

*715 Reforming the People's Mediation System In Urban China

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After its "revitalisation" after the Cultural Revolution, China's people's mediation system declined throughout the 1990s. However, a "second revitalisation" that began in 2002 has quite successfully reversed this trend. This article discusses this reform effort in four parts. Part I explores the reasons for the 1990s decline of people's mediation in urban China and the government's interest in strengthening this institution. Policy reforms at the national level -- particularly the issuance of the "Three Documents" -- are analysed in Part II. Part III describes the basic unit in the urban people's mediation web, the community PMC, and then details the web's "vertical expansion" and "horizontal expansion," including new forms of cooperation with the police and courts. The paper concludes with Part IV, which discusses the new "legalised" nature of urban people's mediation and evaluates the significance of the reforms described above.

Introduction

Beijing's demands on the form, function and operation of the people's mediation committees (PMCs; tiaojie weiyuanhui) that exist in nearly every neighbourhood and community throughout China have evolved along with the national goals of the CCP. In fact, there exists a decent English language literature discussing this transition through the early 1990s. [\[FN1\]](#) To begin, *716 scholars note how unlike mediation in traditional China, the PMCs formally established in 1954 were not intended to simply preserve harmony by encouraging mutual yielding and compromise. Rather, Maoists saw mediation as "essentially a political endeavour". Disputes were to be solved by educating and persuading parties to adopt the appropriate ideology and values promoted by the Party. [\[FN2\]](#) In addition to solving disputes and mobilising commitment to the CCP's goals, Lubman notes that PMCs also served to suppress disputes that interfered with socialist construction and as an instrument of social control. [\[FN3\]](#) Nonetheless, during the Cultural Revolution, the PMCs came under criticism for their encouragement and promotion of compromise and many stopped operating; their "revival" would not occur until the late 1970s.

People's mediation in the reform era was far less politicized than its Maoist predecessor. Resolving disputes and thus ensuring the social stability required for economic development was prioritized and mediators were even encouraged to promote yielding (rang) to settle cases. [\[FN4\]](#) People's mediation was also supposed to fit into and contribute to the construction of the legal system and a legal culture. A new set of Regulations on people's mediation was issued in 1989 (hereinafter "1989 Regulations") to

replace the 1954 Provisions, the major themes of which are "the preeminence of law and the resulting need for accountability to the law." [FN5] Mediators are to possess a certain amount of legal knowledge (Article 4), are forbidden from harassing, attacking, insulting, penalising or taking bribes from parties (Article 12), and most significantly, are to perform their work "in conformity with the law, statutes, rules, regulations and policies of the state" (Article 6). The 1989 Regulations also treat mediators as more professional, allowing them to receive stipends, removing restraints on the time when they may work and extending their terms from one to three years. [FN6]

Despite what Palmer labels the "revival" of people's mediation in the reform era though, the 1990s was clearly a period of decline for the institution. [FN7] While the ratio of civil cases handled by PMCs to those handled by the people's courts was over 7:1 in 1986, this disparity has gradually shrunk until reaching 1:1 in 2001. This is not due simply to the annual number of *717 court cases growing at a rate faster than mediation cases; rather, the actual number of cases being mediated declined from year to year. While 7.4 million cases were handled by PMCs in 1990, this number dropped to 5 million by 2000 and fell to just 3.1 million cases in 2002 -- roughly 40 per cent of the 1990 number. [FN8]

This article analyses the development of people's mediation in urban China since the 1990s; exploring the reasons behind the decline of people's mediation and examining a few aspects of the effort to respond to it, what might be called the "second revitalisation." Part I of this article probes the reasons for the decreased use of people's mediation in the 1990s and analyzes who maintains an interest in strengthening people's mediation and why. The article then discusses the specific steps that have been made to people's mediation in response, specifically since 2002. Part II analyzes policy reforms at the national level and Part III considers how the institutional structure of people's mediation is changing and expanding. The final section, Part IV, evaluates the impact and significance of the above reforms until now. [FN9]

*718 Part I: The Decline of People's Mediation and Sustained Government Interest

Some argue that the increased wealth of urban residents has decreased the number of neighbour and family conflicts traditionally dealt with by the community PMCs. For instance, Beijing PMC Director Wang, who has been doing such work for nearly 25 years, explains that residents who would previously refuse to fix the leaky pipes that dripped into their neighbour's apartment can now afford to have them repaired. Similarly, whereas Director Wang had the gruelling task of helping wives find ways to cohabitate with their mother-in-laws in the past, nowadays the husband can buy a new apartment for him and his wife to move into, the relationship need not even be reconciled. In explaining why from the 1970s to early 1990s she mediated 100 cases annually ("every day there was something") and in 2001 she mediated just a single case, Director Wang also sees a change in residents' attitude and lifestyle: "In the past, nobody had anything, so they would argue and fight over the littlest things; but today, people are more focused on their work, some only come home to eat dinner and sleep. They barely know or talk with their neighbours, so how can they get into a dispute with them?" [FN10]

It is often said that economic development and liberalisation is actually increasing the tensions and conflicts in society; however, the types of disputes and even disputants are changing. Two justice bureau officials from Xiamen, where the number of cases handled

by PMCs dropped by 50 per cent from 1982 to 2002, note that conflicts today are no longer just between two citizens, but many involve economic organisations, companies and corporations, basic-level cadres, the basic-level government or other social organizations. [FN11] New types of disputes are also appearing; for instance, cases involving economic contracts, debts and liabilities, property confiscation and compensation, demolition, construction-related noise, renting apartments, deferred salary payments, pensions for laid-off or unemployed workers, medical care coverage, etc. [FN12] Even those cases in the areas of marriage, family and neighbour relations that have been traditionally handled by PMCs -- such as divorce, inheritance, filial responsibilities, child-support, and compensation disputes -- have become more complicated by the interests, legal issues and *719 amount of money involved. In the past, "mediating" a "divorce" case might simply mean the mediator offers moral and social reasons to persuade the couple to stay together. Today's parties might ask the mediator how they should divide the house the wife was given after her previous marriage and the money she inherited from her deceased father before this marriage. Therefore, mediating conflicts today often requires a far greater understanding of law than in the past.

Uncertainty existed as to whether PMCs were legally permitted to process some of these more complex disputes; [FN13] however, a more significant factor was that disputants increasingly chose other methods for resolving these cases -- primarily litigation. To begin, going to court is no longer viewed as problematic in terms of cultural norms as it was in the past. After the disastrous results of letting politics reign supreme during the Cultural Revolution, the CCP emphasised the need to develop China's legal system and rule the country by law. Through newspapers, television and movies, community legal propaganda work, legal education classes, etc people paid more attention to the law and became more aware of their rights: in a 1997 survey of 1,500 Chinese "about 60 per cent of respondents said the most important thing in their social lives was respecting individual freedom and interests." [FN14] Scholar Fan Yu even argues that the former "disgust for lawsuits" has been transformed into a belief in the "omnipotent power" and "worship" of the litigation process. [FN15] Losing face amongst neighbours or destroying a relationship with the other disputant by going to court is also less feared in today's urban China -- the "society of strangers." In Beijing, residents are increasingly moving from traditional housing where neighbours share a courtyard to tall apartment buildings where they hardly know their neighbours, and thus lack a relationship to preserve. The same is true of their ties to the Residents' Committee (RC; jumin weiyuanhui). [FN16]

The above trends are truer of some in Chinese society than others. First, as a person's education level increases, their preference for litigation over mediation increases. [FN17] More educated people may be less afraid of going to court as well as have less respect for the authority and abilities of an old-aged *720 mediator with less education and perhaps poorer understanding of law than they themselves have. People with more education usually also have more money, which makes going to court more affordable. Secondly, older residents are far more likely to use the services of the PMCs. [FN18] One Shanghai mediator noted that 23 per cent of residents in her subdistrict (also translated as street level) are senior citizens, but estimates that 60 per cent of mediations involve at least one person from this cohort. [FN19] Older people are generally less legally conscious or knowledgeable and more hesitant of going to court. Moreover, retired residents not only

have more time to dwell upon their problems, even small ones, but also have greater contact with their RC members and thus opportunities to seek advice, guidance or request mediation from them.

While mediation's decline is largely explained by how the legal system and attitudes towards it have advanced since the Cultural Revolution, people's mediation's lack of change since that time is also a key factor. The legacy of mediation in the Maoist period as a process that merely sought to enforce the government's policies or reshape disputants thinking still lingers in the minds of many Chinese; [\[FN20\]](#) for instance, many still believe a mediator would never consider or support a solution of a couple deciding to divorce in a marriage dispute. More importantly, residents' image of community mediators as the female, "ageing ... busybodies" lacking in education, let alone any understanding of law, that "[poke] into people's personal matters" and seek to enforce social morality who existed in the Maoist and early reform periods (and still today in many areas) persists. [\[FN21\]](#) As the government did not provide much funding for people's mediation in the reform period, it was unable to attract new, better-qualified mediators or even train existing ones. Residents are well aware of this fact: in his 2002 survey of 249 Beijing residents, Ting Wang discovered that 88 per cent of respondents "expressed the need for people's mediators to upgrade their legal knowledge." [\[FN22\]](#) This may explain why these respondents, while still preferring to use mediation for solving family and neighbour disputes, far prefer the use of litigation for economic cases involving property or commerce. [\[FN23\]](#) Both residents and the government also often criticize mediators for pushing parties to compromise instead of reaching agreements based on principle or law. [\[FN24\]](#) This phenomenon, along with mediation's legacy from the Cultural Revolution, explains why the 1989 Regulations mandated that mediation be "based on law." [\[FN25\]](#)

Another factor is that people and thus conflicts are increasingly falling outside the control of the work and residential units that so tightly controlled their lives in the Maoist period. For instance, more and more Chinese are working for themselves or for private companies that have not established a PMC. Similarly, migrant workers or other residents are moving into less formalised or newer housing complexes that are not overseen by an RC (and therefore, a PMC).

Even for those cases that do get handled by the PMCs, solving them is becoming harder in many ways, decreasing mediators' motivation level. One Beijing resident explained that while growing up, he would certainly do whatever he was told by the community mediator: "She was friends with my grandfather, how could I not listen to her?" [\[FN26\]](#) Today's mediators often lack such personal ties with the parties, and failing to command their deference, must provide convincing legal or other reasons to persuade them. Alternatively, mediators sometimes encounter people who simply don't listen to reason; the mediator could spend hours, days or weeks providing good legal or interest-based arguments to accept an agreement and still meet refusal. In fact, questioning the mediator's ability to solve their dispute, some residents are not even willing to participate in mediation. People's mediators are generally RC members that have several responsibilities in addition to mediation and receive no additional stipend for doing this mediation work or for doing it well. Thus, many officials and even mediators have commented that nowadays they are less willing to perform zhudong tiaojie (actively seek out one or both parties and try to persuade them to mediate), to endure being sworn at by

the people they seek to help, or to mediate a case more than one or two times. That going to court is now a viable option for most disputants seems to have also decreased the pressure mediators feel to solve every dispute.

Finally, that agreements reached through people's mediation lacked legal weight both discouraged parties from employing the PMCs and negatively impacted mediators' motivation. The 1989 Regulations state that parties "should (yingdang)" carry out mediated agreements (Article 9). Yet, as Donald *722 Clarke notes, the legal weight of the Chinese word "yingdang" is actually disputed amongst Chinese scholars. [\[FN27\]](#) The consensus amongst Chinese citizens, however, seems to be that these agreements are not binding: Ting Wang discovered that 80 per cent of respondents were of the opinion that mediated agreements did not carry legal weight in court. [\[FN28\]](#) Mediators interviewed by the author often complained that parties frequently violated mediated agreements without consequence, which also made them question if their own work was not done in vain. Wang's survey also revealed that the failure to enforce the agreement was the most common reason for parties' dissatisfaction with mediation (accounting for 44 per cent of all unsatisfied parties) and that 90 per cent of respondents said seeking legal finality would be their primary motivation for filing a lawsuit. [\[FN29\]](#)

Despite all these obstacles though, the government proved unwilling to allow people's mediation to continue declining to the point of irrelevance. The perceived need to strengthen this institution and interest in increasing the number of cases handled by PMCs stem from three main areas. First is what people's mediators, without fail, state as their primary purpose: "to preserve social stability." The government at all levels sees PMCs as the "first line of defence" in this national effort. It argues that the quantity, forms and complexity of disputes in society have increased and if not promptly solved, they can intensify into situations that greater threaten stability and are more difficult to solve, such as suicides, criminal acts or "large group incidents" (quntixing shijian). [\[FN30\]](#) PMCs are to know what is happening in their community and conduct organized investigations (paicha) into issues that can or do agitate a large numbers of residents, such as discontent over the noise from a *723 local construction site, and then report this information to the basic-level people's government. Most ideal is for the mediators to prevent conflicts, or if not, to resolve them while just "sprouting" and before they intensify, even if it requires seeking out the parties unsolicited. Mediators also work towards preventing conflict by conducting legal propaganda work and "educating citizens to abide by the law and respect social morality." [\[FN31\]](#)

Secondly, if the PMCs handle more cases, it reduces the pressure on the government to solve them. Chinese citizens bring all sorts of complaints or disputes to the government for resolution (this act is called xinfang), and if they are unsatisfied with the result, almost like an appeal, will continuously seek out the higher level of government (called shangfang). Some of these complaints involve disputes among citizens, but most are against officials. Therefore, having community mediators resolve these matters not only saves these officials time and energy, but also avoids the repercussions and criticism from their superiors that officials often face for both the actions that caused the discontent and not being able to settle the matter themselves. [\[FN32\]](#) The goal of reducing the workload of their overburdened basic-level organs has also stimulated the desire of the Ministry of Public Security (MoPS; the police) and Supreme People's Court (SPC) to see PMCs handle more cases. Finally, the Ministry of Justice (MoJ), which oversees people's

mediation, has a bureaucratic interest in these committees handling more cases. The country's eight million people's mediators that comprise close to one million PMCs only mediate six million cases a year. [\[FN33\]](#) If the MoJ can fulfil its goal of "further developing the use" (fahui zuoyong) of this vast infrastructure, demonstrating the national importance of this institution, it could mean more resources for itself.

These goals and envisioned functions of people's mediation have actually not changed much since the beginning of the reform era. [\[FN34\]](#) At a general level, most of the strategies for achieving these goals also remain the same, such as further standardising the mediation process, improving the quality of mediators (particularly their legal knowledge) and establishing new forms of PMCs. There has been a change, however, in the attention and resources put into moving people's mediation in these directions. Moreover, some of the specific plans for implementing these strategies have been altered in response *724 to the factors that caused the decline of people's mediation in the 1990s. The following sections of this article will introduce some of these reforms, describe how people's mediation operates in Chinese communities today and evaluate the reform effort up until now.

Part II: Improving the Policy Environment

The 1989 Regulations on people's mediation was the most significant document governing the institution through the 1990s. [\[FN35\]](#) Its 17 articles made further specifications in the areas covered by the 11 articles of the 1954 Rules and also introduced several specific changes. In addition to establishing the concept of "mediation based on law" and making mediators more professional, the 1989 Regulations made PMCs more democratic and accountable by providing for the election of mediators by community members (Article 3). While the people's courts remain responsible for guiding and directing PMCs from above, judicial assistants (JAs) [\[FN36\]](#) were put in charge of supervising their daily work (Article 2). The 1989 Regulations also specifically allowed for the establishment of PMCs by "enterprises and public institutions" (Article 15), not just in neighbourhoods and villages. However, although the 1989 Regulations mark a large improvement on the 1954 ones, Glassman notes that its provisions are still "very brief" and "leave many procedural questions unanswered." [\[FN37\]](#)

Significant policy reforms regarding the system of people's mediation would not come again until 2002. This year witnessed the clarification and reform of several aspects of this institution through the issuance of what MoJ officials commonly refer to as the "Three Documents." The document that has generated the most discussion amongst officials, mediators and scholars is the 5 September 2002 Judicial Interpretation issued by the SPC that clarifies the legal status of agreements reached through people's mediation and instructs courts on how to try cases involving them (hereinafter "Interpretation").

Article 9 of the 1989 Regulations and Article 16 of the Civil Procedure Law instruct that if the parties fail to implement a mediated agreement or wish to retract it they may initiate legal proceedings at the people's court. *725 The Civil Procedure Law is quite clear that agreements with illegal content or reached through illegal means shall be rectified by the people's court (Art 16); however, how to handle valid agreements was not clearly specified. Virtually all judges seem to agree that mediated agreements certainly could not be directly implemented (bu juyou zhixingli) and some sort of trial was necessary. While at least one basic-level judge would conduct a trial with a simplified

procedure just to ensure the legality of the agreement before upholding it, [FN38] most judges would ignore the existence of the agreement and hear the case de novo. Some judges would not even accept lawsuits requesting an agreement be upheld, cancelled or changed, but only those requesting a decision on the original dispute. [FN39]

The 2002 Interpretation finally states that an agreement reached through people's mediation that is signed or chopped by both parties is a civil contract in nature and thus may not be arbitrarily changed or absolved by the parties (Article 1). It also sets criteria for the validity of an agreement, such as that parties have full legal capacity, the PMC did not coerce the mediation and it doesn't violate the law or social morality or harm the public interest (Articles 4, 5) -- those that fail to meet these conditions lack legal binding force (Article 8). A party seeking to alter or confirm the invalidity of a mediated agreement must file a lawsuit within one year (Article 7) and bears the burden of proof (Article 3). In trying such cases, the basic-level people's court generally should use a summary procedure (jianyi chengxu) (Article 11) [FN40] and may notify the local judicial administrative organ or PMC if it changes, revokes or declares invalid the original agreement (Article 12). While some ambiguities about how the courts ought to handle cases involving mediated agreements still remain, the Interpretation significantly clarifies this matter. [FN41] Official statistics report that the courts upheld 18,895 (over 87 per cent) of the 21,651 mediated agreements that parties failed to implement in 2004. [FN42]

The second of the three documents, issued less than three weeks after the Interpretation, is the 26 September 2002 Order of the MoJ, "Some Provisions Concerning the Work of People's Mediation" (hereinafter "Provisions"). *726 The 45 articles of this document both provide further detail on and offer new provisions regarding the topics covered in the 1989 Regulations. The Provisions clearly seek to promote the aforementioned goals of the people's mediation system; for instance, Article 3(c) requires PMCs to report to the RC and basic-level people's government on the status of disputes and their work, emphasising their role in promoting stability. Specific provisions are also made in response to the obstacles responsible for the decline of people's mediation in the 1990s, such as to encourage PMCs to handle more complex cases, expand the reach of people's mediation and improve the quality of mediators. [FN43]

The Provisions also seek to make people's mediation more attractive to disputants by making the procedure more based on law and standardised. More detail is offered about how mediators are to accept cases, even outlining disputes that they are not allowed to mediate (Articles 20-20-4). A one-month time limit is also set for the mediation of a case (Article 33). Not only are the obligations of the parties stated (Article 7), but also their rights, such as to request a mediator to withdraw or to freely terminate mediation (Article 6), and mediators are obliged to notify the parties of these (Article 30). Mediators are instructed not to conduct mediations in public when the personal privacy or business secrets of the parties are involved or if the party objects to this (Article 29). To increase their ability to solve conflicts and disputants' willingness to employ them, the Provisions seek to raise the quality and professionalism of mediators. The JA is to train the mediators (Article 40) and secure funding for the PMCs' work and mediator subsidies (Article 42), [FN44] while the mediators are to organise study sessions and evaluations of their own work (Article 19).

The Provisions also contain an almost entirely new section on people's mediation agreements that aims to ensure they are implemented and if not, are upheld by the court. The new text describes exactly what content should be included in the agreement (Article 35) and then instructs mediators to check if it has been implemented (Article 36), outlining how to proceed if it has not been (Article 37).

The last of the three documents is the "Opinions of the SPC and the MoJ on Further Enhancing People's Mediation in the New Era" that was reissued by the General Office of the Central Committee of the CCP and the General *727 Office of the State Council. This document is largely a restatement of other SPC and MoJ documents, listing what needs to be done by the PMCs, courts and local judicial administrative organs to improve the system of people's mediation. The most important aspect of this document, therefore, is by whom it is issued; it demonstrates support for people's mediation by the highest levels of the government and Party.

In addition to the specific changes they bring to court procedures or the keeping of records by PMCs, a very significant effect of the Three Documents is the increased motivation and spirit of the mediators and JAs that they have created. During interviews with the author, mediators no longer moan of how the frequent violations of mediated agreements make their work pointless, but speak proudly of the care they take in preparing these agreements because they are upheld by the court. [\[FN45\]](#) Judicial administrative officials at all levels also seem to have been far more active in their work regarding people's mediation since 2002, be it in terms of establishing new PMCs, increasing training for mediators, emphasising mediation, or otherwise. The official responsible for people's mediation in Beijing claims to have witnessed a revitalisation of mediation work since 2002 resulting from the improved "policy environment" and "work atmosphere" brought about by the SPC Interpretation and other documents. [\[FN46\]](#)

Nonetheless, work on further national policy reforms is already underway and China is likely to adopt a mediation law in the near future. Currently, three main options for such a law's format exist, each with different implications for people's mediation. The first possibility is to create a "Mediation Law" to regulate all types of mediation (people's, labour, police, business, etc); like China's "Contract Law," it would state certain principles pertaining to all forms of mediation (such as that all mediated agreements are to be treated as civil contracts) followed by specific provisions for each type of mediation (for instance, who is qualified to serve as a labour versus people's mediator). [\[FN47\]](#) The second option is to treat each type of mediation individually by either creating a new law or adding a new provision regarding mediation *728 to existing laws (for instance, to the "Labour Law" or "Consumer Rights Protection Law"). [\[FN48\]](#)

The final option, and that supported by the MoJ, is to create a "People's Mediation Law." [\[FN49\]](#) One formulation of such a law would seek to widen the net of "people's mediation" by putting other forms of mediation (such as labour-related or that by consumer associations) under this umbrella -- clearly promoting the MoJ's bureaucratic interest of expanding people's mediation. [\[FN50\]](#) Others propose a less drastic broadening of the scope of people's mediation. Yang Rongxin suggests that PMCs should be allowed to mediate cases of "slight" criminal behaviour, such as slander. [\[FN51\]](#) Along these lines, some suggest that mediation be mandatory for certain types of cases before a lawsuit may be filed; [\[FN52\]](#) however, such a policy raises questions for some

about infringing on both people's right to litigation and the requirement that people's mediation be voluntary.

The most commonly cited reason to pass such a law is to make agreements reached through people's mediation directly enforceable by the courts. [\[FN53\]](#) Zhang Weiping contends that the 2002 Interpretation forces reliance on the problematic Contract Law to interpret the status of mediated agreements; instead, a law should be passed that more clearly states the status of mediated agreements and how they ought to be treated. [\[FN54\]](#) Other proposed provisions for a people's mediation law include clarifying the legal status of the organizations *729 guiding and managing people's mediation, clarifying PMCs' relationship with the courts, requiring courts to recommend mediation before accepting cases and establishing stipulations for a mediator training system. [\[FN55\]](#) Thus, whatever specific form it takes, the goals in adopting a people's mediation law are clearly to further increase the legal standing of the institution, to expand its role and use in society as well as to improve the quality of its work.

Part III: Expanding the "Mediation Web"

1. The Basic PMC Unit

The vast majority of PMCs in urban China are the "community PMCs" (shequ tiaowehui or jumin tiaowehui) established as subcommittees of the RCs. [\[FN56\]](#) RCs usually have five to nine members that are elected to three-year terms by residents or representatives of the 100 to over 1,000 households that they serve. The RCs' tasks are plentiful and include legal propaganda work, maintaining public security and mediating disputes. RCs may also, "when necessary," form subcommittees for people's mediation, public security and other matters, on which members can concurrently serve. In fact, many disputes are discovered in the course of performing other tasks, such as going to residents' homes to collect electricity payments. While technically a "mass organization for self government," RCs function almost as a branch office of the local people's government, helping to both carry out the government's policies and programs as well as report information back to it (about conflicts, family planning violations, etc). The RCs' dependence on the people's government for its operating expenses and its members' salaries or stipends reinforces this relationship.

The 2002 Regulations state that community PMCs shall have three or more members (Article 11) who may either be RC members, elected by residents or appointed by the RC (Article 15). In most RCs, the director or Party secretary directs the public security subcommittee and therefore also the PMC. Some PMCs will then list other residents as committee members, usually if these residents are serving as "informants" or "activists" (see below), but most just list other RC members, if anyone at all. It is very rare that anyone other than the RC members will do the actual mediation work. This is largely due to the fact that they are the ones present in the RC office when parties come *730 to request mediation. With the pressure to move quickly to investigate and solve these conflicts, RC members explain that it is not practical to seek out other community members to help or wait for them to return home from work. Further, as even some RC members can be reluctant to engage in this often-difficult mediation work, community members, who generally receive no stipend for their work, would often prefer not to get involved in such problems, despite having signed up for such duties. [\[FN57\]](#)

The community PMCs are the core structure in the urban people's mediation system. At the end of 2001, over 90,000 such mediation bodies had been established. [FN58] Of the 5.7 million cases handled by all PMCs in 2003, over 4.5 million (79 per cent) were handled by the community and village PMCs. [FN59] Throughout the 1990s, and particularly since 2002, there has been a significant push to create a "mediation web" (tiaojie wangluo) or "grand mediation" (da tiaojie) scheme, by expanding both vertically and horizontally from the community PMCs. The term "vertical expansion" is used here to refer to the creation of new mediation bodies to operate at different levels in geographic areas where a PMC already exists (for instance, adding a "mediation group" for each group of buildings in a community that already has a PMC). "Horizontal expansion" is used to describe the establishment of PMCs in areas in which no formal mediation organisations were previously operating. The latter seeks to ensure that conflicts of all forms and in all places have a chance to be mediated before they escalate or are dealt with by the courts, police or government. Vertical expansion is designed to better equip PMCs to gather information about what is occurring in the area they govern, deal with problems at an appropriate level (a frequently stated motto is "small issues don't leave the community, big issues don't leave the subdistrict" (xiaoshi bu chu shequ, dashi bu chu jiedao)), and sometimes offer multiple chances to successfully mediate a conflict.

*731 Figure 1. The Organisation of People's Mediation in Urban China
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2. Vertical Expansion

a. Below the RC Level

In terms of the vertical arrangement, the "mediation network" is encouraged to have three levels, with some areas reporting four. [FN60] Below the community PMC there is often one resident of each building who has volunteered to aid *732 the RC in providing a number of different services, which is reflected in the many different names by which they are called -- including, but not limited to "building heads" (louzhang), "activists" (jijifenzi), "informants" (xinxiyuan) and "mediators" (tiaojieyuan). In some communities, these informants are actually organized into "small mediation groups" (tiaojie xiaozu). [FN61] These informants are responsible for knowing what is occurring in their building -- both within households and between them -- and reporting that information to the RC. Often the informants will just call the RC's attention to a situation that has the potential to become a dispute so it can be closely monitored.

In most cases, particularly if it is a "small matter" (xiaoshi), the informant will himself attempt to mediate the dispute. [FN62] Often, however, the informants will not even interact with the parties, but just report the dispute to the PMC. If his own attempt at mediation fails or no attempt is made, the informant usually still plays a role in the PMC's processing of the case. The informant is expected to best understand the parties and conflict; therefore the PMC mediator will often mediate together with the informant. In cases where the PMC seeks to mediate a conflict whose parties have not yet requested intervention (zhudong tiaojie), the more familiar informant may be relied upon to introduce the mediator and encourage the parties to accept mediation. At times where the

parties directly seek out the PMC, the mediator will still often consult the informant as part of the pre-mediation "investigation" of the facts of the dispute. In such cases, the PMC mediator will also often invite the informant to help mediate the case -- even if the disputants had specifically requested that the informant be kept out of the matter.

b. Above the RC Level

Before proceeding, it is first necessary to further introduce the JA system in China. The current system was implemented in 1979 with the end of the Cultural Revolution and revival of the MoJ, and then formalised with the issuance of the "Provisional Rules for the Work of Judicial Assistants" in 1981. [\[FN63\]](#) Basically, as these Provisional Rules state, JAs work in the urban subdistricts and rural townships as both functionaries of the local people's *733 government as well as the judicial administrative structure. [\[FN64\]](#) JAs are charged with five duties: managing PMCs; guiding mediation and mediating complex disputes; conducting legal education; studying patterns of disputes and developing potential solutions; and channeling citizens' opinions to the government. [\[FN65\]](#) At present, most subdistricts not only have a full-time JA in the street-level people's government, but also have formally established a local judicial office (sifasuo) -- which is often staffed by two or three people, one of whom serves as the director (suozhang). [\[FN66\]](#) National regulations do not require a high education level or any knowledge of the law to become a JA; however, the number of JAs who are part of the civil service (gongwuyuan) [\[FN67\]](#) and that have formally studied law or have worked in law-related professions is increasing, especially in some urban areas.

The 2002 Provisions call for the establishment of PMCs at the township and subdistrict levels (Article 10) -- where the JAs serve. This is generally the highest level in the "mediation web." According to official statistics, 40,000 such committees, comprising 93 per cent of all towns and subdistricts were established by 2003 and handled 1.11 million of the 5.7 million cases processed by PMCs that year. [\[FN68\]](#) Three categories of people are to serve as members of these PMCs: the director of village, community or enterprise PMCs in the subdistrict; JAs; and social volunteers with legal knowledge or special skills (Article 13). In practice, the JA serving as director of the local judicial office is almost invariably the PMC's director and the committees' other registered members are the other JAs, other officials working in the street office (such as in the labour bureau, legal aid office or women's league) and maybe a police *734 officer. Like in the community PMCs, the PMC director (JA) generally plays the lead role in all of the mediations.

These committees are designed to mediate three types of conflicts: (1) conflicts involving parties from two different neighbourhoods; [\[FN69\]](#) (2) "complex" (fuza) or "difficult" (yinan) cases; and (3) cases that the neighbourhood PMCs failed to solve. [\[FN70\]](#) In most cases though, the street-level PMC does not function as a separate level where the case will be re-mediated, but amounts to the JA getting involved in the case. The 2002 Provisions require these officials to respond to the community PMCs' request for instructions and complaints of the parties, as well as to "assist and participate in the mediation activities of specific disputes upon the request of the PMCs or according to the practical demand" (Article 43). Some JAs limit their role to just explaining the relevant law to mediators or to the parties. At the other end of the spectrum, one local judicial office in Beijing requires community PMCs to enter all information about a dispute into a

database as it becomes available so it can track the progress of the case, providing guidance at every step and getting personally involved whenever it is deemed necessary. Most urban JAs will go to the neighbourhoods and mediate along with the community PMCs if their help is requested. At other times, JAs may conduct the mediation at their office in the local government building. If this approach is taken, the community mediators are also told to attend the mediation at the new location.

Parties sometimes directly seek out the JA without having first consulted the community PMC. This can be because the parties do not trust the RC to keep their matter private, believe it incapable of handling the dispute or feel it favours the other party. Contending that the community mediators are the ones that best understand the conflict and the parties, some JAs will (depending on the type of case) still send these parties to see the community PMC. However, several Chinese officials (from all departments) have expressed the sentiment that problems only flow one way in the bureaucracy -- upwards; further, telling parties to seek out the community PMC would be seen as a shirking of responsibility by the JA. In this case, the JA will, nonetheless, often invite the mediators from the community in which the parties live to help mediate.

The JA (PMC director) will often request the help of others in mediating cases, a decision made based on who will be the most effective in resolving the conflict and generally unrelated to who is formally listed as a mediator. For instance, in a highly charged dispute between two neighbourhoods, the *735 head of the people's government mediated along with the JA. A JA in Shenzhen described how the head of the labour bureau helps mediate all cases between workers and management. An investigation is conducted before the mediation to determine if the business has any code violations so that the labour bureau can threaten to fine or take other administrative action toward the business if it is not sufficiently willing to yield during mediation.

The 2002 Provisions also make JAs responsible for inspecting mediation agreements and "straightening out" any violations of laws, regulations or administrative rules and policies (Article 43). As the court will not uphold agreements with mistakes, officials (as well as mediators) take this responsibility quite seriously. While most JAs just review the agreements for cases in which they were involved, one in Beijing admits to writing virtually all of the agreements in his subdistrict, believing that the community mediators are incapable of performing this task adequately.

c. Exploring the Effectiveness of the Vertical Mediation Web: The Role of Officials in People's Mediation

Virtually all disputes brought before the PMCs seem to get resolved by the "mediation web"; official statistics report a national success rate of 95 per cent. [\[FN71\]](#) Extensive interviewing suggests that as one moves up the "mediation web" from the informants to the PMC to the JA, particularly this last step, the success rate of mediation increases. [\[FN72\]](#) This can be partially attributed to the higher level of mediation skill, experience and legal knowledge found at the higher-level PMCs. In many cases, that the JA represents the government is an even more important factor; this can increase the probability of success in several specific ways.

First, whereas parties may suspect a community mediator of being biased or ignorant of the law, urban citizens generally "trust" or "believe" (xiangxin) the government to be fair and just. Therefore, it is not uncommon to have cases where the parties do not accept

a solution offered by the community mediator but accept the exact same solution when it is suggested by the JA. Second, many angered disputants really just want to "be heard," and after this happens, are far less concerned about the specifics of an agreement. Knowing a government official is cognizant of and paid attention to their problem can satisfy parties and greatly facilitate reaching an agreement. Thirdly, as many JAs explain, they are more successful because many parties treat their solution as a government decision that must be accepted. This seems truer of *736 cases where the parties do not necessarily request the local judicial office's involvement but the community mediator invites the JA, or the JA himself decides to get involved. Parties may even fear there will be repercussions for not agreeing, or these threats may have been explicitly stated -- such as in the labour cases described above.

One of the larger current debates among academics, MoJ officials and mediators relating to people's mediation is over the appropriate role for JAs in this system. Some argue that government officials should not be actually performing mediations, for this is really "administrative mediation" not "people's mediation." [\[FN73\]](#) Reasons for this range from how JAs' participation threatens the "mass nature" or "self-governing character" of people's mediation to the increased chance for coercion when mediations are done by officials. Some justify mediations being done by JAs by stating they are somehow qualitatively different than other officials, while others suggest that JAs are acting in the capacity of a citizen when they do this work. Nonetheless, many still believe that the 2002 MoJ Provisions are wrong for instructing JAs to actually perform mediations (Article 43). In fact, the MoJ has recently instructed JAs not to get involved in the actual mediation work; however, they have encountered great resistance from JAs that believe solving the conflict is the most important objective, and if they are best able to do this, then they should continue to do so. [\[FN74\]](#) In truth, should JAs be forbidden from doing such work, there is a real question of who is willing and able to mediate these conflicts instead.

d. The Li Qin Mediation Workroom

The Jiangsu Street Office in Shanghai's Changning District has been experimenting with new forms of organizing their "mediation web" for nearly a decade. The central principle of these reforms is that of resource sharing, particularly that qualified, experienced and effective mediators should not only be handling cases in their specific district. The latest development in this effort is the creation of the Li Qin Mediation Workroom instead of a street-level PMC.

In 2003 the Street Office signed a contract with Li Qin, a nationally famous mediator, providing her with RMB120,000 to hire four other full-time employees (RMB1,000/month) and cover operating expenses. [\[FN75\]](#) In return, the Workroom is responsible for providing legal counselling and assistance, receiving and aiding residents seeking to xinfang, leading and training (at *737 least twice per year) community mediators and performing mediations. The contract stipulates that the Workroom will mediate at least 40 per cent of all conflicts in the subdistrict with a minimum 95 per cent success rate and at least 90 per cent of all difficult or knotty (yinan) disputes with a success rate not below 80 per cent. The Workroom now also effectively reviews all written agreements concluded by the community PMCs below it, ensuring that they set a specific time and place for its implementation, state clearly the relationship between the

parties, are understandable to someone not familiar with the dispute and most importantly, do not violate the law. After mediating 157 cases and writing 43 mediation agreements in its first year, the Street Office increased the Workroom's annual funding to RMB150,000, allowing Li Qin to hire another full-time employee and raise monthly salaries to RMB1,300. [\[FN76\]](#) By spring 2005, the Workroom was handling 150 legal counselling, mediation and xinfang cases every two months. Every street office in Shanghai has now established a similar organisation. [\[FN77\]](#)

This type of arrangement has several advantages over the structure described above that is being used in other cities. First, the mediators are more experienced, knowledgeable and capable. Almost all mediators agree that mediation experience is the most important determinant of one's ability, but most RC members (and mediators) lack this and it is hard to obtain. Many RCs handle very few cases each year; moreover, members' subcommittee assignments frequently change, as do the members themselves. Workroom mediators ideally have mediation or legal experience when they are hired, and if they do not, such experience is gained quickly by handling several cases each week. From a resource sharing perspective, this model is preferable as it moves the good mediators, such as Li Qin, from an RC that only mediates a few cases each year to a position of doing mediations for residents of the subdistricts' 13 communities.

Workroom mediators are also more professional. Their clear, contractual responsibilities, ambitious success targets and decent salaries motivate these *738 mediators to be active and conscientious in successfully solving all cases that are brought before them. To not help those residents who approached the Workroom with a dispute or to fail to help parties reach an agreement would put the Workroom mediators' salaries in jeopardy, whereas RC mediators face no real repercussions for similar behaviour. Unlike the judges and lawyers who are sometimes found to sit on street-level PMCs, Workroom mediators are actually available to work during the day and cannot be "too busy" to participate in a case.

Finally, this arrangement decreases the role of government officials in people's mediation. As there are full-time mediators at the street level and not just volunteers' names listed on a sheet of paper, the JA is not required to actually participate in mediating disputes. Instead, the JA of Jiangsu Lu focuses on providing training and guidance to the mediators.

While the Workroom has received many visitors from around China interested in this novel model, funding obstacles will limit its implementation in other areas. Few local governments have the money to hire a handful of employees to perform these functions, especially when the JA is already being paid to do this work. [\[FN78\]](#)

3. Horizontal Expansion

In addition to the vertical expansion of the "mediation web" described above, there has also been a significant effort to cast the mediation net wider to catch more conflicts. This horizontal expansion has two main components: first, constructing community and street-level PMCs in areas where they *739 formally did not exist, and second, is to create new forms of PMCs to mediate various sorts of conflicts that might not get adequately covered by the community or street-level PMCs.

After declining annually since 1990, official statistics report that both the actual number of PMCs and of people's mediators increased in 2003. The number of PMCs is

said to have risen above one million, which it fell below in 1995, and the number of mediators surpassed eight million for the first time since 1999. [\[FN79\]](#) Some of this increase is due to the establishment of new RCs (and thus PMCs) in newly constructed neighbourhoods. Another source of this increase is simply formalizing the existing mediation work of RCs and VCs by establishing and registering PMCs. Of course, the 40,000 PMCs constructed at the town and street levels as of 2003 also contribute to this number. [\[FN80\]](#)

The establishment of entirely new forms of PMCs that has taken place in recent years also raises the national numbers. Such entities are usually created to provide an effective means of monitoring and controlling, as well as a convenient forum for mediating new types of disputes. The speed at which Chinese society is changing and diversifying has created several such areas and promises to continue to do so. To date, some areas in which PMCs have been established include consumer associations, handicapped persons federations, markets, economic development zones, real-estate development zones and communities managed by wuye companies. [\[FN81\]](#) An interesting example of such expansion comes from the Xuanwu District of Beijing, where the justice bureau has adopted the slogan "where there are disputes, there is people's mediation" (nali you jiu fen, nali you renmin tiaojie). [\[FN82\]](#) In response, the local judicial office of the Taoranting subdistrict established six PMCs at construction sites and one at a construction workers' housing complex in May 2004. [\[FN83\]](#)

Construction work, which there is a remarkable amount of in many Chinese cities, almost inevitably causes disputes between the construction company and both surrounding residents and its own workers. The Taoranting construction PMCs, directed by the JA, bring together government officials *740 as well as representatives of the company and the workers as members. Simply creating this committee is significant, as workers and officials know how to contact the company director in case of a labour dispute -- when these people often become unreachable. This is one way that the PMCs achieve their function of preventing the escalation of conflicts, as a few unpaid workers who get ignored by the company could soon turn into a mass worker protest. The PMCs' other major function is to prevent conflicts, which is done by making suggestions to the construction company about reducing noise, removing debris, etc and ensuring its adherence to the construction plan (such as hours of operation). Although these PMCs have solved some salary disputes and one involving a pedestrian (allegedly) injured by debris falling from a construction site, the JAs stress that this function is secondary to that of preventing conflicts and their escalation. In fact, sometimes after the PMC discovers a conflict exists, instead of mediating the conflict, it will transfer the dispute to a different bureau for processing -- such as to the labour bureau for arbitration. [\[FN84\]](#) Contrarily, mediation at a street-level PMC in Ningbo seems to be replacing arbitration by the labour bureau as the primary method of solving disputes involving migrant workers because of the less formal (less intimidating), cheaper (free) and faster process it provides. In the first eleven months of 2005, the JA of this subdistrict and his assistant mediated 195 cases and recovered RMB2.6 million for migrant workers. [\[FN85\]](#)

In another example, the Beijing Justice Bureau approached an already existing organization of volunteers involved in helping migrant workers about formally becoming a PMC. Since its formation in 1999, Xiao Xiao Niao (Little Little Bird) had been aiding migrant workers protect their rights and interests by helping them to recover overdue

wage payments, get compensation for work-related injuries and demand better working conditions as well as by publicizing legal information. In 2004, the Xiao Xiao Niao PMC was formed, which is the first entirely non-governmental organization of this sort to form a PMC in China. [FN86] The Justice Bureau's desire to make Xiao Xiao Niao a PMC is clearly consistent with the MoJ's and lower-level justice organs' bureaucratic interests of expanding the scope and reach of people's mediation. [FN87] Xiao Xiao *741 Niao's Director (and now the PMC's also) says that since they do not bother to complete all the burdensome paperwork for the JA, the only significant impact of becoming a PMC has been that employers -- who perceive the PMC as a "government organisation" -- feel greater pressure to negotiate some solution to the dispute. [FN88] In their first year as a PMC, Xiao Xiao Niao reports mediating 314 cases, involving 2,169 migrant workers, and recovering over RMB 15 million for them. [FN89] Alternatively, in the city of Yiwu in Zhejiang Province, it was the city-level trade union (gonghui) itself which requested that it be allowed to form a PMC so that the mediated agreements it brokered would have greater legal weight in court, as per the 2002 Interpretation. [FN90]

Catering to a different constituency, a university in Zhejiang Province created a PMC to deal with conflicts involving student problems and interests. The People's Mediation article reporting this news cites two specific social phenomena that inspired this development. The first is that the one-child policy has created a student body of "only children" who are more selfish and lacking in communication skills than past students, which increases the likelihood of inter-student disputes. The second is that the students are often unsatisfied with the administration's provision of housing, bathing and dining services, particularly as student enrolment increases. Further, the students could not negotiate with the university as equals, but would often be treated unfairly in finding solutions to these issues. Thus, the PMC -- comprised of nine law school students and faculty members -- provides a forum for processing the above conflicts in a fair way. [FN91]

The number of formal PMCs established by enterprises has also been increasing since the 1989 Regulations (Article 15) provided a basis for their creation: by the end of 2001, roughly 100,000 factory, mine and enterprise PMCs existed. [FN92] The city of Dongwan, Guangdong even started experimenting with PMCs in foreign-invested companies in 2001 and had established 78 by November 2004. [FN93] Enterprise PMCs handle conflicts both between management and workers as well as amongst workers.

*742 4. Cooperation with the Police

Police stations in several cities have established "Joint Reception Rooms" staffed by police as well as people's mediators to handle cases that the police would normally mediate. This furthers both the MoJ's and MoPA's interests by greater utilising people's mediation and decreasing the workload of the police. Encouraged by slogans such as "bring all troubles to the police" (you kunnan zhao minjing) and perhaps waning respect for PMCs, Chinese citizens come to the police with all sorts of problems. Officials in Beijing and Shenzhen report that between 70 per cent and 80 per cent of matters brought to local police stations either did not violate the Public Order Regulation (for instance, marital disputes or an unhappy restaurant customer refusing to pay the bill), or did, but did not constitute criminal offences (usually fights or damaged property) -- both of which can be mediated. [FN94] Such mediations constituted 60 per cent of daily police work in

Kunming. [\[FN95\]](#) Police complain that mediation work detracts from the time they can devote to more serious, criminal matters; yet, as this work is still of secondary importance and so large in quantity, police are also unable to do the mediation work itself very well.

The first article of a 1987 Interpretation of the above Regulation outlining what cases the police can mediate explicitly instructs the police to pass on cases that do constitute disruptions to public order to the PMCs or courts. [\[FN96\]](#) Nonetheless, police officers, like other officials, explain that making such a suggestion to parties would be viewed as an unacceptable passing of the buck. Another impediment to this is that many fights or disputes occur at night or on weekends when RC members (PMC mediators) are not working.

The joint reception room operates by receiving all cases that can legally be mediated, with the "public security disputes" (those violating the Public Order Regulation) being mediated by police officers and other "civil disputes" by people's mediators. The head of Beijing's Fengshan Police Station explains *743 that having the people's mediators in the same physical room makes parties, who had sought out the police, more willing to accept being transferred; if demanded by the parties, a police officer can even mediate along with the people's mediators. [\[FN97\]](#) The joint reception rooms in Shenzhen's Luohu District even have people's mediators on staff 24 hours a day.

The people's mediators in the police stations are also supposed to be of "higher quality" than community mediators, making parties more willing to have their case handled by them. Sixteen of the 20 mediators working in the Xicheng District of Beijing (two per police station) are retired police officers, judges or other cadres, and these mediators earn monthly stipends of between RMB800 and RMB1,000. [\[FN98\]](#) In Shenzhen's Luohu District, only one-fourth of the 60 mediators staffing the People's Mediation Workrooms (joint reception rooms) had definite legal knowledge when hired; however, the district justice bureau in cooperation with the public security bureau conduct a one-week training for the mediators that covers four topics (the process and principles of mediation, ethics, public security, and relevant legal knowledge) and concludes with a test -- which at least some have failed. Most of these mediators are not retired, in fact several are in their early twenties, and receive a monthly salary of between RMB1,100 and RMB1,200. [\[FN99\]](#)

Mediators in the police stations seem to mediate more cases than virtually all other PMCs. The two mediators at the Fengshan Police Station handled 156 cases (solving 64, providing legal counselling for 46 and passing along 46) in their first 14 months, while the ten community PMCs in that subdistrict mediated a total of 300 cases in 2004. [\[FN100\]](#) Of the 3,943 cases handled by all PMCs in Luohu District in 2004, 2,880 (73.0 per cent) were done in the police stations; in one subdistrict this statistic reached 97.4 per cent, with only about a dozen mediations not being performed in police stations. [\[FN101\]](#) These high numbers are also due to the fact that Shenzhen's RCs (and thus community PMCs) generally serve full-time residents, leaving the extremely large migrant population to the police. [\[FN102\]](#) Like the effect of Li Qin's Mediation Workroom in Shanghai, making people's mediators available to parties "socializes" the dispute resolution system (that is, decreases the role played by government officials). In Beijing, plans to establish a joint reception room at *744 every police station in the city's eight urban districts are already being implemented. [\[FN103\]](#) Mediations by the nine joint

reception rooms in Kunming had a success rate of 80 per cent in their first five months. [\[FN104\]](#)

5. Cooperation with the Courts

Like the police, urban courts' interest in promoting people's mediation is to relieve their own pressure in dealing with China's "litigation explosion." The first method of doing this is to make using PMCs more attractive, which is a major reason why the SPC raised the status of mediated agreements. Another effort is to improve the "quality" of mediators, namely their legal knowledge and mediation ability, so they are better able to solve cases -- meaning they will not wind up in court. [\[FN105\]](#) Judges are doing this by lecturing on specific laws, discussing cases mediators failed to solve, encouraging mediators to contact them with questions, going to the communities to mediate together with mediators or inviting mediators to watch court cases. Other mediator training activities are more directly aimed at reducing judges' workloads or meeting the courts' needs, such as having people's mediators try to resolve court cases before a verdict is issued and having them serve as jurors. [\[FN106\]](#) Urban courts are also encouraging parties filing civil lawsuits to first try people's mediation. While it is increasingly common for judges to make such a suggestion, they are not overwhelmingly successful with parties, who have already come to the courthouse. In response, the Dongcheng District of Beijing has established a Joint Reception Room that is staffed by police, court and PMC representatives to match parties with the appropriate forum for dispute resolution from the outset. [\[FN107\]](#)

The People's Mediation Window located inside the People's Court of Shanghai's Changing District even further conveniences disputants. The court targets seven types of cases as particularly suitable for people's mediation and encourages disputants of such cases to try people's mediation at three times: when they are filing a lawsuit, after filing a lawsuit but before the trial, and *745 even after the trial has begun. [\[FN108\]](#) To encourage the use of mediation, those parties who have already paid the court fee and then resolve their case through people's mediation receive half of that money back. [\[FN109\]](#) If parties want (or the type of case necessitates) a directly enforceable court mediation agreement to be issued instead of a people's mediation agreement though, parties must file a lawsuit and pay the court fees. From its inception in June 2003 through May 2005, the Window has mediated 705 cases (about 30 cases per month). Of these, 628 (89.1 per cent) were successfully mediated, of which 103 cases involved parties that had not yet filed lawsuits, 586 cases were transferred before the trial and 16 after the trial had begun.

The Court's funding of the Window allows it to provide mediators with superior legal knowledge. Two retired civil court judges work as mediators full-time and receive a monthly salary of RMB1,400. The Window also serves a training function: each month, several street-level mediators, each paid RMB700, mediate cases together with the retired judges and receive training from the two civil court judges that oversee the Window. [\[FN110\]](#) The civil court judges also work to improve the quality of people's mediation throughout the district by visiting each street-level Xinfang Representation Center every week to teach about the law and discuss cases the mediators are processing. Examining every written people's mediation agreement produced in the district (in 2004, there were over 2,000) to ensure it does not violate the law or have other serious flaws is another

responsibility of the judges. As they frequently find problems, such as failing to clearly state the parties' relationship or forfeiting the rights of a third party without his permission, the judges' performance of this function is quite valuable, but time-consuming. [\[FN111\]](#)

The cost alone of hiring full-time mediators and dedicating two judges solely to this work would prevent most urban courts from replicating the Window model as it operates in Changning. However, Deng Jiangsheng, Director of Grassroots Work in the Beijing Justice Bureau, revealed that the *746 city's courts objection to putting people's mediators in the courts in 2003 was one of principle: the courts feared such an arrangement would obstruct citizens' right to litigate. Since then, however, mediators have been allowed into the Chaoyang District Court and similar plans are being discussed in all districts of Beijing. [\[FN112\]](#) Deng attributes this change in position to the courts' feeling overburdened by ever-growing caseloads as well as instructions from the SPC to help with the training of people's mediators. [\[FN113\]](#) It seems likely that this trend will spread to other cities as their dockets also become increasingly overwhelming.

6. Bringing Mediation and Xinfang Together

The joint reception room format is also being used to pair mediation services with receiving citizens seeking to xinfang in the 13 United Judicial Xinfang Centers (Sifa Xinfang Liandong Zhongxin) in Tongxiang, Zhejiang Province and the Li Qin Mediation Workroom (and its equivalent in Shanghai's other subdistricts). [\[FN114\]](#) Again, the belief is that mediators can often solve many of the issues about which residents seek to xinfang -- increasing the role for mediators in society, "socialising" dispute resolution and reducing the workload of local officials. [\[FN115\]](#) For those cases that mediators cannot solve, they are to play a "representative" role in the xinfang process, making it more convenient for both residents and officials. First, they help the resident to write-up the complaint, ensuring it is clearly stated, and then deliver it to the appropriate bureau or official. When the answer is returned, the representative (mediator) can then spend time explaining the reasoning behind it -- reducing the likelihood that the resident will shangfang. Li Qin says that this arrangement also solves the "three difficulties" (san nan) of dealing with officials in the xinfang system: (1) their words are hard/ugly to hear (hua nanting); (2) their faces are hard/ugly to look at (lian nankan); and (3) their doors are hard to enter (men nanjin). Thus, in addition to ensuring that the complaint is processed, this system aims to do this in a way that will not further anger the resident, but make him content with the result. Several street offices in the Xuanwu District of Beijing have already begun to consider creating such an organization.

*747 Part IV: Conclusion

The declining role and influence of the community PMCs and their "granny cadres," [\[FN116\]](#) residents' increasing use of litigation and the continued production of legally questionable agreements through legally questionable tactics caused some Chinese legal scholars to recommend entirely abolishing people's mediation in the 1990s. This article has presented some of the steps taken, reforms made and ways in which the institution has adapted to better, or at least continue to pursue its goals in recent years. How should one evaluate these changes though? What are their implications?

The urban people's mediation system is becoming far less monochromatic: street-level, courthouse, police station and other PMCs have diversified this institution formerly comprised almost exclusively of community PMCs. The process of "legalisation" and promoting "mediation based on law" has also continued to alter the nature of people's mediation. Increasingly, PMCs' work is regulated, the principles and procedural rules of mediation are respected, mediators' legal knowledge is deepened, written agreements are produced and mediation work is overseen by JAs. Mediation agreements based on law are gradually replacing simple compromises between the parties that were prevalent early in the reform era. [\[FN117\]](#) Legal arguments, instead of those based on Party ideology, morality or policy, are being used to persuade parties to accept the mediated solution. Similarly, people's mediation is not selling itself as an "informal" alternative to court, but rather is emphasising its formality and similarity to court -- for instance, that it uses a regulated procedure and that agreements are based on law and recognised by the court. PMCs now define their comparative advantages over court as convenience, speed and cost. [\[FN118\]](#) Of course, the degree of legalisation and formality varies greatly across PMCs; however, in general, the new types of PMCs (at the street level or in police stations and courthouses) measure higher in terms of both.

The reforms to the urban people's mediation system mentioned in this article have revitalised the institution in many ways and better equipped it to pursue its goals. The expansion of the PMC web, both vertically with the more systematic use of informants and horizontally into areas where disputes are common, improve its ability to learn of, monitor and solve conflicts, and do so earlier. Community mediators still do, however, face obstacles in being *748 as "all knowing" as their Maoist predecessors and an effective mechanism for promoting stability. Relationships between residents and RCs continue to weaken, as does citizens' belief that any and all information should be made known to the RC. Regulation and training efforts to curb coercive mediation have made mediators more cautious of conducting zhudong tiaojie, instead passively waiting for parties to seek them out.

Expansion and the creation of new PMCs have contributed to an increase in the number of cases handled by PMCs overall: this number not only stopped declining but increased from 3.14 million in 2002 to 4.49 million in 2003 and up to six million in 2004. [\[FN119\]](#) Legalisation and formalisation are also making parties more willing to bring disputes to PMCs, especially complex ones, and helps to ensure better processing of those conflicts. For instance, of the four million cases handled by PMCs between January and September 2004, 480,000 involved either a legal person or social organisation as a party. A regulated mediation procedure and the formation of agreements based on law protects parties against arbitrary solutions or compromises (luan tiaojie). Issuance of the Interpretation has also encouraged mediators to draft more written agreements, of which 70 per cent were reportedly implemented and again, 87 per cent of those brought before the courts were upheld in 2004. [\[FN120\]](#)

The MoJ consistently reports a national mediation success rate of around 95 per cent. Again, while that figure's precise meaning is unclear, it does appear that the vast majority of parties who voluntarily agree to mediation will have their case settled. Although some community PMCs might be of limited effectiveness, the top level of the web, be it the JAs or the professional mediators in Shanghai, seem able to use their greater legal knowledge and mediation skills, as well as perceived status as officials (in the case of the

JAs), to resolve most disputes. In a dispute between two market vendors where the plaintiff ("applicant") did not accept the solution offered by the market's own PMC, he was willing to accept practically any resolution offered by the retired judge of the police station PMC, who he "believed" or "trusted" (xiangxin). It was precisely the formality of the PMC -- that is, its being housed in a government organ (the police station) -- that assured the party it was fair and accept its solution. [\[FN121\]](#) These new forms of more legalised, more formal PMCs with the closest ties to the government are most responsible for the increases in cases handled by PMCs in many urban districts. The high number of cases handled by these PMCs also helps to relieve pressure on the police, labour arbitrators, judges and other officials in those places.

*749 Despite the aforementioned advances though, significant obstacles still do exist to revitalising people's mediation in the manner envisioned by the MoJ. For instance, despite efforts to increase mediators' understanding of the law, familiarity with its content and how to apply it remains minimal for the vast majority of mediators. [\[FN122\]](#) Urban mediators still handle cases outside the scope of people's mediation, act coercively and produce poor, even illegal agreements: nearly one in seven mediated agreements brought before the courts is not upheld -- just according to official statistics. At present, a disproportionately high number of mediated cases involve elderly parties; however, it seems unlikely that the younger, less litigation-averse generation will grow to prefer having the RC settle their problems as their parents and grandparents do. If legalisation and formalisation do not continue to convince younger, wealthier, more educated Chinese to use people's mediation, the relevance of community PMCs will only decrease over time. The lack of motivation amongst community mediators can also be expected to resurface and persist if they continue to receive no financial reward for their work. These are just some of the challenges facing the system.

It must be acknowledged that while this paper assessed some of the important ways that people's mediation has evolved in recent years, it only presents part of the picture. First, other institutional changes with important implications for people's mediation are occurring. For instance, the recognisable, often unpaid granny cadres are being replaced on the RCs by younger, better-educated and more "professional" people who live outside the community in which they work. Which of these people make a more effective mediator? Second, truly understanding the effect of reforms, nature of mediation and problems facing mediation requires not just looking at the institutional level. Individual cases, mediators and mediations must be examined to discover exactly how "mediation based on law" is being conducted, how a JA mediates differently than a granny cadre or more professional RC member and whether training activities actually change the outcomes of mediations. Thus, this study is just a small step down the road towards understanding the present state of people's mediation in urban China.

As a result of the "second revitalisation" of people's mediation, debates are no longer about the abolishment of this institution, but how to further improve it. In fact, several significant steps have already been taken in this direction: most notable is the Standing Committee of Qinghai Province's People's Congress issuance of China's first local Regulation (tiaoli) governing people's mediation in October 2005. The 41 articles of this document *750 increase legalization by making more specific rules in many of the areas covered by the 2002 MoJ Provisions. Most significant is the definition of funding obligations for each level of government, with county and township governments made

responsible for ensuring that financially troubled village and community PMCs have operating funds and can pay mediators. [\[FN123\]](#) It therefore seems quite clear that in coming years, the legalisation of people's mediation will continue, with its legal standing increasing, mediators' legal knowledge improving and regulation and standardisation of the PMCs heightening. New forms of PMCs and the range of areas in which they operate can also be expected to continue expanding. It is only the speed at which all this will occur, the specific forms it will take and its level of success that remain to be seen.

[\[FN1\]](#). Research Associate, The China Law Center, Yale University Law School; Visiting Scholar, Peking University Law School. The people to be thanked for their assistance with conducting the research for this article are far too numerous to list here. Nonetheless, I would especially like to thank Professors Fan Yu, Jiang Shigong, Fubing Su and Jerome A. Cohen for their generous time and effort. I am particularly indebted to Professor Fu Hualing for the inspiration he provides through his own research as well as his invitation to present an earlier version of this paper at The University of Hong Kong, encouragement to write this article and invaluable comments on an earlier draft. I am also grateful for the feedback provided by this journal's anonymous reviewer. Finally, I would like to thank Shang Xiaolu for his research assistance and partnership in culinary explorations. This study was made possible by the financial support of the US Government's Fulbright Program.

[\[FN1\]](#). Jerome A. Cohen, "Chinese Mediation on the Eve of Modernization" (1966) 54 California Law Review; Stanley B. Lubman, "Mao and Mediation: Politics and Dispute Resolution in Communist China" (1967) 55 California Law Review; Jerome A. Cohen, "Drafting People's Mediation Rules" in John Wilson Lewis (ed), *The City in Communist China* (Stanford: Stanford University Press, 1971), pp 29-50; Michael Palmer, "The Revival of Mediation in the People's Republic of China: (1) Extra-Judicial Mediation" in *Yearbook on Socialist Legal Systems* (W.E. Butler (ed), 1987); Eric J. Glassman, "The Function of Mediation in China: Examining the Impact of Regulations Governing the People's Mediation Committees" (1992) 10 UCLA PAC. BASIN LJ; Fu Hualing, "Understanding People's Mediation in Post-Mao China" (1992) 6 *Journal of Chinese Law*.

[\[FN2\]](#). See Fu, n 1 above, p 212.

[\[FN3\]](#). Stanley B. Lubman, *Bird in a Cage: Legal Reform in China after Mao* (Stanford: Stanford University Press, 1999), pp 59-63.

[\[FN4\]](#). See Palmer, n 1 above, p 233.

[\[FN5\]](#). See Glassman, n 1 above, p 478.

[\[FN6\]](#). *Ibid.*, pp 479-480.

[\[FN7\]](#). See Palmer, n 1 above, p 219.

[\[FN8\]](#). *Zhongguo Falu Nianjian* [Law Yearbook of China, hereinafter ZGFLNJ] (Beijing:

Press of Law Yearbook of China, 1986-2001).

[FN9]. This study draws largely on the interviews conducted by the author between Aug 2004 and Nov 2005 in the cities of Beijing, Shanghai, Tianjin, Chengdu and Shenzhen. A total of 74 people directly involved in people's mediation in the urban parts of these municipalities were interviewed: 41 people's mediators; 20 judicial assistants (JAs); eight officials in district justice bureaus; four from city justice bureaus; and one Ministry of Justice (MoJ) official. Generally, three methods were used to contact mediators and officials: the author contacted them directly, either by phone or walking into their office; the author was introduced by a friend, professor or other interviewee; or the interviewee's superior had arranged the meeting (ie the street-level (subdistrict) JA contacted one of the community PMCs that she oversees). Thus, no claim is made that this sampling is in any way random; however, some effort was made to talk with mediators from a diverse set of districts and neighbourhoods.

Sometimes multiple mediators and/or officials were interviewed simultaneously. All interviews were over one hour in length, although most lasted for an entire morning or afternoon (three to four hours) and several for an entire day. Moreover, many of these people were interviewed more than once. Interviews were primarily conducted at the workplace of the interviewee, although several (usually the second or third meeting with a given interviewee or an "unofficial" interview) were held at restaurants or the interviewee's home. Virtually all interviews were conducted alone, although the author was sometimes accompanied by the person that had introduced him to the subject. Although there was some variation, interviews were generally quite informal. A few were group discussions over dinner about a number of topics, only one of which was mediation; although, this was usually preceded by a more focused discussion on mediation at the workplace of the interviewees.

In addition to the aforementioned interviews, a number of other research methods were used to gather information for this article. First, the author observed both whole and parts of several people's mediations, at community, street-level and police station PMCs. Second, the author interviewed numerous individuals doing work related to people's mediation (such as Residents' Committee (RC) members, judges, police officers, people's government officials, etc) and had countless informal conversations with ordinary citizens about their opinions towards PMCs. Third, the author spoke with many academics, both at CASS and in universities, who are researching either mediation or related topics. Lastly, all sorts of written sources were consulted -- including government laws, policies, regulations, scholarly articles, newspaper articles and magazine articles. The magazine *Renmin Tiaojie* [People's Mediation, hereinafter RMTJ], which is published by the MoJ, was particularly useful.

[FN10]. Director Wang, personal interview at the Keqing RC, Beijing, 7 Jan 2005.

[FN11]. Lin Xianfeng and Li Mingzhe, *Dangqian renmin tiaojie gongzuo de kunjing yu chulu* [The dilemma China's people's mediation work is currently in and the path out], *Zhongguo Sifa* [Justice of China, hereinafter ZGSF], Nov 2004 (59), p 38.

[FN12]. *Ibid.*, Yang Rongxin, *Tuokuan renmin tiaojie fanwei, quding tiaojie xieyi xiaoli*

[Broaden the scope of people's mediation, define the status of mediated agreements], Renmin Fayuan Bao [Court News], 30 Sep 2002, available at <http://www.jcrb.com/zyw/n6/ca12222.htm> (visited 28 Nov 2005).

[FN13]. As the 1989 Regulations mandate the PMCs to mediate "disputes among the people" (minjian jiufen) (Art 2), many mediators felt that they could not legally mediate conflicts involving legal persons or social organizations.

[FN14]. "Chinese Prefer Mediation to Lawsuit," Xinhua News Agency, 28 Jan 1997.

[FN15]. Fan Yu, Dangdai zhongguo feisusong jiufen jiejie jizhi de wanshan yu fazhan [Development and perfection of China's ADR system in the modern era], Xuehai [Sea of Learning], Jan 2003, p 80.

[FN16]. The community PMCs are actually subcommittees of the RCs, so the members are often the same and residents do not distinguish amongst the two (discussed further in Part III).

[FN17]. Ting Wang, "Extrajudicial Mediation of Civil Disputes in China: The Decline of People's Mediation and Institutional Response," Department of Government, Harvard College, Unpublished Thesis, Mar 2002, p 42. Wang's conclusions are based on his 2002 survey of 249 Beijing residents.

[FN18]. In her investigation of a Beijing subdistrict, Yang Na found that roughly 62% of disputants were over 50 years old and just 1% were under 30, although this number was 20% a decade earlier (Yang Na, Renmin tiaojie zhidu de xianzhuang fenxi [Analysis of the people's mediation system's current status], Fazhi Ribao [Legal Daily, hereinafter FZRB], 24 Sep 2000).

[FN19]. Director Li Qin, interview at Li Qin's People's Mediation Workroom, Shanghai, 13 June 2005.

[FN20]. Lubman writes how in the Maoist period, some disputants "avoided mediation by activists or cadres because they felt it would not resolve their difficulties [and] they disliked mediators' lectures and exhortations" (see n 3 above, p 62).

[FN21]. The quoted terms are taken from Benjamin L. Read, "Revitalizing the State's Urban Nerve Tips" (2000) 3 The China Quarterly 163, 806.

[FN22]. See Wang, n 17 above, p 44.

[FN23]. Ibid., p 42.

[FN24]. After surveying 1,500 Chinese citizens on their legal knowledge and views in 1997, the China Social Investigation Office concluded that "negative results which harm parties' interests may be produced if mutual understanding and concession is

overemphasized and when the basic principle of mediating in line with the law is forgotten" (see n 14 above).

[\[FN25\]](#). 1989 Regulations, Art 6(1).

[\[FN26\]](#). Director Zheng Zhong, interview at Xuanwu District Public Security Mediation Center, Beijing, 2 June 2005.

[\[FN27\]](#). Donald C. Clarke, "Dispute Resolution in China", in Tahirih V. Lee (ed), *Contract, Guanxi and Dispute Resolution in China* (New York: Garland Publishing Inc, 1997), pp 414-415. Clarke notes that some interpret this phrase as a simple behest lacking any coercive force, while others equate it with the Chinese term for "must" (bixu).

[\[FN28\]](#). See Wang, n 17 above, p 38. In addition to the people's courts, the 1989 Regulations also allow parties to request the local people's government to handle cases where agreements are not implemented. The Measures on Handling Civil Disputes issued by the MoJ in 1990 quite clearly instruct the government (the JA, whose position is described below) (Art 2) to uphold such agreements so long as they are in accordance with law, rules, regulations and policy (Art 18) and then orders that parties must (bixu) implement this decision (Art 21). If a party does not implement the decision and does not file a lawsuit within 15 days, the government may, upon application by the other party, take the necessary measures within the scope of its official powers (zhiquan) to enforce the decision (Art 21). While it is unclear exactly how often disputants sought out the JA in such cases or how the JA handled such cases, the feeling amongst mediators and parties that agreements lacked legal effect and mediation was often done in vain remained throughout the 1990s.

[\[FN29\]](#). See Wang, n 17 above, pp 37-38.

[\[FN30\]](#). An MoJ official reports that each year PMCs prevent over 30,000 suicide cases (involving over 50,000 people) and over 50,000 civil cases from escalating into criminal matters (involving over 120,000 people), as well as stop nearly 100,000 group fights (Wang Jue, *Jianlun renmin tiaojie lifa de shijian jichu* [A Brief Argument on the Foundation for the Enforcement of the Legislations on the People's Mediation], ZGSF, May 2005 (65), pp 48-51). It should be noted that some of these numbers differ from those reported in the 2004 edition of ZGFLNJ.

[\[FN31\]](#). The Order of the MoJ, "Some Provisions Concerning the Work of People's Mediation," Art 3(b).

[\[FN32\]](#). PMCs are reported to prevent over 100,000 group shangfang cases involving over 1 million annually. See Wang, n 30 above, p 51. Again, different sources offer different numbers.

[\[FN33\]](#). *Woguo renmin tiaojie zuzhi meinian tiaojie yue 600 wan jian minjian jiufen* [China's People's Mediation Organizations Mediate Approximately 6 Million Civil

Disputes Annually], Renmin Ribao [People's Daily, hereinafter RMRB], 24 Feb 2004.

[FN34]. The exception is the desire of the courts and police to have PMCs handle more cases to decrease their own burden. During the first two decades of the reform period, the courts and police were actively encouraging disputants to seek them out (discussed further in Part III).

[FN35]. The work of the PMCs is also mentioned in the 1982 PRC Constitution, which requires that "The residents' committees and villagers' committees establish committees for people's mediation ... in order to ... mediate civil disputes" (Art 111).

[FN36]. The JA, who works at the level of the urban subdistrict or rural township, is the most basic-level functionary in the judicial administrative system under the MoJ. JAs are, amongst other things, responsible for managing the community PMCs that exist in their subdistrict. The nature and role of JAs are discussed further in Part III, 2(b) below.

[FN37]. See Glassman, n 1 above, p 478.

[FN38]. He Bing, Lun minjian tiaojie zuzhi zhi chonggou [Comments on the restructuring of the civil mediation organizations], ZGSF, Feb 2004, p 26.

[FN39]. Zuigao renmin fayuan fuyuanzhang Li Guoguang jiu 'Zuigao renmin fayuan guanyu shenli sheji renmin tiaojie xieyi de minshi anjian de ruogan guiding' da jizhe wen [SPC Vice-President, Li Guoguang, answers reporters questions on "The SPC's provisions for trying civil cases involving agreements reached through people's mediation"], RMTJ, Nov 2002, p 34.

[FN40]. The provisions for a summary procedure are outlined in Chapter 13 of the Civil Procedure Law.

[FN41]. For instance, legal scholar Zhang Weiping argues that it remains unclear whether a judge is permitted to re-mediate the parties' initial dispute or may only offer a decision about the validity of the agreement (Zhang Weiping, Renmin tiaojie: Wanshan yu fazhan de lujing [People's mediation: the path to perfection and development], Faxue [Legal Studies], Dec 2002, p 49).

[FN42]. ZGFLNJ, 2004, p 200.

[FN43]. PMCs' scope is expanded from disputes among citizens to include those "between citizens and legal persons or other social organizations" (Art 20); PMCs are no longer limited to just those founded on RCs, in enterprises or by public institutions, but can be established by urban subdistricts or be area- or industry-based (Art 10); all mediators are required to have a "certain education level" (wenhua shuiping), which is defined as a high school education for street-level PMC members, in addition to understanding of law and policy (Art 14).

[\[FN44\]](#). Again, JAs are discussed in Part III, 2(b) below.

[\[FN45\]](#). Of course, this often does not translate into actually producing legally sound or even sensible agreements that the court will uphold. Further, while enthused that the courts "recognise" mediated agreements, many mediators are unclear as to exactly what this means. For instance, many did not know whether a party could apply directly for the enforcement of a mediated agreement or a trial must first occur to determine the validity of the agreement.

[\[FN46\]](#). Deng Jiansheng, interviewed at Department of Grassroots Work, Justice Bureau, Beijing, 21 Feb 2005.

[\[FN47\]](#). Scholar Fan Yu notes that at present, some local officials will conclude an administrative mediation by writing a "people's mediation agreement" because of the Interpretation's explicit instruction for courts to recognize its legal effect. So, a "Mediation Law" may actually reduce the use of people's mediation by clearly defining its boundaries and giving the same legal effect to agreements reached through administrative and other forms of mediation. (Professor Fan Yu, interviewed at People's University, Beijing, 10 Jan 2005).

[\[FN48\]](#). Fan Yu favours this option, as she believes that it supports a trend towards specialisation in mediation. (Fan Yu, *Shehui zhuanxingzhong de renmin tiaojie zhidu* [People's Mediation System in a Transitional Society], ZGSF, Oct 2004, p 60).

[\[FN49\]](#). See Wang, n 30 above, p 51.

[\[FN50\]](#). Many in the MoJ would also like to start charging a fee for people's mediation and such a law, if not stipulating this directly, could at least bring them closer to doing so by eliminating several competing alternatives for dispute resolution.

[\[FN51\]](#). See Yang, n 12 above. Actually, the 1954 mediation rules explicitly empowered PMCs to handle cases involving minor criminal acts, but this power was removed with the issuance of the 1989 Regulations.

There are also certain cases, such as those requiring private prosecution (*zisu anjian*), where it is not clear whether or not PMCs can legally perform mediation. Tian Wenquan, a justice bureau official in Sichuan Province, contends that if the victim of a private prosecution case applies for mediation and relinquishes his right to pursue it as a criminal case (this should be done in writing) then PMCs ought to process these cases (*Xingshi zisu anjian shiyong renmin tiaojie zhi wojian* [My opinion on using people's mediation in criminal private prosecution cases], RMTJ, June 2005, pp 17-19). Adopting a people's mediation law would provide an opportunity to provide a clear answer to this and other similar questions.

[\[FN52\]](#). It is usually suggested that those cases which PMCs traditionally handle, such as marriage, family and neighbour disputes are the types that would be made mandatory.

[FN53]. Under the 2002 Interpretation, a trial is still required to ensure that the agreement is legal, not coerced, etc before the court will enforce it. Some argue that allowing parties to apply directly for enforcement of an agreement after it is violated is important to increase the legal standing of (and appeal of using) PMCs; others contend that it is simply unfair to require a party that has successfully mediated a case to then go through a trial. The major concern with this proposal is that a major check on the work of the PMC would be eliminated. As agreements that violate the law are still numerous and coercive mediations still occur, such a reform still seems premature.

[FN54]. See Zhang, n 41 above, p 49.

[FN55]. Fu Jiandi, Guanyu yaoqiu zhiding 'Renmin Tiaojiefu' de yian [A motion requesting the drafting of a "People's Mediation Law"], 23 June 2004, available at <http://www.zjmj.org.cn/polity/detail.jsp?id=154> (visited 28 Nov 2005).

[FN56]. For the most complete description of present-day RCs, see Read, n 21 above; also see Fu, n 1 above, pp 223-226.

[FN57]. MoJ regulations allow for and actually encourage people's mediators to receive subsidies for their work, charging local judicial administrative organs with the responsibility of procuring government funds for this purpose (2002 Provisions, Art 42). Despite some MoJ officials' belief that all mediators -- community volunteers and RC members -- receive some stipend, even if very small (Interview with MoJ official, Beijing, 1 Apr 2005), the author failed to find any evidence of community mediators receiving financial compensation for their work anywhere in China.

[FN58]. Yang Rongxin and Xing Jun, Renmin tiaojie zhidu yanjiu [Research into the people's mediation system], Nanyang Shifan Xueyuan Xuebao (Shehui Kexueban) [Journal of Nanyang Teacher's College (Social Sciences)], Vol 2 No 5, May 2003, p 14.

[FN59]. ZGFLNJ, 2004, p 200.

[FN60]. The 2002 Provisions permit community PMCs to establish mediation groups below them when necessary (Art 12).

[FN61]. The distinction between informants and community PMC mediators is not always clear though, as many informants are technically also registered as members of the community PMC.

[FN62]. Mediators and officials often speak of "small" and "large" matters (xiaoshi and dashi). No real definition or clear standard exists for distinguishing the two, but the main factors seem to be a conflict's seriousness (if it can evolve into violence, threaten stability, etc) and complexity (the amount of money or number of people involved).

[FN63]. Fu Hualing, "The Judicial Assistant System in Rural Mainland China" (1992) 28 Issues & Studies 25-26.

[FN64]. See Fu, n 63 above, p 26. The JA's exact relationship with the local government and the judicial administration structure (such as by whom the "primary management" is provided and by whom the "supplementary management") also varies amongst localities (Sifabu guanyu xiangzhen (jiedao) sifa xingzheng jifgou jianshe youguan wenti de pifu [MoJ response to issues relating to the construction of township (subdistrict) judicial administrative organs], 5 Mar 1999, available at http://www.legalinfo.gov.cn/moj/jcgzzds/2003-05/28/content_19897.htm (visited 28 Nov 2005)). The key variables in this set of relationships are who pays the salary of the JA and who has the power to select the JA. (For an analysis of local variation and urban/rural differences, see Fu, n 63 above, pp 29-30; for a discussion of the current state of the JA system in rural China, see Fu Hualing, "Shifting Landscape of Dispute Resolution in Rural China," in Jianfu Chen, Yuwen Li and Jan Michiel Otto (eds), *Implementation of Law in the People's Republic of China* (New York: Kluwer Law International, 2002), pp 182-185).

[FN65]. See Fu, n 64 above, p 182.

[FN66]. Since the 1990s, the MoJ has been stressing the creation of these local judicial offices to formalize the JAs' position at the subdistrict/township level and meet the growing need for legal services at the basic-level. (See Sifabu guanyu jiaqiang sifasuo jianshe de yijian [MoJ opinion on furthering the construction of local judicial offices], 24 June 1996, available at http://www.legalinfo.gov.cn/gb/jcgzzds/2003-05/28/content_19896.htm (visited 28 Nov 2005)). Workers in these local judicial offices usually do not refer to themselves as "JAs," but by their position in that office (ie "director"). Nonetheless, the term JA is used in this article to refer to all basic-level judicial officials.

[FN67]. Joining the civil service requires possessing a college degree and passing a competitive examination.

[FN68]. ZGFLNJ, 2004, pp 200-201. These numbers include PMCs established at this level in both rural and urban areas; therefore, it should not be compared directly with the number of community PMCs offered above.

[FN69]. The Provisions, Art 21.

[FN70]. No clear definition exists for "complex" or "difficult" disputes. Many mediators suggest criteria of involving more complicated legal issues or complex interests. In practice, the operational standard for "complex" and "difficult" cases is usually those cases which the community PMC could not solve.

[FN71]. See n 33 above.

[FN72]. One Beijing JA estimates that the actual (in contrast to the reported) success rate of community PMCs in his subdistrict is as low as 20%, but that he is able to resolve almost all of these cases at the street level.

[FN73]. Ji Weidong, Dangqian renmin tiaojie xieyishu cunzai de wenti yiji jieju banfa, [Current problems with people's mediation agreements and how to solve them], RMTJ, Aug 2004, pp 19-20.

[FN74]. Interview with MoJ official, Beijing, 1 Apr 2005.

[FN75]. As a comparison, RC members in this subdistrict usually earn RMB800/month (see n 19 above).

[FN76]. Tansuo renmin tiaojie gongzuo: zhuan yehua, shehuihua jianshe zhi lu [Exploring people's mediation work: the road towards specialisation and socialisation], RMTJ, Oct 2004, pp 19-20; see n 19 above.

[FN77]. There are some differences between the Li Qin Mediation Workroom and those bodies established by other street offices. First is the name: the bodies are called "Xinfang Representation Centers" (Xinfang Daili Zhongxin). Second, these Centers do not have the same contractual relationship with their street offices as the Li Qin Mediation Workroom does with the Jiangsu Lu Street Office, in which one person is given a lump sum of money and told the standards that must be met; rather, they are simply hired by the street office to perform this work. Li Qin contends that the workers in the Centers are therefore still "eating from the communal pot" (chi daguofan) and thus do not face the same pressure or share the level of motivation that she and her staff do (see n 19 above). However, the numbers suggest that these Centers still play a large role in the areas that they oversee. That of the Huayang Subdistrict, also in the Changing District, reported handling 700 cases (including mediation, legal counseling etc) in a 12-month span (Mediator Qian, interviewed at the Huayang Street Community Service Center (Huayang Jiedao Shequ Fuwu Zhongxin), Shanghai, 27 Oct 2004).

[FN78]. Responding to the lack of funds available to pay salaries (or even stipends) to mediators, some in the MoJ and its lower levels believe that mediators should be permitted to charge a fee for their services, although plans for this remain very preliminary (Interview with MoJ official, Beijing, 1 Apr 2005). Director Deng Jiansheng of the Beijing Justice Bureau suggests establishing certain fee-charging PMCs comprised of high-quality mediators with definite legal knowledge (such as those at the street level), while the community PMCs continue to provide mediation for free; others envision all committees charging for their services. The goal is not for the PMCs to become highly profitable, but to cover their expenses and pay mediators a stipend or salary, which some say is necessary to attract highly qualified people in the first place (see n 46 above). Such an arrangement will both free the government of financially supporting PMCs as well as decrease the need for JAs to perform mediations themselves.

Of course, charging a fee also has drawbacks. Many parties are willing to use mediation only because it is free. Demanding payment for a process that may fail or produce an agreement that is not directly enforceable, thus requiring payment again to file a lawsuit, will discourage many from mediating. The specific details of how this might be implemented -- such as how the fee is calculated, which party must pay it and

when -- are also of crucial importance. For instance, mediators in the People's Mediation Window of the Changning People's Court (described below) note the difficulty of deciding which party pays the court fee in cases where a lawsuit has already been filed (Judge Shi, interview at Changning District People's Court, Shanghai, 13 June 2005). If PMCs charge a fee, this would become an issue in every case. Other concerns include that charging a fee for mediation could make this service too costly for the most economically disadvantaged citizens, who already cannot afford to go to court. Even if a fee is only charged for the "more qualified" mediators, it will create a two-tiered justice system, with better service being received by those who have the money to pay for it.

[FN79]. These dates are reported taking into account the fact that the official statistics represent numbers for the previous calendar year (ie the "2004 numbers" represent the situation in 2003).

[FN80]. Renmin tiaojie zhudong jieru shehui redian jiufen [People's mediation actively takes on important social conflicts], FZRB, 2 Mar 2005, available at http://www.legaldaily.com.cn/xwzx/2005-03/02/content_191457.htm (visited 28 Nov 2005).

[FN81]. ZGFLNJ, 2004, p 200.

[FN82]. Street offices in Xuanwu District have created PMCs for dealing with Chinese citizens who have returned from living abroad, the migrant population, communities managed by wuye companies and at construction sites (Lu Xiuyun, Jianli duozhong xingshi de tiaoweihui [Creating many types of PMCs], RMTJ, Nov 2004, p 45).

[FN83]. Lu Xiuyun, Jianzhu gongdi you le renmin tiaojie weiyuanhui [Construction sites have PMCs], RMTJ, Aug 2004, p 48.

[FN84]. Director Jiang Longhua, Assistant Director Zhang Zhonghua, interview at Taoranting Local Judicial Office, Beijing, 17 Mar 2005.

[FN85]. Dong Huasheng, Luotuo Street Office, Ningbo, presentation at the Sino-US Seminar on the Mediation and Conciliation of Labor Disputes, Institute of Labor Relations, Renmin University, 26 Nov 2005.

[FN86]. Director Wei Wei, interview at Xiao Xiao Niao PMC, Beijing, 17 Nov 2005.

[FN87]. The justice bureau may also be striving to show that it is making a contribution to solving problems relating to migrant workers, which has become a key political issue. This move can also be interpreted as showing the Chinese government's apprehension towards any organization which is not formally tied to the state. Bringing Xiao Xiao Niao under the local judicial office's authority allows it to be more easily controlled; further, it keeps the government informed about the conflicts and happenings in this area. Finally, the chance for the Beijing Justice Bureau to show its leadership and creativity by establishing the nation's first PMC of this nature was probably quite appealing as well.

[FN88]. See n 86 above.

[FN89]. Xiao Xiao Niao, Minjian tiaojie jigou de weiquan xianzhuang [The status of rights protection by a nongovernmental mediation body], Sino-US Seminar on the Mediation and Conciliation of Labor Disputes, Institute of Labor Relations, Renmin University, 25-26 Nov 2005, Conference Materials, p 26.

[FN90]. Chen Youde, Yiwu City Trade Union, presentation at the Sino-US Seminar on the Mediation and Conciliation of Labor Disputes, Institute of Labor Relations, Renmin University, 25 Nov 2005.

[FN91]. Wei Peng, Cong "Ma Jiajue shijian" kan daxue xiaoyuannei jianli tiaojie xiaozu de zhongyaoxing [The "Ma Jiajue Incident" demonstrates the importance of mediation organizations], RMTJ, Aug 2004, p 15.

[FN92]. See n 58 above.

[FN93]. Wang Chengkui, Liang Shunyang and Gao Yingchun, Dongwan shi waizi qiye tiaojie zuzhi de xianzhuang ji zuoyong [The status and utility of mediation organizations in foreign-invested enterprises in Dongwan], RMTJ, Nov 2004, p 28.

[FN94]. Article 5 of the 1986 "Regulation Concerning the Management of Public Security and Administration of Penalties" (Zhian Guanli Chufa Tiaoli) states that those "activities that interfere with the maintenance of public order, including physical fighting that results in slight (qingwei) injuries and/or property damage arising from disputes among the people can be dealt with through mediation by the public security authorities" (emphasis added by author). A similar provision appears in the 2003 "Provisions on the Procedures for Handling Administrative Cases by Public Security Bureaus" (Gongan Jiguan Banli Xingzheng Anjian Chengxu Guiding) (Art 145).

[FN95]. 5 ge yue li qianqi jiufen 80% chenggong tiaojie; Kunming Minshi Zhian Jiufen Jiedaishi rang qunzhong manyi ling paichusuo jianfu [A thousand disputes mediated with an 80% success rate in five months; Kunming's Reception Room for People's Public Order Disputes satisfies the masses, reduces burden on police stations], 23 Nov 2004, available at http://www.legalinfo.gov.cn/rmtj/2004-11/24/content_153536.htm (visited 28 Nov 2005).

[FN96]. "The Interpretation of the MoPS concerning the 'Regulation Concerning the Management of Public Order and Administration of Penalties.'" This same provision is repeated in the 2003 "Provisions on the Procedures for Handling Administrative Cases by Public Security Bureaus" (Art 145).

[FN97]. Director Zhao, interview at Fengshan Police Station, Beijing, 31 May 2005.

[FN98]. "Shuangtiao" dailai shuangying: Beijingshi Xichengqu tuiguang jiang zhian

xingzheng tiaojie yu renmin tiaojie xiang xianjie de zuofa ["Joint Mediation" brings double victory: Beijing's Xicheng District promotes combining public order mediation and people's mediation], RMTJ, Nov 2004, p 11.

[FN99]. Interview at Luohu District Justice Bureau, Shenzhen, 3 Mar 2005; Interview at Huangbei Police Station, Shenzhen, 1 Mar 2005.

[FN100]. Director Zhang, Fengshan Street Local Justice Office, interview at Fengshan Police Station, Beijing, 30 May 2005.

[FN101]. "Statistical Table of People's Mediation in Luohu District, 2004," Luohu District Justice Bureau (on file with author).

[FN102]. Interview at Luohu District Justice Bureau, Shenzhen, 3 Mar 2005.

[FN103]. Woshi chuangxin renmin tiaojie gongzuo jizhi chengbaqu jiang quanmian shixing zhian xingzheng tiaojie yu renmin tiaojie liandong gongzuo jizhi [The city's eight urban districts fully implement public order mediation and people's mediation joint work organisation], 26 Nov 2004, available at http://www.bjsf.gov.cn/sy/sfdd/t20041126_113700.htm (visited 28 Nov 2005).

[FN104]. See n 95 above.

[FN105]. During a 2002 interview, SPC Vice-director Li Guogang cites the ambiguous status of agreements and low quality of mediators as the reasons why people are reluctant to use people's mediation (see n 39 above, p 34).

[FN106]. A December 2004 Regulation setting more specific requirements for selecting people's jurors makes it far more difficult for people's mediators to serve in this capacity.

[FN107]. Sifa tiaojie, renmin tiaojie, zhian tiaojie liandong; shoujia "sanlian" jiedaishi jianli [Judicial mediation, people's mediation and police mediation come together; the first "three-way" reception room is constructed], Huaxia Shibao [China Times], 5 Feb 2005, p A03.

[FN108]. The seven types of cases are those relating to (1) divorce, (2) three types of financial support relationships (parent to child, child to parent and between married persons), (3) loans under RMB5,000, (4) compensation under RMB5,000, (5) neighbour conflicts, (6) changes to guardian status and (7) terminating financial support for an adopted child (Zhang Tianlun and Xu Bin, Fahui renmin tiaojie de susong tidai zuoyong; tansuo susong tiaojie shidu shehuihua xin tujing [Use people's mediation to replace litigation; explore the new path of socialising court mediation], Renmin Sifa [People's Justice], Jan 2004, pp 15-17).

[FN109]. The court is presently considering a plan that would return an even greater percentage of the court fee (perhaps 70-80% or even the total amount) to those parties

that choose mediation before their trial has even begun (Judge Shi, interview at Changning District People's Court, Shanghai, 13 June 2005).

[FN110]. Initially, each mediator worked at the court for three months, but the street offices complained about having to pay these people full salaries for jobs they were not doing. Community mediators also served as court mediators, but the Court decided that since many would return to their RC and soon be assigned a task other than mediation it was not worth training these people (see n 109 above).

[FN111]. Ibid.

[FN112]. Beijing: Renmin tiaojieyuan shouci shangting tiaojie [Beijing: People's mediators mediate in court for the first time], 4 Apr 2005, available at <http://www.people.com.cn/GB/14576/15177/3290962.html> (visited 28 Nov 2005).

[FN113]. See n 46 above.

[FN114]. Wu Zhiqiang, Jianli sifa xinfang liandong jizhi, jishi shudao tiaochu maodun jiufen [Building a joint judicial xinfang mechanism, promptly mediate or transfer conflicts] RMTJ, Oct 2004, p 15.

[FN115]. This is especially true with the more stringent requirements for handling a xinfang established by the revisions made to "The Regulations on Letters and Visits (Xinfang)" in 2005. The new Regulations require officials to provide complainants with a written response (Art 32) within 60 days for normal cases or 90 days for difficult ones (Art 33).

[FN116]. The term "granny cadres" is used by Pan Tianshu in his chapter, "Civilizing Shanghai: Government Efforts to Cultivate Citizenship among Impoverished Residents," in Rachel Murphy and Vanessa Fong (eds), *Chinese Citizenship: Views from the Margins* (London: Routledge, 2005).

[FN117]. The way this often works is that law is used to provide a basis for determining who bears responsibility for the conflict and to what extent, but the specific amount of compensation that will be paid is then decided through bargaining.

[FN118]. See "Mediation committee avoids trouble in court," *China Daily*, 24 Mar 2004, p 5.

[FN119]. ZGFLNJ, 2003, 2004; see n 33 above.

[FN120]. ZGFLNJ, 2004, p 200.

[FN121]. Mediation observed at Dongxiao Police Station PMC, Luohu District, Shenzhen, 3 Mar 2005.

[\[FN122\]](#). Such an evaluation was even made by a Beijing JA that organised what is probably one of China's most comprehensive legal training programs for the community mediators in his subdistrict (Interview with JA, Xuanwu District, Beijing, 28 Mar 2005).

[\[FN123\]](#). Liu Xinyan, Qinghai chutai shoubu renmin tiaojie fagui; jingfei jiang ru caizheng yusuan [Qinghai issues the first regulation on people's mediation; funding to be allocated in budget], RMRB, 25 Oct 2005, available at <http://politics.people.com.cn/GB/14562/3797719.html>; Qinghaisheng chutai guonei shoubu renmin tiaojie difang fagui [Qinghai Province issues the nation's first local regulation on people's mediation], 20 Oct 2005, available at <http://www.qhnews.com/1/2005/10/20/62@277077.htm> (visited 28 Nov 2005).

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