirable for there to be some relationship between the parties existing before the "crime"[472], for instance, they are neighbours, classmates or colleagues. It would be easier for acquaintances to reach a reconciliation agreement. Third, the suspect is a juvenile. Criminal reconciliation is recommended as an effective means to educate and correct juvenile suspects. Fourth, criminal reconciliation is suitable in cases where the victim also had some fault in the "crime". Fifth, there is no deep-rooted animus between the parties. Yet the latter three are not compulsory requirements for criminal reconciliation. And finally, the suspect must show remorse (*huizui*).'

Some officials particularly mentioned their preference for criminal reconciliation in juvenile cases. One of them was judge L from the People's Court of B district in Xi'an.[473]

'I always appreciate criminal reconciliation as I believe that it is especially beneficial for young defendants. Criminal reconciliation can grant them one more chance to rectify mistakes, whereas litigation or imprisonment would very likely ruin their future, and even their whole life. So I have the tendency to use criminal reconciliation in juvenile cases.'

The interviews more than merely substantiated what the case files had shown. In the interviews, officials also talked about how they decided to initiate criminal reconciliation in some cases that did *not* meet the stipulated (strict and soft) requirements. Prosecutor H told me how he changed his mind to initiate criminal reconciliation at the point when the suspects neither admitted guilt nor showed any regret at all in case no. seven in location B (an intentional injury case).[474]

'The Procuratorate I worked at was encouraging criminal reconciliation in juvenile cases, so I got in touch with the suspects to see if there was any chance for criminal reconciliation in this case when I received the case.

Yet I found that the suspects showed an indifferent attitude towards their conduct and the victim they had allegedly harmed. Moreover, they each sought to put the blame on the other person. They did not realize that they had done something wrong and harmed other people. The suspects' parents were also indifferent about the victim their children had allegedly hurt and the criminal charge that their children had violated the law. They insisted that their children were the perfect and best ones in their minds.

Regarding the victim, his parents and he were extremely angry with the suspects after the case happened. The parents even threatened to retaliate.

In such a situation, it was not feasible to use criminal reconciliation since the suspects did not show any repentance or regret and the contradiction between the two parties was fairly severe and sharp. However, after obtaining more

information about the family background of the suspects, I began to re-consider resolving this case through criminal reconciliation.

There were six suspects aged between 16 and 18 in this case. The suspect A lost his mother when he was little and lived with his father all along. His father was disabled and earned a living by selling fruit in a street market. B's parents had divorced and his father had married again; his mother, father and stepmother did not look after him much. C's mother worked in another city and only went back home once every six months. His father had stomach cancer and could not work. D's parents were not educated and did not have stable jobs, so the family had to live on subsistence allowances from the government. E's parents had also divorced yet lived together again, but they were too busy earning money and had no time to take care of their child. F's father was a migrant worker working in a construction plant with a very low salary; his mother was "too weak" to work.

Taking into account the suspects' family background, I felt that on the one hand, it was unfair solely to blame the young suspects for their conduct as it was largely due to their parents' negligence; on the other hand, as the suspects were juveniles, prosecution and litigation would undoubtedly have very bad effects on their future. I also thought that since they still did not realize their fault and the harm allegedly caused by their conduct, it was difficult to count on the ordinary criminal procedure to resolve it, which was even more harmful for their future moral development. Considering all these issues, I finally decided to initiate criminal reconciliation in this case.'

In prosecutor H's accounts, it seemed that he viewed the suspects' remorse or admission of guilt as a result of criminal reconciliation rather than as a requirement of this programme. It was somewhat reasonable since the claim was that criminal reconciliation also had the effect of educating and correcting suspects/defendants. However, if this requirement could be arbitrarily abandoned by the officials, there might be a danger that an official could pressurize a suspect/defendant who was innocent (or claimed to be innocent) to enter this programme. Despite being an

alternative to formal criminal litigation procedure, this programme is still part of the wider criminal procedure, and involves the coercive power of the State. It is noticeable in prosecutor H's accounts that actually he simply viewed the suspects as persons who had carried out the alleged crime, even though the suspects did not admit that. So he tried to use criminal reconciliation to make them 'recognize their faults' and 'feel regretful'.

The phenomenon that the official was so convinced that the suspect/defendant had committed the suspected crime before the case was heard and sentenced in Court might also indicate that there was no 'presumption of innocence' in these officials' minds. This issue is further discussed in Chapter Five along with the analysis on the officials' roles in this programme.

Another prosecutor, S, from the People's Procuratorate of B district in Xi'an mentioned in the interview that, in general, the suspect's remorse was in fact not taken into account when the officials considered to initiate a criminal reconciliation programme.[475]

> 'It is required to consider the suspect's regret before we make the decision to use criminal reconciliation in a case. But in fact this (whether or not the suspect feels regret) is very difficult to ascertain in that it is really hard to read someone's mind, and you know that it is easy to pretend to be regretful. Moreover, often the suspect is still in detention at this stage, so that we do not see them regularly. Some people may reflect and feel remorseful in the detention house, yet others may become even "worse" via learning "bad examples" after staying there.'

What prosecutor S said indicated that the officials found it difficult to consider, and might in some cases have chosen not to consider the suspects' attitude out of convenience. Reflecting a similar attitude, prosecutor S simply described the suspects as 'criminals' and observed in the interview that they could reflect on their wrongdoing in the detention house.[476] Judge Z from the People's Court of Y district in Xi'an even frankly said to the author that in fact, the judges would conduct

criminal reconciliation in almost all the cases where a civil dispute about compensation had been conjoined to the criminal litigation, regardless of whether the stipulated requirements had been met.[477]

> 'Guided by the Supreme People's Court's policy of "Giving Priority to Mediation and Combining Mediation with Judgment" (*tiaojie youxian, tiao pan jiehe*)[478], nowadays we judges would conduct mediation/reconciliation in all the criminal cases with civil disputes on compensation, and we would try our best to use it. That is to say, actually there is no special pre-condition for initiating criminal reconciliation/mediation; as long as we meet cases of this kind (cases in which civil proceedings about compensation had been affiliated or, *xingshi fudai minshi susong*), we will conduct it.'

The above accounts from prosecutor H, prosecutor S and judge Z implied that the stipulated requirements of initiating a criminal reconciliation programme were not always observed by the officials in practice. Further discrepancies between stipulated requirements and actual practices are discussed in the following sections of this Chapter.

Except for the situation that criminal reconciliation was initiated by the officials in cases where some stipulated pre-conditions were not met, it was also found in the interview that in some circumstances, the officials 'added' a few pre-conditions by themselves in practice when they considered the initiation of criminal reconciliation in a case. These 'additional pre-requirements', as indicated in the officials' accounts in the interview, included the suspect/defendant's performance before he/she was alleged to have committed the suspected crime and the suspect/defendant's local residence. It was further noticed in the interview that these pre-requirements, although not provided in the procedural regulations or guidelines, were in fact used by the officials as compulsory determinants in initiating criminal reconciliation programmes.

For example, prosecutor F from the People's Procuratorate of X district in

Changzhou told me how much the suspect's usual performance weighted in his consideration of initiating criminal reconciliation in case no. six in location A (a suspected theft case).[479]

> 'When I received this case, I found that the suspect, as a 20-year-old young worker, had a good performance record in the factory throughout his employment period. Even his boss spoke for him and asked for a lenient disposition when the case was transferred to the Procuratorate. Then I began to consider that criminal reconciliation might properly be initiated in this case.'

Moreover, the accounts provided by prosecutor Z from the People's Procuratorate of Y district in Xi'an indicated that actually non-local juvenile suspects were excluded from criminal reconciliation programme.[480]

> 'Generally, the following situation would affect my decision whether or not using criminal reconciliation in juvenile cases: it should be suspected minor crime; the victim should have forgiven the suspects; the parents and the school should have the ability to co-operate with our work by supervising the children in order to guarantee the rehabilitation effect after the criminal reconciliation meeting finishes. So those non-local children or those whose parents are not in Xi'an will not be considered (for criminal reconciliation) since it was so hard for us to trace them, especially in the follow-up supervision period.'

The officials' making the suspects/defendants' previous good performance and residence as the pre-requirements of criminal reconciliation might largely service for their own convenience (i.e. to trace the suspect in the supervision period if it is true). Yet it also causes the problem of unfairness among the suspects/defendants in criminal reconciliation programmes. This issue is further discussed in the next chapter together with the officials' own accounts on their motivations for adding these pre-requirements.

4.1.2 No presumption of innocence

The procedural regulations or guidelines required that the suspect/defendant had to admit guilt (*renzui*) or show remorse (*huizui biaoxian*) before entering criminal reconciliation. The case files studied showed that this requirement was complied with in the three locations, and it was plainly reflected from the short question and answer between the officials and suspects/defendants. In the interviews, except in the case of one suspect the author approached in Xi'an, all suspects/defendants indeed expressed their admission of guilt and remorse. The only one suspect the author referred to was accused of a traffic accident related crime and he accepted criminal reconciliation not out of feeling regretful, but just out of very practical considerations. He said,[481]

> 'My job is driving for others. Concerning this matter, I drove a lorry delivering goods and suddenly my lorry and their car crashed. Their daughter sitting beside the driver in the car died. But I do not think the main responsibility for this traffic accident lies with me. I think that in fact it is their fault. It is because they drove carelessly and too fast, so that they bumped into my lorry. I tried to dodge, but their car was really too fast.
>
> After the accident happened, I felt stressed since I did not know how to deal with this matter. I thought about hiring a lawyer; I also consulted some friends and they told me that I could surely win the suit if I could have a lawyer defending me. But I am really too poor. I could neither afford the money for hiring a lawyer, nor pay for the accommodation I would have had to find here for a long-period litigation.
>
> At that point, the prosecutor called me and offered a choice of criminal reconciliation. I also learned from the prosecutor that the other party was rich so that I did not need to pay much compensation to them in criminal reconciliation. I then considered that I could get rid of this matter and work to earn money soon.

I have an old father of over 70 years old with serious problems with his legs to take care of. The prosecutor also persuaded me that I would not be prosecuted if I could reach a reconciliation agreement with the other party successfully. In addition, it would not be hard since the other party's attitude was fine. Then I considered not persevering with this matter any further as after all their daughter died in this accident. I discarded the idea of hiring a lawyer and accepted the offer of criminal reconciliation.'

In this specific case, although the suspect did not mention whether or not he had told the responsible prosecutor his real thoughts and difficulties in the interview, it at least showed that what the official cared about most was trying all means to make the suspect accept criminal reconciliation. This might be because the official knew about it and decided to discount it, or because he/she did not find out that the driver considered himself innocent. Perhaps this was the reason that the case files had shown only formulaic engagement with the question of 'regret' or 'admission of guilt' - a very simple question by the official and the suspect/defendant's short answer concerning this issue, before the initiation of criminal reconciliation.

4.1.3 Violations of the principle of voluntariness

It was further stipulated that if the responsible prosecutor/judge intended to initiate criminal reconciliation, he/she should explain this programme in terms of its procedure, outcome and the parties' rights for obtaining their voluntary participation. The documents, especially the parties' statements on their voluntary participation enclosed in the case files showed that this procedural requirement was fully observed in the three research sites. Yet how the official obtained the parties' voluntary participation was not shown in the case files. Information as to this question was complemented and provided in greater detail by the interviews. For instance, the interviews with the victim and suspect, respectively, of case no. five in location A (a juvenile theft case) at their school shed some light on the prosecutor's conduct during

this process.

In the interview with the suspect G, he first told me that even he himself did not know why he had stolen his classmate H's mobile phone. 'Maybe it was just something wrong I did on an impulse. You know that actually I was not short of money', G said about his motivation.[482] He then said that he had greatly regretted what he had done and been worried about his future when he was found out by the police. He felt that he was lucky when the prosecutor F approached him to talk with him about resolving this case through criminal reconciliation rather than going to court. He learned from F that criminal reconciliation would resolve the case with the outcome of non-prosecution and no criminal record if he could obtain H's forgiveness and reach an agreement with H. That was indeed attractive for him and largely relieved his worry, so he accepted the offer of trying to reconcile immediately.[483]

In the interview with the victim H, he said to the author that he felt 'very surprised, lost and angry' when he found his mobile phone had been stolen in the dormitory for it was the third time he lost his mobile phone.[484] He really wanted to 'teach the thief a lesson' at that time. However, after he knew that the suspected thief was his classmate G and he got back the phone later, he thought that maybe G had done this just on an impulse and he 'did not hate G since the phone was returned'. Thus, when the prosecutor F approached him and communicated with him about resolving this case through criminal reconciliation rather than sending G to the Court, H agreed immediately. 'He is my classmate. Prosecution or sentence would have led to his being sent down by the university and that would have affected his future badly. It would have been terrible for him. So I really wanted to give him a chance as this crime actually had no lasting impact on me, whereas the resolution of this matter was very important for him.'[485]

It could be seen from the parties' narrative that in this case, the official in charge of this case (prosecutor F) did not have to try very hard to get the parties' agreement to participate in criminal reconciliation since the offer of criminal reconciliation coincided with the parties' own wishes. The suspect was anxious for some alternative

way other than prosecution/litigation, and the victim had somewhat forgiven the suspect when he knew that the suspect was his classmate.

But this was not always the case, the interviews showed that more often, what the officials had done during this process was far more than what prosecutor H had done in this case. In some cases, such a process involved great efforts on the part of many other people such as the parties' teachers or employers, and the party (or parties) had been repeatedly 'persuaded' by the officials and these other people to accept criminal reconciliation.

For example, J, the victim of case no. nine in location A (an intentional injury case) mentioned the reason for his agreement to participate in the criminal reconciliation programme as 'my coach and prosecutor F spoke to me many times'.[486] 'They taught me to consider the relationship between me and the suspects as schoolmates, so that I should give them one more chance'.[487] K, the victim in case no. six in location A (a theft case) described such a process as 'the suspect's employer and the responsible prosecutor F approached me no fewer than five times separately to persuade me to engage in criminal reconciliation'.[488] 'I was also told by them that the suspect L felt very remorseful, and since L was very young, I should give him an opportunity given that prosecution would destroy his future.'[489]

Judge L from the People's Court of B district in Xi'an also talked about this process and her hard efforts to get the victim's voluntary participation in case no. five in location C (a juvenile robbery case).[490]

> 'At first, the victim M and his parents were all very insistent that they did not want to give the defendants one more chance through reconciling with them. The defendants had hurt them so deeply that they only wanted to see themsentenced according to law. Yet I was also very insistent: I approached M and his parents three times and told them that those young defendants indeed felt extremely remorseful, and that litigation would destroy the defendants' future. Moreover, through criminal reconciliation, M and his family could get a larger sum of compensation more promptly compared with the compensation that might be

awarded in a court decision. At last, I got the victim's and his parents' agreement to participate in the criminal reconciliation programme. M was also required by me to provide a statement about his voluntary participation in the criminal reconciliation programme.'

In sum, it appeared from the parties' and the officials' accounts that the officials would mainly refer to the benefits of criminal reconciliation to the parties respectively to get their 'voluntary participation'. It was not a problem to explain the benefits of criminal reconciliation to the parties. However, in the circumstance that such an explanation, or precisely persuasion, was repeatedly done by the officials and sometimes also by the parties' teachers or employers, even though the parties finally presented their voluntary participation in writing as enclosed in the case files, the voluntariness of their agreement was questionable, as is argued in the following.

As argued in Chapter Three, the influence of the teachers, employers, leadership (*lingdao*) and officials as 'powerful persons' should not be neglected. The parties must be aware that the officials concerned, for instance, had power and the final say in their cases. And the parties' teachers, employers or leadership (*lingdao*) were the people that had close connections with as well as crucial influences on the parties in their daily lives, especially considering the fact that 'relationships' (*guanxi*) took an extraordinarily significant role in China. It was therefore hard for the parties to reject these persons' suggestions. In this sense, the voluntariness of the parties' participation was easily impaired. What the parties really felt in such a situation is further discussed in the following chapter on the basis their own accounts.

Except for the point that the parties were subjected to hard 'persuasion' to accept criminal reconciliation, the interviews also showed that sometimes the parties were not approached at all during this process. Instead, it was their parents or lawyers that the officials approached and talked to about the possibility of criminal reconciliation. Accounts from prosecutor H on case no. seven in location B exemplified how the juveniles as the real parties in this case were totally replaced by their parents during this process.[491]

'I first suggested to the suspects' parents that since all the suspects were very young, it was meaningful to make them realize their faults and to teach them some legal knowledge which could best be done through criminal reconciliation. More importantly, in this case, the evidence was sufficient to sentence the suspects in the Court, yet criminal reconciliation could close the case through non-prosecution, and there would be no criminal record for the suspects, which meant that their children could go back to school soon. It seemed that these benefits of criminal reconciliation were attractive for the suspects' parents as they agreed to participate immediately after hearing that.

As to the victim's parents, it seemed that they were considerate and sensible. Although they told me that the whole family had been harmed deeply by the suspects, they could still understand the meaning of non-prosecution and a decision not to burden the suspects who had harmed their child with a criminal record. They also expressed sympathy after knowing the suspects' family backgrounds from me. Hence, they also agreed to participate in the criminal reconciliation programme. And after that, both parties' parents were required to confirm such agreements in written form.'

Another prosecutor, L, from the People's Procuratorate of B district in Xi'an talked about an intentional injury case in which he discussed the possibility of criminal reconciliation only with the suspect's lawyer and then the lawyer successfully persuaded the suspect who originally did not want to participate.[492]

'At first, the suspect N did not want to accept criminal reconciliation as he insisted that he was innocent. His lawyer did not want to participate either. But I approached his lawyer and said to him that since N was preparing for the college entrance examination at that point, it was most important for N to get rid of this case and then to go back to school as soon as possible. Criminal reconciliation could resolve the case in one week and N could get a non-prosecution decision

and no criminal record.

Learning this, the lawyer advised N to accept criminal reconciliation. The lawyer did this out of a desire to protect N's greatest benefits; he as an experienced legal professional knew very well that defending innocence would take too long because it needed very strong evidence, while N could not afford the time. In addition, he might know that it was almost impossible to get an acquittal in cases of this kind. Very likely, the result was going to be a suspended sentence which was not any better than a non-prosecution decision, and it also meant that there would be no criminal record, if N accepted criminal reconciliation. Hence, the lawyer explained this to N and suggested that the best choice was criminal reconciliation. Finally, N agreed to participate in the criminal reconciliation programme.'

Prosecutor L's accounts implied as well that the suspect N showed remorse or admitted guilt just out of the compromise, and the prosecutor in fact did not care whether the suspect had committed the alleged crime. He just wanted to get N to accept his offer of criminal reconciliation.

In the above circumstances, the parties were represented by their parents or agents although there was no legal basis for that. The 'General Principle of the Civil Law of the PR China' provides that the responsibilities of the parents as the juveniles' guardians are only to 'protect the juveniles, manage the juvenile's property, act as the juveniles' legal agents in some civil activities and in compensation claims'.[493] The PRC Law on Lawyers stipulates the responsibilities of lawyers mainly as 'providing legal consultation and participating in litigation/mediation to protect their clients' interests.'[494] Neither law provides that the parents' or agents' intention could replace the juveniles'/their clients' intention. Moreover, the very meaning of reconciliation, and the importance assigned to voluntariness in reconciliation, would appear to preclude the use of representatives in this process. This is shown also in the relevance of regret, which as a personal feeling on the part of a wrongdoer, could surely not be felt by a parent or teacher or lawyer on the

wrongdoer's behalf.

Moreover, the procedure designed for criminal reconciliation required that during the process of getting the parties' (the victim and the suspect/defendant) agreements to participate in criminal reconciliation, the prosecutor/judge should communicate with the parties *directly,* rather than with the parties' legal agents/parents and so on. In this sense, criminal reconciliation was purported to empower the parties to deal with their own case mainly by themselves. If the parties had not been approached and if there was no communication with them at all during this process, how could the officials make sure of their voluntary participation? It was somewhat absurd to assert that the parties truly agreed to participate so long as their parents or agents agreed. To a certain extent, it might also imply that actually the officials did not really care much about the parties' intentions/voluntary participation.

In conclusion, interviews with the officials and parties indicated that in the three locations, the requirements of initiating criminal reconciliation had been violated, at least in some cases. And the officials' conduct was likely to have impaired the parties' voluntary participation in some cases. It seemed that the officials just tried their best to make the parties (the victim and the suspect/defendant or their agents) engage in criminal reconciliation, when they themselves had that decided on that course. In addition, it was implied in some cases that the suspects/defendants were simply viewed as 'criminals' by the officials who needed to be 'educated' and 'corrected' through criminal reconciliation before the suspects/defendants themselves admitted guilt or showed remorse. However, why were officials able to neglect key requirements of criminal reconciliation in the cases examined? And how did the parties' truly feel in these circumstances? These questions are addressed in Chapter Five. Next, let us see what happened in criminal reconciliation meetings.

4.2 The criminal reconciliation meeting

4.2.1 Appropriate communication between the parties in some reconciliation meetings

Criminal reconciliation meetings have been described by some scholars as the essential stage of criminal reconciliation. The reason for the centrality of these meetings, it has been argued, is that many goals of this programme such as reparation of damage to the victim (both financially and psychologically), education of the suspect/defendant, and dispute resolution were expected to be produced chiefly through free communication between the parties in the meeting. As shown in Chapter Three, the case files often stated that 'there was an active and sufficient discussion between the parties in the criminal reconciliation meeting' 'without any official interference'. Such descriptions were substantiated by a few officials in the interviews.

Prosecutor H's accounts of the criminal reconciliation meeting held for case no. seven in location B was an example. This meeting was held in H's office in the People's Procuratorate of D district in Chongqing and attended by the victim and his parents, six suspects and their parents, and both parties' teachers with H presiding.[495]

> 'In the meeting, a platform for face-to-face communication was built for the parties. Each party was asked to raise any question they wanted to the other party. I also arranged various activities like showing the victim's medical record and photos documenting the injury he had received, letting the victim and his parents relate their feelings and pain, and arranged for the teachers to make "educational statements" in the meeting.
>
> When the victim and his parents narrated their worries and sufferings with tears, it could be observed from the young suspects' and their parents' look that they were truly moved. After these communicative activities, I also read a letter entitled "to the suspects' parents" in which I attributed the reason leading to this case mainly to the parents' negligence of their children and emphasized the great significance of family education and much more care and communication in the

family for a young person. At that point, all the suspects cried and apologized sincerely and repeatedly to the victim and his parents at the end of the meeting. Some of the parents also could not help crying and promised better education and supervision of their children in the future. Finally, both parties signed an agreement on compensation in an amount of one hundred thousand Yuan that covered the victim's medical charges, nutrition fee and psychological loss after a peaceful negotiation. The whole meeting lasted for about three hours.'

It sounded as though in this meeting, the parties were provided by the prosecutor with an opportunity to communicate sufficiently. Such expression and communication aimed to repair the victim and educate the suspect. The various activities arranged by the prosecutor, such as the teachers' statements and his reading of the letter, were expected to have some educational effect on the suspects. The prosecutor even took an active role in assigning blame mainly to the parents of the suspects. It seemed effective since the parties (as well as their parents) changed their attitudes and showed regret, according to the responsible prosecutor's description.

Yet the prosecutor's conduct was debatable in itself. First, the arrangement of showing the photos of the victim's wound might make the victim feel upset and hurt again. Then, those 'educational activities' might be shameful for the suspects, especially considering that they did not admit guilt at that moment. Last but not the least, the prosecutor in charge attributed the main responsibility for the alleged crime to the parents in the meeting. This might be somewhat unfair to the parents even though they did not show discontent in the interview, since the reasons for a crime are complicated, ranging from the general context like society and school to the family and individual. In this case, whether this particular criminal reconciliation meeting really had produced those outcomes and satisfied the parties could only be addressed through learning their actual feelings and comments, which is discussed in Chapter Five.

Examples of a criminal reconciliation meeting with much communication between the parties were also provided by some parties in the interview. L, the

suspect of case no. six in location A (a theft case) described the criminal reconciliation meeting he once attended as involving a lot of communication between the parties.[496]

> 'This case was resolved through only one face-to-face meeting attended by me, my boss, the victim K and K's leadership and presided over by the prosecutor F.
>
> During the meeting that lasted for about two hours, I first related the reason why I committed the suspected crime and my remorse over that. I then apologized sincerely to K. Following that, my boss talked about his assessment of me as an employee and asked K seriously to consider forgiving me and giving me another chance. Then K talked about his feelings and at last indicated his forgiveness.
>
> After that, I asked K to indicate how much compensation he asked for. Since his motorbike [taken away by the suspect] had been quickly retrieved, he put forward the requirement of compensation for a new lock and his loss of reputation caused by the theft of his motorbike. Given that the loss of reputation was hard to evaluate precisely and he knew that I was not rich, he only asked for two thousand Yuan. F did not comment on this compensation requirement and only asked about my opinion on that. I accepted immediately. Then we signed an agreement and I paid the money on the spot. Then the whole process ended in a peaceful atmosphere.'

The above descriptions from prosecutor H and L showed that criminal reconciliation meetings in these cases were truly a place for the parties to communicate sufficiently and freely, which meant that they could express whatever they wanted without the officials' interference or pressure. And such a meeting sounded as if it had produced the expected outcomes such as repairing the damage the victim suffered because of the alleged crime, educating the suspect/defendant, satisfying the parties, and resolving the dispute.

In my view, however, their accounts might already indicate a problem with a criminal reconciliation meeting. The criminal reconciliation meeting in these two cases was characterized by extensive participation and observation, which might cause some negative impacts on the parties. As raised in the last section of Chapter Three, it might put pressure on the parties, which would impair the parties' voluntariness, satisfaction and the effect of dispute resolution. This problem is also addressed in Chapter Five with the parties' accounts.

4.2.2 Focus on bargaining over compensation

Contrary to the character of the criminal reconciliation meetings described above, it was also found in the interviews that in some cases, the parties did not communicate or even meet at all in the criminal reconciliation meeting.

Sometimes, the parties went to the criminal reconciliation meeting but did not communicate with each other. The criminal reconciliation meeting was thus just a place for their families to bargain over the amount of compensation. This most often happened in juvenile cases. For instance, J, the victim of case no. nine in location A (a juvenile intentional injury case) described the meeting he attended as follows.[497]

> 'It was really a terrible thing, for I did not want to see the suspects and mention my hurt anymore actually. Accordingly, I did not say anything in the meeting. And I have not received any apologies from the suspects to this day. The only impression I had of the meeting was that it was a bargaining process about the amount of compensation between our parents. I did not even want to look at the agreement containing the compensation amount when it was finally reached.'

Sometimes, the suspect and victim did not meet each other at all in the criminal reconciliation meeting. Examples were the two criminal reconciliation meetings held for case no. five in location C (a juvenile robbery case), which were attended only by

the juvenile suspects' parents and lawyers. L, the judge responsible for this case, described this meeting as follows.[498]

> 'After both parties' written agreements to participate in the criminal reconciliation programme had been obtained, I presided over the first criminal reconciliation meeting in the People's Court of B district in May 2010. The victim and his parents, all the defendants' parents and their lawyers attended the meeting. Since all the defendants were still detained at that moment, they did not attend the meeting.
>
> In the meeting, the victim M first talked about his hurt and negative emotions after the case. Then the defendants' parents apologized to him and said that it was also their fault, as they did not educate their children well. They also presented statements I had required them to write before the meeting about guaranteeing better supervision over their children to prevent them from reoffending, and documents showing that there were schools willing to accept their children during the probation period if the defendants could get suspended sentences. As all the defendants were still in detention, their lawyers conveyed their regrets and apologies to the victim on their behalf. Subsequently, M expressed his forgiveness and acceptance of the apologies.
>
> Then they turned to bargaining about compensation. However, even after nearly one hour of bargaining, they could not reach any agreement. The defendants' parents and lawyers argued that the victim's proposition of fifty thousand Yuan was too high and they really could not afford this sum. Yet the victim's parents were unwilling to make any concessions. I tried to mediate between them, but I failed since both parties were quite insistent at that time.'

Two months later a second meeting was held also in the People's Court of B district.[499] This time in addition to all the participants of the first meeting (but the defendants remained in detention), L also invited an official of the Justice Bureau to observe the meeting. L mentioned that the reason for inviting that official was merely

that the official had once expressed to her some interest in criminal reconciliation meetings. L also described the second meeting.[500]

> 'The content of the second meeting was all about compensation. I further stressed to M and his parents that all the three families of the defendant-party were really poor; one of them even lived on a state subsistence allowance. Besides, what they asked for was indeed far higher than the court would normally award in damages in this kind of case. The official of the Justice Bureau also helped me with this mediation. Then, after another one hour's negotiation mainly between the two parties' parents, an agreement on a compensation sum of thirty thousand Yuan was finally reached. The money was paid to the victim by the defendants' parents on the spot at the meeting. After getting the money, I required M to provide a statement requesting a lighter sentence for the defendants.'

To sum up, although criminal reconciliation agreements were still reached in these two examples, the criminal reconciliation meetings, either in the suspect/defendant's absence, or in his/her presence but without substantive contribution from him/her to the reconciliation process, could hardly be evaluated as having served the predicted outcomes. This is because all these objectives such as restoration of a good relationship, redress for harm done to the victim (except by payment of damages), or rehabilitation or education of the suspect/defendant were expected to be served by sufficient communication and discussion between the parties in the criminal reconciliation meeting. In addition, the criminal reconciliation meetings in these cases mainly appeared to focus on compensation, not on the parties themselves.

With regard to the defendant's reluctance to talk in the criminal reconciliation meeting, it might be because of the problem pointed out in the first section that the official merely asked for his parents' opinions on 'voluntary participation'. This was supported by the interview with the defendant J, and is shown in the following chapter. The reason for the defendants' absence in the second example was their

being in detention according to the responsible judge's accounts. This was symptomatic of a problem with the Chinese judicial system, much criticized by Chinese scholars, namely the long period of custody (*jiya*) of the suspects/defendant.

Custody, *jiya,* including pretrial custody and custody during trial, is a situation resulting from detention (*juliu*) and arrest (*daibu)*.[501] It is reinforced by the fact that detention centres (carrying out detention, *juliu,* and arrest, *daibu*) are under the responsibility of the Public Security Bureau, that is to say, the criminal investigation authority in most cases discussed in the present context.[502] A serious problem with the detention system, according to much literature, is that it is as a custom always extended for a long period. According to the 1996 PRC Criminal Procedural Law, criminal detention (*juliu*) can be extended up to 37 days in exceptional cases; but the exception is widely thought to have become the norm in practice.[503] Criminal arrest (*daibu*), as stipulated in the Criminal Procedural Law, can be extended to five months.[504] In addition, there is almost no supervision or examination in deciding extensions, and detention will in some cases continue beyond such stipulated time limits as long as the case is not closed.[505] As disclosed by some reports, the suspects/defendants in some cases have even been detained for over ten years.[506]

It is very problematic that detention, as a measure to limit and deprive the individuals of their freedom, can be imposed before the Court adjudicates a case almost in an arbitrary way. Even worse, suspects/defendants in detention are usually simply viewed as criminals, since there is no 'presumption of innocence' in the Chinese legal system.[507] In this context, individual rights are easily subverted by public power, which has constituted a constitutional problem.[508]

The origins of this problem have been discussed in academic work as well. Concerning custody especially after a case is transferred to Court, which is recognized as happening most often in practice and is shown in this case, there are two main causes. The first is the intimate cooperation among the Public Security Bureau, the People's Procuratorate and People's Court in dealing with a case, which is described as a 'line process'.[509] In this context, these three organs are positioned as 'working together' to resolve a case. As a result, one organ, like the Court, would

hardly challenge the decisions or conduct such as detention made by the other two organs.[510]

Furthermore, it is actually very difficult for the People's Court to challenge the Public Security Bureau's decisions or conduct. This is because the power of the Public Security Bureau, as both an investigation organ and administrative organ in China, is so strong.[511] The position of the Public Security Bureau is widely viewed as higher than that of the People's Procuratorate and People's Court.[512] This is also reflected in the custody system. By means of custody, the Public Security Bureau holds absolute power to limit and deprive the suspects/defendants of their rights and freedom before the Court hears or adjudicates a case.[513] This problem is aggravated by the structure of the Chinese criminal process, in which 'investigation dominates' and 'confession is the king', so that what the People's Court (and the People's Procuratorate) do is mainly to 'confirm' the investigation outcome transferred by the Public Security Bureau.[514] This problem is further demonstrated in Chapter Five and discussed in Chapter Six.

When judge L mentioned that she could not get the defendants out of the detention house for criminal reconciliation and refused to say more about this issue,[515] it was possible that her request had been refused by the detention house. Yet it was also possible that she did not make that request, in light of the problem pointed out above, namely that the officials cared most about achieving a compensation agreement that allowed them formally to conclude the case, irrespective of the genuine views and wishes of the parties.

In the case file examination, there was one case in Changzhou in which no criminal reconciliation meeting was held and the criminal reconciliation agreement was reached only through the official's discussion with the respective parties. Although the author could not find the parties of this case to interview, it was even harder to tell if a criminal reconciliation programme of this kind could serve the official goals of the system, goals of repairing the victim and educating/correcting the defendant since there was no encounter at all between the parties. This further

strengthens the impression that what the officials cared about most or essentially pursued was only a compensation agreement to close the case.

4.2.3 Private agreement reached prior to the formal reconciliation meetings

In this circumstance, the criminal reconciliation was quite simple as well. Prosecutor Y described such a criminal reconciliation meeting held for case no. eight in location B (a traffic accident related crime case).[516]

> 'The criminal reconciliation meeting proceeded in a peaceful atmosphere. It did not last for a long time since the parties had reached an agreement privately beforehand. In the meeting, the suspect O apologized to the victim's son P (the victim died in the traffic accident) sincerely which was accepted by P. Then, an agreement which was in accord with their private agreement was signed, and the meeting finished.'

In fact, in this interview, the officials and parties often indicated that the compensation in the criminal reconciliation agreement reached at the end of the criminal reconciliation meeting was 'paid on the spot'. In this case, it was likely that much private negotiation had gone on prior to the official criminal reconciliation meeting, because compensation in those cases was not a small sum of money which one would normally bring to the meeting. In this sense, it was far-fetched to say that it was the criminal reconciliation meeting that reconciled the parties. They had virtually reconciled themselves. Hence, the formal criminal reconciliation meeting was simple and short. One would not expect such a criminal reconciliation meeting (formally confirming a prior compensation agreement) to produce the other outcomes such as victim reparation and suspect/defendant education.

The problem with private negotiation in these (minor) criminal cases, nevertheless, was somewhat complicated. In this circumstance, the (minor) criminal cases were resolved through civil means and the judicial authority merely confirmed

the outcome. Discussion of the relationship between the Tort Law and the Criminal Law (or, tortious liability and criminal liability) has been much in domestic academic work. On the one hand, scholars criticize the traditional definition of crime as individuals' infringements upon the interests of the State' and argue that crime is also an infringement upon the individual interests.[517] On the other hand, these scholars maintain that Tort Law and Criminal Law are not detached, and have considerable overlap.[518] Some further contend that crimes stipulated in the Criminal Law are in essence also tortious, and that tortious liability should be prior to the criminal liability.[519] This indicates balance and allocation of power between judicial authorities and individuals in the criminal justice system. However, even though there is much overlap between Tort Law and Criminal Law and they are closely connected, there are differences between them.[520] The Criminal Law is to deal with those relatively serious offences that infringe relatively more widely and seriously.

In this sense, it is debatable and improper whether criminal cases (even if they are minor ones) should be essentially and mainly resolved privately by the parties. More importantly, in the private negotiation, it is likely that improper or illegal conduct coercion would occur, especially considering the pressure the suspect/defendant faces in that situation, namely that he/she would confront the rigid criminal justice system if he/she fails to reconcile with the victim. In fact, either party with stronger power could impose pressure to the other party easily as the outcome of 'reconciliation' is preferable for himself/herself. This constitutes further harm to (the other/weaker) party' interests and may re-victimize the victim.

4.2.4 Pressures on the parties to reach agreements

An impression that the officials would not interfere with the parties' intentions in reaching a criminal reconciliation agreement was obtained from the case file examination. This also emerged in the interviews. For instance, prosecutor L from the People's Procuratorate of B district in Xi'an stressed the official's respect

regarding the parties' own intentions in reaching a criminal reconciliation agreement.[521]

> 'Criminal reconciliation is mainly done by the parties themselves. We will at most help them reach an agreement. For example, we will persuade the suspects to apologize and compensate for a better outcome, and we will tell the victims that getting a considerable amount of compensation efficiently is best for them. But we will absolutely respect the parties' willingness. We will not coerce them to reach an agreement. If they cannot reach an agreement, the case will just go back to the normal procedure.'

However, the author did not come across one case in which no agreement was reached at the end of the criminal reconciliation meeting. Maybe this resulted from the official's great passion and efforts to 'help' the parties to reach an agreement. It was found that the officials would repeatedly hold criminal reconciliation meeting(s) for the parties' further discussion on compensation amount (see the above example of case no. five in location C provided by judge L). Alternatively, perhaps those cases in which no agreement was reached were simply not filed as 'criminal reconciliation case', especially given the possibility raised in Chapter Three that the officials would select the 'best examples' for me to examine.

This caused two potential problems. On the one hand, some officials stated that criminal reconciliation had taken too of their time and energy. On the other hand, in such circumstances, the officials' manifest interest might put pressure on initially reluctant parties to make them reach an agreement. It could not be excluded that the parties were in some cases afraid of some worse outcome if they 'offended' the official who would still be the one in charge of their case in the event of being transferred back to the normal procedure later.

4.2.5 Compensation as the main content of criminal reconciliation agreements

In terms of the content of the criminal reconciliation agreement, whether it was reached by the parties in the official criminal reconciliation meeting or privately prior to the official programme, the case files showed that compensation was the absolute focus and main component. This was also substantiated by accounts from the officials and parties interviewed. Interviewees often described the agreements as 'the amount was more than the court would sentence', and 'they were performed promptly' or 'on the spot'.

4.2.6 Clauses added by officials into criminal reconciliation agreements

In some cases, as disclosed in the interviews, the content of the criminal reconciliation agreement was really reached by the parties themselves. The agreement could also include a part not provided in the current laws. For example, K, the victim of case no. six in location A, had asked for compensation on his 'loss of reputation because of theft' at the end of the criminal reconciliation meeting, which was agreed by the victim and written into their agreement.[522] Also, it was not a problem if the victim wanted to waive compensation. In case no. five in location A (a theft case), the parties signed an agreement without reference to any compensation requirement (but it was the only such case the author encountered in the three locations). The victim in this case told the author that 'I did not want any extra compensation; I only wanted to hear the victim's sincere apology'.[523] In these cases, the criminal reconciliation agreements were on based on the parties' own wishes.

However, in some other cases, the officials had actively put some content into the criminal reconciliation agreement. There were two examples - the criminal reconciliation agreement reached in case no. five in location A and case no. eight in location B. They both contained a clause that 'the parties were not allowed to go back on their agreement reached in the criminal reconciliation meeting' and 'if there was any further dispute between the parties concerning this case after they signed the criminal reconciliation agreement, they were not allowed to appeal the case to Court'.

The parties and prosecutors in these two cases told the author that such a clause was added in the agreements by the prosecutors.[524]

Such a clause infringed on the parties' procedural appeal rights as stipulated in the Criminal Procedure Law. Articles 145 and 146 of the 1996 PRC Criminal Procedure Law stipulate that both the victim and suspect have the right to present an appeal to the People's Procuratorate if they are against the decision of non-prosecution.[525] Articles 180 and 182 provide the defendant with rights to appeal to the People's Court at the next higher level and the victim with rights to request the People's Procuratorate to present a protest when they refuse to accept a judgment or order of the first instance trial.[526] Although there was still no legal basis for the validity of criminal reconciliation agreements reached by the parties when the author conducted the empirical work, it was still illegal for the officials to just simply put the clause impeding the parties' further appeal in the agreements. Yet why did the official do this? The motivation of the officials' conduct is addressed in the next chapter which analyzes the officials' roles in criminal reconciliation.

4.3 Factors affecting official decisions in criminal reconciliation processes

4.3.1 Focus on fulfillment of compensation obligations

As noted in Chapter One, as provided in the local regulations or guidelines, after the parties had performed the criminal reconciliation agreement, the responsible official should make a decision about the case. The prosecutor could make a decision of non-prosecution (with expunging the suspect's criminal record), or suggest that the Public Security Bureau to drop the case[527], or suggest to the People's Court that it should impose a lenient punishment on the defendant; the judge could give a lenient punishment or a suspended sentence. The case files showed that all the cases examined were officially closed with one of those decisions. Interviews further supported this finding, and showed more details concerning the officials' conducts in

practice at this stage. For instance, Prosecutor S from the People's Procuratorate of B district in Xi'an talked about the prosecutors' conduct in decision-making.[528]

> 'Most of the non-prosecution cases in our public prosecution division concern traffic accident related crimes. Only a few are minor intentional injury cases. Actually, in the traffic accident related crime cases, often the police would mediate at first; it is a necessary procedure of their work.[529] If they succeed, they will transfer the case file enclosed with the parties' agreement to us. Then we will examine the case file and the agreement for decision-making. If the police fail, they will transfer the case to us for further reconciliation/mediation.
>
> In the traffic accident related crime case, if the suspect can get the victim's forgiveness and they can reach an agreement on compensation, we will make a decision not to prosecute or suggest a lenient sentence to the Court.
>
> Usually we will not prosecute a suspect if he/she has paid a large sum of compensation (i.e. fully or over-compensate the victim) given that in this circumstance, the victim could be largely satisfied and we could say that the suspect's risk to society is somewhat minor. We will still prosecute a suspect if he /she can only partly compensate the victim, but meanwhile we will present a "sentence recommendation report" to suggest a lighter punishment for the suspect to the Court. Then, there may be two kinds of result for the defendant in Court: a suspended sentence or a shorter period of custody. As far as I know, judges will always take our recommendation and most of the defendants will be given a suspended sentence.'

It sounded as though the amount the suspect had paid to the victim was the most crucial or even the only consideration for the prosecutors in making their decision to prosecute or not or in deciding about a 'sentence recommendation'(*liangxing jianyi*)[530]. In prosecutor S' view, it also reflected the suspect's remorse and risk to society, and the victim's satisfaction. This situation also existed in the People's Court.

Judge D from the People's Court of B district in Xi'an provided a copy of an 'internal guideline' in his Court about cases in which a criminal reconciliation agreement had been reached. This rule read that 'in a case where the defendant has actively compensated the victim, the defendant *ought to* be considered for a lenient punishment'. 'The degree of the sentence reduction *should* take into account the circumstances of the crime, the compensation amount, and the victim's attitude towards the compensation (to what extent the compensation could satisfy the victim)'.[531] 'In the event that the defendant has actively compensated the victim and obtained the victim's forgiveness, the sentence *could* be reduced by 20 to 50 per cent of the sentence made according to the Criminal Law and the crime's risk to society (which was termed as *ji zhun xing* in the rule).'[532] 'In the circumstance that the defendant has fully compensated the victim, the sentence *could* be reduced by less than 20 per cent of the *jizhun xing*.'[533] 'In the circumstance that the defendant has partly compensated the victim, the reduction should be less.[534] 'If the defendant has compensated more than the victim's loss, there should be a further reduction'.[535] Each judge needed to fill in a form formulated according to this rule to demonstrate how the sentence he/she adjudicated was 'calculated'. This form is translated and enclosed as appendix of this thesis.

It could be seen from this 'internal rule' that the defendants' different economic circumstances, determining their ability to provide compensation, were directly linked with the distinct results they could secure in the criminal reconciliation programmes. Hence, although all the official decisions made by prosecutors and judges were in accordance with the designed procedural regulations or guidelines, the mechanism leading to these different decisions was flawed in terms of the rules governing it, which violated the spirit of criminal justice, the idea of equality before the law.

The problem of unfairness in criminal reconciliation has been heavily criticized by many scholars, as noted in Chapter One. In this sense, criminal reconciliation was hotly debated as a system in which the rich can pay money to avoid penalties while the poor who cannot pay compensation were excluded from this programme.[536]

Although some scholars argued for criminal reconciliation by saying that compensation was not the focus of this programme, the information obtained in my interviews indicated that at least in the three studied locations, compensation was indeed the absolute focus.[537]

As shown in prosecutor S's accounts, the prosecutors would make a decision of non-prosecution if the suspect fully or overcompensated the victim. In the People's Court, as provided in the 'internal guidelines,' the sentence the judge would impose was directly related to the amount of compensation the defendant had paid. Although it was also true that, the officials would usually consider some other factors in decision-making such as the suspects/defendants' risk to society and the suspects'/defendants' remorse, it was more likely that they plainly identified these factors with how much the suspects/defendants were able to pay. A lawyer interviewed also mentioned this problem based on his own experience of being an agent in a couple of criminal reconciliation cases.[538]

> 'The biggest problem I ever met in the criminal reconciliation programme was that the suspect/defendant was too poor to pay the compensation the victim asked for. Then the parties could not reach an agreement and the suspect/defendant had no means to get the result of non-prosecution or a lighter/suspended sentence. In this sense, I think that criminal reconciliation is an unfair programme. Since money is the most important thing in this programme, it is easy to get the impression that the Criminal Law or criminal penalty is just for the poor people who cannot enter criminal reconciliation due to lack of money. As a lawyer, I do not know how to resolve this problem. Perhaps the poor people could only accept it. It is really disappointing.'

In sum, the interviews showed that compensation was the absolute focus in the officials' decision-making in the criminal reconciliation programmes. This finding to a certain extent supports the criticism that criminal reconciliation is unfair to suspects/defendants with different financial circumstances. It was also found in the

interview that criminal reconciliation programmes that focused on compensation had caused difficulties even to the suspects/defendants who had paid compensation and obtained the prescribed outcomes. And compensation, as argued later in Chapter Five, did not necessarily have the desired effect on repairing or satisfying the victim as mentioned by the officials. These points are discussed in the next chapter along with the parties' accounts.

4.3.2 The lack of judicial independence

It was also provided in the procedural procedure and guideline as shown in Chapter One that decisions on criminal reconciliation could not be made by the presiding prosecutor/judge alone and had to be sent for discussion by the procuratorial committee or judicial committee before the responsible officials announced them. This provision was in accordance with the 'Criminal Procedural Rules of the People's Procuratorate' and the 'Relevant Opinions on Reforming and Improving the Judicial Committee System of the People's Court'.

The case files showed, with the exception of one case, that the responsible prosecutors/judges' decisions in the criminal reconciliation cases examined were all smoothly approved by the procuratorial/judicial committee. Only in case no. five in location C (a juvenile robbery case), was the responsible judge L's suggestion for a suspended or lighter sentence for the defendant Q rejected by the judicial committee. Judge L talked about this situation in the interview.[539]

> 'In the first instance trial of this case, the defendant Q, as the leader in the suspected robbery case concerned, did not get a lighter sentence or a suspended sentence. In the judicial committee' discussion of this case, although I had tried very hard to present the reasons for a lighter sentence or suspended sentence for all the defendants, unfortunately they were not wholly accepted by the committee. The president and vice-president of the Court insisted that it was not

appropriate to grant a suspended sentence or lighter sentence to the leader Q in the context of a "strike hard" (*yanda*) campaign nationwide currently.'

L then mentioned that, in fact, this requirement had been her principal difficulty in conducting criminal reconciliation.[540]

'Actually, my "leaders", namely the president and vice-president of the Court, did not support criminal reconciliation, so my suggestions were often rejected. I feel confused and frustrated as my decision was based on a serious consideration of the defendants' situation, which could convince me that a suspended sentence was much better for their rehabilitation and future life. Yet in fact, those who did not quite understand the situation and the case had the final say. The leaders' decision ruined my hard work over long periods of time in one stroke.'

Judge L's difficulty actually implied a long-standing problem attracting much criticism, namely the problem that there is no judicial independence in China.[541] As pointed out by many scholars, there is neither external nor internal judicial independence in the Chinese judicial system.

In terms of 'external' judicial independence, not only is the judicial system as a whole not independent from the Party and the People's Congress, but also the Court is subject to the government and the Party Committee at the same level.[542] The PRC Constitutional Law only provides that the People's Courts are not subject to interference by any administrative organ, public organization or individual, while they have to be under the Party's leadership and the People's Congress's supervision.[543] The Commission of Politics and Law (*zhengfa wei*) was established by the Party in central and at all levels to manage and control the work in the Public Security Bureau, the People's Procuratorate and the People's Court.[544] Besides, finance and staffing of the People's Court are controlled by the government and the Party's Committee at the same level.[545] The problem of the lack of judicial

independence, and the intervention to the People's Court by the Party and the local governments will be discussed in greater detail in Chapter Six.

In terms of internal judicial independence, the judge as an individual decision-maker in the Court cannot adjudicate a case independently. Judicial authority lies in 'the court' not in the individual judge. This problem is shown in judge L's accounts on this criminal reconciliation case. It is chiefly due to the internal structure of the Chinese Court which is virtually an administrative or authoritative one.[546]

According to the PRC Judge Law, there are twelve ranks of judges in the Chinese Courts and the hierarchy between judges with different ranks is very rigid.[547] The relationship between judges with different ranks is that of superior and subordinate.[548] Not only does the judicial committee have the final say in some kinds of case as stipulated in law, it is even normal in the Chinese Courts that judges would simply ask for directives and instruction (*zhishi*) from their 'superiors' when they judge cases.[549] In this regard, the Chinese Court is described as having the characteristic that 'those who sentence the case did not hear it' (*pan er bu shen*).

In such an administrative and hierarchy system, the judges' aim in their daily work tends to pursue a higher rank (by achieving the task imposed by their 'superiors' and observing their superiors' indicative and instruction), rather than judging cases justly and fairly according to law.[550] Even worse, due to the lack of transparency and the application of challenge system in the *zhishi* system and the judicial committee, the 'superiors'' power is easy to abuse which produces possibilities of under-table trade and corruption.[551] This problem has also been criticized as being the origin of judicial injustice in the Chinese judicial system.[552]

Concerning the impact of this problem on criminal reconciliation specifically, as indicated by judge L, it made the criminal reconciliation programme fail to reach her expectation. It was indicated in the interview that this problem also made criminal reconciliation disappoint the defendant. This is further discussed and illustrated in the next chapter.

4.4 Insights into follow-up programmes

4.4.1 Limited substantiation of findings in case file examination

As provided in the procedural regulations or guidelines, after the criminal reconciliation meeting finished, a follow-up programme could be arranged by the official. It was an option decided by the official, and the case files showed that this programme was undertook in some cases, especially involving juvenile though they constituted the minority of the cases examined. The interviews mostly substantiated such findings, while adding more detail.

As also shown in the case files, the follow-up programmes took a variety of forms. It could be a 'supervision period' lasting for several months. During this period, the suspects/defendants had to do some voluntary work and to report about their life and their thoughts regularly to the officials, and the officials would liaise with the suspects/defendants' teachers or employers or families for updates on how the suspects/defendants were doing. G, the suspect of case no. five in location A (a juvenile theft case) described the follow-up programme of this form in his case.[553]

> 'After the criminal reconciliation agreement was signed by me and the victim, the prosecutor F told me that there would be a five-month-period of "supervision" for me. The decision of non-prosecution could only be confirmed if I was assessed as "having performed well" during this period by F, otherwise, the decision of non-prosecution would be revoked and I would still be prosecuted.
>
> During this period, my teacher would regularly communicate with me to help me make progress in terms of my studies, my life and the development of moral character. Moreover, F arranged some voluntary work for me (i.e. helping an advertising company to produce some public service advertisement). I was also required to submit a "thought report" (*sixiang huibao*) to F every month, and F often called me and my teacher to ask about my progress and situation. I

was even invited to participate in an activity organized by the X district People's Procuratorate on Tree Planting Day. All the activities really let me feel cared for. After five months, I got F's positive evaluation and confirmation on the decision of non-prosecution as expected.'

In some cases, the follow-up programme merely consisted in the official's continuous contact with the suspects/defendants, their families and teachers over a period of several months. For example, in case no. seven in location B (a juvenile intentional injury case), after the criminal reconciliation meeting ended, the responsible prosecutor H kept in touch in this way for about three months.[554]

H told me in the interview that during this period, he traced the suspects' performance at home and in school by calling their parents and teachers regularly in order to satisfy himself that criminal reconciliation had produced what he termed a 'good correction effect' (*jiaozheng qingkuang lianghao*) on them. After continually getting positive comments on the suspects from the parents and teachers such as 'they did not make any serious mistake' and 'they worked hard at school' during this period, H confirmed that the suspects would not be prosecuted.[555]

The follow-up programme could also take the form of a so-called 'teaching and help' programme (*bangjiao*) which could be conducted by volunteers or by the officials who had been in charge of the criminal reconciliation process. Documents enclosed in the case files, as discussed in Chapter Three, have served to give an understanding of the process of 'teaching and help' programme (*bangjiao*), but interviews provided more details. Prosecutor Z from the People's Procuratorate of Y district in Xi'an described the 'teaching and help' programme in her Procuratorate as follows.[556]

'The "teaching and help" programme is arranged for juvenile suspects. It is conducted by the community the suspects lived in and often takes the form of legal education or volunteer work arranged for the suspects. We will also invite the suspects to participate in some activities organized by our Procuratorate such

as the art show last month. They sang a song or read a poem in that show, which was really great. We have also cooperated with the Northwest University of Politics and Law to do the "teaching and help" programme. We will arrange two college students to help one juvenile suspect during this period. The volunteers will have conversations with them, take them out to parks or museums, and visit their families regularly.

At this stage, we will not interfere, because for one thing, we do not have so much time; for another, the young suspects would communicate better with those college students as they might still be kind of fearing us. The volunteers have to report on the suspects' performance to us every month. If their reports show that the suspects perform well, we will confirm the decision of non-prosecution.

I think that the "teaching and help" programmes were of great significance for young suspects. This programme could educate and correct them; they may get worse via following the "bad examples" in the prison.'

What prosecutor Z described with regard to the 'teaching and help' programme in her Procuratorate was similar to 'teaching and help' programmes the author learned about in the interview with judge L when she talked about this programme arranged for case no. five in location C (a juvenile robbery case).

In this case, L in her functions as judge in charge of the case and criminal reconciliation process, decided that the two suspects, S and T, who had received suspended sentences, were to participate in a 'teaching and help' programme for half a year after the criminal reconciliation agreement had been reached in their case.[557] Such an arrangement was not a part of the parties' criminal reconciliation agreement. It was absolutely up to the responsible officials' discretion and the suspects/defendants seemed have no chance to object – the officials did not even ask for their opinions on it.

The 'teaching and help' programme in this case talked about by judge L was undertaken by volunteers who were college students. Two college students were

assigned to be responsible for one defendant. Those volunteers were to chat with S and T, visit their families and teachers about once a week to get updates on how they were doing, and take them out for hiking and so on.

The volunteers had to provide reports on the situation of S and T to judge L. During this period, S and T were also required to write a 'thought report' (*sixiang huibao*) about their study, life and thoughts every month to L. If L found from the reports that these two defendants had done something that violated laws or administrative regulations or regulations of the Public Security Departments of the State Council during this period, the suspension of the sentence would be revoked and the punishment would be enforced.[558]

4.4.2 The effects and problems of the follow-up programmes

Information and personal assessments provided during the interviews suggested that the follow-up programmes, no matter what form they took, had produced a good effect of suspect/defendant rehabilitation. For instance, the parents of the suspects of case no. seven in location B told the author that 'we felt that our children grew up rapidly after it and became more mature than before'.[559] 'They studied much harder and their teachers in the school often praised them now'.[560] L, the suspect of case no. six in location A said to the author that 'this work lasting for half a year let me reflect deeply about myself and I feel that I have matured rapidly through this process'.[561] 'I will definitely not do such things in the future, and I really appreciate this chance the prosecutor and the victim gave me.'[562] These assessments were in accordance with the case files materials.

Nevertheless, judge L from the People's Court of B district in Xi'an mentioned her worries about the 'teaching and help' programme in the interview.[563]

> 'In the normal criminal procedure, normally the juvenile case would not be heard in public according to the Criminal Procedure Law.[564] That is to protect the juveniles. But in the 'teaching and help' programme, people living around

the young suspects would all come to know about the case. I think this may have some negative influence on the young people.'

Judge L's worries are reasonable; the discussion in Chapter Five of the roles played by people in the parties' (suspects'/defendants' and victims') social environment may shed some light on her worries.

4.4.3 The potential failure of the official aim of correcting the suspect/defendant in criminal reconciliation cases without follow-up programmes

As noted in Chapter Three, one juvenile case (in Changzhou) and all the adult cases in the three studied locations did not include any follow-up programme. Since the follow-up programme was designed to be optional and its use was left to the responsible official's discretion, cases without a follow-up programme still followed existing procedural regulations or guidelines. But it remains to be asked, as we did in Chapter Three, how well criminal reconciliation worked in cases without follow-up programmes. The interviews provide some indication that in cases without follow-up programmes, the results achieved were not good. For example, Y, the coach of the juvenile parties of case no. nine in location A, described the young suspects' situations after the conclusion of the criminal reconciliation programme without any follow-up programme.[565]

'After the case was resolved, one suspect U performed well; and he has just been selected by the professional judo team of Jiangsu province; the other two suspects V and W, however, left the school shortly after the programme ended. They gave up sports training and now worked as bodyguards in an organization to earn money because they owed too much money and their parents were unlikely to be able to pay it off [without contributions from the juveniles]. It was difficult for them to find some other job due to their lack of education and diploma. I often heard that they were not doing well and fought with others in

this work.'

However, it appeared that the responsible prosecutor F of this case knew nothing about the suspects' situations since there was no follow-up programme arranged. Hearing the coach's account, F yelled,[566]

> 'Why did not you tell me about that situation? I have not contacted them for long. I will definitely find V and W and talk to them. I believe that I can persuade them to go back to the school or find another job! Do not worry.'

Given the smallness of the sample of cases studied for the purpose of this dissertation, it certainly remains possible that in other cases without follow-up programmes, suspects/defendants still performed well. After all, the criminal reconciliation meeting was in itself designed to have the effect of 'correction' and 'education' of the suspect/defendant. Moreover, access to the parties of criminal reconciliation cases was limited and those parties who had participated in *bangjiao* programmes may have had additional reasons for assuring the author that the programmes had been effective.

However, the different situations of the suspects/defendants in the cases with and without follow-up programmes as shown above at least to a certain extent strengthened the point that a follow-up programme was crucial for suspect/defendant rehabilitation; the expected goal of rehabilitating the suspect/defendant might be hard to achieve if there was no follow-up programme. Concerning the reason why there was no such programme in the majority of cases, although an assumption that it was due to the conflicting goals of correcting the suspect/defendant and promoting judicial efficiency was raised in Chapter Three, more causes are analyzed in the following chapter along with the narratives from the officials.

4.5 Summary

To sum up the evidence collected in the interviews, some of the officials' and parties' accounts support the generally positive picture of criminal reconciliation that emerged from the case files. They have shown that criminal reconciliation practices operated in accordance with the procedures officially designed. But as shown in this chapter, the interviews also indicated a number of problems with this programme that could not be identified through case file analysis.

At the initiation stage, the preconditions for initiating a criminal reconciliation programme were sometimes not complied with by the officials. In case no. seven in location B (an intentional injury case) and case no. nine in location A (an intentional injury case) , for instance, in trying to get the parties' 'voluntary participation' the officials persuaded the parties very strongly, or merely approached the parties' parents or agents, instead of the parties themselves. Such conduct was not in accordance with the procedure as designed and might have impaired the voluntariness of the parties' participation. In one case, the interviews suggested that that the suspect/defendant had admitted guilt just out of practical considerations like time and money, while they did not truly admit guilt or feel remorseful.

In four cases, the criminal reconciliation meeting had various activities arranged by the official in charge, and was attended and observed by a number of people other than the parties, such as the parties' teachers, schoolmates or employers. In these circumstances, the parties' voluntariness and real needs might be impaired by such an extensive observation. Yet in some other cases, the meeting was so simple that it mainly focused on compensation bargaining. In some circumstances, the parties had already reached an agreement privately prior to the official criminal reconciliation meeting. In other circumstances, the parties did not communicate or even actually meet in person in the 'meeting.' In three cases, the officials held repeated criminal reconciliation meeting(s) until the parties had reached an agreement. This conducts might be a kind of pressure for the parties.

In terms of the criminal reconciliation agreement, compensation was the absolute focus. In two cases, the officials had added a clause to the agreements in an

attempt to prevent the parties' appeal, which as argued above, infringed the parties' legal rights.

As to the officials' decision, the suspect/defendant's ability to pay compensation was what the officials chiefly considered in decision-making, which was unfair to suspects/defendants in different economic circumstances. The requirement of submitting the decision to procuratorial/judicial committee discussion before the responsible official could make the decision embodied the flawed judicial independence in China and was viewed as a difficulty by officials in implementing criminal reconciliation.

With regard to the follow-up programmes, cases with such programmes showed a positive effect on correcting the suspects/defendants while this effect was not satisfactory in those cases without such arrangements. This might to a certain extent show that follow-up programmes are important to suspect/defendant rehabilitation.

Therefore, by and large, this chapter has drawn a picture showing that in the three studied locations, criminal reconciliation practices complied with the designed procedure less than suggested by the official case files. It might to a large extent support the assumption that the case files examined were selected as 'the best examples' by the officials, and it was likely that the officials might have artificially used the case files to make the criminal reconciliation practices look in accordance with the designed procedure.

The findings raise questions concerning the reasons for the procedural departures shown in this chapter. However, the reasons provided in Chapter Three for the violations, namely the problematic provisions in the procedural regulations or guidelines and the conflicting goals of criminal reconciliation cannot explain all the violations shown in this chapter, because most of the violations shown in this chapter concern the officials' conduct or arrangements not provided in the procedural regulations or guidelines. For example, the officials added some 'compulsory pre-requirements' like household registration (*hukou*) or ability to pay compensation as pre-requisites for initiating this programme. They also added some clauses to the parties' criminal reconciliation agreement; these clauses impeded the parties' rights

to appeal after the conclusion of criminal reconciliation meetings. The conflicting aims of criminal reconciliation might to a certain extent affect the officials' conducts in practice, while not all the violations can be simply attributed to the officials' preference for efficiency. More reasons lie in other incentives motivating officials' conduct. Additionally, the questions raised in the last section of Chapter Three concerning the voluntariness of the parties' participation and their satisfaction with the criminal reconciliation process have not yet been addressed in this chapter. Comments and feelings from the officials and parties are key to answering these questions, which are presented in the next chapter.

Chapter V: The Participants Of Criminal Reconciliation Programmes: Evidence From Interviews

In this chapter, which continues to draw on the interviews conducted in this project, the officials' and the parties' motivations and feelings, their comments, concerns and difficulties in criminal reconciliation processes are discussed. Such information is also important to understand whether or not the purported goals of criminal reconciliation such as redressing the damage the victim suffered from the alleged crime, educating and correcting the suspect/defendant, satisfying the parties, and closure (*an jie shi liao*) are achieved. Accounts from the lawyers and other people participating in the criminal reconciliation programmes such as the parties' parents, teachers, employers and leadership (*lingdao*) interviewed are also shown in order to complement the picture of criminal reconciliation practices drawn through the accounts of the officials and parties.

As in previous chapters, the term 'participants' is used broadly in this chapter. It refers to a number of persons involved in criminal reconciliation processes with different roles. It includes the prosecutors/judges who conducted criminal reconciliation programmes, victims and suspects/defendants of the criminal reconciliation cases, lawyers who represented in criminal reconciliation cases, and other people such as the victims/suspects/defendants' parents, teachers, employers and other persons belonging to what in China is called 'the leadership' (*lingdao*) who also participated in the criminal reconciliation programmes. The term 'parties', as defined in Chapters Three and Four, also refers to the victim (or the direct victim's family if the victim died in the case concerned) or the suspect/defendant of the criminal reconciliation cases.

5.1 Official involvement in criminal reconciliation programmes

5.1.1 Officials' leading and dominant role

According to the procedural regulations or guidelines, what the officials could do in criminal reconciliation process mainly involved examining eligible cases, explaining this programme to the parties, organizing criminal reconciliation meetings, making decisions for the suspects/defendants after the criminal reconciliation programme was completed, and arranging some follow-up programmes. Except for the decision-making and the arrangement of follow-up programmes, the officials' role at the stage of initiation and criminal reconciliation meeting was passive in confronting the parties' intentions. Moreover, since criminal reconciliation was promoted as a programme empowering the parties to resolve their cases mainly by themselves, it was also explicitly stressed in the regulations or guidelines that the initiation and proceeding of this programme ought to be entirely based on the parties' voluntariness, and the officials were forbidden from interfering with the parties' wishes.

Five officials interviewed (one in Changzhou, two in Chongqing, two in Xi'an) seemed to fully acknowledge this and explicitly stressed their 'passive role' in the criminal reconciliation programmes. For example, prosecutor L2 from the People's Procuratorate of B district in Xi'an mentioned the prosecutor's role especially in the criminal reconciliation meeting as follows.[567]

> 'We merely preside over the criminal reconciliation meeting, and must avoid talking about our own opinions in the meeting… well, actually during the entire process of criminal reconciliation.'

But she attributed the prosecutor's passive role to the reason that 'otherwise, it might give others grounds to act on (*lao ren huabing*),'[568] which meant that the officials' conduct in criminal reconciliation might be used by the parties to complain since there was no legal basis for such conduct. This motivation was not the publicly claimed one of empowering the parties to resolve their cases mainly by themselves. It sounded as though this motivation was more for the interests of the officials themselves.

However, it was found in the interview that in other circumstances, the officials were not passive in the criminal reconciliation process. It was first embodied in the officials' arbitrary disregard of the requirements (both compulsory ones and optional ones) of eligible criminal reconciliation cases. As described in Chapter Four, instead of complying with the stipulated premises of eligible cases, the prosecutors/judges often initiated criminal reconciliation in cases that did not fulfill the compulsory preconditions, or they 'invented' some compulsory requirements that were not provided in the regulations or guidelines (i.e. the parties' residence, performance before allegedly committing the suspected crime, psychological test etc.) in examining cases for criminal reconciliation. In this sense, the officials played a fairly dominant role in the criminal reconciliation process as they could actually 'make' the procedure in practice and ignore the existing (formal) one.

But why did the officials do this? Interviews with them shed further light on their motivations. For example, judge N from the People's Court of Y district in Xi'an mentioned the reason why he preferred criminal reconciliation as the internal task imposed by his Court.[569]

> 'It is required in our Court that three judges should resolve five hundred cases in one year,[570] plus there are strict requirements on the quality of each case - "people-oriented judiciary" (*sifa weimin*), "resolving disputes and satisfying parties" (*xi shi ning ren*) and "closure" (*an jie shi liao*).
>
> But in fact, the investigation quality in a number of cases is unsatisfactory; especially there are often some problems with evidence. And our work burden has always been extremely heavy. Thus, it is very difficult for us to meet the requirements in terms of quality and quantity at the same time.
>
> In this context, we (judges) have a strong motivation to conduct criminal reconciliation in that it can resolve cases with deficiencies in investigation or evidence much more quickly. It can also comfort both parties more easily. You know that the defendant can get a lenient punishment and the victim can get a

considerable sum of compensation promptly in criminal reconciliation, which is very hard to achieve in the normal litigation procedure.'

Judge N's colleague, judge L2, attributed his motivation in initiating criminal reconciliation to the internal performance assessment system (*jixiao kaohe*). This system required the judge's superiors to take into account a criterion called 'mediation rate' (*tiaojie lü*), as well as a criterion concerning the judge's success in resolving problems of petitioning (*shangfang*). Both criteria, according to this judge, had been imposed by the People's Court of Y district in Xi'an.[571]

'It is normal that the victims or their families cannot get a decision regarding the defendants' payment of compensation through court litigation enforced by the Court.[572] In some cases, it is because the defendants just do not want to pay. Yet more often, it is because the defendants (or their families) are really too poor to pay. Whatever the reason, the conflict between the two parties cannot be resolved in this situation. And the victim/victim's family would also be dissatisfied with us (judges), so that they might continue making trouble (*naoshi*) or go to petitioning (*shangfang*). In accordance with an internal rule, we will be disciplined (*chufen*) by the Court if they engage in petitioning. So we have to try our best to let the victim get compensation! I think, if the defendant really cannot afford the compensation, they should borrow money or take out a loan to pay it.

Moreover, there is an item in our internal performance assessment system requiring that the "mediation rate" among all the cases each judge handled has to be at least 50 per cent. And "marks" will be deducted if we fail to reach such a rate.'

The problems with the performance assessment system in general have been discussed in Chapter One. So far as criminal reconciliation is concerned, judges' accounts demonstrate that it has given officials direct incentives to by-pass the procedural regulations or guidelines in consequence of which the parties'

voluntariness might be impaired and distress caused. For example, it is clear from the accounts of two judges (above) that the internal task imposed by their Court and the performance assessment system were the main reasons for their breach of the regulations or guidelines in the initiation of criminal reconciliation. Such incentives were also shown in the interviews with the prosecutors.

An example was case no. seven in location B (a juvenile intentional injury case), as illustrated in Chapter Four, in which the responsible prosecutor H initiated criminal reconciliation when the defendants did not admit guilt or show any remorse towards the alleged crime. In the interview, prosecutor H further mentioned the internal task imposed by his Procuratorate as the reason for his initiation of criminal reconciliation in this case, except for the defendants' family backgrounds.[573]

> 'In the last year, the High People's Procuratorate of Chongqing issued a document[574] stating that in the context of promoting a harmonious society and the experimental practices of criminal reconciliation in other localities nationwide, all the Procuratorates in Chongqing should stress the work of criminal reconciliation. Accordingly, our Procuratorate has allocated a task of implementing at least three criminal reconciliation programmes in one year to each prosecutor. Such a requirement is also included in our performance assessment system.
>
> Yet actually, it is not easy to identify a case eligible for criminal reconciliation. I thought that in this case involving juvenile defendants, it should be rather easy to make the parties reach an agreement. So I tried criminal reconciliation in this case.'

Another prosecutor, L, from the People's Procuratorate of B district in Xi'an frankly explained that he initiated criminal reconciliation in a case mainly out of a desire to avoid 'losing' – that is to say, to avoid an acquittal - as outcome of a potential criminal litigation.[575]

'Honestly, I conducted criminal reconciliation in that case not because of some greater goal of social harmony, social stability or conflict resolution. It was principally because I had no confidence in winning the litigation of that case.

It happened between youngsters and was charged as an intentional injury crime case. I found it very hard to prove the suspect's subjective intention, and the investigation did not provide enough evidence either. I knew that in this case, it was difficult to win in litigation, yet it was not a problem if I could resolve the case through criminal reconciliation. In criminal reconciliation, the most important thing was to make the parties compromise and reach an agreement.'

Although prosecutor L did not explicitly mention the phrase of 'internal task' or 'performance assessment system' as his motivation for initiating criminal reconciliation in that case, his strong desire to win the case implied that this might have some connection with the performance assessment system adopted in his Procuratorate. Under it, the prosecutors would try their best to avoid losing a case in Court.

This, however, might produce two problems. For one thing, criminal reconciliation was more likely a tool for the officials to 'plaster over' cases, especially those with deficiencies in evidence, in an attempt to fulfill the various internal objectivesand performance assessment system. For another, the officials would also simply view the suspects/defendants as 'objects' for them to accomplish the internal tasks set in the performance assessment system. Therefore, the officials would still initiate criminal reconciliation regardless of the circumstances of the cases, and repeatedly 'persuade' the parties, or ask the parties' lawyers, teachers, employers or leadership to 'persuade' the parties to make them participate in the criminal reconciliation programmes. Judge L2 from the People's Court of Y district in Xi'an said in the interview that the judges would normally 'catch an opportune moment to persuade the parties or '*zuo gongzuo*' ('do some work' or 'do some thought work on the parties) to get the parties' "voluntary participation" if they do not want to accept the offer of criminal reconciliation initially.[576]

Nevertheless, the officials' efforts to initiate criminal reconciliation would in some cases be at the cost of the parties' wishes and interests. This was verified by several victims' accounts in the interviews, which are discussed in the following section.

In addition to this hard 'persuasion', officials may directly use illegal methods to make the parties 'reconcile' and pay compensation. For instance, a lawyer disclosed that in a death penalty case he had represented, the judge simply kept detaining the defendant to 'wait for' any payment of compensation.[577]

> 'The presiding judge was very actively conducting mediation between the two parties. He had actually implied that as long as my client could compensate, he would not give the death penalty. However, very unfortunately, my client was really too poor to afford that. As a result, no agreement was reached in the first instance trial and my client is still detained at present – the case is now in the second instance trial phase - due to this issue. Yet his current detention has already exceeded the legally prescribed time limits.[578],

Moreover, as raised above, the officials' dominant role in criminal reconciliation was also reflected in the fact that the officials could add some requirements themselves as compulsory pre-requisites for initiating criminal reconciliation. It sounded as though a suspect/defendant could not enter criminal reconciliation without these (additional) 'qualifications' even though he/she had met the compulsory requirements stipulated in the procedural regulations or guidelines.

As shown in Chapter Four, such requirements often concerned the suspect/defendant's (or his/her family's) residence, performance prior to committing the alleged crime, and most important, their ability to pay compensation. Interviews showed that officials had incentives to create additional requirements, for instance because they wanted to avoid failure in the criminal reconciliation process. For instance, prosecutor N from the People's Procuratorate of B district in Xi'an

mentioned the reason why non-local suspects were precluded from participation in criminal reconciliation.[579]

> 'Nowadays, the floating population (*liudong renkou*)[580] is too large. It is dangerous and troublesome for us if we cannot find the suspects after making a decision not to criminally arrest them, or during the follow-up supervision period in criminal reconciliation. You know that police power is also limited.
>
> So we will only initiate criminal reconciliation for the suspects who are registered as Xi'an residents (i.e. have a Xi'an *hukou*). We have also established some cooperation with residential communities (*shequ)* in Xi'an to supervise the suspects (who have gone through the criminal reconciliation process). So of course this programme is only applicable in cases involving local people.'

Another prosecutor, Z, from the People's Procuratorate of Y district in Xi'an explained the reason why criminal reconciliation was only applicable to local suspects in a similar way.[581]

> 'It is very hard for us to trace the suspects' situation in the follow-up programmes if they live in other locations rather than in Xi'an. That is really too inconvenient and we do not have that much time and energy.'

If the suspects' household registration (*hukou*) was a consideration chiefly motivated by the desire to avoid trouble and save time and energy, according to the officials, the officials' considerations of the suspect/defendant's performance prior to the alleged crime and ability to pay compensation were mainly motivated by the desire to avoid the potential failure of the criminal reconciliation programmes. Prosecutor C from the People's Procuratorate of Y district in Xi'an explained this.[582]

> 'A difficulty I once encountered in implementing a criminal reconciliation programme was that it still failed after a long-time of reconciliation and after the

conclusion of a "teaching and help" programme. Some children really could not control themselves. Their parents and schools did not supervise them well either. So they found their "bad" friends and committed some offense again. Then the criminal reconciliation programme had to end and fail. That was really a waste of our time and effort in conducting criminal reconciliation.

In order to resolve this problem, now, for one thing, we have added psychological tests for juvenile suspects to test their ability to control themselves before making the decision to implement criminal reconciliation. If the result of this professional test is not satisfactory, we will definitely not initiate criminal reconciliation. For another, we will take the suspect's performance before the alleged crime into account before making the decision to initiate criminal reconciliation. I think a usually good performance can to a large extent guarantee a good correction effect and the success of criminal reconciliation.'

The ability to pay compensation, as noted in Chapter Four, was a very critical element affecting the officials' initiation of criminal reconciliation. And the officials interviewed indicated that criminal reconciliation was rarely initiated if they found that the suspects/defendants were going to be unable to afford a sum of compensation. And this was also mainly to prevent the failure of criminal reconciliation due to the suspects/defendants' failure to implement the compensation agreements.

So, it emerged from the interviews that the pre-requisites added by the officials in initiating criminal reconciliation such as the suspects/defendants' self-control, usual performance and ability to paycompensation, were related to the officials' desire for the success of criminal reconciliation programmes. Although the officials only mentioned the reason to be avoiding a waste of time and effort they had put into such programmes, it also had some relationship to the internal performance assessment system. Taking into account the internal tasks and requirements such as the 'mediation rate' set down in the performance assessment system, it was hard to exclude the influence of such a system on the officials' conduct.

It is also likely that the internal tasks and the performance assessment system

were also the reason that the officials played a dominant and active role in the criminal reconciliation meeting. As described in Chapter Four, the officials repeatedly held criminal reconciliation meeting(s) in order to allow the parties to bargain about the compensation sum and reach an agreement. And the officials added some clauses themselves into the parties' criminal reconciliation agreement which infringed upon the parties' rights of appeal. Considering the requirement on 'mediation rate' in the performance assessment system and perhaps some restriction on 'appeal rate', it was not hard to understand the officials' conduction in criminal reconciliation meetings.

5.1.2 Officials' positive comments on criminal reconciliation

In the interview, sixteen officials (two in Changzhou, six in Chongqing, eight in Xi'an) indicated their satisfaction with the criminal reconciliation meeting(s), or the follow-up programmes, or the whole criminal reconciliation process. For example, Prosecutor H expressed his satisfaction with the criminal reconciliation meeting held for case no. seven in location B (an intentional injury case) as follows.[583]

> 'In this criminal reconciliation programme, mutual understanding between the parties was achieved; the suspects and their parents realized their faults and changed their indifferent attitudes; the victim and his parents discarded hatred and forgave the suspects; the compensation agreement was enforced fully and in a timely fashion. These outcomes could hardly be achieved in the formal criminal procedure.'

Another prosecutor, F, from the People's Procuratorate of X district in Changzhou also gave a high evaluation to the criminal reconciliation meeting and the whole progamme conducted by him in case no. nine in location A (a juvenile intentional injury case).[584]

> 'This case was resolved peacefully through the face-to-face criminal reconciliation meeting. Conflicting emotions between the two parties were also eliminated through dialogue and discussion in that meeting. Furthermore, the problem of compensation enforcement was effectively resolved in criminal reconciliation programmes. It is helpful to maintain harmony in society. Therefore, I think that criminal reconciliation is a great programme that needs to be expanded to the whole country as soon as possible.'

He also praised the criminal reconciliation programme he conducted in case no. six in location A (a theft case).[585]

> 'I was quite satisfied with the outcome of this case closed through criminal reconciliation. For one thing, the victim gave up his anger and chose to be tolerant which was fairly appreciated by his leadership. For another, the suspect's work, life and future were not affected by the act he committed on impulse. It was really very important for a young man to have such a chance after making mistakes. Moreover, I got feedback information from the suspect's boss and parents to the effect that he performed even better than before the criminal reconciliation programme during his supervision period. I was informed that he worked much harder now and even proposed to work overtime; he rarely went to internet bar and often helped his parents to do some farming work.'

It sounded as though the officials rated the criminal reconciliation meeting(s) and programmes highly mainly from the aspects of the officially predicted aims of this programme such as redressing the harm the victim suffered, educating the suspect/defendant, resolving the parties' disputes and establishing a 'harmonious society'. Moreover, four officials (one in Chongqing and three in Xi'an) particularly talked about the advantages of criminal reconciliation as compared with the normal criminal process. For example, prosecutor S from the People's Procuratorate of B district in Xi'an said that,[586]

> 'The most impressive advantage of criminal reconciliation compared with the normal procedure is that the suspect would know that others may forgive them after they have done something wrong. I believe that this is good for the suspect's future performance and mental development.'

Judge L2 from the People's Court of Y district in Xi'an mentioned the effect of legal knowledge popularization (*pufa*) as the main advantage of criminal reconciliation.[587]

> 'A very significant function of criminal reconciliation is legal knowledge popularization (*pufa*). In criminal reconciliation programmes, we (judges) have to do much work to persuade the parties to accept our offer of criminal reconciliation. In doing this, we have to patiently explain to them that the outcome of the case resolved through criminal reconciliation is in accordance with the law and therefore is fair to them. During such a process, we would give them much relevant legal knowledge. The normal criminal procedure does not have such a function.
>
> It is beneficial. Often, the parties are unsatisfied with the Court's adjudication and then petition. But it is largely out of their disregard of legal knowledge! Too many people in China do not understand law and do not trust law, so as a judge in China, I think it is my responsibility to help them know some legal knowledge. Criminal reconciliation is a good channel, as we can have much communication with the parties in this programme.'

It seemed that it was hard to learn negative comments from the officials as the people conducting the criminal reconciliation programmes, especially considering the fact that criminal reconciliation was connected so closely with their marks in the performance system. Yet the benefit of 'legal knowledge popularization (*pufa*)' as raised by judge L2 was debatable. It was problematic to assert that the reason why the parties petitioned was largely because of their disregard of the law. As noted in

Chapter One, it was in many cases due to the judicial officers' violations of law. Second, considering the fact that criminal reconciliation was only participated in by a comparatively small number of people (often only the victim and the suspect/defendant of the case concerned) it was a bit far-fetched to say that it was a better way of legal knowledge popularization compared with the normal procedure. It was also questionable to assert that the normal criminal process did not embody this function; this will be further discussed in Chapter Six. Yet most importantly, was legal knowledge popularization really a proper goal that a legal process or a criminal process should pursue? Probably, it should not be over-stressed for a legal process, compared to the values of fairness, justice, and protecting the parties' rights. All in all, it might not be proper to rate legal knowledge popularization as an advantage of criminal reconciliation.

5.1.3 Officials' negative comments on criminal reconciliation

Two officials out of 18 who were interviewed expressed some negative views on the criminal reconciliation programmes and their likelihood of achieving the predicted outcomes. Prosecutor C from the People's Procuratorate of Y district in Xi'an was worried about social circumstances in terms of reaching the aim of correcting juvenile suspects.[588]

> 'Nowadays, the social context is terrible. Too little concern is put on the juveniles. Also, juvenile crime prevention work is far from enough. There has been much propaganda, while all what we have is merely propaganda. The function of propaganda is so superficial. It cannot touch the juveniles' mind.
>
> Concern for juveniles not studying in school is even less. Could we reckon on such a society to address the problem of juvenile crime and to correct juvenile criminals effectively? What we (prosecutors) can do, or what criminal reconciliation and the "teaching and help" programme can do is so limited. I

believe that either crime prevention or criminal correction should rely on long-term efforts and the general social context.'

Another prosecutor, L, from the People's Procuratorate of B district in Xi'an, expressed his misgivings concerning criminal reconciliation's impact on the victim (or his/her family) as well as the whole society.[589]

'I think that criminal reconciliation would bring about some negative feelings to the victims (or their families). For example, in the traffic accident related crime cases, the victims' families would think that they get money because of their relatives' death. But they have no opportunity to express such a feeling. And in fact, it is useless for them to express it.

It is bad for society too – other people would think that it is just a monetary exchange in criminal cases. Criminal law is unfair in that it only deals with the poor, or people living at the bottom level of society. They will be further dissatisfied with our society.

Besides, I do not think that criminal reconciliation can have great influence on society. Criminal reconciliation cases are minor and usually would not attract public attention. The public cannot get any feedback from these criminal reconciliation cases either.

Now we use reconciliation as a way resolving civil cases to deal with criminal cases. I feel that such a method is very utilitarian since it is used in the context that conflicts in our society today are too sharp and too much. Yet this has made the People's Procuratorate more like an official "debt-collection company". '

Prosecutor L's comments on the problems of unfairness and the negative influence on the victim in criminal reconciliation could be further shown by the parties' accounts in the following sections. But he might somewhat underestimate the influence of criminal reconciliation cases on society. As noted in Chapter One, there

have been many news reports and articles about criminal reconciliation and some of them have attracted wide attention and discussion in society.

5.1.4 Officials' expressed concerns about criminal reconciliation

In the interviews, the officials also expressed uncertainty about the legal basis for criminal reconciliation programmes, even though in some of the locations studied, procedural regulations for these programmes existed at the local level. For example, prosecutor S from the People's Procuratorate of B district in Xi'an mentioned such confusion in the application of this programme:[590]

> 'Criminal reconciliation is in accordance with the criminal policy of "combining leniency with severity" (*kuan yan xiang ji*). Thus, apparently it cannot be used in all kinds of crimes. But for which kinds of crime is it applicable? I really feel a bit confused.
>
> We are now just exploring this programme in practice. The guideline issued in our Procuratorate is too general and vague. So when I conducted criminal reconciliation programmes, I often asked myself whether what I was doing was legitimate. I hope that there would be clearer regulations for this practice. Then we (prosecutors) would feel much more secure if there was a solid legal basis for our work.'

This prosecutor even viewed this as the main problem of criminal reconciliation practices.[591]

> 'It is the major problem of criminal reconciliation practices. In some criminal reconciliation cases, the suspects [whose cases are handled through criminal reconciliation] may think that committing a crime is not serious and that they may do that again in the future. That is awful, so we must control the use of criminal reconciliation.

I think that the way to prevent this problem is to limit the use of criminal reconciliation in suspected minor crime conducted by young people or minor crimes completely on impulse. And we should consider the suspects' characteristics in making the decision to use criminal reconciliation.

But there is no solid legal basis for the criteria now used to judge if a case should be handled through criminal reconciliation. So they rely too much on the responsible official's subjective judgment, which would produce too much uncertainty as various people may have various criteria.'

Another prosecutor, L, from the People's Procuratorate of B district in Xi'an, also talked about some confusion coming from the lack of a clear and solid legal basis for criminal reconciliation practices:[592]

'The first unclear issue in criminal reconciliation is whether it only applies to juvenile crimes or also includes adult crimes. There is no clear legal regulation for this programme now. I myself have conducted this programme for about one year in both juvenile and adult crimes.

Second, I always feel confused about its nature. Is it plea bargaining? No. Plea bargaining is related to the problem of evidence, while in criminal reconciliation, the requirement of its application is that the evidence is "clear and sufficient" (*zhengju queshi chongfen*). Then, is it something merely related to the circumstances to be considered for sentencing? Obviously it is not the statutory sentencing circumstances (*fading liangxing qingjie*); it is something concerning the officials' discretionary power. Yet there is no legal basis for such a discretionary power either.

There is also no definition of criminal reconciliation, so I am not sure whether it is just an idea or a system, or a method adopted at a certain period in the context of "establishing a harmonious society" (*hexie shehui*)?'

He further talked about the officials' actual conduct facing this confusion.[593]

'Since criminal reconciliation has not been provided in any legal regulation yet, you cannot find this phrase in any document in the People's Court, People's Procuratorate, or the Public Security Bureau. We can only write down those systems that have legal basis in the documents. With regard to criminal reconciliation cases, we would write that "there is compensation" or "there are circumstances affecting sentence" in the documents, instead of "*xingshi hejie.*"

The leadership in the Procuratorate did not support this programme much due to the lack of a clear legal basis. We could avoid being criticized by observing legal procedure. In criminal reconciliation, however, our conduct easily attracts criticism (*shuo san dao si*) by the parties since there is no clear legal basis for it.'

Prosecutor L's accounts also help explain the phenomenon noted in Chapter One that the statistics on the implementation of criminal reconciliation delivered in the public resources showed that this process was rarely used in the state authorities. Altogether ten out of 18 interviewed officials (one in Changzhou, four in Chongqing, five in Xi'an) mentioned their problems with conducting criminal reconciliation programmes on the grounds that 'this practice currently has no legal basis'[594]. This problem also gave rise to the officials' conduct of adding some clause into the criminal reconciliation agreement, which impeded the parties' rights to appeal. The prosecutor who had done this, Y, explained his motivation in the interview:[595]

'It is for the efficiency and effectiveness of the criminal reconciliation programme. On the one hand, litigation after criminal reconciliation is a waste of judicial resources.[596] On the other hand, it would impair the effectiveness of the criminal reconciliation agreement and the prosecutor's image [if the parties could go back to a litigation process after concluding criminal reconciliation]. If the parties could renege on their agreements at their own will, what would be the

difference between agreements reached in the People's Procuratorate through criminal reconciliation and private agreements?'

It seemed that in prosecutor Y's opinion, the criminal reconciliation agreement should have the effect of barring any further litigation. Yet the validity of the agreement reached in criminal reconciliation was also unaddressed in the current legal system (even in articles 277 to 279 of the 2012 CPL). Therefore, the situation that there was no legal basis for criminal reconciliation (before the 2012 CPL takes effect on 1 January 2013) had given rise to two problems. Firstly, the officials felt insecure about the legal force of this programme, so they 'created' something (i.e. adding a clause that explicitly prohibited either party to bring about litigation after signing criminal reconciliation agreement into the parties' agreement) in an attempt give it have stronger force.

Secondly, these additions were in fact in conflict with the existing laws and infringed upon the parties' rights, while there was also no restriction in law concerning the officials' conduct in this regard in criminal reconciliation programmes. The problem caused by the lack of legal restriction on the official's power in criminal reconciliation might lead to further problems. This will be further elaborated in the next chapter. Prosecutor L from the People's Procuratorate of B district in Xi'an mentioned the problem of corruption.[597]

'The official's discretionary power in criminal reconciliation is too great. So it is easy to earn personal benefits in this programme, especially given that there is no judicial supervision of this programme.'

5.1.5 Difficulties faced by officials in charge of criminal reconciliation

An official, prosecutor S from the People's Procuratorate of B district in Xi'an, expressed some confusion regarding the performance assessment system. She talked about the contradiction between a requirement regarding high 'prosecution rate'

(*gongsu lü*) in the performance assessment system of her Procuratorate and the policy of 'establishing a harmonious society':[598]

> 'There is a requirement on arresting and prosecuting a certain number of cases each year in my Procuratorate's performance assessment system. In fact, this system directly impacts the number of cases in which we would make a decision of non-prosecution and conduct criminal reconciliation.
>
> Sometimes we will not initiate criminal reconciliation merely in order to meet the assessment requirement on "prosecution rate", even though the case in itself is suitable for this programme.
>
> There is also a competition about these (i.e. arrest and prosecution) rates among all the districts in Xi'an. We will lose in the competition if we do not prosecute a sufficient number of cases. But isn't there a contradiction? Now we are advocating the establishment of a harmonious society, but in the meanwhile we are pursuing a high prosecution rate, which is a sign of non-harmonious society. I really feel puzzled.'

Prosecutor S' accounts highlighted again the close relationship between the performance assessment system and the officials' conducts in their work. They used this system as the real 'guideline' for their work, even though they might also consider the system itself unreasonable.

The kind of pressure indicated by Prosecutor S may also explain the finding obtained through case file examination that in contrast to the message delivered by public sources, according to which criminal reconciliation was developing rapidly and widely nationwide, not many cases were resolved through this programme in the two People's Procuratorates in Changzhou and Chongqing (the number was not obtained in Xi'an). Since criminal reconciliation would normally lead to a decision of non-prosecution, the prosecutors might restrict the use of it in order to fulfill the requirement on 'prosecution rate' in the performance assessment system.

Almost all of the officials interviewed expressed the view that this programme took too much of their time and energy. For example, prosecutor L from the People's Procuratorate of B district in Xi'an said:[599]

> 'Criminal reconciliation programmes take too much of our time and energy. In fact, it requires us (prosecutors) to possess mediation skills, which we should not be supposed to possess as judicial officials. Aunts of the Resident's Committee (*ju wei hui*) are much more competent in this aspect. And they have much time to do such work.'

Prosecutor H from the People's Procuratorate of D district in Chongqing also described a criminal reconciliation programme he once implemented as very time-consuming:[600]

> 'Compared with prosecution, criminal reconciliation consumed much more of my time and energy given that I had spent much time before the criminal reconciliation meeting to seek the parties' agreements to participate, to prepare for the various activities in the meeting, and to do the supervision work after the criminal reconciliation meeting. Since my work burden as a prosecutor of the People's Procuratorate at basic level has been already quite heavy, I am inclined not to initiate another use of criminal reconciliation in the future even if I come across a case that by itself is suitable, so long as there is no "task requirement" for that.'

Yet, the officials said that a worse situation for them was that even after such hard work over a long period, the parties still could not reach an agreement. For example, prosecutor S from the People's Procuratorate of B district in Xi'an indicated it as the main difficulty she encountered in the criminal reconciliation cases:[601]

> 'In conducting criminal reconciliation programmes, the most serious problem for me is that I feel embarrassed when the parties cannot reach any agreement after a long period of reconciliation. In this case, the victim would be concerned that it is because we (prosecutors) have taken some "benefits" from the suspect, so that we did not want to prosecute the suspect.'

Concerning the reason why the parties could not reach an agreement, the officials attributed it to the victim's unreasonable requirements on compensation or the suspect/defendant's likely inability to pay compensation. For example, prosecutor L2 from the People's Court of Y district in Xi'an said:[602]

> 'Sometimes victims were fairly unreasonable (*bu jiang li*). They asked for too much and could not be persuaded to compromise. As a result, the parties could not reach a criminal reconciliation agreement and we had to go back to the normal procedure. This wasted our time.'

Judge L from the People's Court of B district in Xi'an also viewed the failure to reach a criminal reconciliation agreement as the victim's responsibility:[603]

> 'Criminal reconciliation relies too much on the parties' will. Some victims are too stubborn; they put their own interests above anything else. In some cases like minor injury, we (prosecutors) do not think a very serious harm has been done, while they insist that they have been harmed so badly that they deserve a very large sum of compensation from the defendant. In this kind of case, it is almost impossible for us to persuade such victims to compromise and as a result, the parties cannot reconcile.'

Two officials (in Xi'an) thought that it was the suspect/defendant, rather than the victim, that should be blamed for the failure of reaching a criminal reconciliation agreement. For instance, judge Z also from the People's Court of Y district in Xi'an

mentioned the defendant's inability to pay compensation as the chief obstacle to reaching a criminal reconciliation agreement:[604]

> 'Generally, the success rate of mediation and reconciliation in our Court is about 50 per cent to 60 per cent. The chief element affecting the success rate is the defendant's ability to pay compensation. If the defendant cannot afford the compensation demanded by the victim, it is impossible for them to reach a criminal reconciliation agreement. In criminal reconciliation, we should mainly take into account the victims' difficulties and needs since they are the party without fault in the suspected crime.'

As indicated above, criminal reconciliation was included in the Procuratorate's and Court's internal performance assessment system, so the officials would try their best to make the parties reach an agreement once they had initiated this programme. Yet in the sense that criminal reconciliation would take too much time, the task set in the performance assessment system concerning a certain number of criminal reconciliation cases baffled the officials. A judge, L2, talked about a dilemma he met in criminal reconciliation practice, which resulted from the contradiction between criminal reconciliation's time-consuming characteristic and the internal task imposed by the Court he was based in:[605]

> 'Normally, criminal reconciliation would take us at least three months to close a case. It is longer than the time the formal procedure would take, since minor crimes are usually dealt with by the simplified procedure (*jianyi chengxu*) which takes less than one and a half months. So in my opinion, criminal reconciliation has increased our workload. And it has put us to a very difficult position - the Court requires that three judges resolve five hundred cases per year.'

This indicated the problem with the performance assessment system again: Regardless of whether the officials wanted to implement criminal reconciliation, or

whether the case in itself was not suitable for this programme, the officials had to initiate it largely for the purpose of meeting the requirements set in the performance assessment system.

5.2 The parties participating in criminal reconciliation programmes

According to domestic scholars, an essential difference between criminal reconciliation and the normal criminal procedure was that criminal reconciliation empowered the parties to resolve their cases mainly by themselves. In this sense, it protected what was referred to as the parties' 'rights of participation (*canyu quan*)' in the criminal justice process.[606] During this process, the victim was expected to be redressed both financially and psychologically and the suspect/defendant was expected to be properly 'educated' and 'rehabilitated'.

It could be seen from those descriptions that the parties were expected to be at the core and play a leading role in the criminal reconciliation process, especially at the stage of initiating this programme and during the criminal reconciliation meeting itself. The parties' voluntariness and leading role at these two stages were also stressed in the procedural regulations or guidelines.

However, as already discussed, in practice, it was the officials that controlled and led the whole process of criminal reconciliation. They might also pressurize the parties in this programme. They had the incentive to do so considering the performance assessment system and the capacity to do so considering their almost unrestricted power in criminal reconciliation processes. In this section, the parties' accounts are provided to further support this point. And the accounts further indicate that the officials' dominance in criminal reconciliation can cause harm to the parties.

5.2.1 The victim's participation under coercion

It was found in two cases (in Changzhou) that the victims did not want to accept the offer of criminal reconciliation but they still agreed to participate mainly because of

the pressure exerted by the officials. An example was victim C in case no. nine in location A (an intentional injury case).

In the interview, C looked very shy and initially did not want to talk. He just responded that 'you can ask the prosecutor and my coach', or 'I cannot remember', or 'just so-so' to the questions concerning the case, the criminal reconciliation meeting and his feelings. When the author asked more questions aimed at probing further into these vague responses, he did not say anything and remained expressionless, giving an impression of resistance and reluctance. After the author explained to him again that the only purpose of this interview was for the writing of a PhD thesis and that the interview had nothing to do with the prosecutor or the final disposition of his case, he looked much relaxed and started to talk. He talked about how the attack by the fellow students hurt him deeply:[607]

> 'I could be enrolled in a university on the condition that my performance in the 16th national sports meeting was good, but the injury caused by them (the three defendants) compelled me to give up the sports meeting and so I lost the opportunity of going to university. Even worse, I had to change the training course because of the wound to my legs. You know that it is not easy to exercise a new discipline, so the progress and the grade of my training are now unsatisfactory. And I am very uncertain about the future - I have no idea when I will ever get another chance to go to university. Therefore, I hate the suspects very much and even view them as the murderers of my bright future.'

Asked why he agreed to participate in the criminal reconciliation programme if he 'hated' them that much, C confessed that he really wanted to see them tried in court, yet his coach and the responsible prosecutor F had spoken to him many times and taught him to 'consider the relationship between them as schoolmates, so he should give them one more chance as their schoolmate'.[608] He said that he was also told by prosecutor F that criminal reconciliation was beneficial for educating the suspects and letting them realize their faults. And for C himself, criminal reconciliation could

resolve the case in a short time and he could continue training as soon as the case was resolved. Therefore, at last C chose to accept criminal reconciliation for he did not want to offend his coach and the prosecutor. Also, he wanted to re-start training as soon as possible.[609]

Thus, it is clear that actually C (the victim) did not want to participate in the criminal reconciliation programme initially, but the repeated 'persuasion' from his teacher and the responsible prosecutor and the promised benefit criminal reconciliation would bring led him to accept it eventually.

C's account, while merely one case, illustrated that 'persuasion' could diminish the meaningfulness of the parties' 'voluntary' participation. In such circumstances, the criminal reconciliation meeting could not be expected to produce the projected outcomes such as redressing harm done to the victim and restoring the parties' relationship. Victim C further described the criminal reconciliation meeting as follows:[610]

> 'It was terrible! Actually, I did not want to see the suspects and discuss my painful experience anymore. Accordingly, I did not say anything in the meeting. The only impression I had about the meeting was a bargaining over the compensation amount between the parents of both parties. I even did not want to see the agreement containing the compensation amount reached finally. And I have not heard the suspects' apologies yet.'

It seemed that a criminal reconciliation meeting without the parties' or one party's genuinely voluntary participation was merely an arrangement for negotiating over compensation, and that such arrangement was not appreciated by the parties or one of the parties in this case. When the author further asked C whether he viewed it as a fair process, or whether he felt satisfied with it, he paused, as though did not know how to answer. Finally, he just murmured that all the bad things had passed away and he could feel better now by trying as best he could to forget the case and the suspects.[611]

The second example was case no. six in location A (a theft case). The victim of this case, Q, also said that he still could not forgive the suspect after the incident:[612]

> 'I felt very angry when I found my motorbike stolen as the theft made me lose face in front of my friends. I hated the thief very much and only wanted to "teach the thief a lesson" (*jiaoxun ta*) when I caught the suspect, X.'

Then the author asked him why he had agreed to participate in criminal reconciliation if he hated the suspect that much. He said that he did not want to participate but that his leadership (*lingdao*), X's boss and the prosecutor F approached him no fewer than five times separately to persuade him to engage in criminal reconciliation. He was also told by them that X felt very remorseful and that since X was very young, he should give X an opportunity given that prosecution would destroy his future.

Although Q really could not understand why in such circumstances, X should be immune from prosecution and be given another chance, he finally agreed to participate in the criminal reconciliation programme. But obviously he was unhappy with this:[613]

> 'Motorbike theft happens very often in our village. Why was X different from others? And why was I chosen to be a different victim from other victims (who were not pushed into a criminal reconciliation process), and why should I give him another chance? I am afraid that such a programme is not helpful in terms of cracking down on offences in our village. Yet under the circumstances at that time, I had no other choice, as it was impossible to say no to my *lingdao* and the prosecutor. I did not want to offend them and make them unhappy. That [antagonizing them] would not have been good for me.'

Then I asked him whether he viewed criminal reconciliation as a fair and just programme. He laughed at me and said that only students at school (like myself) still

cared about things like fairness and justice nowadays, while in society, a variety of issues (i.e. relationships, connections and your leadership's 'image' or *mianzi*) mattered more.[614] 'Compromise is necessary in life. That is the truth and you have to accept it', said Q.[615] But when I asked him whether he felt satisfied with the criminal reconciliation programme, he only commented 'it's alright'. And he said that 'I don't want to see X and mention the case anymore because I still feel very angry now' at the end of the interview.[616]

It could be seen that in this case, the victim Q did not participate in the criminal reconciliation programme voluntarily either. He was actually participating because of pressure from the official and his leader. His emotions as a victim could not be addressed appropriately through such a coercive process, though he viewed the 'compromise' as vital. Moreover, his anger might show that actually he viewed the process as unfair and unjust though he did not want to state this explicitly.

In a case in location C (a juvenile robbery case), the victim, Z's father, explicitly expressed his discontent with the situation resulting from the responsible judge's repeated persuasive efforts to get their acceptance of criminal reconciliation:[617]

> 'Actually I think what the judge did was really a waste of time. It is because of this that the case has not been decided until this moment! In such a situation [the case has not been resolved yet), how could we comment on our government and our judicial system?
>
> Moreover, Z's situation is really bad now. All the students in his class heard about this matter, and some of them laughed at him. Especially considering that this case has not been resolved, my son and his classmates may think that there would be no consequences for the boys that had done something wrong. What is worse, some of the suspects once threatened my son since they are not detained and still continue to study with my son.
>
> So Z is under such great pressure now that his life and study have been greatly impaired. We, as parents, feel very bad and upset too. At present, we even have no idea on how to explain this situation to Z as a juvenile. So we

wrote a letter to the Court. We can only ask for a fair and timely trial of this case. If we get that, we could convince Z that there is fairness and justice in our society and we could help him get out of this trouble as soon as possible.'

5.2.2 No presumption of innocence

The procedural regulations or guidelines stipulated that criminal reconciliation could only be initiated if the suspect/defendant had admitted guilt (*renzui*) or expressed regret (*huizui*). It was the basis of the official goal of criminal reconciliation, namely to educate and correct the suspect/defendant. However, from the descriptions in Chapter Four it appears that the officials virtually initiated criminal reconciliation ignoring this premise and initiated it when the suspect/defendant did not admit guilt. For example, in case no. seven in location B (an intentional injury case), the responsible prosecutor H talked about his initiation of criminal reconciliation when none of the juvenile suspects show any regret regarding the case. Another prosecutor, S, mentioned that normally the prosecutors would not consider the issue if the suspects admitted guilt since the suspects were detained at that moment. In this sense, the suspect/defendant was simply viewed by the officials as 'criminal' in need of education and correction through criminal reconciliation processes.

This attitude was also reflected in the officials' accounts when they talked about the suspects/defendants in detention when they considered initiating criminal reconciliation. Some, as set out below, even expressed the view that the 'education and correction' (*jiaoyu he jiaozheng*) of the suspects/defendants could be expected to start from the moment they were detained, and that the detention house was a suitable place for 'education and correction'. For example, prosecutor S from the People's Procuratorate of B district in Xi'an said that:[618]

'Some suspects may get better after being educated in the detention house, yet some may get worse after staying in that kind of place.'

Such a description was popular for juvenile suspects/defendants as well. Another prosecutor, L2, from the People's Procuratorate of B district in Xi'an mentioned that:[619]

> 'The circumstances in the detention house are rather bad and that is a good education for those children. Then they would bear in mind the outcome of committing crime and would not dare to do that again in the future.'

However, the problem with excessively long custody (*chaoqi jiya*), as shown in case no. five in location C (a juvenile robbery case) and as discussed in Chapter Four, was found to cause much hurt to the family of the people detained in the interview. The mother of the defendant in case no. five in location C (a juvenile robbery case) could not help crying during the interview when she talked about her son, S, in the detention house after the first instance trial.[620]

> 'I have not seen S for about half a year, except for his brief appearance in court during the first instance trial.
>
> Although according to an internal rule, detainees may be visited by their families every 10th and 20th of the month, I have not seen him since he was sent there. I was only permitted to write him notes which were said to be passed on to S by the people working there.
>
> I feel extremely worried and upset, but I do not know the reason why I was not allowed to see him and what I can do about it. What worries me most is my son's condition in the detention house because I have been unable to find out how he has been doing for such a long time. The whole family is under very great pressure and S's father is sick now out of being too angry and worried. So we insist on appealing (*shangsu*) for a fair sentence for S. The presiding judge also supports our appeal.'

The reason for S's detention and segregation from seeing his family was not obtained in the interview, but the accounts above, as a snapshot, showed the seriousness of the problem of excessively long custody (*chaoqi jiya*) during the criminal reconciliation process on the one hand, and its harm to the parties' family on the other hand.

So far as the officials of the system regarded the suspects/defendants as criminals in need of education and correction, it was likely that the suspects/defendants would be pressed by the officials to enter criminal reconciliation to accept education and rehabilitation. And it was really hard to say no to officials holding such strong views since the suspects/defendants would also know that the officials were the ones having great power in making crucial decisions in their cases. None of the suspects/defendants interviewed mentioned this point. But it must be remembered that in Changzhou and Chongqing, for the purposes of this research, all the parties were contacted by the officials and interviews took place under their observation.

Deriving from this view held by the officials (that the suspects/defendants were criminals) it became clear that the suspects/defendants were further used as 'examples' embodying educational meaning to their peers. Thus, as noted in Chapters Three and Four, the criminal reconciliation meetings in four juvenile cases (three in Changzhou and one in Xi'an) were attended not only by the parties and the officials, but also by the parties' schoolmates. For example, the criminal reconciliation meeting held in case no. five in location A (a juvenile theft case) in the parties' school was attended by the responsible prosecutor, F, both parties, several teachers who had taught the parties, and some student delegates selected from the parties' class (they were from the same class) and all the other classes of the school.[621]

The student delegates' observation, according to the responsible prosecutor interviewed, was for the purpose of 'making this meeting a good chance for the other students to learn more about law'; and the teachers' observation was to 'help the teachers know this matter more comprehensively which was good for their educational work in the future'.[622]

However, it was possible that such a setup mainly served the purpose of putting pressure on the parties (the suspect especially) to behave according to the teachers' and the officials' expectations (i.e. to serve the end of 'education'). Such a criminal reconciliation meeting was more like a show that sacrificed the parties' needs or interests for the so-called larger good or other people's expectation (i.e. 'education' in this case). But it was not the end criminal reconciliation was claimed to pursue and had violated the goal of empowering the parties during this process.

Although both the suspect and victim expressed their satisfaction on such a criminal reconciliation meeting in the interview, the victim of this case still mentioned that the suspect 'was very nervous in the criminal reconciliation meeting'.[623]

In this sense, the suspect might be unhappy with this arrangement, while having agreed out of the teacher's or the prosecutor's pressure. After all, it was hard for him to offend these people acting as 'powerful persons' for him. His extreme nervousness in the meeting mentioned by the victim might be a sign of his reluctance of that extensive observation. In this regard, to what extent the criminal reconciliation meeting focused on the parties, and granted them real power to resolve their own cases was questionable, now that they even could not have the criminal reconciliation meeting in the way they really wanted.

Yet the responsible prosecutor, F, further commented on such a criminal reconciliation meeting as 'a vivid lesson on law for the other students observing the meeting'[624]. Such comments again indicated that rather than empowering the parties to resolve the case by themselves, criminal reconciliation and the parties were actually controlled by the officials to serve their own ends, sometimes at the price of sacrificing the parties' intentions and needs. And it might echo the doubt on the benefit mentioned by a judge that criminal reconciliation was expected to have the function of legal knowledge propaganda (*pufa*). However, neither the suspects/defendants nor the programme itself should be a tool or a show which accorded some 'larger good' greater than the parties' interests. Otherwise, it might

violate the predicted aim of this progamme as 'empowering the parties' and cause hurt to the parties.

5.2.3 Active roles for parties only in private reconciliation

It was found in the interview that in the criminal reconciliation programmes, the parties were not always 'used' by the officials to serve their own interests. They also negotiated and reached an agreement privately prior to the criminal reconciliation programme, as happened in case no. eight in location B (a traffic accident related crime case). The accounts from the parties in the interview provided further important details allowing a better understanding of the parties' attitudes.

In this case, W died in a traffic accident caused by the suspect X's negligent driving under extreme fatigue after overnight work.[625] X talked about his feelings and thoughts after the accident:[626]

> 'I really felt very sorry and regretful. I also expressed such feelings to the prosecutor. Nevertheless, in my view, the most important thing, rather than sadness or regret, was to find a way best for him and the victim's family to resolve the problems resulting from the accident as soon as possible.
>
> So I commenced to search information on the way of handling traffic accident related crime cases on the internet, and then found out a number of news reports about dealing with this kind of case through criminal reconciliation in many other cities in China. I found criminal reconciliation to be a win-win choice for me and the victim's family – I might not be prosecuted and they could get a considerable sum of compensation promptly. These were tangible benefits! Then I found a friend who also knew T (W's son) to help me communicate with T. These efforts were successful and T agreed to meet and discuss the way of resolving the problems together with me.'

The victim's son T described the change in his thoughts before his acceptance of X's

offer of private negotiation and reconciliation.[627]

> 'After the accident happened, I was very sad and angry. I felt that it was impossible for me to forgive the person who "had killed" my mother. My family was full of that kind of emotion too at that time. When I knew X's intention from my friend, at the beginning I thought that I could not accept this suggestion as I just wanted to see X sent to trial and fired from his job.
>
> However, my father was so tolerant that he persuaded me and my brother and sister to forgive X and to give the young man another chance after he heard X's situation and regret from the prosecutor. Since I and my brother and sister firmly disagreed with our father's opinion, family conferences attended by my father and all the children were held many times to discuss whether we should accept X's reconciliation proposal.
>
> At first, all the three children refused to listen to our father's views. But in the meantime, I learned from the internet that in traffic accident related crime cases, the suspect often did not pay compensation according to the sentence delivered in the Court, and the suspect would not be sent to prison anyway since it was a minor crime. Then I began to consider my father's reasons and X's suggestion.
>
> Finally, I thought that my mother cannot come alive again; it is correct to rationally pay attention to the method how to best address this matter. Therefore, I agreed to meet with X and negotiate with him.'

T's accounts, however, showed that the main reason leading to his change of mind and acceptance of X's suggestion of reconciliation was his realization of the frustrating reality that it was almost impossible to get X sent to jail as he wished, and that it was very likely that his family would not get any compensation if X was convicted and sentenced in a criminal trial process. In other words, if T had been convinced that X would be punished harshly in accordance with T's wishes and that his (the victim's) family could also get compensation according to the Court's

adjudication, he would not have chosen criminal reconciliation.

Concerning the private meeting between X and T, T described it as follows in the interview:[628]

> 'In our private meeting, we mainly talked about compensation and reached an initial agreement on that. We later suggested to prosecutor Y that we wanted to resolve the case through an alternative way other than litigation, which was smoothly adopted by Y.'

This process showed that in this case, criminal reconciliation was factually driven more by X, the suspect, and T, the son of the victim rather than by the prosecutor. The prosecutor was involved informally prior to the resolution meeting; but the parties had, de facto, come to an understanding, if not full agreement, beforehand based upon their assessment of what could be achieved in the reconciliation process as against the criminal process. In addition, it is interesting to see in this case that information on the general issue was available from the internet which might become an increasingly important source of 'legal advice.'

Subsequently, as shown in Chapter Four, the formal criminal reconciliation meeting was held by the responsible prosecutor Y simply to confirm the private agreement. Such a simple criminal reconciliation meeting, which revolved around confirming the parties' private agreement, could hardly serve the claimed purposes such as redressing the victim's damage and educating or correcting the suspect. It was further noticed in T's accounts that it seemed that the dispute between the parties was not well addressed either:[629]

> 'In fact, my brother and sister could not understand my choice of reconciliation even now. My brother and sister argued that I was putting a price tag on our mother's life. My father and I would continue persuading my brother and sister. And I believed that they would eventually understand that.'

In this sense, actually a potential dispute remained since T's brother and sister still firmly objected to criminal reconciliation and its outcome. This made it hard to accept the official position that criminal reconciliation brought about 'closure'.

The suspect X's accounts in the interview confirmed that the claimed goal of educating and correcting the suspect was not reached in such a criminal reconciliation programme (see further below).

As to why the official accepted the parties' proposal of criminal reconciliation and the parties' private reconciliation, it was attributed to the fact that the parties' proposal met his expectation of using criminal reconciliation in this case. Maybe the official also knew that there might be some problems in the parties' private negotiation and such a criminal reconciliation was hardly likely to produce the predicted outcomes such as repairing the harm of the victim and educating and correcting the suspect/defendant. Instead of implying the parties' dominance, this might actually show that in fact, driven by the performance assessment system, what the officials cared about most was that they could close the case as they wished, the sooner, the better. The parties were actually marginalized in this process.

5.2.4 The parties' comments on criminal reconciliation

It was found in the interview that most of the parties expressed satisfaction with criminal reconciliation. For example, in case no. five in location A (a theft case), the suspect commented on the criminal reconciliation programme he participated in as necessary and fair.[630]

> 'I am satisfied with this programme. It first provided an outlet for the victim L to express his emotions, and second, during this process, both of us could say what we wanted. After the case was resolved, my life went back to what it had been before:
>
> I felt stressed at the time I was discovered by the Police, but this pressure disappeared when I found that my classmates, especially the victim L, and my

> teachers did not look down upon me and I re-integrated into the group easily after the case was resolved through criminal reconciliation. Moreover, since there was no criminal record, my future would not be affected by this case. I also felt good that I had learnt some useful legal knowledge from the prosecutor in the meeting; it could help me control myself better in future.'

The victim in this case also briefly expressed his satisfaction with this criminal reconciliation programme in the interview:[631]

> 'I have got what I wanted in the criminal reconciliation meeting, which really met my expectation. So I was fully satisfied with this programme'.

In case no. six in location A (a theft case), the suspect, X2, also expressed his satisfaction with the criminal reconciliation programme:[632]

> 'The best point of criminal reconciliation was that my work and life were not adversely affected by my wrongdoing. And the criminal reconciliation meeting provided a place for me to say anything I wanted freely, and to express my remorse and extend an apology to the victim. Accordingly, I regard criminal reconciliation as a fair and just programme that meets all my expectations. As to the relationship between us (the parties) after criminal reconciliation, on my side, I am very willing to say hello to the victim Q if we meet some day, though we have not met again after the case was resolved.'

Even in the case mentioned above in which the essential negotiation was conducted before the formal criminal reconciliation meeting, the suspect stated his satisfaction with the outcome of the formal criminal reconciliation programme:[633]

'I am very satisfied with this programme and the outcome. After the case was resolved, my work was not adversely affected, and my life went back to what it had been before.

If the suspect's family had insisted on litigation, I would have tried my best to avoid paying the compensation awarded by the Court in the civil suit collateral to criminal proceedings, since litigation would make me lose job and have a criminal record which would badly influence my future. In this sense, I would have hated the victim's family and would not have wanted to pay anything to them.'

Indicating satisfaction with the criminal reconciliation programme notwithstanding, X's accounts led to reasonable doubts about the sincerity of his regret and apology in this programme. It seemed that those were merely built on the positive outcome criminal reconciliation could bring to him; had the outcome not met his expectations, he would have abandoned his remorseful emotions and become resentful. This, however, was not noticed by the responsible prosecutor in the criminal reconciliation programme, which was in fact an official formality to confirm the parties' agreement reached in the private negotiation. Perhaps this was also due to the problem pointed out above that what the officials cared about most was having the parties sign a criminal reconciliation agreement to reach the requirement set in the performance assessment system.

In this case, the victim's son who participated in the criminal reconciliation also expressed satisfaction with this programme in the interview, facing his brother and sister's objection though:[634]

'Although I am still very sad too, I do not regret my choice. I am pleased to have given the young victim another chance and to see that his career and life were not affected. Also, since my mother could not be brought back to life even if X were sent to court and fired, for my family, receiving a considerable sum of compensation promptly was rational and meaningful.'

There are also 'direct' parties of the criminal reconciliation cases expressing their satisfaction in the interview. For example, in case no. seven in location B (an intentional injury case), the victim's mother expressed her positive evaluation of criminal reconciliation in my interview with her over the phone:[635]

> 'I felt relieved to participate in the criminal reconciliation meeting and viewed it as a win-win practice. On the one hand, we felt much better through having been able to speak of our distress and other feelings in the meeting, and getting a sincere apology from the suspects. On the other hand, we were happy to see the changes in the suspects and to give them this chance after they had done something wrong.'

The suspects' parents in this case also positively commented on the effect brought about by the criminal reconciliation programme in the telephone interview as 'the children became more mature than before; they studied much harder and their teachers in the school often praised them now.'[636] Nevertheless, the author only got the juvenile parties' parents as the 'indirect' parties to grant interviews, because the author was informed by the parents that all the children were extremely busy with preparing for their final examinations at that time. Although all the parents used 'we' not 'I' in the interview, which meant that what they spoke also for the 'direct' parties, namely their children, the possibility that the juvenile parties in fact would not have provided such positive comments on the criminal reconciliation programme cannot be precluded.

Concerning the reason why these parties expressed satisfaction with criminal reconciliation programmes, it might because they had participated in this programme voluntarily, and the outcome of the programme had met their expectations. Referring to the earlier analysis, the victims who had participated mainly under pressure from officials of the justice system or their teachers or leaderships, expressed displeasure and irritation with this programme. Those distinct emotions, to a certain extent,

demonstrated that voluntary participation was crucial to whether or not criminal reconciliation could satisfy the parties. But it was also possible that the parties just did not want to show their negative comments on this programme for fear of any potential negative consequences this interview might have for them, especially since the interviews with the parties were contacted and observed by the officials in Changzhou and Chongqing.

5.2.5 The parties' difficulties in criminal reconciliation programmes

Although being satisfied with the criminal reconciliation programmes, the parties also met difficulties in this programme. One difficulty mentioned by the victims interviewed was that not much attention was paid to them, except for the monetary issue which had little influence sometimes (i.e. the victim did not care or need money very much; or the psychological harm was more important than the monetary loss in the victim's mind). An example was the account delivered by the victim M in case no. five in location C (a robbery case):[637]

> 'In the criminal reconciliation meeting, I could really feel the defendants' parents' upset and remorse from their sincere apologies. Some of the parents even cried, and they were positive towards compensation. So I changed my mind to be willing to give the juveniles one more chance and signed the agreement.
>
> However, actually I do not think such a programme helped me a lot and it did not alleviate my hurt feelings. My psychological harm cannot be relieved through money. Now I still feel bad. I became a very timid person after that. I am very scared of going somewhere alone. I always feel very insecure now but I do not know how to deal with it.'

Although criminal reconciliation effectively resolved the problem of compensation enforcement, from these remarks, the function of compensation for the victim in criminal reconciliation might be overstated. As mentioned by the lawyers

interviewed, in fact some victims in good economic circumstances would not accept criminal reconciliation. This point was substantiated by the accounts of the victim's father in case no. six in location C (a juvenile intentional injury case). In this case, the first criminal reconciliation meeting failed and the victim's father firmly insisted on refusing the responsible judge's proposal of another criminal reconciliation meeting. The family asked for a trial as soon as possible even though the responsible judge had communicated with him no fewer than three times.[638] The victim's father Z explained his insistence in the interview:[639]

> 'My son Z's wound was so serious that there was now symptoms in his brain. Yet after the attack, when Z was in hospital, none of the defendants (or their families) appeared to visit him, or to apologize to him. We felt very angry about the defendants' indifference, so honestly we did not want to see the defendants anymore.
>
> But later we still agreed to meet them as arranged by the judge L in the so-called criminal reconciliation meeting. We did so purely to show the judge some respect. But the meeting made me even angrier, as we could not see even a gleam of sincere apology or remorse or concern for Z from them.
>
> All of their talk concentrated on our forgiveness's being essential for their children. And the parents attending the meeting even found various excuses for their children, rather than apologizing to us sincerely. It was really ridiculous, and made us feel angrier.
>
> So what we hope now is that the case could be decided in court as soon as possible. Now we do not care about money. We have spent all the money needed for Z's cure and we can afford that. We just want to see them sentenced according to law even if we cannot get any compensation from them.'

It could be seen from Z's father's accounts that different from the opinion widely expressed by the officials that compensation was of paramount importance for the victims, not all victims actually view it as that important. But the frustrating fact that

they could hardly get compensation could to a large extent force victims needing it to enter criminal reconciliation by sacrificing their other needs or voluntariness. In such a context, however, to what extent the criminal reconciliation programme could redress the victims and satisfy them was questionable.

Concerning the defendant's difficulty in criminal reconciliation, it mainly related to the compensation they had to pay. As mentioned in the preceding chapters, the sum of the compensation the suspects/defendants needed to pay in criminal reconciliation was normally higher than a Court would award in the same kind of case. And it needed to be paid in a timely fashion. Otherwise, the suspects/defendants could not get the expected outcome like non-prosecution or a lenient sentence.

This was attested to by the fact that all the suspects/defendants, even though they had paid the compensation in the agreements, talked about the difficulties in life caused by such payment, and rated compensation as the top difficulty in criminal reconciliation. For example, L, the suspect of case no. two in location C (a traffic accident related crime case) mentioned it as follows:[640]

> 'Although I have got the suspended sentence I appreciate most through criminal reconciliation, my life is still impacted by this matter. As a migrant working here, the compensation of thirty thousand Yuan is indeed a large sum of money for me. But I know that I do not have any choice. On the one hand, I really did something wrong so that I owe them (the victim); on the other hand, it was the only opportunity for me to get a lighter sentence.
>
> So I think that overall, criminal reconciliation is a fair process and I am satisfied with it since I have got the suspended sentence. But my difficulty is that I have borrowed too much money to pay the compensation, so now I have to work very hard to pay back the debt. Actually I am worried about that and under tremendous pressure.'

It seems from L's accounts that he rather justified the difficulty caused by the compensation in terms of receiving the suspended sentence and he viewed criminal

reconciliationt as the only way for him to get that outcome. Such a thought was very common among the suspects/defendants interviewed. In a juvenile intentional injury case in location A, all the juveniles' parents also said that, because of the amount of compensation, although they were heavily in debt after the case was resolved, it was still worth resolving the case through criminal reconciliation. It meant that their children had no need to go through the criminal trial process and could resume school quickly. And they were willing to earn money and work harder to pay off the debt.[641]

Nevertheless, it seemed that the suspects/defendants' difficulty was because compensation was the absolute focus of criminal reconciliation, and the officials even connected it directly with the suspects/defendants' remorseful attitudes, the victim's satisfaction and the decisions they would make. However, was it totally the suspects/defendants' burden to address the problem of enforcement? Alternatively, was it mainly or only the suspect/defendant to blame for this problem? Besides, could or to what extent this mechanism really address the problem of enforcement? These are elaborated in the following chapter.

As noted in Chapter Four, more than that, the idea that identifying the suspects/defendants' remorseful attitudes and the victim's satisfaction with compensation was absurd. While the suspects/defendants could still pay a large sum of compensation mainly for a lighter sentence, the victim still felt hurt after being paid.

5.3 The lawyers as actors (participants) in criminal reconciliation cases

5.3.1 Lawyers' role as mediators between officials and the parties

As demonstrated in Chapter Four, it was noticed in the interview that in two cases the officials only approached the lawyers during the process of getting the parties' agreement to participate, and then the lawyers successfully persuaded the suspect to accept the offer of criminal reconciliation. Judge L from the People's Court of B

district in Xi'an described how the lawyer acted like a 'bridge' or 'go-between' between her and the defendants (and their parents) during this process in case no. five in location C (an intentional injury case):[642]

> 'I first communicated with the defence lawyers assigned by the court about the possibility of criminal reconciliation.[643] In my communication with the lawyers, I chiefly mentioned as the advantageous outcome of criminal reconciliation a lighter sentence or a suspended sentence, which was conditional upon the victim's acceptance of their clients' apologies and compensation payment. Since all the defendants were in the detention house at that point, I did not approach them. Then the lawyers conveyed my intention to the defendants in detention and their parents.
>
> In the notes recording the meetings between the lawyers and the defendants which were also enclosed in the case file, all the defendants explicitly talked about their repentance and regret, and expressed their willingness to go through a criminal reconciliation process. The lawyers also told me that all the defendants' parents agreed to fully compensate the victim and participate in the criminal reconciliation programme. Then the parents were required by me to write a statement about their voluntary participation in criminal reconciliation.'

In the criminal reconciliation meetings that followed, the lawyers also conveyed the defendants' remorse on behalf of the defendants and helped the defendants' parents with bargaining over compensation. In the interview, Judge L2 from the People's Court of Y district in Xi'an also mentioned that 'usually the lawyers would actively facilitate criminal reconciliation'.[644]

The stated reason why the officials sometimes approached the lawyers, instead of the parties they represented, to talk about the offer of criminal reconciliation, was that this would make the process easier. Prosecutor S from the People's Procuratorate of B district in Xi'an explained this as follows:[645]

'Often, the relationship between the two parties is tense immediately after the case has happened. The victim (or his/her family), especially, is angry with the suspect. Thus, it is hard for us to get them to accept criminal reconciliation and make some compromise. Besides, the suspect is generally detained at that time and it is not very convenient for us to meet him/her.

In this kind of case, we would normally seek out their lawyers. It is much easier to communicate with the lawyers, as legal professionals, and they would know that criminal reconciliation is beneficial for their clients. Then they would persuade their clients; and it is also easier for the parties to accept their lawyers' advices.'

It seemed that the officials had made working with their lawyers a 'strategy' to get the parties' participation in criminal reconciliation. Lawyer L interviewed in Xi'an also described this role played by lawyers in criminal reconciliation:[646]

'At first, the judge/prosecutor/police would tell us about the possibility of criminal reconciliation and the benefits of it. At this stage, the individual parties will not meet each other. I feel that the conflict between them still exists. So in fact they do not want to see each other.

Normally, we will give our clients suggestions on accepting criminal reconciliation as it is really beneficial for them. The suspect/defendant could get some lenient punishment and the victim could get compensation promptly. After all, getting those "concrete" benefits like money or a lighter sentence is much more significant for them, I believe.

Yet we will definitely respect their opinions. If they do not want to accept it after we have tried to persuade them, we will not insist on that.

In the criminal reconciliation meeting, the agents of both parties will discuss the compensation agreement.'

Lawyer L's account sounded as though the lawyer viewed criminal reconciliation as beneficial for both parties so that he assisted the officials to facilitate this programme. But he also talked about the problems with this programme, which made the benefits regarding compensation of questionable value.

Importantly, lawyer L's accounts imply that rather than challenging public power, the lawyers acted as 'go-betweens' to get their clients to accept the offer of 'reconciliation', and this further facilitated the officials' 'persuasion'.[647] Although it was understandable considering the dilemma the lawyers might face - the potential adverse results their clients might get if they 'offended' the officials and the fact that their clients found it hard to get compensation through the normal procedure, this process was an erosion of the adversarial and rights-centred conceptions of justice underlying earlier reform efforts.[648]

5.3.2 Some lawyers' comments on criminal reconciliation

Lawyer L expressed the view that the problems of criminal reconciliation arose mainly from its focus on compensation:[649]

> 'I have been the agent in about five criminal reconciliation cases; they were all traffic accident related crime cases. As to the process of criminal reconciliation, it is mainly bargaining over compensation. Often the officials would simply connect the degree of the suspect/defendant's regret with the amount of compensation he/she would be willing to pay in criminal reconciliation.
>
> I find that the parties might fight with each other when they meet at the beginning of the criminal reconciliation meeting. But the situation changes after the criminal reconciliation agreement on compensation is reached. In particular, the victim changes his/her attitude of anger when he/she gets the money.
>
> However, I think that criminal reconciliation is an unfair system. It readily conveys the impression that criminal law or penalty is just for poor people who cannot afford paying compensation. I do not know how to resolve this problem

as a lawyer. Maybe poor people will just have to accept this unfairness resulting from wealth disparity? It is really disappointing.'

Therefore, in the opinion of lawyer L, although compensation in criminal reconciliation was advantageous for both parties, it led to unfairness. Yet of course, concerning the specific clients in one case, he would try to make criminal reconciliation successful since it was good for his clients.

Another lawyer interviewed, Z, also commented on the importance and the problem of compensation in criminal reconciliation:[650]

'I noticed that the victim's (or his/her family's) economic circumstances mattered crucially for whether or not the parties could reach a criminal reconciliation agreement. Often, victims from families in good economic circumstances would refuse entering into a criminal reconciliation process.'

Lawyer Z further talked about the problem of unfairness and coercion in criminal reconciliation from the perspective of the judge's power:[651]

'The most serious problem with criminal reconciliation, in my opinion, is that the judge's discretionary power is unreasonably great. It is thereby easy for them to do some under-the-table things.

According to my own experience, in some cases, the defendants cannot get the expected lighter sentence after the enforcement of the compensation agreement. When that happens, it is really unfair. And the defendant would in such a case think that the judge must have gained something from the other party. However, reducing the sentence after the defendant has paid compensation is just a way of taking into account an extenuating circumstance in sentencing (*zhuoding liangxing qingjie*) as provided in the Criminal Procedure Law, rather than a statutory one (*fading liangxing qingjie*). It is totally up to the judge's

discretionary power. So it is hard for the defendant to challenge such an outcome.

In this regard, in criminal reconciliation programmes, defendants in the same kind of crime may get different sentences because of the judge's discretionary power. Such differential treatment will give the impression that law is unfair.

Moreover, since in the current system mediation and reconciliation are directly connected with the judges' own interests coming from their internal performance assessment system, it is possible that they would use their discretionary power to put pressure on the parties during the process of criminal reconciliation to make it successful. And it is easy for them to make it successful as it is hard for the parties to offend the judge who will judge their cases afterwards.

As for ways to resolve this problem, we as lawyers have to "communicate" well with the judges to help our clients obtain a reasonable and expected outcome.'

Lawyer Z's accounts substantiated the discussion of the officials' dominant role in the process. It seemed that the officials' dominance in criminal reconciliation largely came from their very great discretionary power in this programme. As a result, the parties (and their agents) faced much uncertainty concerning the outcome of the case in criminal reconciliation, while the lawyers could only resort to ways outside the legal system like building some good personal relationship with the officials to resolve this uncertainty in the outcome of the case. Thus, the officials and the parties (and their agents) would have much personal contact in criminal reconciliation which was likely to produce some under-table trade. This was exactly what prosecutor L from the People's Procuratorate worried about, as shown in the first section.

5.4 The role of other participants in criminal reconciliation programmes

5.4.1 Serving officials' purposes

The term 'other participants' refers to those people who participated in the criminal reconciliation programmes, apart from the parties and the responsible officials. They included the victims' or the suspects/defendants' parents, teachers, employers, leadership (*lingdao*), peers such as their schoolmates, and some officials observing the criminal reconciliation meeting (i.e. the policeman responsible for the case and the officials from the local Justice Bureau).[652]

As we have seen, except for observing the criminal reconciliation meeting, these people, especially the parties' parents, teachers, employers, leadership assisted the responsible prosecutors/judges in the criminal reconciliation programmes. Specifically, they helped the officials in getting the parties' agreements to participate in criminal reconciliation, making the parties reach criminal reconciliation agreements, and supplying updated information regarding the suspects/defendants' performance in the follow-up programmes to the responsible officials.

Nonetheless, as noted in Chapter Four, such assistance might have constituted coercion impairing the parties' voluntariness in criminal reconciliation. For instance, they helped the officials to repeatedly persuade the parties to give their 'voluntary participation' in circumstances where it was hard for the parties to offend these people. And the extensive observation of the criminal reconciliation meeting in itself was likely to make the parties feel uncomfortable or unhappy.

In addition, it was found in the interviews with the juvenile parties' parents that they largely took it for granted that they could represent their children in the criminal reconciliation process. They appeared to believe that they could express the emotions and stands expected to be shown from the parties in criminal reconciliation like voluntary participation, remorse about the alleged crime, and satisfaction with the criminal reconciliation programmes.

All these activities of the other participants further lowered the status of the directly involved parties and lessened the parties' intentions in criminal reconciliation programmes. In this sense, those other participants also assisted the officials in terms

of marginalizing the parties in this programme.

5.4.2 Other participants' comments on criminal reconciliation

All the other participants interviewed expressed their zealous enthusiasm for criminal reconciliation and high opinions of this programme. For instance, in case no. five in location A (a theft case), the juvenile parties' teacher, W, who had helped the responsible prosecutor arrange the criminal reconciliation meeting with extensive observation by the parties' teachers and schoolmates talked about his welcome to this programme:[653]

> 'When the responsible prosecutor F contacted me about resolving the case through criminal reconciliation, I expressed my strong support immediately and promised to help F to persuade the suspect and victim to accept this offer, because I believed that it was beneficial for the suspect and the relationship between the two parties as classmates.'

He further evaluated this programme highly:[654]

> 'First, it resolved the contradiction between the suspect and the victim caused by the case; second, it gave both parties a chance to learn more about law; third, as many student delegates from other classes also attended the meeting, it had a great educational meaning to more students.'

At this point, the author asked whether or not such an extensive participation might embarrass the parties, especially the suspect. W did not share this opinion by saying that it surely would not since he had told the victim C before the meeting that attending a meeting observed by his schoolmates and teachers was the right way to face the mistake, and rumour or judgments concerning him could only be eliminated through such a public channel.[655] Thus, C himself agreed to that type of meeting.

In case no. nine in location A (an intentional injury case), the parties' coach also talked about her activities and thoughts in the criminal reconciliation process in the interview:[656]

> 'My husband and I have lived with these children for many years as their coaches. We know these children very well that they are all good youngsters; this case happened just because youngsters are always impetuous.
>
> After the incident happened, we were anxious about (the victim) C's injury and worried about the awful influence the case might bring to the three suspects too. We knew that a criminal trial and sentence would not only badly affect the suspects' current performance on the training programme, but also affect their future. So we felt glad when the responsible prosecutor F approached us to introduce criminal reconciliation. We thought that it was good since according to F's introduction, firstly there would be no criminal record for the suspects, and secondly the victim could get compensation quickly.
>
> Then we helped prosecutor F to suggest the use of this programme to the parties' parents and the young parties. The suspects' parents were willing to participate for they did not want their children to be prosecuted and have criminal record. As for the victim's parents, getting compensation promptly through criminal reconciliation to cover the operation fee was the most attractive point, so they also agreed to participate.'

In the first criminal reconciliation meeting, the two parties could not reach an agreement on compensation. This coach even helped them to reach an agreement via consulting a judge she was acquainted with about the sum of compensation after the failure of the first meeting.[657] She then conveyed the information given by that judge to the victim's parents, which led to the victim's parents' compromise in the second criminal reconciliation meeting and the parties' coming to an agreement.[658] At the end of the interview with her, she also praised criminal reconciliation as 'a good way to handle criminal cases since the result benefited both parties'.[659]

It seemed that these people thought it a really good chance for the parties (especially the suspect/defendant perhaps), so that the parties should take the opportunity. However, it might also be possible that these people assisted the officials because they did not want to offend the officials. They might be concerned that they would still have to deal with those officials in the future and it would be adverse for them if they offended the people with power.

5.5 Summary

This chapter further addressed the role of the official, the lawyer, the parties and the other participants in criminal reconciliation, as well as their comments and feelings in this programme through their accounts in interview, in an attempt to shed some light on the questions raised in Chapters Three and Four.

It was found that contrary to the claimed goal that criminal reconciliation would empower the parties to resolve their cases mainly by themselves, it was the officials who played the leading and dominant role during the process of criminal reconciliation. The parties, by contrast, could play only a somewhat passive role. The officials could arbitrarily disregard the procedural regulations or guidelines during the process of criminal reconciliation for the purpose of meeting the various requirements set in the internal performance assessment system. So in fact, it was not the procedural regulations or guidelines, but the performance assessment system, that guided the officials' conducts in this programme. The unrestricted power of the officials owned facilitated this outcome. The lawyers' assistance and the other participants' assistance in criminal reconciliation, possibly out of their consideration of the benefits of criminal reconciliation or their personal wish to keep good relations with the officials, further facilitated the officials' dominant and leading role in this programme. This weakened the parties' role in the criminal reconciliation processes with the result that the parties were usually passively and employed by the officials' as a 'tool' to meet their own goals.

In this context, it was not surprising that the officials and the other participants mostly commented positively on criminal reconciliation as having achieved the claimed goals, and the official case files drew a positive and uncritical picture of this programme. Some of the parties also rated criminal reconciliation highly at interview. It might be because they indeed participated in this programme voluntarily, while it might be also because the interviews with them were conducted under official observation. However, two victims explicitly expressed negative comments and their distress out of somewhat coercive participation caused by the officials and their teachers or leaderships. This showed the significance of voluntary participation in criminal reconciliation on the one hand, and the coercion coming from the repeated persuasion of the officials and their teachers or leaderships on the other hand.

The interviewees' accounts also illustrated difficulties some of the officials met in criminal reconciliation. Some officials felt uncertain about the structure of the programme in the absence of clear regulation. Additionally, criminal reconciliation took too much of their time and energy, which conflicted with some other requirements set in the performance assessment system. The lawyers felt uncertain in criminal reconciliation processes since the official's power was too strong, possibly causing unfairness to the parties. For the parties, the main difficulty came from the absolute focus on compensation in this programme. For one thing, it brought heavy pressure on the suspect/defendant; for another, it actually could not do much to redress the victim.

To sum up the findings shown in Chapters Three to Five, it emerged from the case file examination and interviews that criminal reconciliation practices in the three studied locations differed from accounts in public sources. The parties did not have power in this programme to resolve the case mainly by themselves. This programme was still controlled and led by the officials to serve interests arising out of the performance assessment system. The parties' rights and voluntariness were easily harmed by the officials' unrestricted power during this process. In addition, in many cases, the predicted goals of criminal reconciliation such as redressing the victim's damage, educating the suspect/defendant, restoring the parties' relationship, bringing

'closure' were not achieved, which placed in question the end of 'promoting a harmonious society.' As the interviews showed, the focus of this programme was actually on compensation. But such a focus led to unfairness and the parties' discontent and difficulties, all of which further impeded the criminal reconciliation's achievement of those purported goals.

Although the fieldwork for the present study was small-scale, two arguments may further support the author's findings shown in Chapters Four and Five.

First, concerning the limited access to research samples, since the author's access was restricted to those cases 'selected' by the officials as 'good examples' and the parties' accounts might have been affected by the officials' presence in the interview, the real picture can only be worse.

Second, increasing public reports from a variety of locations in China have also demonstrated problems with criminal reconciliation of the kind the author found in the empirical study. For example, a news report published in April 2012 disclosed that the suspect of an alleged crime of illegal confinement Niu Hao, who was the deputy director of the housing bureau of Zhaolin district of Luohe city in Henan province had signed a compensation agreement with the victims through 'reconciliation' to resolve this case.[660] According to their 'agreement', as an 'exchange' of the payment of the compensation, the victims needed to express their forgiveness, ask the Public Security Bureau not to investigate the suspect's liability and cooperate with the Public Security Bureau in order to make sure of this outcome, and the 'reconciliation' should mean a 'closure' to the matter.[661] At first, the victims had fully complied with the 'agreement.' What finally irritated the victims and made them reveal this matter was the suspect Niu Hao's further 'requirement' to ask them to change their testimony at the Public Security Bureau before he paid the last installment of the agreed compensation.[662] According to the victims, Niu asked them to say that they had not been beaten by Niu; their wounds were caused by their own fall.[663]

This case implies that criminal reconciliation mainly revolves around compensation, and how easy it is for the rich and powerful to use this process to

impose coercion (on the other party) and avoid punishment. What the officials did (or failed to do) in this process further infringed the weaker party's rights and harmed justice. This might indicate that, as argued in this chapter, under pressure or personal interests to meet the internal performance assessment criteria, what the officials care about most in criminal reconciliation is just compensation.

Chapter VI: Understanding Wider Problems in the Criminal Justice System through the Lens of Criminal Reconciliation

The preceding three chapters have provided an account of criminal reconciliation practices in Changzhou, Chongqing and Xi'an on the basis of case files and interviews with people who experienced this process.

The discussion thus far indicates that criminal reconciliation in the places studied is led and dominated by officials. The officials implement this programme in ways routinely contravening procedural rules and guidelines. As a result, the parties' access to justice, the suspect/defendant's right to be presumed innocent until proven guilty, and the principle of voluntary participation by all parties to a criminal reconciliation process may be compromised. As argued in Chapters Three to Five, these problems are caused, on the one hand, by the problematic design of the rules guiding criminal reconciliation (henceforth, these rules will include the relevant articles of the Criminal Procedure Law) and the conflict among the predicted goals of criminal reconciliation. On the other hand, they also result from the officials' motivation to initiate these programmes arising from the internal 'performance assessment (*jixiao kaohe*) system'.

If we regard criminal reconciliation as part of a wider system, the specific problems observed and analyzed in previous chapters turn out to reflect problems with the wider Chinese criminal justice system. Three problems are taken to be fundamental in the context of the present study. First, legal rules are ignored, in part counteracted by internal regulations and in part supplanted by 'hidden rules' (*qian guize*) in practice. As noted in Chapters Four and Five, prosecutors and judges flaunting legal rules could be understood to do this, because they possess unrestricted power. Nevertheless, as argued in this chapter, 'hidden rules', rather than showing the officials' great power, reveal their weakness in the face of various external and internal pressures. The pressure comes from, for instance, the Political-Legal Committees (*zhengfa wei*), the Public Security Bureaus, People's Congresses, local governments, and the internal performance assessment systems. Second, the criminal

process reflects an authoritarian approach to education aimed at thought reform. Third, evading the real problems leading to difficulty in enforcement (*zhixing nan*), the government fails to take sufficient responsibility for protecting the victims' rights to get compensation in civil litigation collateral to criminal proceedings. A closer analysis of these problems of the general criminal justice system is provided below.

6.1 Contradictory rules and 'hidden rules' (*qian guize*)

Chapter Four shows that in the cases observed, procedural regulations and guidelines on criminal reconciliation were disregarded in various ways by the officials thereby compromising the parties' rights and interests. For example, judges and prosecutors used unfair criteria such as household registration (*hukou*) and ability to compensate to exclude some suspects/defendants from participating in criminal reconciliation. The procedural regulations and guidelines compulsorily required the suspect/defendant's admission of guilt before initiating this process. Yet in some cases, the officials simply initiated this process when the suspect/defendant had not admitted guilt and tried to 'make them realize their guilt and fault through criminal reconciliation'. In some cases, officials used undue pressure to get other parties to engage in this process when they were actually reluctant to participate thus compromising the principle of voluntary participation. Also, the regulations or guidelines asked for both parties' (direct parties) attendance in criminal reconciliation meetings. However, in some cases, the suspect/defendant was absent from the meetings because they were under detention. In many criminal reconciliation meetings, there was no communication about the case between the parties as there should have been under the regulations or guidelines; the parties' communication involved little more than bargaining over the amount of compensation.

In fact, the disregard for written rules is not unique to criminal reconciliation; it is a general problem with the Chinese criminal justice system. As argued by Chen Ruihua, in Chinese criminal justice practice, 'hidden rules' (*qian guize*) have in reality largely replaced written rules.

6.1.1 The prevalence of 'hidden rules' and 'parallel systems'

According to Chen, 'in amending the PRC Criminal Procedure Law, we should not focus on further improvements of the written rules concerning issues such as individual rights protection and reallocation of the power among the Public Security Bureau, the People's Procuratorate and People's Court'.[664] In his view, 'the fundamental problem with the PRC Criminal Procedure Law is not the imperfection of the written rules, but the disregard for these written rules in practice, which leads to the 'malfunction of the Criminal Procedure Law'.[665]

Chen argues that officials in the criminal justice process, although expected to abide by or even enforce rules contained in statutory law, in particular the criminal procedure law, use 'hidden rules' (*qian guize*), which are designed by themselves, to replace the written rules.[666] For example, according to Chen, the 1996 Criminal Procedure Law has provided the lawyer with rights to meet their clients at the investigation stage,[667] but this right is usually restricted or simply denied by investigators in practice.[668] A lawyer revealed that normally the investigators would simply put off the lawyers' application to meet their clients. For this purpose, they might avoid encounters with the lawyers under various pretexts.[669] A survey conducted by the Beijing Lawyers Association in 2005 indicated that at the investigation stage, about 38 per cent of lawyers' application to meet with their clients was rejected, and no reason was provided in 45.3 per cent of the rejection cases.[670]

Long Zongzhi, another scholar, describes three main 'hidden rules' in the Chinese criminal justice practice: the first relates to the collection of evidence. According to Long, the 1996 Criminal Procedure Law makes certain forms of gathering of evidence illegal.[671] Article 43 of the 1996 CPL says that 'judges, procurators and investigators must, in accordance with the legally prescribed process, collect various kinds of evidence … [I]t shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other

unlawful means'.[672] However, Long argues that in practice, it has been normal to use 'irregular' (*bu guifan*) or illegal ways to collect evidence.[673] The second 'hidden rule' is that when the defendant claims that his/her confession was induced by torture, the judge is inclined to simply deem the claim as a fabrication and accordingly ignores it.[674] Third, article 162 of the 1996 CPL stipulates that 'if the evidence is insufficient and thus the defendant cannot be found guilty, he/she shall be pronounced innocent accordingly'.[675] Yet in practice, according to Long, the Court is rarely prepared to acquit the defendant despite lack of evidence; normally, in such cases, the defendant is instead given a 'lenient' sentence (*sic*) or a suspended sentence.[676] Some research has shown that the acquittal rate in China 'remains less than one percent'.[677]

6.1.2 Internal and external pressures as the reason for 'hidden rules' and 'parallel systems'

Chen Ruihua provides five causes for the malfunction of written rules and the prevalence of 'hidden rules' in the Chinese criminal justice practice. In general, these five reasons, according to the author, can be categorized into two sorts – first, deficiencies of the institutional design, which is somewhat in conflict with his own argument that 'the fundamental problem with the PRC Criminal Procedure Law is not the imperfection of the written rules'. The author believes that it obscures a fundamental reason causing the officials' disregard for written rules. Second, the officials' enormous power lacks effective supervision (*jiandu*). Consequently, according to Chen, the officials can always calculate costs and benefits of implementing legal rules and can always substitute those written rules leading to low efficiency, possibly harming their own interests, or counteracting goals and targets set for them by higher authorities with 'hidden rules'. In this respect, Chen argues that the lack of an effective implementation system (*youxiao de zhixing jizhi*) is one reason for the ineffectiveness of restrictions on officials' power. Yet to the author, lack of checks on official power is not the fundamental reason for the officials' disregard for written rules. This is because in essence, these 'hidden rules' result

from prosecutors' and judges' weakness in the face of strong external and internal pressures. The internal pressure, as also noted by Chen Ruihua, comes from the various internal assessment criteria; the external pressure takes the form of interventions from the Party and other State authorities. The external and internal pressures mean that in the Chinese legal system, prosecutors and judges can hardly execute their power independently, which is the basis for the argument that their adoption of 'hidden rules' is because of their unrestricted power. Therefore, the author argues that 'hidden rules' are a sign of the prosecutors' and judges' weakness rather than of their power. While 'supervision by the media and public opinion' (*yulun jiandu*), are now popularly regarded as the most effective ways of curbing the abuse of power, the current system in fact continues to rely heavily on 'supervision' by other Party-State authorities. (Public opinion, moreover, is itself under the supervision of the Party-State.) Such 'supervision' amounts to interference with the Procuratorates and Courts, and further harms the already flawed judicial independence.

Conflicting ideologies or power struggle? According to Chen Ruihua's more detailed account of the argument outlined above, the primary reason for 'hidden rules' is that there are fundamentally conflicting ideologies in the Chinese criminal justice system.[678] For instance, according to Chen, the 1996 CPL has stressed the suspect/defendant's right to legal counsel, which would include the right to plead not guilty.[679] Additionally, Article 43 says that 'it shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means.'[680] This, as argued by Chen, indicates the 1996 Criminal Procedure Law's intention to protect the voluntariness of the suspect/defendant's statements under interrogation.[681] However, meanwhile, the 1996 CPL also stipulates the responsibility to answer the interrogators' questions truthfully (*rushi gongshu*) for the suspect/defendant.[682] The suspect/defendant's attitude (i.e. whether or not to answer the interrogator's questions truthfully, whether or not to admit guilt) can also affect the sentence afterwards, according to a long-standing ideology as well as a criminal policy that 'to be lenient with those who confess and severe with those who refuse to'

(*tanbai congkuan, kangju congyan*).[683]

Such an internally conflicted design of the Criminal Procedure Law, according to Chen Ruihua, originates from the in-depth conflicts between different legal values, which are legal values transplanted from western jurisdictions on the one hand, and based in native legal traditions on the other.[684] In this regard, Chen argues that the prevalence of 'hidden rules' also shows the unsuitableness of those values transplanted from western jurisdictions.[685] The example just given illustrates this: on the one hand, the CPL has recognized the principle of 'no one should be forced to incriminate himself', while on the other hand, 'finding out the (substantive) truth of a case' and viewing confession as 'the most critical evidence' are still strong in the 'Chinese legal culture'.[686]

This author acknowledges Chen's realization of the conflicting provisions in the statutory laws. Yet the conflict in legal rules, such as the one causing the regular use of torture in getting confession, is not mainly due to different legal cultures or values. The difference in cultures between China and western countries may have been cited too often as the explanation, or excuse, by some domestic scholars (and practitioners) to exclude the mechanisms protecting the parties' rights to criminal justice processes.

Actually, as observed by some scholars, the process of revising the CPL is like a power game among the various State authorities as well as a game of power and rights.[687] Sida Liu and Terence Halliday reviewed the lawmaking processes of the 1979 and 1996 CPL and described them as 'power struggles' of the various State authorities with 'conflicting interests'.[688] According to Liu and Halliday, the 'contradictory concepts and ideologies incorporated in the final version' (of the 1996 CPL) are the result of compromises of the State authorities taking part in the lawmaking process.[689] Such a process also played out in the latest revision of the CPL in 2012.[690] On the second main revision of the CPL in 2012, Chen Guangzhong commented that 'the investigators, in particular the police, are under great burden to solve cases', so 'they are inclined to have great power and little restriction during this process', and this has also been shown in the new CPL, effective in 2013.[691] Taking into account the obvious power imbalance between the Public Security Bureau, the

People's Procuratorate and the People's Court, the conflicting provisions in the CPL is in essence a sign of this power structure as well as the result of their power struggles, instead of conflicts among western and Chinese legal values.

Pursuing own interests or pressure from the quota system? Second, according to Chen Ruihua, in implementing legal rules, the officials normally engage in a cost – benefit calculation.[692] Hence, if a programme or a system would lead to marked increases of cost but only a little improvement of benefit, namely an overall decrease of efficiency, they will be inclined to circumvent such programmes or systems,[693] and adopt programmes or systems that have higher efficiency through creation of hidden rules.[694] An example for this is the gradual shift away from collegiate judicial panels[695] to one-person adjudicators in charge of handling criminal cases, in reaction to judges' rising workloads.[696]

Furthermore, according to Chen Ruihua, if strictly observing the legal rules would damage the officials' interests or lead to disciplinary measures, criminal punishment or a bad evaluation under the internal performance assessment (*jixiao kaohe*) system explained in Chapter One, it is much easier for the officials to just circumvent these rules.[697]

Carl Minzner has also argued that internal quotas can replace legal rules in judicial practice. According to Minzner, Chinese bureaucracy 'relies on internal responsibility systems' to manage the judicial system just like any other bureaucratic system.[698] Yet quotas and requirements set out under these internal systems, 'translating' *some* legal rules, are not always consistent with legal rules.[699] As a result, 'aims and goals expressed in national law that have not been reduced to hard targets, or are not capable of being so reduced, may fade in importance' and then be ignored by officials.[700]

The above mentioned practice that judges do not acquit when they ought to according to article 162 of the 1996 CPL is an example in point. Because under the Procuratorates' internal performance assessment system the prosecutor would be disciplined if there was an acquittal in a case where he/she had initiated prosecution, the prosecutor would try every means to avoid acquittal in the Court.[701] For example,

they might communicate with the adjudicating judge(s) to persuade, pressurize or bribe them. This might result in judges suggesting to prosecutors that the charges be withdrawn, or in judges giving a 'lenient' (*sic*) sentence.[702] This is, of course, a serious violation of the suspect/defendant's rights.

This problem also gives rise to the other two above-mentioned 'hidden rules'. As noted in Chapter One, resolving cases (*po'an*) is a crucial criterion used by the Public Security Bureaus in China to assess the performance of the police;[703] And as observed in Chapter Four, in China, the relationship between the Public Security Bureau, the People's Procuratorate and the People's Court is like a 'production line'.[704] In this production line, according to Chen Ruihua, the three State authorities are largely working together to meet the various quotas set in their performance assessment systems, so they are prone to abandon legal rules obstructing their achievement of these quotas and to adopt 'hidden rules' facilitating fulfilling the quotas.[705] For instance, as discussed by Chen, the number of arrests approved by the Procuratorates is normally a criterion the Public Security Bureau uses to assess the police. The number and rate of cases not prosecuted is a criterion to evaluate the performance of the police and the prosecutor to the extent that they are in charge of approving arrests. The conviction rate, in turn, is used to assess the performance of the police and the prosecutors.[706] This means that the various quotas set in the internal performance assessment systems, which are directly connected with the officials' interests, are not only a source of stress but also they are incentives for the officials to ignore some written rules and adopt 'hidden rules'.

Lack of supervision or lack of independence? Why can officials follow 'hidden rules' at the cost of the written rules protecting the parties' rights? Chen Ruihua states that the officials' power is too strong and lacks effective 'supervision' (*jiandu*), and that the Chinese criminal procedure itself lacks adequate mechanisms for effective implementation, which 'innately leads to avoidance and disregard for such procedures'.[707]

Lack of effective supervision might be the most widely cited problem in domestic China, offered as an explanation for power abuses infringing individual

rights. In this specific discussion related to the empirical study of criminal reconciliation practices, the focus is the power the prosecutors and judges possess.

The People's Procuratorate in China was established in accordance with the model of the Soviet institution, which is characterized by its taking on two roles – public prosecutor and supervisor (of other state authorities).[708] The People's Procuratorates also possess discretionary power over some cases – according to article 142 of the 1996 CPL, 'with respect to a case that is minor and the offender need not be given criminal punishment or can be exempted from it according to the Criminal Law, the People's Procuratorate *may* decide not to initiate a prosecution'.[709]

The People's Courts, according to the PRC Constitution, are the judicial organs of the State and 'shall, in accordance with the law, exercise judicial power independently and are not subject to interference by administrative organs, public organizations or individuals'.[710] Yet scholars such as Chen Ruihua say that because of the undue emphasis on exploring the substantive truth (*shiti tanzhi*) in handling cases in Chinese criminal procedure, the judge has been granted great discretionary power which calls for effective supervision.[711]

Scholars who regard a lack of supervision as the main problem are inclined to focus on institutional checks upon the prosecutors' and the judges' power. For instance, according to Cai Guoshan, supervision of the People's Procuratorate comes mainly from inside the Procuratorate'.[712] It consists in supervision conducted by the procuratorial committee (*jiancha weiyuanhui*), the People's Procuratorate of the higher level, as well as the disciplinary inspection departments set up within the People's Procuratorates.[713] However, Cai argues that this kind of supervision means 'letting one supervise oneself', which is in itself highly suspect.[714] For example, the decision not to prosecute is made by the chief prosecutor (*jiancha zhang*) or after discussion by the procuratorial committee (*jiancha weiyuanhui*).[715] The internal supervision is supposedly undertaken by the procuratorial committee as well, and therefore actually allows the supervisor to supervise and examine itself.[716]

Chen Ruihua's argument about the officials' disregard for written rules is concerned with the ineffectiveness of the supervision system as well. According to

Chen, if we want a set of procedural rules to be implemented well, there ought to be a tribunal mechanism (*caipan jizhi*) to deal with any alleged violations of procedure, and an annulment mechanism (*xuanbu wuxiao jizhi*), attributing responsibility for violations of procedure.[717] Yet neither of these two mechanisms has been properly established in the Chinese Criminal Procedure Law.[718] In the judicial system, Chen says, the Courts cannot review the police and the prosecutors' conduct, because on the one hand, they do not play a role at any stage before trial, and on the other hand, there is no tribunal mechanism to appraise the official's illegal conduct (violating the procedure even during trial).[719]

The violation of the lawyer's right to meet their clients and the suspect/defendant's right to apply for a change of enforcement measures (*qiangzhi cuoshi*) are taken by Chen as instances resulting from this problem.[720] The statutory laws do not impose any adverse consequence or legal liability on officials infringing these rights and rules. Nor do they provide any opportunity for the lawyers or suspects/defendants to lodge appeals (to the Courts) when they encounter such infringements; the investigators can easily restrict and even deprive of the lawyers' and the suspects/defendants' such rights in practice.[721]

With regard to supervision of the Courts, the PRC Constitution provides that the People's Procuratorate shall supervise the People's Court and the Public Security Bureau. As stipulated in the Criminal Procedure Law, the People's Procuratorate can lodge a protest (*kangsu*) if it discovers any mistake in the Court's verdict.[722] It can also present comments concerning any illegal conduct on the part of the People's Court's hearing cases.[723] Nevertheless, according to Chen Ruihua, in practice, the Procuratorate is very reluctant to conduct supervision of the People's Court due to its assumption of two conflicting roles, namely supervision and prosecution.[724] The role of supervision, according to Chen, asks for neutrality while the role of prosecution (and investigation in certain 'crimes') asks for the prosecutor's proactive involvement.[725] Under the current stress on 'cracking down against crime', the Procuratorate is inclined to ignore its role as a supervisor and pays much more attention to prosecuting 'crime'.[726]

In addition, supervision of the People's Procuratorates and People's Courts can come from the People's Congress. Article 3 of the PRC Constitution provides that 'all administrative, judicial and procuratorial organs of the state are created by the People's Congresses to which they are responsible and under whose supervision they operate'.[727] Yet Cai Guoshan says that according to the statutory laws, supervision from the People's Congress is only general and ex post.[728] For example, article 10 of the Organic Law of the People's Procuratorates has stipulated that the People's Procuratorates only needs to 'report their work to the People's Congresses and their Standing Committees'. So does the Court. In fact, even though this 'general and ex post' supervision may constrain prosecutors and judges, any constraints arising from People's Congress supervision are difficult to justify by reference to genuine democratic legitimacy of the People's Congresses or by the argument that the Congresses are better qualified than prosecutors and judges to make these decisions.

In sum, in the opinion of scholars such as Chen Ruihua and Cai Guoshan, prosecutors' and judges' regular uses of 'hidden rules' in practice which infringe upon the parties' rights results from their great power without effective supervision. However, if there are tribunal and annulment mechanisms in the institutional design, as argued by Chen, can the People's Courts properly implement them to reduce the force of 'hidden rules' adopted by other State authorities violating the parties' rights?

According to the view taken here, further supervision mechanisms are unlikely to be effective, because, the origin of the officials' adoption of 'hidden rules' does not lie in written laws nor the lack of the Court's roles in written laws, nor the ineffectiveness of the supervision system. Rather, for prosecutors and especially for judges in China, the real problem is that neither can exercise their power independently. As shown in the following, they have to subject themselves to instructions from the Party and other State authorities such as the Public Security Bureaus, the People's Congresses and local governments, as they are subject to the various internal quotas as shown above.

Party control takes the form of direct interventions from the Political-Legal Committee (*zhengfa wei*) in the general operation of the Procuratorates, as well as in

the handling of individual cases. The Political-Legal Committee, according to the definition of the Chinese Communist Party, is the department set up by the Party at the central and all local levels 'to lead and manage political-legal affairs'.[729] It has been given the responsibility, among other things, 'to unify the conduct and thinking of all the political-legal departments', 'to supervise and coordinate each political-legal department', 'to conduct research and coordination in important and complicated cases' and 'to organize and maintain social stability'.[730] The 'political-legal departments' include the Public Security Bureau, the People's Procuratorate, the People's Court, the State Security Bureau and the prison.[731] This definition by the Party shows that the Public Security Bureau, the People's Procuratorate, and the People's Court are all supposed to operate under the leadership of the Political-Legal Committee. The enormous power of the Political-Legal Committee also stems from the fact that according to Party custom, the head of the Political-legal Committee is also a member of the Party Committee (*dangwei*)[732] (central or local), while normally the presidents of the People's Procuratorate and the People's Court are not committee members.[733]

Moreover, since usually the director of the Public Security Bureau is also the head of the Political-Legal Committee in most locations in China, in essence, the Procuratorates and the Courts are led and directed by the Public Security Bureaus.[734] A widespread phrase captures the powerfulness of the Public Security Bureau and the weakness of the Procuratorate and Court: 'big Public Security Bureaus; little Courts; dispensable Procuratorates' (*da gong'an, xiao fayuan, keyoukewu jianchayuan*).[735] As noted by Jerome A. Cohen, this leads to the problem that on the one hand, the Procuratorate is 'without incentive to self-monitor,' while on the other hand, it is 'even less likely to intervene in investigations by the Public Security Bureau, whose investigators generally outrank the Procuratorate counterparts in the Party's political pecking order'.[736]

Recently, there has been discussion about a possible decline of the powers and statuses of the Political-Legal Committee and the Public Security Bureau in the Chinese political-legal system (*zhengfa xitong*). As observed in some places, the

police chiefs no longer necessarily become the heads of the Political-Legal Committees, and the heads of the Political-Legal Committees are not members of Party Committees.[737] Yet to what extent such changes would affect their powers in reality is debatable – as argued by some scholars, China remains an authoritarian state relying on coercive forces especially the police to maintain its political stability.[738]

For a long time, the institution of the Political-Legal Committee has been criticized for its adverse effects on judicial independence and the administration of justice. Chen Guangzhong has argued that many cases are in fact decided by the Political-legal Committee and that the 'the Public Security Bureau, the People's Procuratorate, and the People's Court' are routinely 'coordinated' (*xietiao*) by the Political-Legal Committee to handle cases according to its own decision.[739] Lawyer Chen Youxi has gone so far as to comment that 'almost all the unjust and wrongly decided cases disclosed in recent years could find direct interventions from the Political-legal Committee'.[740] That is to say, very likely the injustice of a case lies in the Political-Legal Committee's 'coordination' and directions, not in the Court, the Procuratorate or even the Public Security Bureau.

The 'Zhao Zuohai case' [741] is an example of the potentially harmful role of the Political-Legal Committees. In this case, the People's Court originally thought that this case should not be sentenced due to serious flaws in evidence; the People's Procuratorate held the same opinion and asked the Public Security Bureau to further investigate while the Public Security Bureau could not find any new evidence.[742] However, later, the Shangqiu Political-legal Committee intervened and ordered the three organs to resolve it since it was murder.[743] In this situation, under the pressure from the Political-legal Committee, the People's Court gave a suspended death penalty sentence to the alleged defendant Zhao Zuohai, who was later found to have been tortured to extract his 'confession' and to have been wrongfully convicted and sentenced, because the person alleged to have been killed by him re-appeared alive.[744] There is no mechanism at all for investigating the Political-Legal Committee's accountability in handing and directing cases even of this extreme

nature.[745] If any misconduct in handling a case is disclosed afterwards, only the police, prosecutors or judges (in charge) may take responsibility.[746]

Judicial independence has been especially eroded in a variety of ways. In addition to pressure and interventions from the Party's Political-Legal Committee, as analyzed by Carl Minzner, the People's Courts at all levels also face pressure from the Party policies such as maintaining social stability, preventing large-scale citizen protects.[747] As also observed by Benjamin Liebman, in the speech concerning establishing 'socialist rule of law' by Luo Gan, head of the Central Political-Legal Committee in 2006, characterized 'following the leadership of the Party' as a requirement for the legal system (including the People's Procuratorates and People's Courts) in order to 'guarantee the political colour and loyalty to the Party'.[748] These general policies, according to Minzner, are crucial to the People's Courts and have been adopted as requirements and tasks more significant than the legal rules for the Courts and judges.[749]

Yet these political requirements have weakened judicial independence and produced awkward situations, which result in the officials' violation of written rules protecting the parties' rights. For example, as discussed in Chapter One, since 2000, the Party has highlighted judicial mediation as an effective way to address social conflicts and unrest and thereby to achieve 'harmony' in society. In this context, according to Randall Peerenboom and He Xin's report, 'judges may be caught between solving cases in an efficient manner and the political requirement of a higher mediation rate'.[750] Under this political pressure and tension, judges use methods such as pleading and even forcing the parties to make mediation consume less time and energy.[751] This analysis fits the observation of criminal reconciliation practices as well – the officials' violations of the procedural rules as shown in Chapters Four and Five can also be seen as largely caused by pressure coming from the Party's policies of 'promoting a harmonious society', which has been transformed to the internal performance assessment criteria.

Obstacles from local government, widely characterised as 'local protectionism,' is another problem leading to weakness of the People's Procuratorates and People's

Courts' in executing their authorities. As argued by Zhang Hui, the administrative structure in China as stipulated by the Constitution has decided that the personnel and finance of the local People's Procuratorates and the People's Courts are subject to the local People's Congresses and local governments, so the Procuratorates and Courts are one community of beneficiaries with local governments and the People's Congresses.[752] This structure gives local People's Congresses and local governments power to interfere with the People's Courts and Procuratorates – they may face retaliatory budget cuts if they tried to exert independence in such cases.[753]

In sum, while there is a multitude of officially recognized 'supervision' mechanisms, these mechanisms are ineffective, largely because of the Procuratorates' and Courts' weakness vis-à-vis the Party, the Public Security Bureau, and local governments. For instance, scholar Yu Jianrong recalls being told by a judge that in fact 'the judges are conscientious but have no strategies', since 'the secretary (of the Party) controls their position; the mayor controls their salary; and the Political-Legal Committee controls their case'.[754] Since the People's Procuratorates and People's Courts are ultimately subject to these entities, the violation of rights perpetrated by the Procuratorates and Courts may be more appropriately viewed as power abuse of the Procuratorates and Courts by these entities.

It is therefore very problematic to call for more supervision (*jiandu*) of the Procuratorates and Courts. According to the view taken here, rather than addressing the problem of rights' violations, more supervision results in more potentially harmful interference with the People's Procuratorates and People's Courts.

The expansion of the People's Congress' supervision in recent years could be referred to as an example here. Following the thought that more supervision is needed, the People's Congress has 'expanded the Standing Committees' power,' albeit any without statutory basis, to undertake 'supervision' in individual cases (*ge'an jiandu*). Yet, this expansion of power, as argued by Cai Dingjian, has actually constituted a form of intervention rather than supervision of the People's Procuratorates and Courts.[755] As conceded by Randall Peerenboom, interventions from the People's Congress also cause 'awkward situations' for judges, since they

sometimes 'receive conflicting advice from different People's Congresses'.[756]

Moreover, the effects of supervision from the media and the public, widely called '*yulun jiandu*', which is increasingly referred to as another potentially effective supervisory mechanism are also in question. On the one hand, against the background that there is no freedom of speech in China, the media are still controlled and supervised by the Party.[757] In 2004, *Yulun jiandu* has been explicitly defined by the Chinese government as 'an official form of Party supervision stipulated in the Internal Supervision Regulations of the Communist Party of China'.[758] In this sense, Li Fung Cho argues that 'this [tight supervision by the Party] was by far the clearest indication that China's *yulun jiandu* should not be seen to correspond to the Western press theory of the "Fourth Estate", which implied that the press has powers independent of the government to criticize state policies'.[759]

On the other, as argued by Benjamin Liebman, in China today, public opinion, more appropriately defined as 'cheap speech' rather than 'free speech' has in fact formed 'populist pressures' on the People's Courts, especially in the context of the Party's highlighting of 'social stability' and 'harmony'.[760] This, according to Benjamin Liebman and Tim Wu, has already produced a 'new type of Party-state intervention', which is characterized by quick response to public opinions, even sacrificing legal rules.[761] Thus, Liebman and Wu say that

> 'When criticism is used as a political weapon against an already weak judiciary it does not improve governance but endangers progress toward a rule of law system. At its worst, and when supported by the state, cheap mass criticism can cause judges to become unwilling to make decisions that run the risk of inflaming the public thereby causing a surrender of judicial authority to the vicissitudes of public opinion.'[762]

To sum up, more supervision - *jiandu* – would not be likely to prove effective in addressing the problem of hidden rules, and would pose the risk of more undue interference with the People's Courts and the People's Procuratorates. Courts and

Procuratorates need to be strengthened not further weakened by additional layers of supervision.

6.1.3 Preliminary conclusions

All the problems leading to the malfunctioning of the system discussed by Chen Ruihua can also be found in criminal reconciliation as a sub-system implemented in the general framework of criminal justice. To that extent, the criminal reconciliation system may be said to replicate problems also found in the wider criminal justice system. For example, concerning the lack of an implementation mechanism for (criminal) procedure, as shown in Chapter One, those local rules or guidelines for criminal reconciliation chiefly provide a set of procedures governing this programme and the officials' conduct (power) in this process. Judicial review of this process and legal liability imposed on the officials cannot be found in these regulations and guidelines. It is not included in the articles 277 to 279 of the 2012 CPL either. In addition, there are conflicts in rules governing criminal reconciliation. For example, as argued in Chapter Three, the procedural regulations and guidelines emphasize the parties' *voluntary* participation in this process. However, it also provides that many other people such as the parties' employers, 'leadership' or teachers could also attend criminal reconciliation meetings. This, it was observed, may put pressure on the parties and impair the voluntariness of their decisions.

As argued in this section, the fundamental problems leading to the prevalence of 'hidden rules' in judicial practices are internal and external pressures on the police, prosecutors and judges' coming from the internal performance assessment systems and various other entities. These problems were further aggravated in criminal reconciliation processes.

Internal pressures, as shown in Chapter Five, were increased by procedural regulations and guidelines for criminal reconciliation and the internal performance assessment systems taking these specific rules into account. As discussed in Chapter Five, officials could be expected to make certain choices; it would be natural for

them to evade time-consuming programmes like criminal reconciliation. Nevertheless, they could not simply give up on this programme since it had been set as a task in the internal performance assessment system. The performance assessment system often involved requirements regarding the number of criminal reconciliation cases, whose handling was time intensive, yet at the same time required officials to dispose of a high number of cases closed totally. The officials might be disciplined or at least their bonus and promotion might be affected if they could not fulfill the various tasks imposed by the performance assessment system. Therefore, it might be simpler in this case for them just to abandon 'complicated' and 'time-consuming' procedures. Avoiding such procedures would be much easier when there were no effective checks on their power, and where there were no other adverse consequences.

External pressures impeding prosecutors and judges' independent exercise of power, as noted in Chapter Four, resulted from the fact that the decision not to prosecute in criminal reconciliation is always made by the procuratorial committee (*jiancha weiyuanhui*), not the prosecutor in charge. In the People's Court, as noted in Chapters Three and Four, in criminal reconciliation, the People's Procuratorate could present 'sentencing suggestions' (*liangxing jianyi*) to the People's Court, and given the weakness of the People's Court as a part of the 'production line', it could be expected to subordinate itself to the Public Security Bureau and the People's Procuratorate.

Indeed, as shown in Chapter One, there are officially recognized and endorsed practices of collaboration (*liandong*) and cooperation (*duijie*) in criminal reconciliation, whereby a case could, or in fact should, be reconciled cooperatively by the three state authorities. This explicit endorsement of cooperation further strengthens the three organs' connection and mutual reliance as a 'production line.' It further harms judicial independence, as well as the prosecutors' independent exercise of power.

In addition, in the current context, criminal reconciliation is being strongly promoted by the Party as a mechanism embodying the policy of 'combining severity

with leniency' and helpful for 'promoting a harmonious society'. According to the analysis in this section, however, the strong promotion of this mechanism by the Supreme People's Court and the Supreme People's Procuratorate, and the quotas set for criminal reconciliation cases only add pressure on the Procuratorates. Under such pressure, the system is unlikely to achieve genuinely harmonious resolution of cases.

6.2 Criminal justice through 'correction' (*jiaozheng*) and 'thought reform' (*sixiang gaizao*)

'Educating and correcting (*jiaozheng*) the suspect/defendant' is one of the officially stated aims and functions of criminal reconciliation. In order to achieve this aim, as shown in the empirical study discussed in Chapters Four and Five, the officials paid special attention to education, particularly in cases involving juvenile offenders. In such cases, responsible officials would deliver educational statements during, before or after criminal reconciliation meetings.[763] They would, in some cases, arrange for follow-up programmes such as 'teaching and help' projects.

There are two prominent features of the concept of *jiaozheng* in criminal reconciliation:

First, education and correction in criminal reconciliation processes are characterized as focusing on changing the suspects/defendants' thought and improving their moral character. For instance, in the follow-up programmes, the person in charge (i.e. the juvenile suspects/defendants' teachers, or the responsible officials) provided help focusing particularly on the suspect/defendant's thought and moral character. The suspect/defendant was required to submit regular so-called 'thought reports' (*sixiang huibao*) to the officials regularly.

Second, education and correction not only targeted the suspect/defendant; rather, the officials intended to involve the public in this process. For instance, as shown in Chapter Five, a judge highlighted criminal reconciliation's significance in 'propagating legal knowledge' (*pu fa*). In some cases, criminal reconciliation meetings were arranged by the officials in such a way that the suspect/defendant's

schoolmates and teachers could observe and participate, with an apparent expectation that they, too, would be educated.

'Education' and 'correction' is not a particular aim set for criminal reconciliation. Rather, they are general goals the Chinese ordinary criminal justice process is expected to achieve. In the ordinary process, just like in criminal reconciliation, education targets individual (perceived) offenders and/or immediate parties to a dispute, as well as a wider public, as discussed below.

6.2.1 The concept of 'correction' in the wider criminal process

Education and correction are officially regarded as important features of the normal (adjudicative) criminal trial process. The scholar Li Changsheng has recently proposed a way of understanding the trial process by reference to its educational aims. According to the PRC Criminal Procedure Law, the normal criminal trial process (in the first instance trial) includes the formal stages of opening a court session (*kaiting*), court investigation (*fating diaocha*), court debate (*fating bianlun*), the defendant's final statement (*zuihou chenshu*), and assessment (*pingyi*) and sentence announcement (*xuanpan*).[764] Li Changsheng, however proposes to think of the trial process as involving four stages, namely declaration of attitude (*biaotai*), revelation (*zhanshi*), education (*jiaoyu*) and remorse (*huiguo*). Li has thus characterized the Chinese trial as 'educational ('formative' or 'educational' trial' (*jiaohua xing tingshen*).[765]

Li's account amounts to a creative and deeply perceptive reinterpretation of the criminal justice process. At the stage of opening a court session, that is, at the stage of 'declaring one's attitude', the defendant is required by the Court to show his/her attitude towards the charges that have just been presented by the prosecutor - normally, the defendant is requested to admit guilt or plead not guilty.[766] In practice, according to Li, most defendants would admit guilt at this stage.[767]

In the ensuing stage of the trial hearing, which among other things involves the Court's examination of the evidence, the prosecutor makes the defendant 'reveal' the

crime he/she has been charged through examining (putting questions to) the defendant.[768] Nevertheless, as observed by Mike McConville *et al*, the questions raised by the prosecutors are chiefly 'clarifications, or merely observations, or even a statement confirming the contents of the documentary evidence under consideration' rather than 'challenging'.[769] Li Changsheng observes that at this stage, the prosecutors may even use strategies to 'coerce' or 'induce' the defendant, who often[770] does not have a defence lawyer, to *illustrate* the alleged crime collaboratively with the prosecutor.[771] Such a process also shows that the trial system set up in the 1996 CPL is not adversarial in practice and that defendants' rights to criminal justice processes are heavily compromised.

The following, in Li Changsheng's view crucial stage of court debate, provides a platform for the prosecutor to present 'prosecution opinions' (*gongsu yijian*).[772] From the perspective of the formal characterization of the trial, prosecution opinions mainly serve the purpose of presenting an argument to the Court – for instance, a legal argument for the defendant's guilt. According to Li, however, they in fact serve an educational purpose, and education is based in feelings and reason (*qing li*) - this characterization draws on a widely used conceptual triad of 'law, reason, and feelings' but notably makes no explicit mention of 'law'. For instance, a report provided by the People's Court of Xishan district in Wuxi city shows that they have adopted four methods to educate defendants during trial: (i) reflection through identification with the other (*huanwei sikao*), a method which seeks to make the defendants feel the victims' hurt and thereby to 'step out of his/her narrow and wrong sense of values;'[773] (ii) 'Reform through familial affection' (*qinqing ganhua*), which, according to this official report, tries to make the defendant repent and to 'rebuild the defendant's rationality through family bonds;'[774] (iii) 'Criticism and condemnation', a method only used when the previous two cannot take effect and the defendant 'refuses to admit guilt when the evidence is sufficient'[775] so as to 'use law and evidence to make the defendant realize his/her criminal conducts as well as the harm;'[776] (iv) The fourth method is called 'balancing benefits and costs' (*quanheng libi*), a method trying to make the defendant 'form a rational and wise attitude

towards life' through the realization that 'committing a crime is not worth it'.[777]

As further shown by Li Changsheng, some People's Procuratorates even formally require prosecutors to state the goal of educating the defendant to 'become a new person' (*gai guo zi xin*) and 'propagating legal knowledge to the defendant and other citizens [sitting on the trial]' should be 'necessary components' in their plea at trial.[778] Li also says that in practice, the prosecutor often expresses moral condemnation of the defendant during this process of 'education'.[779] In the setting of the Chinese trial, in which there is no jury or judge to persuade of the defendant's guilt, because the defendant is *de facto* already presumed guilty, the purpose of the moral condemnation, is to educate the defendant (as well as other people attending the trial), not to win debate in court, according to Li.[780] In the same vein, Pang Zheng shows how the prosecutor delivered moral condemnation to the defendant of an alleged fraud crime at the stage of court debate:[781]

> 'We think the crime originated from two wrong ideas of the defendant: the first one is the intention to reap without sowing. In our city, a number of people are creating wealth and maintaining their life through their own hard work. Thus, no matter how humble their social status was, they are worthy of our respect. Yet the defendant Chen intended to reap without sowing and to take others' wealth though fraud. This was a base way of making a living.
>
> The second one is to take chances. The defendant Chen defrauded others to obtain their wealth on so many occasions, yet he naively thought of this as creditor-debtor relationships. However, the mills of God grind slowly but surely and law is always the last ditch of conscience in our society.
>
> In sum, the prosecutor hopes that the defendant could draw lessons from this crime, and we want to caution those eager to have a try.'

Such statements, as argued by Pang, show that the prosecution statement has two contradictory functions – on the one hand, it is to prove that the defendant has committed the alleged crime; yet on the other, it has to presume that the defendant

has committed the alleged crime.[782]

The last stage is the defendant's final statement. At this stage, the defendant is expected to explicitly express his/her remorse towards the crime he or she is charged with, which might bring about some leniency in sentencing.[783] Standard ways of expressing repentance, according to Li's empirical study, were: 'I admit guilt, I hope (the judge) will sentence me leniently, taking into account my child.'; 'I did make mistakes in my work and hope that the Court will sentence me leniently'; 'I admit guilt and feel very regretful towards my conduct. I hope the Court will give me another chance. I was too greedy and flouted the law and rules of discipline in committing the crime, but I really hope the judge will sentence me leniently considering that my family is so poor.'[784] Li says that in practice, considering the potential benefits in sentencing, almost all defendants (some 86 percent) would grab this 'final opportunity' to show their remorse, which is, [taken by the officials as] also a sign of the success of the whole trial process as actually an education process.[785]

Education also plays a critical role in the Chinese system of correction and punishments *post* conviction, which involves prisons and school of discipline and education for juvenile offenders (*shaonianfan guanjiao suo*).[786]. Article 3 of the PRC Prison Law lays down 'combining punishment with reform, combining education with labor' as a principle of the prison system in China.[787] Article 62 further stipulates that 'thought education' should be carried out with regard to principles, legal knowledge, morals, current affairs, and politics. According to Victor Shaw, education about 'principles' covers political ideas such as socialism, communist leadership and a subject called 'Marxism-Leninism and Mao Zedong Thought'.[788] 'Legal education' focuses on the PRC Criminal Law, Criminal Procedure Law and Prison Law.[789] Moral education often covers 'collectivism, civility, social ethics and worldviews.[790] Education about current affairs is about the Party's current policies and government agendas.[791]

In addition to 'thought education', education through (typically manual) labour also plays a role. In the context of ordinary prisons with inmates serving criminal

sentences, this is known as 'reform through labour (*laodong gaizao*).'[792] In the context of China's so-called 'reeducation through labour (*laodong jiaoyang,* RETL)' system, those to be educated have not been convicted in a trial process, but are deemed guilty on the basis of a decision made by the police.[793] According to Article 3 of 'the Ministry of Public Security's Trial Methods for Implementing Re-education Through Labor' issued in 1982, the principle of RETL is education, saving and reforming; education and reform are first and foremost and production and labour are the second.[794] Paragraph 2 of the 'Decision of the State Council on Re-education Through Labor' issued in 1957 also says that 'rehabilitation through labour is a measure whereby education and reform are mandatorily imposed on persons who are interned for rehabilitation through labour, and is also a measure to resettle them and provide employment for them'.[795] 'Help shall be given to them in cultivating their consciousness of loving the country, abiding by the law and regarding work as a matter of honour, in learning skills of labour and production, and in fostering a habit of loving manual labour so that they may be turned into working people who take part in socialist construction and who support themselves by their own labour.'[796] The requirement that persons incarcerated in prisons or RETL facilities should perform physical labour, according to Shaw, is related to the socialist (or Marxist) idea of transformation of consciousness as well as, more recently, to the Confucian idea that 'mind can be best exercised and reformed by labour.'[797]

Even assuming, for a moment, that those incarcerated really were in need of education, the goals, methods, and real outcomes of these various 'education' programmes are dubious. This point has been made by Chinese scholars, domestic and international rights defenders, and several human rights organizations.[798] Moreover, through examining the history of China's RETL system since 1955, Fu Hualing argues that RETL system nowadays serves 'multifold functions', one of which is the political function of controlling and suppressing political dissidents.[799]

The experience of Ye Jinghuan provides good insights into how RETL works in ordinary – as opposed to unusually cruel – cases through depicting her miserable experience in the Beijing RETL institution. Ye describes her own experience as

'virtual torture' and writes of insults by officials of the institution. In terms of the manual work, Ye says that people under reeducation through labour have to work continuously for 14 to 15 hours per day, almost without rest or breaks.[800] With regard to 'education', Ye describes various 'rules'. These include: RETL detainees must lower their heads before guards. They must beg the officials to be allowed to eat, go to the restroom, etc. On certain occasions, they must bow or kneel in front of officials. They may be required to produce written 'self-criticisms' if they do not perform well. Moreover, they are subjected to a system of mutual surveillance and collective responsibility for good conduct called '*bao jiao.*' Under this system, detainees assigned to oneself will monitor and report on one's every action.[801] Based on her own experience, Ye concludes that actually, the 'manual work' is exploitation, and the 'education' is mental torture. Exploitation and torture are designed, according to Ye, to 'strike your dignity, ruin your soul, debase your personality and to harm your health'.[802]

Although pre-trial defendants are not, at least not according to the principles laid down in the CPL, supposed to be educated, elements of 'thought education' are present in the regimen for pre-trial detainees as well. They are not subjected to the same kind of 'thought education' and 'education through labour' that is used for persons at trial or after conviction. However, the 'Detention Centre Regulation' promulgated by the State Council in 2012 says that 'the detainee should receive education'.[803] Article 21 of this regulation further stipulates that 'the detention house should provide legal and moral education for detainees, and organize appropriate recreational and sporting activities'.[804]

A number of online reports give an impression, albeit anecdotal, of the practice of 'moral and legal education' in detention centres. For example, an official account of the detention centre in Zezhou County in Shanxi province states that all the detainees received at least ten hours of legal education in total.[805] The police also organized education on current affairs and 'heart-to-heart' conversation sessions for the detainees.[806] The detention house in Putian city in Fujian province was prepared to establish a drug prevention education center in order to promote the ability of the

detainees, who were deemed as 'high-risk group', to quit drugs.[807] In addition, this detention house was intended to establish a psychological education center to carry out psychological consultation and 'correction' of detainees.[808]

In sum, an 'educational' mindset in the sense just outlined characterizes a suspect's experience from the moment they are detained, and this is of obvious relevance to the practice both of the ordinary criminal justice system, and of criminal reconciliation. As shown in Chapter Five, some officials interviewed even commented on the bad conditions in the detention centre as an opportunity for the suspects/defendants to reflect seriously and change to be 'good guys' (after being shocked by the bad conditions there).[809]

The effect of such 'educational' experiences is further reinforced by practices designed to educate the wider public while exposing the suspect to public censure and shame. As shown in criminal reconciliation, the goals of education and thought reform set for the Chinese criminal process are not limited to suspects/defendants/inmates either; they target the public, the ordinary people in society as well. This is dramatically shown in 'open trial (*gong shen*) meetings' and 'open sentencing (*gong pan*) rallies', rituals essentially the same as 'parade and public exposure' (*youxing shizhong*), a way of punishment that prevailed in the Cultural Revolution (1966-1976)[810] and still practiced in China today.[811] For example, it was reported that in 2012 in Xianyang city in Shaanxi province, in order to educate secondary students, the police escorted juvenile criminals into the school to 'tell their stories' in public.[812] In 2010, it was reported that 32 individuals were declared formally detained as criminal suspects and 20 defendants were convicted and sentenced in a 'public arrest and sentencing rally' (*gongbu gongpan dahui*) in Loudi city in Hunan province.[813] Over 6,000 people attended this rally, and all the suspects and defendants were paraded across the city with their names written on white boards hanging on their necks.[814] To anyone who had lived through it, this would have vividly recalled the Cultural Revolution when such techniques were common.

6.2.2 The ideology of 'thought reform' underlying 'correction'

The most direct reason for 'educating and correcting' the criminals' (suspects and defendants included) thought lies in the idea that 'crime' is closely connected or even directly results from problems in a person's moral consciousness, resulting from capitalism, or bad class influence. So consciousness can be transformed to make criminal motivation disappear. This idea goes back to the Mao era, the idea of 'false consciousnesses' from which people had to be freed as developed by Marx and Engels and elaborated on by Mao Zedong. Mao said in the article 'where do correct ideas come from?' in 1963 that 'it is man's social being that determines his thinking… It is therefore necessary to educate our comrades in the dialectical materialist theory of knowledge, so that they can orientate their thinking correctly, become good at investigation and study and at summing up experiences, overcome difficulties, commit fewer mistakes, do their work better, and struggle hard so as to build China into a great and powerful socialist country and help the broad masses of the oppressed and exploited throughout the world in fulfillment of our great internationalist duty'.[815]

A number of scholars have noticed and commented on the continuity of the ideology and practices adopted in the Maoist time and China today. For instance, Stanley Lubman observed that judicial practices in criminal processes in the Mao era deeply influenced judicial activities in criminal as well as non-criminal areas in the 1990s.[816] Elizabeth Perry argued in a broader context that the 'revolutionary past' in the Maoist period had been 'succeeded' by post-Mao leaders, and 'the Cultural Revolution was the most dramatic, but not the last expression' of the various Maoist approaches such as 'mobilizing the masses' and 'dividing society'.[817]

Jiang Shigong argues that punishment methods used in the Cultural Revolution were largely attributable to the very close perceived relationship between or the conflation of deficient moral consciousness and crime.[818] Furthermore, according to Jiang, since there was no clear distinction between criminality and innocence and the relationship between crime and moral consciousness was complicated but direct,

almost anyone could end up being labeled a criminal:[819]

> 'There was no clear and fixed distinction between criminality and innocence during the Cultural Revolution - crime was defined mainly as the result of reactionary, feudal or bourgeois, or corrupting and uncivilized thoughts, as well as the degeneration of morality and the frailty of willpower. In this sense, crime was not understood as an act; rather, it was a matter of ideological quality, personality and attitudes toward life. Accordingly, punishment and correction should directly touch the criminal's soul and thought, and should permeate a person's daily life.'

Therefore, according to Jiang, the goal of punishment at that time was neither retribution nor prevention; rather, educating and reforming the criminal into 'a new person' (*chongxin zuoren*) were the goals of punishment.[820] That is to say, the Cultural Revolution view of punishment seemed to be also motivated by the idea of rehabilitation – yet since its conception of crime included mere 'thought crime' (or criminal thought), it was widely different from the narrow justifications of criminal punishment associated with rehabilitation in liberal western systems.

Methods of punishment and re-education ranged from measures mainly targeting the criminal's 'soul and thought' such as writing 'thought reports' (*sixiang huibao*) to activities also involving the wider public in society such as 'criticism and denouncement' (*pidou*), parade and publicly exposure (*youxing shizhong*), 'study class' (*xuexi ban*), and singing 'revolutionary songs'.[821] Therefore, according to Jiang, punishment was not supposed to target merely a particular wrongdoer; education and thought reform were crucial to – needed by - everybody in society. It was related to everyone in the sense of eliminating problematic thoughts from everyone's minds, which carried political significance to 'accomplish the republic's mission'.[822] As a result, as argued by Jiang, the entire country became at the same time a 'school' to educate each person and a 'prison' to reform their 'selfish ideas', which were viewed as 'corrupt remains of feudalism, capitalism or revisionism'.[823]

The ideology underlying punishment popularly used in the Cultural Revolution like 'parade and publicly exposure' as analyzed by Jiang Shigong may shed some light on the strong stress on education in the criminal justice system and the use of 'open trial meetings' and 'open sentencing rallies' in China today.

China today is widely different from the Cultural Revolution, during which legal institutions had been denounced and almost entirely destroyed.[824] The officially stated function of 'education' of the kind discussed above has accordingly changed. It is today dominated by the goals of 'special prevention' and 'general prevention' of crime.[825]

Many scholars have commented on this point and discussed how this ideology influences the use of public, open trials [*gongkai shenli* or *shenpan*], a requirement for the majority of cases in criminal, as well as civil and administrative procedure nowadays.[826] For example, as observed by Mike McConville *et al*, the Chinese trials served the function of educating the defendant and the public.[827]

> 'Historically, one purpose of trials in China has been educative not only of the defendant but also more generally of the community by seeing justice in action and hearing at first hand the sentencing homily as a cautionary example to all. In addition, the presence at trials of members of the public is one important mechanism by which society as a whole may be given accurate knowledge.'

Li Changsheng also described the educational function of open trials in China today as:[828]

> 'On the one hand, the judicial officials "implant" legal values and rules as well as moral values to the defendant in order to make them realize their faults and take active responsibility for them. On the other hand, through setting "negative examples", officials can educate other people to comply with the law, which is beneficial for the maintenance of social stability.'

The emphasis on education or crime prevention, nevertheless, changes the function of public trials in the Chinese criminal justice system compared to its function according to liberal criminal justice theory, which sees it as a significant mechanism to restrict the judge's power and to protect the defendant's rights.[829] It is recognized as one of the most fundamental safeguards for judicial justice.[830] That is to say, the value to the state, namely educating the defendant as well as the public, has surpassed the value to individual rights protection in public trial in China. As argued by Jerome A. Cohen, following the Soviet Model, in China, law is used mainly to discipline people and to reach the state's goals.[831] In another words, the criminal justice system, as well as all the participants in this system, ranging from the officials to the parties, is viewed by the authorities as tools to serve political ends. In this regard, Donald Clarke and James V. Feinerman described Chinese trial as mainly serving 'a propaganda effort, directed at the citizens, to condemn vice and praise justice', so it is 'any trial with an audience'.[832] Although Mike McConville *et al* found in an empirical study of the criminal process that only few trials had an audience consisting of persons other than the defendant's and victim's families and friends[833], this may still not essentially weaken its educative intention. Because, as noted by Liebman and Wu, a variety of channels including State-controlled media and internet have been increasingly used to serve the educational ends.[834]

6.2.3 A critique of thought reform

With regard to the '*educational* trial' in the ordinary criminal process, Li Changsheng criticized it as an important factor rendering 'presumption of innocence' impossible.[835] According to Li, since the trial is designed to serve the goal of 'educating the defendant' to make him/her repent and 'become a new person' (*gai guo zi xin*), the basic premise is that the defendant has committed the crime he or she is accused of.[836] This shifts the responsibility of finding out if the defendant has committed the crime to earlier stages such as arrest or prosecution, and to the Public Security Bureau and the People's Procuratorate.[837]

Moreover, according to Li, in a trial designed in such a way, the defendant who expresses objection to the accusation or keeps silent at trial would be deemed as a recalcitrant that cannot be educated, which might result in some more serious punishment afterwards.[838] As noted in the first section, the 1996 Criminal Procedure Law has stipulated that the suspects have an obligation to answer truthfully (*rushi gongshu*), which has been in the 2012 revision. Consequently, the measures provided for the purpose of protecting the defendant's rights, such as the now-stipulated right against self-incrimination,[839] the procedure for summoning witness to appear in the Court, and generally getting a strong defence, cannot be fully realized in practice because these protective rules and procedures are in conflict with the premise of 'presumption of guilt' and might impede the officials' education work.[840] Li's criticism is in accordance with the observation made by Donald Clarke and James Feinerman that in the Chinese criminal trial, the issue of whether the suspect was guilty or not guilty had been decided prior to trial.[841] Trial was the place to 'educate, not to confuse'.[842]

The ideas of moral education and character reform, nevertheless, indicate a more in-depth problem with the Chinese criminal justice system. Another scholar, Yi Yanyou, argues that the central idea of moral education and character reform shows that the Chinese State regards criminals' (suspects and defendants included) as people who are not free, for instance because they have been controlled by their passion, or have lost their will-power due to irritation, or have been seduced by some temptation.[843] Therefore, the State believes that the system of corrections and punishments has the function of liberating from such bad influences.[844] This idea, according to Yi, suggests that the Chinese government holds the doctrine that 'the government [State] can compulsorily make citizens more free'.[845]

Yi argues that, this doctrine confuses two different kinds of freedom – 'inner freedom' and 'individual freedom'.[846] Referring to Hayek's use of these concepts in 'the Constitution of Liberty', Yi takes 'inner freedom' to mean that 'a person could act on his own deliberation, will, brief, and ration, instead of on impulse or passion, which are regarded as irrational'.[847] Accordingly, a criminal suspect may be viewed

by the State as an unfree person, in need of liberation from passions, impulses, or other disturbing factors.[848] Thus, the government is entitled to take measures to liberate this unfree person.[849]

This type of freedom is essentially different from what Yi terms personal or individual liberty, which, according to Yi, asks for 'a person's choices or adherences without being compelled by others' will'.[850] Personal freedom or individual liberty is the underlying value of the Constitution.[851] Adopting the idea of 'inner freedom', the Chinese State has deprived individuals of their personal or individual liberty, and thus has violated the Constitution.[852]

According to the view taken here, the 'inner freedom' approach at its core is an expression of authoritarianism. Yi's analysis resonates with Isaiah Berlin's famous account of 'two concepts of liberty' as developed in a lecture delivered in 1958, and Berlin's work can help us better understand the connection between thought reform and authoritarianism, and between authoritarianism and China's criminal justice system. In this work, Isaiah Berlin also discussed two liberties - 'positive liberty' and 'negative liberty'. According to Berlin, 'negative liberty' is concerned with the question of 'what is the area within which the subject – a person or group of persons – is or should be left to do or be what he is able to do or be, without interference by others'.[853] It is 'freedom from something'. According to Berlin, liberal thinkers hold that there should be 'frontiers of freedom' in society that no one (the government or public power or social control) is allowed to cross; in other words they support negative liberty.[854]

By contrast, 'positive liberty' deals with the question of 'what, or who is the source of control or interference that can determine someone to do, or be, this rather than that';[855] it can be usefully, if simplistically, understood as 'freedom to'. As also in Hayek and Yi, this conception of liberty uses the notion of a 'lower self' that can influence a higher self (through passions, desires, etc.), and implicitly assumes that the 'real' or 'ideal' or 'higher self' must be liberated to become its own 'master'.[856] Berlin is critical of this idea, arguing that it 'splits a person into two personalities' – 'the transcendent, dominant controller and the empirical bundle of desires and

passions to be disciplined and brought to heel'.[857] The predominant controller can be further 'inflated into super-personal entity', ranging from a group to a state.[858]

Taking this insight and applying it to Yi's analysis, it appears that the problem with rhetoric of 'liberation' of criminals and other targets of thought education is not merely that it justifies infringements of the rights of individual, negative liberty. In essence, Berlin's 'positive liberty' concept is a concept that can be employed by an authoritarian State seeking to justify its use of power in the name of 'liberating' its subjects.[859] Some other scholars have commented on the characteristic of the Chinese criminal justice system as an authoritarian system. For example, Borge Bakken discusses the reasons why the Chinese criminal justice system is linked so closely to the public, arguing that this is due to its significance in controlling people – by means of not only 'punishing the already deviant minority', but also and mainly 'frightening (*zhenshe*) the majority'.[860] Yet, according to Bakken, these are just 'outward signs of control' (*zhibiao*), and 'moral and ideological education were the basis of control (*zhiben*)'.[861] In a more vague and indirect way, Li Changsheng has also mentioned that the '*educational* trial' implied that the criminal process in China follows the 'family model', which is based on the trust in state power or authorities and in the good morality of officials to educate the suspect/defendant and to change their 'bad' morality.[862]

6.2.4 Preliminary conclusions

The emphasis on educating the suspect/defendant, present both in ordinary criminal justice processes and in criminal reconciliation, helps to explain why there is no 'presumption of innocence' in the practice of criminal reconciliation. Absence of the suspect/defendant's 'admission of guilt' (*renzui*) or 'repentance' (*huizui*) can be ignored as an impediment to carrying out 'criminal reconciliation' by the responsible official. The suspects/defendants were from the outset regarded as 'criminals' that needed to be educated and corrected through criminal reconciliation. This not only denied suspects and defendants access to a proper criminal justice process in which

the presumption of innocence could be upheld and their rights could be protected. It also made it virtually impossible for their participation in criminal reconciliation to be genuinely voluntary. It is perhaps noteworthy in this context that although Articles 277 to 279 of the 2012 CPL require the voluntary participation of the victim they do not mention voluntary participation of the suspect or defendant as a procedural requirement for 'reconciliation' to be carried out. The 2012 CPL only requires their admission of guilt. While this absence of a requirement pertaining to suspects and defendants may better reflect the current reality of criminal procedure, it turns criminal reconciliation even more clearly into a mechanism in which the accused person's rights can be infringed.

What is worse, criminal reconciliation may serve a 'better' or more convenient channel for the officials and the State to conduct authoritarian education. This is because firstly, criminal reconciliation is formally based on the suspects/defendant's admission of guilt, which, according to the government's ideology, indicates that they are 'bad' or 'unfree' people in need of education and reform. Secondly, as noted in Chapter Two, mediation since the Mao era has been characterized by mediators' exploring both parties' thoughts and using 'faults' in *both* parties' thoughts to facilitate mediation settlements.[863] Consequently, the authoritarian approach to education as discussed in this section can be delivered more easily and explicitly in criminal reconciliation processes compared with the normal trial process.

6.3 The State's failure to enforce victims' claims to compensation through civil litigation

As shown in Chapters Four and Five, criminal reconciliation has become a programme with an exclusive focus on compensation: the ability to compensate was a compulsory pre-requirement for the suspect/defendant to enter into this programme and to obtain a lenient outcome. The suspect/defendant unable to afford paying compensation was simply excluded from the programme, even though all the other circumstances (i.e. admitting guilt or showing remorse) met the pre-requirements

stipulated in the local regulations or guidelines.

Compensation was also the most important, or even the only topic discussed in the criminal reconciliation meeting. For example, the juvenile victim of case no. nine in location A (an juvenile intentional injury case) said in the interview that he had not heard the other parties' apology in and after the criminal reconciliation meeting; what the meeting involved was merely bargaining over compensation between the two parties' parents. In some cases, the officials repeatedly held criminal reconciliation meetings merely to let the parties bargain over the compensation amount. In some other cases where the parties had already reached agreements privately, the official did not hold a criminal reconciliation meeting at all. Since compensation was the most crucial issue in the criminal reconciliation meeting, it seemed that the officials were inclined to think that there was no need for the defendant or parties to attend the meeting. For instance, as shown clearly in case no. five in location C (a juvenile robbery case), the criminal reconciliation meeting proceeded without the presence of the juvenile defendant, as he was still detained at that point.

Compensation also played a very significant role in the official's decision following the criminal reconciliation meeting. For example, as shown in Chapter Four, in the 'internal guideline' issued by the B district People's Court in location C, the amount of compensation was directly connected with how much reduction of sentence the defendant could get. Furthermore, according to some officials in the interview, in their views, the amount of compensation the suspect/defendant paid bore a close relationship with the degree of the victim's satisfaction and the suspect/defendant's attitude towards the alleged crime as well as his/her harmfulness to society.

Criminal reconciliation can lead to infringement of the victim's rights stipulated in statutory laws. According to article 77 of the 1996 CPL, 'if a victim has suffered material losses as a result of the defendant's criminal act, he has the right to file an incidental civil action during the course of the criminal proceeding'.[864] Article 36 of the PRC Criminal Law provides that 'if a victim has suffered economic losses as a

result of a crime, the criminal shall, in addition to receiving a criminal punishment according to law, be sentenced to pay compensation for the economic losses in the light of the circumstances'.[865] As noted by Mike McConville *et al*, complaints and petitions after the trial result from the fact that the victim's rights to get civil compensation are not well protected.[866]

However, as observed by some scholars, the problems with enforcing civil litigation decisions have existed for more than 30 years[867], and is regarded as a 'regular feature' of the Chinese judicial system.[868] In relying on the bait of sentence reduction or a decision not to prosecute to 'enforce' private law obligations owed by an alleged perpetrator to the victim, the State effectively forces the victim to trade his or her consent for what he/she has a legal right to already under private law (often, under tort law), namely, civil compensation. According to the view taken here, this allows the State to avoid tackling wider problems urgently awaiting resolution through judicial reform.

6.3.1 The reason leading to the problem with enforceability

The reasons leading to this problem have been addressed a lot in academia. Many have noticed that the fundamental problem lies with the People's Court, or the system, not the defendants.

For instance, Donald Clarke argued that due to local protectionism and the lack of judicial independence, what the Court could do is very limited - as also discussed in the first section of this chapter, in China, the People's Court is always subject to various authorities including local government, Party committees and local People's Congress.[869] Stanley Lubman also acknowledges this as the most serious obstacle for execution. Consequently, according to Lubman, the Courts sometimes have to 'solicit or seek instructions from local Party and governments' in execution.[870] In addition to the direct intervention or resistance from these powerful authorities, as further analyzed by Clarke, it is very hard for the Court to get cooperation even from the banks in execution (especially banks located in places different where the Courts are),

as some local governments have issued rules 'forbidding the forcible transfer of funds from local parties to outside parties'.[871]

Chen Ruihua argues that it is very problematic to make the People's Court undertake 'dual tasks' of adjudication and execution.[872] Adjudication and execution are two powers different in nature – adjudication belongs to judicial power, which should be by nature passive and neutral, while execution belongs to administrative power, which asks for the Court's proactive efforts in taking enforcement measures on behalf of the creditor (namely, the victim in the civil litigation collateral to criminal cases).[873] Yet, as argued by Chen, making a judicial institution assume administrative work innately decides the powerlessness of the Court in enforcement.[874]

In the same vein, Tang Weijian also recognizes this flawed system in the Court as the main obstacle for enforcement. Tang says that the Constitution only empowers the People's Court to exercise jurisdiction, which means that all the other powers such as execution the People's Court possesses should be subordinate to jurisdiction.[875] Thus, judges would input their efforts mainly to adjudication, not execution.[876] Donald Clarke also notices the subordinate position of execution in the People's Court. According to Clarke, it is the tradition of the Chinese Courts that execution is not their main concern, as demonstrated by the Court's internal organization:[877]

> 'The president [of the Court] takes charge of criminal adjudication, the vice-president takes charge of civil adjudication, and the vice-president's assistants takes charge of execution. When the adjudication committee discussed cases…problems in executing judgments come last – if there is any time left.'

Since the main reason leading to the enforceability problem lies with the Court, it is hardly to imagine reconciliation and mediation resolving this problem. Actually, as indicated by Randall Peerenboom and He Xin, there have been studies showing that mediation agreements are not more easily enforced as compared to Courts'

sentence.[878] And mediation was sometimes used by the parties as a strategy to delay enforcement, which further aggravated the enforceability problem.[879]

6.3.2 Preliminary conclusions

To sum up the analysis above, the promotion of criminal reconciliation as a means of boosting the enforceability of tort and other private law claims held by victims against perpetrators of crime rests on a deeply flawed argument. The already-discussed problem of unfairness toward economically weak defendants resurfaces in the context of the 'enforceability' argument, only in reverse form. Indirectly, the enforceability argument suggests that responsibility for solving the problem of enforceability may be legitimately shifted from the State to the defendant. Criminal reconciliation may also lead to a risky confusion of the State's 'claim' to punish crime and private person's claims for compensation. Furthermore, while any claims the victims hold ought to be enforceable, in their full amount without any requirement for concessions such as may occur in a negotiation process, the fact that they may obtain even more than what they can get according to law, may make criminal reconciliation a mechanism that undermines and contravenes the suspects/defendants' interests.

This thesis has examined 'criminal reconciliation' (*xingshi hejie*) as a 'new' criminal process. There are three main findings.

First, at the level of institutional design according to statutory law and official regulations, the roles given to officials in the Public Security Bureaux, the Procuratorates and the Courts, parties, and lawyers (in the relatively rare cases in which they are involved) in the process of criminal reconciliation are different when compared to their roles in the normal criminal process.

The procedure of criminal reconciliation designed in the local regulations and guidelines, and now in articles 277 to 279 of the 2012 CPL, suggests that criminal reconciliation is intended to be a non-adversarial process. Criminal reconciliation is supposed to be based primarily on communication between the parties, and to take place only once a suspect or defendant has admitted guilt, so that the principle that the guilt of the suspect can be determined only through a trial[880], which is supposed to play a dominant role in the ordinary criminal process, can be abandoned. Since the premise of criminal reconciliation is the suspect/defendant's admission of guilt, education and correction of this 'guilty' participant become the focus of the reconciliation process. The criminal reconciliation procedure purports to give the parties a dominant role in the criminal reconciliation process; and officials are expected to respect the voluntary nature of their participation. Special rules purportedly imposing restrictions on public power under the more adversarial ordinary process do not apply in criminal reconciliation, since the officials are supposed to be secondary to the parties. The role of criminal defence lawyers, too, is virtually eliminated. Officials are mainly expected to *facilitate* the parties' communication and reconciliation. Such a change in the roles of the parties and officials in criminal reconciliation, compared to the adversarial adjudication process, is officially claimed to be this process's main advantage. It is purported to help bring 'closure' to criminal cases and to satisfy both parties, a result unlikely to be reached, and not aimed at, in the normal criminal process.

Second, the empirical study presented in this dissertation shows that while the

formal roles of the actors in criminal reconciliation are indeed different from the roles of actors in the ordinary criminal process according to this process's institutional design, differences are not what procedural law, regulations, guidelines and official claims would lead one to expect. In other words, while criminal reconciliation is supposed to be widely different from the normal criminal process 'on paper', as elaborated in Chapter Six, a certain degree of convergence between criminal reconciliation and the ordinary criminal justice process can be observed in practice.

In practice, and despite the promise of the formal procedure, the officials of the criminal justice system, not the parties in criminal cases, still dominate the process and control its outcome. The great discretion and unrestricted power given to the officials in this process do not serve the purported function of merely enabling and facilitating the parties' reconciliation based on the voluntariness of their participation. On the contrary, as shown in Chapters Four and Five, the discretion and unrestricted power can facilitate official abuse of power to infringe the parties' voluntariness and rights in criminal reconciliation. Local regulations and guidelines governing the criminal reconciliation procedure, which are designed to protect the parties' voluntary participation, can be simply discarded by some prosecutors and judges. The study has moreover shown institutional reasons motivating officials to discard the rules, including in particular their desire to meet official performance evaluation criteria.

The parties are actually further marginalized in criminal reconciliation processes. As shown in Chapter Five, the parties become tools for the officials to fulfill their own tasks as defined by the internal assessment system. Officials in charge of criminal reconciliation operate under outcome-oriented pressures identified in Chapter Six, and have incentives to coerce the parties to 'reconcile.' In this case, as observed by Carl Minzner, 'alternative dispute resolution' mechanisms such as mediation and reconciliation are not truly an 'alternative to litigation'; rather, they are conducted under the condition that 'litigation channels are shut'.[881] Violations of the suspect/defendant's right to be presumed innocent until proven guilty, and the

principle of voluntary participation by all parties to a criminal process, and the parties' 'legally protected' interests may be obscured by the very fact that what is taking place is styled as 'reconciliation' or 'mediation', and purports to 'empower the parties to resolve disputes'. This designation of the procedure as a voluntary, parties-led one therefore easily leads one to ignore the fact that the parties are still weak in the face of public power and that power can still easily infringe the parties' voluntariness in the process of reconciliation and mediation. Given the conflict between the formal rules in the books and the informal organizational rules related to audits and outcome targets, this study reinforces the observations of other researchers that informal rules are readily given primary importance in practice notwithstanding that the outcomes achieved are reported in terms of compliance with the formal rules.[882]

The change of role of any lawyer, who becomes involved in this process, as shown in Chapter Five, further facilitates the infringement of individual rights by public power. So far as the role of lawyers is concerned, there is no institutional expectation of lawyers becoming involved in the process at all, and it appears that lawyers play a role in only a small percentage of cases. Since the two parties are expected to come together for a mutual goal – reaching a reconciliation agreement with each other - and the officials are 'deemed' to play the role of friendly facilitators in this process, any lawyers hired by either party are normally expected by the officials to act as their 'assistants' to facilitate the 'reconciliation' process. In some cases, indeed, as shown in Chapter Five, the lawyers are fully aware that their clients' rights and 'legally protected' interests would be harmed in criminal reconciliation. Yet in so far as they believe that their clients' interests as to getting a just (or good and satisfactory) result for the case would also be harmed if they refused the officials' 'offer' of criminal reconciliation, they have reasons for considering criminal reconciliation a comparatively better option for their clients. A lawyer quoted in Chapter Five commented aptly that it was very important to 'maintain a good relationship' with the officials to allow their clients to get 'good results' in the criminal reconciliation process.[883] This remark not only further testifies to the

difficult situation the lawyers were facing, but also to the weakness of the parties and the powerfulness of public power in this process. In all these characteristics, criminal reconciliation practice replicates difficulties also affecting the ordinary, supposedly adversarial criminal justice process, with the further disadvantage of reducing the role of lawyers, who have no clearly defined role in criminal reconciliation and, indeed, do not even get a mention in the relevant rules of the CPL.

Thirdly, in practice, criminal reconciliation operates unfairly in respect of economically weak parties. This unfairness is mainly due to an almost exclusive focus on compensation. This focus on monetary compensation not only leads to unfairness among suspects/defendants, but also results in criminal reconciliation failing to address the victims' needs through obtaining psychological redress arising from the 'crime'. Coerced by public power to participate in such a process, victims are in fact re-victimized. The feelings of anger, hurt or helplessness some interviewees expressed indicates that criminal reconciliation does not really bring about 'closure' in their cases. Instead, this 'reconciliation' process mainly served the purpose of suppressing conflict at the cost of individual rights.

In sum, criminal reconciliation in practice does not operate according to its institutional design in the way that many official as well as academic assessments of this mechanism might lead one to expect. Instead of empowering the parties, it is actually controlled by the officials. Instead of being based on the voluntariness of the parties', it is actually based on coercion (by public power) and rights' violations. Instead of a 'panacea' for bringing about 'closure' and 'harmony', it actually suppresses conflicts.

How the local regulations and guidelines operate after the 2012 CPL takes effect might be a question for further study. In any case, considering the prevalence of contradictory institutional expectations and 'hidden rules' in Chinese judicial practice and the other problems with the Chinese criminal justice system, as discussed in Chapter Six, without changes to the general system and those more fundamental problems, the future operation of criminal reconciliation is unlikely to substantially differ from the practice shown in this thesis.

Through showing the problems with criminal reconciliation, this research sheds some light on the heated debate over judicial reforms in China since the 2000s. As discussed in Chapter One, the debate mainly revolves around whether or not the current judicial reforms which are characterized by the wider use of mediation and reconciliation in the judiciary are a proper way 'with Chinese characteristics' to address social conflicts and build a 'harmonious society'. The author's research findings imply that this judicial reform is unlikely to produce the positive effects predicted. The so-called 'harmonious judiciary' to be built through increased use of mediation and reconciliation mechanisms may rather be a type of judiciary based on infringement of the parties' rights.

Appendix I

Sentencing Normalization Form of the Criminal Division of B District People's Court [in Xi'an]

Case: No.:

Relevant [personal] information	Name		Gender		Date of birth	
	Ethnicity		Household registration (*jiguan*)		Education level	
	Time of criminal detention (*juliu*)		Time of criminal arrest (*daibu*)		Previous criminal record	
Brief description of case						
[Possible] sentence [for offence(s) charged] stipulated in the Criminal Law (*fading xing*)						
Sentence after considering the harm	Crime					
	Minimum stipulated					

caused by the crime to society (*jizhun xing*)	sentence					
	Jizhun xing					
Sentence announced (*xuangao xing*)	Adjustment in accordance with the circumstances affecting sentencing (*liangxing qingjie*)	Circumstances affecting sentencing	Degree of sentence reduction in accordance with provisions of the Supreme People's Court	Degree of sentence reduction as confirmed by the People's Court of B district	Degree of sentence increase in accordance with provisions of the Supreme People's Court	Degree of sentence increase as confirmed by the People's Court of B district
	Proposed sentence to be announced					
	Sentence as Announced					
Conviction						
Any Other issues for clarification						

Collegial panel member: Person in charge: Date of discussion:

[redacted]法院刑庭规范化量刑评议表

案由: [redacted]

相关信息简要	姓名		性别		出生年月日	
	民族		籍贯		文化程度	
	刑拘时间		逮捕时间		有无前科及处理情况	
简要案情						
法定刑（《刑法》条文规定）						
确定基准刑	罪名					
	量刑起点					
	基准刑					
确定宣告刑	根据量刑情节调节基准刑	量刑情节	最高院规定减少基准刑	本院确定减少基准刑	最高院规定增加基准刑	本院确定增加基准刑
	拟定宣告刑					
	宣告刑					
判决结果						
需要说明的问题						

合议庭成员: 承办人: 评议日期:

说明: 1、按我院量刑规范化有关规定填写，一案一人一表。

2、本表与合议庭笔录等装入副卷存档。

Appendix II

The Criminal Procedure Law of the People's Republic of China (2012 Revision)[884]

Chapter II: The procedure for public prosecution cases where the parties have reached reconciliation

Article 277 In the following public prosecution cases, if the suspect or defendant has repented sincerely and obtained forgiveness from the victim through compensating the victim's loss or apologizing to the victim, and the victim voluntarily agrees to reconciliation, both parties may reconcile the case:

(1) Crime arising from civil disputes stipulated in Chapter IV or V of the Specific Provisions of the Criminal Law and may be sentenced with three years imprisonment or a lighter penalty; or

(2) Negligent crime, except crimes of malfeasance, which may be sentenced with seven years imprisonment or a lighter penalty

The procedures in this Chapter shall not apply to suspects or defendants who committed intentional crimes in the past five years.

Article 278 When both parties have reached a reconciliation settlement, the Public Security Bureau, the People's Procuratorate or the People's Court shall hear opinions of the parties and other relevant persons, examine whether or not the settlement is reached voluntarily and legally, and preside over the preparation of a settlement agreement.

Article 279 In a case where a reconciliation agreement has been reached, the Public Security Bureau may provide suggestions on lenient dispositions to the People's Procuratorate. The People's Procuratorate may suggest a lenient sentence to the

People's Court; where the circumstances of the case are minor and criminal punishment is not necessary, the People's Procuratorate may make a decision not to initiate public prosecution. The People's Court may give a lenient sentence to the defendant in accordance with the law.

中华人民共和国刑事诉讼法 (2012 修正)

第二章　当事人和解的公诉案件诉讼程序

第二百七十七条　下列公诉案件，犯罪嫌疑人、被告人真诚悔罪，通过向被害人赔偿损失、赔礼道歉等方式获得被害人谅解，被害人自愿和解的，双方当事人可以和解：

（一）因民间纠纷引起，涉嫌刑法分则第四章、第五章规定的犯罪案件，可能判处三年有期徒刑以下刑罚的；

（二）除渎职犯罪以外的可能判处七年有期徒刑以下刑罚的过失犯罪案件。

犯罪嫌疑人、被告人在五年以内曾经故意犯罪的，不适用本章规定的程序。

第二百七十八条　双方当事人和解的，公安机关、人民检察院、人民法院应当听取当事人和其他有关人员的意见，对和解的自愿性、合法性进行审查，并主持制作和解协议书。

第二百七十九条　对于达成和解协议的案件，公安机关可以向人民检察院提出从宽处理的建议。人民检察院可以向人民法院提出从宽处罚的建议；对于犯罪情节轻微，不需要判处刑罚的，可以作出不起诉的决定。人民法院可以依法对被告人从宽处罚。

Appendix III

Supreme People's Court Judicial Interpretation on Some Issues Concerning the Implementation of the Criminal Procedure Law
(Draft Issued to Solicit Opinions)[885]

30 July 2012

Chapter 21: The procedure for public prosecution cases where the parties have reached reconciliation

Article 509 In public prosecution cases under article 277 of the Criminal Procedure Law ('the CPL'), where the facts are clear and the evidence is clear and sufficient, the parties [to the criminal case] may conduct reconciliation themselves, or apply for the Court to preside over reconciliation.

A defendant who, in addition to committing any of the crimes stipulated in section 1 of article 277 of the Criminal Procedure Law, has committed any other intentional crime within five years prior to this offence, shall be deemed to have 'committed an intentional crime in the past five years as stipulated in section 2 of article 277 CPL, regardless of whether or not the defendant has been convicted of the earlier crime

Article 510 In negligent crime cases where the victim has died, the [victim's] legal representative or close relative can reconcile with the defendant, where the victim lacks legal capacity or has limited legal capacity, the legal representatives and close relatives can reconcile on the victim's behalf.

In cases where the victim has died and there is more than one close relative, the reconciliation agreement shall be subject to consent from all the close relatives within the same succession order.

Article 511 If the defendant is a person who has limited legal capacity, the [defendant's] legal representative or close relative can reconcile on the defendant's behalf. If the defendant is under detention, the defendant's legal representative and close relative can reconcile on the defendant's behalf if the defendant consents.

Article 512 If both parties had already reached reconciliation during the criminal investigation and examination stage, before public prosecution, but the People's Procuratorate did not transfer their reconciliation agreements when initiating public prosecution, the People's Court shall inform the People's Procuratorate to transfer the reconciliation agreement within three days.

In cases where the Public Security Bureau or the People's Procuratorate has presided over the two parties' reconciliation and an agreement has been reached, the People's Courts shall review the agreement. If is has been reached voluntarily and is [otherwise] legal. No new reconciliation agreement shall need to be reached. If the People's Court finds that the reconciliation agreement has not been are voluntarily reached or is otherwise illegal, it shall, in accordance with the law, decide that the agreement is ineffective. After the People's Court has determined that the reconciliation agreement is ineffective, it may preside over a new reconciliation process according to article 514 of this Interpretation.

Article 513 After the People's Courts receive cases, for those complying with article 277 of the Criminal Procedure Law and in which the parties did not conduct reconciliation, the People's Courts shall inform the parties that they may reconcile by themselves; in cases where either party or both parties apply for the Courts' chair in reconciliation, the People's Courts shall actively facilitate both parties' reconciliation.

The People's Courts may, according to the specific circumstances of the case, invite People's mediators, criminal defender, legal representative [of either of the parties],

the parties' relatives or friends to participate to facilitate the parties' reconciliation.

Article 514 If the parties reach reconciliation during court hearings, the People's Court shall hear both parties' and their legal representatives' and other relevant people's opinions; if the parties reach out-of-court settlements, the People's Court shall inform the People's Procuratorate and hear the Procuratorate's opinions. The People's Court shall preside over and make reconciliation agreements after examination and determining that the reconciliation is voluntarily and legally reached.

The reconciliation agreement shall include the following content:

(1) The defendant has admitted all the alleged offences, has no objection to the charge crime and has repented sincerely;
(2) The defendant has obtained the victim's forgiveness through apology, compensation, or in other ways.; the agreement shall specify the amount and method of payment any compensation agreed on; in cases of civil litigation proceedings collateral to criminal proceedings, the plaintiff shall [agree to] withdraw this civil litigation.
(3) The victim is voluntarily participating in reconciliation, and applies for or agrees with a lenient punishment to be given to the defendant in accordance with law.

The reconciliation agreement shall include both parties' signatures (seals) and their fingerprints. Judges shall not sign or affix the Court's seal to the agreement, but the agreement may record that the Court has presided over the reconciliation resulting in the agreement.

There shall be three copies of the agreement, two for the parties and one for the Court's record.

If both parties ask to keep the contents of the agreement confidential, the People's Court shall permit this and take measures accordingly. The People's Court shall not publish the content [of such agreements] in court hearings and in verdicts.

Article 515 Compensation agreed on in the reconciliation agreement shall be paid immediately after the agreement has been signed and shall not be paid later than at the time of the announcement of the verdict in first instance. If the agreement has been reached at the second instance stage, compensation [agreed upon] shall be paid up completely no later than at the time of the announcement of the verdict in second instance. If the defendant cannot fulfill his compensation obligation within the time period stipulated here, the agreement shall be deemed ineffective.

If either or both parties renege on the reconciliation agreement at any time after they have signed the agreement and prior to the announcement of the verdict, the People's Court shall seek to understand the reasons; it may initiate and preside over a new reconciliation.

If the agreement has already been carried out and either or both parties subsequently renege on the reconciliation agreement, the People's Court shall not support such reneging unless there is evidence showing that the agreement was not concluded in a voluntary manner or otherwise illegal.

Article 516 In cases where the parties have reconciled already at the criminal investigation or examination stage and where the victim initiates collateral civil litigation after the public prosecution has been initiated and the case been transferred to the Court, the Court shall accept [and adjudicate] the [civil litigation application], unless the defendant has already fully compensated the victim's material loss.[886]

Article 517 In cases where the victim reaches reconciliation with the defendant during the trial hearing after having initiated collateral civil litigation, the issue

compensation in collateral civil litigation shall be addressed as well in the reconciliation agreement, and the People's Court shall explain any relevant issues in the verdict. If the defendant is willing to compensate the victim's loss voluntarily but cannot perform in a timely manner, as required by article 515 of this Interpretation, the People's Court shall issue a civil mediation agreement [to conclude the collateral civil litigation proceedings].

Article 518 The People's Court shall give a lenient punishment to the defendant who has reached reconciliation with the victim. It shall impose a non-custodial punishment if it is in accordance with the legal conditions [for such punishment]. It may lighten the punishment and if the minimum punishment stipulated by law would be still too heavy, it may exempt the defendant from criminal punishment if it determines that the circumstances of the crime are minor and that there is no need to impose criminal punishment.

In cases of joint prosecution where some but not all of the defendants have reached a reconciliation agreement with the victim, the Court shall, when giving lenient punishments to those defendants, give consideration to all of the sentences pronounced in this case.

In cases where one defendant committed more than one crime and some of the crimes fall within the scope stipulated in article 277 of the Criminal Procedure Law and the defendant has reached reconciliation with the victim, lenient punishment may be given with regard to this part of the crimes in accordance with law.

Article 519 In cases where there is a reconciliation agreement, the People's Court shall mention this in the verdict. It shall specify whether or not the defendants are given lenient punishment and the reasons [supporting this decision] and cite relevant rules of the Criminal Law and Criminal Procedure Law.

庭，了解对未成年罪犯的管理和教育情况，引导未成年罪犯的家庭承担管教责任，为未成年罪犯改过自新创造良好环境。

第五百零八条 被判处管制、宣告缓刑、免予刑事处罚、裁定假释、决定暂予监外执行等的未成年罪犯，具备就学、就业条件的，人民法院可以就其安置问题向有关部门提出司法建议，并且附送必要的材料。

第二十一章 当事人和解的公诉案件诉讼程序

第五百零九条 符合刑事诉讼法第二百七十七条规定的公诉案件，事实清楚，证据确实、充分的，双方当事人可以自行和解，也可以申请人民法院主持和解。

被告人在犯刑事诉讼法第二百七十七条第一款规定的犯罪前五年内曾经故意犯罪的，无论该故意犯罪是否已经判决，均应当认定为刑事诉讼法第二百七十七条第二款规定的“五年以内曾经故意犯罪”。

第五百一十条 过失犯罪案件中，被害人死亡的，其法定代理人、近亲属可以与被告人和解。被害人系无行为能力或者限制行为能力人的，其法定代理人、近亲属可以代为和解。

被害人死亡，其近亲属有多人的，达成和解协议，应当征得处于同一继承顺序的所有近亲属的同意。

第五百一十一条 被告人系限制行为能力人的，其法定代理人、近亲属可以代为和解。被告人在押的，经被告人同意，其法定代理人、近亲属可以代为和解。

第五百一十二条 双方当事人在侦查、审查起诉期间达成和解，人民检察院在提起公诉时未移送和解协议书的，人民法院应当通知人民检察院在三日内移送。

对于双方当事人在公安机关、人民检察院主持下制作的和解协议书，人民法院经审查，认为和解自愿、合法的，予以确认，无需重新

制作和解协议书；认为和解协议不具有自愿性或者合法性的，应当依法认定无效。认定和解协议无效后，双方当事人仍自愿和解的，人民法院可以依照本解释第五百一十四条的规定主持制作新的和解协议书。

第五百一十三条　人民法院受理案件后，对于符合刑事诉讼法第二百七十七条规定的公诉案件，双方当事人没有和解的，应当告知其可以自行和解；一方或者双方当事人申请人民法院主持和解的，人民法院应当积极促成双方当事人和解。

人民法院可以根据案件情况，邀请人民调解员、辩护人、诉讼代理人、当事人亲友等参与促成双方当事人和解。

第五百一十四条　法庭审理过程中，双方当事人和解的，人民法院应当听取当事人及其法定代理人等有关人员的意见；双方当事人在庭外达成和解的，人民法院应当通知人民检察院，并听取其意见。经审查，和解自愿、合法的，应当主持制作和解协议书。

和解协议书应当包括以下内容：

（一）被告人承认自己所犯罪行，对指控的犯罪事实没有异议，真诚悔罪；

（二）被告人通过向被害人赔礼道歉、赔偿损失等方式获得被害人谅解；涉及赔偿损失的，应当写明赔偿的数额、方式等；提起附带民事诉讼的，由附带民事诉讼原告人撤回附带民事诉讼；

（三）被害人自愿和解，请求或者同意对被告人依法从宽处罚。

和解协议书应当由双方当事人签字（盖章）、捺指印，审判人员不签名，也不得加盖人民法院印章，但可以在协议中写明和解协议书系在人民法院主持下制作。

和解协议书一式三份，双方当事人各持一份，另一份交人民法院附卷备查。

对于和解协议的具体内容，双方当事人要求保密的，人民法院应当准许，并采取相应的保密措施，在法庭审理和裁判文书中不得公开

相关内容。

第五百一十五条 和解协议书约定的赔偿损失内容，应当在协议签署后即时履行，至迟应当在第一审判决宣告前履行完毕；第二审期间达成和解协议的，至迟应当在第二审判决、裁定宣告前履行完毕。被告人不能在上述时限内履行赔偿责任的，应当认定和解无效。

一方或者双方当事人在和解协议书签署之后、判决、裁定宣告之前反悔的，人民法院应当了解反悔的原因，并可以主持双方当事人达成新的和解协议。

和解协议已经履行，一方或者双方当事人在判决、裁定宣告后反悔的，人民法院不予支持，但有证据证明和解违反自愿、合法原则的除外。

第五百一十六条 双方当事人在侦查、审查起诉期间已经和解，案件起诉到人民法院后，被害人又提起附带民事诉讼的，人民法院应当受理，但被告人已经实际赔偿被害人全部物质损失的除外。

第五百一十七条 被害人提起附带民事诉讼后，在案件审理过程中与被告人达成和解的，在和解协议中应当一并解决附带民事赔偿问题，人民法院的裁判文书应当说明有关情况。被告人自愿赔偿被害人损失，但不能依照本解释第五百一十五条规定即时履行赔偿义务的，应当制作附带民事调解书。

第五百一十八条 对于达成和解协议的案件，人民法院应当对被告人从轻处罚，符合非监禁刑适用条件的，应当适用非监禁刑；判处法定最低刑仍然过重的，可以减轻处罚；综合全案认为犯罪情节轻微不需要判处刑罚的，可以免予刑事处罚。

共同犯罪案件，部分被告人与被害人达成和解协议的，可以依法对该部分被告人从宽处罚，但应当考虑全案的量刑平衡。

一人犯数罪，其中部分罪行属于刑事诉讼法第二百七十七条规定的范围，被告人与被害人达成和解协议的，可以对该部分罪行依法从宽处罚。

第五百一十九条　对于达成和解协议的案件，人民法院应当在裁判文书中作出叙述，写明是否对被告人从宽处罚及其理由，并援引刑法和刑事诉讼法的相关规定。

第二十二章　犯罪嫌疑人、被告人逃匿、死亡案件违法所得的没收程序

第五百二十条　同时符合下列条件的，人民检察院可以向人民法院提出没收违法所得的申请：

（一）犯罪嫌疑人、被告人实施了贪污贿赂犯罪、恐怖活动犯罪、黑社会性质的组织犯罪、毒品犯罪、走私犯罪、破坏金融管理秩序犯罪、金融诈骗犯罪等犯罪，可能被判处无期徒刑以上刑罚，或者案件在本省、自治区、直辖市或者全国范围内有较大影响等情形的；

（二）犯罪嫌疑人、被告人逃匿，在通缉一年后不能到案，或者犯罪嫌疑人、被告人死亡；

（三）根据刑法规定应当追缴其违法所得及其他涉案财产的。

实施犯罪行为所取得的财物及其孳息，以及被告人非法持有的违禁品、供犯罪所用的本人财物，应当认定为刑事诉讼法第二百八十条第一款规定的“违法所得及其他涉案财产”。

第五百二十一条　人民法院对人民检察院提出的没收违法所得的申请，应当审查以下内容：

（一）是否属于本院管辖；

（二）是否写明犯罪嫌疑人、被告人涉嫌有关犯罪的情况并附相关证据材料；

（三）是否附有犯罪嫌疑人、被告人的通缉令或者死亡证明；

（四）是否列明违法所得及其他涉案财产的种类、数量、所在地并附有相关证据材料；

Appendix IV

Opinions of the Supreme People's Procuratorate on the Handling of Minor Criminal Cases When the Parties Have Reached Reconciliation

Promulgation date: 29 Jan 2011

Effective date: 29 Jan 2011

To ensure the People's Procuratorate's lawful and correct examination of the issue of arrest and prosecution in handling minor criminal cases where the parties have reached reconciliation, we hereby put forward the following Opinions in accordance with the Criminal Law of the People's Republic of China (the "Criminal Law"), the Criminal Procedure Law of the People's Republic of China (the "Criminal Procedure Law") and to consolidate prosecutorial practices:

I. Guiding ideas and basic principles

The guiding ideas regarding the handling of minor criminal cases where the parties have reached reconciliation are as follows. In accordance with the overall requirements of the [Chinese Communist Party] Central on thoroughly promoting the three major tasks[887] of correctly carrying out the criminal policy of 'combining severity with leniency', fully the People's Procuratorate's function in resolving social disputes and establishing a socialist harmonious society, and of maintaining fairness and justice in society, and to promote social harmony and stability.

In handling minor criminal cases in which the parties have reached reconciliation, we must follow the following principles:

1. Paying equal attention to the handling of cases in accordance with law and to

conflict resolution;

2. Paying equal attention to punishing crimes and to protecting human rights;

3. Realizing the integration of legal and social effectiveness.

II. Application scope and conditions

These Opinions may apply to criminal cases under public prosecution where the accused is likely to be sentenced to imprisonment of three years or shorter, criminal detention[888], public surveillance[889] or a fine. A criminal case that falls within the aforesaid scope must satisfy the following conditions:

1. It is an intentional crime where there is a specific victim or a negligent crime where there is a direct victim;

2. The facts of the case are clear and the evidence is clear and sufficient

3. The suspect/defendant sincerely admits guilt and has fully implemented the reconciliation agreement; or if the reconciliation agreement could not yet be implemented, the suspect/defendant has provided a valid guarantee or the mediation agreement has been verified by the People's Court;

4. The parties have reached reconciliation on the issues of compensation, restoration [of a thing] to its original state, apology and psychological redress and other issues; and

5. The victim and the victim's legal representative(s) or close relative(s)[890] have explicitly expressed forgiveness to the suspect/defendant, and have requested or agreed to a lenient disposition of the suspect's/defendant's case in accordance with law.

These Opinions do not apply to the following kinds of cases:

1. Criminal cases that seriously impair the interests of the State and society, or seriously endanger public safety or public order;

2. Cases in which a crime was committed by state employees in the performance of their duties

3. Criminal cases in which the legal rights and interests of an unspecified number of people have been damaged.

III. The content of the reconciliation agreement between the parties

The parties may agree to reconcile about issues concerning their civil responsibility including the responsibility for compensation for loss or restitution, apology, and psychological redress. They may reach an agreement on whether the victim or his legal representative or close relative requests or agrees to a lenient disposition of the suspect or defendant's case by the Public Security Bureau or judicial organ. However, they shall not negotiate on issues falling within the legal responsibilities of the Public Security Bureau or of the judicial organs, such as the determination of the facts of the case, the evidence, the application of the law, or the conviction and sentencing [of the suspect/defendant].

The parties or their legal representatives have the right to conduct reconciliation. The parties' close relatives, lawyers and other entrusted persons can conduct reconciliation on behalf of the parties. If the aforementioned persons have achieved reconciliation, they shall sign a written agreement which has to be confirmed by the parties or their legal representatives. The suspect/defendant has to express sincere regret and apologize to the victim in person or in writing.

The compensation for loss in the reconciliation agreement shall be basically compatible with the [amount of] suspect/defendant's legal liability and the victim's loss caused by the crime concerned, and may also take into account the suspect/defendant's or his legal representative's ability to pay compensation or provide remedies.

IV. Ways for the parties to reach reconciliation and cooperation between the People's Procuratorate and People's Mediation Organization

Reconciliation between the parties includes reconciliation reached by the parties privately and reconciliation reached after mediation conducted by an organization or individual such as a People's Mediation Committee, the basic level self-governing organization, the parties' work units or colleagues, relatives and friends.

The People's Procuratorate shall actively communicate and intimately cooperate with the People's Mediation Committee to establish a work coordination mechanism. It, shall inform the parties in due course of their right to apply to the People's Mediation Committee to mediate, as well as of way to submit such an application, the operational procedures and available options for disposing of the case after a mediation agreement has been reached successfully, so as to support and cooperate with the People's Mediation Committee.

For the following cases meeting the scope and requirements of application as set out in these Opinions, the People's Procuratorate may suggest that the parties conduct reconciliation and inform the parties of their related rights and obligations, and provide legal consultation if necessary:

1. Cases regulated in Article 170 Section 2 of the PRC Criminal Procedure Law[891] which are investigated by the Public Security Organ;
2. Minor criminal cases committed by juveniles under 18 years old and school students; and
3. Minor criminal cases which are committed by an elderly person of 70 years of age or older.

In cases where the suspect/defendant or his relatives, friends, defence lawyers force or induce the victim to reconcile by violence, intimidation, cheating or any other illegal method, or engage in intimidation of or retaliation against the victim after the agreement as been fully implemented, the provisions on non-arrest or non-prosecution shall not be applied. If a decision of non-arrest or non-prosecution

has been made, the People's Procuratorate shall revoke the original decision [not to arrest or prosecute] and arrest or prosecute the suspect/defendant in accordance with the law.

The suspect/defendant or his relatives, friends, defence lawyers seriously committing any of the aforesaid acts will be investigated for their legal liability.

V. Examination of the parties' reconciliation agreement

The People's Procuratorate shall examine the parties' reconciliation agreement especially from the following aspects:

1. Whether the parties reached reconciliation voluntarily;
2. Whether the compensation amount is adequate given the harm caused by the suspect/defendant, and whether [the agreement] has taken into account the suspect/defendant or his legal representative's ability to pay compensation or repair. Whether the suspect/defendant has regretted sincerely and whether the suspect' defendant has performed the reconciliation agreement actively, or [alternatively] an effective guarantee for the performance of the reconciliation agreement has been provided or the mediation agreement been confirmed by the People's Court;
3. Whether the victim and his legal representative or close relative have clearly expressed forgiveness to the suspect/defendant;
4. Whether the reconciliation agreement is in accordance with law;
5. Whether the reconciliation agreement impairs the interests of the State or any collective or public interests or other people's legal rights and interests;
6. Whether it is in accordance with social morality.

In examining these questions, the People's Procuratorate shall hear both parties' opinions on reconciliation in face-to-face meetings, inform the victim of the potential lenient disposition of the case concerned and the parties' rights and obligations, and

enter the afore-mentioned issues in the case record.

VI. The People's Procuratorate's handling of cases where the parties have reached reconciliation

If a case in which the Public Security applies for arrest meets the application scope and conditions set out in these Opinions, it shall be considered as meeting important requirements that allow for a decision not to impose arrest, and the People's Procuratorate may generally make the decision not to arrest in such cases. If an arrest has already been approved and the Public Security Organ, having subsequently changed the compulsory measure, notifies the People's Procuratorate of the change the People's Procuratorate shall carry out supervision in accordance with law. At the stage of examination before prosecution, the compulsory measure may be changed in accordance with the law if this change would not impede the smooth progress of the litigation.

If a minor criminal case under Article 170 Section 2 of the Criminal Procedure Law has been filed for investigation and transferred for prosecution by the Public Security Organ and meets the application scope and conditions set out in these Opinions, the People's Procuratorate may generally, decide not to prosecute.

If any other minor criminal case meets the application scope and conditions set out in these Opinions, it shall be considered as a vital factor indicating that the circumstances of the case are minor so that criminal punishment is not necessary or that the suspect or defendant could be exempted from punishment, and the People's Procuratorate may generally make the decision not to prosecute. If a public prosecution must be initiated according to the law, the People's Procuratorate may make suggestions as to a lenient punishment within the statuary extent to the People's Court.

If an administrative punishment or an administrative disciplinary action against the person not prosecuted is required or the illegal proceeds from the person's action need to be confiscated, the People's Procuratorate shall provide procuratorial opinions and transfer the case to the relevant authority for handling.

In cases in which the parties have reached reconciliation and the People's Procuratorate has made the decision not to prosecute, the People's Procuratorate shall hear both parties' opinions on reconciliation again before announcing the decision of non-prosecution, and shall investigate if the suspect has regretted sincerely, whether the reconciliation agreement has been performed or whether there is an effective guarantee or the mediation agreement has been confirmed by the People's Court.

In cases that can lead to a sentence of imprisonment of three years or longer and in which the parties have reached a reconciliation agreement, when the People's Procuratorate initiates public prosecution, it may make suggestions regarding a lenient punishment within the statuary extent to the People's Court. In cases where there are extraordinarily serious circumstances or in which especially serious harm has been caused to society, in addition to reconciliation, the Criminal Law's functions of education and prevention shall also be considered.

VII. To standardize the way handling cases where the parties have reached reconciliation

The People's Procuratorate shall comply with the requirements on time limits for handling cases stipulated in the PRC Criminal Procedure Law and the Criminal Proceeding Rules of the People's Procuratorates when it deals with cases according to these Opinions.

Where a decision not to arrest or not to prosecute is to be made in a minor criminal case in which the parties have reached reconciliation according to these Opinions, the

Procuratorial Committee shall discuss it before the decision is made.

The People's Procuratorate shall strengthen supervision and examination in arrest approval and prosecution examination in cases where the parties have reached reconciliation. If any violation of law or disciplines is found, and if the violation is minor, the People's Procuratorate shall impose [the sanction of] criticism and education on the violator; if the violation is serious, an organizational sanction or disciplinary punishment shall be given according to relevant regulations; if the violation constitutes a crime, the violator's criminal liability shall be investigated in accordance with the law.

最高人民检察院关于办理当事人达成和解的轻微刑事案件的若干意见

发布日期 2011.01.29

实施日期 2011.01.29

为了保证人民检察院在审查逮捕和公诉工作中依法正确办理当事人达成和解的轻微刑事案件，根据《中华人民共和国刑法》、《中华人民共和国刑事诉讼法》等有关法律规定，结合检察工作实际，提出如下意见：

一、指导思想和基本原则

人民检察院办理当事人达成和解的轻微刑事案件的指导思想是：按照中央关于深入推进三项重点工作的总体要求，正确贯彻宽严相济刑事政策，充分发挥检察机关在化解社会矛盾和构建社会主义和谐社会中的职能作用，维护社会公平正义、促进社会和谐稳定。

办理当事人达成和解的轻微刑事案件，必须坚持以下原则：

1．依法办案与化解矛盾并重；

2．惩罚犯罪与保障人权并重；

3．实现法律效果与社会效果的有机统一。

二、关于适用范围和条件

对于依法可能判处三年以下有期徒刑、拘役、管制或者单处罚金的刑事公诉案件，可以适用本意见。

上述范围内的刑事案件必须同时符合下列条件：

1．属于侵害特定被害人的故意犯罪或者有直接被害人的过失犯罪；

2．案件事实清楚，证据确实、充分；

3．犯罪嫌疑人、被告人真诚认罪，并且已经切实履行和解协议。对于和解协议不能即时履行的，已经提供有效担保或者调解协议经人民法院确认；

4．当事人双方就赔偿损失、恢复原状、赔礼道歉、精神抚慰等事项达成和解；

5．被害人及其法定代理人或者近亲属明确表示对犯罪嫌疑人、被告人予以

谅解，要求或者同意对犯罪嫌疑人、被告人依法从宽处理。

以下案件不适用本意见：

1．严重侵害国家、社会公共利益，严重危害公共安全或者危害社会公共秩序的犯罪案件；

2．国家工作人员职务犯罪案件；

3．侵害不特定多数人合法权益的犯罪案件。

三、关于当事人和解的内容

当事人双方可以就赔偿损失、恢复原状、赔礼道歉、精神抚慰等民事责任事项进行和解，并且可以就被害人及其法定代理人或者近亲属是否要求或者同意公安、 司法机关对犯罪嫌疑人、被告人依法从宽处理达成一致，但不得对案件的事实认定、证据和法律适用、定罪量刑等依法属于公安、司法机关职权范围的事宜进行协商。

双方当事人或者其法定代理人有权达成和解，当事人的近亲属、聘请的律师以及其他受委托的人，可以代为进行协商和解等事宜。双方达成和解的，应当签订书 面协议，并且必须得到当事人或者其法定代理人的确认。犯罪嫌疑人、被告人必须当面或者书面向被害人一方赔礼道歉、真诚悔罪。

和解协议中的损害赔偿一般应当与其承担的法律责任和对被害人造成的损害相适应，并且可以酌情考虑犯罪嫌疑人、被告人及其法定代理人的赔偿、补救能力。

四、关于当事人达成和解的途径与检调对接

当事人双方的和解，包括当事人双方自行达成和解，也包括经人民调解委员会、基层自治组织、当事人所在单位或者同事、亲友等组织或者个人调解后达成和解。

人民检察院应当与人民调解组织积极沟通、密切配合，建立工作衔接机制，及时告知双方当事人申请委托人民调解的权利、申请方法和操作程序以及达成调解协议后的案件处理方式，支持配合人民调解组织的工作。

人民检察院对于符合本意见适用范围和条件的下列案件，可以建议当事人进行和解，并告知相应的权利义务，必要时可以提供法律咨询：

1．由公安机关立案侦查的刑事诉讼法第一百七十条第二项规定的案件；

2．未成年人、在校学生犯罪的轻微刑事案件；

3．七十周岁以上老年人犯罪的轻微刑事案件。

犯罪嫌疑人、被告人或者其亲友、辩护人以暴力、威胁、欺骗或者其他非法方法强迫、引诱被害人和解，或者在协议履行完毕之后威胁、报复被害人的，不适用 有关不捕不诉的规定，已经作出不逮捕或者不起诉决定的，人民检察院应当撤销原决定，依法对犯罪嫌疑人、被告人逮捕或者提起公诉。

犯罪嫌疑人、被告人或者其亲友、辩护人实施前款行为情节严重的，依法追究其法律责任。

五、关于对当事人和解协议的审查

人民检察院对当事人双方达成的和解协议，应当重点从以下几个方面进行审查：

1．当事人双方是否自愿；

2．加害方的经济赔偿数额与其所造成的损害是否相适应，是否酌情考虑其赔偿能力。犯罪嫌疑人、被告人是否真诚悔罪并且积极履行和解协议或者是否为协议履行提供有效担保或者调解协议经人民法院确认；

3．被害人及其法定代理人或者近亲属是否明确表示对犯罪嫌疑人、被告人予以谅解；

4．是否符合法律规定；

5．是否损害国家、集体和社会公共利益或者他人的合法权益；

6．是否符合社会公德。

审查时，应当当面听取当事人双方对和解的意见、告知被害人刑事案件可能从轻处理的法律后果和双方的权利义务，并记录在案。

六、关于检察机关对当事人达成和解案件的处理

对于公安机关提请批准逮捕的案件，符合本意见规定的适用范围和条件的．应当作为无逮捕必要的重要因素予以考虑，一般可以作出不批准逮捕的决定；已经批 准逮捕，公安机关变更强制措施通知人民检察院的，应当依法实行监督；审查起诉阶段，在不妨碍诉讼顺利进行的前提下，可以依法变更强制措施。

对于公安机关立案侦查并移送审查起诉的刑事诉讼法第一百七十条第二项

规定的轻微刑事案件，符合本意见规定的适用范围和条件的，一般可以决定不起诉。

对于其他轻微刑事案件，符合本意见规定的适用范围和条件的，作为犯罪情节轻微，不需要判处刑罚或者免除刑罚的重要因素予以考虑，一般可以决定不起诉。对于依法必须提起公诉的，可以向人民法院提出在法定幅度范围内从宽处理的量刑建议。

对被不起诉人需要给予行政处罚、行政处分或者需要没收其违法所得的，应当提出检察意见，移送有关主管机关处理。

对于当事人双方达成和解、决定不起诉的案件，在宣布不起诉决定前应当再次听取双方当事人对和解的意见，并且查明犯罪嫌疑人是否真诚悔罪、和解协议是否履行或者为协议履行提供有效担保或者调解协议经人民法院确认。

对于依法可能判处三年以上有期徒刑刑罚的案件，当事人双方达成和解协议的，在提起公诉时，可以向人民法院提出在法定幅度范围内从宽处理的量刑建议。对于情节特别恶劣，社会危害特别严重的犯罪，除了考虑和解因素，还应注重发挥刑法的教育和预防作用。

七、依法规范当事人达成和解案件的办理工作

人民检察院适用本意见办理案件，应当遵守《中华人民共和国刑事诉讼法》、《人民检察院刑事诉讼规则》等有关办案期限的规定。

根据本意见，拟对当事人达成和解的轻微刑事案件作出不批准逮捕或者不起诉决定的，应当由检察委员会讨论决定。

人民检察院应当加强对审查批捕、审查起诉工作中办理当事人达成和解案件的监督检查，发现违法违纪，情节轻微的，应当给予批评教育；情节严重的，应当根据有关规定给予组织处理或者纪律处分；构成犯罪的，依法追究刑事责任。

Appendix V

Opinions of the Supreme People's Procuratorate on Implementing the Criminal Policy of Combining Severity with Leniency in Procuratorial work

Promulgation date: 15 Jan 2007

Effective date: 15 Jan 2007

For the purpose of fully implementing the criminal policy of 'combining severity with leniency', serving the establishment of a socialist harmonious society, the Supreme People's Procuratorate promulgates the following Opinions in accordance with the Criminal Law of the People's Republic of China, the Criminal Procedural Law of the People's Republic of China, other related regulations and consolidating [the experiences of] procuratorial practice.

I. Guiding ideas and principles of implementing the criminal policy of 'combining severity with leniency'

1. In order to implement the criminal policy of 'combining severity with leniency', we must follow the guidance of Deng Xiaoping Theory, the important thought of the 'Three Represents', and the Concept of Scientific Development, firmly establish the ideology of socialist rule of law and the correct idea of stability, adopt the promotion of social harmony as a significant criterion in the examination of procuratorial work, thoroughly discharge our responsibility of supervision, effectively restrain, prevent and reduce crime, increase the factors of harmony to the largest extent, decrease the factors of disharmony to the minimum level, and provide strong judicial safeguards for the establishment of a socialist harmonious society.

2. The criminal policy of 'combining severity with leniency' is an important policy of the Party and the State, and is an important guide of the People's Procuratorate to implement the laws of the State. To carry out the criminal policy of 'combining severity with leniency', we shall treat criminals and public security issues differently in accordance with the specific requirements of each situation when discharging our legal responsibility of supervision. We shall be lenient with those who deserve it, be severe when the actual circumstances require it, integrate leniency with severity and keep a balance between them, strike hard against serious crimes in accordance with the law, be lenient with regard to minor crimes in accordance with the law, be lenient with regard to mitigating circumstances in serious crimes, be severe with regard to serious circumstances in minor crimes, and show the spirit of combining severity with leniency in regard to both the procedure and the outcome of handling crimes.

3. The People's Procuratorate shall, according to the requirements on establishing a socialist harmonious society, recognize and uphold the significant guiding ideas of the criminal policy of combining severity with leniency in new situations. While striking hard against serious crimes in accordance with the law, we shall try our best to be lenient toward criminals, and to win over and save them in accordance with the law, so as to transform negative factors into positive ones to the largest extent and to serve the establishment of a harmonious society.

4. The People's Procuratorate shall stick to the following principles in implementing the criminal policy of 'combining severity with leniency':

-- *Comprehensive Understanding*. Severity and leniency in the criminal policy of 'combining severity with leniency' are to be internally consolidated. They are to supplement each other. So we shall comprehensively understand, uphold, and fully implement them. We shall prevent the tendency of merely stressing either one, or covering one with the other.

-- *Differentiated Responses*. The core of the criminal policy of 'combining severity with leniency' is differential treatment. We shall comprehensively consider the harm a crime has caused to society (including the question of what or whom the crime has harmed, the circumstances, dimensions, and outcomes of the crime), the criminal's subjective culpability (including the subjective state of mind of the criminal when he committed the crime, his attitude after committing the crime and his ordinary performance), and the impact of the crime on society to decide whether the case shall be handled in a lenient or severe manner according to the difference concerning the time [of the offence], the person of the criminal and the respective public security situations in different regions.

-- *Strictly following the laws*. To carry out the criminal policy of 'combining severity with leniency', we must stick to the principles of *nulla poena sine lege* (no punishment without a law), suiting the punishment to the crime and equality before the law, realize the internal integration of policy guidance and strict law enforcement, impose limits regarding both leniency and severity, and be lenient or severe [as the case requires] in accordance with the law.

-- *Emphasizing effect*. To carry out the criminal policy of 'combining severity with leniency', we shall combine the punishment of crime with human rights protection, combine legal with social effects, combine suspect/defendant protection with victim protection, combine general prevention with specific prevention, combine handling cases according to law with conflict resolution to sustain social stability, resolve conflicts, reduce confrontation and promote harmony.

II. To carry out the criminal policy of 'combining severity with leniency' in performing the legal responsibility of supervision

5. To severely crack down on crimes that seriously endanger public security and sabotage the order of market economy in accordance with the law. 'Striking hard' is an important and integral part, and a crucial form of the criminal policy of 'combining severity with leniency', so we must firmly stick to it. We must,

according to law, severely and swiftly crack down on mafia crimes, crimes committed by terrorist organizations, drug-related crimes, crimes that seriously endanger public security including murder, explosion, robbery, rape, kidnapping, and poisoning; we must, according to law, severely punish crimes that seriously sabotage financial order, infringe intellectual property rights, and crimes that seriously sabotage the order of the socialist market economy including producing and selling fake or inferior goods which seriously endanger personal safety and health; we must, according to law, strike hard against crimes that seriously damage environmental resources such as serious environmental pollution crimes. The approval of arrests and prosecution [of crimes] in an accurate, effective and timely manner help to combat crime.

6. We shall thoroughly investigate and severely deal with crimes of embezzlement, bribery, infringement and dereliction of duty that are committed by state employees. We shall intensely investigate and handle state employees' crimes of dereliction of duty, increase detection rates, reduce rates of escape, and effectively restrain and prevent crimes of dereliction of duty. We shall severely investigate and process crimes of dereliction of duty committed by Party leaders or cadres, crimes of dereliction of duty committed by state employees related to power-for-money deals by taking advantage of power related to personnel matters, judicial power, powers of administrative examination and approval, or power in enforcing the administrative law, crimes of dereliction of duty committed by state employees as mafia and evil forces' "protective umbrella", crimes of dereliction of duty involving serious safety accidents, allowing the manufacturing or selling of fake or shoddy goods, damaging the interests of the State or the People in enterprise restructuring, land expropriations or [building] demolitions, examination and approval for resources usage, social security etc., crimes of dereliction of duty that have occurred at basic levels or in industries of social importance, or having strong attention from the people. We shall decisively take the necessary measures to investigate and control or to detain and arrest the suspect if the crime is serious or if the suspect does not admit guilt or does

not restore illicit gains, absconds, or tallies confession [with other suspects], or destroys evidence to impede litigation. We may, according to law, make the decision not to arrest or change the compulsory measure taken against the suspect if the crime is minor, he regrets sincerely, the evidence has been secured especially in cases of negligent crime where these conditions are met.

7. We shall strictly control the preconditions of arrest [to cases] where 'arrest is necessary' and use arrest cautiously. Arrest is the most serious compulsory measure and we shall use other compulsory measures when possible. The approval of arrest shall be strictly in accordance with the law, and we shall correctly understand and respect the criteria for 'necessity of arrest', and in the meantime acknowledge the facts, evidence, and circumstances of crimes that may lead to punishment. Specifically, the following factors may be considered: a. whether the suspect is juvenile or a student at school, or whether the suspect is elderly, a person with a serious disease, dumb, deaf, blind, a first offender, accessory, or a woman who is pregnant or breastfeeding; b. whether the statutory punishment is light; c. whether there is a statutory provision for leniency, mitigation or an exempting circumstance such as the suspect's having desisted from fully carrying out the time or surrendered or rendered meritorious service; d. whether there is subjective negligence or whether the suspect has been cheated or coerced; e. whether there is admission of guilt, repentance or any possibility of harming society again or impeding the [criminal] litigation processes like tallying confession [with other suspects], destructing evidence or impeding of a witness; f. whether the suspect has fled to commit crimes, whether the suspect/defendant has a or has a fixed residence and meets the conditions for [correction through] education and discipline; g. whether the basic evidence of the case is secured, and whether there is any possibility of the suspect's or defendant's withdrawing their confession or evidence [if released]. We shall arrest the suspect if the crime is serious, his subjective malignancy is serious and if he is very likely to cause personal injury to others, or has the possibility of impeding the [criminal] litigation process like tallying confession [with other suspects],

destroying evidence or impeding witness, and if the circumstances are in accordance with the preconditions of arrest. We shall not arrest the suspect if the [criminal] litigation process would not be impeded, if there is no compulsory measure or other compulsory measures can be adopted.

8. We shall correctly understand the preconditions of prosecution and non-prosecution and apply non-prosecution in accordance with the law. During the examination of a case to decide whether to prosecute, we shall strictly respect the preconditions of prosecution according to law and give full consideration to the necessity of prosecution and not initiate prosecution if possible. We shall not initiate prosecution in cases of first offences, of accessory [involvement in the offence], of persons who had merely prepared to commit a crime or desisted from fully carrying out a crime, of unjustifiable self-defense, of acts committed in an emergency to avert danger but exceeding the limits of necessity, juvenile crimes, crimes committed by the elderly, and crimes triggered by disputes among relatives, friends, neighbour s, schoolmates or colleagues, if the preconditions of non-prosecution are met, and we shall impose warnings, or requirements for an apology or [expressions of] repentance and compensation on the suspect. If prosecution is necessary, we may make a sentence suggestion [reflecting the aforementioned circumstances] such as a suggestion to give a lighter punishment or suspended sentence to the People's Court.

9. Emphasis shall be placed on supervision of the process of filing a case[892]. Supervision of the process of filing a case shall be improved. Emphasis shall be placed on serious crimes or crimes that have a very bad impact on society and to illegality in the filing of a case. We shall strengthen follow-up supervision of the investigation organ to ensure a timely correction of the illegality.

10. We shall correctly carry out the criminal policy of 'combining severity with leniency' when we lodge a protest against the court's verdict. We shall emphasize appeals against cases where the defendant should be convicted but is acquitted or

mistakenly given a lighter punishment, and also in a case where there should be no criminal responsibility or is mistakenly given a heavier punishment. We shall generally not appeal the decision in cases of light verdicts when the defendant has actively admitted guilt, provided compensation and obtained the victim's forgiveness or where there is a mitigating circumstance provided for by statutory law. Ordinarily, if there are no new facts and no new evidence, we shall not appeal the decision in order to obtain a heavier punishment in cases where the People's Procuratorate did not appeal within the statutory time limit[893], or did not protest in six months since the sentence or verdict had taken effect.

11. We shall be lenient in cases of juvenile crime. We shall deal with juvenile crime cases following the principle of 'education first, punishment second' and the guideline of 'education, reform and rescue. We shall investigate the circumstances of the juvenile suspect to learn about his personality, family, social relationships, growing-up experience, to understand if the conditions for [reform through] education are present. Except for those juveniles whose culpability is serious and how have done serious harm to society, we shall, according to the circumstances of the case, decide not to arrest or prosecute if it is not necessary. For those cases where prosecution is necessary, we shall make a suggestion of a lenient disposition or a suspended sentence to the People's Court according to the circumstances of the case.

12. We shall be lenient in cases of crime triggered by conflicts among the people. In the case of a minor crime arising from disputes among relatives, neighbour s or schoolmates, we shall correctly handle case based on the spirit of 'better making friends than enemies' and from the angle of conflict resolution. In the case of a minor crime in which the suspect has admitted guilt, repented, apologized, actively compensated the loss and obtained the victim's forgiveness or where the two parties have reached and implemented a reconciliation agreement, and where the harm done to society is not serious, we shall make the decision not to arrest or prosecute in accordance with the law. If prosecution is necessary, we may suggest a lenient

sentence to the People's Court. In case of a minor crime that can be prosecuted by the party[894] and has been investigated, where the Public Security Organ has applied for arrest and transferred the case for public prosecution to, the People's Procuratorate, we may facilitate reconciliation about civil compensation and psychological conciliation between the parties to resolve the conflict and to dispose of the case in a lenient way in accordance with the law.

13. We shall dispose of the cases of first or casual offenders in minor criminal cases in a lenient manner. A suspect who commits a minor crime for the first time and whose subjective culpability is minor may generally not be arrested, especially where a minor crime like theft has been committed due to [livelihood related] hardship, and where the suspect or defendant is unlikely to cause personal injury to others; there shall be no prosecution if this is in accordance with the statutory provisions. If prosecution is necessary, we may make suggest a lenient sentence to the People's Court.

14. We shall correctly handle criminal cases in the context of collective incidents. To handle criminal case in the context of collective incidents, we shall follow the principle of punishing the minority while winning over, uniting and educating the majority. We shall strike hard according to the law against the few criminals that meddle in, scheme, organize or direct collective incidents and the chief and core members engaging in crimes such as beating, smashing and looting. We shall exercise caution in imposing compulsory measures and prosecution on participants; if prosecution is necessary, we may make a suggestion with regard to a lenient disposition to the People's Courts in accordance with the law.

III. Establishing and improving mechanisms in procuratorial work and ways in handling cases to implement the criminal policy of 'combining severity with leniency'

15. We shall further improve our regular working mechanisms in implementing the policy of 'striking hard' in procuratorial work. We shall strengthen the analysis of situations of concern with regard to public security, make decisions emphasizing the need of 'striking according to the circumstances.' We shall, according to the law, arrest and prosecute swiftly in serious crimes to improve the effectiveness of combating crime.

16. We shall strengthen the establishment of investigation mechanisms and improve our ability to discover and handle crimes of dereliction of duty. We shall improve the establishment of an 'integrated' working style, pay attention to coordinated handling of investigation clues, the integrated organization and direction of investigation activities, the coordination and cooperation of investigation across different regions, the allocation and utilization of investigation resources, etc,. to establish and improve investigation, direction and vertical cooperation mechanisms [across different hierarchical levels] and close horizontal cooperation, as well as free and fast information flows, and effective and orderly operation the handling of cases of crimes of dereliction of duty. We shall strengthen the professionalism of the investigation teams to improve their investigation skills and capabilities, strengthen the modernization of investigation equipments, standardize the application of investigation skills, and further improve our ability to use high–tech means in investigating crime to solve cases.

17. We shall improve professionalism in handling cases and establish working mechanisms to swiftly handle cases of minor criminal offences. We shall improve the division of work in approvals for arrest and prosecution by separating out [the handling of] simple and complicated cases. We shall arrange people to specially deal with minor criminal cases and concentrate our major strength in serious, difficult and complicated cases. We shall establish mechanisms for the swift examination of arrest and prosecution in minor criminal cases, raise efficiency and shorten time periods in dealing with cases where the facts are clear, the evidence is sufficient, the suspect

has admitted guilt and where the prospective sentence is imprisonment of three years or shorter.

18. We shall correctly apply the summary procedure and simplified trial procedure in accordance with the law. The People's Procuratorate shall suggest the use of summary procedure in minor criminal cases confirming to the statutory condition; in cases where the defendant and his defense lawyers apply for use of the summary procedure, the People's Procuratorate, after examining to see if it is in accordance with the conditions provided for by statutory law, shall agree and make this suggestion to the People's Court; if the People's Court suggests the use of the summary procedure, the People's Procuratorate shall agree after examining and determining that this suggestion is in accordance with the conditions provided for by statutory law. In a case in which the defendant admits guilt and complies with the conditions set out in relevant regulations, the People's Procuratorate shall suggest the use of the summary procedure.

19. We shall improve the handling of juvenile cases. In juvenile cases, special work departments and special working groups shall be established and special staff shall be assigned to work on such cases. Special mechanisms to examine the issues of approval of arrest and prosecution considering the characteristics of the juvenile shall be put in place. In principle, juveniles and adults in joint offence shall be handled differently [according to their different status]. In juvenile cases where the summary procedure is applied, in general the prosecutor shall appear in court to support the prosecution and conduct education in court. In cases where it is decided not to prosecute a juvenile because the circumstances of the case are minor, 'teaching and help'[895] measures shall be taken.

20. We shall stress conflict resolution in dealing with criminal cases. The Procuratorate shall strengthen resolution of the conflict and mediation of the dispute related to the crime, shall take the outcome of dispute resolution and the

implementation of any agreement [related to the dispute] as a significant factor in considering a lenient disposition. In a case where there is a direct victim, the People's Procuratorate may request the suspect to apologize to the victim and compensate the victim if it gives a lenient disposition or decides not to prosecute. The People's Procuratorate shall also well explain the decision to the victim to avoid any further petitioning to the judicial authorities [on the part of the victim in this case].

21. We shall improve supervision mechanisms concerning parole and community correction. We shall adapt to the trend that the number of people given parole or sentenced to community correction may increase, cooperate with relevant departments to improve our working mechanisms, and strengthen supervision mechanisms regarding parole and community correction to avoid losing, missing and illegally managing criminals who have been given parole or community correction sentences.

22. We shall improve our assessment and performance evaluation systems for the handling of cases. We shall manage procuratorial work according to the rules governing the administration of justice and procuratorial working rules, scientifically set assessment and evaluation criteria for procuratorial work, improve the assessment method from the perspective of helping with the implementation of the criminal policy of 'combining severity with leniency' to guarantee the lawful and correct making of non-arrest and non-prosecution decisions, to correct inappropriate restrictions of non-arrest and non-prosecution rates, and to realize the integration of quantity, quality and effect related factors in handling cases.

IV. Changing ideas, strengthening guidance to guarantee a proper implementation of the criminal policy of 'combining severity with leniency'

23. Procuratorates and prosecutors at all levels, in particular leaders and cadres shall conscientiously, fully and correctly comprehend the criminal policy of 'combining severity with leniency' according to the requirements of promoting a socialist harmonious society, combine the implementation of the criminal policy of 'combining severity with leniency' with carrying out reforms of the judicial system and mechanisms and with strengthening the standardization of law enforcement, and constantly improve their ability to punish crime, protect the people, resolve conflicts and promote harmony.

24. Relevant departments in the Supreme People's Procuratorate and all provincial? People's Procuratorates shall deepen research and investigation giving consideration to the circumstances of their own departments and regions, and strengthen guidance, review and supervision of the implementation of the criminal policy of 'combining severity with leniency' in their own departments and regions. The higher level People's Procuratorates shall summarize their experiences and identify problems in practice a timely manner, improve their regular management and assessment [mechanisms], improve their supervision system to avoid mistakes in implementing this policy, and thoroughly investigate crimes involving power abuse committed in the name of implementing the criminal policy of 'combining severity with leniency' in order to ensure the correct implementation of the criminal policy of 'combining severity with leniency'.

25. Procuratorates at all levels shall improve connection and coordination with the Public Security Bureaus, People's Courts and judicial and organs under the Ministry of Justice, establish regular cooperating mechanisms in the context of their work, conduct research together on specific working measures in implementing the criminal policy of 'combining severity with leniency', and resolve the problems arising in implementing the criminal policy of 'combining severity with leniency' in a timely manner.

26. We shall implement the policy of combining severity with lenience with greater force, strengthen research on the theory of implementing the criminal policy of 'combining severity with leniency', and constantly improve the handling of criminal cases following the guiding principle of the criminal policy of 'combining severity with leniency'. Concurrently, we shall stress research on criminal reconciliation, conditions of arrest, conditional non-prosecution, conditions of making appeals, and of the use of the summary procedure and other relevant issues, and proactively make suggestions for improving the legal systems relevant to the implementation of the criminal policy of 'combining severity with leniency'.

最高人民检察院关于在检察工作中贯彻宽严相济刑事司法政策的若干意见

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为了在检察工作中全面贯彻宽严相济的刑事司法政策，更好地为构建社会主义和谐社会服务，根据刑法、刑事诉讼法及有关规定，结合检察工作实际，提出以下意见。

一、检察机关贯彻宽严相济刑事司法政策的指导思想和原则

1．检察机关贯彻宽严相济的刑事司法政策，必须坚持以邓小平理论、"三个代表"重要思想和科学发展观为指导，牢固树立社会主义法治理念和正确的稳定观，把促进社会和谐作为检验检察工作的重要标准，充分履行法律监督职能，有效地遏制、预防和减少犯罪，最大限度地增加和谐因素，最大限度地减少不和谐因素，为构建社会主义和谐社会提供有力的司法保障。

2．宽严相济是我们党和国家的重要刑事司法政策，是检察机关正确执行国家法律的重要指针。检察机关贯彻宽严相济的刑事司法政策，就是要根据社会治安形势和犯罪分子的不同情况，在依法履行法律监督职能中实行区别对待，注重宽与严的有机统一，该严则严，当宽则宽，宽严互补，宽严有度，对严重犯罪依法从严打击，对轻微犯罪依法从宽处理，对严重犯罪中的从宽情节和轻微犯罪中的从严情节也要依法分别予以宽严体现，对犯罪的实体处理和适用诉讼程序都要体现宽严相济的精神。

3．检察机关要按照构建社会主义和谐社会的要求，认识和把握宽严相济刑事司法政策在新的形势下对检察工作的重要指导意义，在对严重犯罪依法严厉打击的同时，对犯罪分子依法能争取的尽量争取，能挽救的尽量挽救，能从宽处理

的尽量从宽处理，最大限度地化消极因素为积极因素，为构建社会主义和谐社会服务。

4．检察机关贯彻宽严相济的刑事司法政策应当坚持以下原则：

-- 全面把握。宽严相济刑事司法政策中的宽与严是一个有机统一的整体，二者相辅相成，必须全面理解，全面把握，全面落实。既要防止只讲严而忽视宽，又要防止只讲宽而忽视严，防止一个倾向掩盖另一个倾向。

-- 区别对待。宽严相济刑事司法政策的核心是区别对待。应当综合考虑犯罪的社会危害性（包括犯罪侵害的客体、情节、手段、后果等）、犯罪人的主观恶性（包括犯罪时的主观方面、犯罪后的态度、平时表现等）以及案件的社会影响，根据不同时期、不同地区犯罪与社会治安的形势，具体情况具体分析，依法予以从宽或者从严处理。

-- 严格依法。贯彻宽严相济的刑事司法政策，必须坚持罪刑法定、罪刑相适应、法律面前人人平等原则，实现政策指导与严格执法的有机统一，宽要有节，严要有度，宽和严都必须严格依照法律，在法律范围内进行，做到宽严合法，于法有据。

-- 注重效果。贯彻宽严相济的刑事司法政策，应当做到惩治犯罪与保障人权的有机统一，法律效果与社会效果的有机统一，保护犯罪嫌疑人、被告人的合法权利与保护被害人的合法权益的有机统一，特殊预防与一般预防的有机统一，执法办案与化解矛盾的有机统一，以有利于维护稳定，化解矛盾，减少对抗，促进和谐。

二、在履行法律监督职能中全面贯彻宽严相济刑事司法政策

5．依法严厉打击严重危害社会治安的犯罪和严重破坏市场经济秩序等犯罪。"严打"是宽严相济刑事司法政策的重要内容和有机组成部分，是贯彻宽严相济刑事司法政策的重要体现，必须坚定不移地坚持。必须依法从重从快打击黑社会性质组织犯罪、恐怖犯罪、毒品犯罪以及杀人、爆炸、抢劫、强奸、绑架、投放危险物质等严重危害社会治安的刑事犯罪，依法严厉惩治严重破坏金融秩序、

侵犯知识产权、制售严重危害人身安全和人体健康的伪劣商品等严重破坏社会主义市场经济秩序的犯罪，依法打击重大环境污染等破坏环境资源犯罪。该批捕的要坚决批捕，该起诉的要坚决起诉，及时、准确、有力地予以打击。

6．依法严肃查处贪污贿赂、渎职侵权等国家工作人员职务犯罪。加大对职务犯罪的查处力度，提高侦破率，降低漏网率，有效遏制、震慑职务犯罪。严肃查办党政领导干部的职务犯罪，国家工作人员利用人事权、司法权、行政审批权、行政执法权进行权钱交易的职务犯罪，充当黑恶势力"保护伞"的职务犯罪，重大安全责任事故所涉及的职务犯罪，放纵制售伪劣商品的职务犯罪，企业改制、征地拆迁、资源审批和社会保障等工作中侵害国家利益和人民群众切身利益的职务犯罪，发生在基层或者社会关注的行业以及人民群众反映强烈的职务犯罪。对罪行严重、拒不认罪、拒不退赃或者负案潜逃以及进行串供、毁证等妨害诉讼活动的，要果断采取必要的侦查、控制手段或者拘留、逮捕等措施。对于罪行较轻、真诚悔罪、证据稳定的，特别是其中的过失犯罪，可以依法不予逮捕或者及时变更强制措施。

7．严格把握"有逮捕必要"的逮捕条件，慎重适用逮捕措施。逮捕是最严厉的刑事强制措施，能用其他强制措施的尽量使用其他强制措施。审查批捕要严格依据法律规定，在把握事实证据条件、可能判处刑罚条件的同时，注重对"有逮捕必要"条件的正确理解和把握。具体可以综合考虑以下因素：一是主体是否属于未成年人或者在校学生、老年人、严重疾病患者、盲聋哑人、初犯、从犯或者怀孕、哺乳自己婴儿的妇女等；二是法定刑是否属于较轻的刑罚；三是情节是否具有中止、未遂、自首、立功等法定从轻、减轻或者免除处罚等情形；四是主观方面是否具有过失、受骗、被胁迫等；五是犯罪后是否具有认罪、悔罪表现，是否具有重新危害社会或者串供、毁证、妨碍作证等妨害诉讼进行的可能；六是犯罪嫌疑人是否属于流窜作案、有无固定住址及帮教、管教条件；七是案件基本证据是否已经收集固定、是否有翻供翻证的可能等。对于罪行严重、主观恶性较大、人身危险性大或者有串供、毁证、妨碍作证等妨害诉讼顺利进行可能，符合逮捕条件的，应当批准逮捕。对于不采取强制措施或者采取其他强

制措施不致于妨害诉讼顺利进行的，应当不予批捕。对于可捕可不捕的坚决不捕。

8．正确把握起诉和不起诉条件，依法适用不起诉。在审查起诉工作中，严格依法掌握起诉条件，充分考虑起诉的必要性，可诉可不诉的不诉。对于初犯、从犯、预备犯、中止犯、防卫过当、避险过当、未成年人犯罪、老年人犯罪以及亲友、邻里、同学同事等纠纷引发的案件，符合不起诉条件的，可以依法适用不起诉，并可以根据案件的不同情况，对被不起诉人予以训诫或者责令具结悔过、赔礼道歉、赔偿损失。确需提起公诉的，可以依法向人民法院提出从宽处理、适用缓刑等量刑方面的意见。

9.突出立案监督的重点。完善立案监督机制，将监督的重点放在严重犯罪或者社会影响恶劣以及违法立案造成严重后果的案件上，加强对侦查机关落实立案监督情况的跟踪监督，确保违法立案案件及时得到纠正。

10．在抗诉工作中正确贯彻宽严相济的刑事司法政策。既要重视对有罪判无罪、量刑畸轻的案件及时提出抗诉，又要重视对无罪判有罪、量刑畸重的案件及时提出抗诉。对于被告人认罪并积极赔偿损失、被害人谅解的案件、未成年人犯罪案件以及具有法定从轻、减轻情节的案件，人民法院处罚偏轻的，一般不提出抗诉。对于第一审宣判后人民检察院在法定期限内未提出抗诉，或者判决、裁定发生法律效力后六个月内未提出抗诉的案件，没有发现新的事实或者证据的，一般也不得为加重被告人刑罚而依照审判监督程序提出抗诉。

11．对未成年人犯罪案件依法从宽处理。办理未成年人犯罪案件，应当坚持"教育、感化、挽救"的方针和"教育为主、惩罚为辅"的原则。要对未成年犯罪嫌疑人的情况进行调查，了解未成年人的性格特点、家庭情况、社会交往、成长经历以及有无帮教条件等情况，除主观恶性大、社会危害严重的以外，根据案件具体情况，可捕可不捕的不捕，可诉可不诉的不诉。对确需提起公诉的未成年

被告人，应当根据情况依法向人民法院提出从宽处理、适用缓刑等量刑方面的意见。

12．对因人民内部矛盾引发的轻微刑事案件依法从宽处理。对因亲友、邻里及同学同事之间纠纷引发的轻微刑事案件，要本着"冤家宜解不宜结"的精神，着重从化解矛盾、解决纠纷的角度正确处理。对于轻微刑事案件中犯罪嫌疑人认罪悔过、赔礼道歉、积极赔偿损失并得到被害人谅解或者双方达成和解并切实履行，社会危害性不大的，可以依法不予逮捕或者不起诉。确需提起公诉的，可以依法向人民法院提出从宽处理的意见。对属于被害人可以提起自诉的轻微刑事案件，由公安机关立案侦查并提请批捕、移送起诉的，人民检察院可以促使双方当事人在民事赔偿和精神抚慰方面和解，及时化解矛盾，依法从宽处理。

13．对轻微犯罪中的初犯、偶犯依法从宽处理。对于初次实施轻微犯罪、主观恶性小的犯罪嫌疑人，特别是对因生活无着偶然发生的盗窃等轻微犯罪，犯罪嫌疑人人身危险性不大的，一般可以不予逮捕；符合法定条件的，可以依法不起诉。确需提起公诉的，可以依法向人民法院提出从宽处理的意见。

14．正确处理群体性事件中的犯罪案件。处理群体性事件中的犯罪案件，应当坚持惩治少数，争取、团结、教育大多数的原则。对极少数插手群体性事件，策划、组织、指挥闹事的严重犯罪分子以及进行打砸抢等犯罪活动的首要分子或者骨干分子，要依法严厉打击。对一般参与者，要慎重适用强制措施和提起公诉；确需提起公诉的，可以依法向人民法院提出从宽处理的意见。

三、建立健全贯彻宽严相济刑事司法政策的检察工作机制和办案方式

15．进一步健全检察环节贯彻"严打"方针的经常性工作机制。加强对社会治安形势的分析，因地制宜地确定打击犯罪的重点，坚持什么犯罪突出就重点打击什么犯罪，增强打击的针对性。对严重刑事犯罪坚持依法快捕、快诉，增强打击的时效性。

16．加强侦查机制建设，提高发现和查办职务犯罪的能力。推进侦查工作一体化机制建设，突出抓好案件线索的统一管理、侦查活动的统一组织指挥、跨地域侦查的统一协调配合、侦查资源的统一配置使用等各项工作，建立健全纵向指挥有力、横向协作紧密、信息畅通灵敏、运转高效有序的职务犯罪侦查指挥协作机制。加强职务犯罪侦查队伍的专业化建设，提高侦查队伍的侦查技能与水平。加强侦查装备现代化建设，依法规范侦查技术的运用，进一步提高运用科技手段侦查破案的能力。

17．推进办案专业化，建立快速办理轻微刑事案件的工作机制。在审查逮捕、审查起诉中改进办案分工，对案件实行繁简分流，指定人员专门办理轻微案件，集中力量办理重大、疑难、复杂案件。建立轻微案件审查逮捕、审查起诉的快速办理机制，对案情简单、事实清楚、证据确实充分、可能判处三年有期徒刑以下刑罚、犯罪嫌疑人认罪的案件，简化审查逮捕、审查起诉的办案文书，缩短办案期限，提高诉讼效率。

18．依法正确适用简易程序和简化审理程序。对于符合法定条件的轻微刑事案件，人民检察院应当建议适用简易程序；被告人及其辩护人提出适用简易程序，人民检察院经审查认为符合法定条件的，应当同意并向人民法院提出建议；人民法院建议适用简易程序，人民检察院经审查认为符合法定条件的，应当同意。对于被告人认罪的普通刑事案件，符合有关规定条件的，人民检察院应当建议适用简化审理程序。

19．改革完善未成年人犯罪案件的办案方式。对未成年人犯罪案件，应当设立专门工作机构、专门工作小组或者指定专人办理。建立适合未成年人特点的审查逮捕、审查起诉工作机制。对成年人与未成年人共同犯罪案件，原则上实行分案处理。对未成年人犯罪案件适用简易程序的，公诉人一般应当出庭支持公诉并开展庭审教育活动。对于因犯罪情节轻微决定不起诉的未成年人，要落实帮教措施。

20．在办理刑事案件中强化化解矛盾的工作。检察机关在办理刑事案件中，应当加强对与犯罪有关的社会矛盾、纠纷的化解和调处工作，将矛盾化解情况和达成协议及履行情况作为考虑从宽处理的一个重要因素。对有直接被害人的案件作从宽处理或者决定不起诉的，可以要求犯罪嫌疑人向被害人赔礼道歉、赔偿损失，取得被害人的谅解，检察机关也要做好对被害人的解释、说明工作，防止产生新的涉法上访。

21．完善对监外执行、社区矫正的法律监督机制。适应监外执行、社区矫正人员可能增多的趋势，配合有关部门完善相关工作机制，加强对监外执行、社区矫正的法律监督，防止对被监外执行犯罪分子的脱管、漏管和违法管理。

22．完善办案的考核评价体系。要按照司法规律和检察工作规律管理检察业务工作，从有利于贯彻宽严相济的刑事司法政策出发，科学确定考核各项检察业务工作的指标体系，改进考评办法，保证依法正确适用不批捕、不起诉，改变不适当地控制不捕率、不起诉率的做法，实现办案数量、质量和效果的有机统一。

四、转变观念，加强指导，保障正确贯彻落实宽严相济刑事司法政策

23．各级检察机关和检察人员特别是领导干部和执法办案人员，应当自觉按照构建社会主义和谐社会的要求，全面准确地理解宽严相济的刑事司法政策，把贯彻落实宽严相济的刑事司法政策与推进司法体制机制改革、加强执法规范化建设结合起来，不断增强惩治犯罪、保护人民、化解矛盾、促进和谐的能力。

24．最高人民检察院有关业务部门和各省级人民检察院应当结合本部门、本地区的实际情况，深入调查研究，加强对本部门、本地区贯彻宽严相济刑事司法政策的工作指导、检查和监督。上级人民检察院应当及时总结、发现实践中的经验和问题，强化日常管理和定期考核，完善监督制约机制，防止贯彻落实中

出现偏差，严肃查处借贯彻宽严相济刑事司法政策名义所进行的徇私枉法、滥用职权等犯罪活动，保证宽严相济刑事司法政策的正确贯彻落实。

25．各级检察机关应当加强与公安机关、人民法院、司法行政机关等部门的联系与协调，建立经常性的协调配合工作机制，共同研究在刑事诉讼活动中贯彻宽严相济刑事司法政策的具体工作措施，及时解决在贯彻宽严相济刑事司法政策中出现的问题。

26．要大力加强贯彻宽严相济刑事司法政策的理论研究工作，不断提高运用宽严相济刑事司法政策指导办理刑事案件的水平。同时，要加强对刑事和解、逮捕条件、附条件不起诉、抗诉条件、简易程序以及其他有关问题的研究，积极提出完善贯彻宽严相济刑事司法政策相关法律制度的建议。

Appendix VI

Opinions of the Supreme People's Court on Implementing the Criminal Policy of Combining Severity with Leniency[896]

Promulgation date: 2 Aug 2010

Effective date: 2 Aug 2010

'Combining severity with leniency' is a basic criminal policy in China. It shall be carried out throughout the whole process of criminal legislation, of the judicial administration of criminal justice and of execution of criminal punishment. It has continued, developed and improved the policy of 'combining punishment with leniency' in new situations and shall be a guideline governing the judicial organs in punishing criminals, preventing crimes, protecting the people, protecting human rights and correctly enforcing the laws of the state. For the purpose of carrying out this policy in judicial work, we issue these Opinions.

I. General requirements on implementing the criminal policy of combining severity with leniency

1. To carry out the criminal policy of combining severity with leniency, we shall treat different crimes in different ways based on their actual circumstances. We shall be lenient with those who deserve it, be severe when the actual circumstances require it, integrate leniency with severity and maintain a balance between these approaches, impose due punishments, strike against and isolate the tiny minority, educate, reform and save the vast majority, reduce social contradictions to the largest possible extent,

enhance social harmony and stability and maintain lasting peace and the stability of the Nation.

2. We shall correctly understand the relationship between leniency and severity, pay attention to both leniency and severity in judicial work, avoid over-emphasizing severe criminal punishment, and also avoid being influenced by the idea of leniency in punishment to the point of being blindly lenient.

3. To carry out the criminal policy of combining severity with leniency, we must handle cases strictly in accordance with the law, uphold the principles of not imposing any punishment without statutory legal basis (*zuixing fading yuanze*), *of s*uiting the punishment to the crime, and of equality before law, hold quilty or acquit and sentence in accordance with the law, and impose lenient and severe punishments in accordance with the law and ensure that punishment is duly imposed in accordance with the crime. .

4. We shall, based on economic and social developments and changes in the public security situation as well as especially changes in the circumstances of each individual crime, adjust the object, scope and degree of leniency and severity in criminal punishment within the statutory limits in a timely manner. We shall gain a comprehensive and objective understanding of the economic and social situation and the public security situation at different times and in different regions, take into full account the public's feeling of security and the actual need for criminal punishment, severely punish crimes that seriously harm national security, public security or the public interest, and be lenient in accordance with the law if the crime is not serious, the circumstances make it a minor crime or the crime has produced comparatively little harm to society, and if the defendant has admitted guilt and shown repentance, and if lenient punishment is more beneficial for social harmony and stability.

5. To carry out the criminal policy of combining severity with leniency, we must strictly comply with the law and maintain the consistency and authority of the law so

as to guarantee good legal effects (*falü xiaoguo*). At the same time, we must consider whether the handling of cases is good for winning the public's support and maintaining social stability, whether it is helpful for checking crime and eliminating [social] contradictions, whether it is helpful for reforming and educating criminals and bringing them back to society, and whether it is helpful for reducing social contradictions and enhancing social harmony so as to bring about better social effects. Full reasons shall be elaborated in written judgments, [which shall address] especially the reasons for giving a lenient or severe punishment to make the defendant realize his guilt and accept the conviction, and to educate the public so as to realize a dynamic integration of legal effects and social effects in conviction and sentencing.

II. Correctly understanding and applying the requirement of "being severe" in accordance with the law

6. "Severity" in the criminal policy of combining severity with leniency means that a severe [custodial] punishment or the death penalty shall be resolutely given if a crime is extremely serious and has caused extraordinarily serious harm to society and if severe punishment or the death penalty is prescribed by the law. [It means that] we shall, in accordance with the law, severely deal with the defendant if she/he has caused has serious harm to society, or if in the defendant's case the statutory provisions would require or the circumstances warrant severe punishment, if the defendant who has serious subjective culpability and poses a risk to others. We shall practice "severity" in judicial work and effectively shock and awe criminals and [other] forces that may cause instability in society, to realize the goal of effectively suppressing and preventing crime.

7. To carry out the criminal policy of combining severity with leniency, we must firmly stick to the guideline of severely punishing serious criminal offences according to law. The following crimes shall be listed as the main offences calling for severe punishment, in which a heavier punishment shall be imposed: crimes that

seriously endanger the stability of State power, such as crimes harming national security, terrorist crimes, crimes committed by evil cult organizations, mafia-style organizations, or evil forces, and crimes intentionally endangering public security; seriously violent crimes and crimes seriously affecting the people's feeling of security, such as murder, intentional injury causing another's death, rape, kidnapping, abducting and selling women and children, robbery, serious snatch and serious theft; crimes that harm the people's health, including drug smuggling, trafficking, transporting and manufacturing. In particular, for criminals who are extremely hostile to the State or society, aim to harm unspecified persons, or commit extraordinarily serious crimes, severe punishment or the death penalty shall be resolutely given in accordance with the law.

8. Severe punishment shall be given in cases concerning the following crimes in accordance with the law: crimes of embezzlement, power abuse, dereliction of duty by state employees; crimes committed by mafia organizations or [other] and evil forces; crimes of dereliction of duty [leading to] accidents seriously affecting security[897] or cases of manufacturing and selling counterfeited and shoddy foods and medicines; crimes of dereliction of duty in the context of social security [administration], land takings and building demolitions, post-disaster reconstruction, [State-owned] enterprise restructuring, medical services, education, or employment, if such crimes seriously harm the public interest, have a bad impact on society and attract great concern from masses; and crimes such as serious commercial bribery crimes that have occurred in areas and industries that are key to economic and social construction .

Crimes of dereliction of duty, commercial bribery crimes in which the crime is of a bad nature, the circumstances are serious, the involvement is extensive and the crim has had a great influence, or where the defendant conceals the facts of the crime, destroys evidence, enters into a conspiracy of dissimulation [of the crime] with

others, absconds or otherwise refuses to admit guilt and show repentance after committing the crime shall be punished severely in accordance with the law.

Severe punishment shall also be given to state employees crimes of dereliction of duty and commercial bribery crimes which, although the defendant has not gained much from them, have caused heavy loss to state property or the public interest and have had an extraordinarily bad impact on society.

We shall seek a precise understanding of the appropriate standards for determining culpability and the application scope of statutorily determined mitigating circumstances in cases of crimes of dereliction of duty, strictly control the scope of sentence suspensions in cases of sentences of imprisonment for three years or less after sentence reduction, and standardize the application of sentence suspensions and exemptions from criminal punishment in crimes of dereliction of duty.

9. We shall severely punish the following crimes to maintain the economic order of the State and protect the health and safety of the people currently and in the near future: crimes which seriously disrupt the financial order, such as crimes of financing fraud, mortgage fraud, manufacturing and trafficking counterfeit currency, manipulating the securities or futures markets; crimes which seriously endanger food or drug safety, such as crimes of manufacturing and selling fake or inferior drugs or poisonous or hazardous food; crimes which seriously harm the State's economic interests, such as smuggling crimes; serious security accident crimes which cause serious consequences; and crimes which seriously damage environmental resources, such as crimes of serious environmental pollution, illegal mining and unlawful felling of trees.

10. When we give severe punishment, we must take into full account the defendant's subjective culpability and the likelihood of his causing any personal injury. If the defendant had carefully premeditated the crime or is a habitual or career criminal offender, or if he has been punished due to an intentional crime and yet re-offended

during the probation of parole or the period of sentence suspension, he shall be punished severely in accordance with the law to realize criminal punishment's function of special prevention.

11. We shall severely punish recidivists and repeat offenders in drug crimes. Re-offenders and recidivists in drug crimes, even though the circumstances of the crime make it a minor crime, shall be dealt with severely. Severe punishment shall be given especially to recidivists whose previous offence was a violent crime or a crime for which a severe punishment was given

12. We shall pay attention to an integrated application of various kinds of criminal punishment, in particular the application of punishment affecting the property [of the criminal][898] to effectively punish criminals. When there is a supplementary fine provided for in the law, we shall apply [this provision]. For crimes related to property embezzlement and corruption and other forms of [illicit] enrichment[899], we shall particularly stress the application of punishment affecting the property [of the criminal] to economically punish the criminal and deprive him of the ability and conditions to commit crime again. We shall strengthen the enforcement of punishment affecting the property [of the criminal] to realize criminal punishment's severity and function of punishment. The defendant's failure to return the victim's property due to illegal possession or due to having disposed of the property shall be considered as an important aggravating circumstance justifying severe punishment to show the spirit of severity.

13. We shall judge the defendant's criminal responsibility strictly in accordance with the law, in order to realize the principle of not bending the law to convict or acquit. We shall do our best to improve judicial efficiency while also upholding justice. We shall hear cases and convict criminals that have seriously harmed social security and attracted public attention in a timely manner while also safeguarding the quality of the way in which we handle cases.

III. Correctly understanding and applying the requirement of "being lenient" in accordance with the law

14. "Being lenient" as required in the criminal policy of combining severity with leniency means that punishment may be lightened or mitigated or that there may be exemption from punishment in the case of crimes in which there are mitigating circumstances or where there has been less harm to society, or where the statutory provisions require or the circumstances warrant a lighter punishment although the criminal offence as such is serious, or in which the defendant's subjective culpability is not great and where the defendant is less likely to cause personal injury to others. If an act has causes a certain degree of harm to society but the circumstances and the harm are obviously minor, it shall not be dealt with as crime; a suspended sentence, public surveillance or a fine shall be imposed to the extent possible in the case of acts that may be exempted from imprisonment in accordance with the law.

15. Where the defendant's act has constituted a crime but the circumstances of the crime make it a minor crime, or it is a comparatively minor crime committed by a juvenile or student, or where the defendant was only in the process of preparing to commit the crime, or has desisted from fully carrying out the crime, or is an accessory or coerced accomplice, or in cases of acts of unjustifiable self-defense, or acts committed in an emergency to avert danger but exceeding the limits of necessity, there may be an exemption from criminal punishment in accordance with the law. Follow-up work of 'help and education' (*bangjiao*) shall be conducted or the case shall be transferred to other relevant departments according to article 37 of the Criminal Law for the sake of improved social effects.

16. If a criminal's offence and subjective culpability are not serious and if is not so likely to harm others and has shown repentance and will not further harm society he shall be dealt with leniently. In cases of criminals where these conditions are met a non-custodial punishment such as a suspended sentence, public surveillance or a fine

shall be given. At the same time, we shall cooperate with community correction to strengthen education, reform, help and rescue.

17. Generally, if a defendant has voluntarily surrendered, unless his offence and subjective culpability are extraordinarily serious and he is very likely to cause personal injury to others, and unless he has maliciously used surrender to avoid legal sanctions, he shall be punished leniently in accordance with the law.

In a case where the defendant has been sent by his relatives to surrender in a variety of ways, or is arrested with his relatives' assistance provided to the Public Security Bureau, a lenient punishment shall in principle be given; where the defendant cannot be viewed as having voluntarily surrendered but where considering his relatives' assistance facilitating his being brought to justice, admission of guilt and repentance, a lenient punishment shall be properly considered as well in deciding a punishment.

18. Where a defendant has rendered meritorious services by reporting on others' crime, a lenient punishment shall be given in principle. The degree of leniency shall be larger if the circumstances and consequences of the defendant offence are not serious and if he has rendered meritorious service.

19. In cases of first offenders or offenders tempted by opportunity who have committed a minor crime, we shall give a lenient punishment by comprehensively considering his motive, means, circumstances, the consequences and subjective culpability in committing the crime. If there are mitigating circumstances in such an offender's case, he may be exempted from criminal punishment. Where a criminal punishment is required by law [in such cases], a non-custodial punishment such as a suspended sentence, surveillance or a fine shall be given if possible.

20. We shall handle juvenile crimes by fully considering the defendant's motive, objectives, and the nature, circumstances and social harmfulness of the crime, as well as whether he is a first offender, has showed repentance after being arrested, his life experience and overall conduct, and handle the case following the principle of

"education first, punishment second" and the guideline of "education, reform and rescue." In the case of a juvenile defendant who has committed theft, robbery or fraud making use of an opportunity, where the amount just reaches the threshold of "relatively large amount", and if the juvenile defendant has confessed truthfully and returned the ill-gotten gain after the case has been discovered, he may be deemed to have committed a crime which is obviously minor and his action may be treated as not constituting a crime. In the case of a defendant whose criminal offence is comparatively minor, a non-custodial punishment such as suspended sentence, surveillance and fine may given in accordance with the law; if the defendant may be exempted from criminal punishment in accordance with the law, such exemption from criminal punishment shall be given. If there are aggravating circumstances in the case of a crime committed by a juvenile offender, a lighter or mitigating punishment under Section 3 of Article 17 of the Criminal Law shall be given as well. Generally, life imprisonment shall not be given to a juvenile offender aged between 14 and 16 years old.

21. In the case of an elderly offender, his motive, the objective of committing the crime, and the circumstances and consequences of the crime, his repentance after the crime, etc., shall be taken into full account, as also the likelihood of causing personal injury to others and the possibility of further offences if a lenient punishment is given.

22. A lenient punishment shall be given in cases of crime arising from contradictions among the people caused by such love affairs, marriage disputes, family disputes or disputes with neighbour s, or arising from labor disputes or inappropriate management in which the criminal motive is not serious, or in which [the criminal conduct was] caused through the victim's fault, or where the crime was motivated by righteous indignation or an element of self-defence.

23. If the defendant compensates the victim promptly, admits guilt and shows repentance after committing the crime, this may be taken into consideration

according to law as circumstances affecting the discretionary sentencing considerations. In a crime arising from disputes among the people such as marriage or family disputes, if the victim and his family have forgiven the defendant, this shall be considered as circumstance under which discretional sentencing is allowed. If the crime is a minor crime given the circumstances of the crime and the defendant is forgiven by the victim, the defendant may be punished leniently or even be exempted from criminal punishment if it is in accordance with the law.

24. If a non-custodial compulsory measure such as bail or residential surveillance is enough to prevent potential danger to society and will not affect regular progress of criminal proceedings, a custodial [compulsory] measure shall in general not be imposed. If a defendant who is under public prosecution and not under arrest, except for in situations where the defendant is likely to cause personal injury to others or impede the normal progress of criminal proceeding, for instance by absconding, tallying confession [with other suspects] or committing a new crime, the People's Court may generally, decide not to arrest the defendant.

IV. Correctly understanding and applying the requirement of "combining" severity with leniency

25. "Combining" as used in the criminal policy of combining severity with leniency indicates principally that we shall integrate both severe and lenient measures in punishing different kinds of crime in accordance with the law. We shall treat different crimes and criminals differently to show leniency in severity, severity in leniency, complement leniency with severity, and *vice versa*.

26. When giving a severe punishment for serious crime, if statutory provisions require or the circumstances warrant a lenient sentence, for instance because the defendant has surrendered, rendered meritorious service, or is an accessory, we shall complement severity with leniency and take the specific circumstance of the crime requiring or warranting a lenient sentence into consideration in sentencing.

27. When giving a lighter punishment for minor crimes, we shall complement leniency with severity, fully take into account whether there are circumstances warranting a severe punishment shall be given, for instance because the defendant refuses to reform after repeatedly receiving education or has seriously disrupted social order or because there are vigorous complaints from the masses . If lenient punishment is not enough to effectively deter, we should also show this in sentencing and complement leniency with severity to give criminals the punishment they deserve and strengthen the reformative effect [of the punishment].

28. If statutory provisions require or the circumstances warrant both a severe and a lenient punishment, we shall, take the facts, the nature, and the circumstances of the crime as well as the harm it has caused, the defendant's subjective culpability, whether he is likely to cause personal injury to others and the public security situation into account for a comprehensive analysis; and we shall decide whether on the whole we should be lenient or severe.

29. We shall correctly understand and strictly implement the policy of "preserving but strictly controlling the use of the death penalty and applying the death penalty with restraint". A criminal who has committed an extraordinarily serious crime shall, if the seriousness of the crime calls for the death penalty be sentenced to death in accordance with the law. We shall, according to law, strictly control the application of the death penalty, unify sentencing standards in death penalty cases and make sure that the death penalty is only given to very few criminals who have committed an extraordinarily serious crime. Evidence in cases where the death penalty is to be given must be clear and sufficient and the conclusion must be the only possible one. As long as in the case of an extraordinarily serious crime, a suspended sentence is permitted by law, a suspended death penalty sentence shall be given.

30. Crimes committed by a terrorist organization, evil cult organization, organization with mafia connections, criminal gang engaged in smuggling, fraud or drug trading, shall be treated differently according to different circumstances. We shall be severe

toward those who have chiefly organized, directed or planned the crime and toward any core member of the criminal organization or gang, and impose a severe punishment or the death on them in accordance with the law. A defendant who has been deceived or coerced to join the criminal organization or gang, or who has only been an ordinary member and played a subordinate or assisting role, shall receive a lighter or mitigated punishment[900], and a suspended sentence may be given the statutory requirements are met.

In cases of crimes of murder, arson, robbery or bodily injury committed in the context of a mass incident, there shall be an emphasis on striking against persons who have organized, directed or planned the crime or who have directly committed or actively participated in the crime. If a person has been incited, deceived or coerced to participate he shall, if the circumstances make it a minor crime and if he shows repentance after receiving education, be treated leniently.

31. In cases of ordinary joint crime, we shall fully take into account each defendant's position and role in the offence and their different levels of subjective culpability and the likelihood of their causing injury to others to identify principal offenders and accessories, if it is possible to distinguish them based on the facts and evidence. If there is more than one principal offender, he in whose case the circumstances of the crime are most serious shall be further identified. In a case where two or more defendants have jointly have jointly caused one victim's death, we shall further separate each defendant's role in the case, accurately determine their respective responsibilities and treat them differentially, instead of simply subjecting all of them to severe punishments merely on the grounds that it is impossible to distinguish principal offender from the accessory.

32. In cases of negligent crime such as causing security incidents, the degree of leniency or severity shall be based on the seriousness of the harm caused by the crime, the offender's subjective culpability and their conduct after committing the crime. A lenient punishment shall be given to an offender who of his own accord

takes measures to recover loss or prevent further loss after committing a negligent crime. An offender who even though he did not cause very serious harm but in whose case there are serious circumstance, or who intentionally conceals the facts of the crime or absconds, thus preventing a timely investigation of the cause of the accident and timely organization of rescue operations, shall be given a heavier punishment in accordance with law.

33. In the case of a joint crime where the principal offender or ringleader reports or discloses a criminal who played a secondary role in the case, and where this constitutes meritorious service, we shall be cautious in giving/allowing a lighter or mitigated punishment. If a lighter punishment may lead to an imbalance of sentencing in the whole case, it shall generally not be granted. If the criminal whose identity is disclosed or who is reported has been involved in another criminal case of the same seriousness, or has been a principal criminal or leader [in that case], we shall, in principle give a lighter or mitigated punishment. This policy shall be adopted especially in cases where the accessories or other ordinary members of a criminal gang render meritorious service, in particular by assisting the arrest of the principal offender or leader; in such cases they shall receive lighter or mitigated punishment or be exempted from punishment in accordance with law.

34. We shall exercise severity in reducing the sentence or giving parole to criminals who have committed serious crimes such as crimes of endangering national security, crimes of intentionally endangering public security, serious violent crimes or economic crimes involving a large number of people; to leaders, organizers and key participants in organized crimes such as crimes committed by terrorist organizations, evil cult organizations, mafia organizations or evil forces; to recidivists in cases of serious drug crimes; and to offenders who could have of his own accord handed over property for the purpose of execution of a punishment affecting the property [of the criminal] or who could have discharged their civil obligation to pay compensation but refused to do so. We shall also be severe in considering sentence

reductions for recidivists. Sentence reduction or parole shall not be given to a defendant who refuses to disclose his true identity, provides false material to support [an application for] sentence reduction or parole, or does not meet the conditions of sentence reduction or parole.

In cases of criminals who have been sentenced to death with a two-year reprieve or to life imprisonment due to having committed a violent crime including murder, causing an explosion, robbery, rape or adduction resulting in another's death or severe disability, we shall strictly control the number and scope of sentence reductions to ensure that these criminals serve a comparatively long time of imprisonment and to maintain fairness and justice and ensure the reformative effects [of the punishment].

In the case of juvenile, elderly , and disabled offenders and of offenders who have committed a negligent crime, desisted from fully carrying out the crime, committed a crime under duress, offenders who have of their own accord handed over property for the purpose of execution of a punishment affecting the property [of the criminal] or who have discharged their civil obligation to pay compensation , offenders who are sentenced to imprisonment due in cases of acts of unjustifiable self-defense, or acts committed in an emergency to avert danger but exceeding the limits of necessity , and other offenders whose subjective culpability is not serious and who are less/not very likely to cause personal injury to others, we shall be lenient in our decisions regarding sentence reductions and parole for them. We shall reduce the sentence in accordance with the law for a defendant who admits guilt, accepts conviction, complies with the prison rules, accepts education, actively participates in labor and study, and shows repentance; and the reduction may be greater and the interval between two reductions may be shortened accordingly. If defendants meet the conditions of parole as prescribed in Section 1 of Article 81 of the Criminal Law, they shall be given parole [more easily] according to the law.

V. Improving the working mechanism for implementing the criminal policy of combining severity with leniency

35. We shall consolidate our experiences in adjudicative practice and, actively and steadily promote sentencing standardization. We shall regulate the judge's discretionary powers, gradually integrate sentencing into the trial proceedings, improve the openness and transparency of sentencing, realize fairness and balance in sentencing and constantly improve the quality and efficiency of our handling of criminal case.

36. The Supreme People's Court shall continue to improve its system to guide the adjudication of cases by promoting the criminal policy of combining severity with leniency through consolidating the experiences of adjudicative practice, issuing exemplary case compilations, strengthening our guidance for the adjudication of cases and issuing normative documents governing the system to guide the adjudication of cases.

37. We shall actively explore working mechanisms for the People's Courts in handling minor criminal cases and fully develop the People's Courts' ability to accept and try cases speedily for the greater benefit of the people, and further promote adjudication of minor cases in a timely manner to ensure an optimal integration of legal and social effectiveness.

38. We shall fully give effect to the function of the summary procedure in saving judicial resources, improving judicial efficiency and judicial justice, and further strengthen the use of the summary procedure. For public prosecution cases in first instance where the defendant has no objection to the basic facts of the respective case and admits guilt voluntarily, we shall further strengthen the use of the simplified ordinary procedure to ensure that all the cases satisfying the legal requirements can be disposed of in a timely and efficient manner.

39. We shall establish criminal trial mechanisms suitable for juveniles, realize the principle of education through the trial, combine punishment with education, realize the goal of "education, reform and rescue" through scientific and humanized trial methods to facilitate juvenile offenders' reintegration in society. We shall proactively promote the building of systems beneficial to reforming and managing juveniles. We shall review reports submitted [to us] by the Public Security Bureau concerning the intended revocation of a suspended sentence or parole given to a juvenile offender due to his illegal or criminal conduct during the period of the suspended sentence or parole in a timely manner, and make a decision within the statutory time limit, so as to join the effort of optimizing the handling of punishment and prevention of juvenile crimes. .

40. We shall mediate as much as possible to eliminate disputes and facilitate both parties' reconciliation in private prosecution cases. In cases where after the judicial organs have conducted [thought] work,[901] the defendant admits guilt and repents voluntarily, agrees to compensate for the victim's loss and is forgiven by the victim, the private prosecution may be allowed to be withdrawn, or we shall give a lighter punishment or exempt the defendant from punishment in accordance with law If a case could be initiated through either public or private prosecution, the People's Court shall try the case and impose punishment [*sic*] [following the rules of] public prosecution in accordance with law if the Procuratorate has initiated public prosecution. In the case of a minor crime such as minor injury crime arising from disputes among the people, if the parties reach reconciliation after public prosecution has been initiated and the case been transferred to the Court, the Court shall approve [the reconciliation agreement] and keep it on record. The People's Court may also try to conduct work to facilitate reconciliation in such cases as long as doing so would not violate any legal provisions.

41. We shall do our best to utilize all positive factors beneficial for reaching closure in collateral civil proceedings through mediation, make a great effort to use legal

reasoning and analysis in order to enhance both parties' wish to reconcile of their own accord, to better implement the criminal policy of combining severity with leniency, and reach closure. We shall make full use of the roles of the defendant's and the victim's work units, basic level community organizations, defence lawyers, legal representatives and relatives in the process of mediation of collateral civil disputes and coordinate these [persons' or entities'] efforts in the process of mediation, to try to eliminate the dispute and promote harmony through getting the parties to reach an agreement on civil compensation and allowing the defendant to obtain the victim's and his family's forgiveness.

42. If the victim or his relatives encounter special difficulties in life because they have been harmed by the criminal offence and cannot get effective compensation in a timely fashion, financial aid provided by relevant entities is conducive to resolving contradictions and promoting social harmony and stability. The People's Courts of all regions shall, under the coordination and leadership of the Party Commissions and governments, well implement the assistance system for victims of crime to ensure the smooth progress and actual effectiveness of this work.

43. The methods of holding public hearings and and document-based proceedings shall be combined in cases involving sentence reduction or parole. Sentence reduction or parole in cases of crimes of dereliction of duty, especially those committed by [Party] leaders or officials at or above the county level shall be decided on through public trial hearings. Violent criminals who have committed murder, robbery, intentional injury or any other offences seriously endangering public security; Sentence reduction or parole for leaders or other principal offenders in organized crime cases, and criminals who have participated in other serious and influential crimes shall be decided on open trial as well. If there is an intention of giving a sentence reduction or parole in a case tried through a document-based process, a list of criminals who are about to get sentence reduction or parole shall be

published at their respective places of detention, to allow for supervision from other criminals in detention.

44. We shall improve the mechanisms of supervision of criminal judges' implementation of the criminal policy of combining severity with leniency to prevent inappropriate applications of leniency or severity, conviction and sentencing bending the law, and corrupt power abuses. We shall improve the performance evaluation system for judicial work, improve the standards whereby we identify wrongfully decided cases and hold those responsible for wrongful convictions accountable. We shall completely change the practice of assessing the quality of [a judge's or court's] adjudication solely on the basis of on the ratios of cases where the judgment was altered and of cases remanded for retrial. We shall explore and establish a performance evaluation system that both comply with judicial rules and the specific characteristics of judicial office and be an adequate measure of a judge's overall quality and working ability as a judge, so as to comprehensively and scientifically assess the quality of the judge's criminal adjudication work and the judges' efforts in implementing the criminal policy of combining severity with leniency, in order to achieve a comprehensive and scientific assessment of the integrated legal and social effectiveness of criminal adjudication.

45. The People's Courts at all levels shall strengthen contact and coordination with the Public Security organs, State Security organs, the People's Procuratorates, organs under the Ministry of Justice and other relevant departments, set up routine work coordination mechanisms, and jointly research measures to be taken to implement the criminal policy of combining severity with leniency, and to resolve specific problems in their work in a timely manner. We shall, according to the principle of "divided work responsibilities, mutual cooperation, and mutual restraint", strengthen our liaisons with the Public Security Organ and the People's Procuratorate, perform our tasks independently while at the same time joining efforts to constantly improve public trust and uphold the authority of the judiciary. We shall strengthen

communication and coordination with the organs under the Ministry of Justice with regard to criminal defence and legal representation, legal aid, applications for sentence reduction and parole by prisoners, community correction and other areas, in order to facilitate effective implementation of the criminal policy of combining severity with leniency.

最高人民法院关于贯彻宽严相济刑事政策的若干意见

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宽严相济刑事政策是我国的基本刑事政策，贯穿于刑事立法、刑事司法和刑罚执行的全过程，是惩办与宽大相结合政策在新时期的继承、发展和完善，是司法机关惩罚犯罪，预防犯罪，保护人民，保障人权，正确实施国家法律的指南。为了在刑事审判工作中切实贯彻执行这一政策，特制定本意见。

一、贯彻宽严相济刑事政策的总体要求

1、贯彻宽严相济刑事政策，要根据犯罪的具体情况，实行区别对待，做到该宽则宽，当严则严，宽严相济，罚当其罪，打击和孤立极少数，教育、感化和挽救大多数，最大限度地减少社会对立面，促进社会和谐稳定，维护国家长治久安。

2、要正确把握宽与严的关系，切实做到宽严并用。既要注意克服重刑主义思想影响，防止片面从严，也要避免受轻刑化思想影响，一味从宽。

3、贯彻宽严相济刑事政策，必须坚持严格依法办案，切实贯彻落实罪刑法定原则、罪刑相适应原则和法律面前人人平等原则，依照法律规定准确定罪量刑。从宽和从严都必须依照法律规定进行，做到宽严有据，罚当其罪。

4、要根据经济社会的发展和治安形势的变化，尤其要根据犯罪情况的变化，在法律规定的范围内，适时调整从宽和从严的对象、范围和力度。要全面、客观把握不同时期不同地区的经济社会状况和社会治安形势，充分考虑人民群众的安全感以及惩治犯罪的实际需要，注重从严打击严重危害国家安全、社会治安和人民群众利益的犯罪。对于犯罪性质尚不严重，情节较轻和社会危害性较小的犯罪，以及被告人认罪、悔罪，从宽处罚更有利于社会和谐稳定的，依法可以从宽处理。

5、贯彻宽严相济刑事政策，必须严格依法进行，维护法律的统一和权威，确保良好的法律效果。同时，必须充分考虑案件的处理是否有利于赢得广大人民群众的支持和社会稳定，是否有利于瓦解犯罪，化解矛盾，是否有利于罪犯的教育改造和回归社会，是否有利于减少社会对抗，促进社会和谐，争取更好的社会效果。要注意在裁判文书中充分说明裁判理由，尤其是从宽或从严的理由，促使被告人认罪服法，注重教育群众，实现案件裁判法律效果和社会效果的有机统一。

二、准确把握和正确适用依法从“严”的政策要求

6、宽严相济刑事政策中的从“严”，主要是指对于罪行十分严重、社会危害性极大，依法应当判处重刑或死刑的，要坚决地判处重刑或死刑；对于社会危害大或者具有法定、酌定从重处罚情节，以及主观恶性深、人身危险性大的被告人，要依法从严惩处。在审判活动中通过体现依法从“严”的政策要求，有效震慑犯罪分子和社会不稳定分子，达到有效遏制犯罪、预防犯罪的目的。

7、贯彻宽严相济刑事政策，必须毫不动摇地坚持依法严惩严重刑事犯罪的方针。对于危害国家安全犯罪、恐怖组织犯罪、邪教组织犯罪、黑社会性质组织犯罪、恶势力犯罪、故意危害公共安全犯罪等严重危害国家政权稳固和社会治安的犯罪，故意杀人、故意伤害致人死亡、强奸、绑架、拐卖妇女儿童、抢劫、重大抢夺、重大盗窃等严重暴力犯罪和严重影响人民群众安全感的犯罪，走私、贩卖、运输、制造毒品等毒害人民健康的犯罪，要作为严惩的重点，依法从重处罚。尤其对于极端仇视国家和社会，以不特定人为侵害对象，所犯罪行特别严重的犯罪分子，该重判的要坚决依法重判，该判处死刑的要坚决依法判处死刑。

8、对于国家工作人员贪污贿赂、滥用职权、失职渎职的严重犯罪，黑恶势力犯罪、重大安全责任事故、制售伪劣食品药品所涉及的国家工作人员职务犯罪，发生在社会保障、征地拆迁、灾后重建、企业改制、医疗、教育、就业等领域严重损害群众利益、社会影响恶劣、群众反映强烈的国家工作人员职务犯罪，发生在经济社会建设重点领域、重点行业的严重商业贿赂犯罪等，要依法从严惩处。

对于国家工作人员职务犯罪和商业贿赂犯罪中性质恶劣、情节严重、涉案范围广、影响面大的，或者案发后隐瞒犯罪事实、毁灭证据、订立攻守同盟、负案潜逃等拒不认罪悔罪的，要坚决依法从严惩处。

对于被告人犯罪所得数额不大，但对国家财产和人民群众利益造成重大损失、社会影响极其恶劣的职务犯罪和商业贿赂犯罪案件，也应依法从严惩处。

要严格掌握职务犯罪法定减轻处罚情节的认定标准与减轻处罚的幅度，严格控制依法减轻处罚后判处三年以下有期徒刑适用缓刑的范围，切实规范职务犯罪缓刑、免予刑事处罚的适用。

9、当前和今后一段时期，对于集资诈骗、贷款诈骗、制贩假币以及扰乱、操纵证券、期货市场等严重危害金融秩序的犯罪，生产、销售假药、劣药、有毒有害食品等严重危害食品药品安全的犯罪，走私等严重侵害国家经济利益的犯罪，造成严重后果的重大安全责任事故犯罪，重大环境污染、非法采矿、盗伐林木等各种严重破坏环境资源的犯罪等，要依法从严惩处，维护国家的经济秩序，保护广大人民群众的生命健康安全。

10、严惩严重刑事犯罪，必须充分考虑被告人的主观恶性和人身危险性。对于事先精心预谋、策划犯罪的被告人，具有惯犯、职业犯等情节的被告人，或者因故意犯罪受过刑事处罚、在缓刑、假释考验期内又犯罪的被告人，要依法严惩，以实现刑罚特殊预防的功能。

11、要依法从严惩处累犯和毒品再犯。凡是依法构成累犯和毒品再犯的，即使犯罪情节较轻，也要体现从严惩处的精神。尤其是对于前罪为暴力犯罪或被判处重刑的累犯，更要依法从严惩处。

12、要注重综合运用多种刑罚手段，特别是要重视依法适用财产刑，有效惩治犯罪。对于法律规定有附加财产刑的，要依法适用。对于侵财型和贪利型犯罪，更要注重通过依法适用财产刑使犯罪分子受到经济上的惩罚，剥夺其重新犯罪的能力和条件。要切实加大财产刑的执行力度，确保刑罚的严厉性和惩

罚功能得以实现。被告人非法占有、处置被害人财产不能退赃的，在决定刑罚时，应作为重要情节予以考虑，体现从严处罚的精神。

13、对于刑事案件被告人，要严格依法追究刑事责任，切实做到不枉不纵。要在确保司法公正的前提下，努力提高司法效率。特别是对于那些严重危害社会治安，引起社会关注的刑事案件，要在确保案件质量的前提下，抓紧审理，及时宣判。

三、准确把握和正确适用依法从“宽”的政策要求

14、宽严相济刑事政策中的从“宽”，主要是指对于情节较轻、社会危害性较小的犯罪，或者罪行虽然严重，但具有法定、酌定从宽处罚情节，以及主观恶性相对较小、人身危险性不大的被告人，可以依法从轻、减轻或者免除处罚；对于具有一定社会危害性，但情节显著轻微危害不大的行为，不作为犯罪处理；对于依法可不监禁的，尽量适用缓刑或者判处管制、单处罚金等非监禁刑。

15、被告人的行为已经构成犯罪，但犯罪情节轻微，或者未成年人、在校学生实施的较轻犯罪，或者被告人具有犯罪预备、犯罪中止、从犯、胁从犯、防卫过当、避险过当等情节，依法不需要判处刑罚的，可以免予刑事处罚。对免予刑事处罚的，应当根据刑法第三十七条规定，做好善后、帮教工作或者交由有关部门进行处理，争取更好的社会效果。

16、对于所犯罪行不重、主观恶性不深、人身危险性较小、有悔改表现、不致再危害社会的犯罪分子，要依法从宽处理。对于其中具备条件的，应当依

法适用缓刑或者管制、单处罚金等非监禁刑。同时配合做好社区矫正，加强教育、感化、帮教、挽救工作。

17、对于自首的被告人，除了罪行极其严重、主观恶性极深、人身危险性极大，或者恶意地利用自首规避法律制裁者以外，一般均应当依法从宽处罚。

对于亲属以不同形式送被告人归案或协助司法机关抓获被告人而认定为自首的，原则上都应当依法从宽处罚；有的虽然不能认定为自首，但考虑到被告人亲属支持司法机关工作，促使被告人到案、认罪、悔罪，在决定对被告人具体处罚时，也应当予以充分考虑。

18、对于被告人检举揭发他人犯罪构成立功的，一般均应当依法从宽处罚。对于犯罪情节不是十分恶劣，犯罪后果不是十分严重的被告人立功的，从宽处罚的幅度应当更大。

19、对于较轻犯罪的初犯、偶犯，应当综合考虑其犯罪的动机、手段、情节、后果和犯罪时的主观状态，酌情予以从宽处罚。对于犯罪情节轻微的初犯、偶犯，可以免予刑事处罚；依法应当予以刑事处罚的，也应当尽量适用缓刑或者判处管制、单处罚金等非监禁刑。

20、对于未成年人犯罪，在具体考虑其实施犯罪的动机和目的、犯罪性质、情节和社会危害程度的同时，还要充分考虑其是否属于初犯，归案后是否悔罪，以及个人成长经历和一贯表现等因素，坚持“教育为主、惩罚为辅”的原则和“教育、感化、挽救”的方针进行处理。对于偶尔盗窃、抢夺、诈骗，数额刚达到较

大的标准，案发后能如实交代并积极退赃的，可以认定为情节显著轻微，不作为犯罪处理。对于罪行较轻的，可以依法适当多适用缓刑或者判处管制、单处罚金等非监禁刑；依法可免予刑事处罚的，应当免予刑事处罚。对于犯罪情节严重的未成年人，也应当依照刑法第十七条第三款的规定予以从轻或者减轻处罚。对于已满十四周岁不满十六周岁的未成年犯罪人，一般不判处无期徒刑。

21、对于老年人犯罪，要充分考虑其犯罪的动机、目的、情节、后果以及悔罪表现等，并结合其人身危险性和再犯可能性，酌情予以从宽处罚。

22、对于因恋爱、婚姻、家庭、邻里纠纷等民间矛盾激化引发的犯罪，因劳动纠纷、管理失当等原因引发、犯罪动机不属恶劣的犯罪，因被害方过错或者基于义愤引发的或者具有防卫因素的突发性犯罪，应酌情从宽处罚。

23、被告人案发后对被害人积极进行赔偿，并认罪、悔罪的，依法可以作为酌定量刑情节予以考虑。因婚姻家庭等民间纠纷激化引发的犯罪，被害人及其家属对被告人表示谅解的，应当作为酌定量刑情节予以考虑。犯罪情节轻微，取得被害人谅解的，可以依法从宽处理，不需判处刑罚的，可以免予刑事处罚。

24、对于刑事被告人，如果采取取保候审、监视居住等非羁押性强制措施足以防止发生社会危险性，且不影响刑事诉讼正常进行的，一般可不采取羁押措施。对人民检察院提起公诉而被告人未被采取逮捕措施的，除存在被告人逃跑、串供、重新犯罪等具有人身危险性或者可能影响刑事诉讼正常进行的情形外，人民法院一般可不决定逮捕被告人。

四、准确把握和正确适用宽严“相济”的政策要求

25、宽严相济刑事政策中的“相济”，主要是指在对各类犯罪依法处罚时，要善于综合运用宽和严两种手段，对不同的犯罪和犯罪分子区别对待，做到严中有宽、宽以济严；宽中有严、严以济宽。

26、在对严重刑事犯罪依法从严惩处的同时，对被告人具有自首、立功、从犯等法定或酌定从宽处罚情节的，还要注意宽以济严，根据犯罪的具体情况，依法应当或可以从宽的，都应当在量刑上予以充分考虑。

27、在对较轻刑事犯罪依法从轻处罚的同时，要注意严以济宽，充分考虑被告人是否具有屡教不改、严重滋扰社会、群众反映强烈等酌定从严处罚的情况，对于不从严不足以有效惩戒者，也应当在量刑上有所体现，做到济之以严，使犯罪分子受到应有处罚，切实增强改造效果。

28、对于被告人同时具有法定、酌定从严和法定、酌定从宽处罚情节的案件，要在全面考察犯罪的事实、性质、情节和对社会危害程度的基础上，结合被告人的主观恶性、人身危险性、社会治安状况等因素，综合作出分析判断，总体从严，或者总体从宽。

29、要准确理解和严格执行“保留死刑，严格控制和慎重适用死刑”的政策。对于罪行极其严重的犯罪分子，论罪应当判处死刑的，要坚决依法判处死刑。要依法严格控制死刑的适用，统一死刑案件的裁判标准，确保死刑只适用于极少数罪行极其严重的犯罪分子。拟判处死刑的具体案件定罪或者量刑的证据必

须确实、充分，得出唯一结论。对于罪行极其严重，但只要是依法可不立即执行的，就不应当判处死刑立即执行。

30、对于恐怖组织犯罪、邪教组织犯罪、黑社会性质组织犯罪和进行走私、诈骗、贩毒等犯罪活动的犯罪集团，在处理时要分别情况，区别对待：对犯罪组织或集团中的为首组织、指挥、策划者和骨干分子，要依法从严惩处，该判处重刑或死刑的要坚决判处重刑或死刑；对受欺骗、胁迫参加犯罪组织、犯罪集团或只是一般参加者，在犯罪中起次要、辅助作用的从犯，依法应当从轻或减轻处罚，符合缓刑条件的，可以适用缓刑。

对于群体性事件中发生的杀人、放火、抢劫、伤害等犯罪案件，要注意重点打击其中的组织、指挥、策划者和直接实施犯罪行为的积极参与者；对因被煽动、欺骗、裹胁而参加，情节较轻，经教育确有悔改表现的，应当依法从宽处理。

31、对于一般共同犯罪案件，应当充分考虑各被告人在共同犯罪中的地位和作用，以及在主观恶性和人身危险性方面的不同，根据事实和证据能分清主从犯的，都应当认定主从犯。有多名主犯的，应在主犯中进一步区分出罪行最为严重者。对于多名被告人共同致死一名被害人的案件，要进一步分清各被告人的作用，准确确定各被告人的罪责，以做到区别对待；不能以分不清主次为由，简单地一律判处重刑。

32、对于过失犯罪，如安全责任事故犯罪等，主要应当根据犯罪造成危害后果的严重程度、被告人主观罪过的大小以及被告人案发后的表现等，综合掌握处罚的宽严尺度。对于过失犯罪后积极抢救、挽回损失或者有效防止损失进

一步扩大的，要依法从宽。对于造成的危害后果虽然不是特别严重，但情节特别恶劣或案发后故意隐瞒案情，甚至逃逸，给及时查明事故原因和迅速组织抢救造成贻误的，则要依法从重处罚。

33、在共同犯罪案件中，对于主犯或首要分子检举、揭发同案地位、作用较次犯罪分子构成立功的，从轻或者减轻处罚应当从严掌握，如果从轻处罚可能导致全案量刑失衡的，一般不予从轻处罚；如果检举、揭发的是其他犯罪案件中罪行同样严重的犯罪分子，或者协助抓获的是同案中的其他主犯、首要分子的，原则上应予依法从轻或者减轻处罚。对于从犯或犯罪集团中的一般成员立功，特别是协助抓获主犯、首要分子的，应当充分体现政策，依法从轻、减轻或者免除处罚。

34、对于危害国家安全犯罪、故意危害公共安全犯罪、严重暴力犯罪、涉众型经济犯罪等严重犯罪；恐怖组织犯罪、邪教组织犯罪、黑恶势力犯罪等有组织犯罪的领导者、组织者和骨干分子；毒品犯罪再犯的严重犯罪者；确有执行能力而拒不依法积极主动缴付财产执行财产刑或确有履行能力而不积极主动履行附带民事赔偿责任的，在依法减刑、假释时，应当从严掌握。对累犯减刑时，应当从严掌握。拒不交代真实身份或对减刑、假释材料弄虚作假，不符合减刑、假释条件的，不得减刑、假释。

对于因犯故意杀人、爆炸、抢劫、强奸、绑架等暴力犯罪，致人死亡或严重残疾而被判处死刑缓期二年执行或无期徒刑的罪犯，要严格控制减刑的频度和每次减刑的幅度，要保证其相对较长的实际服刑期限，维护公平正义，确保改造效果。

对于未成年犯、老年犯、残疾罪犯、过失犯、中止犯、胁从犯、积极主动缴付财产执行财产刑或履行民事赔偿责任的罪犯、因防卫过当或避险过当而判处徒刑的罪犯以及其他主观恶性不深、人身危险性不大的罪犯，在依法减刑、假释时，应当根据悔改表现予以从宽掌握。对认罪服法，遵守监规，积极参加学习、劳动，确有悔改表现的，依法予以减刑，减刑的幅度可以适当放宽，间隔的时间可以相应缩短。符合刑法第八十一条第一款规定的假释条件的，应当依法多适用假释。

五、完善贯彻宽严相济刑事政策的工作机制

35、要注意总结审判经验，积极稳妥地推进量刑规范化工作。要规范法官的自由裁量权，逐步把量刑纳入法庭审理程序，增强量刑的公开性和透明度，充分实现量刑的公正和均衡，不断提高审理刑事案件的质量和效率。

36、最高人民法院将继续通过总结审判经验，制发典型案例，加强审判指导，并制定关于案例指导制度的规范性文件，推进对贯彻宽严相济刑事政策案例指导制度的不断健全和完善。

37、要积极探索人民法庭受理轻微刑事案件的工作机制，充分发挥人民法庭便民、利民和受案、审理快捷的优势，进一步促进轻微刑事案件及时审判，确保法律效果和社会效果的有机统一。

38、要充分发挥刑事简易程序节约司法资源、提高审判效率、促进司法公正的功能，进一步强化简易程序的适用。对于被告人对被指控的基本犯罪事实

无异议，并自愿认罪的第一审公诉案件，要依法进一步强化普通程序简化审的适用力度，以保障符合条件的案件都能得到及时高效的审理。

39、要建立健全符合未成年人特点的刑事案件审理机制，寓教于审，惩教结合，通过科学、人性化的审理方式，更好地实现“教育、感化、挽救”的目的，促使未成年犯罪人早日回归社会。要积极推动有利于未成年犯罪人改造和管理的各项制度建设。对公安部门针对未成年人在缓刑、假释期间违法犯罪情况报送的拟撤销未成年犯罪人的缓刑或假释的报告，要及时审查，并在法定期限内及时做出决定，以真正形成合力，共同做好未成年人犯罪的惩戒和预防工作。

40、对于刑事自诉案件，要尽可能多做化解矛盾的调解工作，促进双方自行和解。对于经过司法机关做工作，被告人认罪悔过，愿意赔偿被害人损失，取得被害人谅解，从而达成和解协议的，可以由自诉人撤回起诉，或者对被告人依法从轻或免予刑事处罚。对于可公诉、也可自诉的刑事案件，检察机关提起公诉的，人民法院应当依法进行审理，依法定罪处罚。对民间纠纷引发的轻伤害等轻微刑事案件，诉至法院后当事人自行和解的，应当予以准许并记录在案。人民法院也可以在不违反法律规定的前提下，对此类案件尝试做一些促进和解的工作。

41、要尽可能把握一切有利于附带民事诉讼调解结案的积极因素，多做促进当事人双方和解的辨法析理工作，以更好地落实宽严相济刑事政策，努力做到案结事了。要充分发挥被告人、被害人所在单位、社区基层组织、辩护人、诉讼代理人和近亲属在附带民事诉讼调解工作中的积极作用，协调各方共同做好促进调解工作，尽可能通过调解达成民事赔偿协议并以此取得被害人及其家属对被告人的谅解，化解矛盾，促进社会和谐。

42、对于因受到犯罪行为侵害、无法及时获得有效赔偿、存在特殊生活困难的被害人及其亲属，由有关方面给予适当的资金救助，有利于化解矛盾纠纷，促进社会和谐稳定。各地法院要结合当地实际，在党委、政府的统筹协调和具体指导下，落实好、执行好刑事被害人救助制度，确保此项工作顺利开展，取得实效。

43、对减刑、假释案件，要采取开庭审理与书面审理相结合的方式。对于职务犯罪案件，尤其是原为县处级以上领导干部罪犯的减刑、假释案件，要一律开庭审理。对于故意杀人、抢劫、故意伤害等严重危害社会治安的暴力犯罪分子，有组织犯罪案件中的首要分子和其他主犯以及其他重大、有影响案件罪犯的减刑、假释，原则上也要开庭审理。书面审理的案件，拟裁定减刑、假释的，要在羁押场所公示拟减刑、假释人员名单，接受其他在押罪犯的广泛监督。

44、要完善对刑事审判人员贯彻宽严相济刑事政策的监督机制，防止宽严失当、枉法裁判、以权谋私。要改进审判考核考评指标体系，完善错案认定标准和错案责任追究制度，完善法官考核机制。要切实改变单纯以改判率、发回重审率的高低来衡量刑事审判工作质量和法官业绩的做法。要探索建立既能体现审判规律、符合法官职业特点，又能准确反映法官综合素质和司法能力的考评体制，对法官审理刑事案件质量，落实宽严相济刑事政策，实现刑事审判法律效果和社会效果有机统一进行全面、科学的考核。

45、各级人民法院要加强与公安机关、国家安全机关、人民检察院、司法行政机关等部门的联系和协调，建立经常性的工作协调机制，共同研究贯彻宽严相济刑事政策的工作措施，及时解决工作中出现的具体问题。要根据“分工负责、相互配合、相互制约”的法律原则，加强与公安机关、人民检察院的工作联系，既各司其职，又进一步形成合力，不断提高司法公信，维护司法权威。要

在律师辩护代理、法律援助、监狱提请减刑假释、开展社区矫正等方面加强与司法行政机关的沟通和协调，促进宽严相济刑事政策的有效实施。

Bibliography

Books:

Bakken, Borge *The exemplary Society: Human Improvement, Social Control and the Dangers of Modernity in China* New York, Oxford University Press 2000

Berlin, Isaiah *Four Essays on Liberty* Oxford, Oxford University Press 1969

Bian, Jianlin [卞建林] and Wang, Li [王立] (ed.) *Criminal Reconciliation and An Alternative Procedure [刑事和解与程序分流]* Beijing, The Chinese People's Public Security University Press [中国人民公安大学出版社] 2010

Black, James A. and Champion, Dean J. *Methods and Issues in Social Research* New York, John Wiley & Sons 1976

Braithwaite, John *Crime, Shame and Reintegration* Cambridge, Cambridge University Express 1989

Cai, Guoqin [蔡国芹] *Research on Criminal Mediation System[刑事调解制度研究]* Beijing, The Chinese People's Public Security University Press [中国人民公安大学出版社] 2010

Chen, Ruihua [陈瑞华] *Criminal Proceedings: the Chinese Model [刑事诉讼的中国模式]* Beijing, Law Press [法律出版社] 2008

Chen, Ruihua [陈瑞华] *Leading Issues In Criminal Proceedings [刑事诉讼的前沿问题]* Beijing, China Renmin University Press [中国人民大学出版社] 2005

Chen, Ruihua [陈瑞华] *Justice Can Be Seen [看得见的正义]* Beijing, China Law Press [中国法制出版社] 2000

Chen, Shihe [陈世和] *The Embarrassment of Law[法律的尴尬]* Beijing, Law Press [法律出版社] 2011

Cohen, Jerome A. *The Criminal Process in the People's Republic of China 1949-1963: An Introduction* Harvard, Harvard University Press 1968

Di, Xiaohua [狄小华] and Liu, Zhiwei [刘志伟] (ed.) *The Theory and Practice of Restorative Justice In Juvenile Cases [恢复性少年司法理论与实践]* Beijing,

People Publishing [群众出版社] 2007

Elrod, Preston and Ryder, R. Scott *Juvenile Justice: A Social, Historical, and Legal Perspective* Sudbury, Massachusetts, Jones and Bartlett Publishers 2005

Etzioni, Amitai *A Comparative Analysis of Complex Organizations* New York, Free Press 1975

Fan, Yu [范愉] *The Theory and Practice of Dispute Resolution [纠纷解决的理论与实践]* Beijing, Tsinghua University Press [清华大学出版社] 2007

Fan, Yu [范愉] *Research on Alternative Dispute Resolution [非诉讼纠纷解决机制研究]* Beijing, Renmin University of China Publishing [中国人民大学出版社] 2000

Gao, Qicai [高其才] Zuo, Ju [左炬] Huang, Yuning [黄宇宁] *Political Judiciary: the People's Court of Hua County in 1949-1961[政治司法：1949-1961 年的华县人民法院]* Beijing, Law Press [法律出版社] 2009

Ge, Lin [葛琳] *On Criminal Reconciliation [刑事和解研究]* Beijing, The Chinese People's Public Security University Press [中国人民公安大学出版社] 2008

Huang, Philip C. [黄宗智] *Law, Society and Culture in Qing Dynasty [清代的法律、社会与文化]* Shanghai, Shanghai Shudian Publishing [上海书店出版社] 2001

Lubman, Stanley B. *Bird in a Cage: Legal Reform in China After Mao* Stanford, Stanford University Press 1999

Jiang, Shigong [强世功] *Punishment and the Rule of Law – the Emergence of the Modern Rule of Law (1976-1981) [惩罚与法治 – 当代法治的兴起(1976-1981)]* Beijing, Law Press [法律出版社] 2009

Ma, Mingliang [马明亮] *Negotiated Justice: A New Procedural Idea [协商性司法：一种新程序主义理念]* Beijing, Law Press [法律出版社] 2007

Marshall, Tony F. *Restorative Justice: An Overview* Minnesota, Centre for Restorative Justice& Mediation 1998

McConville, Mike *et al Criminal Justice in China: An Empirical Inquiry* Edward, Elgar Publishing 2011

Salter, Michael and Mason, Julie *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* New York, Pearson/Longman 2007

Sharp, Susan *Restorative Justice: A Vision for Healing and Change* Alberta,

Edmonton Victim Offender Mediation Society 1998

Song, Yinghui [宋英辉] and Yuan, Jinbiao [袁金彪] (ed.) *The Theory and Practice of Criminal Reconciliation in China [我国刑事和解的理论与实践]* Beijing, 北京大学出版社 [Peking University Press] 2009

Sun, Qin [孙勤] *An Analysis of The Values of Victim-Offender Reconciliation [刑事和解价值分析]* Beijing, The Chinese People's Public Security University Press [中国人民公安大学出版社] 2009

The Central Commission of Comprehensive Governing [中央社会治安综合治理委员会办公室] (ed.) *Strategies for the Long-term Peace and Stability [长治久安之策]* Beijing Chang'an Press [中国长安出版社] 2009

Trevaskes, Susan *Courts and Criminal Justice in Contemporary China* U.K., Lexington Books 2007

Wang, James C.F. *Contemporary Chinese Politics* New Jersey, Prentice Hall 1995

Wang, Yijun [王一俊] *Criminal Reconciliation [刑事和解]* Beijing, China University of Politics and Law Publishing [中国政法大学出版社] 2010

Wu, Xiaofeng [武小凤] *Conflict and Compromise - On Criminal Reconciliation [冲突与对接—刑事和解刑法制度研究]* Beijing, The Chinese People's Public Security University Press [中国人民公安大学出版社] 2008

Wu, Hongyu [武红羽] *The Process of Judicial Mediation: From the Perspective of the Relationship between Judicial Mediation and Judicial Realm [司法调解的生产过程: 以司法调解与司法场域的关系为视角]* Beijing, Law Press [法律出版社] 2010

Wu, Zhiming [吴志明] Lin, Huabin [林化宾] and Wu, Junying [吴军营] (ed.) *The General Mediation System – the Eastern Experience of Responding To Social Conflicts [大调解 – 应对社会矛盾凸显的东方经验] Beijing* Law Press [法律出版社] 2010

Yeboah, David A. *Research Methodologies in Criminology* New York, Nova Science Publishers 2008

Ye, Jinghuan [野静环] *A Rewarding Trip – Report on Life in the Beijing Transferring*

Institution of Reeducation through Labor [不虚此行——北京劳教调遣处纪实] (Unpublished draft on file with author)

Yi, Yanyou [易延友] *Chinese Criminal Procedure and Chinese Society [中国刑诉与中国社会]* Beijing, Peking University Press [北京大学出版社] 2010

Book chapters:

Braithwaite, John & Mugford, Stephen 'Conditions of Successful Reintegration Ceremonies: Dealing With Juvenile Offenders' in Roche, Declan (ed.) *Restorative Justice* England, Dartmouth Publishing Company 2004

Chen, Qi [陈颀] 'The Incentive Mechanism of "Reducing Punishment With Money ["赔钱减刑"的激励机制]' in Su Li [苏力] (ed.) *Law And Social Sciences [法律和社会科学]* Beijing, Law Press [法律出版社] 2009

Chen, Ruihua [陈瑞华] 'Theoretical Reflection on Detention [未决羁押的理论反思] in' Chen, Ruihua [陈瑞华] (ed.) *An Empirical Study of The Detention System[未决羁押制度的实证研究]* Beijing, Peking University Press [北京大学出版社] 2004

Clarke, Donald C. 'The Execution of Civil Judgments in China' in Lubman, Stanley (ed.) *China's Legal Reforms* Oxford, Oxford University Press 1996

Clarke, Donald C. and Feinerman, James V. 'Antagonistic Contradictions: Criminal Law and Human Rights in China' in Lubman, Stanley (ed.) *China's Legal Reforms* Oxford, Oxford University Press 1996

Cho, Li-Fung 'The Emergence of China's Watchdog Reporting' in Bandurski, David and Hala, Martin (ed.) *Investigative Journalism in China* Hong Kong, Hong Kong University Press 2010

Chui, Wing Hong 'Quantitative Legal Research' in McConville, Mike and Chui, Wing Hong (ed.) *Research Methods for Law* Edinburgh, Edinburgh University Press 2007

Di, Xiaohua [狄小华] 'Restorative Justice and Criminal Mediation [复合正义和刑事调解]' in Wang, Ping [王平] (ed.) *Forum on Restorative Justice [恢复性司法论坛]*

Vol. 2005 Beijing, Qunzhong Publishing [群众出版社] 2005

Fu, Hualing 'Challenging Authoritarianism through Law' in Jean-Philippe Béja, Fu Hualing and Eva Pils (ed.) *Liu Xiaobo, Charter 08 and the Challenges of Political Reform in China* Hong Kong, Hong Kong University Press 2012

Hao, Yinzhong [郝银钟] 'On the First Instance Trial [第一审程序论]' in Zhang, Jun [张军] Hao, Yinzhong [郝银钟] (ed.) *刑事诉讼庭审专题研究 [Research on the Criminal Trial]* Beijing, Renmin University of China Press [中国人民大学出版社] 2005

Horwitz, Allan V. 'Diversion in the Juvenile Justice System' in Albrecht, Günter & Ludwig-Mayerhofer, Wolfgang (ed.) *Diversion and informal Social Control* Berlin, Walter de Gruyter 1995

Kang, Huaiyu [康怀宇] 'The Current Situation and the Future: An Investigation On People's Mediation from the Microscopic Perspective [现状与前瞻: 人民调解的微观考察]' in Zuo Weimin [左卫民] (ed.) *Dispute Resolution in the Age of Transformation [变革时代的纠纷解决]* Beijing, 北京大学出版社 [Peking University Press] 2007

Li, Site [李斯特] 'The Context of the People's Judiciary and the Mass Line [人民司法群众路线的谱系]' in Su Li [苏力] (ed.) *Law and Social Science [法律和社会科学] Vol.1*, Beijing, Law Press [法律出版社] 2006

Liu, Guangan [刘广安] Li, Cunpeng [李存捧] 'People's Mediation and Rights Protection [民间调解与权利保护]' in Xia, Yong [夏勇] (ed.) *Towards An Age of Rights [走向权利的时代]* Beijing, China University of Political Science and Law Press [中国政法大学出版社] 1995

McConville, Mike and Chui, Wing Hong 'Introduction and Overview' in McConville, Mike and Chui, Wing Hong (ed.) *Research Methods for Law* Edinburgh, Edinburgh University Press 2007

Palmer, Michael 'The Revival of Mediation in the People's Republic of China: (1) Extra-judicial Mediation' in Butler, W.E. (ed.) *Yearbook on Socialist Legal Systems* New York, Transnational Publishers 1987

Pils, Eva 'The Dislocation of the Chinese Human Rights Movement in Stacy

Mosher' in Poon, Patrick (ed.) *A Sword And A Shield: China's Human Rights Lawyers* Hong Kong, China Human Rights Lawyers Concern Group 2009

Wu, Jianxin [吴建新] 'Confusions and Thoughts During The Transplant of Restorative Justice in China [恢复性司法中国化中的困惑与思考]' in Wang, Ping [王平] (ed.) Forum on Restorative Justice [恢复性司法论坛] Vol. 2007, Beijing, China Procuratorial Press [中国检察出版社] 2007

Zehr, Howard and Mika, Harry 'Fundamental Concepts of Restorative Justice' in Roche, Declan (ed.) *Restorative Justice* England, Dartmouth Publishing Company 2004

Journal articles:

Belkin, Ira China's Tortuous Path Toward Ending Torutre in Criminal Investigations 2011 (Vol. 24, No. 2) *Columbia Journal of Asian Law* 273

Chen, Guangzhong [陈光中] Criminal Reconciliation Should be Promoted and Standardized [刑事和解应当推动和规范] 2010(1) *Legal Research [法学研究]* 162

Cai, Guoshan [蔡国山] Who To Supervise the People's Procuratorate – On the Improvement of the People's Supervision System [谁来监督检察院？- 兼论人民监督员制度之完善] 2011(4) *Law and Economy [法制与经济]* 169

Chen, Ruihua [陈瑞华] An Initial Research on The Malfunction of Criminal Procedure [刑事程序失灵问题的初步研究] 2007 (6) *China Legal Science [中国法学]* 141

Chen, Ruihua [陈瑞华] Private Cooperation in Criminal Proceedings: The Emergence of Criminal Reconciliation in China [刑事诉讼的私力合作模式：刑事和解在中国的兴起] 2006(5) *China Legal Science [中国法学]* 15

Chen, Weidong [陈卫东] Several Opinions On Criminal Reconciliation [关于刑事和解的几点看法] 2009(3) *Chinese Laws [中国法律]* 11

Chen, Yufan [陈玉范] Qu, Guangchen [屈广臣] Thoughts on 'Private Resolution' ["私了"问题的法律思考] 1995(1) *Modern Legal Science [当代法学]* 24

Choukroune, Leïla and Garapon, Antoine The Norms of Chinese Harmony 2007 (3)

China Perspectives 36

Clarke, Donald C. Dispute Resolution in China 1991 (Vol.5) No.2 *Journal of Chinese Law* 245

Du, Yu [杜宇] "Criminal Conciliation": Critics and Preliminary Response ["刑事和解": 批评意见与初步回应] 2009(8) *Chinese Criminal Science [中国刑事法杂志]* 3

Feeley, Malcolm M. Two Models of the Criminal Justice System: An Organizational Perspective, Vol. 7, No. 3 (Spring, 1973) *Law & Society Review* 407

Fu, Hualing Zhou Yongkang and the Recent Police Reform in China 2005 (Vol. 38) No. 2 *The Australian and New Zealand Journal of Criminology* 241

Fu, Hualing Re-education through Labour in Historical Perspective Dec. 2005 (No. 184) *The China Quarterly* 811

Fu, Hualing The Politics of Mediation in a Chinese County: The Case Study of Luo Lianxi 2003 (vol.5) no.2 *Australian Journal of Asian Law* 107

Fu, Hualing Criminal Defence in China: The Possible Impact of the 1996 Criminal Procedural Law Reform No. 153 (Mar. 1998) *the China Quarterly* 31

Feng, Jialin [冯嘉林] Abolishing the Instruction System Should be Based on the Reform of the Current Wrongful Decision Investigation System [取消个案请示应以改革现行错案追究制度为基础] 2006(9) *National Judges College Law Journal [法律适用]* 3

Ge, Lin [葛琳] An Analysis of the Practical Predicament of Criminal Reconciliation [刑事和解的现实困境解析] 2010(5) *Justice of China [中国司法]* 19

He, Weifang [贺卫方] The Reform of the Chinese Court and Judicial Independence: Observation and Reflection of a Participant [中国法院的改革与司法独立: 一个参与者的观察与反思] 2003 (3) *Zhe Jiang Social Sciences [浙江社会科学]* 83

He, Weifang The Police and the Rule of Law: Commentary on "Principles and Secret Agents" Sep 2007 *The China Quarterly* 191

He, Yongjun [何永军] On Legitimacy and Legalization of Criminal Reconciliation [论刑事和解的合法性与合法化] 2009(3) *Journal of Kunming University of Science*

and Technology (Social Science) [昆明理工大学学报（社会科学版）] 82

Hong, Dayong [洪大用] An Initial Research on The Poverty Relief Work by Chinese Non-Governmental Organizations [中国民间组织扶贫工作的初步研究] 2002(2) *Jianghai Academic Journal [江海学刊]* 100

Huang, Philip C. C. Centralized Minimalism Semiformal Governance by Quasi Officials and Dispute Resolution in China January 2008 Vol.34 No. 1 *Modern China* 9

Huang, Philip C. C. Between Informal Mediation and Formal Adjudication: The Third Realm of Qing Civil Justice July 1993 (Vol. 19, No. 3) *Modern China* 251

Hudson, Barbara Restorative Justice and Gendered Violence: Diversion or Effective Justice? 2002 (42) 3 *The British Journal of Criminology* 616

Lewis, Margaret K. Controlling Abuse to Maintain Control: The Exclusionary Rule in China 2011 Vol. 43 *International Law and Politics* 629

Li, Buyun [李步云] Liu, Zhiwei [柳志伟] Several Issues Relating to Judicial Independence [司法独立的几个问题] 2002(3) *Legal Research [法学研究]* 3

Li, Changsheng [李昌盛] The Chinese Pattern of Criminal Trial: *Bildung* Trial [刑事庭审的中国模式：教化型庭审] 2011(1) *Science of Law(Journal of Northwest University of Political Science and Law) [法律科学(西北政法大学学报)]* 130

Li, Hong [李宏] On Judicial Justice and Independent Trial [论司法公正与审判独立] (2010)5 *Legal System and Society [法制与社会]* 107

Li, Lianfeng [李连峰] Shang Shumin [尚淑敏] On the Construction of Criminal Reconciliation System – On the Basis of 'Private Resolution' Among the People [论我国刑事和解制度的构建 – 以民间"私了"传统为基础的构建模式] 2009(12) *Academic Exchange [学术交流]* 83

Liao, Huanguo [廖焕国] Zeng, Xiangsheng [曾祥生] The Interactive between the Civil Law and Criminal Law: Conflicts and Coordination of the Tort Law and Criminal Law [民刑互动：侵权责任法与刑法的冲突与协调] 2010(3) *Wuhan University Journal (Philosophy & Social Science [武汉大学学报(哲学社会科学版)]* 290

Liang, Genlin [梁根林] Ten Falsification in Using Criminal Reconciliation in Death Penalty Cases [死刑案件被刑事和解的十大证伪] 2010(4) *Legal Science [法学]* 3

Liang, Ping [梁平], The Establishment of A Diverse Dispute Resolution System [多元化纠纷解决机制的制度构建] 2011(3) *Contemporary Law Review[当代法学]* 118

Liebman, Benjamin L. China's Courts: Restricted Reform 191 Sep 2007, *The China Quarterly* 620

Liebman, Benjamin L. and Wu, Tim China's Network Justice January 9 2007 *Chicago Journal of International Law* 143

Liu, Lingmei [刘凌梅] Introduction and Assessment on Criminal Reconciliation in Western Jurisdictions [西方国家刑事和解理论和实践介评] 2001 Vol.23 (1) *Modern Law Science [现代法学]* 152

Liu, Sida & Halliday, Terence Recursivity in Legal Change: Lawyers and Reforms of China's Criminal Procedure Law Vol.34 Issue 4 Fall 2009 *Law and Social Inquiry* 911

Lubman, Stanley Dispute Resolution in China after Deng Xiaoping: 'Mao and Mediation Revisit' (1997) Vol.11 no.2 *California Law Review* 229

Lubman, Stanley Mao and Mediation: Politics and Dispute Resolution in Communist China Vol. 55, No. 5 (Nov. 1967) *California Law Review* 1284

Ma, Jinghua [马静华] The Theoretical Basis of Criminal Reconciliation and the Construction of This System in China [刑事和解的理论基础及其在我国的制度构想] 2003(4) *Legal Science [法律科学(西北政法大学学报)]* 81

Ma, Zhangmin [马章民] Combination and Conflict between the Tort Law and Criminal Law [侵权责任法与刑法的衔接与冲突] (2010)9 *Legal System and Society [法制与社会]* 27

Minzner, Carl F. China's Turn against Law Vol. LIX, Fall 2011 No. 4 *The American Journal of Comparative Law* 935

Minzner, Carl F. Judicial Disciplinary Systems For Incorrectly Decided Cases: The Imperial Chinese Heritage Lives On 2009 Vol. 39 *New Mexico Law Review* 63

Minzner, Carl F. Xinfang: An Alternative to Formal Chinese Legal Institutions

(2006) Vol. 42 *Stanford Journal of International Law* 103

Miu, Weihui [缪伟辉] 刑事和解的价值提取 [The Values of Criminal Reconciliation] 2010(10) *Legal System and Society [法制与社会]* 19

Pan, Li [潘力] Several Issues Concerning the Wrongful Conviction Investigation System [关于错案追究制度的若干问题] 1994 (8) *People's Procuracy [人民检察]* 9

Pang, Zheng [逄政] Education in the Court [法庭上的教化] 2008(10) *Fang Yuan Fazhi [方圆法治]* 60

Peerenboom, Randall What Have We Learned about Law and Development? Describing, Predicting and Assessing Legal Reforms in China Spring 2006 Vol. 27, *Michigan Journal of International Law* 823

Peerenboom, Randall Judicial Independence and Judicial Accountability: An Empirical Study of Individual Case Supervision January 2006 No. 55 *The China Journal* 67

Shaw, Victor Corrections and Punishments in China: Information and Analysis 2010 Vol. 26 (1) *Journal of Contemporary Criminal Justice* 53

Shi, Limei [史立梅] Criminal Reconciliation: the Third Approach to Resolve Criminal Conflicts [刑事和解：刑事纠纷解决的“第三领域”] (2007)11 *Tribune of Political Science and Law [政法论坛]* 80

Perry, Elizabeth J. Studying Chinese Politics: Farewell to Revolution? *The China Journal Jan. 2007 (No.57)* 1

Song, Yinghui [宋英辉] An Empirical Analysis of Criminal Reconciliation in China [我国刑事和解实证分析] (2008)5 *China Legal Science [中国法学]* 123

Stutsman, Tomas the Use of Demonstration Projects To Advance Criminal Procedure Reform in China 2011 (Vol. 24, No. 2) *Columbia Journal of Asian Law* 333

Sun, Wanhuai [孙万怀] Do Death Penalty Cases Need Reconciliation and Can They Be Reconciled? [死刑案件可以并需要和解吗？] 2010 (1) *China Legal Science [中国法学]* 180

Tan, Zelin [谭泽林] and Zhao, Qiusheng [赵秋生] Problems and Improvements of Laws Accordingly in Implementing Criminal Reconciliation in China [我国刑事和解实施中的问题与相应实体、程序法完善] 2009 (9) *Politics and Law [政治与法律]* 148

Tang, Weijian [汤维建] On the Establishment of a Uniform Enforcement System – Start with Solving the Problem with Enforcement in Civil Cases [执行体制的统一化构建 – 以解决民事"执行难"为出发点] 2007(5) *Study and Exploration [学习与探索]* 22

Wan, Yi [万毅] Shi, Qingzheng [施清正] An Empirical Study of the Performance Assessment System in the People's Procuratorate [检察院绩效考核实证研究] 2009(1) *Eastern Law [东方法学]* 28

Wang, Zhixiang [王志祥] Zhang, Weike [张伟珂] On the Legitimacy of Criminal Reconciliation in Capital Cases [死刑案件中刑事和解的正当性探究] 2011 (4) *Northern Legal Science [北方法学]* 40

Wang, Xiang [王向] An Analysis on the Social Welfare Policy to the Floating Population [流动人口社会保障政策分析] 2003(4) *Information of Economics and Law [财经政法资讯]* 33

Xia, Min [夏敏] Closure: A Not Easy Task in Trial [案结事了：一个不轻松的审判课题] 2007(2) *China Trial [中国审判]* 12

Xiao, Shiwei [肖仕卫] 'The Third Realm' in Criminal Justice: An Analysis of the Structural Position and Function of Criminal Reconciliation in China [刑事法治的"第三领域": 中国刑事和解制度的结构定位与功能分析] (2007) Vol19 No.6 *Peking University Law Journal [中外法学]* 721

Xiao, Shiwei [肖仕卫] Ma, Jinghua [马静华] The Unique Function of Criminal Reconciliation in China: From the Perspective of Resolving the Problem of 'Solving Criminal Cases Privately' [中国刑事和解的独特功能 - 以刑事案件"私了"问题之解决为起点的分析] 2010(2) *Criminal Science [中国刑事法杂志]* 63

Xiang, Chaoyang [向朝阳] Ma, Jinghua [马静华] The Establishment of the Values of Criminal Reconciliation and Its Chinese Pattern [刑事和解的价值构造及中国模

式的构建] 2003(6) *Chinese Legal Science [中国法学]* 113

Xu, Yang [徐阳] Harmfulness Of and Safeguard Against Power Abuse in Criminal Reconciliation [刑事和解中权力过度推进之危害及其防范] 2009(6) *Legal Review [法学评论]* 131

Yao, Li [姚莉] An Analysis of the Essentials of Judicial Justice [司法公正要素分析] 2003(5) *Legal Research [法学研究]* 3

Yi, Yanyou, Can a Government Compulsorily Make Her Citizens More Free? – Revisiting Non-Judicial Detentions Under the People's Republic's Administrative Regulations and Their Justifications 2010 Vol.2 *Tstinghua China Law Review* 381

Yu, Jingyao [俞静尧] An Structural Analysis of Judicial Independence and Legal Reform **[**司法独立结构分析与司法改革] 2004(3) *Legal Research [法学研究]* 52

Yuan, Jianping [袁建平] The Problem with Enforcement and Its Resolution From the Perspective of Judicial Justice [司法公正视角下的执行难及其矫治] 2010(7) *Journal of Socialist Theory Guide [理论导刊]* 67

Zhang, Fuxiong [张孚雄] Thoughts on The Use Of Criminal Reconciliation in Serious Crimes [重罪案件刑事和解的理论思考] 2011(2) *Law and Economy [法制与经济]* 185

Zhang, Shuqin [张书琴] Treating Criminal Reconciliation Rationally [理性对待刑事和解] 2007(3) *Hebei Law Science [河北法学]* 118

Zhang, Weiping [张卫平] Judicial Mediation: Analysis and Thoughts In the Current Context [诉讼调解: 时下时态的分析与思考] 2007(5) *Legal Science[法学]* 18

Zhou, Shixiong [周世雄] On Criminal Reconciliation – Taking the Exploration of Criminal Reconciliation in Hunan Province as An Analytic Sample [也论刑事和解制度 – 以湖南省检察机关的刑事和解探索为分析样本] 2008(3) *Law Review [法学评论]* 13

Zhou, Yongkun [周永坤] Wrongful Conviction Investigation System and the Establishment of A Rule of Law Country – Thoughts of Law-sociology [错案追究制与法治国家建设 – 一个法社会学的思考] 1997(9) *Legal Science [法学]* 6

Zhu, Tonghui [朱桐辉] Performance Assessment System and the Judicial Context

[绩效考核与刑事司法环境之辩] 2007(2) *Criminal Law Review [刑事法评论]* 253

Zou, Jianzhang [邹建章] and Liu, Fengrui [刘丰瑞] Research on Wrongful Conviction Investigation System [刑事错案责任追究制度刍议] 1995(2) *Modern Law Science [现代法学]* 70

Electronic source materials:

An *Examination of the Idea of Restorative Justice Embodied in the Customary Tibetan Law [藏族习惯法之现代恢复性司法理念审查]*
http://www.daixie.org.cn/faxue/sifazhidu/48033.html (4 November, 2011)

An *Introduction of The Thought Report System in the Chinese Communist Party [党员思想汇报制度]* http://www.whci.gov.cn/whjszx/shownews_dj.asp?newsid=20 (27 January 2011)

An *Introduction of The Thought Report System in Universities In China [学生党员思想汇报制度]* http://www.csust.edu.cn/pub/wfxy/xsgz/xsdj/t20081121_83308.htm (27 January 2011)

Bai, Mingshan [白明山] Yue, Wenting [岳文婷] *The Traffic Accident Related Crime Case Happened in Hebei University Was Sentenced: Li Qiming Was Given A Sentence of Six Years of Imprisonment [河北大学交通肇事案宣判 李启铭被判刑 6 年]* http://news.sohu.com/20110130/n279161518.shtml (8 November 2011)

Braithwaite, John *Crime, Shame and Reintegration*
http://www.ciaj-icaj.ca/english/publications/DP1999/braithwaite.pdf (20th January 2008)

BBC News, *The Cultural Revolution*
http://news.bbc.co.uk/hi/english/static/special_report/1999/09/99/china_50/cult.htm (12 March 2012)

Beijing Times [京华时报] *Juvenile Offenders were Escorted into the School to Educate 3000 Students with Legal Knowledge in Xianyang, Shaanxi Province [陕西咸阳少年犯被押解进校向 3000 学生示众说法]*
http://news.sohu.com/20120105/n331275818.shtml (8 January 2012)

Cai, Dingjian, at the conference 'Legal Reform in China: Problems and Prospects'

held by the Carnegie Endowment for International Peace and the Asia Foundation in 2005 http://www.carnegieendowment.org/files/panel2_summary.pdf (26 April 2012)

Chao, Xuku [晁绪库] *The Detention House in Zezhou County Strengthened Education Work to Facilitate the Detainees' Reform [泽州县拘留所加强教育促进被拘人员转化]* http://jc.jcnews.com.cn/jincheng_content/2012-04/24/content_162200.htm (10 May 2012)

Chen, Baocheng [陈宝成] *刑事诉讼法学家陈光中建议取消地方政法委拍板权 [The Criminal Procedure Law Expert Chen Guangzhong Advised to Abolish Local Political-legal Committees' Power To Make Final Decision]* http://nf.nfdaily.cn/nfdsb/content/2010-05/15/content_11945697.htm (26 April 2012)

CCTV: *Li Gang Cried and Bowed For 30 Minutes to Apologize [中央电视台法治在线视频：李刚痛哭流涕数度哽咽; 俯身鞠躬 30 秒致歉]* http://news.qq.com/a/20101022/001308.htm (8 November 2011)

Chen, Chunlong [陈春龙] *The Current Situation and Reform of China's Hukou System [中国"户口制度"的现状与改革]* http://www.iolaw.org.cn/showArticle.asp?id=1729 (6 December 2010)

Chen, Deling [陈德玲] *The Hard Improvement of Criminal Reconciliation in Death Penalty Cases [死刑案件中举步维艰的刑事和解]* http://blog.sina.com.cn/s/blog_51dd87c10100gkdg.html (2 August 2010)

Chen Guoqing *et al [刑事和解: 法律家与法学家对话录]* http://www.procedurallaw.cn/xsss/zdwz/200807/t20080724_51763.html (24 October 2011)

Chen, Min [陈敏] Wang, Wei [王伟] *The Effects of Deepening the Moral Reform Work For the Defendants – the Experience of the People's Court of Xishan District In Wuxi City [深化刑事被告人道德教化显成效-无锡锡山法院刑事审判经验材料]* http://www.dffy.com/fazhixinwen/sifa/200907/20090723154611.htm (9 May 2012)

Chen, Ruihua [陈瑞华] *The Main Problems with the Chinese Criminal Justice System [中国刑事司法制度的主要问题]* http://article.chinalawinfo.com/Article_Detail.asp?ArticleID=19991&Type=mod (22 June 2011)

Chen, Ruihua [陈瑞华] *Sentence with Flexibility [留有余地的判决]*

http://xinjin.xxlnm.fyfz.cn/art/910367.htm (27 April 2012)

Chen, Ruihua [陈瑞华] *Who to Supervise the Supervisor [谁来监督监督者]* *http://article.chinalawinfo.com/Article_Detail.asp?ArticleId=34869* (28 April 2012)

Chen, Ruihua [陈瑞华] *中国刑事司法制度的三个传统 [Three Traditions of the Chinese Criminal Justice System]* http://www.procedurallaw.cn/xsss/zdwz/200905/t20090518_220963.html (23 June 2012)

Chen, Xuan [陈暄] *4243 Cases Resolved 'Privately'; The Enforcement Rate of Criminal Reconciliation in Hunan Reached 99.5% [4243 件案子"私了",湖南刑事和解案件赔偿履行率达 99.5%]* http://hn.rednet.cn/c/2009/12/13/1871544.htm (27 July 2010)

Chengdu Business Daily [成都商报] *The People's Mediator Firstly Presided Over Criminal Reconciliation in Sichuan Province [四川首尝刑事和解由人民调解员主持]* http://news.163.com/09/0610/00/5BDIK7CL000120GR.html (28 July 2010)

Chinese Human Rights Defenders (CHRD) *Re-education through Labor Abuses Continue Unabated: Overhaul Long Overdue* http://docs.law.gwu.edu/facweb/dclarke/public/CHRD_RTL_Report.pdf (2 July 2012)

Clarke Donald C. *Choice of dispute resolution mechanisms in China* http://lawprofessors.typepad.com/china_law_prof_blog/2011/08/choice-of-dispute-resolution-mechanisms-in-china.html (10 June 2011)

Cohen, Jerome A. *The PRC Legal System at Sixty* http://www.eastasiaforum.org/2009/10/01/the-prc-legal-system-at-sixty/ (9 March 2012)

Cohen, Jerome A. *Law in Political Transitions: Lessons From East Asia and The Road Ahead For China* http://www.cecc.gov/pages/hearings/072605/Cohen.php?PHPSESSID=b63a0066ec44bfc7e52470d7373a8916 (26 April 2012)

Coonan, Clifford *Zhao Zuohai: Beaten, framed and jailed for a murder that never happened* http://www.independent.co.uk/news/world/asia/zhao-zuohai-beaten-framed-and-jailed-for-a-murder-that-never-happened-1973042.html (4 July 2012)

Criminal Reconciliation: A Conversation Between Legal Experts and Legal Scholars

Du, Yu [杜宇] *"Criminal Conciliation": Critics and Preliminary Response ["刑事和解": 批评意见与初步回应]* http://article.chinalawinfo.com/Article_Detail.asp?ArticleID=52142 (18 February 2012)

Dui Hua, *Taming Police Influence in Politico-Legal Committees* http://www.duihuahrjournal.org/2011/11/taming-police-influence-in-politico.html (23 July 2012)

Dui Hua, *Dui Hua Estimates 4,000 Executions in China, Welcomes Open Dialogue* https://sna.etapestry.com/prod/viewEmailAsPage.do?databaseId=DuiHuaFoundation&mailingId=22213781&personaRef=11073.0.152691&jobRef=2967.0.31681565&memberId=789166155&erRef=11073.0.152697&key=e2eacaff46787bfeefcaa24cf35264c7 (1 March 2012)

Dui Hua, *Zhao Zuohai Case Provokes Responses on Legal Protections from Chinese Public* Government http://www.duihuahrjournal.org/2010/06/zhao-zuohai-case-provokes-responses-on.html (23 July 2012)

Equity and Human Rights Commission, *The Right To A Fair Trial* http://www.equalityhumanrights.com/advice-and-guidance/before-the-equality-act/guidance-for-service-users-pre-october-2010/criminal-justice-system/the-right-to-a-fair-trial/ (6 March 2012)

Fei County of Linyi City in Shandong Province [山东省临沂市费县], *Measures on Establishing Collaboration Between Criminal Reconciliation and People's Mediation [关于建立刑事和解与人民调解对接机制的实施办法]* http://fxzfw.cn/News_View.asp?NewsID=438 (25 October 2011)

Feng, Liqiang [封利强] Cui, Yang [崔杨] *Experience and Problems of Criminal Reconciliation: An Investigation on the Implementation of Criminal Reconciliation in Chaoyang district in Beijing [刑事和解的经验与问题 — 北京市朝阳区刑事和解现状]* http://article.chinalawinfo.com/Article_Detail.asp?ArticleID=42834 (24 October 2011)

Feng, Renqiang [冯仁强] Xie, Meiyin[谢梅因] *Definition and Disposition of the Repentance in Criminal Reconciliation [刑事和解"反悔"行为的认定与处理]* http://www.procedurallaw.cn/xsss/zdwz/200902/t20090227_185404.html (25 June

2011)

Fu, Hualing *Access to Justice in China: Potentials, Limits, and Alternatives (draft)* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1474073 (6 September 2012)

Global Times *Misjudgement Day marked as real killers of Zhao Zuohai case emerge* http://china.globaltimes.cn/society/2010-06/538434.html (20 April 2012)

Guo, Songmin [郭松民] *The Embarrassment of the Enforcement Agency [法院执行局的尴尬]* http://news.sina.com.cn/c/2005-09-20/18087819132.shtml (18 June 2011)

Han, Jingwei [韩景玮] *Murderer Had A Lighter Sentence for the First Time in Henan Province; the Court Proposed Criminal Reconciliation [河南首次轻判故意杀人者，法院推出刑事和解制度]* http://news.eastday.com/c/20091015/u1a4728228.html (26 July 2010)

He, Weifang [贺卫方] *Amendments on the PRC Court Organic Law and Judicial Independence [中国法院组织法的修改与司法独立]* http://article.chinalawinfo.com/Article_Detail.asp?ArticleID=33871&Type=mod (28 October 2010)

He, Weifang [贺卫方] *Nothing Has More Reformational Characteristics Than Judicial Reform [没什么比司法改革更具改良特色]* http://blog.sina.com.cn/s/blog_488663200102dufm.html (26 April 2012)

Hua, Rui [华蕊] *The 'Fuqing Discipline Inspection Commission Explosion Case' Unresolved For Ten Years Will Be Heard Recently [十年不决的'福清纪委爆炸案'二审于近日开庭]* http://blog.boxun.com/hero/201104/chrd/106_1.shtml (14 June 2011)

Human Rights in China *Reeducation Through Labor: A Summary of Regulatory Issues and Concerns* http://hrichina.org/public/PDFs/Reports/HRIC-RTL.pdf (2 July 2011)

Human Rights Watch *Reeducation Through Labor in China* http://www.hrw.org/legacy/campaigns/china-98/laojiao.htm (2 July 2011)

Ji, Beibei Innocent Man Spent 11 Years In Jail http://www.globaltimes.cn/china/society/2010-05/529982.html (2 July 2011)

Jiang, De [蒋德] Wan Zhong [万众] *Criminal Reconciliation Has Been Introduced Into Prison, The Judge Says That It Is Not Illegal Leniency [狱内伤害案引入刑事和*

解，检察官称绝非法外施恩] http://news.sohu.com/20090721/n265364272.shtml (22 July 2009)

Jin, Xiaogang [金晓刚] *The Origin of Unjust Cases; the Appeal To Abolish the Political-legal Committee Is Increasing [制造冤案的祸源“取消政法委”呼声涨]* http://www.kanzhongguo.com/news/12/03/30/446116.html?%E5%88%B6%E9%80%A0%E5%86%A4%E6%A1%88%E7%9A%84%E7%A5%B8%E6%BA%90%20%E2%80%9C%E5%8F%96%E6%B6%88%E6%94%BF%E6%B3%95%E5%A7%94%E2%80%9D%E5%91%BC%E5%A3%B0%E6%B6%A8(%E7%BB%84%E5%9B%BE (26 April 2012)

Kai Wen [凯文] *Zhang Kai The Lawyer Delegating in Li Gang Case Was Assaulted [李刚门代理律师张凯遭人袭击]* http://www.chinese.rfi.fr/%E4%B8%AD%E5%9B%BD/20101216-%E6%9D%8E%E5%88%9A%E9%97%A8%E4%BB%A3%E7%90%86%E5%BE%8B%E5%B8%88%E5%BC%A0%E5%87%AF%E9%81%AD%E4%BA%BA%E8%A2%AD%E5%87%BB (8 November 2011)

Kui Kui [魁魁] *The People's Court: Performance System is the root of all evil [法院：绩效考核是万恶之源]* http://www.dffy.com/faxuejieti/zh/200911/20091122160353.htm (13 May 2011)

Kunming Daily [昆明日报] *The Organic Law of the Sub-District Office over '50 Years Old' Was Banned, Yet New Responsibility Has Not Been Clear Yet: the Sub-District Office Is More and More Embarrassed ['50 多岁'的 《城市街道办事处组织条例》已被废止，但新职责依然不明确；街道办身份越来越尴尬]* http://szcg.km.gov.cn/ggxx/news.aspx?id=5371 (24 October 2011)

Lai Yang [来扬] *The Expert Talked About The Incident Where the Deputy Director Beat the Journalist and Said 'Private Resolution' With the Exemption from Criminal Liability Is Invalid ["专家谈副局长持枪打记者事件 称免刑责的私了无效"]* http://www.chinanews.com/fz/2012/04-09/3803624.shtml (24 April 2012)

Lan Wuyou [蓝无忧] *The Twist and Destroy of Rule of Law By the Political-legal Committee [政法委对法治的扭曲破坏]* http://www.chinainperspective.com/ArtShow.aspx?AID=15187 (26 April 2012)

Li, Changsheng [李昌盛] *The 'Defendant Talking' Style Trial Which Lacks Defense*

[缺乏对抗的被告人说话式审判]

http://www.docin.com/p-26284336.html?bsh_bid=85286478 (10 May 2012)

Li, Keji [李克杰] *A contradictory system of quality and task and its gap from the reality [素质与任务的矛盾制度与现实的断裂]*

http://epaper.timedg.com/html/2010-07/12/content_492444.htm (20 December 2010)

Li, Ming [黎明] *The 'All-About-Money' Criminal Reconciliation Is Damage [要钱的刑事和解是祸水]*

http://news.ifeng.com/opinion/society/detail_2009_08/18/1303072_0.shtml (5 November 2011)

Li, Na [李娜] *The Judicial Institutions' Enthusiasm on Criminal Reconciliation Is Not Following the Fashion [司法机关热衷刑事和解并非赶时髦]*

http://roll.sohu.com/20120326/n338853384.shtml (26 March 2012)

Li, Ping [李萍] Liu, Yu [刘宇] *Discussion on the Establishment of Criminal Reconciliation System in Juvenile Cases in the People's Procuratorate [检察机关构建未成年人刑事和解制度探讨]*:

http://www.shjcy.gov.cn/njcgyd2007/llsj/t20070809_33593.htm (11 February 2011)

Li, Shilin [李诗林] *Criminal Reconciliation Agreements [刑事和解协议书]*

http://lishilin1982.fyfz.cn/art/636321.htm (25 October 2011)

Li, Song [李松] Huang, Jie [黄洁] *Beijing Promote Cooperation Between Legal Aid and Criminal Reconciliation For The First Time [北京首推法援与刑事和解对接]*

http://www.qh.xinhuanet.com/qhpeace/2010-09/10/content_20868110.htm (25 October 2011)

Li, Yinfang [李银芳] Li, Jinfu [李金富] *Reasons and Strategies of Petitioning Related to Judicial Cases [涉法上访案件的成因及对策]*

http://www.dffy.com/fayanguancha/sh/200409/20040916085512.htm (5 March 2012)

Li, Zhongyong [李忠勇] Li, Jia [李佳] *Criminal Reconciliation Eliminated the Resentment and the Judge Positively Facilitated Harmony [刑事和解消怨恨，法官全力促和谐]* http://bj1zy.chinacourt.org/public/detail.php?id=702 (28 July 2010)

Liu, Dehua [刘德华] Wang Li [王莉] Jiang Hua [简华] *The Victim Can Nominate National People's Congress Deputy to Participate in The Criminal Reconciliation*

Process [哪位代表介入刑事和解? 被害人点名] http://news.china.com.cn/rollnews/2010-07/05/content_3023494.htm (28 July 2010)

Liu, Xiaoying [刘小英] *The Defence Lawyer in Li Gang Case Said The Victim's Family Had Been Coerced to Reconcile With Li Gang ["李刚门"受害者律师称当事家庭已被迫与李刚和解]* http://www.nbd.com.cn/newshtml/20101218/20101218090550130.html (8 November 2011)

Long, Zongzhi [龙宗智] *'Hidden Rules' in Legal Practices [法律实践中的"潜规则"]* http://www.yadian.cc/paper/21974/ (7 April 2012)

Lowe, Rebecca *Leading Law Professor Fu Hualing optimistic about China's potential for change* http://www.ibanet.org/Article/Detail.aspx?ArticleUid=8ca250bc-00d4-4369-85f9-f9ba4b18b163 (6 September 2012)

Luo, Fulin [骆福林] Zhou, Jie [周劼] *It Is Inappropriate That Criminal Reconciliation Is Presided Over By The People's Procuratorate [刑事和解不宜由检察机关主持]* http://www.lawtime.cn/info/xingfa/xfnews/2010031539572.html (28 July 2010)

Ma, Jing [马竞] Cao, Tianjian [曹天健] *Hebei Police Successfully Mediated 3438 Minor Injury Cases in Nearly One Year [河北警方试水轻伤害案件调解处理，近一年成功调解 3438 起]* http://www.criminallaw.com.cn/article/default.asp?id=2146 (27 July 2010)

Mao, Zedong *On the Correct Handling of Contradictions among the People* http://www.peopleofcolororganize.com/wp-content/uploads/pdf/poco/contradictions.pdf (16 June 2011)

Marshall, Tony F. *Restorative Justice: An Overview* http://library.npia.police.uk/docs/homisc/occ-resjus.pdf (16 February 2008)

Metropolitan Express [都市快报] *No Appealing or Petitioning in Dongyang Throughout the Two Years With the Implementation of Criminal Reconciliation [刑事和解：东阳实施两年多无一人申诉上访]* http://news.163.com/09/1109/07/5NLNMDJD000120GR.html (28 July 2010)

Ouyang, Fang [欧阳芳] *The Police of Ji'an City in Jiangxi Province Experimentally*

Conducted Criminal Reconciliation to Promote Social Harmony [江西吉安公安局试行刑事和解制度,促社会和谐]

http://www.chinapeace.org.cn/zhzl/2009-08/24/content_82878.htm (27 July 2010)

***Principles** Supporting Qualitative Research*

http://www.cedu.niu.edu/~sorensen/502/powerpoint/topicD/qlnotes.htm (28 December 2011)

Peerenboom, Randall and He, Xin *Dispute Resolution in China: Patterns, Causes, and Prognosis*

http://www.fljs.org/uploads/documents/Peerenboom_He%20Xin%231%23.pdf (16 July 2012)

Pejan, Ramin *Laogai: "Reform Through Labor" in China*

http://www.wcl.american.edu/hrbrief/07/2laogai.cfm (2 July 2011)

Rosenzweig, Joshua; Sapio, Flora Jiang, Jue; Teng, Biao and Pils, Eva *The 2012 Revision of the Chinese Criminal Procedure Law: (Mostly) Old Wine in New Bottles*

http://www.law.cuhk.edu.hk/research/crj/papers.php

San Xiang Municipal Newspaper [三湘都市报] *Hunan Tried Criminal Reconciliation: Minor Criminal Cases Can Be Reconciled Privately [湖南试行刑事和解制: 轻微刑事案件可私下和解]*

http://www1.china.com.cn/policy/txt/2006-11/22/content_7393033.htm (11 February 2011)

Smith, Jennifer and Gompers, Michael Realizing Justice: The Development of Fair Trial Rights in China

http://www.law.upenn.edu/journals/ealr/articles/volume2/issue2/SmithGompers2ChineseL.&Pol%E2%80%99yRev.108(2007).pdf (6 March 2012)

Shan, Shibing [单士兵] *The 'Illusion of Harmony' Behind Criminal Reconciliation [刑事和解背后的"和谐幻觉"]*

http://gb.cri.cn/9083/2006/11/23/2165@1317252.htm (24 February 2012)

Shanghai Evening Post [新闻晚报] *Hitting Girl to Death, The Driver Yelled 'My Father Is Li Gang' [撞死女生 司机狂言"我爸是李刚"]*

http://news.163.com/10/1019/13/6JC2FKS700014AED.html (8 November 2011)

Song, Yinghui [宋英辉] *Empirical Analysis on Criminal Reconciliation in Public Prosecution[公诉案件刑事和解的实证分析]* http://www.sqxb.cn/blog/blog.aspx?id=309&zuozeid=83 (27 July 2010)

Southern Weekend [南方周末] *The Forth Strike Hard: Can It Be Like The Previous Ones? [第四次严打：能像过去一样打吗?]* http://nf.nfdaily.cn/epaper/nfzm/content/20100701/ArticelB10005FM.htm (29 November 2010)

Southern Weekend [南方周末] *The Fourth 'Strike Hard' Campaign: The More We Gain, The More Horrible It Is [第四次全国"严打"成果越大越可怕]* http://news.qq.com/a/20100702/000470.htm (21 March 2012)

Southern Weekend [南方周末] *A Shooting Case Resulting in Three Judges' Death in Yongzhou, Hunan Province: The Murder Has An Incurable Disease [湖南永州致三法官死枪击案：凶手身患绝症]* http://www.infzm.com/content/45861 (15 November 2010)

Su, Li [苏力] *Deliberative Justice and the Big Mediation System [关于能动司法与大调解]* http://article.chinalawinfo.com/Article_Detail.asp?ArticleId=53760 (9 March 2012)

Sui, Yunyan [隋云雁] *The People's Courts of Fukang City Used Criminal Reconciliation to Promote Social Harmony [阜康市法院刑事和解促和谐]* http://big5.xjts.cn/news/content/2010-08/06/content_5143642.htm (24 October 2011)

Sun, Ming [孙明] *My Views on The Judge's Private Meeting with the Parties and Their Lawyers [法官私自会见当事人及委托律师之我见]* http://www.dffy.com/sifashijian/sw/200601/20060104221654.htm (9 April 2011)

Sun, Yu [孙瑜] Chen, Lei [陈磊] *Solving Criminal Cases Privately: Moving on in Debates[刑事案件私了：在争议中前行]* http://news.sina.com.cn/c/l/2007-03-21/160612576540.shtml (26 August 2008)

The People's Court Daily [人民法院报] *From Controversy to Harmony: the Transplant of Restorative Justice to China [从对抗走向和谐：恢复性司法的本土移植]* http://news.xinhuanet.com/legal/2007-05/10/content_6080026.htm (2 March 2012)

The Central Committee of the Chinese Communist Party *Resolution of the CPC Central Committee on Major Issues Concerning the Building of a Socialist Harmonious Society* [中共中央关于构建社会主义和谐社会若干重大问题的决定] http://news.xinhuanet.com/politics/2006-10/18/content_5218639.htm (5 March 2012)

The Constitution of Communist Party of China http://news.xinhuanet.com/english/2007-10/25/content_6944738.htm (16 May 2012)

The Economist, *China's Security State: Guarding the Guardians by the Economist* http://www.economist.com/node/21557760 (23 July 2012)

The People's Procuratorate of Wuhua District in Kunming City [昆明市五华区检察院] *Cooperation Among Departments and Between the People's Procuratorate and the People's Court Promotes Criminal Reconciliation in Our Court [我院"部门联动检调对接"积极促进刑事和解]* http://www.kmwh.gov.cn/kmwh/web/jwb/j5/jcy/showdoc.jsp;jsessionid=Ot51m9BDkebtjnp8RzU7mU9Qmv9bnuDjlMTimcwXMvfFgfOVXroz!742181009?docid=D105138&fieldid=F3792 (25 October 2011)

The Justice Bureau of Haishu District [海曙区司法局] *Haishu District Has Reached Perfect Collaboration Between Criminal Reconciliation and The People's Mediation 海曙区实现刑事和解与人民调解工作无缝对接]* http://www.zjsft.gov.cn/art/2011/8/8/art_61_31321.html (25 October 2011)

***The** People's Court of Foshan City Used Criminal Reconciliation in A Forced Prostitution Case [强迫卖淫案: 佛山法院促刑事和解]* http://news.cntv.cn/program/lawonline/20100803/102472.shtml (30 October 2011)

Trevaskes, Susan *Restorative Justice or McJustice with Chinese Characteristics?* http://www98.griffith.edu.au/dspace/downloaduriredirect?itemId=29444&bitstream=20758 (5 March 2012)

Wang, Chengduo [王成铎] *Yantai: On the Way of "Peaceful Judiciary" [烟台: 走在"平和司法"的大道上]* http://www.jcrb.com/n1/jcrb904/ca477942.htm (24 October 2011)

Wang, Keqin [王克勤] Feng Jun [冯军] *An Investigation On The Traffic Accident*

Related Crime Case in Hebei University: Ten Doubts [河北大学车祸案件调查：事件进展存十大疑点] http://news.sina.com.cn/c/sd/2010-10-25/113521346535.shtml (8 November 2011)

Wang, Feiling [王飞凌] *The Transformation of China's Hukou System [中国户口制度的转型]* http://www.chinaelections.org/newsinfo.asp?newsid=185108 (6 December, 2010)

Wang, Xiaoxian [王效贤] *On Open Trial [论公开审判]* http://article.chinalawinfo.com/Article_Detail.asp?ArticleId=41580 (11 May 2012)

Wang, Xuetang [王学堂] *Popular Identification on Criminal Reconciliation: An Empirical Analysis Based on Three News Reporting [刑事和解的民众认同：基于三起新闻事件的实证分析]* http://www.dffy.com/faxuejieti/ss/201101/20110110150022.htm (19 December 2011)

Wu, Ping [吴平] *The Lawyer of Li Gang Case: The Attack Was Made by Mafia with Official Background ["李刚门"受害人律师：袭击为拥有官方背景的黑恶势力所为]* http://news.ifeng.com/society/special/ligangmen/content-2/detail_2010_12/16/3539907_0.shtml (8 November 2011)

Xia, Jianzhong [夏建中] *The Concept of Community and the Establishment of Community in Urban China [社区概念与我国城市社区建设]* http://www.ccpg.org.cn/Article/ShowArticle.asp?ArticleID=272 (8 December 2010)

Xiang, Sunlian [向孙连] *Hongjiang City Established Collaboration between Criminal Reconciliation and People's Mediation [洪江市建立刑事和解与人民调解对接机制]* http://www.0745news.cn/2010/0820/81389.html (25 October 2011)

Xie, Yongfeng [谢永峰] Jiang, Chengliu [蒋成柳] *Jiangyong Procuratorates Established New Criminal Reconciliation Mechanism Directing Towards Petitioning [湖南江永检察院构建信访风险导向的刑事和解新机制]* http://www.jcrb.com/jcpd/jckx/201007/t20100707_383312.html (9 March 2012)

Xinhua Net [新华网] *Following The Traffic Accident Related Crime Case in Hebei University: the Offender Wants To Resolve It Privately With Money But Was Refused*

[河北大学车祸案续 肇事者欲花钱私了遭拒]
http://www.sx.xinhuanet.com/rdsp/2010-10/21/content_21195534.htm (8 November 2011)

Xinhua Net [新华网] *The Witness in The Traffic Accident Related Crime Case In Hebei University Keeps Silence: The Students Said They Were Afraid of Being Disciplined by the University [河北大学车祸目击者集体沉默 学生称怕学校处分]*
http://news.xinhuanet.com/society/2010-10/21/c_12683495.htm (8 November 2011)

Xinhua Net [新华网] *The Outcome of Li Gang Case: A Secret [李刚门结局：不能说的秘密]* http://opinion.cn.yahoo.com/2010ligang.html (8 November 2011)

Xinhua Net [新华网] *Is 'Reform Through Labour' The Same With 'Reeducation Through Labour'? ["劳动教养"就是"劳动改造"吗?]*
http://news.xinhuanet.com/banyt/2004-05/12/content_1464763.htm (2 July 2011)

Xu, Aiqiong [许爱琼] *The Detention House in Putian City Is The First in the Province To Establish A Drug Control Propaganda and Education Centre [莆田市拘留所将建禁毒宣传教育基地 全省首创]*
http://news.66163.com/2012-04-10/622023.shtml (10 May 2012)

Xu, Bin [许斌] *Laws and Regulations Should be the Products of Open Game [法律法规应该是公开博弈的产物]*
http://www.china.com.cn/news/comment/2010-07/30/content_20607709.htm (6 March 2012)

Xu, Chi [许驰] Liu, Xiaohan [刘晓晗], *Ming Guangchao: Lighting Up the Light in Juvenile Delinquent's Heart [明广超: 点亮失足少年心中的灯]*
http://js.jcrb.com/rwgs/201010/t20101014_454600.shtml (19 March 2012)

Xu, Guoping [徐国平] *Problems and Suggestions Concerning the Current Criminal Reconciliation Work [当前刑事和解试点工作的问题及建议]*
http://www.ningbo.jcy.gov.cn/006/003/680.html (28 July 2010)

Yazhou Zhoukan [亚洲周刊] *Competitive Election Adopted in the Party Committee of Guangdong Province; Head of The Political-Legal Committee Is No Longer A Member Which Implies its Decreasing Status [廣東省委換屆推差額選舉 政法委不是常委地位下降]*
http://www.yzzk.com/cfm/Content_Archive.cfm?Channel=bc&Path=2447308872/21

bcc.cfm (23 July 2012)

Yan, Jun [严峻] *The Debates Triggered By "Avoiding Punishment With Money" ['赔钱减刑'引发的是非争议]* http://www.zj.xinhuanet.com/magazine/2007-05/08/content_9972222.htm (4 March 2011)

Yan, Xiaoguang [闫晓光] *Criminal Reconciliation Conducted by the People's Court of Foshan City of Guangdong Province Triggered Debates: It Was Criticized as 'Avoiding Punishment With Money [广东佛山法院刑事和解引争议, 被指'以钱买刑']* http://news.163.com/10/0730/00/6CQ5UU5R0001124J.html (28 July 2010)

Ye, Doudou [叶逗逗] Wang, Heyan [王和岩] *Major Revisions to the Criminal Procedure Law; The Advance and Retreat of Public Powers [刑诉法大修 公权力进退]* http://china.caixin.com/2012-03-12/100367126.html (23 May 2012)

Zhang, Guochen [张国臣] *The People's Courts in Our City Implemented Criminal Reconciliation Actively to Resolve Social Conflicts [市法院充分运用刑事和解; 积极化解社会矛盾]* http://www.alt.gov.cn/Article/ShowArticle.aspx?ArticleID=44190 (27 October 2011)

Zhang, Hui [张辉] *The Obstacles of Judicial Independence in China – On the System of Political-legal Committee's Harmfulness to Judicial Independence and Violations of Human Rights [中国司法独立的障碍 – 兼论政法委体制对司法独立的侵害及其对人权的侵犯]* http://boxun.com/news/gb/china/2011/01/201101240023.shtml (26 April 2012)

Zhang, Huihua [张辉华] Wang, Yuan [王媛] *On the Introduction and Implementation of Criminal Reconciliation in China from the Perspective of Restorative justice [从恢复性司法看刑事和解在我国的引入和应用]* http://www.chinacourt.org/html/article/200411/02/137288.shtml (22 July 2008)

Zhang, Jieping [张洁平] *The Serious Retrogression of Rule of Law in China; The Campaign-Style Law Enforcement Emerged Again [中国法治大倒退 再现运动式执法]* http://www.yzzk.com/cfm/Content_Archive.cfm?Channel=ae&Path=2292637042/32ae1a.cfm (23 April 2012)

Zhang, Jie [张洁] *'Restorative Justice, Criminal Reconciliation, Community*

Correction': Three Crucial Systems in Juvenile Justice System ['恢复性司法、刑事和解、社区矫正': 少年司法中的三项重要制度] http://www.yffz.org/E_ReadNews.asp?NewsId=1249&page=2 (13 February 2011)

Zhang, Ning [张宁] Sun, Ying[孙颖] Sun, Xu [孙旭] *Disputes Among Neighbours Caused Harm, Criminal Reconciliation Promoted Harmony [邻里纠纷造祸端 刑事和解促和谐]* http://www.chinareports.org.cn/tianjin/Article/lanmu19/201202/329200.html (9 March 2012)

Zhang, Xingchuan [张星川] *An initial Analysis of the Problems and Strategies for the Current Criminal Reconciliation Work [浅议当前刑事和解工作中存在的问题及对策]* http://www.jcrb.com/jcpd/jcll/201008/t20100803_394537.html (12 December 2011)

Zhang, Yinghong [张英红] *The Commission of Politics and Law Impedes Judicial Independence [政法委妨碍司法独立]* http://www.chinaelections.org/NewsInfo.asp?NewsID=26678 (22 April 2011)

Zhao, Jiayue [赵佳月] *The Revision of the Criminal Procedure Law: A Game Between Power and Rights [刑诉法修改：权力与权利的博弈]* http://nf.nfdaily.cn/nfrwzk/content/2011-09/13/content_29780011.htm (6 May 2012)

Zhong Yan [忠言] Can Only Be 'Convinced': His Father Is Indeed Li Gang [不服不行，他爸果然是李刚] http://bbs.finance.ifeng.com/viewthread.php?tid=5923610 (8 November 2011)

Zhu, Feng [朱峰] *The Hebei Police Denied that 'Ligang Case' was Reconciled and Said the Offender Must be Punished [河北警方否认"李刚门"和解; 称凶犯必受处罚]* http://view.news.qq.com/a/20101223/000002.htm (8 November 2011)

Zhu Yingxiao [逐影侠] *Disclosing Li Gang And His Son's Performance With Methods in 'Lie to Me' [用 'Lie to Me' 的方法揭穿李刚父子在镜头面前的表演]* http://www.douban.com/note/96832320/ (8 November 2011)

Government publications:

Almanac of Xinbei district, Changzhou city 2003-2005

http://www.cznd.gov.cn/nj2005/zfrw/4.htm (15 November 2010)

Almanac of Xinbei district, Changzhou city 2006-2008

http://www.cznd.gov.cn/nj2008/Templates/zhengfa/html5-6.html (15 November 2010)

The Community Correction Office of Jiangsu Province [江苏省社区矫正办公室]

http://www.jssf.gov.cn/xxgk/jgsz/nsjg/200810/t20081028_18928.html (6 December 2010)

Statistical Bulletin of the National Economic and Social Development of Dadukou District of Chongqing in 2007

http://www.ddktj.gov.cn/wwweb/sjck/tjgb/20091223/1950.html (7 February 2011)

Statistical Bulletin of the National Economic and Social Development of Dadukou District of Chongqing in 2008

http://www.ddktj.gov.cn/wwweb/sjck/tjgb/20091223/1951.html (7 February 2011)

Legislations and judicial interpretations:

Laws:

Law of the People's Republic of China on Public Security Administration Punishments [中华人民共和国治安管理处罚法] (2005)

Law of the People's Republic of China on Road Traffic Safety [中华人民共和国道路交通安全法] (2003)

The PRC Constitution [中华人民共和国宪法] (2004)

The PRC Criminal Law [中华人民共和国刑法] (1997)

The General Principle of the Civil Law of the PR China [中华人民共和国民法通则] (1986)

The PRC Criminal Procedure Law [中华人民共和国刑事诉讼法] (1996) and the newly revised 2012 version

The PRC Civil Procedure Law [中华人民共和国民事诉讼法] (2007)

The PRC Mediation Law [中华人民共和国调解法] (2012)

The PRC Judges Law [中华人民共和国法官法] (2001)

The PRC Prosecutors Law [中华人民共和国检察官法] (2001)

The PRC Lawyer Law [中华人民共和国律师法] (2007)

The Organic Law of The Urban Residences Committees of the People's Republic of China [中华人民共和国城市居民委员组织法] (1989)

The Organic Law of the Villagers Committees of the People's Republic of China [中华人民共和国村民委员会组织法] (2010)

The Organic Law of the People's Courts of the People's Republic of China [中华人民共和国法院组织法] (2006)

The Organic Law of the People's Procuratorates of the People's Republic of China [中华人民共和国检察院组织法] (1983)

The PRC Prison Law [中华人民共和国监狱法] (1994)

The Civil Servant Law of the People's Republic of China [中华人民共和国公务员法] (2005)

Administrative legislations:

Decision of the State Council on Re-education Through Labor [国务院关于劳动教养问题的决定] (1957)

The Ministry of Public Security's Trial Methods for Implementing Re-education Through Labor [国务院关于转发公安部制定的劳动教养试行办法的通知] (1982)

The Regulation on Letters and Visits [信访条例] (2005)

The Organic Law of the Sub-District Office [城市街道办事处组织条例] (1954)

The Regulations on Registration and Administration of Social Organizations [社会团体登记管理条例] (1998)

The Temporary Regulations on Registration and Administration of Non-profit **Non**-government Organizations [民办非企业单位登记管理暂行条例] (1998)

The Regulation on Foundation Administration [基金会管理条例] (2004)

The PRC Detention House Regulation [拘留所条例] (2012)

Department rules:

Provisions on the Procedure Handling Traffic Accidents [道路交通事故处理程序规定] (2008)

Judicial interpretations:

Opinions on Fully Implementing the Criminal Policy of Combining Severity with Leniency issued by the Supreme People's Procuratorate [最高人民检察院关于在检察工作中贯彻宽严相济刑事司法政策的若干意见] (2006)

Opinions on Fully Implementing the Criminal Policy of Combining Severity with Several Opinions of the Supreme People's Procuratorate on Handling Petty Criminal Cases Where the Parties Have Reached Reconciliation Issued by the Supreme People's Procuratorate [最高人民检察院关于办理当事人达成和解的轻微刑事案件的若干意见] (2011)

Opinions on Improving the Establishment of Urban Community' issued by the Ministry of Civil Affairs [民政部关于在全国推进城市社区建设的意见] (2000)

Opinions on Reforming and Improving the Judicial Committee of the People's Court Issued by the Supreme People's Court [最高人民法院关于改革和完善人民法院审判委员会制度的实施意见] (2010)

Opinions on Reforming and Improving the Judicial Committee System of the People's Court [关于改革和完善人民法院审判委员会制度的实施意见] (2010)

Opinions on Further Implementing the Working Principle of "Giving Priority to Mediation and Combining Mediation with Judgment" [最高人民法院关于进一步贯彻"调解优先、调判结合"工作原则的若干意见] (2010)

Opinions on Several Issues concerning the Regulation of Sentencing Recommendation (Trial Implementation) [关于规范量刑程序若干问题的意见(试行)] (2010)

The Judicial Interpretation on CPL Issued by the Supreme People's Court [最高人民法院关于执行《中华人民共和国刑事诉讼法》若干问题的解释] (1998)

The Organic Regulation of the Procuratorial Committee of the People's Procuratorate [人民检察院检察委员会组织条例] (2008)

The Criminal Procedural Regulation of the People's Procuratorates [人民检察院刑

事诉讼规则] (1999)

The Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of Justice: Opinions on the Nationwide Trial Implementation of Community Correction [最高人民法院、最高人民检察院、公安部、司法部关于在全国试行社区矫正工作的意见] (2009)

Dictionary:

现代汉语词典 [Modern Chinese Dictionary] 商务印书馆 [The Commercial Press] (the 1977 edition)