

Community Corrections in China: Problems, Political Goals, and the Way Forward

by

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LL.B. Nankai University, 2014

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Supervisory Committee

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Abstract

In this thesis, I examine the implementation of community corrections in China with a focus on the factors preventing it from functioning effectively, as well as the possible way forward for the system. I introduce the history and legal framework of community corrections in China and the problems with its implementation. Rather than simply identifying the problems at a superficial level, I have analysed the relevant political context and its influence on the application of community corrections in China in order to identify the sources of problems and suggest potential methods to remedy these problems so as to improve implementation.

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Dedication

To my parents.

Chapter One: Introduction

After fifteen years of implementation, community corrections (Shequ jiaozheng) in China will finally be regulated by a specific law: *Community Corrections Law*.¹ A draft of the new law has passed the first round discussion of the National People's Congress and has been released to the public for suggestions and comments in 2016.² A specific law regulating community corrections has been widely expected by media and academia, although the exact date when the new law will be passed is still unknown, and it may still be several years before the law is eventually put into effect.

When first adopting community corrections on an experimental basis in 2003, China defined it as “a form of non-incarceral criminal sanction that puts offenders in the community to correct their criminal mind and behaviour and to help them reintegrate into society within the sentenced or decided length of time.”³ In China, community

¹ I will introduce here the difference in China between “laws” and “measures” so that readers can better understand my references to these two different types of legal instruments. In China's legal system, the National People's Congress is the main legislature of China; their powers include enacting statutes, passing amendments to the Constitution and reviewing decisions by the State Council. (See The State Council Information Office of the People's Republic of China, *Zhongguo tese shehui zhuyi falv tixi* [Socialist Legal System with Chinese Characteristics] (27 October 2011) online: <http://www.scio.gov.cn/zfbps/ndhf/2011/Document/1034943/1034943.htm>; Pitman B. Potter, *The Chinese Legal System : Globalization and Local Legal Culture*, (London: Routledge, 2001). Only the laws passed by the NPC can be named a “law”. The State Council can also make legislation, which is usually named “regulations” or “measures”. In the hierarchy of the Chinese legal system, “laws” are superior to “measures”, which means when a “measure” conflicts with a “law”, it is the “law” that must be followed.

² Legislative affairs office of People's Republic of China, *Fazhiban guanyu zhonghua renmin gongheguo shequ jiaozheng fa zhengqiu yijiangao gongkai zhengqiu yijian de tongzhi* [Legislative Affairs Office Now Receiving Public Opinions on the Draft of *Community Corrections Law*], online: The central government of the People's Republic of China <http://www.gov.cn/hudong/2016-12/01/content_5141139.htm>; See also Ningning Zhu “Falv shuliang duo xiangmu fenliang zhong lifa renwu jianju [The Large Number of New Laws and Their Significance Make the Legislation Difficult]” *Legal Daily* (15 May 2017) online: <http://www.legaldaily.com.cn/rdlf/content/2017-05/16/content_7165575.htm?node=34014>.

³ The *Notice on Commencing Experimental Programs of Community Corrections* (12 July 2003) [translated by author].

corrections targets offenders sentenced to suspended sentences (Huanxing),⁴ deprivation of political rights, or surveillance, as well as paroled inmates, or inmates on temporary absences from confinement facilities (Jianwai zhixing). The current legal framework of community corrections in China is made up of a series of regulations, including *the Notice on Commencing Experimental Programs of Community Corrections*,⁵ and the *Measure of Implementing Community Corrections*,⁶ which work together with some provisions in the *Criminal Law*⁷ and *Criminal Procedural Law*.⁸

Community corrections in China has received much attention in academia. Since the beginning of 2013,⁹ 2,097 papers dealing with community corrections have been published.¹⁰ These research papers cover a wide range of issues, including its theoretical basis, current problems in its implementation, and methods to evaluate and enhance the effect of its implementation.¹¹ Many of these studies point out the fact that the community corrections system is a long way from functioning effectively. They have also pointed out that the absence of sufficient resources has led to the absence of sufficient control and rehabilitation of offenders, and sometimes their escape. When it comes to the

⁴ Huanxing is sometimes translated as probation. However, this translation can cause confusion, since Huanxing in China is similar to the suspended sentence in Canada.

⁵ *The Notice on Commencing Experimental Programs of Community Corrections* (12 July 2003) online: Ministry of Justice of the People's Republic of China <<http://www.moj.gov.cn/2003/0712/6242.html>>.

⁶ *The Measure of Implementing Community Corrections* (10 January 2012) online: Ministry of Justice of the People's Republic of China <http://www.moj.gov.cn/government_public/content/2012-01/12/fggz_6458.html>.

⁷ *Criminal Law of the People's Republic of China* (1 July 1979) online: The National People's Congress of People's Republic of China <http://www.npc.gov.cn/wxzl/gongbao/2000-12/17/content_5004680.htm>.

⁸ *Criminal Procedural Law of People's Republic of China* (1 July 1979) online: The National People's Congress of People's Republic of China <http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4373.htm>.

⁹ Since January 2013

¹⁰ By searching in Cqvip Database of Chinese journals.

¹¹ *Ibid.*

future development of community corrections in China, many scholars suggest that making a detailed specific law defining and regulating community corrections in China is necessary to significantly improve its implementation.¹²

Based on the studies of those scholars, which provide a good foundation for basic information and limitations on implementing community corrections in China, what I examine in this thesis is a series of deeper questions: What factors have led to the lack of effectiveness in practice? Are the Chinese authorities actually making progress in ameliorating these problems? Will the new law really improve the implementation? Are the suggestions and recommendations put forward by scholars to date likely to be feasible and effective in improving community corrections?

From my point of view, rather than simply identifying the problems at a superficial level, it is essential to identify the sources of the problems of community corrections in China if one hopes to find effective measures to improve the system. Therefore, in this thesis, beyond discussing the problems and limitations of the current implementation of community corrections, I will also focus on identifying the root causes of the problems.

Although China's adoption of community corrections has been occurring at the same time as practices of de-incarceration and the development of more humane correctional systems that has been taking place in other Western countries, the reasons behind the adoption and development of community corrections in China is unique to the special

¹² Yan Tang, "Xin shiji shequ jiaozheng yanjiu zongshu [Comprehensive Review of the Studies on Community Corrections in 21st Century]" (2013) 136:1 J Hubei U Police 90.

political environment in China, which continues to affect the implementation of laws and policies in China. In this thesis, I argue that the two main purposes of initiating the community corrections system in China was to improve social stability and to reduce the cost of operating prisons. I further argue that the system of community corrections was introduced in haste without enough time to experiment with the mechanisms of community corrections and without enough resources invested in community corrections. As a result, the effectiveness of community corrections has been crippled by flaws in the legal framework and the problem of scarce resources. Furthermore, I suggest that the Chinese authorities are still reluctant to improve the actual implementation of community corrections. Instead they have simply left the public impression of positive reform while trying to maintain social stability and cut state expenses in operating their overcrowded prison system.¹³

I also argue that the making of a new *Community Corrections Law* will not result in much improvement in the implementation of community corrections, and the law is merely a political trick or deception by the authorities to make it seems like positive change is happening. If I am correct in assuming that effective implementation is not the authorities' main focus, then finding methods to improve the Chinese system of community corrections will be very challenging.

¹³ Putting offenders in community rather than incarceration is comparatively cost-effective and is often deemed as a method to reduce the number of inmates in prison and therefore cut down expense of prisons.

In this thesis, I will use a narrative analytical legal approach. I will start by examining the legal framework of community corrections in China by describing relevant laws and regulations. Then I will draw from existing studies on the practice of community corrections in China to give a comprehensive critical review of the practice, focusing on its problems and limitations. I will also engage in a close examination of a draft of the new law and compare it with the existing laws, regulations, and policies in order to reveal the new laws potential impact on the existing practice. In order to suggest possible solutions to the problems, I will try to identify the source of the problems in practice by reviewing studies on the relevant political context and the impact of politics on the practice of community corrections. Based on these insights, suggestions for possible methods to improve the implementation will be made.

In Chapter 2, I will begin my analysis by introducing the current legal framework of community corrections in China to provide readers with a full picture of the design of the system. This chapter includes a timeline of the development of the system and an introduction to relevant laws and regulations.

In Chapter 3, I will focus on the actual application of community corrections in China. Specifically, I will explain and analyse various problems that have developed within its implementation, and how these problems interact with each other and prevent community corrections in China from functioning effectively.

In Chapter 4, I will analyse the draft of the new *Community Corrections Law*, which is seen by many politicians and justice officials as an important move by the authorities to solve the problems in the implementation of community corrections and improve the total efficiency of the system. I will describe the content of the new law and closely examine the changes it makes and its potential influence on the practice of community corrections. I will then discuss the reasons why I believe the new law will not make much difference and what I think is the hidden purpose of the state in making the new law.

In Chapter 5, I will provide an analysis of the political factors contributing to the problems that have been identified with the implementation of community corrections. I will begin with the strike-hard campaigns which were the mainstream criminal policy prior to the commencement of community corrections. I suggest that although adopting community corrections is one of the authorities' methods to correct their failure in the strike-hard campaigns, the core of community corrections and strike-hard campaigns remains the same: to maintain social stability using criminal justice policies. Finally I will analyse the change in the political context and the political ideology of the Chinese Communist Party which led to the inception of community corrections in China and the problems in its implementation.

Based on the discussion in Chapter Five, I will examine in Chapter Six the possibility of finding feasible solutions to those problems. Some possible methods can improve the effectiveness of the system to some extent. However, I argue that the system will never

function efficiently unless the state invests significantly more resources than it currently does into the community corrections system.

In Chapter Seven, I will conclude the thesis by integrating the issues discussed and making suggestions on directions for future studies. My major conclusion is that China's new *Community Corrections Law* will not make much improvement in implementation and is little more than a political trick or deception by the authorities to make it seem like positive changes are occurring when in fact none are. Sufficiently improving the actual implementation of community corrections in China is very challenging, and it is unlikely to occur unless the authorities are eager to make it work which in turn will require a significant increase in resources devoted to community corrections.

Chapter Two: Legal Framework of Community Corrections in China

This chapter provides a description of the legal framework for community corrections in China. It serves as the basis for further analysis of the problems and limitations of community corrections and the root causes of those problems, as well as an analysis of possible solutions.

I start with a brief historical investigation, introducing the timeline of the development of community corrections in China in the past fifteen years. I will then move to a summary of the laws and regulations defining community corrections in China and explain how they function together.

2.1 Inception and Development of Community Corrections in China

In July 2003, the Supreme People's Court, the Supreme People's Procuratorate,¹⁴ the Ministry of Public Security, and the Ministry of Justice of the People's Republic of China jointly issued a document entitled the *Notice on Commencing Experimental Programs of Community Corrections* (the *Notice*), to announce the commencement of community corrections in China. The *Notice* defines several important notions regarding community corrections, including the goal of implementation, the types of offenders that may receive community corrections, and the regions in which community corrections programs would be implemented. At the time of its commencement in 2003, community corrections were to be piloted only in six cities and provinces: Beijing, Jiangsu, Shandong, Shanghai,

¹⁴ The national-level state agency responsible for prosecution.

Tianjin, and Zhejiang.¹⁵ As for the reasons for commencing community corrections, the *Notice* states that “it is the trend of the development of criminal justice systems in the world. To meet the requirement of developing our country ... it is necessary to start implementation of community corrections and to reform the criminal justice policy”.¹⁶

Two subsequent announcements expanded the provinces that were to implement community corrections. In 2005, the *Notice on Expanding the Regions of Experimenting Community Corrections* expanded the areas of piloting community corrections to twelve other provinces and regions.¹⁷ Finally, in 2009, the *Suggestion on Experimenting Community Corrections Nationwide* announced that all provinces and regions in China would practice community corrections.¹⁸

¹⁵ As for the reason, the *Notice* states that these six regions’ local administrative justice agencies’ work is comparatively “good”, and it does not clarify the criteria of “good”. The language of the *Notice* seems somewhat unclear.

¹⁶ *Supra* note 3.

¹⁷ The *Notice on Expanding the Regions of Experimenting Community Corrections* (20 January 2005) online: Provincial Department of Justice of Guangdong Province, People’s Republic of China <<http://www.gdsf.gov.cn/info.do?infoId=96557>>. The twelve provinces and territories are: Hebei, Inner Mongolia, Heilongjiang, Anhui, Hubei, Hunan, Guangdong, Guangxi, Hainan, Sichuan, Guizhou, and Chongqing.

¹⁸ The *Suggestion on Expanding the Regions of Experimenting Community Corrections* (2 September 2009) online: <http://www.moj.gov.cn/government_public/content/2009-09/04/fggz_6399.html>. Although it appears to be an incremental expansion of the system, the development is actually rather rapid and in haste. Community corrections was a new form of criminal sanction for China, and the responsibility of implementing community corrections was assigned to administrative justice agencies, which had no power of law enforcement, no prior experience of implementing community corrections, nor appropriating staff to do so. Under such a situation, it would require a significant amount of time to conduct a systematic evaluation of the efficiency of the system before expanding the regions of implementation. However, it took merely six years for community corrections to be implemented in all regions of China, which have very diverse social and economic situation. Also, although the two *Notices* in 2005 and 2009 both state that “the effect of the experiment was significant and achieved expectation”, there is no evidence that scientific evaluation of the system was conducted, according to Shanhe Jiang et al, “Semiformal Crime Control and Semiformal Organizations in China: An Empirical Demonstration from Chinese Community Corrections” (2015) 10:4 *Asian Criminology* 287.

During the first years after the commencement, there were not any laws defining the mechanism of community corrections in China. After several years of application of community corrections, two substantive amendments elucidated some related details and marked the initiation of building the legal framework.¹⁹ In 2011 and 2012, the National People's Congress proclaimed the *Eighth Amendment of China's Criminal Law* and the *Decision of Amending China's Criminal Procedural Law*, added some provisions to accommodate the implementation of community corrections in China and stipulated the types of targeted offenders.

In 2012, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, and the Ministry of Justice issued another regulation, the *Measure of Implementing Community Corrections* (the *Measure*), which is the most comprehensive regulation so far regarding the substance, methods, and conditions of implementing community corrections.

In 2015, the 12th Standing Committee of the National People's Congress announced that the making of a new law regulating community corrections was included in its plan of legislation.²⁰ On December 1st, 2016, the Legislative Affairs Office of the State Council released a draft of the new law and accepted public opinions on the new law until December 31st, 2016.

¹⁹ “Shequ jiaozheng lifa yi lieru guowuyuan 2014 nian lifa gongzuo jihua [Making a Community Corrections Law is Included in the Plan of Legislation of 2014]” (05 November 2014), online: China News <<http://www.chinanews.com/fz/2014/11-05/6753695.shtml>>.

²⁰ *Shierjie quanguo renda changweihui lifa guihua* [The Legislative Plan of the 12th Standing Committee of the National People's Congress] (1 June 2015) online: The National People's Congress of the People's Republic of China <http://www.npc.gov.cn/npc/xinwen/2015-08/03/content_1942908.htm>

2.2 Legal Framework Regarding Community Corrections

In this section, I introduce how different laws and regulations work together to set up the current legal framework of community corrections.²¹

2.2.1 The Definition and Objective of Community Corrections

The *Notice* is the first document giving the clearest definition of community corrections in China. According to the *Notice*, community corrections is a form of non-incarceral criminal sanction that puts offenders in the community to correct their criminal mind and behaviour and to help them reintegrate into society within the sentenced or decided time limit.

The *Notice* also defines the three primary goals of community corrections in China. These goals are (1) supervising and controlling the offenders and ensuring the execution of punishment, (2) educating criminals and rehabilitating them into law-abiding citizens, and (3) helping offenders to solve problems related to legal issues, mental health, job seeking, and their daily lives, in order to help them adjust to healthy social lives.

Beyond the definition given by the *Notice*, it should be noted that community corrections in China is a general program for all types of offenders who serve their sentence outside prisons. In other words, the community corrections system in China is not divided into different programs targeting different types of offenders.

²¹ The draft of the new community corrections law is not included in this section, given that it is a draft that still under review. Also, the draft of the new law does not make a significant change in the legal framework.

2.2.2 State Agencies Involved

According to the *Measure*, four state agencies participate in the implementation of community corrections in China: People's Court, People's Procuratorate,²² the police department, and the administrative justice department. The People's Courts make decisions on sentencing certain offenders to community corrections. People's Procuratorate is responsible for supervising the application of community corrections at all stages. Police departments ensure the offenders are arrested in a timely manner if they break their community corrections sentence.²³ The administrative justice departments are responsible for the implementation of community corrections and will be introduced in detail below.

As the *Measure* states, the implementing agency of community corrections is the administrative justice department. In China, there is an administrative justice department for each level of government. The Ministry of Justice is the national administrative justice department which supervises community corrections at the national level. Local justice offices are the lowest, community-level administrative justice departments, and they are in charge of actual implementation of individual community corrections sentences. As the implementing agency of community corrections, administrative justice departments also have many other functions in addition to community corrections. These other functions include: (1) holding law-popularizing education initiatives; (2) providing dispute mediation for the local community; (3) supervising notary publics, arbitration

²² The prosecution in China.

²³ This is what is defined in the *Measure*. This definition is very unclear: the prosecution's responsibility for making sentencing suggestions is unmentioned; the way in which the prosecution supervises the implementation of community corrections is unexplained; the police's responsibility seems obscure since all offender should be arrested timely. This problem will be further discussed in chapter three.

bodies, lawyers, and other legal practitioners in its area of administration; (4) holding National Judicial Examinations;²⁴ (5) providing legal aid to local communities; (6) providing education and help to newly-released offenders; and (7) providing legal consultation for other branches of government.²⁵

2.2.3 Types of Targeted Offenders

In this section, I introduce the five categories of offenders who may receive community corrections. My description of the five categories is designed to make it easier for Canadian readers to understand the categories.²⁶

1. Surveillance²⁷ (Guanzhi) is one of the five principal penalties²⁸ in China. It is a non-incarceral penalty that enables offenders to remain in their own community while receiving surveillance and rehabilitation from the implementing agency.²⁹

The length of surveillance can be designated from three months to two years. In

²⁴ Similar to the Bar exam in Canada.

²⁵ From Beijing administrative department official website. <http://www.bjsf.gov.cn/publish/portal0/tab95/>

²⁶ Some scholars writing about this topic in English, including Shanhe Jiang and Enshen Li, give different translations of the five categories. The official translation for the terms also varies from one document to another. These difference may confuse readers, thus in this thesis, I try to make the terms easy to understand.

²⁷ Some official documents translate this term as Control, which is also close to the literal meaning of Guanzhi, see: *Criminal Law of the People's Republic of China*, 1997, online: <<http://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm>>. Some other government websites, and some scholars translate it as Public Surveillance. See: Shanhe Jiang et al., "Community Corrections in China: Development and Challenges" (2014) 94:1 *The Prison Journal* 75.); *Criminal Law of the People's Republic of China*, 1997, online: <http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384075.htm>.

²⁸ As *Criminal Law of China* defines, there are two types of penalties: principal penalties and supplementary penalties. Principal penalties include surveillance, criminal detention, fixed-term imprisonment, life imprisonment, and death penalty. Supplementary penalties include confiscation of property, fines, and deprivation of political rights. A sentence of a principal penalty excludes other principal penalties. Supplementary penalties can be imposed without a principal penalty, or as an addition to a principal penalty or other supplementary penalties.

²⁹ The form of this sentence is similar to probation in Canada.

this period, the offender can be prohibited from engaging in certain activities, including entering a particular place, or contacting certain individuals. Other conditions that must be followed by the offender are (1) obeying the laws; (2) not exercising the rights to freedom of speech, press, assembly, association, and demonstration without special permission; (3) reporting on one's own activity as required by the implementing agency; (4) obeying the implementing agency's rules regarding contacting other individuals; and (5) reporting to the implementing agency when leaving or moving from one's city of residence.

2. Deprivation of political rights is one of the three ancillary penalties in China. This penalty deprives offenders of the rights (1) to vote or stand for elections; (2) to exercise the rights to freedom of speech, press, assembly, association, and demonstration; (3) to assume positions in state agencies; and (4) to hold leadership positions in state-owned enterprises, state agencies, and organizations. All offenders sentenced to the death penalty and life imprisonment shall be deprived of political rights permanently. In other cases, this sentence is optional, with a length from one to five years. The offenders sentenced to deprivation of political rights will serve their sentence under community corrections outside the prison unless they are also sentenced to a term of imprisonment.

3. An offender sentenced to a suspended sentence should receive community corrections during the period of the suspended sentence.³⁰ The conditions to be obeyed are the same as the ones in a sentence of surveillance.
4. Offenders granted parole³¹ have to attend a community corrections program after their release from prison. The length of community corrections is the same as the unserved portion of the prison sentence. For life imprisonment, the length of the parole is ten years. The sentence is finished if the offender does not further break any laws and complies with parole conditions, which are the same as the ones for persons sentenced to surveillance.
5. Inmates on temporary absences (Jianwai zhixing³²) should receive community corrections, including inmates under medical parole, or pregnant or in lactation, or incapable of self-care. If the conditions for temporary absences have ended, the inmate should be returned to prison.

³⁰ Suspended sentence imposes a probation term before the execution of sentence. The sentence is dismissed at the end of probation term if the offender has not broken any law and comply with probation conditions.

³¹ In China, offenders are eligible for parole after serving at least half of the sentence in prison. Offenders sentenced to life imprisonment have to serve at least thirteen years in prison before being eligible for parole. Reoffenders and criminals sentenced to more than ten years of imprisonment for committing violent crimes are not eligible for parole.

³² Literally, Jianwai zhixing means temporarily serving a sentence outside prison. Some scholars, such as Enshen Li and Shanhe Jiang, translate this term as *a temporary execution of a sentence outside a confinement facility* or *serving a sentence outside prison*. Eligible inmates of Jianwai zhixing includes the ones under medical parole, being pregnant or in lactation, and the inmates incapable of self-care. Therefore, I think this term is similar to temporary absences in Canada, although temporary absence in Canada can also be used for “compassionate” reasons such as attending a family member’s funeral or visiting a dying family member.

2.2.4 The Application of Community Corrections

In this section, I will briefly describe the legal procedures for implementing community corrections in China.

2.2.4.1 Before the commence of community corrections

If necessary, the court, prosecution, police, or the prison authorities can request the county-level administrative justice department to investigate the potential influence on the community that the offender would have if he/she was allowed to reside in the community. The administrative justice department should accordingly investigate the offender's condition of residence, social relationships, the aftermath of the offence, the opinions of the victim and local resident committee, and the possible prohibitive conditions. After the investigation, a report should be prepared and delivered to the party that requested it.

When an offender receives a sentence involving community corrections or before a parolee leaves the confinement facility, the offender and the county-level administrative justice department should be notified of the deadline for reporting and the punishment for late reporting. Related documents, such as the verdict or parole approval, should be sent by the court or the prison to the county-level administrative office within three days. County-level prosecution should have a carbon copy.

The offender should serve the community corrections sentence in his or her place of residence.³³ Within ten days after the sentence or the leaving of prison, the offender should attend at the county-level administrative justice bureau. The administrative justice bureau should designate a justice office in which the offender should start his community corrections in three days.

The justice office should explain to the offender about the length of community corrections, the conditions to be obeyed, the punishment for breaking the conditions, his rights, and the members of the offender's corrections committee. The corrections committee should be specially designed for each offender, containing social workers, volunteers, members of the neighbourhood committee, guardians of the offender, or personnel from the school or workplace of the offender, while the leader of the committee should be an officer in the justice office.

2.2.4.2 During the Administration of Community Corrections

The justice office should formulate a corrections plan for each offender according to the type of sentence, the nature of his or her offence, the degree of remorse, personal characteristics, and the offender's living conditions. Psychological counselling and career counselling services should also be provided.

The justice office should collect information regarding the offender's living environment and working conditions and should regularly visit the offender's family, workplace, or

³³ The place of residence is not clearly defined. See the next chapter.

school, to ensure the offender is performing well. The offender's progress should be recorded and assessed.

Offenders under community corrections should participate in educational activities and community services. Offenders should regularly report to the designated justice office in regard to whether they are obeying the laws and receiving supervision, and their progress in participating in educational activities and community services. Circumstances that may affect the application of community corrections, including change of residence and contact with suspicious persons, should be reported in a timely manner.

2.2.4.3 Other Circumstances

If offenders escape from or fail to meet the conditions of their supervision, the justice office should report that fact to the county-level administrative justice bureau promptly.

If offenders have to leave their place of residence or enter a certain place prohibited by the conditions of the community corrections sentence, they should apply for approval from the justice office. Offenders cannot leave or change their place of residence without approval from the administrative justice department. If offenders have to change their place of residence, they should apply one month in advance to the local justice office. Then the justice office should ask for approval from the local justice office of the place that the offender intends to move to. The justice office can approve the application only when granted the approval from the new intended local justice. If the application is

approved, the relevant documents should be transferred to the new justice office, and the local prosecution should be provided with a copy.

Chapter Three: The Practice, Problems, and Limitations of Community Corrections in China

In Chapter Two, I described how the law in China defines the mechanism of community corrections on paper. However, since community corrections was adopted in 2003, many problems have emerged in practice. In this chapter, I give a comprehensive analysis of the practice of community corrections in China and its problems and limitations. Since some of the problems are interrelated, I will also analyse the interactivity between different factors preventing community corrections from functioning well in China. This analysis will help elucidate the actual practice of community corrections in China, and pave the way for the discussion of the root of the problems.

Even if Chinese media and academia are well-known for being controlled by a strict censorship and tend to present a better picture of things than the reality actually warrants, the problems described in news reports and journal articles about escaped offenders and the corruption of corrections officers are still very concerning.³⁴ As is reported, the escape of offenders from supervision has been a widespread phenomenon.³⁵ Many of them escape either by bribing corrections officers or merely disappear and are not traced

³⁴ Some news reports and articles are: Chengliang Han, “Xiang shequ jiaozheng renyuan suohui shouhui 10 wan sifaju fenju juzhang bei qisu [Head of Administrative Justice Bureau Sued for Requesting and Accepting 100 Thousands Bribes]”, *Southern Metropolis Daily* (20 February 2014) online: <http://epaper.oeeee.com/epaper/l/html/2014-02/20/content_2013705.htm>; Yanfeng Li, “Shengong suohui, zuifan tuoguan, shequ jiaozheng jing biancheng ‘fanghu guishan’ [Officers Requesting Bribe, Offenders at Large: Community Corrections is Setting Free ‘Tigers’]” *In Touch Today* (29 August 2016), online: <<http://view.news.qq.com/original/intouchtoday/n3631.html>>; Yang Wang, “Jianwai zhixing zenme zhixing chu sharenfan? [Why Has Temporary Absence Led to Murderers?]”, *In Touch Today* (12 December 2014), online: <<http://view.news.qq.com/original/intouchtoday/n3005.html>>.

³⁵ Lirong Wang, “Shequ jiaozheng yingxiang hechu qu: yi Chongqingshi shidian qingkuang wei qierudian [Where Should Community Corrections Proceed: the Experiment in Chongqing as An Example]” (2010) 26:1 Criminal L Rev 488 at 489.

until they are caught re-offending.³⁶ Unfortunately, there is no public access to the data on the number of escapes and the detailed methods of the escapes. Therefore, it is difficult to give an accurate answer to the question of how serious the problems are. The information I have is mostly from the media, which only reports the cases that were disclosed by the police and court, as well as some scholars who did empirical research in China. However, even if those case reports and studies are limited to the conditions in particular regions, it is at least possible that the similar conditions exist nationwide.

Some blame the structure of the community corrections system. As described in Chapter Two, the state agency being responsible for implementing community corrections is the justice office, the local-level administrative justice agency which has various functions in maintaining social order. Some scholars have noted two problems in this system. Firstly, the justice offices have too many functions; thus they are not able to tackle all the responsibilities concurrently;³⁷ secondly, the justice offices, as an administrative agency, do not have the power of law enforcement.³⁸ That is, although the justice offices are responsible for supervising the offenders, it can only trace their activities and locations, and when actions are needed, the justice offices have to rely on the police to apprehend offenders.

³⁶ Yang Wang, “Jianwai zhixing zenme zhixing chu sharenfan? [Why Has Temporary Absence Led to Murderers?]”, *In Touch Today* (12 December 2014), online: <<http://view.news.qq.com/original/intouchtoday/n3005.html>>.

³⁷ Shanhe Jiang et al, “Community Corrections in China: Development and Challenges” (2014) 94:1 *Prison J* 75 at 92.

³⁸ Chuan Hao, “Shequ jiaozheng zhidu shishi yu wanshan jizhi yanjiu: yi shequ jiaozheng zhuti wei shijiao [The Implementation of Community Corrections and Methods of Improvement: From the Perspective of the Implementing Agency]” (2010) 36:4 *J Southeastern U* 108 at 109.

However, from my point of view, these structural issues may not be the key problems.

Firstly, assuming there is an appropriate functional arrangement of the resources in justice offices, and the mechanism operates well, other functions of the administrative justice department should not impede the implementation of community corrections.

Secondly, although the lack of law-enforcement power may cause some delay in emergency response, it would be acceptable if there is a good contingency plan, and if both the administrative agency and the police react in a timely manner and cooperate well in dealing with offenders. In my view, the real problems are: (1) the lack of the agencies' ability to do community corrections effectively because of the lack of resources in administrative justice agencies, (2) corruption, and (3) at least five flaws in the community corrections legal framework. These problems will be discussed in some depth below.

3.1 Administrative Agencies' Lack of Resources and the Problems Caused

Implementing community corrections in China requires many kinds of resources: (1) manpower, especially well-trained staff with adequate knowledge in penology and social work to supervise and rehabilitate offenders;³⁹ (2) electronic monitoring devices; many regions in China still have no effective electronic monitoring devices;⁴⁰ and (3) funding, which is required for providing education to offenders, holding educational events for the public, supporting offenders' new lives, and paying the staff, and purchasing electronic monitors. Unfortunately, in most regions, the implementation of community corrections

³⁹ Yan Ma, Caifei Zhang & Xiaoliu Jin, "Guanyu shequ jiaozheng yongjing wenti de yanjiu [Utilising Police Force in Community Corrections]" (2017) 213:9 Justice of China 68 at 72.

⁴⁰ Yuhong Wu, "Dianzi jiankong zai woguo shequ jiaozheng guanli zhong de yunying yu youhua [Utilising and Improving Electronic Monitoring in Community Corrections]" (2013) 185:3 Youth Crimes 74 at 81.

is suffering from insufficient funding, even in economically developed regions where the government has a sound financial base. The absence of sufficient funding has been a major issue preventing community corrections from functioning well in China, since this problem not only has caused the absence of efficient implementation in many regions but also has engendered or aggravated many other problems. This section will analyse the impact of scarce resources from the aspects of workforce, devices, and funding.

3.1.1 Allocation and the Shortage of Funding

Unlike the funding for correctional facilities in China, which is allocated directly from the state budget, the funding for implementing community corrections is assigned by local administrative justice agencies from their own budget.⁴¹ Therefore, the amount of funding for community corrections can vary greatly from province to province. The financial condition of local governments can also significantly affect the availability of resources for community corrections, especially considering the huge regional disparities that exist in China.

However, even in the most developed regions, the availability of financial support for community corrections is still concerning. For example, in Beijing, one of the most economically developed regions, there are more than 4000 offenders under community corrections,⁴² and the budget for community corrections in 2017 was around 220,000

⁴¹ Changsheng Ma & Xinghong Tian, “Wanshan tizhi jizhi qianghua shequ jiaozheng jingfei baozhang [Ensure the Funding for Community Correction by Improving the Mechanism]” (2016) 216:6 Justice of China 4.

⁴² Chuanxi Xu, *Beijing fazhi fazhan baogao* [Legal Development in Beijing] (Beijing: Law Press of China, 2016).

Canadian dollars (55 dollars per offender per year),⁴³ which is significantly lower than the amount of required funding.⁴⁴ The lack of funding cannot be attributed to the financial situation of the administrative justice department, since the funding for community corrections is only a small portion of the whole funding. It is only 0.8 per cent of the whole budget of the administrative justice agency in Beijing, much less than the budget for its other functions, for example, 4 per cent for holding the National Judicial Examination exam; 4 per cent for law-popularizing education initiatives; 6 per cent for providing legal aid; 49 per cent for administrative duties.⁴⁵ Thus, the problem is that the government does not allocate more resources within its budget to implement community corrections.

Even if the funding is included in the budget, whether the implementing agency can acquire the funding is still a problem. As stated by the Vice Minister of Justice, Liu Zhenyu, in some provinces, especially the less economically developed ones, despite the fact that funding for community corrections is included in their budget, when it comes to implementation, the government usually fails to provide the promised allotted resources to community corrections due to other financial priorities.⁴⁶

⁴³ People's Government of Beijing, *Beijingshi sifaju 2017 nian caizheng yusuan xinxi* [2017 Budget of Beijing Administrative Justice Bureau] (3 August 2015) online: People's Government of Beijing <<http://caizheng.beijing.gov.cn/caizheng/2801/1246561/145921>>.

⁴⁴ Although Beijing's justice bureau never discloses that how amount of funding is enough to support community corrections in Beijing, some other provinces, including Jiangsu and Hubei, have declared that the amount of funding in their province should be no lower than 2000 RMB Yuan (387 Canadian dollars) per offender per year. Although the situation in different provinces may differ, it is no doubt that 55 dollars per offender per year are significantly lower than the required funding.

⁴⁵ People's Government of Beijing, *supra* note 42.

⁴⁶ Zhenyu Liu, "Chonggfen fahui shehui lilian zai shequ jiaozheng zhong de jiji zuoyong [Making use of Social Power to Improve the Implementation of Community Corrections]" (2017) 213:9 Justice of China 9 at 14.

3.1.2 The Lack of Staff and Training in Justice Offices

As described in Chapter Two, the departments responsible for directly implementing community corrections are local justice offices, which are the local branches of administrative justice department in counties and street communities. The administrative justice department in China has various kinds of functions other than implementing community corrections, including providing mediation, legal aid, and helping newly released offenders.

However, justice offices, which are the subdistrict-level administrative justice departments are not compartmentalized. In other words, justice offices are not divided into divisions that specialize each of their responsibilities. Instead, most of the justice offices have their employees working on the offices' multiple tasks concurrently, while only some of the justice offices have employees particularly focus on community corrections.⁴⁷ This is not surprising since local justice offices have a very limited workforce. In 2013, there were 40,552 justice offices nationwide which had 123,550 judicial officers in total.⁴⁸ Therefore, on average, each local justice office in China has 3.04 judicial officers. The number of judicial officers also varies from province to province. For example, in Beijing, there were 327 justice offices in 2015, and each had 3.43 judicial officers on average,⁴⁹ while each justice office in Hunan Province only has

⁴⁷ Weidong Chen, "Guanyu shequ jiaozheng lifa de sandian yijian [Three Suggestions on Making Community Corrections Law]" (2017) 213:9 Justice of China 23 at 23-24.

⁴⁸ Liyu Zhu & Juan Huang, "Lun sifa zhuliyuan de jueise [The Role of Judicial Officers]" (2016) 113:5 J Beijing Administrative College 1.

⁴⁹ Administrative Justice Bureau of Beijing, *2015 nian quannian tongji shuju ji fenxi* [Annual Statistic of 2015] (05 February 2016) online: Administrative Justice Bureau of Beijing <<http://www.bjsf.gov.cn/publish/portal0/tab83/info106966.htm>>.

2.07 judicial officers on average.⁵⁰ In Hunan Province, and probably elsewhere, cities have more officers than rural areas where there are usually one or two officers per justice office.⁵¹

Since there are many different tasks within the justice offices, it is very doubtful that the employees are capable of conducting all those tasks simultaneously, especially considering that implementing community corrections requires the practitioners to carefully analyse the condition of offenders on a case-by-case basis and to create appropriate restriction conditions, as well as correctional plans, for offenders. I suggest that the limited number of staff working on community corrections has contributed to the escape of offenders, not only by the lack of supervision but also by making it easy to bribe the only supervising officer.

The degree of professional capacity of the practitioners is also very concerning. In many regions, most of the staff do not have enough legal and penological training, which is necessary to ensure the punitive and rehabilitative objectives of the sentence are properly pursued.⁵² The problem of inadequate funding affects both the salary of practitioners and their training. Liu Zhenyu, the Vice Minister of Justice, admits that “in many regions, the salary of the practitioners is merely equal to, or even lower than, the local living wage. Therefore, the difficulty in hiring practitioners and having them stay in the position is

⁵⁰ Jun Feng, “Quanguo renda daibiao fulijuan: jiceng sifasuo jianshe jidai jiaqiang [Fu Lijuan, a member of the National People’s Congress, suggests that the local justice offices urgently need improvement]”, *Red Net* (07 March 2017), online: <<http://hn.rednet.cn>>.

⁵¹ Chen, *supra* note 47.

⁵² Ma, Zhang & Jin, *supra* note 39.

prominent”.⁵³ Due to low wages, hired practitioners usually do not have necessary educational background and work experience.⁵⁴

After practitioners are hired, the amount of training they receive is also concerning. Although state authorities have not released detailed information about the pre-job training of practitioners, Shanhe Jiang surveyed 225 community corrections officers in Hubei Province in 2015, and his study shows that 60.9 per cent of the officers had no prior work experience in the criminal justice system, and only 29.3 per cent of them state that their training prior to the commence of work was longer than four weeks, while 14.2 per cent of them state that they had no professional training about the implementation of community corrections.⁵⁵ Although the survey was only conducted in Hubei Province in 2015 and may not represent the situation nationwide, it very concerning that the practitioners have such extremely low levels of training. It is very likely that their knowledge of criminal justice is quite limited, as well as their ability of providing enough supervision and support to offenders.

Knowledge and sufficient training of community corrections staff is are essential in successful supervision and rehabilitation of offenders. As mentioned before, there are various kinds of offenders receiving community corrections, which requires practitioners to be able to carefully and correctly assess the condition of each offender and decide the correctional plans and goals that are most likely to work for that offender. For example,

⁵³ Liu, *supra* note 46.

⁵⁴ *Ibid.*

⁵⁵ Shanhe Jiang et al, “Semiformal Crime Control and Semiformal Organizations in China: An Empirical Demonstration from Chinese Community Corrections” (2015) 10:4 Asian Criminology 287 at 296.

the correctional plans and goals for violent-crime-offenders and minor offenders should be very different; the support needed by parolees and minor offenders sentenced to surveillance should also be different. Practitioners who have little training are likely incapable of completing these tasks effectively, and therefore the positive effect of community corrections are unlikely to occur.

3.1.3 The Use of Electronic Monitoring and Smart Phone Software

Electronic monitoring requires offenders under community corrections to wear electronic monitoring devices to monitor their compliance with the conditions of their community release, by reporting offenders' locations through a Global Positioning System (GPS) and reporting suspicious activities such as damage to the device.⁵⁶ The administrative justice agency of China started to make use of electronic monitoring in 2009 to improve the supervision of offenders.⁵⁷ This could have been a very good supplementing device for supervision on offenders, especially considering the lack of manpower in justice offices. However, it seems that the new devices are not functioning well. According to an empirical study in Hubei Province, when the GPS device is damaged and the implementing agency is responsible for its repair, the agency usually does not have funding to repair it.⁵⁸ Thus the interviewed offenders state that the electronic monitoring is simply not working.⁵⁹

⁵⁶ James D Wilson, *Policy brief on electronic monitoring: Review and recommendations* (Ottawa: St. Leonard's Society of Canada, 2014) at 2.

⁵⁷ Wu, *supra* note 40.

⁵⁸ Jiang et al, *supra* note 37.

⁵⁹ *Ibid.*

According to news reports and web articles released by official accounts of local governments, many regions have recently started to experiment with a new program that tracks the location of offenders using WeChat, a very popular⁶⁰ Chinese social media software on smartphones.⁶¹ WeChat has a GPS function called “sharing my location”, which allows users to share their real-time or non-real-time location with another user. According to the reports, community corrections officers now can regularly or randomly require offenders to send their locations with WeChat, or ask them to send photos of themselves that can indicate their locations, in order to track offenders’ whereabouts. To help offenders rehabilitate and reintegrate into society, judicial officers can set up group chats with offenders, can send them educational articles, and can require them to send feedback about their learning.⁶²

Although not acknowledged in the state news, the use of WeChat is probably a government cost-saving technique to avoid the expense of electronic monitoring devices and the routine education of offenders, since the software is free to download with any

⁶⁰ WeChat is now the most popular messaging application in China and had reached over 900 million monthly active users. See: Danielle Long, “WeChat Users Pass 900 million As App Becomes Integral Part of Chinese Lifestyle”, *The Drum* (15 November 2017), online: <<http://www.thedrum.com/news/2017/11/15/wechat-users-pass-900-million-app-becomes-integral-part-chinese-lifestyle>>.

⁶¹ See: “Weixin rang shequ jiaozheng lingjuli [WeChat Makes Community Corrections Zero-distance]”, *Phoenix New Media* (08 August 2018), online: <http://js.ifeng.com/a/20170808/5895746_0.shtml>; Government of Yinchuan, “Jinfengqu yinru ‘weixin +’ jizhi tisheng shequ jiaozheng gongzuo shixiao [The District of Jinfeng Introduces WeChat+ to Improve the Effect of Community Corrections]”, *Sina News* (30 November 2017), online: <<http://news.sina.com.cn/c/2017-11-30/doc-ifyphkhk9101473>>; Government of Tianjiaan District, “Huaibi sifasuo ‘weixinketang’ zhutui shequ jiaozheng gongzuo [Justice Office in Huaibin uses ‘WeChat Class’ to Improve Community Corrections]”, *Sina News* (19 October 2017), online: <http://k.sina.com.cn/article_6016491936_1669c61a0040001883>; Shaojun Wang, “Shandong zibo zichuanqu zhonglou sifasuo kaiqi shequ jiaozheng ‘weixinjianguan’ xinmoshi [Zhonglou Justice Office in Zibo, Shandong Province, is using A New Model of ‘WeChat Supervision’ in Community Corrections]”, *Shandong News* (03 August 2017), online: <<http://www.cnsdxinwen.com/html/difang/20170803/11057.html>>.

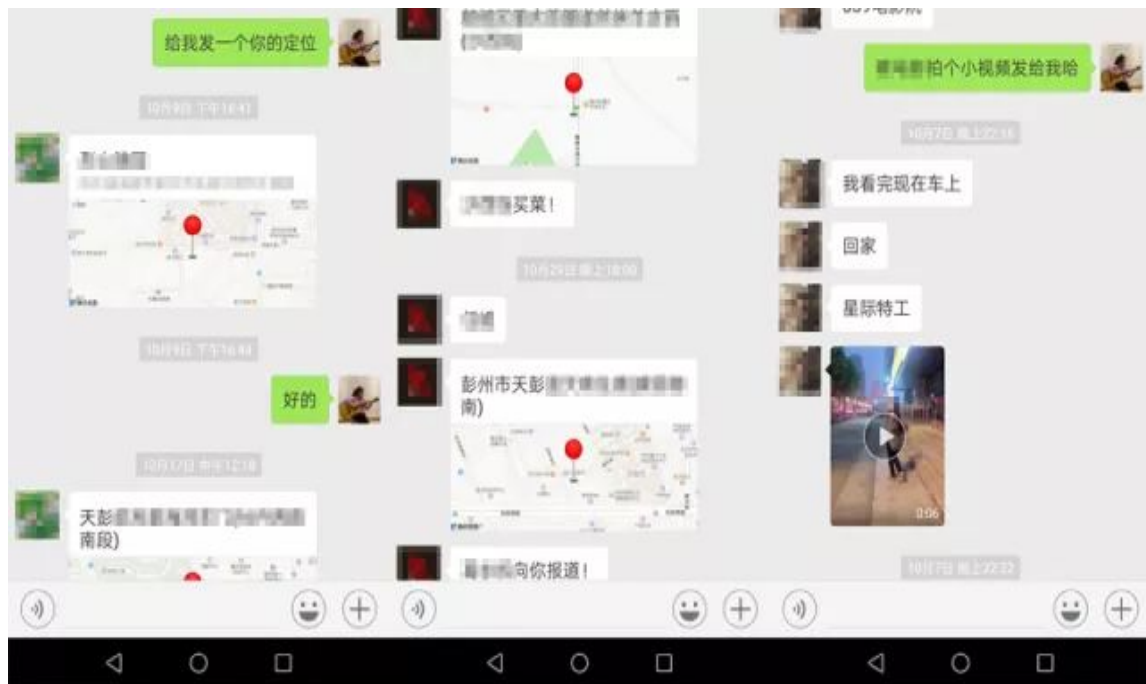
⁶² Government of Tianjiaan District, “Huaibi sifasuo ‘weixinketang’ zhutui shequ jiaozheng gongzuo [Justice Office in Huaibin uses ‘WeChat Class’ to Improve Community Corrections]”, *Sina News* (19 October 2017), online: <http://k.sina.com.cn/article_6016491936_1669c61a0040001883>.

smartphone. Although this new method of supervision appears to be feasible, I doubt that it will actually be effective in tracking offenders' location and their behaviour.

For example, an article released by the administrative justice department of Pengzhou City in Sichuan Province includes some smartphone screenshots illustrating how officers supervise and educate offenders using WeChat.⁶³

⁶³ Administrative Justice Bureau of Pengzhou City, "Pengzhou shequ jiaozheng kaiqi 'weixin +' moshi [Community Corrections in Pengzhou is Now in "WeChat+" Model]", *Net Ease News* (07 November 2017), online: < <http://mp.163.com/v2/article/detail/D2L8BFO50514LI6E>>.

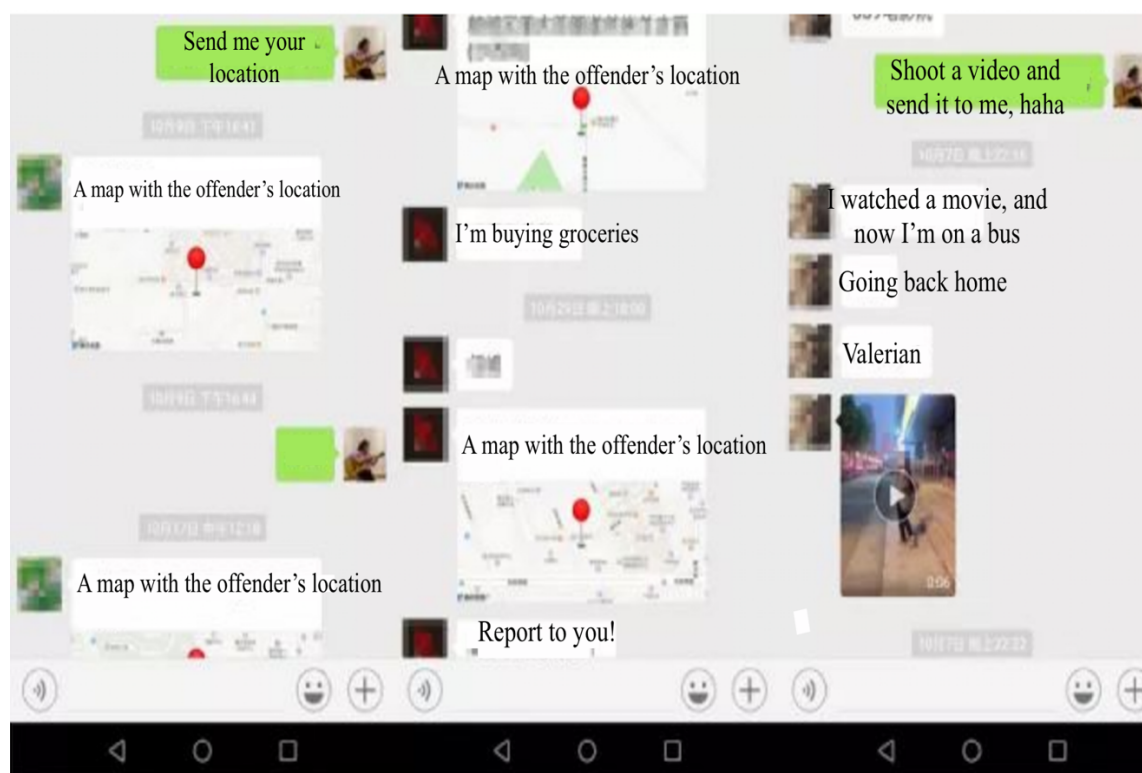
Figure 1: Screenshots illustrating how officers supervise offenders using WeChat in Pengzhou City



Source: *Community Corrections in Pengzhou is Now in “WeChat+” Model*⁶⁴

⁶⁴ *Ibid.*

Figure 2: Translation of screenshots provided by Pengzhou City



Source: *Community Corrections in Pengzhou is Now in “WeChat+” Model*⁶⁵

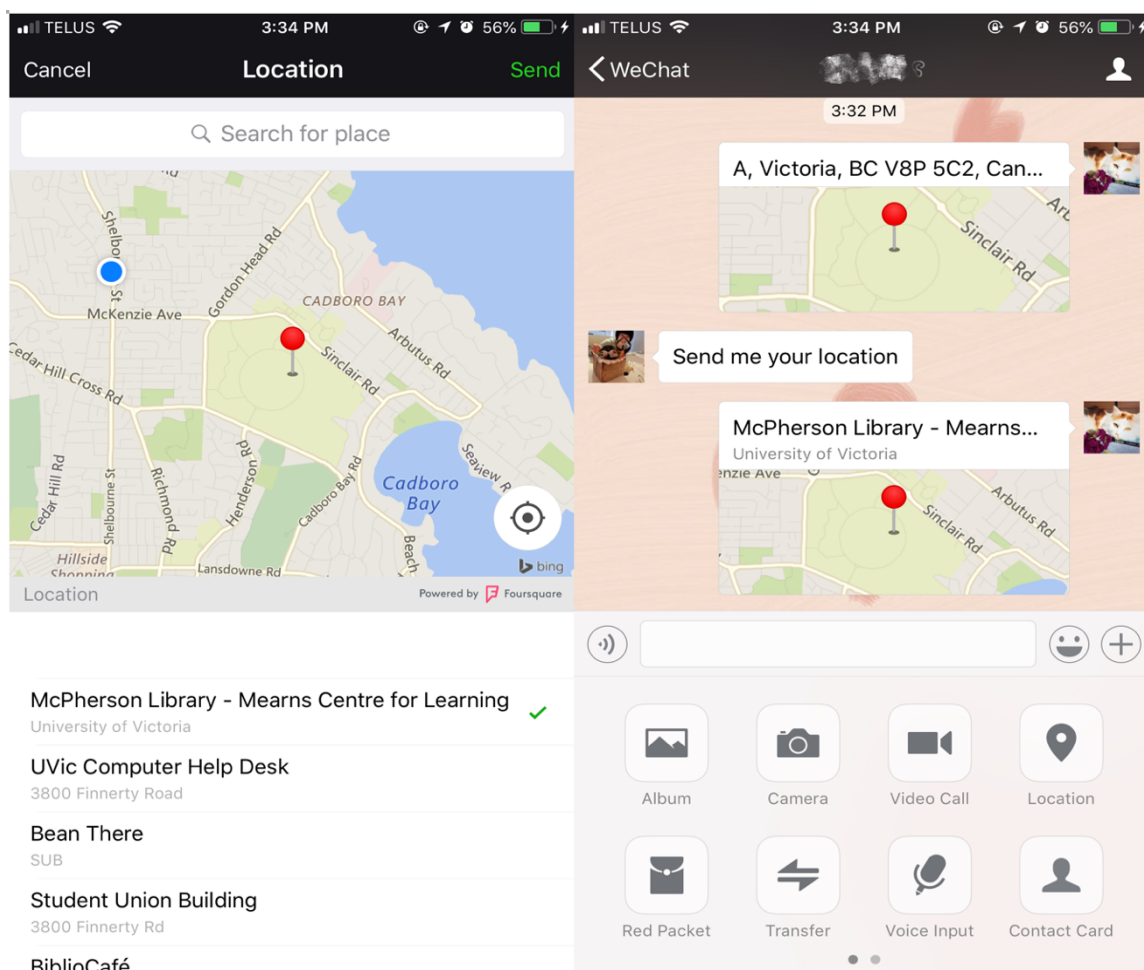
In the screenshots, the officer sends an offender a message saying “send me your location”, and the offender replies with a non-real-time location share. Then the officer replies “OK”. However, using the non-real-time location share, a user can easily send a location where he is not at.

The Figure 3 illustrates the method to fabricate one’s location using WeChat. In the screenshot on the left, the spot on the left shows the actual location of the device, and the pin on the right is a location selected by the user. The screenshot on the right is a

⁶⁵ *Ibid.*

simulation of an officer checking an offender's location on WeChat. The user sends the fabricated location selected with a pin rather than the actual location.

Figure 3: Demonstration of the way to fabricate locations using WeChat



Source: WeChat screenshots

Even when using real-time location share, offenders can also fabricate their location, since a WeChat account can be logged in on different devices. In other words, when being required to send the current location, offenders can fabricate their location by asking another person to log into their account and sending it. Although Pengzhou City's

article is the only one that specifically shows screenshots of the use of WeChat, the descriptions about the function of WeChat supervision are similar among most other articles. Thus, the effectiveness of WeChat in locating offenders actual location is highly doubtful. In sum, WeChat is merely a social media software rather than a professional GPS tracking device. Therefore, although this new method is very cost efficient, relying on WeChat to supervise offenders will not result in effective supervision.

3.2 Corruption

Corruption by all levels of government is not uncommon in China. When a number of factors are all present, bribery will be ever more frequent and can become a serious impediment to the efficient implementation of community corrections.

The concept of Guanxi, or “personal connections”, is deeply rooted in Chinese culture. Chinese people have traditionally relied heavily on personal connections in maintaining social order.⁶⁶ They also tend to resort to personal relationships when facing problems. Especially in rural areas or counties where residents are more closely connected, it is very common for people to bribe the police or government officials through relationships in order to get rid of troubles. In addition, since most justice offices only have one officer working on community corrections, offenders who have a connection with the officer can usually enjoy some privilege.

⁶⁶ Xiaotong Fei, Gary G Hamilton & Zheng Wang, *From the soil: the foundations of Chinese society* (Berkeley: University of California Press, 1992).

The lack of effective supervision and the manpower shortage in many justice offices facilitates practitioners to seek bribes. Under the current legal framework, the inadequate mechanism of supervision has made it easier for community corrections practitioners to avoid inspection, which will be further analysed in section 3.3. Moreover, since there is usually one officer solely responsible for community corrections in each justice office, the officer has little supervision from colleagues. There have been some reported cases that practitioners took advantages of their power and demanded bribes from offenders and parolees by intimidating them or by offering assistance with their escapes.⁶⁷ One of the corrupted practitioners had demanded 32 bribes before his corruption was noticed.⁶⁸ Although the exact number of these corruption cases is unknown to the public, considering the various factors encouraging corruption, it is quite possible that this phenomenon exists widely.

3.3 Flaws in Legal Framework

As many scholars have pointed out, even if the *Measure* is the most comprehensive regulation regarding community corrections to date, it still only gives vague definitions in regard to many important rules and practices for community corrections, such as the

⁶⁷ Xin Gao, “Zuigaojian tongbao 4 qi shequ fuxing renyuan tuoguan louguan you fanzui dianxing anli [The Supreme People’s Procuratorate Publishes 4 Type of Cases of Escaping and Re-offending of Offenders in Community Corrections]” (16 April 2015), online: The Supreme People’s Procuratorate of the People’s Republic of China <http://www.spp.gov.cn/spp/zdgz/201504/t20150416_95483.shtml>; “Fuzhou lianjiangxian yi sifasuo yuansuozhang shouhui 7540 yuan huoxing 9 geyue [The Former Head of Fuzhou Lianjiang Justice Office Are Sentenced to 9 Months of Imprisonment for Taking Bribes of 7459 Yuan in Total]”, *Fuzhou Evening News* (15 July 2017), online: <<http://www.mnw.cn/news/fz/944501.html>>.

⁶⁸ Prosecution of Danyang City, “Sifasuo shegong liangnian 32 ci xiang 24 ming shequ jiaozheng duixiang suohui huoxing [An Officer in Justice Office Demanded 32 Bribes from 24 Offenders in Two Years]”, *Prosecution Daily* (19 August 2016), online: <http://news.jcrb.com/jxsw/201608/t20160819_1642959.html>.

responsibility of different parties and the procedures for applications.⁶⁹ Ambiguous definitions in the legal framework create instability in the implementation of community corrections, and they have often caused chaos in practice or aggravated other problems.

3.3.1 The Supervision of the Prosecution

According to the *Measure*, the prosecution is one of the three state agencies involved in the implementation of community corrections. Their responsibility is supervision of every stage of implementation.⁷⁰ However, the *Measure* does not give clear directions on how the procedure of supervision should be carried out. Nonetheless, it is clear that the main duty of the prosecution is checking the completeness of the documents, for each offender on community corrections.⁷¹ If the prosecution notices any situation contravening the *Measure* or other laws, it can choose to give advice orally or issue a letter requesting the rectification of the problem, according to the *Measure*.⁷² After that, the prosecution should be notified when the issue is solved.

In practice, the effectiveness of this method of supervision is open to doubt. Since the prosecution collects its information only through examining carbon copies of the documents, which can be easily falsified, it is hard for them to actually track what is happening. Also, the prosecution is totally unable to track the situation if the documents are intentionally hidden and are not sent to them. Thus, there have been cases where a

⁶⁹ Chuansheng Ruan, “Woguo shequ jiaozheng zhidu: yuanqi, wenti yu wanshan [Chinese Community Corrections system: the origin, obstacles, and improvement]” (2012) 1 J Beijing Administrative College 98.

⁷⁰ Provision n.2.

⁷¹ Provision n. 5, 12, 14, 25, 26, 28, 30, and 31 are about different steps of implementing community corrections, and they all states that the relevant documents should be carbon copied to the prosecution.

⁷² Provision n.37.

corrupt judge and government officer deliberately hide the documents from the prosecution to avoid inspection.⁷³

3.3.2 Participants Other Than State Agencies

According to the *Measure*, social workers and volunteers are supposed to participate in community corrections under the direction of community corrections departments.⁷⁴

Relevant departments (a term which itself creates ambiguity, since relevant departments are not specified), members of neighbourhood committees, guardians of the offender, personnel from the school or workplace of the offender are also expected to participate in community corrections and help to form a corrections committee. However, the various functions of these parties is unclear, since the regulation does not define the responsibilities of these participants nor the mechanism of how a corrections committee should operate. Therefore, in practice, the participation of these parties is usually in name only.⁷⁵

3.3.3 The Restrictive Conditions and the Methods of Correction

Imposing strict, carefully chosen conditions over the activities of the offender is one of the essential parts of community corrections. Restrictive conditions not only help ensure the safety of the community where offenders reside but also serve as a punishment on offenders by restricting their freedom to some extent. Therefore, offenders should have certain conditions imposed on them and should be punished if they break the conditions.

⁷³ Wang, *supra* note 36.

⁷⁴ Provision n.3.

⁷⁵ Liu, *supra* note 47.

The conditions should be formulated according to the particular situation of each offender including the nature and severity of the offence, the attitude of remorse, the offender's living condition, *et cetera*. According to the *Measure*, the options of restricting conditions usually include restriction on entering specific areas (kindergartens, schools, pubs, *etc*), contacting certain individuals (victims, witnesses, accomplices, *etc*), and other similar restrictions.⁷⁶

The agency that decides on the conditions for community correction sentences in China is itself a problem. For example, in Canada, the conditions are decided by the parole boards (for parolees⁷⁷) or the court (for suspended sentences), at the time of making the decision of granting parole or the decision of sentence, to ensure that the restricting conditions fit the situation of release. However, in China, the probation conditions are decided by the local justice office, namely the government officers who are responsible for community corrections, at the time of the commencement of community corrections. In other words, after the offenders are released, they do not have any conditions to obey until they report to justice offices and until the officer decides the conditions. Since the staff in justice offices often have very little training in criminal justice, and there is usually a huge workload due to the lack of employees, it is doubtful whether the officers are capable of analysing and understanding the situation of each offender and formulating suitable probation conditions to guarantee the effective use of community corrections.

⁷⁶ Offenders who committed economic crimes can be restricted from establishing companies, exchanging stocks, applying for mortgages, or opening certain kinds of business.

⁷⁷ Corrections and Conditional Release Act, SC 1992, c 20, s 99(1).

3.3.4 The Cooperation Mechanism with Police Departments

The *Measure* stipulates various circumstances which require the cooperation of the police departments, including participating in corrections committees, assisting with educational events, apprehending escaped offenders, and arresting parolees when parole is breached. However, according to the Ma Yan, the vice chief of the Beijing Justice Bureau, the police department already has a huge workload and is usually not involved in the routine work of community corrections.⁷⁸ When an administrative justice agency requests the police to help locate an escaped offender, the police are also reluctant to do so since there is no arrest warrant issued, resulting in the offender being at large without supervision.⁷⁹

3.3.5 Unfair Sentencing on Migrant Workers

Internal migration is very extensive in China. Due to huge regional economic disparities, people from rural areas and less developed regions swarm into cities or developed provinces seeking jobs and better living conditions. Some evidence shows that compared with local residents, people without local household registrations (Hukou System) are much more likely to be sentenced to imprisonment rather than community corrections.⁸⁰ For example, in Jiangsu Province, migrants contribute to nearly 50 per cent of reported crimes, however, only 1.75 per cent of migrant offenders are sentenced to community corrections.⁸¹

⁷⁸ Ma, Zhang & Jin, *supra* note 39.

⁷⁹ Fengning Yang & Weiqing Gong, “Shequ jiaozheng shoujian zhixing de kunjing yu chulu [The Dilemma and Solution to the Difficulties in Reincarcerating Offenders under Community Corrections]” (2017) 334:7 *Fanzui yu gaizao yanjiu* 70 at 71.

⁸⁰ Shanhe Jiang et al, “Community Corrections in China: Development and Challenges” (2014) 94:1 *The Prison Journal* 75 at 93; Nan Wu, “Liudong renkou zuifan shiyong shequ jiaozheng de guanxiaquan wenti yanjiu: jiyu guangzhoushi de shizheng diaoyan [A Study on Application of Community Corrections to Migrant populations: An Empirical Study in Guangzhou]” (2013) 25 *Law and Society* 217.

⁸¹ *Ibid.*

This unfairness is a consequence of the flaws in the community corrections legal framework. Firstly, the community corrections sentence made by the court or prisons can be affected by the administrative agencies. According to the *Measure*, before the prosecution makes a sentencing suggestion, or a judge makes a sentence involving community corrections, or a prison authority makes a decision granting parole, they can request the local administrative justice agency to investigate the factors affecting the feasibility of community corrections, including the living conditions of the offender.⁸² Although the *Measure* defines this procedure as an optional one, in practice, this investigating procedure is usually chosen.⁸³ The administrative justice agency has the power to refuse to accept an offender into community corrections when it thinks it is proper. Thus agencies making the decision to impose community corrections tend to go through the procedure of requiring an investigation, which has actually become a procedure asking for the approval from the local implementing agencies. When the local administrative justice agency states that the option of community corrections is not proper for an offender, the decision-making agencies will usually imprison the offender to avoid the awkward situation that an execution of a sentence is refused by the implementing agency.

Secondly, the definition of the location where offenders should receive community corrections is unclear. The *Measure* requires offenders to receive community corrections

⁸² This is similar to a pre-sentence report in Canada

⁸³ Wenqi Ren, “Wanshan woguo shequ jiaozheng shenqian diaocha pinggu zhidu de sikao: jiyu wenben he xianshi de bijiao fenxi [Thoughts on Improving Pre-trial Investigations in Community Corrections: A Comparasion between Reality and Text]” (2017) 9 *Minzhu Yu Fazhi* 25.

in their place of residence but does not define where an offender's place of residence is.⁸⁴

Therefore, the definition is decided by the local government and the definition varies from region to region. If an offender is not considered a local resident according to the criteria decided by the local government, the local administrative agency can refuse to accept him to the local community corrections program. Since migrant workers can move frequently according to the availability of jobs, it is usually hard for them to meet the criteria of being a local resident. For example, to be defined as a local resident in Guangzhou, the capital city of Guangdong Province, one has to: (1) live locally for one year, uninterruptedly; (2) own a local real property, or have an immediate family member who owns a local real property and who agree to allow the offender to live in it; (3) have a local employment contract and have a local income.⁸⁵ It is obviously very hard for migrant workers to meet these criteria and to be accepted as local residents.

Another possible option is to send offenders back to the place where they hold local household registrations. Considering the huge economic gaps between regions and the limited job opportunities in the less developed areas, the offenders are likely to choose to leave their place of household registrations again. Since changing the location of receiving community corrections also requires the approval from the local justice office of the intended city, and this is hard to acquire, some offenders tend to escape from

⁸⁴ The Ministry of Justice published an explanation for the matter in 2012, however, the article is not a law and does not have legal power. Therefore the definition of local resident is still decided by the local government. See: The Ministry of Justice of People's Republic of China, *Shequ jiaozheng shishi banfa jiedu er* [Explanation on the Measure of Implementing Community Corrections] (17 May 2012), online: Provincial Department of Justice of Fujian Province <http://www.fjsf.gov.cn/sfyw/jzbj/sqjzzcfg/201205/t20120517_471355.htm>.

⁸⁵ Nan Wu, "Liudong renkou zuifan shiyong shequ jiaozheng de guanxiaquan wenti yanjiu: jiyu guangzhoushi de shizheng diaoyan [A Study on Application of Community Corrections to Mirant populations: An Empirical Study in Guangzhou]" (2013) 25 Law and Society 217.

supervision while others may try to bribe the officer. This phenomenon is probably very pervasive and may also have contributed to the high imprisonment rate of migrants.

To sum up, in the current legal framework, migrant workers are not admitted as local residents, and therefore local administrative agencies usually refuse to accept them for community corrections locally. Since the prosecution, the court, and prison authorities tend to respect the suggestions of local government to avoid conflicts, the offender's identity as a migrant worker can adversely affect the sentencing and parole decisions and can thereby cause injustice.

Chapter Four: The State's Solution: A New *Community Corrections Law*

Chinese scholars, as well as the state media, describe the new *Community Corrections Law* as a significant improvement in the development of community corrections in China. In a conference of the *China Law Society* held in December 2016, the scholars “all agreed that making a *Community Corrections Law* is very necessary”.⁸⁶ Chen Guangzhong, a professor at China University of Political Science and Law, argued that the 18th National Congress of the Communist Party decided that enacting an actual *Community Corrections Law*, to replace the former *Notice and Measure*, was a necessary step in order to improve the community corrections system in China.⁸⁷ In the *Legal Daily*, the official newspaper of the Chinese Communist Party's Central Commission for Political and Legal Affairs, a commentator describes the necessity of making a *Community Corrections Law* as “the only method to...standardise the implementation of community corrections, to efficiently allocate resources, to maintain public order, and to integrate China into the international community”.⁸⁸ The *People's Daily*, the official newspaper of the Chinese Communist Party, argues that “if there is no specialised law regulating community corrections, there would be no solution when we encounter problems that should be solved by a law”. The *People's Daily* also stated “The *Community Corrections*

⁸⁶ “Chenzexian, liurenwen, huangfang chuxi <shequ jiaozheng fa (zhengqiu yijian gao)> zhuanjia zixun hui [Chen Zexian, Liu Renwen, and Huang Fang attend the forum for the draft of *Community Corrections Law*]”, *Institution of Law News* (20 December 2016), online: <<http://www.iolaw.org.cn/showNews.aspx?id=55188>>.

⁸⁷ Hao Li & Changchun Cai, “Wanshan shequ jiaozheng zhidu tisheng shequ jiaozheng lifa zhiliang [Perfecting Community Corrections System By Improving the Quality of Legislation]”, *Legal Daily* (29 December 2016), online: <http://www.legaldaily.com.cn/index_article/content/2016-12/29/content_6937177.htm>.

⁸⁸ Yu Li, “Woguo shequ jiaozheng lifa de yiyi [The Meaning of Making a Law for Community Corrections]”, *Legal Daily* (03 March 2016), online: <http://www.legaldaily.com.cn/fxjy/content/2016-03/03/content_6509372.htm>.

Law will certainly promote the setting up and the healthy growth of the community corrections system”.⁸⁹

However, from my point of view, the new law, or at least the newest draft of that law, will not make much improvement with respect to community corrections in China. In this section, I will introduce the legislative background and progress to date in creating the new law, then analyse the draft of this new law, compare it with the previous legal framework, and explain why I think it will not work well in bringing about needed changes. I will also analyse the reasons why the state is making this new law and why it has been described as a necessity for community corrections in China.

4.1 The New Law’s Background and Progress

In 2014 the State Council announced that legislation for a Community Corrections Law had been listed in the work plan of the State Council and of the People’s Congress of the People's Republic of China.⁹⁰ However, actual work on the legislation had begun earlier. At a press conference in November 2014 announcing the development of a new law, the State Council explained that the Ministry of Justice had already prepared a draft of *Community Corrections Law* and sent it to State Council’s review process in February 2013.⁹¹ In March 2014, the Ministry of Justice set up a legislation coordinating team which consisted of members from twelve relevant departments.⁹²

⁸⁹ Zhang Jianwei, “Zhuanxiang lifa zhuli wanshan shequ jiaozheng zhidu [Improving Community Corrections Through Making A Specialised Law]”, *People's Daily* (18 January 2017).

⁹⁰ “Shequ jiaozheng lifa yi lieru guowuyuan 2014 nian lifa gongzuo jihua [Making a *Community Corrections Law* is Included in the 2014 Legislative Plan]”, *China News* (05 November 2014), online: <<http://www.chinanews.com/fz/2014/11-05/6753695.shtml>>.

⁹¹ *Ibid.*

⁹² *Ibid.*

The National People's Congress finished the first round of discussion on the draft of the new law in 2016 and has released a newer draft for suggestions and comments. The collection of public opinion was completed in December 2016. The next step in the making of this new law has not yet been announced.⁹³

4.2 The Content of the New *Community Corrections Law*

Generally, the content of the current draft law does not differ much from the *Measure* as described in Chapter Two. The draft of the *Community Corrections Law* covers four main aspects of the implementation of community corrections. It contains four chapters which define (1) the general principles, (2) the procedures of implementation, (3) the supervision of offenders, and (4) the education of offenders. The *Measure* already covers these four aspects. The State Council of the People's Republic of China explains the new features of the new law as follows: (1) it clearly defines the types of targeted offenders; (2) it defines the agency responsible for implementing community corrections and clarifies the responsibility of each agency; (3) it improves the feasibility of the process of implementation; (4) it defines the methods of supervision on offenders; and (5) it regulates the methods to educate offenders to help them rehabilitate.⁹⁴ In the following sections, I will discuss the changes the new law makes, and the reasons why I suggest the new law will not contribute much to the improvement of community corrections in China.

⁹³ Up until now in June 2018.

⁹⁴ Legislative Affairs Office of the State Council of the People's Republic of China, *Guanyu zhonghua renmin gongheguo shequ jiaozhengfa zhengqiu yijiangao de shuoming* [Explanation on the Draft of *Community Corrections Law* of People's Republic of China] (01 December 2016) online: Public Legal Services of China <<http://zqyj.chinalaw.gov.cn/draftExplain?DraftID=1552>>.

4.2.1 Targeted Offenders and State Agencies Involved

Although the draft of the new law does not make any change to the types of offenders who are eligible for community corrections, it does make a positive change by explicitly specifying these groups. The *Measure*, as the most comprehensive regulation on community corrections to date, does not specifically name the types of targeted offenders. Instead the categories of eligible offenders can only be found in the *Criminal Law of China*. In article 2 of the draft of the *Community Corrections Law*, it is clearly defined that the offenders who are sentenced to surveillance and suspended sentences, as well as the inmates granted parole or temporary absence, should receive community corrections.⁹⁵ Thus article 2 in the draft law is an appropriate improvement but not a very significant improvement since it does not expand the categories of offenders who are eligible for community corrections.

As for the state agencies participating in the implementation of community corrections, the draft of the new law does not make any change, and the administrative justice department of the government is still the responsible state agency for the implementation. However, the draft law does change the description of the responsibilities of agencies, from the confusing one in the *Measure* to a more general one: the court, the prosecution, the public security agency, and other relevant departments are instructed to cooperate well and fulfil their responsibilities.⁹⁶

⁹⁵ Provision 2 of the draft *Community Corrections Law*.

⁹⁶ Provision 4 of the draft *Community Corrections Law*.

4.2.2 Clarifying The Process of Implementation

According to the explanation given by State Council, the new draft improves the process of implementing community corrections in various aspects: (1) clarifying that the location of implementation should be the place of residence of the offender; (2) clarifying the duty of judicial officers when commencing the community corrections; (3) clarifying the process of cancelling parole and re-imprisoning of offenders; and (4) stipulating the process for the completion of community corrections.⁹⁷ However, compared with the *Measure*, the new law does not make any real substantive change to any stage of the implementation and only makes slight modifications in its wording.

One of the notable changes is that the draft of the new law has a provision that explicitly states that offenders should receive community corrections in their place of residence. This change is probably because of the problem of confusion and uncertainty in deciding the location for implementation of the community corrections order. However, reaffirming the principle without any further explanation does not seem to ameliorate the problem in practice. According to the new law, the decision-making agency can still request that the implementing agency investigate the feasibility of the offender serving a community corrections sentence in his or her community. For migrant workers and those offenders who are living in a place other than their original place of residence, the new law will not help them qualify for community corrections. Therefore, the new law obviously will not help solve the problem of deciding the location of implementation.

⁹⁷ Legislative Affairs Office of the State Council of the People's Republic of China, *supra* note 94.

Another notable change is that the new law stipulates that when it is necessary to re-imprison offenders, the public security agency is responsible for taking the offender into custody with the assistance of the administrative justice agency. This change can be contrasted with the *Measure* which states that the administrative justice agency should take the offender into custody with assistance from the public security agency.⁹⁸ This change fixes a defect in the *Measure*, since the administrative justice agency in China does not have the power of law-enforcement, so it is the police department that must take the action. This modification is nevertheless merely a correction of the wrong articulation in the previous regulation and will have little impact in practice.

4.2.3 Supervision of Offenders

Chapter Four of the draft stipulates that (i) the implementing agency can check the status or progress of correction by contacting offenders, visiting offenders, or asking their neighbours about the offenders' conditions; (ii) the administrative justice agency should form a corrections committee to assist the supervision of offenders; and (iii) offenders should obey the laws, related regulations, and the restrictive conditions of their orders.⁹⁹ Compared with the relevant content in the *Measure*, the new law makes no substantial change and does not seem intended to improve the supervision of offenders. As is described in Chapter Three of this thesis, many justice offices are experiencing a severe problem of not having enough employees to complete all their duties. Thus at current workforce levels, it is doubtful whether the justice offices will have the time and personnel to undertake the spot checks which are the premise of the effectiveness of the

⁹⁸ Provision 27 in the *Measure*.

⁹⁹ Legislative Affairs Office of the State Council of the People's Republic of China, *supra* note 94.

new law. In addition, the draft law still does not mention the functioning process for the corrections committee, as well as the supervising mechanism for the prosecution.

4.2.4 Education and Help for Offenders

The most noteworthy change in the new legal framework is the new chapter regarding the methods to educate and help offenders in order to rehabilitate them. The *Measure* has three provisions related to this issue.¹⁰⁰ They are very short and somewhat abstract. In the draft of the *Community Corrections Law*, the number increases to ten.

The State Council of the People's Republic of China states that the purpose of this chapter is to help offenders to reintegrate into society as soon as possible and to reduce their re-offending. The State Council summarises the content of this chapter as: (1) stipulating that local government above the county-level has the responsibility to provide necessary support for the education and rehabilitative assistance of offenders and to motivate the public to participate in the assistance of offenders; (2) identifying the functions of different parties in the education and assistance for offenders; and (3) stating that the implementing agency can direct offenders to participate in community events to help them rehabilitate.¹⁰¹

Helping offenders rehabilitate and reintegrate into society should be a primary goal of community corrections, and adding provisions to stipulate the goal of rehabilitation is a positive change, since it shows that the authorities recognize the need to improve

¹⁰⁰ Provision 15, 16, 17 in the *Measure*.

¹⁰¹ Legislative Affairs Office of the State Council of the People's Republic of China, *supra* note 94.

rehabilitation. However, I suggest that the improvement that the new provisions will make is limited. Firstly, although some of the new provisions mention different forms of support for offenders, most of them merely suggest that the agencies “can” provide these forms of support, rather than requiring them to do so.¹⁰² Therefore, it is questionable whether these methods will be effectively carried out. Secondly, even if the provisions set up the requirements, the successful rehabilitation of offenders requires a significant amount of resources in various areas. Unless the new support methods are accompanied by a significant increase in rehabilitative resources, increasing the number of provisions and underlining the norm of rehabilitation in the new law will not make sufficient positive change. To actually increase the effectiveness of rehabilitation, detailed procedures and new resources to implement the new provisions are required.

4.3 The Real Purpose Behind the Making of the New Law

Comparing the draft of the *Community Corrections Law* of China with the *Measure*, which is the most comprehensive regulation on community corrections in China to date, it is not difficult to notice that the most recent draft of the new law does not make any really significant improvements. Most of the improvements are related to the phrasing of the new law, while the few substantive changes seem to have limited impact on the actual application. The flaws in the *Measure* remain unsolved: defects in the mechanism for implementing community corrections still exist, and important definitions remain unclear. Although the new law is still in a draft stage and will probably go through other

¹⁰² Provision n. 28, 30, 32, and 34 of the draft *Community Corrections Law*.

changes before finally being put into effect, the improvement the new law will make is very limited unless it is significantly rewritten.

If the new law is likely to make little difference to the previous regulation, what is the purpose of making a *Community Corrections Law*, and why do the media and most scholars consider the new law essential to community corrections in China? I argue that the main purpose of making a *Community Corrections Law* is to demonstrate the state's interest and effort in improving the community corrections system and thereby lead people to believe that the system is being significantly improved, even though it probably is not.

Making a *Community Corrections Law* without actually changing the system is the most convenient approach to the Chinese Communist Party's goal. In China, laws are divided into different categories. Only the legislation passed by the National People's Congress can be called a "law". The legislative provisions made by the State Council can only be called "regulations" or "measures". In the hierarchy of the Chinese legal system, "laws" are superior to "measures". Although in practice, the effects of "laws" and "measures" are often almost the same, when a "measure" conflicts with a "law", it is the "law" that must be followed.¹⁰³ Therefore, making a *Community Corrections Law* to replace the *Measure of Implementing Community Corrections* is actually promoting the legal framework of community corrections to the same level as *Criminal Law* and the *Criminal*

¹⁰³ The State Council Information Office of the People's Republic of China, *Zhongguo tese shehui zhuyi falv tixi* [Socialist Legal System with Chinese Characteristics] (27 October 2011) online: <<http://www.scio.gov.cn/zfbps/ndhf/2011/Document/1034943/1034943.htm>>.

Procedural Law of China. However, currently, the two laws regarding community corrections in China (the *Criminal Law of China* and the *Criminal Procedural Law of China*) and the *Measure of Implementing Community Corrections* are not in conflict with each other, and thus the promotion of community corrections from a measure to a law will not make any substantial difference except to ostensibly increase the importance of community corrections.

Despite the fact that making a *Community Corrections Law* will not make much difference to its practice, making a new law can be advantageous to the state propaganda. As mentioned at the beginning of this section, the state media and Chinese scholars widely support the making of this new law, even though their reasons for supporting the law-making seem to be empty and rhetorical. Considering the Chinese Communist Party's control of public opinion, it is reasonable to consider whether the media and scholars may have been required to publicly support the making of the *Community Corrections Law*. By fabricating public opinion, the Party can persuade the people that the community corrections system is functioning well and can gain public support without investing many resources into the implementation of community corrections. This point will be further analysed in the next chapter.

Chapter Five: The Reasons for Establishing Community Corrections in China: The Root of the Problems

In the previous chapter, I analysed the new draft of the *Community Corrections Law* of China and concluded that the new law, at least its latest draft, will make little positive change to the implementation of community corrections in China. I suggested that the new law is merely a political ruse by the authorities to make it seem like positive changes are occurring when in fact none are. In other words, the authorities want to convince the people that they are going to fix the problems with community corrections. But in fact they are not going to fix those problems because they are not prepared to make the resource investments that are needed for actual improvement. This situation invites other questions. Why is the state unwilling to actively solve the problems in practice? Why did the authorities choose to commence community corrections if they did not plan to invest resources and help it function well?

To answer these questions, in this chapter, I will further analyse the factors behind the adoption of community corrections and the making of the new law. This analysis will elucidate the reasons why the Chinese authorities adopted community corrections 15 years ago despite possible obstacles in its implementation and what their expectations about community corrections were at that time. These factors are essential to understanding the reasons why the authorities are manipulating the system of community corrections for political purposes and also why community corrections in China is not working well and possibly will not work in the future.

5.1 Community Corrections as A Cost-effective Method of Criminal Justice

The first reason why the authorities likely adopted community corrections was its cost-effectiveness. Cost-effectiveness has been considered an important factor in reforming sentencing and corrections policies in various countries, including the United Kingdom and the United States.¹⁰⁴ Community corrections have proven to be an cost-effective method of alleviating the problem of overcrowding in prisons by allowing low-risk offenders to be supervised in the community.¹⁰⁵

Therefore, adopting community corrections has helped China solve the problem of overcrowded prisons without investing more resources in building and maintaining new prisons. As scholars have suggested, since around 2000, China has been facing a serious problem of overcrowded prisons.¹⁰⁶ According to a study sponsored by the Bureau of Justice,¹⁰⁷ from 1983 to 2003, the number of inmates in China more than doubled from 600,000 to 1,400,000.¹⁰⁸ A scholar, Spencer Li, suggested that the number of prisoners in Chinese prisons in 2000 was already 16% over the capacity of the prisons.¹⁰⁹ However, from 2004 to 2011, the number of inmates further increased by 240,000 inmates to a total of 1,640,000 inmates.¹¹⁰ Considering the huge number of inmates and the huge

¹⁰⁴ Joan Petersilia & Kevin R. Retiz, "Sentencing and Corrections: Overlapping and Inseparable Subjects" in Joan Petersilia & Kevin R. Retiz eds, *The Oxford Handbooks in Criminology and Criminal Justice* (Oxford: Oxford University Press, 2011).

¹⁰⁵ Charles J Corley, "Community Corrections as an Alternative to Imprisonment" in *Encyclopaedia of Community Corrections*, by Shannon M. Barton-Bellessa (Thousand Oaks: SAGE Publications, 2016).

¹⁰⁶ Shanhe Jiang et al, "Community Corrections in China: Development and Challenges" (2014) 94:1 *The Prison Journal* 75 at 79; Spencer D Li, "Toward a Cost-effective Correctional System: New Developments in Community-based Corrections in China" (2014) 9:1 *Victims & Offenders* 120 at 121.

¹⁰⁷ Tang, *supra* note 15.

¹⁰⁸ Guoen Xin, *Ershiyi shiji zhongguo jianyu fazhan zhanlve yanjiu* [The Strategy of Prison Development in the 21st Century China] (Beijing: Law Press of China, 2004).

¹⁰⁹ Spencer D Li, "Toward a Cost-effective Correctional System: New Developments in Community-based Corrections in China" (2014) 9:1 *Victims & Offenders* 120 at 121.

¹¹⁰ Xin, *supra* note 108.

expenditure to increase the number of prisons, it is very understandable that the Chinese authorities adopted community corrections as a solution.

The increased number of prisoners clearly made the budget of the prison system a substantial financial burden. In 2002, China's prison expenditures were nearly 20 billion Chinese Yuan, which was approximately 0.7% of national expenditure.¹¹¹ Since the cost of implementing community corrections is significantly lower than incarceration, China knew it could save a lot of money by setting up a community corrections system. For example, according to the Bureau of Justice Statistics of the United States of America, in 2001, incarceration of an inmate in the United States costs an average of \$22,650 US per year, while the cost of community corrections ranged from \$1,250 per year for probationers to \$2,750 per year for parolees.¹¹² In Canada, in 2015, the cost of incarcerating an offender was \$116,000 CAN per year (without taking into account the cost of building prisons) while supervising a person in the community was \$31,000 CAN per year.¹¹³ Although China has not released the exact number of inmates and the cost for each inmate in China, a government official stated that the expense of implementing community corrections on each offender is only 10% of incarcerating an inmate.¹¹⁴

¹¹¹ Li, *supra* note 109.

¹¹² Charles J Corley, "Community Corrections and Sanctions" in *Encyclopaedia of Community Corrections*, by Shannon M. Barton-Bellessa (Thousand Oaks: SAGE Publications, 2016).

¹¹³ Corrections Services Canada, *CSC Statistics: Key facts and figures* (June 2017) online: Correctional Service Canada <<http://www.csc-scc.gc.ca/publications/005007-3024-eng.shtml>>.

¹¹⁴ Yunfang Li & Dandi Fu, "Renjun chengben zhiyou jianjinxing shifen zhiyi, meng jianzhu yaoqiu kuoda shequ jiaozheng fugaimian [Meng Jianzhu requests to expand the coverage of community corrections, which cost is only 10% of the one of incarceration]", *The Paper* (4 May 2015), online: <http://www.thepaper.cn/newsDetail_forward_1327800>.

Therefore, the significantly lower costs of community corrections is probably one of the crucial reasons why it was adopted by the Chinese authorities. Since community corrections was expected to be a very large and fast cost-saving solution to the problem of the huge expense of imprisonment, this expectation might have led the authorities to unreasonably estimate and underfund the community corrections system. This helps explain why community corrections has continually experienced a problem of scarce resources.¹¹⁵

5.2 Community Corrections as Part of Stability Maintenance

In addition to the pragmatic cost-saving function of community corrections, politics also played an important role in the introduction of community corrections, as political ideology has always been an essential factor in analysing law and policies in China.¹¹⁶ In this section, I will first discuss the Chinese Community Party's norm of social stability, which has been its primary political imperative in past decades. Then, I will give an analysis of how the Party manipulates criminal justice policy to pursue social stability and how this imperative led to the commencement of community corrections.

¹¹⁵ Ekstedt and Griffiths cite the research of Greenberg to explain that sufficiently supporting the offenders under community corrections with designed services requires a considerable amount of cost and might not be cost-effective enough, which is likely to be the reason why China underfunds community corrections. See: John W Ekstedt & Curt T Griffiths, "Community-Based Corrections" in *Corrections in Canada*, (New York: Elsevier, 1988) 255; David F Greenberg, "Problems in Community Corrections" (1975) 10:1 *Issues in Criminology* 1.

¹¹⁶ Suan Trevaskes, "The shifting sands of punishment in China in the era of 'harmonious society'" (2010) 32:3 *Law & Policy* 332.

5.2.1 Maintaining Stability as the Party's Imperative

To help readers understand the Chinese Communist Party's intention of manipulating community corrections for political purposes, it will be helpful to give a background introduction to the Party's eagerness in pursuing and maintaining stability, which has been the Party's highest priority in governance in the past several decades and even overrides routine legal practices in China.¹¹⁷

Starting in 1978, Deng Xiaoping's economic reform brought modernization and economic liberalization to China, as well as its classic side effects including unemployment, income inequality, regional disparity, and rising crime rates.¹¹⁸ The social conflicts that arose not only impeded the progress of economic growth but also made people restless for meaningful solutions which in turn caused some people to even question the reign of the Communist Party.¹¹⁹ Therefore, the soaring economic inequality and profound social change created a challenge for the Party to maintain the state's stability and its own position as the only ruling party. Social stability, in turn, was considered by the Party as the necessary premise for guaranteeing sustainable economic growth.¹²⁰ Therefore, the Party was in urgent need of a solution to the sharp increase in social problems which constituted a threat to maintaining its rule. In the early 1980s, the

¹¹⁷ Susan Trevaskes et al., "Stability and the law" in Susan Trevaskes et al., eds, *The Politics of Law and Stability in China*, (Cheltenham: Edward Elgar Publishing, 2014) 1.

¹¹⁷ I introduce the stability imperative of China with an intention to provide background knowledge to the readers, therefore, the introduction is rather short and not complete. For further information on this topic, please refer to: Sarah Biddulph, *The Stability Imperative: Human Rights and Law in China* (Vancouver: UBC Press, 2015); Susan Trevaskes et al., *The Politics of Law and Stability in China*, (Cheltenham: Edward Elgar Publishing, 2014). *Etc.*

¹¹⁸ Børge Bakken & Ka-Ho Mok, "Social and Political Development in Post-Reform China" (2001) 60:1 *The Journal of Asian Studies* 179.

¹¹⁹ Murray Scot Tanner, "Campaign-style policing in China and its critics" in Børge Bakken, ed., *Crime, punishment, and policing in China* (Lanham : Rowman & Littlefield, 2005) 171.

¹²⁰ Susan Trevaskes et al, *supra* note 117.

strike-hard anti-crime campaign was initiated as a solution to many of these problems. In the later 1980s, as the tension persisted, Deng repeatedly addressed the importance of stability with a statement that began to have great influence on every aspect of China's politics. That state goal was to preserve stability above all other concerns.¹²¹

Also in June 1989, the Tiananmen Square protest further pressured the Party to increase their control over judicial and governmental bodies and to maintain social stability.¹²² Later in 1989, the Party's Central Committee issued a notice that defined stability as "comprehensive governance of public order" and designated the Central Political and Legal Affairs Commission as the agency responsible for maintaining stability.¹²³ In the realm of policing, the Committee emphasised that the political-legal bodies were to increase crime control and apply more intense strike-hard campaigns to contain dissent and maintain public order.¹²⁴ The strike-hard campaigns are further analysed in the section 5.2.2 below.

When the anti-crime campaigns were eventually proven to have failed in achieving the Party's goal of maintaining stability, the Party made a shift in its criminal justice policy in the early 2000s. Although a more lenient criminal justice policy may seem to be the correct shift away from the strike-hard campaign, the core goal remained the same:

¹²¹ *Ibid.* See also: "Wending yadao yiqie [Preserve stability above all other concerns]", *News of the Communist Party of China* (24 December 1990) online: <<http://cpc.people.com.cn/GB/64162/64170/4467121.html>>.

¹²² Trevaskes et al, *supra* note 117.

¹²³ Flora Sapio, "The invisible hand of government: the conceptual origins of social management innovation" in Susan Trevaskes et al., eds, *The Politics of Law and Stability in China*, (Cheltenham: Edward Elgar Publishing, 2014) 244.

¹²⁴ *Ibid.*

maintaining social stability using criminal sanctions. Section 5.2.3 below gives a more detailed explanation of this shift in policy.

In the new millennium, economic growth has continued to accelerate while social conflict has also created more social and political tension. The Party recognized the need for political reform but was unwilling and perhaps incapable of carrying out thorough reform without endangering the authoritarian leadership of the Party.¹²⁵ By contrast, stability maintenance still seemed a cost-saving way of guaranteeing economic sustainability at least in the short-run.¹²⁶ Therefore when the Hu-Wen rule started, the leaders rationalised stability maintenance as “an imperative of the general will”¹²⁷ using a new political ideology, referred to as the Harmonious Society, which was later declared to be the leading ideology of the Party. This ideology and its connection with community corrections will be analysed in Section 5.2.4 below.

5.2.2 The Strike-hard Campaign: from Start to End

Although strike-hard campaigns started decades before the commencement of community corrections and appear to be the opposite of community corrections, it is the campaign’s failure that contributed to the change in the policy of punishment in China and pushed the Party to the commencement of community corrections as a tool for maintaining stability.

¹²⁵ Susan Trevaskes et al, "Framing the stability imperative" in Susan Trevaskes et al., eds, *The Politics of Law and Stability in China*, (Cheltenham: Edward Elgar Publishing, 2014) 268.

¹²⁶ *Ibid.*

¹²⁷ Sapio, *supra* note 123.

Strike-hard campaigns were “concentrated, fixed-term, special targeting of particular categories of crime” and were marked by a huge number of arrests, swift sentencing without proper procedural protections, and severe punishment.¹²⁸ When facing a serious “crime wave”¹²⁹ and social turbulence in the 1980s, the authorities employed this technique as a response to solve the social conflict and maintain stability. In the 1980s and 1990s, different scales of strike-hard campaigns relentlessly proceeded every year and occupied most of the workload of police and judicial bodies.¹³⁰

Campaign-style policing is a manifestation of the Party’s traditional political technique in the area of criminal justice.¹³¹ In the Mao era, the overall social regulation, including law enforcement, was significantly shaped by Mao's binary of "good" and "bad", and the technique of manipulating the “mass campaign” movement.¹³² Within Mao's revolutionary framework, he divided citizens into "people" and "enemies". The citizens who harm the Socialist society or disobey the rule of the Communist Party or Mao himself were defined as "enemies", and other revolutionary law-abiding "people" should unite together to eliminate the "enemies".¹³³ The political movement to eliminate the “enemies” was carried out through mass campaigning. Nation-wide campaigns helped convey the policy goal from the centre of state power to every corner of the country and motivate every official, as well as the good “people”, to participate in the movement.¹³⁴

¹²⁸ Susan Trevaskes, *Policing serious crime in China : from 'strike hard' to 'kill fewer* (London: Routledge, 2010).

¹²⁹ Deng Xiaoping's economic reform brought liberalisation to China, as well as unemployment, social inequality, and rising crime rates.

¹³⁰ Trevaskes, *supra* note 128.

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ *Ibid.*

Started in Mao's era, the technique of mass-campaigning long persisted into Deng Xiaoping's era when he restated the importance of campaigning and started the anti-crime strike-hard campaigns in order to maintain social stability.¹³⁵

The usage of campaigns in policing was also pragmatic, since it helped the authorities to respond quickly to crime waves and maintain social stability when there was a soaring crime rate and social turbulence.¹³⁶ Firstly, during the strike hard campaign, the police, the prosecution, and the courts were required to cooperate to punish offenders swiftly and harshly.¹³⁷ Some necessary procedural protections were dismissed, thus reducing the time required to arrest and sentence offenders and thereby enabling the government bodies to process cases more quickly and save manpower.¹³⁸ Secondly, campaigns helped mobilise the masses to participate in the war against serious crimes.¹³⁹

Although the strike-hard campaign was never lacking in supporters, it received more and more criticism as it went on. Especially in the late 1990s, both the criticism from the police officers and academia became extensive.¹⁴⁰ Firstly, scholars suggested that the campaign had a far-reaching negative impact on the public. As the strike-hard campaign became routinized, its effect in motivating the citizens to participate in the war against crimes attenuated, and the campaign even started to generate public anxiety and harm

¹³⁵ Tanner, *supra* note 120.

¹³⁶ Tanner, *supra* note 120.

¹³⁷ Jianhua Xu, Book Review of *Policing Serious Crime in China: From 'Strike Hard' to 'Kill Fewer'* by Susan Trevaskes, (2012) 7:3 Asian Criminology 273.

¹³⁸ Trevaskes, *supra* note 116.

¹³⁹ *Ibid.*

¹⁴⁰ Tanner, *supra* note 120.

economic growth.¹⁴¹ Secondly, as for the effect in controlling crimes, the data showed that the campaigns had little effect in the long run, since the routine campaigns had little deterrence on criminals, but it enabled the professional criminals to recognise its schedule and avoid apprehension and punishment.¹⁴² These factors all contributed to the decline of the strike-hard campaigns.

5.2.3 Chinese Penal Policy After 2000: A Shift to Leniency

As already noted, the original purpose of the strike-hard was to maintain social stability during a time of enormous social change. However, contrary to the authorities' expectation, the anti-crime campaign had worsened social conflicts and was even impeding economic growth. As the problems caused by the strike-hard campaign became more and more serious, the Party again urgently needed to refine its criminal justice policy. The last nation-wide strike-hard campaign lasted from 2001 to 2003.¹⁴³ Although small-scale, specialised anti-crime campaigns still exist, nation-wide campaigns have never been held again.¹⁴⁴

As always, policy change in China is accompanied by new political rhetoric. In the first few years of the 21st century, the state propaganda gradually started to emphasise the importance of leniency. In 2003, one of China's top policing journals, *Public Security Research*, published many articles written by high-ranking officials in the police system,

¹⁴¹ Trevaskes, *supra* note 128.

¹⁴² *Ibid.*

¹⁴³ Susan Trevaskes, "The Shifting Sands of Punishment in China in the Era of 'Harmonious Society'" (2010) 32:3 Law & Policy 332 at 340.

¹⁴⁴ Although the campaign against corruption under President Xi Jinping looks somewhat similar.

analysing and debating the shortcomings of strike-hard campaigns.¹⁴⁵ Soon after the publishing of these debates, the authorities started to express an obviously negative attitude towards the strike-hard campaigns. Several prominent state officials, including Luo Gan, the then leader of the Party's Central Commission of Political and Legal Affairs, Zhou Yongkang, the then Minister of Public Security, and Ma Zhenchuan, the then chief of the Beijing Public Security Bureau, all stated in different events that the use of strike-hard campaigns had to be restricted and altered.¹⁴⁶ In 2004, at the National Meeting Regarding Political and Legal Work, Luo Gan suggested that "We should carry out a criminal justice policy of balancing leniency and harshness, being harsh on the serious crimes that endanger the social stability and being lenient on the ones that require leniency according to the law".¹⁴⁷ This is the official announcement of the Party adopting a new criminal justice ideology of balancing harshness and leniency.

Embracing the idea of leniency was a very deliberate and favourable choice for China's Communist Party. In the realm of policing, having a lenient criminal justice policy on the majority of crimes had been proven to be a more efficient method to settle social conflicts and maintain social stability.¹⁴⁸ From the perspective of maintaining stability, making a shift from harshness could help settle or calm concerns about the effective reign of the

¹⁴⁵ Trevaskes, *supra* note 140. This was a noteworthy signal, since China's top journals have always had a strict censorship in academic publishing, and the articles considered to be against the nation's interest or policies are usually not allowed to be published. Therefore, the publication of these articles could be an indication that the state was reflecting on its ideology and policies in criminal justice and preparing to make a shift away from it.

¹⁴⁶ See Susan Trevaskes, "The Shifting Sands of Punishment in China in the Era of 'Harmonious Society'" (2010) 32:3 Law & Policy 332; Enshen Li, "Towards the Lenient Justice? A Rise of 'Harmonious' Penalty in Contemporary China" (2015) 10:4 Asian Criminology 307.

¹⁴⁷ Jiannan Zhuang & Jianfeng Ye, "Kuanyan xiangji xingshi zhengce yu xingfa wanshan [The Policy of Balancing Harshness and Leniency, and Its Contribution in the Improvement of Punishing]" (2006) 36:6 J Zhejiang U 34.

¹⁴⁸ Trevaskes, *supra* note 128.

Party and its ability to maintain its rule. In the late 1990s, as the problems caused by the draconian strike-hard campaigns became critical, people started to question the Party's ability to maintain a healthy society and to deal with social problems, as well as the Party's misuse of the traditional culture of political struggle.¹⁴⁹ Adopting a lenient criminal justice policy and publicising it with new state propaganda was designed to inform the people that the state is actively reflecting on its policies, and also to reassure people about the Party's ability to handle social problems which in turn would contribute to the impression that the Party was able to maintain stability.

Since the decline of strike-hard campaigns, criminal justice policy's shift to leniency manifests itself in several aspects of policing and sentencing, including the decriminalization of minor crimes, the restrictions on the use of the death penalty, and also the adoption of non-incarceral criminal sanctions, namely, community corrections.¹⁵⁰ Community corrections were adopted in 2003, one year earlier than the official declaration of the new policy. Although the authorities never admitted the link between adopting community corrections with their intention to correct their errors and difficulties during the strike-hard campaigns, the use of community corrections is undoubtedly an integral part of their new effort of balancing harshness and leniency in order to stabilise society. This new criminal sanction underlines the idea of rehabilitating offenders and leniency on offenders, and therefore it is right in line with the state's new criminal policy of balancing harshness and leniency. The community corrections system enables minor

¹⁴⁹ Tanner, *supra* note 120.

¹⁵⁰ Enshen Li, "Towards the Lenient Justice? A Rise of 'Harmonious' Penalty in Contemporary China" (2015) 10:4 Asian Criminology 307.

offenders to be supervised outside prisons; thus it contributes to the “de-incarceration” objective, which is one of the critical parts of the lenient criminal justice policies.¹⁵¹

As the favoured response to a perceived crisis, the Party expected community corrections to be initiated instantly and did not take much time to examine whether the political and social conditions met the prerequisite for implementing community corrections. The urgency also did not allow the authorities to deliberately design a system for the community corrections and have it fully tested before final implementation. Instead, the authorities commenced community corrections almost as soon as the strike-hard campaign was finished, and the duty of carrying out community corrections programme was perfunctorily allocated to the administrative justice agencies, despite the fact that the agencies were far from being ready or able to carry out the responsibility.¹⁵²

5.2.4 Harmonious Society and the Development of Community Corrections

After being commenced, further development of community corrections was also closely related to Chinese politics, specifically the Chinese Communist Party’s new political ideology of building a Socialist Harmonious Society, which was first announced in 2004 as a new device of maintaining social stability. The Party even included the establishment of community corrections in one of its most important documents concerning its political campaign plan.¹⁵³

¹⁵¹ *Ibid.*

¹⁵² The administrative justice agency in China does not have the power of law-enforcement. In addition, as mentioned in Chapter Two and Chapter Three, it has many other duties and limited staff, especially appropriately trained staff to carry out community corrections.

¹⁵³ The *Decision on the Important Issues Regarding the Building of Socialist Harmonious Society* (18 October 2006), online: *The People* <<http://politics.people.com.cn/GB/1026/4932440.html>>.

Hu Jintao, the former President of China who proposed the idea of Harmonious Society, defines it as “a society that is ‘democratic and ruled by law, fair and just, trustworthy and fraternal, full of vitality, stable and orderly, and maintains harmony between man and nature.’”¹⁵⁴ This ideology was first mentioned in the Fourth Meeting of the Sixteenth Politburo of the Communist Party of China in 2004. In its Sixth Meeting, the Politburo passed a political campaign plan, the *Decision on the Important Issues Regarding the Building of Socialist Harmonious Society* (the *Decision*). The *Decision* officially defines the ideology of building a Socialist Harmonious Society in detail and declares that building a Harmonious Society is the primary and urgent goal of the Party. The *Decision* specifies the requirement of harmony in various aspects of Chinese life and explains the Party’s plan to achieve it, manifesting its ambition in ameliorating social problems and maintaining its reign in a period of enormous economic growth.¹⁵⁵ In the section concerning building a Harmonious Society by maintaining public order, the *Decision* states that “a criminal justice policy of balancing harshness and leniency shall be carried out ... and community corrections shall be actively advanced.”¹⁵⁶ This indicates that the Party considered implementing community corrections as an important part of carrying out the policy of balancing harshness and leniency, and that community corrections was also an integral part of the Party’s plan in building a Harmonious Society.

Considering the significance of the ideal of a Harmonious Society in the Party’s politics, the inclusion of developing community corrections in the plan for building a Harmonious

¹⁵⁴ Lap Yan Kung, “The Trinity, the Church, and China's Harmonious Society: A Politics of Persuasion” (2011) 17:3 *Studies in World Christianity* 237.

¹⁵⁵ *Supra* note 153.

¹⁵⁶ *Ibid* [translated by author].

Society is of great importance. This new ideology of Harmonious Society was the response by the new leaders of the Party to the social conflicts in the new millennium.¹⁵⁷ When Hu Jintao and Wen Jiabao, the then-new President of China and new Government Premier, took over power, the pressure of maintaining stability became even more intense. The strike-hard campaign had not helped solve the problems of soaring crime rates and in fact seemed to worsen it. The social conflicts caused by social injustice, high regional disparity and enormous economic inequality still existed and became even more exacerbated by the unprecedented economic growth.¹⁵⁸ The new leaders needed a strong political slogan to reassure the people and gain public support. Thus the Harmonious Society ideal was proposed and was then adopted as the leading ideology of the Party.

With its inclusion in the Harmonious Society ideology, community corrections in China developed rapidly, and all regions in the nation began to implement community corrections within three years. According to Wu Aiying, the former Minister of Justice in China, the rapid development of community corrections in China was an inseparable part of the Party's new Harmonious Society ideology.¹⁵⁹ In an article she published in the journal *Qiushi*, the main theoretical journal of Chinese Communist Party, Wu Aiying also emphasised community corrections' function of maintaining social stability and its importance to the Party. She stated that "maintaining social stability is the first political duty of the administrative justice agency, and community corrections... is essential in

¹⁵⁷ Trevaskes, *supra* note 116.

¹⁵⁸ Trevaskes, *supra* note 143.

¹⁵⁹ Aiying Wu, "Jianchi he wanshan zhongguo tese shequ jiaozheng zhidu [Persisting with Community Corrections with Chinese Characteristics and Improving the System]" (2012) 17 *Qiushi* online: <http://www.qstheory.cn/zxdk/2012/201217/201208/t20120826_177715.htm>.

maintaining social harmony and stability. Administrative justice agencies at all levels should consider community corrections as an important part of the work of the Party and the state, ... and strive to improve the stability of the society.”¹⁶⁰

5.3 Conclusion

To sum up, this chapter analysed the two main factors behind the adoption of community corrections in China: its cost-effectiveness and its political function in stability maintenance and state propaganda. Because of these two urgent needs, China’s authorities required community corrections system to be started instantly. However, it has never been the authorities’ top concern to ensure that the system of community corrections is actually functioning well and being efficient in rehabilitating offenders and helping offenders reintegrate into society.

On the one hand, pragmatically, the authorities expected community corrections to become a cost-saving device to reduce the number of inmates, as well as the expense of correctional facilities. Although it is true that community corrections are comparatively cost-saving when compared to imprisonment, the implementation of community corrections still requires a significant amount of funding. The authorities’ desire to cut prison expenses may have been the reason that drove them to underfund the system of community corrections.

¹⁶⁰ *Ibid* [translated by author].

On the other hand, the authorities also attached great importance to community corrections' role in the maintenance of stability and state propaganda. Therefore, authorities required the community corrections system to be set up swiftly to meet their political needs. Once the system was set up and functioning to some degree, the authorities seem to have become reluctant to invest more resources in helping community corrections function better. As time passed and it became apparent there were multiple problems within the implementation of community corrections, the authorities chose to make a *Community Corrections Law* as a response to the problems, since making a new law without significant change is relatively easy and does not require much new funding.

The authorities' unwillingness to invest resources to actually improve the implementation of community corrections has become the root of many problems in the system. Given that the authorities are still not willing to improve the system by properly funding it, finding possible solutions to improve it might be very challenging. This issue will be further analysed in the next chapter.

Chapter Six: The Way Forward for Community Corrections in China

In this chapter, I will analyse possible methods to improve the Chinese system of community corrections. Many Chinese scholars have discussed possible ways to improve the system. Some of them suggest that it is necessary to invest more resources in its implementation, provide more training to practitioners, build an organisation that is solely responsible for its implementation, *etc.*¹⁶¹ I agree with them that these aspects need to be improved, and these suggestions would significantly improve the implementation of community corrections. However, as noted in the last chapter, the authorities' unwillingness to invest a significant amount of additional resources to actually improve the implementation of community corrections is the cause of many of the problems, and unfortunately I do not think that situation will change in the near future. Unfortunately, this means that the above suggestions are impractical because there will be no extra funding to implement them.

The difficulty in making concrete suggestions for improving community corrections is all the more difficult due to the lack of data and empirical study. Most existing studies in community corrections concentrate on the legal framework and its related theory. There are only a few studies that examine the actual implementation in some particular

¹⁶¹ Spencer D Li, "Toward a Cost-effective Correctional System: New Developments in Community-based Corrections in China" (2014) 9:1 Victims & Offenders 120; Shanhe Jiang et al, "Community Corrections in China: Development and Challenges" (2014) 94:1 The Prison Journal 75; Suqin Li & Enhui Tan, "Meiguo shequ jiaozheng zhidu dui woguo de jiejian [Learning from the Experience of Implementing Community Corrections in the USA]" (2012) 159:5 J People's Public Security U China 149; Changsheng Ma & Xinghong Tian, "Wanshan tizhi jizhi qianghua shequ jiaozheng jingfei baozhang [Ensure the Funding for Community Correction by Improving the Mechanism]" (2016) 216:6 Justice of China 4; Yan Ma, Caifei Zhang & Xiaoliu Jin, "Guanyu shequ jiaozheng yongjing wenti de yanjiu [Utilising Police Force in Community Corrections]" (2017) 213:9 Justice of China 68 at 72. *Etc.*

regions.¹⁶² These regional data are precious because they can help us understand the problems; however, the sample size of their studies is insufficient to enact nation-wide programs. Although the situation found in these small studies is possibly prevalent throughout China, it is risky and therefore not responsible to make detailed nation-wide recommendations without having more comprehensive information about the actual situation. Most data that scholars and law reformers can utilise to analyse the situation comes from government reports for each region, while some regions do not even disclose full relevant data. In addition, as mentioned in Chapter Three, considering that the authorities intend to make the situation in their regions look better to meet the needs of positive propaganda, the actual situation is probably worse.

With these restrictions, it is very challenging to suggest any improvements that are likely to bring about positive changes. Furthermore, there is deeper problem than those already identified. Almost all of the current discussions in China are based on the assumption that community corrections should be implemented in China, and that it will finally benefit the Chinese penal system and society if it is well implemented. Thus scholars only have discussed ways to improve the system. There is virtually no literature that discusses the compatibility between Chinese society and community corrections, and the possibility that community corrections will simply not work in China. There is also little discussion

¹⁶² Including: Shanhe Jiang et al, "Semiformal Crime Control and Semiformal Organizations in China: An Empirical Demonstration from Chinese Community Corrections" (2015) 10:4 Asian Criminology 287; Lirong Wang, "Shequ jiaozheng yingxiang hechu qu: yi Chongqingshi shidian qingkuang wei qierudian [Where Should Community Corrections Proceed: the Experiment in Chongqing as An Example]" (2010) 26:1 Criminal Law Review 488; Liu Yang & Rongrong Deng, "Shequ jiaozheng duixiang shehui zhichi zhuangkuang de diaocha yanjiu [An Investigation into the Social Support for Offenders Receiving Community Corrections]" (2017) 17:4 Social Work and Management 57; Lulu Tang, "Shequ jiaozheng de xianzhuang, wenti ji duice [The Current Situation, Problems and Solutions of Community Corrections]" (2017) 33:4 J North China University of Water Resources and Electric Power 92. *Etc.*

of the possibility that community corrections may not be suitable for all types of crimes and offenders in China, and will not achieve the goals even if fully funded. This is a real problem and concern. Some scholars studying the implementation of community corrections in other jurisdictions have suggested that the effectiveness of community corrections is controversial, and that there is not enough evidence to support its benefits in regarded to rehabilitation or in reducing re-offending.¹⁶³

However, as was analysed before, the primary reasons why the Chinese authorities adopted community corrections were its cost-effectiveness and its use in making propaganda. Therefore, given the fact that the community corrections was adopted by the authorities due to the above two reasons, and the system has already successfully met these needs of the authorities to some extent, the authorities are not very likely to abandon or reconstruct the system of community corrections in the near future.

Therefore, I argue that now the most realistic and feasible choice is to try to improve the Chinese community corrections system with minimum cost, so that the already existing system can at least make some contributions in successfully punishing and rehabilitating offenders, rather than being an empty shell for political and economic needs.

In this chapter, I try to suggest some possible cost-effective methods that the authorities may consider adopting if they want to improve the implementation with minimum investment. I suggest that without sufficient funding, the most practical solution is to

¹⁶³ John W Ekstedt & Curt T Griffiths, *Corrections in Canada: Policy and Practice* (New York: Elsevier, 1988) 255.

slow down the anticipated schedule for enacting the new *Community Corrections Law* and carefully re-assess and revise the legal framework. Refining the new *Community Corrections Law* and correcting the flaws in the legal framework can make the legal framework a sounder basis for the implementation of community corrections without incurring any or many new resource investments. Revision in laws can include: clearer specification of the supervision procedure, improving the cooperation mechanism with the police department, and reducing the obstacles for migrant workers to move.

However, since other improvements that require much more funding are also very necessary, for example, increasing more well-trained employees, increasing the use of halfway houses, and enhancing the rehabilitation of offenders, I suggest that the improvement that a revised legal framework can make is still limited, and the system will not ultimately function much more effectively unless the state invests more resources in a true effort to improve the system.

The following sections analyse three kinds of possible solutions: improvement of the legal framework, some cost-effective methods that the authorities can consider, and other necessary investments.

6.1 Improving the Legal Framework

6.1.1 Supervision of the Prosecution and Corrections Committee

As noted in section 3.4.1 of Chapter Three, the current supervising mechanism in the legal framework is not working very well. It allows corrupt officials to ignore, and offenders to avoid, supervision which has led to offenders escaping from their community corrections sentences. The current laws designate the prosecution as the government body that is responsible for supervision. Considering that the prosecution's primary task is prosecuting, which occupies most of its workload, I think it is difficult for the prosecution to comprehensively observe the carrying out of the sentence since the prosecution branch is separate from the correctional system. Therefore, I suggest that the supervision over community sentences has to be primarily situated within the correctional system. I will discuss the methods to achieve this later.

Also, as mentioned in Chapter Three, the existing community corrections legal framework requires various parties, including offenders' guardians, personnel from the school or workplace of offenders, and members of the neighbourhood committee to form an individualized corrections committee for each offender, but currently, the corrections committee is usually operating in name only.¹⁶⁴ Although the draft of the new law adds some provisions that suggest possible methods for the corrections committee to help offenders rehabilitate, its role in supervising offenders is still not mentioned. Making use of a corrections committee has some potential as a good supplement for a scarce

¹⁶⁴ Liu, *supra* note 46.

workforce, and in addition they can add necessary expertise and experience since the members of the committee are from every aspect of the offender's life and can assist in monitoring the offender's behaviour and providing support. The authorities should clarify the responsibility of each member of the committee, set out the goals for committee participation and define the circumstances under which the corrections committee should participate.

6.1.2 Cooperation with the Police Department

To deal with escaped offenders in a timelier manner, I also suggest that the process and procedure for effective cooperation between the police and the local administrative justice agency needs to be improved. As mentioned in Chapters Two and Three, the administrative justice agency has to rely on the police department to handle escaped offenders, and according to some studies, currently the police are not actively assisting in tracking escaped offenders¹⁶⁵. Many scholars suggest that the administrative justice agency should be granted the power of law enforcement so that they can handle escaped offenders independently¹⁶⁶. Some others have suggested building a department separated from the administrative justice agency that has the power of law enforcement and is exclusively responsible for implementing community corrections¹⁶⁷. However, from my point of view, both methods require a significant change in existing governance structure and require a large amount of funding, which seems unlikely to happen in the near future. Instead, I suggest that it is more cost-effective to refine the mechanism of cooperation to

¹⁶⁵ Yang & Gong, *supra* note 79; Ma, Zhang & Jin, *supra* note 39.

¹⁶⁶ Tang, *supra* note 13.

¹⁶⁷ Ma, Zhang & Jin, *supra* note 39.

force the police to react in a timelier manner. The new *Community Corrections Law* can specify the occasions when the police should get involved and can set up time limits for the police to take actions. In addition more attention should be paid to identifying and punishing persons who are responsible for offenders' escaping. Although this will require the police department to increase their workforce or to readjust some of their current activities, I think the expense would be comparatively small and easier to make in the context of a very large police services budget.

6.1.3 Restriction on Conditions

As for the conditions that probationers and parolees should obey, I suggest that those conditions should be decided by the court when making the sentencing decision, or the prison authorities when granting parole. As mentioned in Chapter Three, currently, the staffing level in the administrative justice departments is insufficient, and the practitioners of community corrections are usually overworked and lack relevant training. Unless their qualification and training are improved soon, I think that the community corrections practitioners are obviously not the best personnel to decide upon these conditions. As mentioned in Chapter Three, in other countries including Canada and the United States, the conditions to be obeyed are decided by the court or parole board.¹⁶⁸ Given the fact that China does not have any organization that is a counterpart to a parole board, and that a parole board is not likely going to be set up in the near future considering the cost, I suggest that the conditions for the parolees should be decided by the institution in which the inmates are incarcerated, since the institution has more

¹⁶⁸ *Supra* note 77.

comprehensive information about the offenders' attitude and remorse, the progress in rehabilitation, and mental and physical needs, etc. For offenders sentenced to suspended sentence, I think that the judge working on the case has more knowledge regarding the particular case and is more capable of designing the conditions that fit well with the purpose of the sentence and that can achieve the best correctional result. Increasing the responsibility of corrections facilities in this regard will result in comparatively little increase in their expenses.

I argue that having the prison and the court decide on the conditions can also help ameliorate the problem of the migrant workers to some extent. Before the release of an inmate or the sentence of an offender, the prison and the court have more detailed information about the offender, including whether he is likely to continue working as a migrant worker after release. For parolees who might be working as a migrant worker, the government body deciding the condition needs to know the parolee's living condition and plan after release, and then determine accordingly the place of implementation and the conditions for the parolee to obey.

6.1.4 Reduction of the Obstacles for Offenders Wanting to Change Their Place of Receiving Community Corrections

To improve the implementation of community corrections for migrant workers, another possible method is to reduce the difficulty for offenders to change their place of receiving community corrections. As mentioned in Chapter Three, the impractical requirements for such change becomes an obstacle for offenders being able to change the place of residence according to their own will. The likelihood of an offender escaping from

supervision is increased when legally moving is not possible. In this respect, I agree with Yu Guonv, who suggests the place of receiving corrections should be decided in a flexible manner, in either the place of residence, the place where the offender has Hukou registration or the place where the offender has a family connection, according to the offender's own willingness and the judgment of the court and prisons.¹⁶⁹

6.2 Other Cost-effective Methods

Other than revising the legal framework for community corrections, there are some other possible cost-effective methods the authorities can consider. One possible and feasible solution is to allocate more funding to the electronic monitoring system. Electronic monitoring has been proven to have a good effect in tracking offenders' location and supervising their obedience to probation conditions.¹⁷⁰ Electronic monitoring can also help officers supervise more offenders with limited manpower. Thus when funding is very limited, investing more in electronic monitoring can be a cost-effective way of improving the supervision and control of offenders. Although using social networking software to supervise offenders appears to be very cost-effective, as mentioned in Chapter Three, the WeChat software is not a reliable device in corrections and can be easily taken advantage of. To ensure the effectiveness of supervision, I suggest that the implementing agency properly fund the purchase and repair of professional devices, for example, electronic bracelets.

¹⁶⁹ Guonv Yu, "Waishengji fan shiyong shequ jiaozheng de kunjing jiqi chulu[The Delimma and Solutions of Applying Community Corrections to Offenders]" (2011) 1 Fazhi Yanjiu 87.

¹⁷⁰ Wu, *supra* note 40.

Another possible approach is to examine methods used in other countries. For example, in the United States and Canada, there are some models (like restorative justice programs) which rely on the use of volunteer networks in part because they are relatively cost-effective. A well-developed volunteer network is an essential part of “community” corrections and an effective way to help offenders prepare for reintegrating into society.¹⁷¹ For example, volunteers with special skills can help offenders learn skills and prepare for the job market;¹⁷² socializing with volunteers can help offenders who are newly released from prisons reintegrate into daily living in society.¹⁷³ However, currently, the number of Chinese citizens who are willing to volunteer in the community corrections is still at a low-level.¹⁷⁴ Publicising the importance of volunteers and recruiting and training volunteers may require a more significant amount of funding.

6.3 Necessary Funding Investments to Make Substantive Improvement

Although revising the draft *Community Corrections Law* choosing some cost-effective techniques may help improve the implementation of community corrections and alleviate its problems to some extent, it is still not likely that the system will function to a satisfactory level unless the authorities make some necessary improvements, like hiring more professionals and increasing the training for them.

¹⁷¹ Hao, *supra* note 38.

¹⁷² “Who Are Our Volunteers?” online: Correctional Service Canada <<http://www.csc-scc.gc.ca/volunteers/003008-0003-eng.shtml>>.

¹⁷³ *Ibid.*

¹⁷⁴ Liu, *supra* note 46.

As mentioned in Chapter Three, professionals in psychology and penology have generally been absent in the implementation of community corrections, and currently the practitioners are mostly undertrained. It is not reasonable to expect that the practitioners can provide sufficient support and guidance without proper training. In addition, increasing the number of practitioners in community corrections system can also reduce the opportunity for petty bribery in many situations where offenders are solely supervised by only one practitioner in a local justice office. Instead, having multiple practitioners working together as a team, in which each practitioner can work alone on a particular task, and all have to participate when a decision is made, would increase internal supervision of the administrative justice department and increase the difficulty of escaping through a bribe.

Investing resources to expand the use of halfway houses can also enhance the effective implementation, especially for migrant workers. Currently, only the Municipality of Beijing has experimented with a halfway housing program. That program at the moment is said to have gained a satisfying effect.¹⁷⁵ Halfway houses can provide temporary residence for newly released migrant workers, supervise their post-release behaviour, and assist them in preparing for reintegrating into society and thereby improve both control and support for these offenders.¹⁷⁶

¹⁷⁵ Zhuoqian Li, “Yangguang zhongtu zhijia: zhu ‘lianglei’ renyuan shunli huigui shehui [Sunshine Halfway Houses Help Offenders Reintegrate into Society]” *Minzhu Yu Fazhi* (20 October 2014), online: <http://e.mzyfz.org.cn/paper/paper_1464_1028.html>.

¹⁷⁶ *Ibid.*

Lastly, to improve the implementation of community corrections to a satisfactory level, it is also very necessary for the country to support nationwide empirical studies that examine the implementation of community corrections, since sufficient data is essential in making further concrete suggestions.¹⁷⁷

Although currently there are no signs that the authorities are willing to significantly improve community corrections, I suggest that it would be to the authorities' benefit in the long run to invest more resources to do so and thereby improve its function of supervising offenders, rehabilitating offenders, and reducing recidivism. Admittedly, the efficacy of community corrections is still controversial,¹⁷⁸ and the empirical studies on the effect of community corrections in China is very insufficient, therefore it is not responsible to promise that a sufficiently funded community corrections system in China will definitely achieve a satisfying effect. However, I assume that a more efficiently operated community corrections system would at least help reduce the escaping of offenders and their re-offending, which is probably very pervasive, as mentioned in Chapter Three. If the goals of community corrections are achieved, it will lead to greater social stability and help reduce the costs of handling reoffenders. Enhancing the implementation would also serve a useful propaganda function by improving Chinese authorities' image in the arena of human rights violations that occur in prisons. Implementing community corrections effectively will show an effort in respecting human

¹⁷⁷ Shanhe Jiang et al., *supra* note 37.

¹⁷⁸ Ekstedt & Griffiths, *supra* note 163.

dignity¹⁷⁹ and therefore enhance the reputation of Chinese authorities both nationally and internationally.

If the Chinese authorities do in fact decide to improve the system substantively by increasing the funding, a new law should consider setting some budgetary standards for implementing community corrections. For example, a certain percentage of overall administrative justice budget could be allocated by law to the implementation of community corrections.

¹⁷⁹ Tony Ward, “Human Rights and Dignity in Offender Rehabilitation” (2011) 11:2-3 J Forensic Psychology Practice 103. This article discusses the relationship between human rights and offenders’ opportunity to rehabilitation.

Chapter Seven: Conclusion

In the previous chapters of this thesis, I described the legal framework that currently regulates community corrections in China and analysed the problems in the implementation of that framework. I then examined the content of the draft of the new *Community Corrections Law* and suggested why I believe that it will probably make little improvement in the implementation of community corrections. In chapter 5, I traced the reasons why the Chinese authorities adopted community corrections and their expectations of it. These factors can help explain why many problems still exist in its implementation and why the authorities are not actively solving them by providing enough resources. In chapter 6, I then suggested some cost-effective methods which the authorities can adopt to modestly improve the efficiency of community corrections.

In general, I have suggested that the various kinds of problems within the implementation of community corrections can be primarily attributed to the lack of enough planning, organization and resources on the part of the authorities, in both the design of the system and during its implementation. Implementing community corrections in China certainly has some special difficulties, including the Guanxi culture¹⁸⁰ and the huge regional economic disparity that exists. However, if community corrections is properly designed, and the programs are sufficiently funded, these difficulties would not be the significant obstacles to effective implementation that they are now. The failure in effective implementation in many regions can be attributed to two untested expectations of

¹⁸⁰ Here, Guanxi culture refers to the Chinese people's dependence on "personal connections" in solving problems, see page 34-35.

community corrections which authorities had. Firstly, the authorities expected community corrections would be an extremely cost-saving device by reducing the number of inmates and expense on correctional facilities. Secondly, the authorities expected community corrections to work as a positive force in the maintenance of stability and state propaganda during the shift in criminal justice policy from “strike-hard” to the Party’s new slogan of Harmonious Society. Since both expectations were urgent, China’s authorities assumed a community corrections system could be started instantly, and they did not take enough time to examine whether the social and political environment in China was suitable for implementing community corrections. The authorities also did not take much time to deliberately design a system that fits into China’s social conditions nor did they have it systematically tested and costed before final implementation. Once the system was set up and functioning to some degree, the authorities seem to have become reluctant to invest more resources in helping community corrections function effectively. In part this happened because it has never been the authorities’ top concern to ensure that the system was efficient in rehabilitating offenders and helping offenders to reintegrate into society. As time passed and the problems within the implementation of community corrections became apparent, the authorities chose to respond by making changes on paper, but not changes in practice. The authorities chose to make a new *Community Corrections Law* as its response to the problems and to portray in state propaganda the new law as an effective solution, since making a new law without significant actual change is relatively easy and does not require any or much new funding.

Developing an effective way forward for community corrections in China is very challenging. Although some techniques identified in this paper may help enhance the implementation to some degree without costing much more, it is still not likely to make the system function in a significantly more effective manner. That will never happen as long as the Chinese authorities maintain their reluctance to sufficiently fund the system. Currently, there are no signs that the authorities are willing to significantly improve community corrections. That is unfortunate. However, I suggest that it would be to the authorities' benefit in the long run to invest more resources in improving the implementation of community corrections, so that it can better achieve its function of rehabilitating offenders and reducing recidivism. Pursuing that goal seriously will lead to greater social stability and help reduce the costs of handling reoffenders. Enhancing the implementation would also serve a useful propaganda function by improving Chinese authorities' poor human rights image and record.

Another difficulty that has complicated the task of making concrete recommendations is the lack of empirical studies. Although there has been a significant amount of scholarly writing on a wide range of community corrections topics in China, the number of empirical studies that examine the actual effect of implementation have been very small in number, and they are narrowly focused on only one particular region. Nationwide empirical studies on the implementation of community corrections in China has still not been undertaken. Government reports for each region do provide a possible source of information; however, many regions do not even disclose full relevant data. Considering the authorities' interests to make positive propaganda, the actual situation is probably

worse than the published data shows. While writing this thesis, I was also not able to do an empirical study in China and can only access the information and data in existing studies and available information in government reports. Therefore, the analysis of current implementation is not comprehensive enough, especially regarding the extent of the problems. As a consequence, this thesis mainly points out the root causes and continuing effects of poor implementation in community corrections in China but is not able to make many detailed recommendations on the reform of the system.

In addition, due to the lack of empirical studies, some further substantive questions have to be left unanswered. There is not enough evidence to determine whether community corrections is the best sanction to rehabilitate Chinese offenders and reduce recidivism and whether it is suitable for all types of crimes and offenders in China. These are very basic questions that need to be addressed as part of a deeper reformation of the community corrections system. However, the main goal of this thesis is to take the first step which is to unmask the Party's true purpose of making a new *Community Corrections Law* and to make realistic suggestions based on the available data and current situation. As already suggested, the authorities are not very likely to abandon or reconstruct the system of community corrections in the near future since the system has successfully met the political and economic needs of the authorities to some extent.

As for future studies in community corrections in China, I suggest that nationwide empirical research is essential to proposing nationwide reform of community corrections. I would be particularly interested in large-scale studies on the effect of implementation

from the perspective of offenders who are receiving community corrections. Interviewing offenders throughout China and listening to their opinions on the community corrections system would be very helpful in identifying the flaws of the system that may so far have been neglected by researchers and law reformers. I expect that offender-focused research would help law reformers design the methods of implementation that help offenders rehabilitate better. Also, I would be very interested in socio-legal studies that focus on the exact extent to which traditional Chinese culture, particularly Guanxi culture, influences the implementation of community corrections, especially in rural regions in China.