

THE IMPACT AND DIRECTION OF NATIONAL
STANDARDIZED SENTENCING REFORM
IN CHINA

Ye Xiaoqin

Author
Assistant Professor of Criminal Law, Wuhan University Law School, fxyxq@whu.edu.cn. Funding for this work was provided by the Wuhan University Humanities and Social Sciences Research Youth Project, “Empirical Analysis of Death Penalty Standards” (o8QNXM25) and the Ma Kechang Legal Foundation of Wuhan University, “Analysis of Death Penalty Sentencing Factors” (MJ2oo8Bo1).

INTRODUCTION	248
I. THE IMPACT OF NATIONAL STANDARDIZED SENTENCING REFORM	250
A. A Policy Milestone: Emphasis on Fair Sentencing	252
B. Establishment of Substantive Framework for Sentencing	256
II. IMPLICATIONS OF NATIONAL STANDARDIZED SENTENCING REFORM	261
A. A Greater Role for the SPC in Promoting the Rule of Law	261
B. Gradual Amendment of the Directive on Sentencing	265
CONCLUSION	270

INTRODUCTION

On October 1, 2010, the People's Republic of China ("China") implemented nationwide reform to standardize criminal sentencing in the form of two landmark judicial documents with the goal of reducing unwarranted sentencing disparities and establishing relatively independent sentencing procedures. On that date, all Chinese courts implemented the Directive on Sentencing in the People's Courts (for Trial Implementation) ("Directive on Sentencing"),¹ promulgated by the Supreme People's Court ("SPC"); and the Opinion on Certain Issues of Standardized Sentencing Procedure (for Trial Implementation) ("Opinion on Sentencing Procedure"),² promulgated by the "Two Supremes" and "Three Ministries."³ These "guidance" documents, which provide strict standards and specific procedures for criminal sentencing, triggered full-scale "standardized sentencing reform" (量刑规范化改革) (*liangxing guifanhua gaige*) throughout the Chinese court system. This article briefly discusses the primary impact and possible implications of these new reforms, in particular the Directive on Sentencing.

The Directive on Sentencing and Opinion on Sentencing Procedure have no legally binding effect. Of course, these standardized sentencing rules would enjoy stronger legal effect if promulgated as laws by the National People's Congress (NPC) or as a judicial interpretation by the SPC, as authorized by the Standing Committee of the NPC.⁴ Specific sentencing rules can be seen as applying the penalty range provisions of the Criminal Law. It is usually the NPC that promulgates and amends basic laws such as the Criminal Law and the Criminal Procedure Law, and the SPC itself seems not to have gained sufficient experience to enact a complete judicial interpretation on sentencing

¹ 人民法院量刑指导意见 (试行) [Directive on Sentencing in the People's Courts (for Trial Implementation)], (promulgated by the Sup. People's Ct., Sept. 30, 2010, effective Oct. 1, 2010), available at <http://baike.baidu.com/view/4543902.htm> [hereinafter Directive on Sentencing]. A legal document titled "trial implementation" will be subject to later revision; this designation does not alter its legal effect.

² 关于规范量刑程序若干问题的意见 (试行) [Opinion on Certain Issues of Standardized Sentencing Procedure (for Trial Implementation)] (promulgated by the Sup. People's Ct., Sup. People's Proc., Ministry Pub. Security, Ministry St. Security & Ministry of Justice, Sept. 30, 2010, effective Oct. 1, 2010), SUP. PEOPLE'S CT. GAZ. (P.R.C.), available at http://www.court.gov.cn/qwfb/sfwj/yj/201012/t20101210_12014.htm [hereinafter Opinion on Sentencing Procedure].

³ The "Two Supremes" refers to the Supreme People's Court (SPC) and Supreme People's Procuratorate (SPP); the "Three Ministries" refers to the Ministry of Public Security (MOPS), Ministry of State Security (MOSS) and Ministry of Justice (MOJ).

⁴ Any issue relevant to the concrete application of statutes and legal orders in judicial trials is subject to the SPC's interpretation ("凡属于法院审判工作中具体应用法律、法令的问题,由最高人民法院进行解释。"). 关于加强法律解释工作的决议 [Resolution on Reinforcing the Interpretation of Laws] (promulgated by the Standing Comm. Nat'l People's Cong., June 10, 1981, effective June 10, 1981) art. 2, available at http://www.chinacourt.org/flwk/show.php?file_id=1906.

issues for all offenses. But apparently the SPC thinks it necessary to promote sentencing reform at present, relying on Article 127 of the Constitution of the People's Republic of China to promulgate the Directive on Sentencing.⁵ Article 127 authorizes the SPC to supervise trials in local courts and authorizes higher courts in general to supervise trials in lower courts. The SPC's guidance on sentencing, then, can be understood as a means of supervising criminal trials at all levels. So the Directive on Sentencing and Opinion on Sentencing Procedure are designated as *pilot* judicial documents without binding force: they provide only supervisory guidance in sentencing, and a more formal set of rules is to be enacted after sufficient data on sentencing are collected.⁶

Proponents cite four major reasons in support of reforms to standardize sentencing procedure.⁷ First, the sentencing ranges for fixed-term imprisonment, as defined in the Criminal Law of the People's Republic of China ("Criminal Law"),⁸ are often too broad. Of these ranges, forty percent extend more than five years. For example, sentencing ranges of three to ten years, ten to fifteen years, six months to five years, five to ten years, and five to fifteen years are common in the Criminal Law; indeed, certain crimes require the sentencing judge to choose one of *several* such sentencing ranges.⁹ Second,

⁵ 《人民法院量刑指导意见》与“两高三部”《关于规范量刑程序若干问题的意见》理解与适用 [APPLICATION AND COMMENTARY ON THE DIRECTIVE ON SENTENCING IN THE PEOPLE'S COURTS AND THE "TWO SUPREMES AND THREE MINISTRIES" OPINION ON CERTAIN ISSUES OF STANDARDIZING SENTENCING PROCEDURE] 6 (熊选国 [Xiong Xuanguo] ed., 2010) [hereinafter APPLICATION AND COMMENTARY ON THE SENTENCING REFORMS].

⁶ *Id.* at 36–37.

⁷ See, e.g., *id.* at 6–7. Xiong Xuanguo was vice president and judge of the SPC from August 28, 2005 to August 26, 2011, and he is currently a member of the Standing Committee as well as Secretary of the Politics and Law Committee of the Xinjiang Uygur Autonomous Region Party Committee.

⁸ Under Article 45 of the Criminal Law, a fixed-term imprisonment (that is, a prison term other than a life term) for a single offense is between six months and fifteen years. A prison term resulting from reduction of a death sentence with two years' suspension to fixed-term imprisonment is between fifteen and twenty years. 中华人民共和国刑法 [People's Republic of China Criminal Law] (promulgated by the Standing Comm. Nat'l People's Cong., July 6, 1979, amended Mar. 14, 1997, effective Oct. 1, 1997) art. 50, STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. (P.R.C.), available at <http://www.mps.gov.cn/n16/n1282/n3493/n3763/n493954/494322.html>. A person convicted of multiple crimes may be sentenced to a maximum term of twenty years. *Id.* art. 69.

⁹ *Id.* arts. 104 (lists potential sentences, including between five and fifteen years' imprisonment for instigating subversion of state political power and the overthrow of the socialist system by spreading rumors, slander, or other means; those taking a leadership role in the offense or otherwise committing a grave offense may be sentenced to not less than five years' imprisonment), 109 (potential sentences including up to five years' imprisonment for a state official who, while performing public duties, leaves his or her post without authorization and defects to another country, endangering the PRC's national security; under more "serious" circumstances, the court may impose a sentence between five and ten years), 232 (sentence of three to ten years'

there are no quantitative standards for the application of sentencing factors. Third, current procedure includes no systematic or objective sentencing method, and judges usually base sentencing on their own subjective experience and judgment. Fourth, current procedure has not yet established a sentencing procedure sufficiently independent of the adjudication of guilt, and thus no strong justification for sentencing can be offered beyond guilt itself. Skepticism concerning the fairness of sentencing is common among the public.¹⁰ In sum, the unwarranted sentencing disparities that result from unrestrained discretion make it necessary to promulgate clear standards for sentencing. The Directive on Sentencing reduces these disparities.

I. THE IMPACT OF NATIONAL STANDARDIZED SENTENCING REFORM

The Directive on Sentencing applies to criminal cases and encompasses rules for “imposed control” (管制) (*guanzhi*), criminal detention (拘役) (*juyi*), and fixed-term imprisonment, but it does not encompass life imprisonment or the death penalty.¹¹ It thus serves primarily to provide sentencing guidance for the Basic Level People’s Courts, the lowest courts in the four-level system, which try the majority of first-instance criminal cases.¹² The Directive on

imprisonment for intentional killing of a person under circumstances indicating that the offense is relatively “minor”; under other circumstances, the court may impose fixed-term imprisonment of over ten years, a life sentence, or a death sentence).

¹⁰ The well-known Xu Ting (许霆) case is one example. In April 2006, Xu used a malfunctioning automatic teller machine to withdraw RMB 175,000, far more than was in his bank account. The Guangzhou Intermediate People’s Court convicted Xu of theft and sentenced him to life imprisonment. The harsh sentence in this case drew public attention after widely read media coverage, with both public opinion and legal experts reportedly opposing the sentence and expressing sympathy for Xu. On appeal, the High People’s Court of Guangdong Province remanded the case on grounds that “the facts were not clear and there was not sufficient evidence.” In March 2008, the trial court reconvicted Xu and sentenced him to five years’ imprisonment. The Guangdong High Court upheld this sentence. 许霆案改判: 从无期到五年 [*Change of Judgment in Xu Ting Case: From Life Imprisonment to Five Years*], 新华网 [XINHUA NET] (Apr. 6, 2008), http://news.xinhuanet.com/fortune/2008-04/06/content_7927258.htm.

¹¹ Directive on Sentencing, *supra* note 1, Part V, sec. 2.

¹² Under Article 2 of the Organic Law of the People’s Courts, the main Chinese court system includes Basic Level People’s Courts (基层人民法院) (*ji ceng ren min fayuan*) established in each city, district, or county; Intermediate People’s Courts (中级人民法院) (*zhong ji ren min fayuan*) in cities; High People’s Courts (高级人民法院) (*gao ji ren min fayuan*) in each province, autonomous region, or municipality; and the Supreme People’s Court in Beijing. 中华人民共和国人民法院组织法 [People’s Republic of China Organic Law of the People’s Courts] (promulgated by the Standing Comm. Nat’l People’s Cong., July 1, 1979, effective July 1, 1979, amended Sept. 2, 1983 and Oct. 31, 2006) art. 2, STANDING COMM. NAT’L PEOPLE’S CONG. GAZ. (P.R.C.), available at http://www.law-lib.com/law/law_view.asp?id=1942. Criminal trials of second instance

Sentencing establishes a framework of sentencing standards and authorizes each provincial-level High Court to make detailed implementation rules.¹³ Each High Court, therefore, has made or is making implementation rules for the Directive on Sentencing applicable within its jurisdiction. Through these implementation rules, the High Courts apply the Directive on Sentencing to the circumstances and sentencing standards of specific offenses; in effect, this rulemaking process also allows the High Courts to later amend the Directive on Sentencing.

In Hubei Province, for example, the High People's Court of Hubei Province Implementing Rules for the Directive on Sentencing¹⁴ ("Hubei Implementation Rules") took effect on the same day as the Directive on Sentencing and were recommended by the SPC to other High Courts as a set of model rules in October 2010.¹⁵ The Hubei High Court has taken an active part in standardized sentencing reform from its first preliminary stage in July 2008 and has gleaned a wealth of practical experience from provisional sentencing reforms undertaken in Jiangnan Court and other Basic Level Courts in Wuhan. Jiangnan District People's Court in Hubei Province was one of eight Basic Level Courts chosen by the SPC to pilot standardized sentencing reform in its first stage.¹⁶ It drafted a directive on sentencing which was pilot tested in all Basic Level Courts in Wuhan City, the capital of Hubei. This article will further discuss the Hubei Implementation Rules to illustrate the implementation of standardized sentencing reform.

are final. 中华人民共和国刑事诉讼法 [People's Republic of China Criminal Procedure Law] (promulgated by the Standing Comm. Nat'l People's Cong., July 7, 1979, amended Mar. 17, 1996, effective July 1, 1979) art. 10, STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. (P.R.C.), available at http://www.law-lib.com/law/law_view.asp?id=321 [hereinafter Criminal Procedure Law].

¹³ Directive on Sentencing, *supra* note 1, Part V, sec. 1.

¹⁴ 《量刑指导意见（试行）》实施细则 [Implementing Rules for the Directive on Sentencing], (promulgated by the High People's Court of Hubei Province, effective Oct. 1, 2010), available at <http://lawyerwangjiwu.fyfc.cn/art/936717.htm>.

¹⁵ The full text of the Implementation Rules for Hubei, Jiangsu, and Sichuan Provinces can be found in the guide edited by the SPC, where they are presented as model implementation rules for other High Courts. See APPLICATION AND COMMENTARY ON THE SENTENCING REFORMS, *supra* note 5, at 578–641.

¹⁶ Before the formal implementation of the Directive on Sentencing and Opinion on Sentencing Procedure in October 2010, drafts of these documents were tested in two stages. At the first stage, between July 2008 and May 2009, four Intermediate People's Courts (in Xiamen, Fujian; Shenzhen, Guangdong; Taizhou, Jiangsu; and Zibo, Shandong) and eight Basic Courts (Jiangnan District People's Court in Wuhan, Hubei; Haidian D.P.C. in Beijing; Pudong D.P.C. in Shanghai; People's Court of Jiangyan, Jiangsu; Qingshanhu D.P.C. in Nanchang, Jiangxi; Zicuan D.P.C. in Zibo, Shandong; Beilin People's Court in Xi'an, Shanxi; and People's Court of Gejiu, Yunnan) piloted these reforms. See APPLICATION AND COMMENTARY ON THE SENTENCING REFORMS, *supra* note 5, at 13.

The Opinion on Sentencing Procedure is shorter than the Directive on Sentencing, comprising only eighteen simple provisions. It authorizes both prosecution and defense in a criminal case to advise the court concerning a defendant's sentence and to argue sentencing issues in court. The influence of standardized sentencing reforms can be examined in terms of their emphasis on fair sentencing and their establishment of a substantive framework for sentencing.

A. A Policy Milestone: Emphasis on Fair Sentencing

The Directive on Sentencing does not function in the manner of the United States Federal Sentencing Guidelines, which establish a sentencing system for all federal offenses based on a defendant's criminal history, the offense level, and other factors.¹⁷ Neither does the Opinion on Sentencing Procedure introduce plea bargaining into the Chinese criminal justice system. But the implementation of the Directive on Sentencing and Opinion on Sentencing Procedure can be seen as a significant policy milestone, representing a new emphasis on fair sentencing.

For instance, Part I, Section 4 of the Directive on Sentencing provides that for cases in which "the elements of a crime and the relevant sentencing factors are the same or similar," sentencing should be "basically equal." Article 1 of the Opinion on Sentencing Procedure provides that a court should maintain the relative independence of keep sentencing independent from the determination of guilt in a criminal trial. The adoption of these principles demonstrates the judiciary's awareness of the importance of substantively and procedurally fair sentencing, and reflects a shift away from the previous tendency to "emphasize conviction and ignore sentencing" (重定罪, 轻量刑) (*zhong dingzui, qing liangxing*) and "emphasize substantive criminal law and ignore procedural criminal law" (重实体, 轻程序) (*zhong shiti, qing chengxu*) in the criminal justice system.¹⁸

There are two main reasons why judges may give little attention to sentencing. Firstly, with respect to vagueness of the law, we should note that the Criminal Law gives no specific standards for appropriate sentencing. According to Article 61 of the Criminal Law, "punishment shall be imposed based on the facts, nature and circumstances of the crime, the degree of harm done to society, and the relevant provisions of the Criminal Law." This is what judges have called "taking fact as basis and law as guidance" (以事实为依据, 以法律为准绳) (*yi shishi wei yiju, yi falü wei zhunsheng*).¹⁹

¹⁷ U.S. SENTENCING COMM'N, U.S. SENTENCING GUIDELINES MANUAL (2010), available at http://www.ussc.gov/guidelines/2010_guidelines/ToC_PDF.cfm.

¹⁸ See APPLICATION AND COMMENTARY ON THE SENTENCING REFORMS, *supra* note 5, at 7.

¹⁹ See 刑法学 [CRIMINAL LAW] 274-77 (高铭暄、马克昌 [Gao Mingxuan & Ma Kechang] eds., 2007).

The problem is that the Criminal Law usually specifies two or more broad penalty ranges for a single offense, leaving the presiding judge much discretion. Article 232 of the Criminal Law, for instance, provides for two penalty ranges for murder: the default range allows a sentence of death or imprisonment for ten years to life; a second, lighter range calls for three to ten years' imprisonment and applies "if the circumstances are not serious." A judge can sentence a defendant to any penalty within the default range for common murder, or any penalty within the lighter range for a less serious murder, at his discretion, without providing specific justification for the sentence. Neither defense nor prosecution has a legal basis to challenge this decision, and each can only move for a lighter or heavier sentence, an action which has no binding effect on the judge. Here, it was the legislature who did not devote enough attention to setting proper penalty ranges in amending the Criminal Law in 1997, making it necessary to perfect these sentencing ranges in future amendments.²⁰

Due to the vagueness of the Criminal Law, the SPC has from time to time promulgated judicial interpretations to address difficult or controversial issues concerning major offenses, including standards for the decision to sentence under one of multiple penalty ranges and not another. Before the Directive on Sentencing, the Criminal Law and relevant judicial interpretations of the SPC included some standards for decision between penalty ranges for specific offenses.²¹ But no clear standards, legal or otherwise, have been given for specific sentencing *within* one penalty range. Judges in criminal tribunals generally have discretion to sentence a defendant without explanation or justification. Thus, if the sentence after trial of first instance does not violate the sentencing provisions of the Criminal Law or its relevant judicial interpretations, the appellate judge will have no legal basis or standard by which to find the sentence inappropriate; this results in a low reversal rate for sentences at first trial.²²

²⁰ See 储槐植、梁根林 [Chu Huaizhi & Liang Genlin], 论法定刑结构的优化——兼评 97 刑法典的法定刑结构 [On Improvement of the Structure of Legal Penalties—Commentary on the Structure of Legal Penalties in the 1997 Criminal Law], 35 PEKING U. L.J. 6 (1999), available at http://www.pkulaw.cn/fulltext_form.aspx?db=art&gid=335548075.

²¹ For example, according to Article 347 of the Criminal Law, those convicted of smuggling, trafficking, transporting, or manufacturing opium with a quantity of more than one thousand grams; heroin or methylaniline in a quantity of more than fifty grams; or other narcotics in a large quantity are to be punished by fifteen years of fixed-term imprisonment, life imprisonment, or death. Under the SPC's Interpretation Concerning Certain Issues in the Trial of Theft Cases, "relatively large amounts of public or private property" referred to in Article 264 of the Criminal Law means between RMB 500 and 2000. 关于审理盗窃案件具体应用法律若干问题的解释 [Interpretation Concerning Certain Issues in the Trial of Theft Cases] (promulgated by the Sup. People's Ct., Mar. 10, 1998, effective Mar. 17, 1998) art. 3(1), SUP. PEOPLE'S CT. GAZ. (P.R.C.), available at http://www.law-lib.com/law/law_view.asp?id=374.

²² See 张建升 [Zhang Jiansheng], 反思价值目标定位 细化程序操作规范——刑事二审程序：难题与应对论坛综述 [Reflect on Values and Goals, Refine Procedural Rules—Second Instance Criminal Trial Procedure: Conclusions from the Forum on Difficult

Secondly, under the “case quality assessment” (案件质量评估) (*anjian zhiliang pinggu*) system in each court, an appellate court tends to not reverse the trial court’s judgment because reversal of a criminal case means the original judgment is recorded as “wrong.” Since there is no jury trial in China, the judge sits as both fact-finder and interpreter of law. Trial courts are particularly concerned about the possibility of reversal or remand by an appellate court, as a “wrongly decided” case—that is, one reversed or remanded by the appellate court—can adversely affect the judge’s annual bonus and promotion or even result in penalties.²³

Under the Criminal Procedure Law of the People’s Republic of China (“Criminal Procedure Law”), a first instance judgment should be affirmed if “the determination of facts and application of law are correct, and the sentence is appropriate.”²⁴ Due to legislative vagueness and the breadth of allowable sentencing discussed above, appellate judges usually focus on the correctness of criminal convictions and seldom challenge a lower court’s sentencing, except in extreme cases where the court believes the sentence obviously does not fit the crime.²⁵ For example, in the high profile Sun

Issues and their Solutions], 人民检察 [PEOPLE’S PROCURATORIAL SEMIMONTHLY] no. 16, Aug. 2008, at 50–52.

²³ According to Articles 7 to 10 of the SPC Directive on Developing Case Quality Assessment Systems (Trial Implementation), the three categories of assessment indicators are those of trial fairness (审判公正) (*shenpan gongzheng*), trial efficiency (审判效率) (*shenpan xiaolü*), and trial result (审判效果) (*shenpan xiaoguo*). Each category includes eleven indicators. 最高人民法院印发关于开展案件质量评估工作的指导意见 (试行) [Supreme People’s Court Directive on Developing Case Quality Assessment Systems (Trial Implementation)] (promulgated by the Sup. People’s Ct., Jan. 11, 2008, effective Jan. 11, 2008) arts. 7, 10, SUP. PEOPLE’S CT. GAZ. (P.R.C.), available at http://www.law-lib.com/law/law_view.asp?id=269953. In 2001, at the First Criminal Division of one province’s High Court, sixty-nine of 611 second instance criminal trials resulted in reversal. In 2002, the corresponding figures were sixty-six reversals in 552 cases; in 2003, seventy reversals in 550 cases; and in 2004, fifty-eight reversals in 627 cases. See 王冬云、陈增宝 [Wang Dongyun & Chen Zengbao], 理性地对待刑事二审改判——对现行错案追究制的反思 [*Rationally Treat Reversals in Second Instance Criminal Trials—Reflections on the Wrong Judgment Responsibility System*], 法治研究 [RULE L. RES.], no. 12, 2009 at 69–70.

²⁴ Criminal Procedure Law, *supra* note 12, art. 189.

²⁵ For example, Yibing (宜宾) City Intermediate People’s Court in Sichuan Province tried 597 criminal cases of second instance from 2004 to 2006. In 2004, twenty-nine of 206 cases resulted in reversal; in 2005, twenty-four of 164 cases; in 2006, sixty-six of 227. In 2006, seventeen cases were reversed after an open trial. Of these, two cases were reversed on grounds of factual error, eight on grounds of error in the application of the law, one based on new evidence, and eight on grounds of inappropriate sentencing. The remaining reversals in 2006 were based on documentary review without open trial. 李红彬 [Li Hongbin], 刑事二审审理方式的现状与对策研究 [*Study on the Current State and Future Policy of Second Instance Criminal Adjudication Methods*], 宜宾新闻网 [YIBIN NEWS NET] (Apr. 28, 2008), <http://www.ybxww.com/content/2008-4/28/2008428121232>

Weiming (孙伟铭) case, the defendant drove a car while intoxicated and without a driver's license, causing an accident that killed four persons and seriously injured another. The trial court convicted Sun of endangering public security by dangerous means and sentenced him to death. The appellate court changed the sentence to life imprisonment for the reasons that only indirect criminal intent on the part of the defendant's could be found and that the defendant had paid substantial compensation to the victims.²⁶ This exception notwithstanding, trial judges tend to focus on issues related to conviction, and sentence without concern for the consistent use of clear standards.

Of course, given the well-understood negative consequences for a trial judge whose cases are remanded or whose decisions are reversed, there is another reason for the low reversal rate of criminal sentences: the culture of concern for peers' "face" in public. Whereas federal judges in the American judicial system try both criminal and civil cases, every judge at any level of the Chinese judicial system is assigned to a specific division (criminal, civil, administrative, or other division) at the beginning of her career. Typically, a judge who tries criminal cases tries only criminal cases, and continues to do so if promoted to a higher-level court. The structure of the court system fosters the formation of close relationships between criminal court judges. Trial judges pay closest attention to determining whether a defendant has committed a specific offense, rather than to the fairness and transparency of standards for sentencing; judges in the higher courts are inclined to affirm the judgment in the first instance because they regard themselves as one system of judges of criminal division and usually feel the need to respect each other's judgments.²⁷

It is therefore of great significance that the Directive on Sentencing and Opinion on Sentencing Procedure reflect a policy of consistent and transparent sentencing on the part of the SPC. As the first set of judicial documents with systematic rules of sentencing to be implemented nationally, they serve as a general pilot test for a comprehensive system of substantive and procedural sentencing rules and will provide practical experience for the drafting of future versions of these two regulations. The Directive on Sentencing maps out detailed rules to apply to fourteen sentencing factors, which will be discussed below. The Opinion on Sentencing Procedure requires

.htm; 钱贤良 [Qian Xianliang], 专家认为刑事二审改判率太低影响司法权威 [Expert Believes Reversal Rate of Criminal Judgments on Appeal Too Low, Affecting Judicial Authority], 正义网 [PROCURATORATE DAILY ONLINE] (July 12, 2008), http://www.jcrb.com/zhuanti/fzzt/ntyddl/ntydzxbd/200807/t20080712_36673.html (discussing arguments made by Professor Chen Guangzhong).

²⁶ 最高法: 两起醉驾案被告人被判无期妥当 [Supreme Court: Two Drunk Driving Defendants Properly Received Life Sentences], 新华网 [XINHUA NET] (Sept. 8, 2009), http://news.xinhuanet.com/legal/2009-09/08/content_12014974_1.htm.

²⁷ See 罗宗炳 [Luo Zongbing], 对案件知错不改的裁判行为与渎职关系探讨 [Discussion on the Relationship Between Judgments Not Reversing Known Errors and the Dereliction of Duty], 法制与经济 [LEGAL SYS. & ECON.], no. 20, Oct. 2008 at 22.

each judge to justify the sentence in writing as part of the judgment. This will push judges to give sentencing a weight more equal to that of adjudication of guilt in the criminal justice system.

B. Establishment of Substantive Framework for Sentencing

The Directive on Sentencing provides both a framework for the sentencing process and specific guidance concerning the application of sentencing factors.²⁸ Part II, Section 1 provides for a three-step sentencing process: (i) establish a “starting point” sentence within the penalty range provided in the Criminal Law, based on the primary elements of the offense; (ii) establish a baseline sentence (基准刑) (*jizhun xing*) by adjusting the starting point based on such factors as the value of property involved in the offense and the harm caused by the offense;²⁹ (iii) adjust the baseline sentence using sentencing factors that reflect aggravating or mitigating circumstances (量刑情节) (*liangxing qingjie*), literally “sentencing circumstances,” to produce a final sentence.³⁰ All adjustments are to be recorded in the case file on a sentencing commentary table (量刑评议表) (*liangxing pingyi biao*).³¹

First, the Directive on Sentencing lists fourteen sentencing factors applicable in all cases and their effects on the baseline sentence expressed in terms of percentage of the baseline. Six of these are statutory factors explicitly mandated by the Criminal Law: the baseline sentence is adjusted if the defendant is a minor, an accessory to the crime, has only attempted the crime, has surrendered voluntarily to the authorities, has assisted in a criminal investigation, or is a recidivist.³²

Aside from these six mandatory factors, a further eight factors are discretionary and may be applied by the court on a case-by-case basis: the court *may* adjust a sentence upward or downward if the defendant has a prior criminal record, has confessed to the crime, has pled guilty, has compensated the victim of the crime for economic loss, has committed a crime against a disadvantaged person such as a child or elderly person, has committed a crime during a natural disaster or other emergency, has been forgiven by the victim, or if stolen property has been recovered.³³ The main difference between

²⁸ The Directive on Sentencing comprises five parts: Part I on the principles of sentencing, Part II on basic sentencing methods, Part III on the application of common sentencing factors, Part IV on the sentencing of common offenses, and Part V on supplementary provisions.

²⁹ Directive on Sentencing, *supra* note 1, Part II, sec. 1(2).

³⁰ *Id.* Part II, sec. 1(3).

³¹ See generally, e.g., 量刑探索与实践 [PRACTICE AND RESEARCH ON SENTENCING DISCRETION] (丁寿兴 [Ding Shouxing] ed., 2011) (example sentencing commentary tables for defendants in theft, drug sale, assault, traffic offense, and robbery cases).

³² Directive on Sentencing, *supra* note 1, Part II, sec. 2(3).

³³ *Id.* Part III, secs. 6–10, 12–14.

statutory factors and discretionary factors is that the former *must* be considered under the Criminal Law and the extent of their impact on sentencing is subject to basic regulation.³⁴ In contrast, the latter may or may not be admitted by the judges based solely on the exercise of their discretion.

Usually judges rely heavily on statutory factors and pay little attention to discretionary factors,³⁵ leading to sentencing discrepancies in similar cases. According to a March 2000 sentencing survey by the China University of Political Science and Law Criminal Law Research Center, the inconsistency of sentencing is obvious in Shanghai's court system. For example, in cases involving the theft of property valued at over RMB 20,000, the defendants were typically sentenced to three years' imprisonment in certain counties or districts but to five to six years' imprisonment in others.³⁶ The study found these discrepancies to derive in part from the lack of explicit rules concerning the adjustment of sentences based on aggravating and mitigating circumstances and the broad range of terms of imprisonment for specific offenses allowed under the Criminal Law.³⁷

Prior to the passage of the Directive on Sentencing, only general guidance was given as to how statutorily defined aggravating or mitigating circumstances should affect sentencing. For instance, a defendant between the ages of fourteen and eighteen is to receive a lesser or mitigated punishment.³⁸ Whether the defendant should receive a lesser as opposed to a mitigated

³⁴ For example, a crime committed by a person between the ages of fourteen and eighteen receives a lesser punishment or a mitigated punishment. Criminal Law, *supra* note 8, art. 17. Under Article 62 of the Criminal Law, when the circumstances of a crime call for a *lighter* punishment, the defendant is sentenced to a lighter punishment within the limits of the prescribed punishment range. Under Article 63, when the circumstances call for a *mitigated* punishment, the defendant is sentenced to a punishment below the prescribed range.

³⁵ See 张建新 [Zhang Jianxin], 量刑情节相关问题研究 [Study on Relevant Issues on Sentencing Factors], 吉林公安高等专科学校学报 [JILIN PUB. SECURITY C. J.], no. 1, 2010 at 92.

³⁶ See 中国政法大学刑事法律研究中心赴上海调研组 [China U. of Pol. Sci. & L. Crim. L. Inst., Shanghai Survey Team], 对上海市判刑问题的调查报告 [Survey on Sentencing Issues in Shanghai], in 中英量刑问题比较研究 [COMPARATIVE STUDY ON SENTENCING ISSUES IN CHINA AND THE UNITED KINGDOM] 337-38 (中国政法大学刑事法律研究中心、英国大使馆文化教育处 [China University of Political Science and Law Criminal Law Institute & British Embassy in Beijing Education Section] eds., 2001). The study found that forty-five percent of criminal cases in Shanghai involved crimes against property.

³⁷ A defendant convicted of theft is to be fined and sentenced three to ten years' imprisonment if the amount of property involved is "great" or if other "serious circumstances" exist. Criminal Law, *supra* note 8, art. 264. As provided by the SPC, *supra* note 21, the "large amount of public or private property" referred to in Article 264 is between RMB 5,000 and 20,000. The Shanghai High Court sets the "large amount" at a value of RMB 20,000 within its jurisdiction. Thus the judge has discretion to impose three to ten years' imprisonment; yet judges in areas of different levels of economic development may view the theft of the same RMB 20,000 differently.

³⁸ Criminal Law, *supra* note 8, art. 17.

punishment, and if so, what specific lesser or mitigated punishment should be imposed, are left to the discretion of the judge. The Directive on Sentencing now prescribes a specific adjustment percentage range: for defendants between the ages of fourteen and sixteen, the baseline sentence can be reduced by thirty to sixty percent.³⁹ For defendants between sixteen and eighteen, the baseline can be reduced by ten to fifty percent.⁴⁰ The Directive on Sentencing gives similar prescriptions with respect to all thirteen of the other statutory sentencing factors. As to mitigated sentences, the Directive on Sentencing provides that only if application of all appropriate mitigating factors to the baseline sentence results in a sentence below the statutory range *and* the law allows a mitigated sentence⁴¹ can a mitigating sentence be imposed. Otherwise the sentence can be no lower than the bottom of the baseline range.⁴²

At the same time, the Criminal Law gives no uniform standards for the application of discretionary sentencing factors. Whether mitigating or aggravating sentencing factors apply in a given criminal case is always contested. For instance, there are different sentencing considerations when a defendant has compensated and been excused by the victims of the offence (including the families of a deceased victim). The Directive on Sentencing provides that, based on a comprehensive consideration of the circumstances—the amount of damages, the defendant's ability and willingness to compensate victims, and the reason for the victim's excusing the defendant—the baseline sentence may be reduced by up to thirty percent.⁴³ If the victim excuses the offense, the baseline sentence may be reduced by up to twenty percent.⁴⁴ These two factors can be applied cumulatively to reduce the baseline sentence by up to fifty percent.

Secondly, the Directive on Sentencing also provides for a starting point, baseline sentence, and relevant sentencing factors for fifteen “common offenses,” including assault, rape, robbery, fraud, and the smuggling, trafficking, transport, and production of drugs. For instance, the starting point for assault is determined as follows: (i) for minor injury, the starting point is

³⁹ Directive on Sentencing, *supra* note 1, Part III, sec. 1(1).

⁴⁰ *Id.*

⁴¹ Circumstances allowing a mitigated sentence under the Criminal Law include infancy, disability, or surrender of the defendant. Mitigating sentencing factors can be applied if a defendant is a juvenile or a deaf, mute, or blind person, or has voluntarily surrendered to the authorities. Criminal Law, *supra* note 8, arts. 17(3) (lesser or mitigated punishment for defendants between the ages of fourteen and eighteen), 19 (lesser or mitigated punishment, or exemption from punishment for deaf, mute, or blind defendants), 67(1) (lesser or mitigated punishment for defendants voluntarily surrendering to the authorities, and exemption for those whose crimes are relatively minor).

⁴² Directive on Sentencing, *supra* note 1, Part II, sec. 3(2).

⁴³ *Id.* Part III, sec. 1(9).

⁴⁴ *Id.* Part III, sec. 1(10).

six to eighteen months' imprisonment; (ii) for serious injury, three to four years; (iii) for serious injury by particularly ruthless means resulting in Level VI Disability,⁴⁵ ten to twelve years, unless a sentence of life imprisonment is required under the Criminal Law; (iv) for assault resulting in death, ten to fifteen years' imprisonment unless a life sentence is required under the Criminal Law.⁴⁶

Finally, the sentencing process and application of sentencing factors can be demonstrated by completing a sentencing discretion table. Sentencing discretion tables are designed by each provincial High Court according to each province's implementation rules for the Directive on Sentencing. The judge presiding over a criminal case is required to complete the table after the decision of the judicial panel (合议庭) (*heyi ting*), and list all factors determining the final sentence. The table is included in the formal case files as the part of the judgment and is available to the defense, the prosecution and other judges in the same court or other courts. The sentencing discretion table used in Hubei Province will illustrate the process for a simple hypothetical case.

On October 15, 2010, defendant *D*, an adult, breaks into the apartment of his girlfriend *V*. *D* has discovered that *V* is involved with another man and believes this other man is with *V*. *D* assaults *V* with a pipe, causing a serious eye injury (later determined to be a Level VII disability) and several minor injuries. Later, *D* surrenders to the police and confesses to the assault. *D* has previously served a term of one and one half years' imprisonment after a conviction for blackmail, starting January 18, 2007 and ending July 17, 2008. *D* and *V* reach an agreement under which *D* is to pay RMB 85,000 to *V*. *D*'s relative pays RMB 10,000 to *V* before sentencing, and *D* promises to pay the rest within two years of completing his sentence.

Based on the Directive on Sentencing and Hubei Implementation Rules, we can complete the table as follows.

⁴⁵ The disability level in criminal cases is determined by licensed experts registered with provincial level Departments of Justice. These experts submit formal evaluations according to the Identification Criteria for Serious Human Injury (Trial Implementation) [人体重伤鉴定标准 (试行)] (promulgated by the Sup. People's Ct., Sup. People's Proc., Ministry of Pub. Security & Ministry of Justice, Mar. 29, 1990, effective Mar. 29, 1990), SUP. PEOPLE'S CT. GAZ. (P.R.C.), available at <http://www.jincao.com/fa/02/law02.07.htm>; and Identification Criteria for Minor Human Injury (Trial Implementation) [人体轻伤鉴定标准 (试行)] (promulgated by the Sup. People's Ct., Sup. People's Proc., Ministry of Pub. Security & Ministry of Justice, effective Apr. 2, 1990), SUP. PEOPLE'S CT. GAZ. (P.R.C.), available at <http://www.lawtime.cn/info/jianding/sfjdlaw/2006093037047.html>. The procedure for expert evaluation is governed by the General Rules of Judicial Expert Evaluation [司法鉴定程序通则] (promulgated by the Ministry of Justice, July 18, 2007, effective Oct. 1, 2007), ST. COUNCIL GAZ. (P.R.C.), available at http://www.china.com.cn/policy/txt/2007-08/13/content_8671051.htm.

⁴⁶ Directive on Sentencing, *supra* note 1, Part IV, sec. 2(1).

Table 1. Sentencing Discretion Table for Defendant's Assault⁴⁷

Starting Point			
Binding Penalty Range	Decision		Reasoning
Three to four years' imprisonment ⁴⁸	Four years' imprisonment		D caused V several minor injuries
Factors Affecting Baseline			
Factors	Binding Adjustment Range	Decision	Reasoning
V suffered Level VII Disability	Add one to three months' imprisonment for each disability level from Level X to Level VII. ⁴⁹	Add six months	Add two months for each disability level more serious than Level X.
D assaulted V with weapon	Add six to twelve months' imprisonment. ⁵⁰	Add six months	A pipe is not a typical deadly weapon.
Baseline Sentence	Starting Point (48) + Term Added (12) = 60 months' imprisonment		
Sentencing Factors			
Factors	Binding Percentage	Decision	Reason
Surrender (statutory)	Reduce by up to 40% for D's direct surrender after committing the crime. ⁵¹	-40%	D surrendered immediately and confessed to the crime.
Partial compensation of victim (discretionary)	Reduce by up to 20% if voluntary payment to the best of defendant's ability compensates a small part of the victim's damages. ⁵²	-2%	D paid V RMB 10,000 and agreed to pay a total of RMB 85,000.
Recidivism (statutory)	Add 10% to 30% for recidivism within one to three years of release. ⁵³	+20%	D committed a crime within two years of his release.
Primary Sentence	60 months × (1 - 40% - 2% + 20%) = 47 months' imprisonment		

⁴⁷ Information entered in italics based on the hypothetical; bold fields translated from the standard table.

⁴⁸ Hubei Implementation Rules, *supra* note 14.

⁴⁹ *Id.* Part II, sec. 2(4). A lower numerical disability level indicates more serious injury.

⁵⁰ *Id.* Part II, sec. 2(5).

⁵¹ *Id.* Part II, sec. 14(1).

⁵² *Id.* Part II, sec. 19(2).

⁵³ *Id.* Part II, sec. 22(2).

Judicial Decisions	
Primary Sentence	60 months \times (1 – 40% – 2% + 20%) = 47 months' imprisonment
Presiding judge's decision and reasoning	Forty-three months' imprisonment because the crime is triggered by domestic conflict and D and V have a daughter.
Judicial panel's decision and reasoning	Forty-three months' imprisonment for reasons given above; the panel reduces sentence by four months based on its power under the Hubei Implementation Rules. ⁵⁴
Criminal Division Chief Judge's decision	Forty-three months' imprisonment, in agreement with panel
Court President's decision	Forty-three months' imprisonment, in agreement with panel
Court Adjudication Committee's decision	This type of case is not subject to Court Adjudication Committee discretion. ⁵⁵
Sentence	Forty-three months' imprisonment

II. IMPLICATIONS OF NATIONAL STANDARDIZED SENTENCING REFORM

A. A Greater Role for the SPC in Promoting the Rule of Law

Though standardized sentencing reform involves the entire criminal justice system, including the police, procurators, judges, and correction officials, the SPC and court system play a vital role in promoting nationwide reform. "Standardized sentencing reform" is a slogan derived from the title of a major judicial reform project, "Standardizing Discretion and Bringing Sentencing into Court Trial Procedure," outlined by the SPC in its Third Five-

⁵⁴ Under Part II, sec. 3(5) of the Hubei Implementation Rules, *supra* note 14, the judge in a summary criminal procedure or the presiding panel in an ordinary criminal case has discretion to adjust the primary sentence upwards or downwards by up to ten percent based on a determination that it does not fit the crime.

⁵⁵ The president of a court and chief judge of a court's criminal division have discretion to refer a case to the Court Adjudication Committee. With regard to a difficult, complex, or major case, if the presiding judicial panel has difficulty deciding the case, it shall refer the case to the president of the court, who may submit it to the Court Adjudication Committee for decision. Criminal Procedure Law, *supra* note 12, art. 149. Usually the Court Adjudication Committee is composed of the court's president, vice president, chief judges, and some vice chief judges and judges from the criminal division, criminal division, and administrative division. The size of the Committee varies between courts. There are two major regulations governing Court Adjudication Committees: the Court Adjudication Committee Working Rules (最高人民法院审判委员会工作规则) (promulgated by the Sup. People's Ct., effective Aug. 20, 1993), available at http://www.law-lib.com/law/law_view.asp?id=9800 (last visited Aug. 22, 2011); and the Implementation Opinion on the Reform and Perfection of the Court Adjudication Committee System (关于改革和完善人民法院审判委员会制度的实施意见), 最高人民法院 [Sup. People's Ct.] (effective Jan. 11, 2010), available at http://www.court.gov.cn/qwfb/sfwj/yj/201003/t20100331_3604.htm (last visited Aug. 22, 2011).

Year Reform Outline for the People's Courts (2009–2013) (the “Third Five-Year Reform Outline”).⁵⁶ The SPC has long been active in promoting the rule of law⁵⁷ in China through successive policy reform plans. Its three reform outlines were binding and served as directive policies for all relevant legal and institutional reforms within the court system.⁵⁸

Starting in early 2006, the SPC established a task force on standardized sentencing reform to consider possible strategies for promoting such reform nationwide.⁵⁹ At the same time, the SPC successfully obtained the full support of the Central Committee of the Communist Party of China (“Central Committee”) for nationwide standardized sentencing reform. This political support enabled the SPC to gain the support of other official bodies within the criminal justice system.⁶⁰ Finally, in 2010, after over two years of pilot projects in selected courts,⁶¹ systemic sentencing standards were implemented in the form of the Directive on Sentencing, and basic principles to establish more independent sentencing were implemented in the Opinion on Sentencing Procedure.

It should be noted, however, that while the Directive on Sentencing was promulgated by the SPC alone, the Opinion on Sentencing Procedure was issued jointly by the SPC, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security, and the Ministry of Justice. Because sentencing procedure involves investigation and submission of evidence relating to *sentencing* by police and the recommendation of a sentence by prosecutors,⁶² and thus implicates the authority of other

⁵⁶ 人民法院第三个五年改革纲要 (2009–2013) [Third Five-Year Reform Outline for the People's Courts (2009–2013)] (promulgated by the Sup. People's Ct., Mar. 17, 2009, effective Mar. 17, 2009), SUP. PEOPLE'S CT. GAZ. (P.R.C.), available at <http://china.findlaw.cn/info/guojiafa/xf/124546.html>.

⁵⁷ Here, “rule of law” refers to the principles that the Constitution and legislation should govern all affairs in society and that each case should be decided by a just and explicit adjudication.

⁵⁸ 人民法院第一个五年改革纲要 (1999–2003) [First Five-Year Reform Outline for the People's Courts (1999–2003)] (promulgated by the Sup. People's Ct., Oct. 20, 1999, effective Oct. 20, 1999), available at <http://www.dffy.com/faguixiazai/xf/200511/2005112811114.htm>. The Second Five-Year Reform Outline for the People's Courts (2004–2008) [人民法院第二个五年改革纲要 (2004–2008)] (promulgated by the Sup. People's Ct., Oct. 26, 2005), available at <http://www.dffy.com/faguixiazai/xf/200512/20051214221735.htm>, unified standards for the imposition of the death penalty by withdrawing from the High Courts the previously delegated power to review death sentences.

⁵⁹ APPLICATION AND COMMENTARY ON THE SENTENCING REFORMS, *supra* note 5, at 11.

⁶⁰ *Id.* at 12.

⁶¹ *Id.* at 13–14.

⁶² No laws formally govern a prosecutor's power to recommend a sentence. The procuratorate has the power to initiate a public prosecution in criminal cases. 中华人民共和国人民检察院组织法 [People's Republic of China Organic Law of the People's Procuratorates] (promulgated by the Standing Comm. Nat'l People's Cong., July 5, 1979,

important state entities, it is impossible for the SPC alone to promulgate a document such as the Opinion on Sentencing Procedure. Sentencing procedure is intertwined with the Criminal Procedure Law, and reforms can only be officially put in motion by amending the Criminal Procedure Law. The NPC Standing Committee's 2011 annual report placed the amendment of the Criminal Procedure Law on its 2011 Legislation Plan.⁶³ The NPC Standing Committee first examined the Draft Amendment to the Criminal Procedure Law ("Draft Amendment") on August 24, 2011.⁶⁴ The full text of the Draft Amendment has been published on the NPC's website for the solicitation of public comment, and the Standing Committee plans to submit the final draft of the amendment to the NPC for consideration in the next year.⁶⁵

Under the Draft Amendment, facts relevant to sentencing will be subject to investigation in official procedure,⁶⁶ and argument on sentencing will for the first time be established as one of the stages of criminal trial procedure.⁶⁷

amended Sept. 2, 1983, effective Sept. 2, 1983) art. 5(4), available at http://www.law-lib.com/law/law_view.asp?id=1947. The power to file a public prosecution is generally interpreted as including the power to recommend a sentence. See 林喜芬 [Lin Xifen], 论量刑建议的运行原理与实践疑难破解——基于公诉精密化的本土考察 [On the Operating Principles and Practical Quandary of Sentencing Recommendations—A Native Investigation from the Perspective of the Refinement of Public Prosecution], 法律科学 [Sci. L.], no. 1, 2011 at 122.

⁶³ 吴邦国 [Wu Bangguo], 全国人民代表大会常务委员会工作报告 [Report on the Work of the Standing Committee of the National People's Congress], 人民日报 [PEOPLE'S DAILY], Mar. 19, 2011, at 1, available at http://paper.people.com.cn/rmrb/html/2011-03/19/nbs.D110000renmrb_01.htm.

⁶⁴ 廖文根 [Liao Wengen], 人大常委会第二十二次会议在京举行 [22nd Session of the Standing Committee of the National People's Congress Held in Beijing], 人民日报 [PEOPLE'S DAILY], Aug. 25, 2011, at 1, available at http://paper.people.com.cn/rmrb/html/2011-08/25/nbs.D110000renmrb_01.htm.

⁶⁵ 刑事诉讼法修正案 (草案) 条文及草案说明 [Draft Amendment to the Criminal Procedure Law and Explanation], 中国人大网 [CHINA PEOPLE'S CONGRESS NET] (Aug. 30, 2011), http://www.npc.gov.cn/npc/xinwen/lfgz/2011-08/30/content_1668503.htm.

⁶⁶ Specifically, Article 16 of the Draft Amendment would amend the Criminal Procedure law to require that all facts relevant to sentencing be proved beyond a reasonable doubt. *Id.* ("Revise Article 46 into [the new] Article 52, to read: 'Evidence should be reliable and sufficient and satisfy the following conditions: (i) Facts establishing a conviction or sentence is to be proven by evidence; (ii) All evidence adopted is to undergo investigation by legally required procedure; (iii) After the whole of the case evidence is considered, all reasonable doubt as to established legal facts is to be excluded.'"). All of this language is newly added.

⁶⁷ This requirement is from Article 70 of the Draft Amendment. *Id.* ("Revise Article 160 into [the new] Article 196, to read: 'With the permission of the presiding judge, the prosecutor, parties, defense counsel and agents ad litem may state their views on the evidence, circumstances of the case, guilt and sentencing, and may argue with each other. After the presiding judge announces the end of debate, the defendant has the right to a final statement.'") The words "conviction and sentencing" are newly added.

In short, the Draft Amendment officially incorporates sentencing into the trial procedure at both the investigation and argument stages, and thus provides a legal basis for future development of sentencing procedure through standardized sentencing reform. If the final Draft Amendment is passed by the NPC, more specific rules will be probably again be made independently or jointly by the SPC (through judicial interpretations), Supreme People's Procuratorate, Ministry of Public Security, Ministry of State Security, and Ministry of Justice.⁶⁸ Further rules on sentencing procedure, addressing issues such as the allocation of power between institutions of investigation, prosecution, and adjudication, and their respective roles, will be specified after the Criminal Procedure Law is formally amended in the next year.

The relationship between the prosecutor's power to recommend a sentence and the judge's sentencing discretion is one of the most serious difficulties of standardized sentencing reform.⁶⁹ According to the Opinion on Sentencing Procedure, the prosecutor can propose a sentence and argue sentencing issues with the defense.⁷⁰ But because such measures increase the prosecutor's workload, some procuratorates refuse to cooperate with courts and follow the procedure.

The author's informal interviews on the implementation of the Opinion on Sentencing Procedure with twenty judges in Yunnan Province in January 2011 suggests that judges face two difficulties in this regard. Firstly, at first instance trial, procurators usually do not put forth a formal sentencing recommendation; they may simply recommend a penalty within the same broad range defined in the Criminal Law. Secondly, after implementation of the Opinion on Sentencing Procedure, appellate courts are more likely to conduct open sentencing hearings, but some procuratorates insist that courts adjudicate appeals by documentary review rather than by open hearing, on the grounds that there are not enough prosecutors to appear and argue before the court in every criminal case. The low incidence of open criminal trials is a

⁶⁸ As to the existing Criminal Procedure Law, two judicial interpretations play the most important role. See 最高人民法院关于执行《中华人民共和国刑事诉讼法》若干问题的解释 [Supreme People's Court Interpretation on Certain Questions Concerning the Implementation of the People's Republic of China Criminal Procedure Law] (promulgated by the Sup. People's Ct., June 29, 1998, effective Sept. 8, 1998), SUP. PEOPLE'S CT. GAZ. (P.R.C.), available at http://www.court.gov.cn/bsfw/sszn/xgft/201004/t20100426_4527.htm; 关于刑事诉讼法实施中若干问题的规定 [Regulation on Several Issues in the Implementation of the Criminal Procedure Law] (promulgated by the Sup. People's Ct., Sup. People's Proc., Ministry of Pub. Security, Ministry of State Security, Ministry of Justice, and Standing Comm. Nat'l People's Cong. Legis. Aff. Comm'n, Jan. 19, 1998, effective Jan. 19, 1998), SUP. PEOPLE'S CT. GAZ. (P.R.C.), available at <http://www.spp.gov.cn/site2006/2006-02-22/00024-57.html>.

⁶⁹ 熊选国 [Xiong Xuanguo], 关于量刑程序改革的几个问题 [On Several Issues of Sentencing Procedure Reform], 人民法院报 [PEOPLE'S CT. DAILY], Oct. 13, 2010, at 5, available at <http://www.chinacourt.org/html/article/201010/13/431299.shtml>.

⁷⁰ Opinion on Sentencing Procedure, *supra* note 2, arts. 3, 9.

long-established fact.⁷¹ As a result, in many cases, the court is not guided in the use of its discretion by a sentencing recommendation from the prosecution or by argument between prosecution and defense.⁷²

It is impossible for the Directive on Sentencing of SPC to resolve all problems in criminal justice sentencing; it can only conclude the present experiences during the standardized sentencing reform and give a framework and basic guidelines for the promulgation of more detailed sentencing rules by each High Court. By authorizing High Courts to make implementation rules, the SPC can push the sentencing reform process forward while accounting for practical realities, as the SPC itself has great difficulties supervising the reform process at the local level, and different problems will arise in different provinces. The court system functions as an administrative organ in the sense that all judges and the president of each court are given a ranking in a larger bureaucratic structure. The SPC sits atop the judicial hierarchy. Through the Directive on Sentencing, the SPC formally authorizes each high court to make implementation rules within its jurisdiction.⁷³ In theory, then, the Directive on Sentencing is merely an SPC judicial document. But in practice it is also an administrative document governing criminal trials in each level of the court system. The SPC's place in the judicial hierarchy allows it to push local courts to implement SPC judicial documents by adopting analogous local documents and establishing pilot projects.⁷⁴

B. Gradual Amendment of the Directive on Sentencing

The Directive on Sentencing is far from the end of national standardized sentencing reform. As a pilot document, it will be subject to amendment over the long term, mainly on the basis of its provincial implementation rules. Considering that the Third Five-Year Reform Outline covers a time period ending in 2013, there will be at least one amendment of the Directive on

⁷¹ Between 2004 and 2007, the open trial rate in second instance criminal cases was slightly less than ten percent. In 2008, because of the requirement that all death penalty cases be openly tried, the open trial rate increased to twelve percent. The majority of second instance criminal cases are decided based on court review of documents. 朱和庆、司明灯 [Zhu Heqing & Si Mingdeng], 对提高刑事案件二审开庭率问题的立法思考 [Legislative Thoughts on Enhancing Adjudication of Criminal Cases in the Court of Second Instance], 人民法院报 [PEOPLE'S CT. DAILY], Feb. 16, 2011, at 6, available at <http://www.law-lib.com/fzdt/newshtml/szpl/20110216084817.htm>.

⁷² Author's interviews with seven judges from Basic Level Courts and Intermediate Level Courts of Yunnan Province (Jan. 2011).

⁷³ Directive on Sentencing, *supra* note 1, Part V, sec. 1.

⁷⁴ Under the Constitution, the SPC supervises the work of all local courts and special courts, and higher level courts supervise the work of lower courts. 中华人民共和国宪法 [PEOPLE'S REPUBLIC OF CHINA CONST.] (promulgated by the Nat'l People's Cong. Dec. 4, 1982, amended Apr. 12, 1988, Mar. 29, 1993, Mar. 15, 1999, Mar. 14, 2004) art. 127, SUP. PEOPLE'S CT. GAZ. (P.R.C.).

Sentencing by 2013. Under the Supplemental Provisions to the Hubei Implementation Rules, the latter will be amended after a one-year trial period.⁷⁵ As provincial implementation rules are implemented and later amended, the SPC will collect information, such as the specific adjustment percentages by which one sentencing factor affects the baseline sentence and additional sentencing factors, and amend the Directive on Sentencing based on the findings of local courts.⁷⁶ In particular, future amendments are likely to include the following two changes in Part III and Part IV.

Firstly, additional offenses will probably be added to Part IV of the Directive on Sentencing on "Sentencing for Common Offenses." The present Directive on Sentencing covers only fifteen of the 445 offenses defined in the Criminal Law, and detailed sentencing directives for other offenses have yet to be placed on the agenda. The present Directive on Sentencing is in fact the SPC's second. The first (the "2009 Directive on Sentencing") was promulgated on April 2009 and tested between June 2009 and September 2010 in more than 120 courts: one Intermediate Level Court and three Basic Level Courts in each of the thirty-two High Court jurisdictions.⁷⁷ The 2009 Directive on Sentencing governed sentencing for five offenses: traffic accident, assault, robbery, theft, and the smuggling, trafficking, transportation, and manufacture of drugs.⁷⁸ Provisions concerning ten other offenses were added in the same 120 courts starting December 1, 2009.⁷⁹ The present Directive on Sentencing was promulgated and applied to all courts based on the experience of these pilot reforms.⁸⁰

In practice, courts refer to the first three parts of Directive on Sentencing in sentencing for offenses other than the fifteen common offenses it addresses directly, making more sentencing data available to each High Court for analysis.⁸¹ By their own language, the first three parts of the Hubei

⁷⁵ Hubei Implementation Rules, *supra* note 14, art. 3.

⁷⁶ See Directive on Sentencing, *supra* note 1, Part V, sec. 1.

⁷⁷ 人民法院量刑指导意见 (试行) 2009 [Directive on Sentencing in the People's Courts (for Trial Implementation) 2009] (promulgated by the Sup. People's Ct., June 1, 2009, effective Jul 1, 2009), available at http://www.360doc.com/content/11/0715/12/505429_133695348.shtml. See APPLICATION AND COMMENTARY ON THE SENTENCING REFORMS, *supra* note 5, at 14-15.

⁷⁸ 最高人民法院首次披露量刑规范化改革试点目标 [Supreme People's Court Discloses Pilot Objectives for Sentence Standardization and Reform for First Time], 新华网 [XINHUA NET] (Aug. 11, 2009), http://news.xinhuanet.com/politics/2009-08/11/content_11861144.htm.

⁷⁹ 最高人民法院关于在全国法院扩大量刑规范化试点罪名的通知 [Supreme People's Court Notice on Increasing the Pilot Offenses in Standardized Sentencing in Courts Nationwide], (promulgated by the Sup. People's Ct., Dec. 1, 2009, effective Dec. 1, 2009), available at <http://blog.chinacourt.org/wp-profile1.php?p=220581&author=1741>.

⁸⁰ See APPLICATION AND COMMENTARY ON THE SENTENCING REFORMS, *supra* note 5, at 12.

⁸¹ Author's interview with a vice chief judge in the criminal division of a provincial-level High Court (Jan. 2011).

Implementation Rules apply to all offenses governed by the Criminal Law, like the Directive on Sentencing, to which they add greater detail.⁸² Nationwide rules on the sentencing starting point and baseline sentence can then be promulgated for specific offenses.

Since the fifteen common offenses covered by the Directive on Sentencing account for about ninety percent of criminal cases tried in Chinese courts,⁸³ new offenses will probably be added to the “common offenses” section of the Directive on Sentencing only slowly. Sentencing rules for offenses classified by the value of property involved (e.g., economic offenses) or quantity of articles involved (e.g., firearms offenses), are probably next to be added because the Criminal Law already includes basic sentencing guidelines based on quantity, and baseline sentencing is comparatively easy to divide in detail on the same basis. For example, for the offense of graft or bribery, the penalty ranges correspond to the amount of funds involved.⁸⁴ The next step is to divide the broad penalty range into smaller ranges.

At present, one of the obvious difficulties of setting a national directive on sentencing for such offenses is economic imbalance in Chinese society. For example, under Article 383 of the Criminal Law, government officials convicted of receiving bribes between RMB 5000 and 50,000 are to be sentenced to one to seven years’ imprisonment; for officials receiving between RMB 50,000 and 100,000, the sentence is five to fifteen years, and in especially serious cases, life imprisonment and confiscation of property.⁸⁵ Obviously, RMB 50,000 has a different economic value in the developed provinces of eastern and southern China and in the developing provinces of western and central China.⁸⁶ Though it is simple to write down the appropriate numbers for bribery in the Criminal Law, it is hard to connect bribery amounts with a consistent national penalty range.

Secondly, new statutory and discretionary sentencing factors will probably be added to the fourteen already included in Part III of the Directive on Sentencing (“Application of Common Sentencing Factors”). A broader range of circumstances is considered by judges in sentencing decisions, and it is better to incorporate them into the standardized sentencing process so as to reduce unwarranted sentencing disparities. Because High Courts are authorized to

⁸² See generally Hubei Implementation Rules, *supra* note 14.

⁸³ See 潘从武 [Pan Congwu], 信访投诉降群众满意升 [Xinfang Rate Falls, Satisfaction of the Masses Rises], 法制日报 [LEGAL DAILY], Nov. 2, 2010, at 5, available at http://www.legaldaily.com.cn/bm/content/2010-11/02/content_2335753.htm?node=20733.

⁸⁴ See Criminal Law, *supra* note 8, art. 383.

⁸⁵ *Id.*

⁸⁶ Given local economic development, some jurisdictions have in practice set the minimum monetary amount for criminal liability for receiving bribes at RMB 50,000, on the grounds that the statutory amount of RMB 5,000 is too low. This effectively changes the minimum penalty for bribery. See 赵秉志 [Zhao Bingzhi], 中国反腐败刑事法治领域中的国际合作 [International Cooperation in the Field of Anti-Corruption Criminal Law in China], 5 国家检察官学院学报 [J. NAT’L PROSECUTORS’ C.] 28 (2010).

make specific sentencing rules within the percentage ranges provided in the Directive on Sentencing, there will probably be no significant change to the existing sentencing factors, though more detailed classifications may be made within existing factors. For instance, sentencing guidelines for attempted crimes might differ based on whether the defendant has completed some act and what actual result has occurred. Therefore, the main amendments to Part III will be in the form of additional sentencing factors.

The first set of amendments will probably address statutory sentencing factors defined in the Criminal Law but not yet addressed by the Directive on Sentencing. These include disability status or diminished capacity of the defendant, imperfect self-defense, imperfect necessity, and complicity. In criminal trials, it is usually an open question how statutory factors will affect sentencing. The main issue in amendment of the Directive on Sentencing is setting an adequate national adjustment percentage to baseline sentencing for other statutory sentencing factors that are not included in Directive on Sentencing, so that the same statutory sentencing factor can be applied equally in its influence to defendants' sentences in different criminal cases.

In contrast to statutory sentencing factors relating to the defendant's infancy or mental illness, the highly diverse circumstances of each criminal case make it more difficult to decide on national-level rules for the application of discretionary sentencing factors. The Hubei Implementing Rules suggest that two of these—the defendant's old age and the victim's direct involvement in or responsibility for causing conflict that leads to an offense—are first on the waiting list of discretionary sentencing factors for a formal nationwide sentencing rule. For instance, under the Hubei Implementation Rules, a baseline sentence can be reduced by up to twenty percent for a defendant between sixty-five and seventy-five years of age, and by up to thirty percent for a defendant over seventy-five.⁸⁷

The amendment of discretionary sentencing factors in the Hubei Implementing Rules will probably be followed in the new Directive on Sentencing. First, recent policy-making suggests that old age will soon be addressed by the SPC as a new discretionary sentencing factor. In February 2010, the NPC adopted its Eighth Amendment to the Criminal Law ("Eighth Amendment"), providing that the death penalty shall not be applied to a defendant who is over the age of seventy-five at the time of trial unless the defendant has caused another person's death by especially cruel means.⁸⁸ The Eighth Amendment addresses the responsibility of elderly defendants in the Criminal Law for the first time.

According to the SPC's report to the NPC during discussions of the first draft of the Eighth Amendment, no more than ten defendants over seventy years old have received the death penalty. Thus, although the Criminal Law

⁸⁷ Hubei Implementation Rules, *supra* note 14, Part III, art. 2.

⁸⁸ 中华人民共和国刑法修正案 (八) [Eighth Amendment to the People's Republic of China Criminal Law] (promulgated by the Standing Comm. Nat'l People's Cong., Feb. 25, 2011, effective May 1, 2011) art. 3, STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. (P.R.C.). See APPLICATION AND COMMENTARY ON THE SENTENCING REFORMS, *supra* note 5, at 584.

has not now abolished the death penalty for all elderly defendants, this provision of the Eighth Amendment serves a signaling function in China, expressing the NPC's inclination to limit application of the death penalty.⁸⁹ This gives the SPC a clear indication that it might consider a corresponding amendment to the Directive on Sentencing so as to show leniency for elderly defendants while continuing to further the government's policy of fighting crime.

In addition, courts usually reduce criminal sentences based on the victim's direct responsibility for or involvement in causing a conflict that leads to a criminal offense; the SPC has suggested that courts may not impose the death penalty under such circumstances even when a defendant has caused serious injury.⁹⁰ The point is illustrated by cases published by SPC in recent years, including the Yu Guangping, Wang Yong, and Liu Jiakui murder cases.⁹¹ Thus, present judicial practice suggests that victim responsibility may be addressed in the next Directive on Sentencing. As for other discretionary sentencing

⁸⁹ 赵蕾 [Zhao Lei], “老人免死”为何进一步退半步 [Why “No Death for Old People” is One Step Forward, Half a Step Back], 南方周末 [SOUTHERN WEEKEND], at A06, Jan. 13, 2011, available at <http://www.infzm.com/content/54629>. The Eighth Amendment also abolishes the death penalty with respect to thirteen criminal offenses.

⁹⁰ 全国法院维护农村稳定刑事审判工作座谈会纪要 [Summary of the All-China Courts' Criminal Adjudication Symposium on Maintaining Rural Stability] (promulgated by the Sup. People's Ct., Oct. 27, 1999, effective Oct. 27, 1999) sec. 2(1), SUPREME PEOPLE'S CT. GAZ. (P.R.C.), available at http://www.law-lib.com/law/law_view.asp?id=16156. This advisory judicial document states that in murder and assault cases, if the victim's obvious fault causes or aggravates a conflict leading to a criminal offense, the defendant “generally” may not be sentenced to death.

⁹¹ Yu Guangping (于光平) was convicted of the offense of unlawfully causing an explosion and received a death sentence for exploding a hand grenade in a crowd, killing three people and injuring seven. The appellate court changed the sentence to a suspended death penalty on grounds of the victims' obvious fault resulting in the offense: the victims and their relatives had surrounded Yu's home, harassed him, and attacked him with stones. Wang Yong (王勇) also received a suspended death sentence for the murder of a victim in an altercation that began when the victim drunkenly assaulted Wang's father. Wang's suspended death sentence was affirmed on appeal, the appellate court considering the factors of the victim's obvious fault and Wang's surrender to police two days after the crime. The Liu Jiakui (刘加奎) case involved a fight between butchers working in a market: Liu's wife and one of the victims had injured each other in a quarrel and were ordered by the market manager to negotiate at the hospital for compensation appropriate to injury. Liu stabbed both victims—the butcher who had injured his wife and the butcher's husband, killing the latter and seriously injuring the former. The husband had coerced Liu into apologizing by means of force, and both victims harassed Liu, demanding compensation. The trial court sentenced the defendant to death with two years' suspension for murder in consideration of the victims' responsibility for aggravating the conflict. The appellate court changed the sentence to death, but the SPC overruled the appellate court and affirmed the trial court's sentence. 刑事审判案例 [CRIMINAL TRIAL CASES] 87–103 (中华人民共和国最高人民法院刑事审判第一庭、中华人民共和国最高人民法院刑事审判第二庭编 [First Criminal Division & Second Criminal Division of Supreme People's Court] eds., 2002).

factors, the SPC aims to establish a more comprehensive standardized sentencing system and may define guidelines concerning new factors in future amendments to the Directive on Sentencing based on the experience of the High Courts. For example, the Jiangsu Implementation Rules define victim fault as a mitigating factor reducing a defendant's sentence by up to thirty percent.⁹²

It is likely that all other statutory sentencing factors defined in the Criminal Law, and at least these two major discretionary sentencing factors, will be added into Part III of the Directive on Sentencing in the near future. Combined with the new offenses likely to be added to Part IV of the Directive on Sentencing, the new edition of the Directive on Sentencing will expand coverage of specific offenses and establish a more comprehensive checklist of sentencing factors. The SPC's Third Five-Year Reform Outline (2009-2013) clearly references standardized sentencing reform, indicating that the SPC intends to amend the Directive on Sentencing at least once before 2013. This conclusion is supported by the timing of the process of standardized sentencing reform, which started in early 2006, and the analysis of each High Court's implementation rules. Further amended guidance based on the experience of the thirty-one High Courts and their feedback concerning the problems of implementing reform will certainly help to complete the substantive sentencing rules and is also beneficial to facilitate similar sentencing in similar criminal cases.

The Directive on Sentencing and Opinion on Sentencing Procedure serve as the key judicial documents in full-scale standardized sentencing reform in China. The former formally shows the SPC's policy orientation favoring emphasis on fair sentencing within the criminal justice system, and it gives a detailed map of basic substantive sentencing rules by regulating sentencing steps, specifying penalty adjustment percentages corresponding to sentencing factors, and providing sentencing guidelines for fifteen common offenses. The latter establishes a relatively independent sentencing procedure at trial. This is a step toward reducing unwarranted sentencing disparities in China.

CONCLUSION

Sustainable standardized sentencing reform is a challenging endeavor. The SPC needs to enrich its experience to perfect the rules of substantive sentencing in the Directive on Sentencing; ensure that judges are actually

⁹² 《人民法院量刑指导意见（试行）》实施细则 [*Implementation Rules for the Directive on Sentencing in the People's Courts (for Trial Implementation)*] (promulgated by the Jiangsu Province High People's Ct.) Part III, sec. 1(17). For the full text, see [洪金文] Hong Jinwen, 江苏省高院《人民法院量刑指导意见（试行）》实施细则 [*Jiangsu Province High Court Implementation Rules for the Directive on Sentencing in the People's Courts (for Trial Implementation)*], 找法网 [FINDLAW.CN] (May 27, 2011), available at http://china.findlaw.cn/lawyers/article/d27578_p6.html. See also APPLICATION AND COMMENTARY ON THE SENTENCING REFORMS, *supra* note 5, at 578-95.

willing to sentence according to the Directive on Sentencing, which restrains their discretion; lobby the NPC to include detailed procedural sentencing rules in its amendments to the Criminal Procedure Law; and persuade other official institutions in the criminal justice system—especially prosecutors—to push reform forward by drafting detailed rules on sentencing recommendations. The SPC has in fact gained the general support of the SPP on the issue of sentencing recommendations. In October 2010, the SPP promulgated a Notice on Actively Advancing Standardized Sentencing Reform and Fully Developing the Work of Sentencing Recommendation (“Notice on Sentencing Recommendation”), requiring all procuratorates to initiate the work of sentencing recommendation.⁹³ One SPP high official commented that “the Notice on Sentencing Recommendation is a regulation to implement the Opinion on Sentencing Procedure and push forward standardized sentencing reform; prosecutors should strengthen cooperation with investigative bodies and communicate with defense counsel in making sentencing recommendations.”⁹⁴

The SPC may accomplish the step-by-step amendment of the Directive on Sentencing by referring to the sentencing guidelines of the United States and the United Kingdom. It can develop its amendments based on practical sentencing experience, relying heavily on the court system. In contrast, there is a longer way to go for future legislation based on the Opinion on Sentencing Procedure, which involves the reallocation of power and responsibility outside the courts. For example, at sentencing, the prosecution should bear the responsibility of obtaining evidence both favorable and unfavorable to the defendant, in order to recommend a sentence at trial. Accordingly, investigative bodies—primarily the police—will actually do the work of collecting evidence to support the application of sentencing factors. The Notice on Sentencing Recommendation shows the SPP’s inclination to promote sentencing recommendations, and the difficulties of securing prosecutorial cooperation will mainly lie in the attitudes and working practices of local procuratorates.

⁹³ 关于积极推进量刑规范化改革全面开展量刑建议工作的通知 [Notice Concerning the Positive Advancement of Standardized Sentencing Reform and Full Development of the Work of Sentencing Recommendation] (promulgated by the Sup. People’s Proc.). For discussion of the promulgation of this Notice in October 2010, see 徐日丹 [Xu Ridan], 推进量刑规范化改革, 全面开展量刑建议工作 [Push Forward Standardized Sentencing Reform; Fully Adopt the Work of Sentencing Recommendation], 检察日报 [PROCURATORATE DAILY], at 2, Oct. 14, 2010, available at <http://www.dffy.com/fazhixinwen/lifa/201010/20101016161810.htm>; 隋笑飞 [Sui Xiaofei], 全国检察机关将全面开展量刑建议 [Procuratorates Nationwide Will Launch Sentencing Recommendation], 新华网 [XINHUA NET] (Oct. 13, 2010), http://news.xinhuanet.com/legal/2010-10/13/c_12656339.htm; 隋笑飞 [Sui Xiaofei], 最高人民检察院就推进量刑规范化改革答记者问 [Supreme People’s Procuratorate Answers Reporter’s Questions on Promoting Standardized Sentencing Reform], 新华网 [XINHUA NET] (Oct. 13, 2010), http://news.xinhuanet.com/legal/2010-10/13/c_12656352.htm.

⁹⁴ See Xu, *supra* note 93.

The Notice on Sentencing Recommendations requires the prosecutor to examine both the evidence pertaining to conviction and the evidence pertaining to sentencing, and to make the evidence available during trial. It further requires prosecutors to participate both in the adjudication of guilt and in argument on the sentencing of a convicted defendant.⁹⁵ Thus, the adoption of sentencing recommendations is actually a reform of the procuratorate system and imposes higher requirements on the day-to-day work of prosecutors. It is, of course, asking a great deal for local procuratorates to change their working style to adopt sentencing recommendations, which entails an increased time burden in each criminal case, without providing increased human and financial resources. The historically cooperative relationship between local courts and procuratorates and caseload of each procuratorate will affect the adoption of sentencing recommendations. Aside from this, difficulties will also arise with respect to police cooperation with procurators, as the collection of additional evidence relevant to sentencing also increases the workload of police. Naturally, if procurators do not receive sufficient police support, they will be further disinclined to cooperate with the courts and make sentencing recommendations. In any case, the general rules of standardized sentencing reform have been set, and time is needed for public security bodies, the procuratorates, and courts to discuss the necessary special working rules and processes in detail so that reform can be implemented in practice.

The SPC has a strong motive to implement standardized sentencing reform and ensure fairer, more balanced sentencing. All evidence considered in a criminal case must of course be shown at trial, so the court's role and power in criminal adjudication increases with its power to impose a sentence based on required review of the prosecutor's and defense counsel's evidence and argument. In contrast, the reform increases the daily caseload of both police and procurators, which will discourage them from actively supporting the reform process and will likely impede the court system's progress toward more consistent sentencing. Regardless of these problems, the initiation of standardized sentencing reform is the most difficult point; present issues are rooted in the practical implementation of the reform plan.

For the SPC, improving the transparency of sentencing may reduce undue influence by parties and others on judicial judgments, increasing the acceptability of sentences to defendants, victims, and the public.⁹⁶ By winning public support for sentencing reform and reducing case-by-case disparities (and therefore party petitioning), the SPC can increase its influence not only with ordinary citizens but also with policymakers and other government actors. The SPC has played and will play a greater role in promoting rule of law in China. As this happens, we can hope that the constitutional law and legislation will govern every aspect of society, and that each case will be justly and expressly decided by law in the courts.

⁹⁵ *Id.*

⁹⁶ APPLICATION AND COMMENTARY ON THE SENTENCING REFORMS, *supra* note 5, at 15.