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# The Application of International Human Rights and International Humanitarian Laws in Armed Conflict: Appraisal of the Armed Conflict in Anglophone Cameroon

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**Abstract**

Cameroon has been projected as a peaceful country since achieving independence in 1960. However, since late 2017, an armed conflict broke out in the Anglophone regions of the country following the government's brutal repression of the protests of lawyers, teachers, and University of Buea students in late 2016, and subsequently in September and October 2017 with the violent clampdown of the general protests in Anglophone Cameroon. The violence of the armed conflict has led to several thousands of deaths, several hundred of villages razed, hundreds of internally displaced persons and refugees in neighboring Nigeria. According to analysts, there has been an unprecedented violation of human rights and humanitarian laws by the belligerents in their conduct of hostilities, with devastating consequences on the civilian population, in total disregard of international norms. To this end, this paper examines the violations of human rights and humanitarian laws recorded in the conflict-torn Anglophone regions of Cameroon and assesses the obligations of the belligerents, the defense and security forces of the state on the one part and the Anglophone armed separatist groups on the other, to respect these norms during the prosecution of the war in the country.

**Keywords:** international human rights law, international humanitarian law, armed conflict, Anglophone armed conflict, anglophone regions

## 1. Introduction

The dramatic reality of contemporary conflicts and related violent crisis is the heavy toll of armed violence on the civilian population. In the twenty-first century, violence and conflict continues to be at the heart of some of the worst human rights and humanitarian violations across the globe. Increasingly and devastatingly targeted by the perpetrators of violence, the civilian population accounts for the vast

majority of the victims of the world's conflicts, a toll which falls heaviest on women and children. Most contemporary conflicts of the twenty-first century are caused by the systematic perpetration of violence on the civilian population as a changing nature of conflict and this constitutes serious violations of human rights and humanitarian norms (Carrasco et al., 2014: 12). In recent decades, armed conflict has blighted the lives of millions of civilians and serious violations of international humanitarian and human rights laws are common in many armed conflicts. In certain circumstances, some of these violations may even constitute genocide, war crimes or crimes against humanity (United Nations, 2011: 1).

The Anglophone regions of Cameroon have been the theatre of an armed conflict since late 2017 due to government's violent repression of the peaceful strikes of Anglophone lawyers, teachers, and the University of Buea students in late 2016. The turning point of the crisis appears to be on the 22nd of September and on the 1st of October 2017, when hundreds of thousands of peaceful protesters where shot by government security forces with life bullets leading to several deaths and many wounded. At the same time, several armed groups were formed and started attacking and killing government forces and destroying state property and emblems. By November 2017, the situation quickly degenerated into an armed conflict between government forces and armed separatist groups. The armed conflict has caused the death of several thousands of people, hundreds of thousands of internally displaced persons, tens of thousands of refugees in neighbouring Nigeria and hundreds of villages, houses and property razed and destroyed. Several human rights and humanitarian organizations have indicted the belligerents, the Cameroonian defense and security forces and Anglophone armed separatist groups, for the perpetration of heinous atrocity crimes, which constitutes serious violations of human rights and humanitarian laws in the conduct of hostilities in the armed conflict. According to these organizations, these violations have reached the scale of war crimes and crimes against humanity.

This paper appraises the violations of international human rights and humanitarian laws in the armed conflict in Anglophone Cameroon and examines the application of these norms in the conflict. To this end, it reviews the concepts of international human rights and humanitarian laws and their applicability in the armed conflict. It is divided into four sections. Section 1 explores the introduction and the methodology that inform the findings of the study. Section 2 provides an overview of concepts of international human rights and humanitarian laws and their applicability in armed conflicts, not least in the armed conflict in Anglophone Cameroon, while section 3 documents the numerous violations of these norms recorded in the war in Anglophone Cameroon. Section 4 deals with conclusion of the study.

*1.1 Methodology*

The paper adopts the qualitative research methodology and employs several research methods, among which is the reliance on primary and secondary sources in the collection of data. The paper is essentially a case study. For primary sources, data was obtained from the interpretation of legal sources including the relevant human rights and humanitarian law conventions. Secondary sources involve desk research method where reliance was placed on books, monographs, journals etc. Another method of data collection was through the distribution of questionnaires and conducting unstructured interviews in the field. The paper made use of the purposive and random sampling techniques as sampling methods. A total of 25 questionnaires was administered to respondents with a return rate of 22 questionnaires and 5 selected persons were interviewed. The biodata of the questionnaire respondents is as follows: 12 men, 9 women and 4 youths living in the Anglophone regions and in other parts of Cameroon. In terms of interviews, 2 men, 2 women and a male youth were also interviewed.

**Table 1.** The applicability of international human rights and humanitarian laws in the armed conflict in the Anglophone regions

| No | Main Themes Raised by the in the Questionnaires | SA | A | SD | D | NO | Total |
|---|---|---|---|---|---|---|---|

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1 | The violence in the Anglophone regions amount to an armed conflict | 8 | 6 | 4 | 3 | 1 | 22 |
| 2 | International human rights and humanitarian laws apply in the armed conflict in the Anglophone regions | 6 | 5 | 5 | 4 | 2 | 22 |
| 3 | The belligerents are to be held accountable for violating international human rights and humanitarian laws in the armed conflict in the Anglophone regions | 10 | 7 | 3 | 2 | 0 | 22 |
| | **Total** | **24** | **18** | **12** | **9** | **3** | **66** |
| | **Percentage Average** | **36.36%** | **27.27%** | **18.18%** | **13.64%** | **4.55%** | **100%** |

Source: Authors 2022.

*1.2 Key Findings*

Table 1 shows that a total of 25 questionnaires with 3 questions each, making a total of 75 questions, were distributed to 25 respondents. 22 questionnaires were returned, scoring a return percentage rate of 88%. On the thematic issues raised, 24 respondents strongly agreed, making a total of 36.36%. 18 respondents agreed, making a percentage rate of 27.27%. 12 respondents strongly disagreed, scoring a percentage rate of 18.18%. 9 respondents disagreed, providing a percentage rate of 13.64%. Finally, 3 respondents gave no opinion, making a total percentage rate of 4.55%. As per the interviews, 3 interviewees agreed, while 2 interviewees disagreed with the questions posed making a percentage rate of 60% and 40% respectively.

## 2. Human Rights and Humanitarian Law: Applicability of Concepts in Armed Conflicts

International human rights law and international humanitarian law are interrelated with the former providing protection to individuals against rights violations and the latter only becomes applicable in situations of armed conflicts. Some scholars have argued that human rights law and international humanitarian laws are applicable in different settings, nonetheless, grave human rights violations in situations of war are often criminalized in terms of violations of international humanitarian laws. Seemingly, both laws are mutually reinforcing, and recent scholarship suggests that, like international humanitarian law, human rights are applicable in armed conflicts.

*2.1 International Human Rights Law (IHRL)*

The United Nations' Charter (1945) in its preamble asserts that international momentum to establish a legal order that would prohibit state-sponsored human rights abuses surged during World War II, as the scope of the Nazi atrocities became known (United Nations' Charter, 1945). This led to the adoption of the Universal Declaration of Human Rights (UDHR) with the objective to address human rights concerns across the world by emphasizing the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world. According to the UDHR, human rights are rights that human beings are entitled to simply because of their humanity. These rights apply universally to all people, at all times, and under all circumstances. Human dignity and the equal and inalienable rights of all people are fundamental for freedom and justice (Dicklitch, 2002: 154). These rights are explicated in international legal frameworks such as the Universal Declaration of Human Rights, and other human rights conventions, treaties, and protocols, which are the foundations of modern international human rights law.

Modern human rights scholars generally classify the contents of human rights in accordance with their evolution in modern international law. The two main international human rights covenants — the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) — together with the Universal Declaration of Human Rights (UDHR) and the Optional Protocols to the ICCPR and the ICESCR constitute the so-called "International

Bill of Rights", which encompasses an expanding range of personal, legal, civil, political, subsistence, economic, social, and cultural rights (Walters, 1995: 10). These instruments therefore constitute the compendium of customary international legal framework commonly referred to as international human rights law.

International human rights law is a system of international norms designed to protect and promote the human rights of all persons. These rights, which are inherent in all human beings, irrespective of nationality, place of residence, sex, race, colour, religion, language, or any other status, are interrelated, interdependent and indivisible. They are often expressed and guaranteed by law in the form of treaties, customary international law, general principles, and soft law. International human rights law lays down the obligations of states to act in certain ways or to refrain from certain acts, in order to promote and protect the human rights and fundamental freedoms of individuals or groups. In addition to the 'International Bill of Rights' other core universal human rights treaties are The International Convention on the Elimination of All Forms of Racial Discrimination; The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; The Convention on the Rights of the Child and its two Optional Protocols; The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; The International Convention for the Protection of All Persons from Enforced Disappearance; and The Convention on the Rights of Persons with Disabilities and its Optional Protocol (United Nations, 2011: 5).

As a form of international law, international human rights law is primarily made up of treaties and agreements between states intended to have binding legal effect between the parties that have agreed to them; and customary international law. Other international human rights instruments, while not legally binding, contribute to the implementation, understanding and development of international human rights law and have been recognized as a source of political obligation. International human rights law prescribes obligations, which states are bound to respect and through ratification of international treaties, governments undertake to put into place domestic measures and legislations compatible with their treaty obligations. By becoming parties to international treaties, states assume obligations and duties under international law to respect, protect and fulfill human rights (Diakonia, 2010). These obligations and duties are applicable in situations of peace and as well as in situations of armed conflict.

*2.2 The Application of International Human Rights Law (IHRL) in Armed Conflict*

The applicability of human rights law in armed conflict has been the subject of extensive discussion over the past few decades. Much of this debate centers upon the question of whether human rights law continues to apply once we enter the realm of armed conflict. While the International Court of Justice (ICJ), in its nuclear weapons Advisory Opinion, did state the applicability of human rights law, the use of the term *lex specialis* might have been construed as support for a claim that whereas human rights law then does not disappear, it nevertheless is in effect displaced by International Humanitarian Law (IHL). The more recent Advisory Opinion on the Wall, together with the views of United Nations human rights bodies, have clarified that human rights law is not entirely displaced and can at times be directly applied in situations of armed conflict. While there might still be pockets of resistance to this notion, it is suggested here that the resisters are fighting a losing battle and should lay down their arms and accept the applicability of human rights law in times of armed conflict (Lubell, 2005: 1-2). As such, international armed conflicts — and non-international armed conflicts — have progressively found their way into the case law of human rights bodies in recent years (Kolb, 2012: 8).

In situations of armed conflict, the jurisprudence of the International Court of Justice, which the Court's Statute recognizes as a subsidiary means for the determination of rules of law, is increasingly referring to states' human rights obligations in situations of armed conflict. These decisions have provided further clarification on issues such as the continuous application of international human rights law in situations of armed conflict. In the context of the implementation of human rights obligations, the human rights treaty bodies established to

monitor the implementation of core human rights treaties, such as the Human Rights Committee or the Committee on Economic, Social and Cultural Rights, regularly provide general comments, which interpret and clarify the content and extent of particular norms, principles and obligations contained in the relevant human rights conventions (United Nations, 2011: 11-12). While international human rights law, ordinarily, applied only in peacetime, it is now widely accepted that it applies to situations of armed conflict or in times of belligerent occupation. Regional instruments such as the European Convention on Human Rights (ECHR) are increasingly important in expanding the applicability of IHRL norms in the theatre of war, for instance, in respect of extra-territorial application (Vine et al., 2014: 1).

In principle, international human rights law applies at all times, i.e., both in peacetime and in situations of armed conflict. However, some IHRL treaties permit governments to derogate from certain rights in situations of public emergency threatening the life of the nation. Derogations must, however, be proportional to the crisis at hand, must not be introduced on a discriminatory basis and must not contravene other rules of international law — including rules of international humanitarian law. Certain human rights are never derogable. Among them are the right to life, prohibition of torture or cruel, inhuman or degrading treatment or punishment, prohibition of slavery and servitude and the prohibition of retroactive criminal laws (ICRC, 2003: 1). Indeed, it is widely recognized nowadays by the international community that since human rights obligations derive from the recognition of the inherent rights of all human beings and that these rights could be affected both in times of peace and in times of war, international human rights law continues to apply in situations of armed conflict. Moreover, nothing in human rights treaties indicates that they would not be applicable in times of armed conflict (United Nations, 2011: 5-6). In addition, it should be noted that while international human rights law applies both in times of peace and in times of armed conflict or war, however, it is exercised in times of armed conflict or war concurrently with international humanitarian law.

*2.3 International Humanitarian Law (IHL)*

International humanitarian law (IHL) is a set of rules that seek to limit the effects of armed conflict on people, including civilians, persons who are not or no longer participating in the conflict and even those who still are, such as combatants. To achieve this objective, international humanitarian law covers two areas: the protection of persons; and the restrictions on the means and the methods of warfare. International humanitarian law finds its sources in treaties and in customary international law. The rules of international humanitarian law are set out in a series of conventions and protocols. The following instruments form the core of modern international humanitarian law: The Hague Regulations respecting the Laws and Customs of War on Land; The Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; The Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; The Geneva Convention (III) relative to the Treatment of Prisoners of War; The Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War; The Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Protocol I); and The Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (United Nations, 2011: 12).

International humanitarian law (IHL) is a set of international rules established by treaty or custom, which are specifically intended to solve humanitarian problems directly arising from armed conflicts. It protects persons and property that are, or may be, affected by an armed conflict and limits the rights of the parties to a conflict to use methods and means of warfare of their choice. IHL main treaty sources applicable in international armed conflict are the four Geneva Conventions of 1949 and their Additional Protocol I of 1977. The main treaty sources applicable in non-international armed conflict are Article 3 Common to the Geneva Conventions and Additional Protocol II of 1977 (ICRC, 2003: 1-2). The Hague Regulations are generally considered as corresponding to customary international law, binding on all states independently of their acceptance of them. The Geneva Conventions have attained universal ratification. Many of the provisions contained in the Geneva Conventions and their

Protocols are considered to be part of customary international law and applicable in any armed conflict (Henckaerts & Doswald-Beck, 2005).

The International Committee of the Red Cross (ICRC) has a special role under international humanitarian law. The Geneva Conventions stipulate that it will visit prisoners, organize relief operations, contribute to family reunification, and conduct a range of humanitarian activities during armed conflicts. The International Committee of the Red Cross has a recognized role in the interpretation of international humanitarian law and is charged with working towards its faithful application in armed conflicts, taking cognizance of breaches of that law and contributing to the understanding, dissemination, and development of the law (United Nations, 2011: 13-14).

*2.4 The Application of International Humanitarian Law (IHL) in Armed Conflicts*

The law of armed conflict, also known as the *jus in bello* or international humanitarian law (IHL) is the legal framework that governs the limitation of the effects of 'armed conflict' (a term of art in international law). The law of armed conflict is replete with rules, often divided into two branches, so-called 'Hague' law, that finds its origins in the Hague Conventions of 1899 and 1907, concerned with the regulation of the conduct of hostilities, tactics and usage of weapons; and 'Geneva' law following the Geneva Conventions of 1949 and the two 1977 Additional Protocols to those Conventions, concerned with the protection of the victims of armed conflicts (Carrasco et al., 2014: 26). IHL also referred to as "the law of armed conflicts or the law of wars, designed to balance humanitarian concerns and military necessity". IHL subjects warfare to the rule of law by limiting its destructive effect and mitigating human suffering. As adumbrated, the aim of international humanitarian law is to protect human beings and to safeguard the dignity of man in the extreme situation of any armed conflict (Nkatow, 2020: 14).

International Humanitarian Law (IHL) is applicable in times of armed conflict, whether international or non-international. International conflicts are wars involving two or more states, and wars of liberation, regardless of whether a declaration of war has been made or whether the parties involved recognize that there is a state of war. Non-international armed conflicts are those in which government forces are fighting against armed insurgents, or rebel groups are fighting among themselves. Because IHL deals with an exceptional situation — armed conflict — no derogations whatsoever from its provisions are permitted. IHL binds all actors to an armed conflict: in international conflicts it must be observed by the states involved, whereas in internal conflict it binds the government, as well as the groups fighting against it or among themselves. Thus, IHL lays down rules that are applicable to both state and non-state actors. IHL aims to protect persons who do not, or are no longer taking part in hostilities. IHL also protects civilians through rules on the conduct of hostilities. For example, parties to a conflict must at all times distinguish between combatants and non-combatants and between military and non-military targets. Neither the civilian population as a whole nor individual civilian may be the object of attack. It is also prohibited to attack military objectives if that would cause disproportionate harm to civilians or civilian objects (ICRC, 2003: 1-2).

The four Geneva Conventions have achieved universal applicability as they have been universally ratified. The Additional Protocols, however, have yet to achieve near-universal acceptance. IHL does not only apply to cases of armed conflicts but to all actors in armed conflicts. IHL distinguishes between international armed conflicts and non-international armed conflicts with much more limited range of written rules applying to the latter. In accordance with Article 1(1) of Additional Protocol II, the protocol is to apply to all armed conflicts not of international character and which takes place in "the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which", under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerned military operations and to implement the protocol (Nkatow, 2020: 14-15).

It is clear from the above that armed conflicts must take place between the armed forces of a High Contracting Party and dissidents' armed forces or other organized armed groups, and shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature. By every standard, the crisis in the Anglophone regions of Cameroonian that

took the form of an armed conflict by 2017 conformed in context with Common Article (3) to the 1977 Geneva Convention and Additional Protocol (II) of the Geneva Convention of 1949 to be described as "intrastate armed conflict" (Nkatow, 2020: 16). International humanitarian law is often confused with international human rights law, this should not be because the latter applies at all times, whereas the former applies only in situations of armed conflicts. Both laws complement each other since it is aspects of human rights that when breached in situations of armed conflict, will amount to crimes against humanity, the crime of genocide or war crimes (Fangmbung et al., 2020: 2).

## 3. The Armed Conflict in Anglophone Cameroon in Perspective

The armed conflict raging in Anglophone Cameroon is a product of the country's colonial legacy. Having been split into two separate territories under French and British administration after WW11, the territory was reunified following a plebiscite conducted on February 11th, 1961. Since becoming a single territory, Anglophone Cameroonians have decried their marginalization and the suppression of their culture by the dominant French speaking majority.

The Geneva Academy (2021) states that in October 2016, peaceful protests started in the Anglophone North-West and South-West Regions of Cameroon against perceived structural discrimination and requests for more autonomy in the regions. The government responded by deploying its armed forces, which employed live ammunition from low-flying helicopters into crowds and arrested dozens of activists under terrorism charges. Accordingly, strikes and violent riots ensued; protestors resorted to armed resistance, with the first wave of attacks on state targets by armed militias reported in September 2017. As a result, since late 2017, Cameroon's armed forces, including an elite combat unit, the Rapid Intervention Battalion (RIB) in its French acronym (BIR), have been involved in armed confrontations against a number of separatist groups operating in these regions, in particular the Ambazonia Governing Council (AGC) and its military wing the Ambazonia Defense Forces (ADF) and the Interim Government of Ambazonia (IG) and its military wing the Ambazonia Self-Defence Council (ASC), among others.

### *3.1 Are IHRL and IHL Applicable in the Armed Conflict in Anglophone Cameroon?*

For years, it was held that the difference between international human rights law and international humanitarian law was that the former applied in times of peace and the latter in situations of armed conflict. Modern international law, however, recognizes that this distinction is inaccurate. Indeed, it is widely recognized nowadays by the international community that since human rights obligations derive from the recognition of inherent rights of all human beings and that these rights could be affected both in times of peace and in times of war, international human rights law continues to apply in situations of armed conflict. Moreover, nothing in human rights treaties indicates that they would not be applicable in times of armed conflict. International human rights law and international humanitarian law share the goal of preserving the dignity and humanity of all (United Nations, 2011: 1-5). It is precisely during armed conflict that the inherent rights of human beings are violated the most.

Over the years, the General Assembly of the United Nations, the Commission on Human Rights and, more recently, the Human Rights Council have considered that in armed conflict, parties to the conflict have legally binding obligations concerning the rights of persons affected by the conflict. Although different in scope, international human rights law and international humanitarian law offer a series of protections to persons in armed conflict, whether civilians, persons who are no longer participating directly in hostilities or active participants in the conflict. Indeed, as it has been recognized, *inter alia*, by international and regional courts, as well as by United Nations organs, treaty bodies and human rights special procedures, both bodies of law apply to situations of armed conflict and provide complementary and mutually reinforcing protection (United Nations, 2011: 1-5). However, it is important to determine whether the sociopolitical crisis that erupted in the Anglophone regions of Cameroon in late 2016 and the escalation into an armed violence in late 2017 now amount to an armed conflict.

Schindler (1979: 147) points out that from a legal point of view, in order to determine whether international humanitarian law applies to situations of violence, it is necessary to determine as a precondition whether the

situation amounts to an 'armed conflict' (Schindler, 1979: 147). An armed conflict exists whenever there is resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state (ICTY, 1995). International humanitarian law is therefore applicable whenever a situation of violence reaches the level of armed conflict (ICRC, 2003: 8). Akande (2012: 35) further posits that the distinction between international and non-international armed conflicts is also relevant for the purposes of the application of international humanitarian law because of the differences in the content of the applicable law to the different types of armed conflict (Akande, 2012: 35). An armed conflict is international (external or interstate) if it takes place between two or more states (ICTY, 1999). A non-international (internal or intrastate) armed conflict is when government's armed forces are fighting against one or more organized armed groups within the territory of a single state (Peljic, 2011: 5-7).

There are major differences between internal (intrastate) and international (interstate) conflicts, and they should therefore be analyzed separately. A fundamental difference is that in traditional international wars, the power of the state tends to increase as a result of war, and nationalism can contribute to greater social cohesion. In contrast, civil wars tend to reduce the control of the state over its national territory and lead to societal disintegration, implying additional types of costs (Stewart & FitzGerald, 2001: 3). In this light, it is also important to note that international humanitarian legal conventions and treaties governing international (external or interstate) armed conflicts and non-international (internal or intrastate) armed conflicts are equally slightly different, so too are their application.

Two criteria need to be assessed to establish whether the violence meets the threshold of non-international armed conflict: first, the level of armed violence must reach a certain degree of intensity that goes beyond internal disturbances and tensions. Second, in every non-international armed conflict, at least one side in the conflict must be a non-state armed group, which must exhibit a certain level of organization in order to qualify as a party to the non-international armed conflict. Government forces are presumed to satisfy the criteria of organization. Various indicative factors are used to assess whether a given situation has met the required intensity threshold, such as the number, duration and intensity of individual confrontations; the types of weapons and military equipment used; the number of persons and types of forces participating in the fighting; the number of casualties; the extent of material destruction; the number of civilians fleeing and the involvement of the United Nations Security Council (Geneva Academy, 2021).

Going by the above criteria, there are strong arguments to support the assertion that the situation in the Anglophone regions amount to an armed conflict, albeit a low intensity armed conflict. The violence in the armed conflict has reached a degree of intensity that is beyond an internal ruckus by virtue of the numbers of deadly attacks and combats. The armed groups involved in the armed conflict have demonstrated a certain degree of organization and coordination in the conduct of hostilities and have known leaders at home and abroad. The armed conflict has been raging since late 2017 with the deployment of almost all categories of government forces and also a large number of armed separatist groups and fighters on the other side. The parties to the conflict are using modern lethal weapons of war, such as motorized armored vehicles armed with machine guns, helicopter gunships, tanks, AK 47 rifles on the part of the government forces, and locally made guns, AK 47 rifles, rocket launchers, grenades and Improvised Explosive Devises (IEDs) on the part of the armed separatists, which has led to several thousands of people killed (civilians, government forces and armed separatists), wanton destruction of property, villages and houses, and hundreds of thousands of refugees and Internally Displaced Persons (IDPs).

*Cameroon Magazine* (2019) states that a Francophone Newspaper, Emergence, of the 29th of November 2019, reports that about 12,000 civilians were killed, 400 villages burnt and 769 defense and security forces also lost their lives in the armed conflict (*Magazine*, 2019). As of January 2020, nearly 900,000 children were impacted by the conflict and did not have access to education in the Anglophone regions of Cameroon (UNICEF, 2019). By the end of January 2020, the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) put the number of Internally

Displaced Persons to 679,000 and 52,000 refugees in its Situation Report No. 15 of the 31st of January, 2020. However, by March 2021, UNOCHA reported a total number of 705,000 Internally Displaced Persons and 63,235 refugees in Nigeria. Moreover, these numbers kept increasing exponentially as the armed conflict raged on throughout 2021 and into 2022.

There are several armed groups fighting against state forces, though the level of coordination of these armed groups remains unclear. The ongoing hostilities show a collective character and have forced the government to deploy its armed forces, including its elite combat unit, the Rapid Intervention Battalion (RIB). Between November and December 2017, 17 members of the security forces were killed during armed confrontations with separatist groups. Since May 2018, hostilities intensified between security forces and Anglophone separatist militants, as the latter started extending their military operations to new areas, such as Buea and Limbe. As the opposition groups became more aggressive, state troops reacted with attacks on fighters and civilians. In 2018, armed separatists clashed with government forces 83 times that year, compared to 13 times in the previous year. The spokesman for the Cameroonian military, Colonel Didier Badjeck, confirmed that around 170 Cameroonian troops had been killed as at November 2018. In 2019, the instances of armed hostilities increased. For instance, only in February alone, clashes caused the death of at least 100 separatists, military, and civilians. In mid-March, at least 30 armed confrontations resulted in the death of 26 civilians and 7 members of the security forces. Meanwhile, violence intensified between January and March 2021. In February 2021, several armed confrontations took place between separatist forces and the state army and continued throughout 2021 (Geneva Academy, 2021).

As a result of the above, the Geneva Academy (2021), asserts that all the parties to the conflict are bound by Article 3 Common to the 1949 Geneva Conventions, which provides for the minimum standards to be respected and requires humane treatment without adverse distinction of all persons not or no longer taking active parts in hostilities. It prohibits murder, mutilation, torture, cruel, inhuman and degrading treatment, hostage taking and unfair trials. All parties are also bound by customary international humanitarian law applicable to non-international armed conflict. Customary international law consists of unwritten rules that come from a general practice accepted as law. In addition to international humanitarian law, international human rights law continues to apply during times of armed conflict. Under human rights law, the territorial state has an obligation to prevent and investigate alleged violations, including by non-state actors. Non-state armed groups are increasingly considered to be bound by international human rights law if they exercise *de facto* control over some areas.

The contentious question is whether with the gratuitous violence and human rights violations during these confrontations, the situation in the Anglophone regions meets the threshold of a non-international armed conflict in which international humanitarian law is applicable. In this light, the Geneva Academy (2021), argues that in spite of the armed confrontations and atrocity crimes committed, it is not possible to conclude that the violence between the separatist groups and the government meets the threshold to be considered a non-international armed conflict (Geneva Academy, 2021). However, the reality on the ground and several reports from human rights groups adduced by eyewitnesses' accounts, pictures, videos and satellite images rather points to intense armed violence and egregious violations of international human rights and international humanitarian laws in the conflict in the Anglophone regions by government forces and armed separatists.

### *3.2 Violations of IHRL and IHL Recorded in the Armed Conflict in Anglophone Cameroon*

Lekha Sriram et al. (2014: 5-6) argues that human rights violations emerge primarily because of violent conflicts and contemporary conflicts are characterized by a growing trend of 'one-side violence', which is inflicted on civilians. In the majority of occasions, it involves a conscious choice to harm civilians, although it can have other objectives beyond just injuring or killing civilians because it may be intended to terrorize the population. Human rights violations may include torture and disappearances, but also frequently include war crimes, crimes against humanity, and even genocide (Lekha Sriram et al., 2014: 5-6). Human rights are violated when actors (either state or non-state) abuse, ignore or deny basic rights

(including civil, political, cultural, social, and economic rights). Violations of human rights also occur when a state or non-state actor breaches the Universal Declaration of Human Rights treaty or other international human rights or humanitarian law (Tendon, 2018: 10). It has been established by several human rights groups that there have been serious violations of human rights and humanitarian laws in the Anglophone regions of Cameroon perpetrated by the Cameroonian defense and security forces and armed separatist groups in the conduct of hostilities in the armed conflict.

In this regard, Amnesty International (2018: 5) points out that since late 2016, Cameroon's Anglophone regions — whose grievances date back to the early 1960s — have endured turmoil and violence in what has become a human rights crisis with eyewitness reports of violence and human rights violations committed by government's security forces and by armed separatists (Amnesty International, 2018: 5). The U.S. House of Representatives, in its Resolution H. Res. 358 of the 7th of May 2019, states that numerous credible reports from human rights monitors, including the United Nations High Commissioner for Human Rights, have documented the excessive use of force by government security forces against civilians living in the Anglophone regions, including the burning of villages, the use of live ammunitions against protesters, arbitrary arrest and detention, torture, sexual abuse, and killing of civilians, including women, children, and the elderly (U.S. House of Representatives, 2019: 2).

Tendon (2018: 10) further asserts that there have been many killings in communities in the Anglophone regions including children, women and the elderly, and homes completely burnt down. Some people are hiding in the forest, including babies, expectant mothers and the elderly. They live there, exposed to rain, snakes and danger from government soldiers, without food or medicine. The devastation and pain are unbelievable and the trauma, fear and hopelessness of the local population facing such atrocities are beyond description. As a result of these burnings, the military has caused mass displacement of people and refugees. Thousands of people have been rendered homeless, entire life investments destroyed, family members killed and hiding in the bushes for their dear lives (Tendon, 2018: 10). Far from resolving the conflict, the clampdown on any form of dissent and the heavy-handed response by the Cameroonian authorities and security forces appeared to have empowered and created space for more radical and violent movements to emerge, with a focus on secession and armed struggle. The human rights violations committed by the Cameroonian security forces and authorities also contributed in creating a pervasive climate of fear, which some observers say led to a growing sense of alienation among the communities in the Anglophone regions (Amnesty International, 2018: 6-7).

During the conflict, Cameroonian military responded to protests with arbitrary arrests, torture, and unlawful killings, which were against the rules and regulations governing armed conflicts. In some cases, between 2016 and February 2020 during security operations, people were arbitrarily arrested, tortured, and detained in illegal detention facilities and in secret. Victims described being blindfolded and severely beaten with various objects, including sticks, ropes, wires and guns, as well as being electrocuted and burnt with hot water. There are numerous reports from human rights organizations and the press that alleged that security forces, in particular, the Rapid Intervention Battalion (RIB), engaged in a systematic campaign of terror against Anglophone communities in the North West and South West Regions. The most prominent example of this was the tactic of property destruction in which security forces have reportedly burnt down hundreds of structures such as homes of non-combatants, businesses and local government buildings in Jakiri, Kumbo, Batibo, Santa, Ndop, Bambili, Mbengwi, Bali, Mbonge, Konye, Kumba, Nguti, Mamfe, Kwakwa, just to name these few. All these aforementioned violations were in total contravention of human rights and against international humanitarian law (Nkatow, 2020: 22-23).

As a result of the above, Amnesty International (2018: 6-7) argues that Cameroon has the right and obligation to conduct law enforcement and security operations in any part of its territory in order to identify and detain suspected criminals, seize illegal weapons and protect the population. However, as documented case reports illustrate, its forces failed to uphold their obligations under international human rights law to only use lawful and necessary force, and particularly to use potentially lethal force only

in immediate defense of the right to life, and to respect and protect other human rights (Amnesty International, 2018: 6-7). Reacting on the situation of human rights violations in Cameroon, the United Nations High Commissioner for Human Rights, Michelle Bachelet, stated that

> *as a former minister of defense myself, I recognize the difficulties and dilemmas faced by soldiers confronted with extremely violent armed groups moving in and out of civilian areas, committing atrocities as they go. Nevertheless, every violation committed by government forces is not only unlawful, but also counterproductive as it plays into the hands of the extremist groups, by feeding local resentment and aiding recruitment. The armed forces must win and keep the trust of the local populations, and to do so they must keep scrupulously within the framework of international law and standards (Relief Web, 2019).*

On human rights abuses and violations of humanitarian norms perpetrated by the separatist armed groups, Amnesty International (2018: 5-10) posits that since the beginning of the armed conflict phase of the separatist struggle in the English-speaking regions of Cameroon in 2017, separatist armed groups have perpetrated several human rights abuses on the civilian population, students, teachers, chiefs, civil administrators and elements of the defense and security forces (Amnesty International, 2018: 5-10). The U.S. House of Representatives, in Resolution H. Res. 358, also notes that human rights monitors have documented armed separatists killing traditional leaders and targeting civilians, including women, children, and the elderly, who were perceived to be supporting or working with the government of Cameroon, and reports indicate that armed separatists have killed scores of security force personnel (U.S. House of Representatives, 2019: 2). As a result of all the above-mentioned atrocities, there have been reported cases of murder, kidnapping, torture, extortion, arson, maiming, attacks on schools, students, teachers, chiefs, and government civil administrators perpetrated by armed separatist groups, which are against international law.

There are credible sources that separatist extremists attacked and murdered civilians during the conflict, even though, still in its course, particularly targeting those whom they suspect of colluding with the government, breaking separatist-backed strikes or school shut-downs or criticizing separatist policies or actions. A notable tactic seemingly used by separatist extremists has been attacks on teachers and schools. One alleged strategy of extremist groups in the separatist movement has been to shut-down local schools, which was a violation of the rights to a child, which amongst the prominent, is the right to education. These attacks were not only confined to schools; separatist extremists also targeted both government and locally owned businesses, demanding boycotts and strikes from all businesses operating in certain areas of the two English-speaking regions. The pro-independence fighters, frequently targeted schools perceived to have disrespected the call for the lockdown of schools. In addition, Amnesty International has also documented five attacks on traditional chiefs, whom separatists accused of sympathizing with the government. The Deputy Director of Amnesty International in one of his utterances disclosed that

> *the armed separatists repeatedly targeted the general population. This demonstrated a total disregard for human life, and was another example of the human rights threat faced by people in the Anglophone regions. (Nkatow, 2020: 18).*

Moreover, since the poorly managed Anglophone crisis turned into an armed conflict in 2017, kidnapping of top government officials and civilians has been one of the human rights abuses orchestrated by separatist militias. Since October 2018, at least 350 people were kidnapped and ransomed by separatists' militias, many of which were school children, divisional officers, municipal councilors, mayors etc. Kidnapping was one of the tactical means that was used as a tool of intimidating local communities to keep schools closed to enforce the secessionist boycott on education. Summarily, the acts committed by the separatist fighters, which were against the norms of international humanitarian law and human rights norms were the killings of civilians and dismembering of security forces, torture, or maiming of civilians who appeared to be unsupportive of secession, kidnapping of civilians for ransom, kidnapping of teachers and students to enforce a school ban, enforced lockdowns, trapping of civilians in their homes for days, beating and raping of women and girls

etc. (Nkatow, 2020: 18-19).

The analyses suggest that these acts are in contravention of international humanitarian and human rights principles. Due to the dimension of the conflict, the U.S., the European Union, the African Union etc. have called on the government to call for a ceasefire and to carry out an inclusive dialogue without pre-conditions with the different parties (the separatists, federalists and the unitarists) to the conflict in order to resolve the root causes of the crisis that has turned into a deadly armed conflict (Nkatow, 2020: 25).

On the 18th of January, 2017, the African Union issued a press statement expressing concern over the situation in Cameroon and indicated its willingness to assist in its resolution. The ACHPR/Res. 395 (LXII), in its 62 Ordinary Session of April-May 2018, condemned the human rights abuses by the belligerents in the two English-speaking regions of Cameroon and called for an inclusive national dialogue without preconditions with the primordial aim of addressing the root causes of the problem (Nkatow, 2020: 27). The United Nations Security Council, in what is dubbed as a historic deliberation, held a two hours Arria-Formula meeting on the 13th of May, 2019, on the security and humanitarian catastrophic situation in the North-West and South-West Regions of Cameroon. During this meeting, the Under-Secretary-General for Humanitarian Affairs, Mark Lowcock, stressed that serious consideration should be given to the humanitarian crisis in the area, and that efforts should be made to address the root causes of the ongoing conflict. He also called on the United Nations Security Council members 'to influence all the parties to respect humanitarian law and grant access to those in need' and emphasized the need for ensuring accountability for violations of international humanitarian law and human rights law on both sides (Geneva Academy, 2021).

The European Union (EU) Parliament considered the situation in Cameron as very serious and passed a resolution calling for an end to the cycle of violence, and in particular for the government to organize an inclusive political dialogue aimed at finding a peaceful and lasting solution to the conflict in the Anglophone regions. The EU council for its part, pointed out that serious violations of human rights continued to be reported and predatory crimes have become widespread in the North-West and South-West Regions of Cameroon. The EU continued to state that it 'remained concerned and strongly condemned the continued violence and the level of insecurity' in the two regions. The EU further 'reaffirmed the need for all the parties in Cameroon to respect the rule of law and resolve the conflict peacefully through an inclusive dialogue', and vowed to continue its support for all efforts to settle the situation in coordination with its international and regional partners. In the same vein, as early as 2017, the African Union expressed its 'deep concern' regarding the 'continuous deterioration of the human rights situation' in the Anglophone regions (Geneva Academy, 2021).

Some foreign governments also began to pay keen attention and to take concrete measures regarding the conflict. For instance, the U.S. decided to scale down its military assistance to Cameroon and later in July 2019, the U.S. House of Representatives adopted Resolution 358 calling on both the government and the armed groups — among other things — to respect human rights and work towards resolving the conflict (Geneva Academy, 2021). However, all efforts from the national and international stakeholders to cause the belligerents to refrain from the violations of international human rights and international humanitarian laws, including an agreement to a ceasefire and cessation of violence, have so far remained futile as the armed conflict continued to rage on in the Anglophone regions of Cameroon, with devastating consequences on the civilian population.

**4. Conclusion**

This paper reviews the concepts of international human rights and humanitarian laws and their applicability in armed conflict, specifically the armed conflict in Anglophone Cameroon. It records the numerous violations of international law by the belligerents in the prosecution of the war. From the forgoing, the paper finds that during their operations, government forces and armed separatists committed egregious atrocity crimes, which are in gross violations of international human rights and humanitarian laws. The violence and wanton violations of human rights have led to several thousands of deaths, hundreds of thousands have been internally displaced and tens of thousands have become refugees in Nigeria. Several houses, villages and property have been destroyed

rendering many people homeless and in a state of desolation. In the face of the above unprecedented humanitarian disaster, there is a lingering doubt whether the situation in the Anglophone armed conflict meets the threshold of non-international armed conflict in which international human rights and humanitarian laws are applicable. However, whether the situation meets the threshold of non-international armed conflict or not, the reality is that heinous crimes have been committed by the belligerents, which are to the scale of war crimes and crimes against humanity necessitating the arrest and prosecution of the perpetrators in an international tribunal.

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# The Necessities of Conceptual and Fundamental Reconstruction of the Administrative System — Reforms and Innovations

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**Abstract**

Innovation and adaptation of an administrative system to new requirements are considered essential for its dynamism and effectiveness, and require attention to the issues from which reforms are to begin. Given that modern public administration is a concept derived from the United States administrative system and pursues maximum efficiency, the aim of the research is to find the roots and foundations of administrative system reform in this country. Therefore, the subject was studied using a descriptive-analytical and library method. The research findings emphasize the important role of three factors, which are: 1) Design of a program-based budgeting system; 2) Legal approach to public administration; 3) Emphasis on performance management and conceptual transformation of the principle of separation of powers.

**Keywords:** budget, performance management, legal approach, bureaucracy

## 1. Introduction

Public administration is considered as an element of the governance process; in fact, public administration transforms the needs and desires existing in the space and environment of the political system into public policies. Similarly, the study of administration in the public sector is inseparable from the general aspects related to the dominant management culture in a society and has an impact on public and private organizations. The main element in federalist thinking is based on the fact that it considers distinctions between elements present in a broad and extensive system as permissible and unimpeded, and even promotes them.

Determining and defining the nature of public administration in the United States, as the starting point of many developments in modern public administration, contrary to its fundamental rights foundations, does not seem easy; for example, in the Wilsonian tradition, a professional civil service is considered central to governance, while Hamilton's conception of strong executive rule emphasizes the power of the president, the internal diversity in the American administrative tradition, on the one hand, crystallizes in flexibility and adaptability, and on the other, potentially creates disorder and conflict.

Therefore, it seems necessary to analyze the

United States administrative system as the origin of the formation of modern public administration and its movement towards a new order.

The main question of this research is: What areas and issues initiated the fundamental changes in public administration in the United States? Issues that subsequently led to the emergence of a new order in public administration in this country.

Therefore, using the descriptive-analytical method and the library method, the reforms and innovations of the United States public administration will be analyzed in three axes: reforms in the budgeting system, the legal approach to public administration, and the evolution in the American perception of the principle of separation of powers through the importance and reliance on performance management.

**2. Design of a Program-Based Budgeting System**

In the early 1920s, management and planning functions were often overlooked among the pioneers of budget reform in the United States. Early budget administrators emphasized the development of a purpose-based view of spending and the implementation of budget processes using recommended procedures, forms, and factual information. In fact, budgeting at the federal level was based on control and expenditure targets. According to Charles Dawes, the budget organization deals only with current and insignificant matters of governance and the budget office has no regard for economic economy, efficiency, and policy.

The United States budget reforms can be assessed in three phases. The first phase, from 1920 to 1935, focused on designing a proper structure for monitoring and controlling expenditures, and played a key role in the enactment of the Budget and Accounting Act. Although management and planning considerations were not completely neglected in this phase, there was a marginal focus on these two functions. The second phase, during the period of fundamental reforms, occurred during the Roosevelt presidency and reached its peak after more than a decade with the movement known as "performance budgeting." The dominant orientation during this period was "managerialism" and played a fundamental role in the structural reform of resource allocation, performance evaluation programs, and the activities of regulatory agencies. The third stage was achieved by institutionalizing the budgeting structure based on the plan, which was related to past efforts to create a link between budgeting and planning.

In the plan-based budgeting system, priority is given to planning, the budget system has a multi-purpose nature and also deals with management and supervision areas. The main goal of this method is to rationalize the policy-making process. Thus, by structuring expenditures, variable and alternative elements in planning processes are placed together and, using cost-benefit analysis of different options, a final analysis of the budgeting process is reached. Hence, the design of a program-based budgeting system, with special attention to efficiency and effectiveness, led to innovation in American public administration, which is a reminder that the roots of the developments of the 1980s in Europe should have been sought in the United States many years earlier.

**3. Legal Approach to Public Administration**

New public administration seeks changes that achieve efficiency, good management, and social justice. Achieving social justice requires organizational forms that strengthen the necessary capacities for permanent change or flexibility in a continuous manner. Classical bureaucracies have great strength and stability. Public administration in its traditional form emphasizes strengthening and developing institutions that have been created to deal with social problems and focuses more on institutions than on problems and issues, but modern public administration seeks fundamental solutions and institutional approaches to solving problems and pursues the formation of flexible structures with the aim of changing the shape of traditional bureaucracies. Devolution, expansion of responsibility, decentralization, and stakeholder participation are all concepts opposed to bureaucracy and belong to the new public administration; the goal of all of them is to ensure that policies are accompanied by the realization of social justice while creating bureaucratic changes.

The effort to achieve social justice represents the normative aspect of public administration. This aspect creates a link between public administration and the knowledge of law, and the goal of creating social justice provides the

necessary context for the introduction of a legal approach to public administration.

The legal approach comes from three sources. The first source is administrative law. As early as 1905, Frank Goodnow, a well-known author in the field of public administration theory, published a book called *Principles of Administrative Law in the United States*. In the book, he defines administrative law as follows: "It is a part of legal knowledge that, while establishing the concept of an organization, determines the competencies of individuals who implement laws in organizations, and provides specific solutions in cases where laws are violated." In this regard, according to Marshall Dimmock: "To the public administrator, the law is an objective and tangible thing and specifies the limits of her authority. The said authority is her right and implies the matter: first, it tells the administrator what the law expects of her; second, it determines the limitations and limits of her authority; third, it specifies the fundamental and procedural rights of individuals and groups. The manager, with the awareness of his authority, has both an interpretative role and an architectural and creative function. Thus, whenever he applies an old law to a new situation, he creates a new legal situation. Hence, law, like management, controls and manages affairs." Another author, Kenneth Davis, also believes in the possibility of benefiting from a legal approach to public organizations. He says: "An administrative institution is a legal authority affiliated with the government that affects the rights of individuals through rule-making, decision-making, negotiation, inspection, and informal actions or dispute resolution."

The second source of the emergence of a legal approach to public administration is the move towards establishing judicial procedures in the public administration process. According to Dimock, Until the enactment of the Administrative Procedures Act in 1946, institutional and organizational decisions were made by ordinary administrative employees with the approval of senior managers. The aforementioned procedure was based on organizational and collective decision-making, in which each member of the organization participated in the decision-making process. This structure was effective and in most cases proved effective. Then came the idea of using legal experts in the public sector for cases requiring lengthy and technical hearings, such as railroad cases, which were under the jurisdiction of the Interstate Commerce Commission. The establishment of judicial procedures was accelerated and made more widespread with the passage of the Administrative Procedure Act. Judicial procedures were initially developed by legal experts from various agencies at the U.S. Civil Service Commission. Judicial procedures expanded with the establishment of administrative hearing offices in public agencies; these offices are responsible for handling legal issues and matters within the agency. Therefore, judicial procedures, in addition to facilitating law enforcement, serve as a law-based mechanism for administrative decision-making, and legal values play a fundamental role in organizational actions.

The third source of the legal approach to public administration in the United States is the Constitution. In the 1950s, the United States Federal Court redefined fundamental freedoms, the right to equal protection of the law, and the freedom of citizens from public administrators; In line with this, the right to equal legal protection was strongly emphasized and was used in various administrative matters such as the administration of public sector employees and prisons; courts and tribunals also attempted to combat violations of citizens' rights by reducing the judicial immunity of public sector managers.

The legal approach to public administration in the United States, with its emphasis on the administration of public servant affairs, especially in matters such as disciplinary action and the creation of equal employment opportunities and employment relations, has tangible effects on the organizational structure; In general, by emphasizing fundamental rights, justice, and procedural due process, it considers individuals as unique individuals with special circumstances who should have the right to defend themselves and have a reasonable opportunity to express their views. In fact, the appeals process makes decisions more appropriate to the circumstances.

From this perspective, public administration is accountable to citizens and the unilateral authority of the rulers over the ruled is seriously challenged, which is more consistent with the concept of governance than government, and in line with the concept of new governance, it also

views citizens as a system in which each can reflect their individual will in the space of public administration.

**4. Emphasis on Performance Management and Conceptual Transformation of the Principle of Separation of Powers**

The roots and foundations of the emphasis on performance management in the United States should be sought in a mindset that considered the separation of powers in the traditional and Montesquieuian sense to be rigid and inflexible and required change in order to be responsive to the influence of society in various political, economic, and social spheres. In this regard, an extensive administrative apparatus emerged to enhance flexibility and facilitate specialized affairs. This is not limited to the United States. In the new situation, all three functions of the government branches have been consolidated into the executive branch. Therefore, public administrators are responsible for making regulations, implementing them, and deciding on the scope and application of the regulations. Hence, the violation of the principle of separation of powers in its traditional sense seems obvious. According to White, "the formation and development of administrative institutions in response to new legal and administrative requirements has led to increased pressures to realize the principle of separation of powers." The intensification of pressures has led to "Legitimation crisis" in public administration; Because the integration of the three functions of regulation, performance, and judgment in administrative institutions contradicts the idea of supervision and balance of powers. This is especially true in a situation where, in addition to the three aforementioned functions, supervision and balance are also entrusted to the administrative sector.

In the new thinking on the principle of separation of powers, it is referred to as modern functional separation, and more attention is paid to functions than structures. In this regard, first, executive and administrative functions are separated from supervisory, judicial, policy-making, and legislative affairs, and the separation is made based on the nature of the matter, not the authority or institution that has the authority to implement it. Then, in the next stage, it is possible for each branch to have diverse functions, which is different from the traditional concept of separation of powers in which each branch had a specific function. In the new approach, the actions of the executive branch are distinguished from the other branches by their regulatory and specialized nature, resulting in a broad interpretation and new interpretation of executive affairs.

The emphasis on "performance management" reached its peak during the Bush presidency and entered a new direction; although Congress had previously made efforts to make changes through the "Government Performance and Results Assessment Act". The reforms, in addition to having a strong and emphasized element of "managerialism", also tended towards the so-called "Hamiltonian" and "Wilsonian" versions of governance, which emphasized "executive leadership" and the separation of politics from administration. As a result of the emphasis on the executive sphere in the current public administration, it seems that any change and reform will go through the path of restoring the balance of power and also restoring the process of professionalism in public services. Therefore, the emphasis on performance management, in continuing the conceptual transformation in the separation of powers, emphasizes the specialization of the bureaucracy in the administration of public affairs; which is in line with increasing the efficiency of the administration.

**5. Conclusion**

In modern public administration, there is a distance from classical bureaucracy; organizational and individual goals are formulated in a clear manner, so that the results obtained from them are evaluated by performance indicators and executive plans are systematically reviewed; the driving element of all the aforementioned matters can be sought in the concept of efficiency and effectiveness.

If we consider the ultimate goal of modern public administration to be achieving maximum efficiency, this goal will not be achieved by simply using descriptive words such as transparency; rather, it requires the realization of performance indicators, which in turn requires sufficient attention to the relevant prerequisites.

Therefore, according to the study conducted on the fundamental causes of the transformation of public administration in the United States, three factors play a very important role in this regard, which are: 1) Design of a program-based budgeting system; 2) Legal approach to public

administration; 3) Emphasis on performance management and conceptual transformation of the principle of separation of powers. These matters seem unattainable without adopting an interdisciplinary approach in the two knowledge spaces of public law and public administration.

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# Study on the Legal and Contractual Obligations of Power Companies in Private EV Charging Pile Installation Request

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**Abstract**

With the popularization of electric bicycles and new energy vehicles, the demand for private charging pile installation has surged. When users submit installation applications to power companies, disputes arise over whether the latter bears a mandatory contracting obligation. While power companies are obligated to contract under certain circumstances, this obligation has clear boundaries. When the owner does not have the installation conditions, the common parking space has not been agreed by all the owners, and the requirements of the electricity contract are unreasonable after review, the power company has the right to refuse the installation, and the dynamic balance rule of the power company's review right and contracting obligation should be established. By creating a "power company technical review — property synergy management — owner rights protection" three-party linkage mechanism, practical and legally justified solutions can be provided for new energy infrastructure disputes.

**Keywords:** mandatory contracting obligation, private charging pile, power company

## 1. Introduction

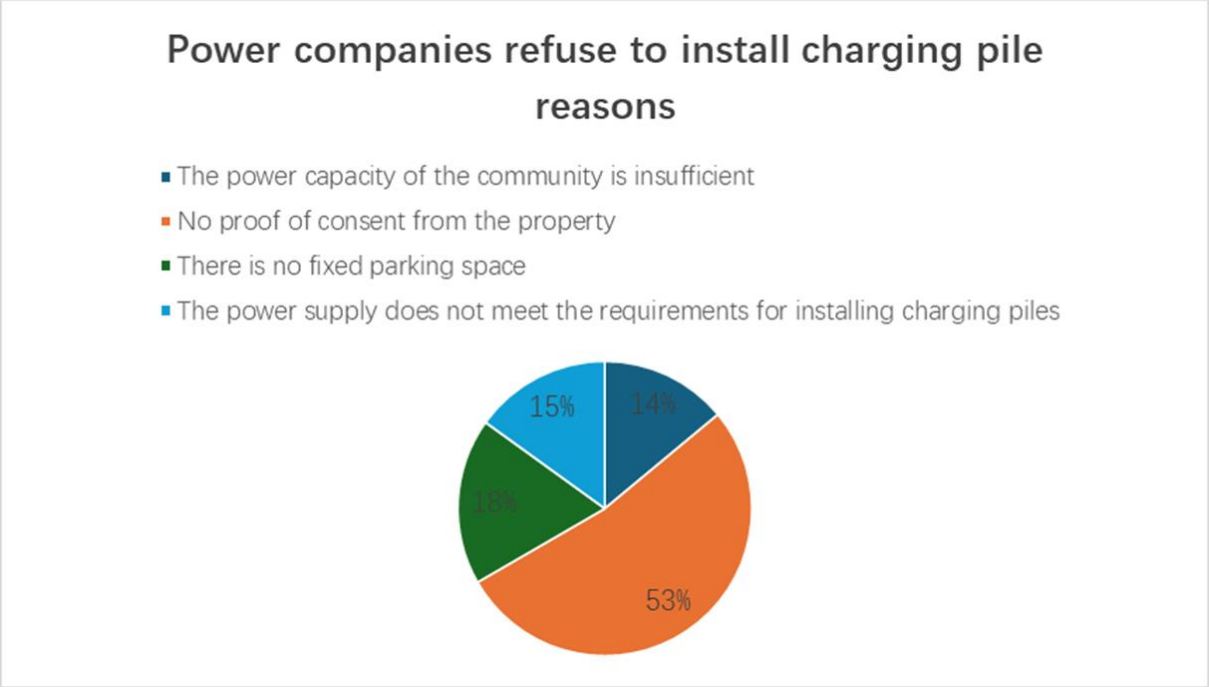
### *1.1 Research Background*

Background China's electric bicycle and new energy vehicle industries are experiencing rapid growth. As a crucial energy infrastructure integrating transportation and power systems, charging facilities play a vital role in supporting the development of new energy transportation, advancing the construction of new power systems, and facilitating the achievement of "dual carbon" goals. Therefore, the increase in the number of charging piles is an inevitable trend. According to survey data, the number of charging piles has surged. For example, in Tianjin, the electric power company reported approximately 5,000 charging piles in the districts of Nankai, Hongqiao, Xiqing, and Baodi in 2022, which increased to around 8,000 in 2023 and has surpassed 10,000 as of the current year.

Around the installation of private charging piles, the applicant and the power company had a dispute on the issue of compulsory contracting. The owner argued to the power company that because the power company had an obligatory contractual obligation, the power company should meet the owner's need to install private charging stations for any reason. The power

company believes that although it has the obligation to promote green energy in accordance with the requirements of the state, it has the right to refuse to approve the installation application that does not meet the safety conditions or exceeds the overall capacity of the community, and the compulsory contracting obligation of the power company is not unconditional.

According to questionnaire data collected by the research team, 36.6% of surveyed community residents reported having their charging pile installation requests denied by power companies. The breakdown of rejection reasons is shown in the following chart:




The vast majority of owners will sue the power company and the property management company to protect their rights after being refused.

*1.2 Research Purpose and Methodology*

The main purpose of this study is to conduct an in-depth discussion on the current situation, substantive problems and countermeasures of conflicts between owners applying for installation of private charging piles and electric power companies, focusing on the compulsory contracting obligations of electric power companies. The purpose of this study is to improve the effective way of dispute management, better resolve the disputes between the power company and the owner, protect the legitimate rights and interests of both sides, and build a harmonious community.

The research methods mainly include literature review and empirical research. Firstly, key issues are identified through questionnaires and case collection from China Judgments Online. Secondly, based on the application of Article 494 and 648 of the Civil Code, relevant provisions of the Electricity Law, and regulations on power supply by the State Council, the main factors affecting the mandatory contracting obligation of power companies are analyzed. Finally, countermeasures and suggestions are proposed to harmoniously resolve disputes over mandatory contracting between the two parties.

## 2. Compulsory Contractual Obligations and the Problems Caused in the Installation of Charging Piles

*2.1 Definition of Compulsory Contracting Obligation*

According to the academic theory, the so-called compulsory contract means that when one party makes a request to conclude a contract, the other party has the legal responsibility to conclude a contract with it according to law. This system is a necessary restriction of the parties' freedom of making a contract under the traditional principle of autonomy, which is reflected in the

compulsory commitment in most cases. [1]Its core function lies in preventing public service providers from selectively providing services based on their advantages, thereby harming consumer rights and public interests. [2]Although compulsory contracting still needs to follow the basic process of offer and commitment in form, and seems to maintain the mode of contract conclusion with the same intention expressed by both parties, it is actually a special obligation imposed by the law on some civil subjects in specific civil activities based on the consideration of public interests.

Compulsory contracting obligations are particularly common in public services. Because the service involved has the nature of social welfare, it is the basic guarantee for the normal production and life of the public. In order to prevent the public service providers from abusing the market monopoly position and refusing to make a contract with users at will, the law intervenes in the original freely negotiated contractual relationship and restricts the public service providers from refusing to provide services without reason.

In the field of power supply, the mandatory contractual obligation of the power supplier is not to refuse the usual and reasonable demand of the power customer. [3] Here, the power supplier refers to an enterprise that has been approved by the state and obtained a power supply business license. After the electricity user submits an electricity application, the power supply enterprise is responsible for reviewing whether its requirements are reasonable. For reasonable needs, the power supply enterprise should timely determine the power supply plan and inform the user in writing, and then sign a power supply contract. However, it should be noted that not all power supply enterprises have the obligation to conclude a compulsory contract with all users. According to the Electric Power Method and the Measures for the Division and Management of Power Supply Business Areas, power supply enterprises can only supply electricity within the approved power supply business areas, and users can only apply to power supply enterprises in the business areas where they are located to conclude power supply contracts, and power supply enterprises outside the business areas have no such obligation to users in the area.[4] In addition, even if the power supplier has the obligation to conclude a compulsory contract, and the power supply contract has the attribute of a continuous contract, it does not mean that the power supplier must continue to perform the contract under any circumstances.[5]

According to Article 23 of the Regulations on Power Supply and Use, an administrative regulation of the State Council, "if a power supply enterprise has no reasonable reason for refusal, it shall supply power." The condition for refusal to supply power is that there is a "reasonable reason", which mainly includes the following situations in practice: applications for power use by users not within the service area; the design, construction, testing and operation of power supply and receiving facilities do not meet national standards or power industry standards; refusal to go through relevant procedures or pay relevant fees; users have illegal acts and so on. The definition of "reasonable reasons" needs to be further determined according to specific circumstances.

An analysis of the legislation on mandatory contracting in various countries and regions around the world shows that the mandatory contracting obligations of power supply enterprises are applicable under certain conditions. If the offeror fails to meet the legal conditions or the contracting request made is unreasonable, the power supply enterprise can defend itself on the grounds that the offeror has not met the legal conditions.

The purpose of this study is to provide theoretical guidance and practical strategies with reference value for resolving the civil disputes caused by the installation of private

[1] Civil Law Science Compilation Group. (2022). *Civil Law Science* (2nd Edition), Vol. 1. Higher Education Press, p. 371.

[2] Civil Law Science Compilation Group. (2022). *Civil Law Science* (2nd Edition), Vol. 1. Higher Education Press, p. 372.

[3] The Working Group for the Implementation of the Civil Code of the Supreme People's Court. (2020). *Understanding and Application of the Contract Provisions of the Civil Code of the People's Republic of China (II)*. People's Court Press, p. 1140.

[4] The Working Group for the Implementation of the Civil Code of the Supreme People's Court. (2020). *Understanding and Application of the Contract Provisions of the Civil Code of the People's Republic of China (II)*. People's Court Press, p. 1140.

[5] The Working Group for the Implementation of the Civil Code of the Supreme People's Court. (2020). *Understanding and Application of the Contract Provisions of the Civil Code of the People's Republic of China (II)*. People's Court Press, p. 1140.

charging piles through in-depth analysis of the contradictions between the owners and the power company, the reasonable demands of the owners who apply for the installation of charging piles, and the difficulties of the power company for the installation of private charging piles.

*2.2 Dispute on Compulsory Contractual Obligation of Charging Pile Installation*

2.2.1 Problems Found in Interviews

During the interview, the relevant owners believed that the compulsory contractual obligation of the power company was unconditional, while the power company believed that it had the compulsory contractual obligation only when there was no reasonable reason to refuse to supply the power. In the face of the owner put forward unreasonable installation reasons, the power company clearly refused and said: for the installation conditions of charging piles, there are special public boards in the business hall, online platforms are also public, state grid App and district service office have public installation conditions, there are 9598 power supply service hotline, the state also has unified provisions on this. The power company also said that the installation of charging pile is not the power company alone, first of all, according to the national regulations, the owner has the sovereignty of parking space or long-term rent for more than one year. Secondly, owners should install charging piles in accordance with national regulations, such as parking property rights, property consent and fixed parking conditions. The installation of charging piles will involve many government departments, including the grassroots management units of the community, which requires some intervention from government departments. Finally, the security risks after installation are comprehensively considered.

According to the interviews with relevant owners and power companies, there are mainly disputes between the two parties over the compulsory contractual obligations of charging pile installation:

First, the power company refuses to install it on the grounds that it does not have the installation conditions.

Owners applying for the installation of private charging piles need to provide the following materials: application form for electricity consumption, valid identity certificate of customers, certificate of property right of fixed parking spaces or license certificate of property right units, certificate of consent to use charging and changing facilities and external access construction issued by street office or property, and technical parameters of charging piles. Proof of property is also required in rural areas.

In practice, power companies focus on the first consideration is to have a car and parking space property rights are their own; Or a long-term lease of more than one year. Secondly, the property agrees to install and issues relevant certificates; At the same time, prove that the applicant has the right to use the parking space, at least for more than one year. Many owners who can't install it are basically stuck with the problem of not having a fixed parking space.

Second, power companies refuse to install charging piles because they involve too many subjects.

The situations in which the power companies reflect that there are too many subjects involved include: the power capacity is insufficient and the distribution facilities need to be converted; the reconstruction of the building and its ancillary facilities are matters jointly decided by the owners under Article 278 and need to be decided jointly by the owners, and a certain proportion of voting needs to be met. Article 272 of the Civil Code stipulates that owners have the right to possess, use, benefit and dispose of the exclusive parts of their buildings. Therefore, owners have the right to install charging piles in private parking spaces without harming the legitimate rights and interests of other owners. Article 278 of the Civil Code provides for matters jointly decided by the owners and voting procedures.

Third, the power company refused to install it on the grounds of security risks.

Charging facilities have a certain impact on fire safety and power safety in the residential area. Owners, owners' committees or neighborhood committees and property enterprises can apply for on-site inspection by departments such as electric power, fire control, urban and rural housing construction, etc., if they do not meet the installation conditions, opinions shall be issued by the above relevant departments. The power company decides whether to install it or not according to the opinions issued by the relevant departments. Article 5 of the Fire Protection Law of the people's Republic of China

stipulates that any unit or individual has the obligation to maintain fire safety and protect fire facilities. When installing charging piles, fire safety regulations should be strictly observed to prevent fire accidents.

2.2.2 Problems Reflected in Judicial Cases

First, the dispute over whether the owner's application meets the installation conditions.

In some cases, the owner's application did not meet the installation conditions, and the court held that the power company had no compulsory contracting obligation and had the right to refuse to install private charging piles. In the case heard by the Beijing Tongzhou District people's Court, the Tongzhou Court held that whether the applicant has the ownership or long-term use of the fixed parking space, whether the application for the installation of the parking space conflicts with the planned use of the existing parking space, and whether the consent of the organization representing the interests of all the owners has been obtained. It reflects that the installation of private charging piles may also involve issues such as public safety, owners' right to know, privacy and so on. It may intensify the conflict between the personal electricity demand of owners and community management, the conflict between the use of charging piles and the legitimate rights and interests of others, and the conflict between the operation of charging piles and public safety.[1] The case also involves questions: whether the problems reflected in such cases will also become the basis for power companies to refuse owners to install private charging piles, and whether these bases are reasonable; whether the problem can be solved to enable owners to install private charging piles; how to establish a coordination mechanism for public service departments to strengthen the unified planning and overall coordination of charging pile installation and construction, and to promote the construction and transformation of charging piles in residential communities as a whole.

In some cases, the court held that the owner's application met the installation conditions and the power company had a compulsory contracting obligation. When the owner has the property right or long-term use right of the fixed parking space, and the electricity demand for the installation of charging piles is reasonable, the power company must fulfill the obligation of compulsory contracting. In the dispute over the property service contract between Liao and Meizhou Management Co., Ltd., the court held that the power company should not refuse the reasonable electricity demand of the electricity users according to the second paragraph of Article 648 of the Civil Code. After the owner puts forward the electricity application, the power company shall examine whether the power demand is reasonable, and if it is reasonable, it must determine the power supply plan and sign the power supply contract as soon as possible.[2]

Second, the dispute about whether the property company, the owners' committee and the interested owners agree to the installation.

First of all, the owner or the owners' committee does not agree to the installation, and the power company does not have the obligation of compulsory contracting. On the magic weapon network of Peking University, the civil judgment of the first instance of disputes over power supply contracts between Yang and the State Grid Beijing Electric Power Company and other power supply contracts involved the issue of power supply contracts. Yang proposed to Beijing Electric Power Company the compulsory right to sign a power supply agreement for the installation of electric vehicle charging piles, and believed that based on the compulsory contracting obligation, the power company must sign a power supply agreement with it and install charging piles. Yang has no fixed parking space, and the location where he applied to install the charging pile belongs to the owner. Yang so-and-so wants to install self-charging piles on parking spaces shared by all owners, which belongs to the use of changing the common part, and this can only be carried out with the consent of all the owners or the owners' committee entrusted by the owners' meeting or other units and organizations that can represent the common interests of all owners, but Yang did not provide any evidence that the above-mentioned units or organizations agreed to install self-charging piles on public parking spaces. In the end, the court rejected Yang's

[1] Beijing Tongzhou District people's Court (2023) Beijing 0112 Preliminary civil trial of No. 4212, the plaintiff Beijing Tongzhou Xinghua property Management Co., Ltd. and the defendant Zhang Qi property service contract dispute.

[2] Guangdong Meizhou Intermediate people's Court (2021) Guangdong 1403 Preliminary civil trial of No.2435, the plaintiff Liao and the defendant Meizhou Management Co., Ltd. property service contract dispute.

claim, arguing that the power company did not have a compulsory contracting obligation.[1] In the contract dispute case between Zhu and a company in Fuxin, the court held that the property had the obligation to cooperate with the power company and the owner to install private charging piles according to the green principle of the Civil Code.[2]

Secondly, after the examination in accordance with the law and regulations, the power company thinks that the requirement of concluding the electricity consumption contract is unreasonable, and the power company does not have the obligation of compulsory contracting. On the China Energy Law Popularization Network, Zhang sued the dispute over the compulsory contracting of the power supply contract of Shandong Zaozhuang Power supply Company, [3]combined with the second paragraph of Article 648 of the Civil Code: "the power supplier who supplies power to the public shall not refuse the reasonable contract requirements of the power user." It is concluded that the compulsory contracting obligations of power supply enterprises in power supply contracts are clarified from the level of the civil basic law. However, the power supply enterprises have been perplexed by such problems as under what circumstances the power supply enterprises should fulfill the obligation of compulsory contracting and how the requirements for the power users to conclude the contract are reasonable. The court decision gives a clear and clear judicial judgment standard, especially an accurate explanation of the uncertain concept of "reasonable", which fully demonstrates the solid foundation, stable expectation and long-term value of the Civil Code. The power supply company has a comprehensive and accurate understanding of the current situation of power supply and electricity payment in the residential area, and it is easy to bring security risks from cross power supply (which does not meet the conditions of direct power supply), the plaintiff responded to the lawsuit in terms of normal electricity consumption without direct economic loss (no additional electricity charge), fully analyzed that the compulsory contracting obligation of power supply is not equal to unconditional contracting, and needs to meet the conditions of "safety, reliability, economy, rationality and convenience for management." The court finally held that the power supplier had the right to examine and determine whether the requirement of the power consumer to conclude the contract was "reasonable" according to law and regulations. And judging whether it is "reasonable" should follow the principles of "safety, reliability, economy, rationality and convenience for management." The first and second trials of this case did not support the plaintiff's claim, and gave a negative evaluation to the plaintiff's abuse of the right of action. The results fully met the expectations of power supply enterprises and had strong guiding significance for power grid enterprises to solve similar problems.[4]

Finally, the owner's application meets the installation conditions, but the interested owner raises objections, and the power company can only be required to perform the compulsory contracting obligation after the dispute between the relevant owners is settled. In some old residential areas, the owner's application for installing private charging piles has been reviewed by the power company and meets the installation conditions. At the same time, the power company has the compulsory contracting obligation to install private charging piles for the applicant. However, because the charging pile installation location is too close to the buildings of other owners, there is a safety hazard. The affected owners hope to remove it as soon as possible and oppose the installation. According to the provisions of Civil Code, the installation of charging piles in public places of residential areas requires the consent of more than 2/3 owners to protect the common rights and interests of owners, while the staff of street offices have only publicized the private charging piles installed in public places in the residential areas and failed to contact the relevant owners. Although the electric power company has

[1] Beijing Yanqing District people's Court (2021) Beijing 0119 Preliminary civil trial of No.11698, Yang Jiasheng had a power supply contract dispute with Beijing Electric Power Company of the State Grid.

[2] Fuxin Intermediate People's Court (2009) Fumin: The second instance is final, the plaintiff Zhu and the defendant Fuxin company contract dispute.

[3] Beijing Xicheng District people's Court (2021) Beijing 0102 Preliminary civil trial of No. 3380, the plaintiff Zhang Yafeng and the defendant State Grid Shandong Power Company Zaozhuang Power supply Company power supply contract dispute.

[4] Hou Zhipeng: *State Grid Shandong Zaozhuang Power Supply Company: Disputes over Compulsory Conclusion of Power Supply and Consumption Contract*. China Energy Law Popularization Network, 2023.

compulsory contracting obligations according to the power supply contract, it cannot install private charging piles for the applicants.

### 3. Factors Affecting Electric Power Company's Fulfilment of Compulsory Contracting Obligation for Charging Pile Installation

Whether electric power company should undertake compulsory contracting obligation or not, the influencing factors include policies and regulations, electric power infrastructure carrying capacity, safety management, economic interests, market competition, technical standards and so on.

*3.1 Policy and Regulatory Factors*

Policies and regulations are the primary factor in determining whether a power company assumes compulsory contractual obligations. At present, many provinces and municipalities have introduced a series of supportive policies in order to promote the development of the new energy automobile industry. For example, in the "New Energy Vehicle Industry Development Plan (2021-2035)", it is clearly stated that the construction of infrastructure such as charging piles should be accelerated, and power companies should be encouraged to actively support the installation of charging piles.

However, the specific implementation of the policy varies from place to place. In some regions, power companies have set many thresholds in the implementation process, which hinders the owners' installation applications. Taking a certain city as an example, although the city has issued relevant policies requiring power companies to actively cooperate with the owners to install charging piles, in actual operations, the power companies have delayed or rejected the owners' applications for various reasons. Some power companies require owners to provide cumbersome certification materials, such as property consent forms and power capacity certificates, which make it more difficult for owners to apply; some power companies refuse to install charging piles for owners on the grounds that the power grid transformation has not yet been completed. Therefore, further refining and strengthening the implementation of policies and regulations, and clarifying the responsibilities and obligations of power companies, are the key to solving the current dilemma.

In addition, when interviewing power companies, we learned that the current policy focus on promoting installing charging piles, but the power company, as the executive party of the policy, will encounter many restrictive conditions when installing charging piles for the owners, which cannot be solved by the power company alone. Specific policies are needed to mobilize all parties to solve related problems together. For example, in old residential areas, there are no fixed parking spaces and parking spaces are tight. Under such a problem, the power company has no way to install the charging pile in a certain location according to the owner's requirements. Even if the installation is successful, there will be some other disputes in the future. Disputes. Some power companies have also stated that they hope to introduce relevant policies to solve the safety hazards that will arise after the installation of charging piles. There are also power companies that say that some public charging piles are currently illegally selling electricity to the outside world for profit under the guise of shared charging piles, and they hope that the state will be able to introduce relevant policies.

In practice, some courts avoid "There is no reasonable reason not to supply power." The review is only based on implement policies to meet people's livelihood needs. On the grounds that the power company is responsible for compulsory contracting obligations, is an error of applicable law. In the property service contract dispute between Shang XXX and Luoyang XXX Management Co., Ltd., the court stipulates in accordance with Article 9 of the Civil Code of the People's Republic of China: "Civil entities engaged in civil activities shall be conducive to the conservation of resources and the protection of the ecological environment." It believes that vigorously developing electric vehicles is important to ensure energy security, promote energy conservation and emission reduction, and prevent and control air pollution. It is of great significance. Starting from the above principles, the installation of charging piles is an indispensable equipment for electric vehicles to achieve the purpose of use. The plaintiff has the right to install charging piles equipped with his car on the parking space he uses. All parties shall assist Shang XXX in going through the relevant procedures for the installation of new energy vehicle charging piles in underground parking spaces. The court defines the installation of private charging piles

as an indispensable equipment in the lives of people who purchase new energy vehicles. The development of new energy vehicles is the only way for our country to move from a large automobile country to a powerful automobile country. The development momentum of the new energy automobile industry is strong and the number of new energy vehicles accounts for a huge proportion, which is consistent with the mandatory contracting obligations. The objects have the same characteristics, and under this understanding, the power company will have compulsory contracting obligations. [1] In the above case, it belongs to the "escape to the general clause" in the application of the law.

*3.2 The Carrying Capacity of Power Infrastructure*

The carrying capacity of the power infrastructure directly affects whether the power company can successfully fulfill its compulsory contractual obligations. The installation of charging piles requires a stable power supply as a guarantee, and whether the existing power grid structure, transformer capacity and other hardware facilities can meet the access needs of large-scale charging piles has become an urgent problem to be solved. In some old residential areas, the power facilities are outdated and the capacity is limited. Large-scale installation of charging piles may lead to power overload, safety risks and other problems.

During the investigation, it was found that after the owner of an old residential area applied for the installation of charging piles on a large scale, there was a situation of power overload, resulting in frequent power outages in the residential area. Although the power company carried out emergency repairs, it failed to solve the problem fundamentally. Later, the power company invested a lot of money to transform and upgrade the community power grid, increasing the transformer capacity and line load to meet the installation needs of charging piles. Therefore, the government should increase investment in the construction of power infrastructure, promote the intelligent upgrading of the power grid, and provide a solid foundation for the installation of charging piles.

*3.3 Safety Management Factors*

Safety management is an important factor that power companies must consider during the installation of charging piles. The installation and use of charging piles involves many aspects such as electrical safety and fire safety, and any safety hazards may have serious consequences. The power company needs to conduct a strict review of the owner's installation application to ensure that the installation of the charging pile complies with relevant safety standards and specifications.

During the investigation, when some owners applied for the installation of charging piles, they lacked a full understanding of safety issues, chose charging pile products that did not meet the standards or constructed without authorization, which put a lot of pressure on the safety management of power companies. For example, an owner installed a charging pile privately without the approval of the power company. Due to the improper installation location, a power leakage accident occurred during the use of the charging pile. Fortunately, it was found in time and no casualties were caused. Therefore, strengthening safety publicity and education, raising the safety awareness of owners, and standardizing the installation and use behavior of charging piles are important measures to ensure the safe operation of charging piles.

*3.4 Factors of Economic Interest*

Economic interests are also an important factor affecting the performance of compulsory contracting obligations by power companies. The installation and maintenance of charging piles requires a certain cost investment, and power companies need to make a trade-off between economic interests and social responsibilities. On the one hand, the installation of charging piles can drive the business growth of power companies and increase power sales; on the other hand, the installation and maintenance of charging piles also requires power companies to invest a lot of manpower, material and financial resources. Under the current electricity price system, power companies have limited profit margins. If the installation cost of charging piles is too high, it may affect the enthusiasm of power companies.

During the investigation, when a power company installed charging piles for the owners, it found that it needed to invest a lot of money

[1] People's Court of Jianxi District, Luoyang City, Henan Province (2023) Yu 0305 Preliminary civil trial of No.9748, the plaintiff Luoyang Zhonghong Excellence Property Management Co., Ltd. and the defendant Shang xx property service contract dispute.

in power grid transformation and equipment upgrades. Due to the high cost, the power company was very passive during the installation process. Later, the government introduced a series of supporting policies, such as providing financial subsidies and tax incentives, to encourage power companies to actively participate in the installation and operation of charging piles, and the enthusiasm of power companies was improved. Therefore, the government should introduce corresponding support policies to encourage power companies to actively participate in the installation and operation of charging piles.

*3.5 Market Competition Factors*

The market competition environment will also affect the behavior of power companies. In some regions, the electricity market is gradually opening up and competition is becoming increasingly fierce. In order to attract and retain customers, power companies may take the initiative to provide more convenient and efficient charging pile installation services. However, in a monopoly or semi-monopoly market environment, power companies lack competitive pressure, are prone to inertia, and set unnecessary obstacles to owners' charging pile installation applications.

In the survey, in a city with an open power market, a number of power companies are competing fiercely. In order to attract customers, some power companies have launched a one-stop service for the installation of charging piles, simplifying the application process and improving the installation efficiency. In the monopoly area of the city, the power company is very indifferent to the owner's application for the installation of charging piles, setting up many obstacles. Therefore, promoting power marketization reform, introducing competition mechanisms, and enhancing the service awareness of power companies are important ways to promote the installation of charging piles.

*3.6 Technical Standard Factors*

The consistency of technical standards is the key to ensure the safe and efficient operation of the charging pile. At present, the technical standards of charging piles have not been completely unified. There are differences in interfaces and communication protocols between different brands and models of charging piles, which have brought great challenges to the management and maintenance of power companies. Power companies need to conduct compatibility tests and safety assessments of charging piles of different standards, which increases the workload and cost.

During the investigation, when a power company was managing charging piles, it found that the interfaces and communication protocols of different brands of charging piles were not uniform, which brought great difficulties to management and maintenance. Later, the government strengthened the formulation and promotion of charging pile technical standards, promoted the construction of industry standardization, and provided convenience for the management and operation of power companies. Therefore, the government should strengthen the formulation and promotion of charging pile technical standards, promote the construction of industry standardization, and provide convenience for the management and operation of power companies.

## 4. Coping Strategies for Problems

*4.1 The Owner Actively Prepares the Application Materials in Accordance with the Relevant Regulations*

Prepare the relevant materials stipulated by law, including the car purchase intention agreement or car purchase invoice, the applicant's valid identity certificate, fixed parking space property rights or more than one year (including one year) use right certificate, parking space floor plan or on-site environment photos, property issuance (no property management community issued by the industry committee or neighborhood committee) consent installation supporting materials of the charging pile. Apply for telegraph installation to the regional power company where it is located. Together with the power company and the property, the on-site survey of electricity consumption and construction feasibility. After confirming the power supply plan, find the construction party to build the charging infrastructure. After the construction is completed and the inspection is qualified, the construction unit and the property will complete the acceptance and test charging confirmation. After the facility is completed, the charging infrastructure will be maintained regularly to prevent infringement of the rights and interests of third parties.

*4.2 Settlement of Joint Ownership Disputes Between*

*Owners in the Installation of Charging Piles*

According to Article 278 of the Civil Code, the installation of charging pile facilities in the common part of the community needs to go through double voting, that is, the owners who account for more than two-thirds of the area and number of people in the exclusive part participate in the voting, and more than half of the area and number of people in the voting agree. However, in real life, the following problems have arisen: the street office did not contact the original owner and did not publicize it to all owners through effective channels; the "public interest" of the majority of owners conflicts with the "damage of neighboring rights" of individual owners; after the majority decision is passed, the actual installation may be deadlocked due to the opposition of individual owners.

In response to the above problems, the dual innovation mechanism of "technology + rules" can be adopted: first, establish a blockchain-based community public affairs voting platform, store certificates on the chain for the owner's voting process, and ensure that the owner's identity verification and voting results cannot be tampered with; second, when determining the specific location of the charging pile installation, use the platform pushes 3D modeling drawings, safety assessment reports and other materials to all owners; finally, set up an objection feedback window period to realize the closed loop of "right to know — right to vote — right to relief". For owners who have been damaged by public facilities, compensation can be withdrawn from public income or property fees can be reduced; At the same time, the majority of the consenting parties are required to propose a compensation plan before voting, otherwise the voting will be invalid.

After a double voting process, the community can introduce an additional "majority dissent period" for major matters. If the proportion of dissenting owners reaches a certain level, a second round of negotiation will be triggered. For those owners who did not participate in the voting and did not raise any objections, they will be regarded as having agreed. However, their right to know should be ensured through methods such as sending text messages or visiting them.

*4.3 Judgment on "Reasonable Grounds for Refusal to Supply Electricity" by Electric Power Companies*

After receiving the application for telegraph installation, go to the site to conduct electricity consumption and construction feasibility survey. For eligible applications, put forward a power supply plan. If the existing power distribution facilities cannot meet the application for telephone installation, and the property rights are for power supply enterprises, the power supply enterprises shall cooperate with relevant parties to propose solutions and complete the relevant transformation. After the construction of the project is completed and the inspection is qualified, the power supply enterprises shall complete the installation and connection of the meter.

The reasonable reasons for the power company to reject the owner's installation application and related appeals are mainly:

a. The power supply contract relationship has not been established yet. The acceptance of the application by the power company is not equivalent to the commitment to the installation of charging piles, nor does it mean that the two parties have established a power supply and consumption contract relationship. It also needs to be approved by the relevant functional departments according to technical specifications.

b. Compulsory contracting obligations are not applicable. Private charging piles are not the only or have no alternative services. Due to the existence of public charging piles, owners can obtain charging services through other channels even if they do not have private charging piles. The power company's non-power supply does not affect the owner's right to obtain charging services.

c. The owner has no right to require the power company to bear the cost of charging and replacing electricity services. The reason why the charging pile cannot be installed will involve many factors, not unilaterally caused by the power company.

d. The reasonableness of the electric power company to conduct examination and survey in accordance with laws and regulations after accepting the application. There are many restrictions on the existing infrastructure conditions. When handling the application for the installation of charging piles, power companies should take into account the actual situation of the community to ensure safety and feasibility.

*4.4 Implement the People's Livelihood Policy and Clarify the Responsibilities of All Parties*

Local development and reform, fire fighting, energy, housing and urban and rural construction departments, etc., should assume the responsibility of "coordination, coordination and supervision", including the supervision of the safety and compliance operation of charging piles.

When the owner believes that the power company has failed to fulfill its mandatory obligations, it can request all departments to intervene and force the power company to fulfill its obligations through the following channels:

a. The intervention of the power regulator

According to Article 24 of the Electricity Supervision Regulations, the electricity regulatory authority has the right to supervise the service quality of power supply enterprises. The owner can submit a written complaint to the agency sent by the State Energy Administration and attach evidence such as the refusal certificate of the charging pile and the inspection report of the community power facilities. The regulatory department shall review within a certain time limit. If it is determined that there is no legitimate reason for refusing to supply, it may require the power company to fulfill its obligation to install charging piles.

b. The intervention of the housing and construction department

The owner can ask the housing and construction department to order the power company to participate in the transformation of the community capacitor. The housing and construction department can add the power distribution facilities of the old community to the urban planning and construction, and give priority to allocating funds to solve the dilemma that owners cannot install charging piles because the power distribution facilities in the community do not meet the requirements. At the same time, the "Standards for the Construction of Charging Piles in Residential Areas" are formulated to clarify the subjects of the power grid.

c. The intervention of the street office and the neighborhood committee

If the owner believes that the power company has failed to fulfill its mandatory contracting obligations, it can report to the street office and the neighborhood committee and ask for help. The street office and the neighborhood committee should organize the tripartite negotiation between the owners, the power company and the property management company to promote the settlement of installation disputes. It can also be resolved through the vote of the owners' meeting.

d. The intervention of the judicial organs

The owner can file a civil lawsuit with the court to request that the power company be ordered to fulfill its mandatory contractual obligations. The fact is that the power company's refusal to provide caused the owner to be unable to use the charging pile, which infringed on their legitimate rights and interests.

**5. Summary**

By conducting an in-depth discussion on the background and current situation, influencing factors and countermeasures of the mandatory contracting obligation issue regarding the installation applications of private charging piles by power companies for property owners, we can find that the installation of private charging piles is a complex and challenging problem. Based on the comprehensive analysis of the contents of court judgments and research interviews, the circumstances where power companies do not have the mandatory contracting obligation are as follows: Firstly, the property owner does not have the installation conditions; Secondly, the installation of self-used charging piles on a shared parking space has not obtained the consent of all property owners or the property owners' association or other units or organizations entrusted by the property owners' association that can represent the common interests of all property owners; Thirdly, after the power company has conducted legal and regulatory reviews, it considers that the requirements for concluding an electricity contract are unreasonable.

The circumstances under which power companies have the obligation to enter into contracts by force are as follows: First, the property owner has the conditions for installation and the application is reasonable; Second, the property or the property owners' committee agrees to the installation; Third, there is an obligation to enter into contracts by force to meet the needs of people's livelihood as a result of implementing policies; Fourth, the power company fails to actively fulfill its work obligations, thereby preventing property owners

with the conditions for installation from installing charging piles.

In terms of the legal dimension, we also need to conduct further research and practice in accordance with relevant laws and regulations such as the "Electric Power Law of the People's Republic of China", the "Civil Code", and the "Consumer Rights and Interests Protection Law of the People's Republic of China", as well as policy documents jointly issued by multiple departments including the National Development and Reform Commission, such as the "Implementation Opinions on Further Improving the Service Guarantee Capacity of Electric Vehicle Charging Infrastructure". We aim to explore more effective solutions to promote the resolution of the issue of power companies' mandatory contracting obligations and make greater contributions to the stability and development of society.

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# Paradigm Reconstruction of the Protected Legal Interests in China's Crime of Money Laundering

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**Abstract**

Since the Criminal Law Amendment (XI) established the punishability of self-laundering, the systemic dilemmas faced by traditional legal interest theories in interpreting the constitutive elements of the Crime of Money Laundering have become increasingly evident. The understanding of the legal interests protected by the Crime of Money Laundering serves as the foundation for interpreting its constitutive elements and the guiding principle for its judicial application. Through a critical analysis of the deficiencies in existing doctrines, this paper proposes a dual-structure theory of protected legal interests: "result-oriented financial management order" and "control rights over proceeds derived from predicate offenses." The former, grounded in the consequence of regulatory failure, emphasizes transcending the traditional paradigm that narrowly equates Money Laundering with the instrumentalization of financial tools. The latter, by synthesizing the rational core of the "judicial function theory" and the "protected legal interests theory of predicate crimes," reconstructs the independent legal interest boundaries distinguishing Money Laundering from traditional crimes involving proceeds of crime. This theoretical framework not only rationally explains the regulatory logic of judicial interpretations governing non-financialized laundering behaviors but also provides substantive criteria for differentiating Money Laundering from crimes involving proceeds of crime. It holds methodological significance for refining China's criminal governance system against money laundering.

**Keywords:** Crime of Money Laundering, protected legal interest, criminal law interpretation, financial crime, crime involving proceeds of crime, result-oriented standard

## 1. Introduction

Among the series of offenses revised under Criminal Law Amendment (XI), the Crime of Money Laundering stands out as one of the most substantially revised offenses. The most notable reform lies in its structural transformation from a historically accessory-type framework to a stand-alone offense that now encompasses self-laundering. This legislative shift reflects imperatives driven by both domestic and international contexts. Domestically, China's national top-level institutional design has prioritized the establishment of anti-money laundering mechanisms, elevating AML to a critical component of safeguarding national security. Internationally, the Financial Action Task Force (FATF), the global standard-setter for AML

compliance, issued evaluative recommendations on China's "criminalization of money laundering," with its critiques directly informing the trajectory of China's criminal legislative reforms.

However, the revisions under Criminal Law Amendment (XI) have not resolved longstanding theoretical and practical controversies surrounding the Crime of Money Laundering. On the contrary, the inclusion of self-laundering and modifications to the definitional scope of laundering methods have intensified interpretative and applicative challenges. Consequently, the focal point of scholarly and judicial debates has shifted from the prior question of whether self-laundering merits punishability to foundational issues such as the interpretation of the protected legal interests underlying the Crime of Money Laundering, the concrete application of self-laundering provisions, and the hermeneutics of the offense's constitutive elements. Among these, the interpretation of the legal interest of Money Laundering Crime is the most important one.

## 2. Raising the Issue of Legal Interests Protection in Money Laundering Crimes

The concept of protected legal interests plays a pivotal guiding and orienting role in interpreting the constitutive elements of a crime, serving as the foundation for understanding the protective purpose of a criminal offense and the scope of its prohibited conduct. The interpretation of the legal interests underlying the Crime of Money Laundering directly determines both the hermeneutics of its specific constitutive elements and the critical distinction between Money Laundering and crimes involving proceeds of crime.

Originating as a legal tool to combat drug-related crimes, the Crime of Money Laundering initially bore strong characteristics of offenses involving illicit proceeds, naturally inheriting the traditional legal interest of safeguarding the normal operations of judicial authorities — a core protective aim shared with crimes involving proceeds of crime. However, as the societal harm of money laundering has grown increasingly pronounced, greater attention has been accorded to its dynamic structural attributes and distinctive harm profile, which diverge fundamentally from those of static proceeds-of-crime offenses. Consequently, clarifying the protected legal interests specific to Money Laundering has become indispensable for both interpreting its constitutive elements and delineating its boundaries from traditional proceeds-of-crime offenses.

## 3. Existing Paradigmatic Views on the Protected Legal Interests of the Crime of Money Laundering

Regarding the protected legal interests of the Crime of Money Laundering, current academic discourse centers on three primary theories:

### *3.1 Monistic Theory of Legal Interests*

First is the theory of unitary legal interest. This doctrine maintains that the protected legal interest of the offense exhibits exclusivity, yet internal divergences persist within this perspective regarding the precise nature of such legal interest. The principal division lies in two strands: the first is the theory of national financial management order, which bases its arguments on the criminal law chapter where Money Laundering is codified and the legislatively predefined behavioral typologies.[1]Within this school, certain scholars contend that the "national financial management order" requires further restrictive interpretation, asserting that the generic legal interest common to offenses within a specific section of the Criminal Code should not be mechanically equated with the specific legal interest protected by an individual crime.

The alternative viewpoint is the theory of judicial authorities' normal operations, primarily grounded in the global and domestic legislative evolution of Money Laundering offenses.[2] Simultaneously, some academics emphasize that, in accordance with the precision mandate inherent in the principle of legality, the "normal operations of judicial authorities" ought to be strictly delimited as "the normal investigative activities of judicial authorities targeting criminal conduct." This interpretative refinement ensures doctrinal coherence with statutory clarity while preserving the functional integrity of judicial mechanisms.[3]

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[1] Liu Xianquan. (2008). *Theory and Practice of Criminal Law Concerning Financial Crime*. Peking University Press, 417.

[2] Li Yunfei. (2013). The Dual Dimensions of Money Laundering Harm and Its Impact on the Classification of Legal Interests. *Criminal Science*, (11).

[3] Zhang Xiangfei. (2001). An Analysis of the Constitutive Elements of the Crime of Money Laundering. *Journal of Ningbo University*, (3).

*3.2 Traditional Composite Legal Interests Theory*

Another perspective, now widely accepted as the predominant view, is the doctrine of composite legal interests. This theory contends that the protected legal interests of Money Laundering offenses need not be confined to a binary choice between judicial functionality and financial regulatory order; rather, both constitute integral and coexisting legal interests safeguarded by this offense. A substantial body of scholarly work endorses this proposition, with near-consensus emerging in contemporary jurisprudence. Nevertheless, significant academic disagreements persist regarding the hierarchical primacy of these dual legal interests.

*3.3 Emerging Perspective*

Additionally, a recently developed theory posits that the protected legal interests of the Crime of Money Laundering encompass both financial management order and the protected legal interests of predicate offenses. This doctrine typically explicates the legal interest of financial management order through a two-tiered normative framework: primarily, establishing the fundamental order to prevent the financial system from being exploited as a conduit for legitimizing criminally derived assets and proceeds; secondly, safeguarding public trust in the financial system and ensuring national financial security.[1] The theory's reference to the "protected legal interests of predicate offenses" pertains specifically to the legal interests inherently safeguarded by the seven categories of predicate offenses listed under China's Money Laundering provisions.

## 4. Theoretical Dilemmas of Existing Doctrines on the Protected Legal Interests of the Crime of Money Laundering

Among the three aforementioned theories, the Monistic Theory of Legal Interests suffers from evident deficiencies, as it fails to comprehensively interpret the legal interests of Money Laundering through the crime's statutory placement, legislative context, or protective purpose. This section thus focuses on analyzing the strengths and weaknesses of the Composite Legal Interests Theory and the Emerging Perspective, synthesizing their insights to propose a generalized and holistic conclusion.

*4.1 Dilemmas of the Traditional Composite Legal Interests Theory*

The primary critique of the prevailing view lies in its inability to explain why identical laundering behaviors and outcomes receive divergent legal evaluations based solely on the category of the predicate offense. For instance: perpetrator laundering proceeds from insurance fraud (listed among the seven predicate offenses) is charged with Money Laundering. Yet, laundering proceeds from ordinary fraud (excluded from the seven predicate offenses) is classified merely as a crime involving proceeds of crime. Both acts ostensibly infringe upon the financial management order and normal judicial activities posited by the Composite Theory, yet their legal consequences diverge fundamentally. This inconsistency suggests that the legal interests violated by these acts are not wholly identical.

If proponents of the Composite Theory resort to a formalistic explanation — "because the Crime of Money Laundering statutorily limits predicate offenses to seven categories" — their reasoning remains superficial, failing to address the substantive rationale behind this legislative choice: why does the Criminal Law exclusively designate seven types of crimes as predicate offenses? This omission implicitly validates the Emerging Perspective's critique that the Composite Theory neglects the specific protective purpose underlying the statutory selection of predicate offenses, which the Emerging Perspective frames as the "protected legal interests of predicate crimes."

A further critique arises from the tension between the judicial function doctrine and the legislative inclusion of self-laundering under Criminal Law Amendment (XI). To contextualize this contradiction, it is essential to examine the historical relationship between Money Laundering and traditional crimes involving proceeds of crime: Money Laundering emerged as a tool to dismantle the economic foundations of predicate offenses (e.g., drug trafficking). Historically, its criminal liability was derivative and dependent on the gravity of the predicate offense — the more severe the predicate crime, the greater the harm attributed to laundering. Early legislation treated Money Laundering as a natural extension of predicate offenses, akin to traditional acts of concealing or disguising

[1] Zhang Mingkai. (2022). The Legal Interests Protected by the Crime of Money Laundering. *Law Science*, (5).

proceeds of crime. Under the principle of non-repetitive evaluation and absence of expectation of compliance, perpetrators of predicate offenses were exempt from liability for laundering their own proceeds, as such acts were deemed non-autonomous and lacking independent culpability. If the Composite Theory's inclusion of "normal judicial activities" as a protected legal interest necessitates adherence to traditional proceeds-of-crime logic, it directly conflicts with the criminalization of self-laundering under Criminal Law Amendment (XI) — a legislative shift predicated on recognizing Money Laundering's independent culpability and distinct harm profile.

The above critiques, however, are not impervious to rebuttal. In recent years, Money Laundering has increasingly demonstrated harms independent of — and even exceeding — those of predicate offenses. Theoretical and practical circles now widely acknowledge that the protected legal interests of Money Laundering are distinct from those of predicate crimes. Perpetrators possess realistic expectation of compliance — they can and should refrain from laundering acts, which inflict independent legal harm. Money laundering involves a dynamic process of 'whitening' illicit proceeds, fundamentally differing from the passive concealment characteristic of traditional proceeds-of-crime offenses. This evolution marks a doctrinal rupture with traditional jurisprudence. Thus, criticizing the "normal judicial activities" doctrine by invoking incompatibility with traditional proceeds-of-crime principles is increasingly untenable. While Money Laundering originated within the theoretical framework of proceeds-of-crime offenses, it has since evolved into a discrete legal construct with autonomous normative foundations.

*4.2 Dilemmas of the Emerging Perspective*

In reality, emerging perspectives have precisely emerged to address the aforementioned issues by substituting "the normal activities of judicial authorities" with "the protected legal interests of predicate offenses," while retaining financial management order as the primary protected legal interest. However, this predicate offense theory remains debatable, as it once again denies the independent characteristics of Money Laundering offenses by inextricably linking them to predicate crimes. This approach manifests dual deficiencies: firstly, it overlooks the autonomous legal interest protection content inherent to Money Laundering offenses distinct from predicate crimes; secondly, it risks creating jurisprudential complexities in determining the numerosity of offenses between Money Laundering and its predicate crimes.

**5. Paradigm Reconstruction: The Dual Legal Interest Structure of "Result-Oriented Financial Management Order" and "Control over Proceeds from Predicate Crimes and Their Benefits"**

Through the preceding analysis, we can preliminarily construct the theory that the legal interests protected by the Crime of Money Laundering encompass financial management order and control over proceeds from predicate crimes and their benefits. The rationale is as follows:

*5.1 Judicial Practice Provides Theoretical Possibilities for Expansion*

First, given the enduring presence of offenses involving illicit proceeds within China's criminal legislation, the deliberate codification of Money Laundering as a distinct offense under the chapter "Crimes of Disrupting Financial Management Order" inherently implies — through its systemic legislative positioning and considering China's statutory objectives in enacting anti-money laundering laws — that the protected legal interest of Money Laundering offenses necessarily encompasses financial management order. The critical inquiry lies in the proper interpretation of "financial management order" within this context. Both predominant and emerging doctrinal interpretations engage in distinct conceptualizations of "financial management order," yet converge on a shared conclusion premised on their respective analyses: "to protect financial management order, the offense of Money Laundering should be strictly construed as acts committed either by financial institutions or through financial instruments by non-financial institutions, targeting proceeds from the seven specified predicate offenses. Acts employing non-financial institutional frameworks or non-financial methodologies cannot be legally characterized as Money Laundering." This interpretive stance, however, engenders an irresolvable paradox:

The Supreme People's Court's *Interpretation on Several Issues Concerning the Specific Application of*

*Law in the Trial of Money Laundering and Other Criminal Cases* (hereinafter "the Interpretation"), the sole judicial interpretation directly addressing Money Laundering in China, enumerates under Article 2 various behavioral patterns constituting "other methods" under Article 191(5) of the Criminal Law. Notably, several listed methods — such as converting proceeds through gambling — clearly involve non-financial institutions and instruments. This challenges the traditional view that Money Laundering must utilize financial systems. Scholars advocating the "judicial function theory" consequently argue that if the protected legal interest of a crime is not necessarily infringed by the acts it regulates, the legitimacy of such legal interest becomes questionable. Indeed, the specific behavioral modalities enumerated in the Judicial Interpretation — particularly the second and fifth categories — resist plausible characterization as employing so-called "financial instruments." However, whether this constitutes legislative oversight or reflects conceptual deviations in either the predominant or emerging interpretations of the "financial management order" legal interest remains a matter for critical examination.

Furthermore, the *Summary of the Special Symposium on Combating Smuggling of Refined Oil Products at Non-Customs Checkpoints* jointly issued by the Supreme People's Court, Supreme People's Procuratorate, and General Administration of Customs stipulates that "knowingly purchasing smuggled refined oil products from non-direct smugglers constitutes the offense of Money Laundering." Evidently, the transactional methods involved here cannot reasonably be construed as "financial instruments," nor do the subjects qualify as "financial institutions." From both behavioral means and subjectum perspectives, such conduct does not inherently infringe upon financial management order. Under doctrinal principles of legal interest specificity, such acts should instead be classified under the crime of concealing or disguising criminal proceeds and their benefits (Article 312 of the Criminal Code). Nevertheless, such conduct is still legally defined as Money Laundering, which raises the question of whether the legal interests protected by this crime encompass the financial regulatory order.

Existing doctrinal responses to this expansive trend in judicial interpretation fail to provide cogent rebuttals. Scholars arbitrarily accuse legislators of violating the principle of legality through their open-textured interpretation of "other methods," contending that the statutory overbreadth in defining "alternative means" constitutes legislative malpractice. Consequently, grounded in their orthodox understanding of financial regulatory order, they maintain that conduct demonstrably unrelated to financial systems or instruments should categorically be classified as receiving stolen property. [1]Such interpretative approaches fundamentally miss the crux of the issue — the criteria for identifying the legal interests protected by financial regulatory order urgently require a paradigm shift from behavioral modality-focused analysis to outcome-oriented evaluation. Moreover, in addressing criminal law issues, primary emphasis should be placed on interpreting existing law rather than criticizing or legislating law. Consequently, a reconceptualization of the "financial management order" legal interest from an alternative perspective becomes imperative to resolve conflicts between statutory instruments and doctrinal understandings of protected interests.

As evidenced by the 2009 Judicial Interpretation governing the application of Article 191(5)'s residual clause, the legal interest of financial order protected by the legislator at the beginning of the establishment of this crime has gradually deviated from the identification of money laundering behavior. Determining whether Money Laundering infringes upon the legal interest of financial regulatory order can no longer be exhaustively ascertained through behavioral methodologies alone. A novel identification framework must be established — the financial order interest in Money Laundering offenses should be grounded in the regulatory failure resulting from the transformation of proceeds from specified predicate crimes into legitimized funds.[2]

*5.2 Primary Legal Interest: Result-Oriented Financial Management Order*

The essence of Money Laundering's infringement on financial order should shift from a focus on financial-instrument-based

[1] Zhang Mingkai. (2022). The Legal Interests Protected by the Crime of Money Laundering. *Law Science*, (5).

[2] Shi Fang. (2022). The Dilemma of Applying the Money Laundering Offense System in China and the Identification of Legal Interests. *Global Law Review*, (2).

means to regulatory-failure-based outcomes. Traditional interpretations grounded the infringement in the financial instrumentalization of laundering methods. However, contemporary judicial interpretations have expanded the scope to include non-financial methods — such as physical cross-border transfers or economic activities like pawnshops, leasing, and gambling—that achieve fund "whitening" while evading supervision. [1]The substantive essence of this transformation lies in recognizing that the legitimization of illicit funds through any economic activity, coupled with their detachment from regulatory oversight, constitutes per se a material violation of financial management order. Such conversion of tainted assets into ostensibly legitimate forms—effectively escaping effective financial supervision—undermines the normative functioning of capital flow regulation. Consequently, the determination of infringements upon financial regulatory order should not be predicated solely on whether laundering methods employ financial channels. More critically, the regulatory disengagement resulting from transforming "black money" into "white money" permits the unrestricted circulation of criminally derived funds within economic spheres from which they should be excluded, thereby equally violating the legal interest of financial regulation. This jurisprudential shift logically extends the scope of money laundering methodologies to encompass all economic transactional activities—including pawnbroking, leasing, investment, gambling, etc. — provided such acts achieve the functional effect of laundering by circumventing financial monitoring of illicit proceeds.

Similarly, when illicit proceeds are transported, carried, or mailed across borders, the physical relocation of criminal funds transcends mere spatial displacement. The illicit nature of these funds undergoes a "identity transformation" upon crossing national boundaries, effectively laundering them into legitimate circulating capital. From the perspective of regulatory failure, the core element of legal interest infringement lies in the uncontrolled circulation of criminal proceeds. Whether through international trade, cryptocurrency transactions, or physical asset swaps, any mechanism that enables "dirty money" to enter economic circulation through legitimate channels creates a regulatory vacuum. This illegal conversion of fund attributes not only evades anti-money laundering monitoring systems but also undermines financial regulators' capacity to track capital flows. Particularly in cross-border transfers, criminal proceeds escape both source country supervision and destination country scrutiny, forming dual regulatory blind spots that essentially complete the "legitimization process" of illicit funds.

The systemic risks arising from such regulatory failures exhibit dual hazards: firstly, the exponential expansion of underground finance significantly weakens national financial security defenses. When unregulated capital reaches critical mass, it may trigger systemic financial risks. Secondly, illicit fund flows provide economic foundations for derivative crimes including terrorist financing and transnational organized crime. From the cumulative legal interest infringement perspective, this phenomenon constitutes a gradual erosion of financial security interests protected by law. Therefore, based on the substantive criteria of legal interest infringement, the expansion of illegal financial systems induced by money laundering has already caused tangible harm to the financial security interests safeguarded by criminal law. In establishing the paradigm for determining legal interest infringement, a results-oriented analytical framework centered on the "regulatory vacuum effect" should be constructed. This framework evaluates the degree of detachment between capital circulation chains and formal financial regulatory systems to ascertain actual damage to financial management order. The establishment of this functional regulatory perspective transcends traditional singular judgment models that rely on formal behavioral assessments or capital flow path dependencies.

Regarding the typology of predicate offenses, China's legislation adopts a selective regulatory approach, prioritizing the suppression of crimes requiring large-scale fund laundering. The regulatory failure effects arising from laundering activities involving massive illegal proceeds derived from specific crimes such as graft, bribery, and financial offenses demonstrate particularly destructive potential.

[1] Luan Li, Sun Qianhui. (2023). The Dilemma, Reflection, and Countermeasures in the Judicial Application of the Crime of Money Laundering. *Journal of Law Application*, (10).

In contrast, while ordinary stolen property offenses also involve fund attribute alteration, their limited transaction volumes inherently restrict capacity to generate systemic impacts on financial regulatory frameworks. This differentiated regulatory strategy reflects legislators' graded protection philosophy towards financial security interests.

Consequently, the demarcation standard between Money Laundering and stolen property offenses should focus on the degree of regulatory failure induced by fund cleansing activities, rather than mechanically examining whether financial instruments are involved. When illicit funds achieve regulatory evasion through economic activities and reach scales threatening financial security, such conduct constitutes the core illegality of Money Laundering offenses. This results-oriented determination approach aligns with the substantive risk prevention requirements of modern financial regulatory systems.

*5.3 Secondary Legal Interest: Control over Proceeds from Predicate Crimes and Their Benefits*

Complementing financial management order, the crime's secondary legal interest is the state's control over proceeds from predicate crimes. This concept synthesizes the strengths of the "judicial function theory" and "predicate crime interest theory." Since Money Laundering offenses originate from traditional "stolen property offenses", their core manifestation lies in concealing and disguising the origin and nature of proceeds derived from predicate crimes, thereby achieving their "legitimization".[1] The statutory purpose of criminalizing money laundering is to ensure the confiscation or recovery of criminal proceeds and their benefits, explicitly "prohibiting the conversion of illicit criminal proceeds into legitimate property". Money Laundering inherently obstructs the state's control over proceeds from predicate crimes and their benefits. Therefore, it is appropriate to recognize "control over predicate offense proceeds and their benefits" as one of the protected legal interests of Money Laundering offenses. Furthermore, from the perspective of absorbing the "protected legal interests of predicate offenses", the control theory accentuates the critical element of "control over proceeds and their benefits", effectively avoiding potential overlaps with the legal interests protected by predicate offense provisions.

**6. Conclusion**

The inclusion of self-laundering under Article 191 has complicated the interpretation of Money Laundering's legal interests and constitutive elements. This article advocates for explicitly defining the protected legal interests of Money Laundering offenses as financial management order and control over proceeds derived from predicate offenses and their benefits. This dual formulation resolves the compatibility pathway between the criminalization of self-laundering and the doctrine of anticipated possibility, while concurrently accomplishing two objectives: first, establishing the legal interest nexus for the typological regulation of predicate offenses to enhance explanatory power—encompassing non-financialized money laundering acts addressed in judicial interpretations; second, clarifying the demarcation criteria between Money Laundering offenses and stolen property offenses.

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# Research on the Limitations of Bone Age Assessment in Confirming the Age of Criminal Responsibility

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**Abstract**

Bone age assessment is a technical means to observe the growth age of human beings by utilizing biological laws. At present, there are identification methods such as the atlas method, the scoring method, and the CHN method. However, bone age assessment has limitations in accuracy when it comes to confirming the age of criminal responsibility, is ambiguous in terms of the basis for legal application, has difficulties in coordinating with other evidence and in cross-regional and cross-jurisdictional applications, and also has problems such as chaotic qualifications of institutions and personnel and a lack of unified standards. Therefore, bone age assessment can only serve as an auxiliary reference to corroborate or supplement other evidence chains, and can only become the basis for age determination under extreme circumstances.

**Keywords:** bone age assessment, forensic medicine, age of criminal responsibility, Criminal Procedure Law

## 1. Introduction of the Problem

Bone age identification is a technical means to infer an individual's biological age by observing and analyzing the growth and development characteristics of human bones. It mainly relies on the specific laws presented by bones at different growth stages, such as the appearance time of ossification centers, the closure of epiphyseal lines, and changes in the shape and size of bones. By comparing these with corresponding standards, the bone age of an individual can be obtained. As a relatively objective biological indicator, bone age has important applications in many fields, including anthropology, clinical medicine, sports science, and forensic medicine. In the field of forensic medicine, especially in cases involving juvenile crimes, bone age identification is often used in practice to assist in determining the age of criminal suspects, and further assess their criminal liability capacity. However, the bone age obtained from bone age identification is a biological age, while criminal liability capacity is determined based on chronological age, that is, the time of survival represented by the AD calendar. Affected by various factors, the two cannot replace each other (Zhou Xiaoping, 2001)[1]. In practice, some defense lawyers also oppose using bone age identification as the basis for determining the age of the parties.

However, in judicial practice, case situations are often complex. There are indeed cases where, except for bone age identification, there is no other effective evidence to prove the age of the

parties. We cannot simply and rudely deny the role of bone age identification. Based on the growth and development laws of human bones, bone age identification can, to a certain extent, provide reference information for age determination. Especially when other conventional evidence is lacking, it may become one of the few clues. However, we must clearly recognize that bone age identification has many inherent disadvantages. In terms of accuracy, it is comprehensively affected by various factors such as genetics, nutrition, and environment. As a result, the outcome usually can only be a rough age range, and it is difficult to be precise to the specific date required by the age of criminal responsibility. For example, during adolescence, the error of bone age identification may reach ±1 year or even larger, which is a huge obstacle to accurately determining the age of criminal responsibility. In terms of legal application, the relevant regulations are vague, lacking clear operating rules, resulting in inconsistent admissibility standards in judicial practice and prone to disputes. In terms of procedures and standards, the qualifications of appraisal institutions and personnel are chaotic, lacking unified norms and effective supervision. There are significant differences between different appraisal methods and in the application of the same method in different regions. Moreover, the update of standards lags behind, unable to adapt to the dynamic changes in the growth and development of children and adolescents. In view of this, it is necessary to explore what are the limitations of bone age identification? What is the application boundary of bone age identification?

## 2. Basic Principles and Methods of Bone Age Identification

### *2.1 Biological Basis of Bone Age Identification*

The core biological basis of bone age identification lies in the fact that the growth and development of human bones follow a specific time sequence and rules. During an individual's growth process, bones gradually undergo the ossification process starting from the fetal period. The appearance of ossification centers is one of the key signs for judging bone age. The ossification centers of different bone parts appear sequentially at specific age stages. For example, in the development of long bones, the ossification centers in the epiphyseal area gradually form and grow larger with age. Generally, in infancy, some bones in the hands and wrists begin to show primary ossification centers, and subsequently, the development speed of these ossification centers is closely related to the individual's growth and development process.

As the age further increases, the epiphyseal line between the epiphysis and the diaphysis gradually changes. During childhood and adolescence, the epiphyseal line is in a relatively active growth state, and the bones grow longitudinally continuously. When an individual approaches adulthood, the epiphyseal line gradually closes, which marks the gradual cessation of bone growth. This orderly process of the appearance of ossification centers, the growth, and closure of epiphyseal lines constitutes the biological foundation of bone age identification, making it possible to infer an individual's age by observing the state of bones.

### *2.2 Introduction to Common Bone Age Identification Methods*

#### 2.2.1 Greulich-Pyle Atlas Method

The atlas method is one of the more traditional and widely used methods in bone age identification. Take the G-P atlas published by Greulich and Pyle in 1950 as an example. It was compiled through long-term and systematic observation and analysis of X-ray films of the wrist bones of children from middle-and upper-class American families. In practical applications, appraisers compare the X-ray film of the wrist of the individual to be tested with the standard images in the G - P atlas. They observe features such as the shape, size of the bones on the tested X-ray film, the appearance and development degree of the ossification centers, and find the age corresponding to the most similar image in the atlas as the estimated bone age of the individual to be tested. The advantage of this method is that it is relatively simple and intuitive to operate, and it has certain convenience for beginners or in large-scale screenings. However, it is highly subjective because different appraisers may have different judgments on the degree of image similarity. Moreover, the samples on which the atlas is based have certain limitations and may not be fully applicable to people of different ethnic groups, regions, or socioeconomic backgrounds.

#### 2.2.2 Tanner-Whitehouse Scoring Method

The TW series of bone age scoring methods

proposed by Tanner, Whitehouse, etc. play an important role in the field of bone age identification. For example, the TW2 method was developed based on in-depth research on the X-ray images of the wrist bones of 2,600 children in the UK and Western Europe. This method divides the maturity of 20 bones in the left wrist into 8 – 9 grades in detail and assigns corresponding scores to each grade. When conducting bone age identification, first, the development of each bone is accurately evaluated and scored, then the scores of all bones are accumulated, and finally, the individual's bone age is determined by referring to a special bone age score table or the SMS-age curve. The advantage of the TW scoring method is that its evaluation process is relatively quantitative, which improves the accuracy to a certain extent compared with the atlas method. However, it also has obvious disadvantages. On the one hand, it is greatly affected by factors such as the era and population. For example, when directly applied to the bone age determination of Chinese children, due to the differences in the growth and development characteristics between Chinese children and adolescents and those in the UK and Western Europe, relatively large errors may occur. On the other hand, its evaluation process is relatively complex, with high requirements for appraisers. Appraisers need to have rich experience and professional knowledge, and the operation is time-consuming.

2.2.3 CHN Method

At the end of the 1980s, Chinese researchers developed the "Evaluation Standard for the Bone Development of the Wrist in Chinese People," that is, the CHN method[2], with the TW2 method as an important reference and combined with the actual situation of more than 30,000 samples from 11 provinces and cities in China. During the identification process, appraisers carefully observe the X-ray images of 14 bones in the left wrist according to specific standards, determine the development grade of each bone, and calculate the bone age by referring to the corresponding scores. The outstanding feature of the CHN method is that it fully considers the growth and development characteristics of Chinese children and adolescents, is more in line with the actual situation of the Chinese population, and has played an important role in the field of bone age identification in China. However, with the passage of time, the accelerated changes in the growth and development of Chinese children and adolescents, and the continuous update of research methods, the CHN method has gradually shown some limitations. For example, the complexity of the evaluation makes it require more manpower and time in practical applications, and it lacks universality internationally, which is not conducive to international exchanges and comparisons.[3]

## 3. Accuracy Limitations of Bone Age Identification in Confirming the Age of Criminal Responsibility

### *3.1 Strict Accuracy Requirements for the Age of Criminal Responsibility*

In the criminal justice system, the definition of the age of criminal responsibility follows extremely strict accuracy standards. Legal provisions clearly and explicitly stipulate that the determination of the age of criminal responsibility must be accurate to the specific date. This is because in the actual operation of judicial practice, even a time difference as small as one day is likely to have an essential impact on whether a criminal suspect needs to bear criminal responsibility. Especially in cases involving serious criminal acts such as intentional homicide, serious robbery, and rape, when the age of the criminal suspect is exactly near the critical value of the age of criminal responsibility, the accurate date of birth becomes the core and crucial factor in determining whether they should be subject to criminal punishment. For example, in some cases, if the criminal act occurs on or after the day when the criminal suspect turns 14 or 16 years old, according to legal provisions, they may face severe sanctions under criminal law. However, if the criminal act is committed before the critical age, then according to the principle of legality of crimes and punishments, the criminal suspect usually should not bear criminal responsibility. This requirement of accuracy to the specific date reflects the solemnity and preciseness of the law in determining criminal responsibility and ensures the fairness and accuracy of legal application.

### *3.2 Accuracy Defects of Bone Age Identification*

3.2.1 Technical Principle Limitations

Firstly, bone age identification mainly infers an individual's age based on the growth and development laws of human bones. Its core principle lies in observing the characteristic

changes of bones at different growth stages, such as the appearance time of ossification centers, the closure of epiphyseal lines, and the shape and size of bones.[4] However, the changes in these bone characteristics do not follow an absolutely fixed time process but are comprehensively affected by multiple factors.

Secondly, in terms of genetic factors, due to differences in genetic genes, the bone development speed and process of different individuals may vary significantly from birth. Some families may have a genetic tendency of early or late bone development, causing the relationship between the bone age and the actual age of family members to deviate from the general standard. For example, children in some families may have significantly advanced bone development among their peers, with the appearance of ossification centers and the closure of epiphyseal lines earlier than the average level. In other families, the opposite situation may occur, with relatively slow bone development.

Thirdly, nutritional status also plays a crucial role in bone development. During an individual's growth process, if there is a long-term lack of key nutrients such as calcium, phosphorus, and vitamin D, the growth and mineralization process of bones will be hindered, resulting in the bone age lagging behind the actual age. Conversely, individuals with sufficient and balanced nutrition may have relatively normal or slightly advanced bone development. For example, in some poor areas, due to the single-diet structure and insufficient nutrition intake of children, their bone age is often lower than that of their peers living in nutritionally rich environments.

Finally, environmental factors cannot be ignored. Geographical environment factors such as altitude and climate conditions can affect bone development. The hypoxic environment in high-altitude areas may inhibit bone growth, causing the bone age of local adolescents to be relatively delayed. The warm climate and abundant sunlight in tropical areas may, to a certain extent, promote bone development, resulting in a relatively advanced bone age. In addition, lifestyle factors such as exercise volume and labor intensity can also interfere with the normal bone development process. Adolescents engaged in long-term high-intensity physical labor or a large amount of physical exercise may have an increased mechanical stress on their bones, which may stimulate bone growth and cause a certain degree of deviation in bone age.[5]

3.2.2 Actual Error Manifestations

Due to the complex influence of the above-mentioned multiple factors, there are obvious errors in the practical application of bone age identification. Currently, even with relatively advanced bone age identification technologies and methods, the results can only provide a rough age range, usually difficult to be accurate to the specific year, and far from meeting the requirement of accuracy to the day for the age of criminal responsibility.

A large number of clinical studies and statistical data of actual cases show that the error range of bone age identification varies in different age groups. In infancy, due to the relatively fast bone growth speed and relatively small individual differences, the error of bone age identification may be relatively small, generally around ±1 month. During adolescence, as the bone development speed gradually slows down but individual differences increase, the error of bone age identification may expand to ±1 year or even larger. After adulthood, bone development basically stops, and the accuracy of bone age identification further decreases, with the error range possibly reaching ±5 years or even wider.[6] Such a large error range makes bone age identification inadequate when facing the precise determination of the age of criminal responsibility.

*3.3 Difficulty in Applying Bone Age Identification to Confirm the Age of Criminal Responsibility*

Given the huge gap in accuracy requirements between bone age identification and the age of criminal responsibility, bone age identification faces many insurmountable difficulties in the process of confirming the age of criminal responsibility and is difficult to be directly used as a reliable basis for determining the age of criminal responsibility.

In actual judicial cases, when the bone age identification result is in the critical interval of the age of criminal responsibility, its ambiguity will cause great confusion in judicial determination. For example, if the bone age identification result shows that the criminal suspect's bone age is around 14 years old, but it is impossible to accurately determine whether they have reached 14 years old, in this case, judicial personnel cannot determine whether the

criminal suspect should bear criminal responsibility solely based on the bone age identification result. This not only triggers a large number of disputes and uncertainties in judicial practice, may lead to the stalemate of case trials, but also may produce unjust judgment results, seriously affecting the fairness and authority of justice.

In some complex cases, criminal suspects may take advantage of the accuracy defects of bone age identification to evade legal sanctions. They may deliberately provide false information or interfere with the bone age identification process, making the identification results more ambiguous. For victims and their families, because bone age identification cannot accurately determine the criminal suspect's age of criminal responsibility, it may lead to their suspicion of the fairness of justice, thereby affecting the trust foundation of the rule of law in society. Therefore, at the current technical level, the limitations of bone age identification in confirming the age of criminal responsibility are obvious, and there is an urgent need to find more accurate and reliable methods to solve this problem.

## 4. Dilemmas in the Legal Application of Bone Age Identification

### *4.1 Vagueness and Uncertainty of Legal Basis*

At the level of legal application, bone age identification faces many dilemmas, and the first one is the vagueness and uncertainty of the legal basis. Although the Supreme People's Procuratorate has issued relevant replies [1], stipulating that bone age identification can be used as evidence to determine the age of criminal suspects under specific circumstances, the key expressions therein lack clear definitions. For example, regarding the requirement of "accurately determining" the age of criminal suspects, no specific measurement standards or accuracy ranges are given. In actual operations, the understanding and grasp of this by different regions and judicial personnel vary greatly. Some judicial personnel may consider that the bone age identification result within a certain error range can be regarded as accurate determination, while others may require a higher accuracy level. This has led to great arbitrariness in the admissibility of bone age identification results in judicial practice.

At the same time, the "prudent handling" mentioned in the reply also does not clearly define the specific operation process and judgment criteria. When the bone age identification conclusion is near the critical value of the age of criminal responsibility and cannot be accurately judged, judicial personnel lack unified guidance in deciding whether to conduct further investigations, how to comprehensively consider other evidence, and finally how to determine the age of criminal suspects. This makes similar cases may be handled completely differently in different judicial jurisdictions, seriously affecting the fairness and consistency of justice.

### *4.2 Coordination Problems with Other Evidence*

There are great difficulties in coordinating bone age identification with other common types of evidence in the process of determining the age of criminal responsibility. Household registration certificates are usually regarded as key documentary evidence for determining age and have high authority. However, in reality, there are many loopholes in household registration management. On the one hand, in some remote areas or places where household registration management was not standardized in the early days, registration errors may occur, such as deviations in the recorded date of birth, confusion between the lunar and Gregorian calendars, etc. On the other hand, there are phenomena of artificial tampering with household registration information, such as changing the age for the purpose of evading family planning penalties, enrolling in school early, or joining the army early. When the bone age identification result is inconsistent with the household registration certificate, judicial personnel find it difficult to make a choice. If they completely rely on the household registration certificate, they may ignore the real physiological development situation of the individual reflected by the bone age identification. However, if they overly rely on bone age identification, it may trigger doubts about the stability of the household registration management system, resulting in confusion in legal application.[7]

Testimony of witnesses, as another important type of evidence, also has problems in age

[1] See the Reply of the Supreme People's Procuratorate on Whether "Bone Age Identification" Can Be Used as Evidence for Determining the Age of Criminal Responsibility (No. 6 [2000], Research and Development of the Supreme People's Procuratorate), issued on February 21, 2000.

determination. Witnesses may provide partial testimony due to their close relationship with the criminal suspect, or the testimony may be inaccurate due to factors such as the passage of time, vague memories, and different observation angles. In some cases, the bone age identification result contradicts the witness testimony. In the absence of clear evidence admissibility rules, judicial personnel often find it difficult to judge the probative force of the two, thus affecting the trial process of the case and the fairness of the judgment result.

*4.3 Difficulties in Cross-Regional and Cross-Jurisdictional Applications*

With the development of society, population mobility has become increasingly frequent, and the legal application problems of bone age identification in cross-regional criminal cases have become more prominent. Different regions may adopt different bone age identification standards and methods, making it extremely complex to compare and comprehensively judge bone age identification results in cases involving multiple regions. For example, some economically developed regions may use more advanced technologies and standards for bone age identification, while the identification methods and accuracy in some relatively backward regions may be different. When a criminal suspect commits crimes in different regions and the bone age identification results of each region are inconsistent, how to determine a unified and credible age determination result has become a thorny problem in judicial practice.

In international judicial cooperation, the cross-jurisdictional application dilemma of bone age identification is more obvious. The legal systems, cultural backgrounds, and bone age identification technical standards of different countries vary greatly. In transnational criminal cases, when it is necessary to refer to bone age identification results to determine the criminal suspect's age of criminal responsibility, how to coordinate the differences among countries to ensure the fairness and justice of legal application has become an important challenge in international judicial cooperation. Currently, there is a lack of unified legal application rules and coordination mechanisms for bone age identification internationally, which has, to a certain extent, hindered the effective handling of transnational criminal cases and also affected the stability of the international judicial order.

## 5. Defects in the Procedures and Standards of Bone Age Identification

*5.1 Chaos in the Qualifications of Appraisal Institutions and Personnel*

In the current field of bone age identification, there is a lack of unified norms for the qualifications of appraisal institutions and personnel, presenting a rather chaotic situation. Many institutions have set foot in the bone age identification business, but many of them have not obtained professional and authoritative judicial appraisal qualification certifications. In the market, in addition to some regular scientific research institutions and professional medical institutions, some commercial testing centers do not even have the necessary professional equipment and technical conditions but still provide bone age identification services.

The backgrounds of personnel engaged in bone age identification are also diverse. Some personnel may have only received simple training and lack the support of a systematic professional knowledge system in medicine, anthropology, forensic medicine, etc. When conducting appraisals, they may not be able to accurately identify and interpret the subtle features on bone X-ray films, nor can they comprehensively consider various factors affecting bone age, thus greatly reducing the reliability of the appraisal results. For example, in some small and non-professional appraisal institutions, the staff may not have passed strict professional assessments, have a poor understanding of the standards and methods of bone age identification, and only make judgments based on limited experience. In such cases, the appraisal conclusions are likely to be biased.

Due to the lack of an effective supervision mechanism and industry access threshold, the bone age identification reports issued by these institutions and personnel with doubtful qualifications may be mistakenly believed or misused by some judicial personnel in judicial practice, seriously interfering with the realization of judicial justice and increasing the risk of misjudgment.

*5.2 Lack of Unified Appraisal Standards and Norms*

There are serious problems of non-uniformity in the standards and norms of bone age identification. There are significant differences between different appraisal methods. The atlas method, scoring method, CHN method, etc.,

each have their own unique operation processes and judgment bases, but there is a lack of effective integration and coordination among these methods. For example, the atlas method is relatively intuitive and simple, but it is highly subjective. Different appraisers may have large differences in the interpretation of the atlas. The scoring method is relatively quantitative, but the setting of scores and the allocation of weights may vary due to factors such as regions and populations, resulting in different appraisal results in practical applications.

Even for the same appraisal method, there may be differences in its application in different regions or institutions. Some regions may have made local adjustments to the appraisal standards based on their own experience and research, but such adjustments have not been widely verified and uniformly recognized. This makes it extremely difficult to compare and adopt bone age identification results in cross-regional judicial cases. For example, in a criminal case involving multiple regions, different regional appraisal institutions use the same appraisal method but obtain different bone age identification results. Judicial personnel are often at a loss when making judgments and cannot determine which result is more reliable, thus affecting the trial process of the case and the fairness of the judgment.[8]

In addition, with the passage of time and the development of science and technology, the growth and development of children and adolescents are constantly changing, but the update of bone age identification standards lags behind. The old standards may not be able to accurately reflect the bone development characteristics of contemporary people, further increasing the errors and uncertainties in the practical application of bone age identification and severely weakening its role in determining the age of criminal responsibility.

## 6. Case Analysis

### *6.1 Basic Case Situation*

In the case of Fang Moumou's intentional homicide, robbery, and corpse-insulting, the core controversial focus of the case is whether the defendant Fang Moumou was over 18 years old when committing the crime. This point is directly related to whether the death penalty, a crucial punishment, can be applied to him. In terms of evidence, the prosecution mainly relied on Fang Moumou's household registration certificate materials and school enrollment materials. These materials showed that he was born in February 2001. Calculated from this, when he committed the crime in September 2019, he was already over 18 years and 6 months old. Moreover, the prosecution also presented that the bone age identification result corroborated that Fang Moumou was over 18 years old when committing the crime, trying to construct a complete chain of evidence from multiple aspects to support its accusation. However, the defender proposed that Fang Moumou's household registration certificate and school enrollment materials were deliberately fabricated by his mother to enable Fang Moumou to enter school early. And due to many uncertainties and reliability issues in the bone age identification result, it should not be used as the key basis for determining Fang Moumou's age. The defender further provided the hospital vaccination registration materials as strong evidence and claimed that the age shown in this vaccination registration was Fang Moumou's real age. Based on this inference, Fang Moumou was under 18 years old when committing the crime. Due to the above disputes, this case was reviewed by the Supreme People's Court and remanded for retrial to further clarify the facts of the case and ensure judicial fairness and accuracy.

### *6.2 Analysis of Bone Age Identification Problems*

#### 6.2.1 Disputes over the Applicability of Standards

When conducting the bone age identification of Fang Moumou in this case, the appraiser used the "Evaluation Method for the Maturity of Wrist Bones of Chinese Adolescents and Children" of the sports industry standard. The defender, based on the clear provisions of the "General Rules for Forensic Appraisal Procedures," precisely pointed out that the application premise of this appraisal standard is based on the "professional field," and since Fang Moumou was not an athlete, the application of this standard in this case was obviously incorrect. In contrast, after a large number of document reviews and case retrievals, the defender found that the "Technical Regulations for Bone Age Identification of Han Adolescents in Forensic Science (GA/T 1583 - 2019)" was the appropriate standard for this case. This standard is clearly applicable to Han adolescents aged 12 – 20 and is used in the fields of forensic science and justice. Its appraisal results are unique.

According to this standard, when X-ray photos were taken of Fang Moumou on August 12, 2020, his bone age was 19.5±1 years old (18.5 years old). From this, it was inferred that his date of birth was February 12, 2002, indicating that Fang Moumou was very likely under 18 years old when committing the crime on September 11, 2019. This fully highlights the crucial importance of the selection of bone age identification standards in judicial practice. Different standards may lead to completely different age determination results, thus having a decisive impact on the outcome of the case.

6.2.2 Doubts About Appraisal Qualifications

The defender searched on the "National Forensic Appraisers and Forensic Appraisal Institutions Inquiry Platform" and found that the practicing category of the appraiser Huang in this case was forensic toxicology, not the forensic clinical appraisal field to which bone age identification belongs. According to relevant regulations, Huang clearly did not have the qualifications for bone age identification. This key issue seriously undermined the legal and reliable basis of the bone age identification result. In the judicial process, the compliance of the qualifications of appraisers is an important prerequisite for ensuring the validity of appraisal results. The appraisal opinions issued by appraisers without qualifications should not be adopted by judicial organs as the basis for deciding cases.

6.2.3 Impact of Appraisal Time on Accuracy

Fang Moumou's bone age identification was carried out nearly one year after the crime. Such a long time interval greatly reduced the accuracy of the identification result. In criminal cases, especially those involving age critical points, the time node of bone age identification is of great significance. Because during this period, the human bones may change due to various factors, such as changes in the individual's living environment and fluctuations in nutritional status. These factors may interfere with the accuracy of the bone age identification result. Therefore, in such a situation, bone age identification must not be used as the only standard for determining age. Otherwise, it is very likely to lead to misjudgments and seriously damage judicial justice.

*6.3 Case Review*

In the case of Fang Moumou's intentional homicide, there were many problems in the bone age identification when determining Fang Moumou's age, making it impossible to be a reliable basis.

Firstly, bone age identification itself has accuracy limitations. Affected by multiple factors such as genetics, nutrition, and environment, the results are often only a rough age range and are difficult to be precise to the specific date required by the age of criminal responsibility. In this case, even if the so-called standard was used for identification, it was impossible to accurately determine whether Fang Moumou was over 18 years old when committing the crime. This ambiguity made it unable to meet the high-precision requirements of age determination in judicial practice.

Secondly, there were serious errors in the procedures of the bone age identification in this case. On the one hand, the appraiser used the "Evaluation Method for the Maturity of Wrist Bones of Chinese Adolescents and Children" of the sports industry standard, and since Fang Moumou was not an athlete, this standard was obviously not applicable to this case. According to the "General Rules for Forensic Appraisal Procedures," a standard that conforms to the professional field and is applicable to judicial practice, such as the "Technical Regulations for Bone Age Identification of Han Adolescents in Forensic Science (GA/T 1583 - 2019)," should be used. However, the appraiser did not follow this principle, resulting in the ineffectiveness of the identification result. On the other hand, it was found through inquiry that the practicing category of the appraiser Huang was forensic toxicology, not the forensic clinical appraisal field to which bone age identification belongs. He did not have the qualifications for bone age identification. This seriously violated the normative requirements of the appraisal procedure, making the bone age identification lose its legal basis from the source of the procedure.

Thirdly, there were other evidences in this case that could prove Fang Moumou's age. The hospital vaccination registration materials provided by the defender showed different age information from that of the prosecution, and there were reasonable grounds to indicate that this material might reflect Fang Moumou's real age. In contrast, given the above-mentioned accuracy and procedural problems of bone age identification, its reliability was far lower than that of these evidences with clear directivity.

In conclusion, due to the accuracy limitations, procedural errors of bone age identification itself, and the existence of other more persuasive evidences, in the case of Fang Moumou's intentional homicide, bone age identification could not be used as the basis for determining Fang Moumou's age. This case serves as a wake-up call for judicial practice. When using bone age identification, it is necessary to strictly review its standards, procedures, and the relationship with other evidences to ensure the accuracy and fairness of age determination and avoid judicial injustice caused by the wrong adoption of bone age identification.

**7. Conclusion**

This article deeply analyzes the situation of bone age identification in the confirmation of the age of criminal responsibility, clearly reveals its limitations in many aspects, and based on this, preliminarily explores its reasonable application boundaries.

The limitations of bone age identification are significant and complex. In terms of accuracy, affected by the interweaving of factors such as genetics, nutrition, and environment, its results can only provide a rough age range. For example, during adolescence, the error can reach ±1 year or even wider, making it difficult to precisely meet the specific date requirements of the age of criminal responsibility, resulting in a lack of accuracy and reliability in the determination of critical ages. In terms of legal application, the key details of relevant regulations are vague. The lack of quantitative definition for "accurately determining" and the absence of operation guidelines for "prudent handling" have led to chaotic admissibility standards in judicial practice. Different regions and personnel handle cases differently, seriously undermining judicial fairness and unity. At the level of procedures and standards, the supervision of the qualifications of appraisal institutions and personnel is lacking. A large number of unqualified entities participate. There are significant differences between different appraisal methods and in their regional applications, and the standard update lags behind, unable to adapt to the growth and development changes of adolescents. This has greatly weakened the scientific nature and authority of the appraisal results, making it difficult to effectively support the determination of the age of criminal responsibility.

Regarding the application boundary of bone age identification, given its limitations, when there are other reliable evidences (such as accurate household registration certificates, flawless birth medical certificates, credible witness testimonies, etc.) that can clearly determine the age, bone age identification should not be used as the primary or key evidence. It can only serve as an auxiliary reference to corroborate or supplement other evidence chains. Only in extreme cases where other conventional age-determining evidences are completely lacking or seriously doubtful, and the bone age identification can follow strict procedural norms (conducted by qualified personnel in accordance with judicial-applicable standards within a reasonable time frame), can it be carefully considered for inclusion in the comprehensive consideration of age determination. However, it still needs to be comprehensively weighed and carefully judged in combination with the overall situation of the case and other indirect evidences. By no means can the age of criminal responsibility be determined unilaterally based on the bone age identification result. In this way, it can ensure the precision, fairness, and legality of judicial judgments in the age-determination link, and safeguard the dignity of the law and social fairness and justice.

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# International Criminal Law: Should Ecocide Become the Fifth Core International Crime?

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**Abstract**

In recent years, climate change and environmental damage have had a profound impact on the global ecosystem and human society. Climate change and ecological destruction have become a global crisis, but the current international criminal law system has not yet provided an adequate legal response to large-scale environmental destruction. This paper explores whether ecocide should be incorporated into the Rome Statute as the fifth core international crime after war crimes, genocide, crimes against humanity and crime of aggression. By analyzing the legal basis of ecocide and its global impact, the paper assesses the necessity and feasibility of incorporating the crime of ecocide and discusses the future of the topic in the light of existing academic research.

**Keywords:** ecocide, international criminal law, environmental crimes, Rome Statute

## 1. Introduction

Climate change and environmental destruction have become global crises, but existing international criminal law has yet to include them as core crimes. In recent years, with the rapid changes in climate change and the deepening of environmental destruction, legal scholars and environmental organizations have promoted the concept of "ecocide" in the hope of incorporating intentional and systematic environmental destruction into the international criminal law system. Polly Higgins has argued that ecocide should have the same legal status as genocide and war crimes in order to deter large-scale environmental destruction. In addition, the United Nations Environment Programme has emphasized that the existing international legal framework fails to adequately address the issue of criminal liability for serious environmental damage.

In addition, from the legal level, ecocide is similar to other core international crimes (e.g., genocide, crimes against humanity) in some aspects. Sands points out that ecocide is essentially an act of systematic destruction of the environment, jeopardizing the basis of human existence, and is comparable to genocide in terms of the scope of its impact and seriousness. Therefore, the establishment of the crime of ecocide not only has a legal basis, but also conforms to the development trend of international criminal law.

## 2. Historical Trends in the Development of Ecocide as the Fifth Core International Crime

The crime of ecocide, as an independent concept of international crime, is not a new concept. Its development has gone through a long period of academic discussion, legal practice and international political gamesmanship. From its beginnings as an act of environmental destruction to today's global debate on whether it should become the fifth core international crime, the historical trend of ecocide has evolved over a long period of time.

*2.1 Early Attention to Environmental Crimes and the Inspiration of Genocide*

In 1941, Winston Churchill, in describing the German invasion of the Soviet Union, referred to a "crime without a name" to describe Nazi Germany's deliberate destruction of specific groups. The term "genocide" was then first coined by Raphael Lemkin in his 1944 book *Axis Rule in Europe*. Subsequently, the United Nations adopted a resolution in 1946 recognizing that genocide constitutes an international crime, and the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) was adopted in 1948, culminating in the 1998 Rome Statute recognizing the crime as one of the four core international crimes under the jurisdiction of the International Criminal Court.

Some scholars have pointed out that the provision of the Convention on the Prevention and Punishment of the Crime of Genocide, "intentionally inflicting on a group conditions of life that are difficult for it to survive", should theoretically include the intentional destruction of ecosystems on which the group depends for its survival. As a result, the crime of ecocide was gradually introduced in the academic community and a conceptual analogy was drawn with genocide, laying the groundwork for subsequent legal developments.

*2.2 Development of the Concept of "Ecocide" and Early International Discussions*

The term ecocide was first coined by Professor Arthur W. Galston at the February 1970 Conference on War and National Responsibility. He criticized the ecological damage caused by the use of Agent Orange by the United States during the Vietnam War as a deliberate act of environmental destruction that should be condemned under international law. He argued that the international community should draft an international convention against ecocide, similar to the Nuremberg Trial's finding of genocide, and that the United Nations was best suited to take on this responsibility.

In 1972, the United Nations Conference on the Human Environment was held in Stockholm, and the then Prime Minister of Sweden, Olof Palme, used the term "ecocide" in his opening speech, re-emphasizing the harsh environmental impact of the use of Agent Orange in the Vietnam War, which gradually gained the concept international attention. In 1973, international law scholar Richard Falk further deepened the legal framework of the crime of ecocide, suggesting that it could be analogous to genocide. In 1973, Richard Falk further deepened the legal framework of the crime of ecocide, suggesting that it could be analogized to the crime of genocide. He wrote the Draft on International Convention on the Crime of Ecocide and suggested that the United Nations draft a relevant legal document to explicitly prohibit acts that cause irreversible damage to ecosystems. Since then, the concept of ecocide has gradually moved from academic discussion to the practice of international law.

*2.3 The International Law Commission and the Legal Attempt to Commit Ecocide*

As early as 1954, the International Law Commission (ILC) drafted the Draft Code of Offences Against the Peace and Security of Mankind, article 22 of which dealt with "the use of methods or means of warfare likely to cause widespread or long-term damage to the natural environment", Article 22 deals with "the use of methods or means of warfare likely to cause widespread and long-term damage to the natural environment", while article 26 proposes that "individuals who intentionally and seriously damage the environment shall be held internationally criminally responsible".

In 1991, the bill was renamed the Draft Code of Crimes Against the Peace and Security of Mankind (Draft Code of Crimes Against the Peace and Security of Mankind), which further discussed the scope of application of the crime of ecocide. However, during the final deliberations in 1996, the relevant provisions on ecocide were deleted, probably mainly due to the issue of legal liability for nuclear weapons testing. Some countries were concerned that the inclusion of environmental crimes in the core international crimes would affect their own military and nuclear policies, and the article was ultimately not adopted.

*2.4 Contemporary International Promotion of the Crime of Ecocide*

In recent years, the crime of ecocide has re-entered the international legal discourse. In 2019, the Republic of Vanuatu and the Republic of Maldives formally proposed consideration of the concept of ecocide at the 18th Assembly of States Parties to the ICC. French President Emmanuel Macron has also supported legislation on the crime on several occasions, while the Belgian government formally raised the subject of ecocide-related issues with the ICC in 2020.

In November 2020, a committee of international legal experts began drafting a legal definition of the crime of ecocide, a group of experts co-chaired by Philippe Sands QC and Dior Fall Sow, and in June 2021 officially published a draft law on the crime of ecocide. This draft provides a clearer legal framework for the crime of ecocide and promotes international consideration of its inclusion in the Rome Statute.

**3. Legal Basis of the Crime of Ecocide**

The concept of ecocide dates back half a century, and the evolution of international criminal law over more than 50 years has provided considerable background to the concept of "ecocide". Therefore, before determining whether ecocide can be included among the core international crimes, it is important to clarify the relationship between the relevant legal foundations that already exist in international law, including the relevant theoretical foundations of international environmental law and international human rights law.

*3.1 International Environmental Law: Theoretical Origins of the Crime of Ecocide*

The theoretical basis for the crime of ecocide begins with international environmental law, particularly in multilateral international environmental treaties and conventions. For example, the United Nations Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD) explicitly state that states should take responsibility for preventing environmental damage, especially when such damage crosses national boundaries, and international treaties require states to take measures to combat climate change, protect ecosystems, and avert environmental disasters (Vinuales, 2020). These international agreements not only set the basic obligations of states for environmental protection, but also emphasize the importance of global cooperation in combating environmental crises. The International Court of Justice has further elaborated on the threat to the human condition posed by serious environmental damage in a number of jurisprudences on environmental liability, stating that environmental damage is not just an infringement of natural resources, but also has a far-reaching impact on the survival and well-being of citizens around the globe, which provides a legal basis for the crime of ecocide.

*3.2 International Human Rights Law: Doctrinal Support for the Crime of Ecocide*

In international human rights law, recent developments on the "right to a clean environment" have provided solid legal support for the crime of ecocide. The United Nations Human Rights Council officially recognized in 2021 that a clean environment has become one of the fundamental human rights of global citizens. The recognition of this human right means that when states or transnational corporations take steps to destroy the environment that result in serious ecological consequences, they are not only violating natural resources, but they may also be violating basic human rights, such as the right to life and the right to health, of global citizens. This argument further strengthens the legitimacy of ecocide as an international criminal law offense within the framework of international law. By closely linking environmental destruction to the human condition, international human rights law provides significant support for the legitimacy of ecocide and ensures that the safeguarding of environmental rights is an essential part of the global rule of law system.

The legal basis for the crime of ecocide is therefore well supported in international environmental law and international human rights law. International environmental law provides the theoretical basis for the crime through multilateral treaties and conventions, clarifying the responsibility of States in preventing environmental damage. And international human rights law provides solid support for the legality of the crime of ecocide by recognizing the right to a clean environment as a fundamental human right. The combination of the two provides a relevant legal basis for global ecological protection and helps to support the campaign to criminalize the crime of

ecocide.

## 4. The Need for the Inclusion of Ecocide in the Rome Statute

### *4.1 Limitations of Existing Laws*

Although international criminal law provides a framework for combating environmental destruction in many ways, the existing body of law has significant limitations in responding to large-scale environmental destruction, particularly ecocide in peacetime. Existing international criminal law is designed to focus on the core international crimes of war crimes, genocide, crimes against humanity, and aggression, but the scope of application and definitions of these offenses remain insufficient to address transnational environmental crimes.

First, while the war crimes provisions of the Rome Statute cover damage to the environment in wartime, they are limited to environmental damage in the context of war and their application is more restricted. For example, article 8 of the Rome Statute provides that "serious damage to the natural environment" caused by war may constitute a war crime. However, this provision only applies to environmental damage during armed conflict and does not take into account the long-term damage to global ecosystems caused by environmental damage in peacetime, especially when led by governments or multinational corporations. As a result, the current legal system fails to effectively cover global environmental crises resulting from activities such as large-scale development, pollution, illegal mining, and deforestation, which often do not meet the traditional definition of war crimes, rendering them ineffectively sanctioned under the existing framework.

Secondly, the current system of international criminal law has failed to adapt to the rapidly changing global environmental problems. With the exacerbation of climate change and the destruction of ecosystems, environmental problems have transcended their traditional regional and localized scope and have become global crises. Problems such as climate change, deforestation and pollution are no longer confined to a particular region, but concern the balance of the global ecology and the long-term survival of mankind. Most of these problems occur in peacetime and are not caused by explicit armed conflict. As a result, the existing framework of international criminal law, especially the provisions for environmental damage in times of war, is inadequate to cover the increasingly complex and widespread environmental damage.

Thirdly, although provisions for crimes against humanity exist in the international criminal law system, they still fail to criminalize the environment as a stand-alone crime. For example, crimes against humanity involve a systematic attack on the human collective, but the existing framework of crimes focuses on direct acts of violence against people and does not include ecological destruction as a component of systematic violence. The lack of a specialized crime of ecocide to address acts that cause widespread, long-term and irreversible ecological damage therefore means that we are unable to robustly hold accountable, within the framework of international criminal law, those States or corporations that engage in large-scale environmental destruction in peacetime.

As a result, there is an obvious legal gap in the existing international criminal law system in dealing with environmental damage, especially acts of mass ecocide. Although some articles make certain provisions on environmental damage, these provisions are mostly limited to war or specific situations, and do not form a complete and unified system to deal with transnational and transgenerational environmental crimes. Therefore, the incorporation of the crime of ecocide into the Rome Statute as an independent international crime not only supplements the existing legal gaps, but also provides a powerful legal tool for global environmental governance, thereby filling the gaps in international law in this area.

### *4.2 Global Impacts of Ecocide*

The crime of ecocide has far-reaching consequences not only for the environment itself, but also for global climate change, human society and economic development in a wide range of negative ways. As the process of globalization accelerates and environmental destruction increases, the consequences of ecocide are not limited to the collapse of ecosystems, but also lie in its far-reaching impact on human society and the global order.

#### 4.2.1 Influencing Climate Change: Increasing Global Warming

The contribution of ecocide behaviors to global climate change is one of the most significant effects. Deforestation, over-exploitation of land,

and pollution emissions directly contribute to the process of global warming. According to Vinuales, deforestation not only reduces the Earth's carbon sinks that can absorb carbon dioxide, but also releases large quantities of greenhouse gases, leading to an increase in the greenhouse effect. In addition, polluting emissions from industrial and agricultural production, such as sulfur dioxide, nitrogen oxides, and other greenhouse gases, further contribute to global warming. Large-scale energy consumption, especially in countries dependent on fossil fuels such as coal and oil, and the neglect of environmental costs in the course of economic development have directly contributed to the acceleration of climate warming.

Against the backdrop of global warming, climate change has become one of the core issues of global governance, and the crime of ecocide was proposed precisely in the hope that international criminal law would provide more serious and powerful legal constraints on the global climate crisis.

4.2.2 Human Rights Violations: Environmental Damage and Increased Social Vulnerability

In addition to the destruction of the natural environment, the consequences of ecocide are also reflected in the violation of human society and human rights. Environmental degradation not only affects the sustainability of ecosystems, but also directly threatens the basic conditions of existence of human societies, especially for poor regions, indigenous groups and low-income countries, where ecological degradation often means scarcity of resources and deterioration of living conditions.

First, environmental damage has a particularly serious impact on food security. Climate change exacerbates the frequency of natural disasters, such as droughts and floods, directly affecting crop growth and the stability of agricultural production. In many developing countries, agriculture is the basis of economies and livelihoods, and extreme weather events often lead to large-scale crop failures, famine and water shortages. For example, the frequent droughts and floods in sub-Saharan Africa in recent years have led to severe food shortages and humanitarian crises, plunging thousands of people into poverty and hunger.

Secondly, the impact of environmental degradation on water resources is even more pronounced. Pollution of water resources and the shortage of freshwater supplies have become important problems for countries around the globe. Industrial pollution, agricultural drainage and illegal mining have led to the contamination of large numbers of rivers, lakes and groundwater sources, jeopardizing not only the safety of human drinking water but also the normal functioning of ecosystems. For communities and countries that depend on water resources for their survival, water scarcity means an extreme deterioration in living conditions, which in turn affects health, productivity and social stability.

In addition, the violation of indigenous peoples' right to subsistence is an important aspect of the impact of the crime of ecocide. Indigenous groups typically live in important ecological zones around the world, such as tropical rainforests, wetlands and mountainous areas, and their livelihoods and cultures are closely linked to these ecosystems. Ecocide behavior, especially large-scale deforestation, mineral extraction and land encroachment, directly threatens the living space of these groups and the continuation of their traditional cultures. The ecocide faced by many aboriginal communities is not only the loss of physical space, but also the loss of control over traditional lands and resources and the destruction of their way of life. The indigenous peoples' rights to survival, culture and development are often not adequately protected in these acts of environmental destruction, creating a long-term injustice for socially vulnerable groups.

In summary, ecocide not only causes irreversible damage to global ecosystems, but also exacerbates climate change, threatens the basic conditions of human existence and deepens social inequality and vulnerability. However, the current international criminal law system has obvious limitations in addressing these issues and is unable to effectively penalize acts of large-scale environmental destruction committed by States, enterprises or other subjects in peacetime. Therefore, the inclusion of the crime of ecocide in the Rome Statute will not only make up for the shortcomings of the existing legal system, but also strengthen global environmental governance through legal means and provide more serious and powerful legal constraints on the climate crisis, human rights protection and sustainable development.

**5. Legal Feasibility of Incorporating the Crime**

**of Ecocide into International Criminal Law**

According to the standards of international criminal law, core international crimes must meet several key elements: extensiveness or systematicity, specificity, and international concern. These elements constitute the basic criteria for determining whether a crime should be included in the international criminal law system. The legal feasibility and applicability of ecocide as a new international crime should be assessed through these three elements.

*5.1 Extensiveness or Systematicity: Scale and Ripple Effects of Environmental Damage*

Extensiveness and system city are paramount in determining whether an act constitutes a core international crime. According to Hall, large-scale environmental destruction is usually systematic, involves multiple countries or regions, and often has long-term, irreversible consequences. The central characteristic of ecocide is that its destructive behavior is not merely localized or episodic, but has global and systemic effects. Phenomena such as global warming, marine pollution, deforestation and species extinction, for example, are often the result of the actions of multiple States, and their impacts cross national, generational and ecosystem boundaries.

This broad and systemic nature in the definition of ecocide is one of the legal foundations of its status as a core international crime. Whether it is governmental acts, destructive production activities by transnational corporations, or illegal logging and mining in some regions, they all have far-reaching effects on the global ecosystem. These acts are not merely localized environmental pollution, but pose a fundamental threat to the global ecosystem. Ecocide therefore meets the criterion of being "Extensiveness or systematicity", demonstrating its transnational nature and global reach, with the capacity to affect biodiversity, the climate system and the long-term well-being of human societies around the world.

*5.2 Specificity: From Environmental Damage to Direct Impacts on Human Society*

"Specificity" is one of the most important criteria for determining whether a core international crime should be prosecuted. Although the crime of ecocide directly affects the natural environment, its ultimate purpose is to pose harm to human society indirectly or directly through the destruction of ecosystems. The consequences of ecocide are not only a mere infringement of natural resources, but also a threat to the survival and development of all human beings. The harm to human society from this environmental destruction is far-reaching, affecting basic human needs such as living conditions, public health, food security, and water resources.

Increased climate change due to ecocide has not only led to an increase in global temperatures, but has also led to extreme weather events, rising sea levels and reduced agricultural yields, which in turn threaten the lives of hundreds of millions of people around the globe. Large-scale deforestation, on the other hand, not only affects the global oxygen cycle, but also destroys the living space of many indigenous peoples, resulting in serious violations of their rights to subsistence and culture. These acts of environmental destruction clearly demonstrate that ecocide is not only a crime against the natural environment, but also a direct threat to the global population, and in particular poses a great challenge to the survival and well-being of the most vulnerable groups, such as low-income countries and indigenous peoples.

*5.3 International Concern: The Impetus of Global Mobilization and Transnational Cooperation*

International concern is another key factor in determining whether an act meets the criteria for a core international crime. The crime of ecocide, as an emerging crime in international criminal law, has attracted widespread global attention. Globally, especially international environmental organizations, nongovernmental organizations (NGOs), academics, and some governments have actively promoted the legislation and criminalization of ecocide. Mitchell points out that, with the growing problems of global climate change and ecological destruction, governments and international organizations are increasingly recognizing that existing legal frameworks are not able to adequately respond to the increasing severity of transnational environmental crimes.

International organizations such as the United Nations, the World Bank, and the International Red Cross have repeatedly mentioned the global threat of climate change and environmental destruction in international forums, and have called on countries to take more stringent legal measures to deal with environmental disasters. In addition, the International Criminal Court

(ICC) has also indicated that it may take environmental damage cases as one of the priority cases in the future and further promote the judicial application of the crime of ecocide. At the same time, the global environmental movement and increased public awareness have also brought the issue of ecocide to the forefront of international legal discussions.

At the national level, countries such as France and Belgium have explicitly introduced the crime of ecocide in their domestic legislation. The legal practices of these countries have not only had a significant impact domestically, but have also provided a model for future revisions of international criminal law and the incrimination of the crime of ecocide. Drafts of the crime of ecocide promoted by global environmental organizations have been endorsed by a number of national and regional organizations, and these initiatives mark the growing international recognition of the crime of ecocide and the widespread attention it has gained globally.

**6. Pathways Towards the Inclusion of Ecocide as a Fifth Core International Crime**

Revision of the framework of the Rome Statute and extension of the jurisdiction of the International Criminal Court: legal path to the criminalization of the crime of ecocide.

Since its adoption in 1998, the Rome Statute has become an important cornerstone of international criminal law, setting the scope of jurisdiction and the crimes to be tried by the International Criminal Court (ICC). However, with the intensification of the global environmental crisis, the crime of ecocide, as an emerging international crime, urgently needs to be incorporated into the international criminal law framework. In order to effectively respond to this growing environmental threat, the Rome Statute must be amended both to clarify the legal definition of the crime of ecocide and to expand the jurisdiction of the ICC so that it can address peacetime environmental crimes. The following is an in-depth discussion of how to achieve these goals in three dimensions: clarification of the definition of the crime, addition of relevant provisions and expansion of jurisdiction.

*6.1 Legal Definition of the Crime of Ecocide and Amendments to the Rome Statute*

The central question of ecocide is how to define the crime so that it can meet the criteria of a core crime under the Rome Statute. While the current body of international law already provides clear definitions of war crimes, genocide, crimes against humanity, etc., the unique nature of ecocide requires some expansion of the existing framework. Ecocide can be defined as "the massive and systematic destruction of the natural environment resulting in a long-term and irreversible threat to the global ecosystem and the survival of humankind". Such a definition must include the following elements:

Large-scale and systematicity: Unlike traditional environmental crimes, ecocide usually involves systemic acts of environmental damage, such as illegal mining, deforestation, and pollutant discharges led by transnational corporations, which not only affect local ecosystems, but also cause widespread ecological damage on a global scale.

Irreversibility and long-term effects: The key feature of ecocide is that the environmental damage it causes is irreversible and the consequences are usually long-term. For example, the effects of climate change, species extinction and ecological imbalances are all direct consequences of ecocide. This requires that the irreversibility of its consequences be explicitly provided for in the revision of the Rome Statute.

Globalization and threats to human survival: Ecocide is not limited to a particular country or region; its destructive nature transcends national boundaries and affects global ecosystems. The definition of the crime should therefore emphasize its global consequences and make clear how these acts threaten the human condition.

Having clarified the definition of the crime of ecocide, the next step is to create specialized provisions for it to be pursued and adjudicated in practice. These provisions should include a definition of the actors, particularly transnational corporations and Governments, for environmental destruction in peacetime, to ensure that the International Criminal Court is able to effectively hold them criminally accountable.

*6.2 Recourse Provisions for the Crime of Ecocide and the Supplementation of the Relevant Legal Framework*

When the Rome Statute is revised, in addition to amending the definition of the crime, a specific provision on ecocide should be added in order

to allow for the effective prosecution of such crimes on a global scale. Unlike the existing war crimes and genocide, the subject of the crime of ecocide is more diverse, involving not only State actors but also transnational enterprises and non-State actors. The creation of the new provisions therefore requires in-depth exploration of the following aspects:

Expansion of actors: The criminal subject of ecocide should include not only national Governments, but also transnational corporations and other non-State actors. For transnational corporations, especially those involved in illegal resource extraction, environmental pollution and other destructive activities, criminal prosecution should be included. This requires that the International Criminal Court be able to investigate and try peacetime environmental crimes.

Definition of transnational and global characteristics: Another characteristic of ecocide is its transnational nature, which usually involves the joint participation of multiple States or ecological impacts transmitted across borders over a long period of time. For example, the exacerbation of climate change is closely related to the global emission of pollution, and the revised Rome Statute should clearly define how these transnational acts constitute criminal liability and ensure that the International Criminal Court is able to provide effective recourse against such large-scale, cross-border environmental crimes.

Criteria for assessing environmental damage and conditions for recourse: Since the effects of the crime of ecocide are usually long-term and complex, how to assess the seriousness and irreversibility of environmental damage has become a legal difficulty. For this reason, the revised article should consider relying on scientific assessment tools, such as environmental impact assessment reports and climate change projections, as an important basis for determining whether the crime meets the criteria for prosecution.

Through the establishment of these provisions, the International Criminal Court is able to respond more effectively to environmental crimes in today's globalized context and to avoid the constraints of an overly narrow legal framework on international justice.

*6.3 Extension of the Jurisdiction of the International Criminal Court*

Currently, the jurisdiction of the International Criminal Court focuses mainly on the four core crimes of war crimes, genocide, crimes against humanity and aggression. Ecocide, however, as an emerging crime, has obvious non-wartime characteristics that call for an expansion of the ICC's jurisdiction. This expansion can be realized through the following paths:

Extension of jurisdiction to peacetime environmental crimes: The current Rome Statute mainly governs wartime environmental damage, but ecocide usually occurs in peacetime, especially in the case of environmental destruction led by Governments or transnational corporations. Therefore, the Rome Statute should be amended to explicitly provide the International Criminal Court with the authority to pursue the crime of ecocide in peacetime on a global scale. In that way, the International Criminal Court would no longer be limited to cases of wartime environmental damage, but would be able to pursue a range of long-term, systematic, transnational and irreversible acts of environmental destruction.

Jurisdiction over transnational environmental crimes: Ecocide often involves transnational acts, especially when transnational corporations or multiple countries collectively cause global ecological damage, and the International Criminal Court should have the power to try them. The revised Rome Statute should make clear provisions on the jurisdiction of such transnational environmental crimes and encourage States to pursue the crime of ecocide through international cooperation mechanisms.

**7. Conclusions**

The essence of international criminal law should be based on stability while maintaining an attitude of constant openness, which is precisely the contemporary character that international criminal law should possess. With the rapid development of global science and technology and the advancement of economic globalization, acts of ecocide have become increasingly rampant, and such acts seriously threaten the common order and interests of the international community, posing a great risk to human life, health and property security. At the same time, it also poses a new challenge to the response mechanism of international criminal law. In order to respond effectively to that challenge, the international community should take unified action based on the harmonization of the

interests of all countries, which was in line with the current main theme of peace and development and could effectively curb the spread of international crime.

However, under the existing international legal framework, the issue of mass ecocide has not yet been effectively addressed. In response to this problem, and in order to give full play to the role of the International Criminal Court in the maintenance of world peace and security, States should, on the basis of continuous adaptation to the new situation, strengthen their cooperation, fill the gaps in the existing international criminal law and bring acts of ecocide within the jurisdiction of the International Criminal Court. This can be achieved by adding a new crime, ecocide, to the existing four core categories of international crimes. The establishment of the crime of ecocide will not only reveal the seriousness of ecological damage caused by the actions of States or organizations, but will also, by exerting pressure on the States concerned, prompt them to stop their destructive acts. By holding people accountable and imposing criminal penalties on the relevant subjects, the deterrent effect of the crime of ecocide is also not to be ignored, discouraging potential criminals from continuing to destroy the environment for fear of reputational and financial gain.

Historically, the inclusion of environmental crimes has long been discussed by the international community and the topic has been studied for decades within the United Nations. It is now time to fill this legal gap by incorporating the crime of ecocide into the international criminal law framework. The fact that there are many legal challenges to the creation of such a crime, in particular the lack of a clear legal definition, does not mean that this effort should be abandoned. Although the International Criminal Court itself had certain limitations, that did not prevent it from playing a role in solving major global problems. It was to be hoped that Governments, non-governmental organizations, civil society and other relevant stakeholders would continue to push legislators to establish the crime of ecocide and to progressively improve the Rome Statute.

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# Optimizing the Change Decision Mechanism in Administrative Reconsideration: Key to Effectively Resolving Administrative Disputes

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**Abstract**

How to resolve administrative disputes quickly and effectively is the key to realizing the goal orientation of the main channel of administrative reconsideration. As a kind of decision for the substantive settlement of administrative disputes, the new Administrative Reconsideration Law has refined and emphasized the importance of the decision to change. Looking at the current situation of China's change decision system, there are still imprecise scope of application, the order of application is unclear, subjective exclusion of review organs and other dilemmas. In order to solve the above problems, the change decision should be positioned as the core of the administrative reconsideration decision system, focusing on the realization of the function of administrative reconsideration to substantively resolve administrative disputes, following the legitimacy, clarifying the scope of administrative reconsideration, constructing a typology of administrative reconsideration, expanding the exceptions to prohibit unfavorable administrative reconsideration, and speeding up the construction of an administrative reconsideration talent team by perfecting the means of the public administrative reconsideration system. Optimize the administrative environment for reconsideration and related systems by speeding up the establishment of reconsideration teams and improving the system for publicizing reconsideration decisions, in order to ensure that the decision to amend can be applied properly and efficiently.

**Keywords:** change of decision, administrative review, substantive resolution of administrative disputes, main channel

## 1. Introduction

With the establishment of administrative reconsideration as the main channel for settling administrative disputes[1], how to realize the "case settlement" and "settlement of complaints and petitions" through administrative reconsideration has become the key. As one of the administrative reconsideration decisions of the change decision in the administrative reconsideration decision system, can make the outstanding administrative legal relationship clear and fixed, carrying the substantive

[1] See Zhou Youyong. (2021). The Role of the Main Channel of Administrative Reconsideration and Its Institutional Options. *Jurisprudence*, (6), p. 17.

resolution of the dispute in the case of the rule of law expectations. Based on this, the revision of the Administrative Reconsideration Law in 2023 strengthened the application of the change decision and made more detailed provisions on the change decision. However, the abstract nature of the law makes it difficult to cover all possible cases, and the complexity of individual cases often exceeds the preset scope of the law. The provisions of the new law on administrative reconsideration of the change of decision are still in doubt and require further study and research. At the time of the implementation of the new Administrative Reconsideration Law, this paper combined with the positioning of administrative reconsideration as the main channel for substantive resolution of administrative disputes of the target orientation, in order to crack the administrative reconsideration of the change of the decision of the priority of the application of the real dilemma as a starting point, to explore the change of the decision of the decision of the administrative reconsideration of the system of functional positioning and system optimization, in order to improve the administrative reconsideration of the decision of the system to achieve the goal of the positioning of the administrative reconsideration.

## 2. A Reality Check on the Application of Administrative Review Change Decision

The value of the system can only be realized in practice, and the advantages of the administrative reconsideration system can only be transformed into system effectiveness in practice. Therefore, it is necessary to change the decision in the administrative reconsideration of the application of the situation to examine, summarize the application of the dilemma and analyze the reasons for its emergence.

### *2.1 Status of Application of Decisions on Changes in Administrative Reviews Before the Revision of the Administrative Review Law*

Before the new Administrative Reconsideration Law was amended, the change decision had long been on the periphery of the nature reconsideration system. The data show that the percentage of administrative reconsideration cases in which the change decision was applied in 2022 is 0.52%[1]. At the local level, almost no change decisions were applied in the 660 decisions publicized in the public column of administrative reconsideration results of the Department of Justice of Zhejiang Province[2]. Similarly, according to the public announcement of the administrative reconsideration work of Shanghai Municipality in 2022, Shanghai Municipality concluded 8,817 administrative reconsideration cases (including transfer) in 2022, and only 4 cases were applied to change the decision in the concluded cases. [3]Such data show that the change of decision in practice presents "low application rate, high rate of inactivity" characteristics, its system effectiveness due to the review organs to avoid the application of the serious void. The neglect of the change decision is one of the outstanding problems that limit the administrative reconsideration to play the role of the "main channel".

### *2.2 Analysis of Causes*

Focusing on the review organs and the system of administrative review and change of decision to analyze, the change of decision itself system defects as well as administrative organs based on the "benefit-risk" measurement are difficult to prefer the application of change of decision is an important reason, in particular, mainly include the following points.

#### 2.2.1 Uncertainty about the Scope of a Change Decision

The Administrative Reconsideration Law，as amended in 2017， adopts a hybrid legislative model, in which revocation decisions, change decisions, and confirmation decisions are applied together to the five situations specified in Article 28 of the Law. Only Article 47 of the Regulations for the Implementation of the Administrative Reconsideration Law makes separate provisions for the system of change decisions. However, the article uses the term

[1] Data source: "Statistics on National Administrative Reconsideration and Response Cases in 2022," in Ministry of Justice of the People's Republic of China, Legal Information Network of the Chinese Government. https://www.moj.gov.cn/pub/sfbgw/zwxxgk/fdzdgknr/fdzdgknrtjxx/202307/t20230711_482419.html, accessed February 8, 2024.

[2] Accessed on February 7, 2024.

[3] Data source: "Situation related to administrative reconsideration and administrative appeal work in the city in 2022," in Shanghai Municipal Bureau of Justice. https://sfj.sh.gov.cn/2020zxgk_xzfy/20230712/e191fdd74f1a44598858f3f52124f2c3.html, accessed February 7, 2024.

"may be changed", and in this context, even if the administrative reconsideration case meets the criteria for the application of a change decision, the reconsideration body may still use other types of decisions to avoid the application of a change decision.

2.2.2 Ambiguity as to the Order of Application of the Change Decision

Under the mixed legislation model, the priority of the application of the change decision is not clearly highlighted. In the absence of a clear distinction between the conditions and order of application of the decision to change, the decision to revoke and the decision to confirm the violation, the review body has greater autonomy in choosing the type of decision to apply. Taking into account other factors, such as convenience, the review bodies tend to favor the use of revocation or confirmation decisions, with the exception of change decisions, which are often not applied.

2.2.3 Subjective Exclusion of the Review Organ

At the level of difficulty in performing its duties, compared with the use of confirmation decision and revocation decision, the review organ needs to judge the legality and reasonableness of the original administrative act, and also needs to correct the error of the original administrative act on the basis of this, and to make a legal, reasonable and justified decision again. This means that, once the reconsideration authority applies the decision to change the need for evidence collection, the application of laws and regulations and the writing of legal documents and other aspects of more complex tasks. Secondly, at the level of litigation rules, the reconsideration authority will become a separate defendant if it adopts the change of decision, which will bring more pressure on itself to respond to the litigation. Therefore, most of the reconsideration organs are subjectively excluded from the application of the change decision.

2.2.4 Respect for the Principle of Administrative Efficiency

In fact, insufficient evidence in the category of cases, the legal provisions of the change of the decision to apply the specific circumstances of the provisions of the ambiguous, controversial, and administrative reconsideration decision system of the scope of application of the revocation of the decision of the cross-fertilization of the reconsideration body can make a change of the decision can also be applied to the revocation of the decision to close the case. In the case of a change decision, the reviewing authority is required to conduct a new investigation and collect evidence. When a revocation decision is adopted, the original administrative act is made by the organ that made the original administrative act on the basis of the facts and evidence that have been investigated and collected to make a new administrative act again. In contrast, it is more efficient and convenient for the original administrative organ to complete this work.

*2.3 Amendment Response*

The newly revised Administrative Review Law overcomes the dilemma of the original mixed legislative system by separately specifying the applicable circumstances of the change decision through the enumerated legislative mode. However, the tension between the formal rationality and substantive rationality of the law leads to the uncertainty of interpretation and application of the abstract rules in the application of individual cases[1]. A careful comparison of the application of several types of administrative reconsideration decisions can be found, there is a cross between the scope of application of different types of decisions, the legislative provisions still need to be further interpreted to clarify the application of various types of decisions. In terms of the order of application, the new law has formed a logical relationship of "change first and then revocation" in the order of the provisions, emphasizing the priority of the application of the decision to change. However, in terms of the specific content of the provisions, there are no specific provisions on the nature and positioning of the decision to change, which would provide specific and clear provisions.

## 3. Functional Position of the Change of Decision on Administrative Review

The overall structure and detailed design of a system is determined by its dominant function[2]. Therefore, first of all, it should be clear that in the administrative reconsideration as the main channel for resolving administrative disputes under the goal of positioning changes in

[1] See Yu Lingyun and Dong Jiale. (2024). The Application of Administrative Reconsideration Changing Decision. *Zhejiang Social Science*, (2), pp. 66-67.

[2] See Deng Youwen. (2023). The Realistic Dilemma, Functional Positioning and Institutional Optimization of Mediation in Administrative Review. *China Administration*, (1), p. 31.

administrative reconsideration to change the position of the function of the decision of the innovation, and as a guide to change the decision of the construction of the system optimization, in order to crack the change of the decision of the application of the reality of the problem.

*3.1 Guidance on the Change of Decision of Administrative Reconsideration by the Change of Its Functional Position*

The functional position of administrative reconsideration is constantly being iterated and updated according to the changes of the times and the needs of the society. From 2011, the Central Committee of the Communist Party of China formally put forward the initiative of giving full play to administrative reconsideration as the main channel for resolving administrative disputes to the adoption of the Administrative Reconsideration Law in 2023, which explicitly included "giving full play to the role of administrative reconsideration as the main channel for resolving administrative disputes" in the provisions of the purpose of the legislation, the positioning of administrative reconsideration has been formally upgraded from the policy level to the legal level. The position of administrative reconsideration has realized the transformation from policy level to legal level,[1] thus, the goal, structure and system of administrative reconsideration system ushered in an all-round adjustment.

For administrative reconsideration, the positioning of "main channel" means that in the existing multiple dispute resolution mechanism, the center of gravity of resolving administrative disputes is shifted from administrative litigation to administrative reconsideration; and the center of gravity of administrative reconsideration function is shifted from supervising the administrative organs to substantively resolving administrative disputes. Substantive resolution of disputes has an obvious result orientation, focusing on the positive response to and satisfaction of the subjective reasonable interests at the time, and avoiding the idleness of the procedure. [2] Among the several forms of decision of administrative reconsideration, the decision to change is more in line with the inherent requirements of the substantive settlement of administrative disputes, and it is the form of decision that should be prioritized and applied under the goal orientation of the main channel of the settlement of administrative disputes.

*3.2 Multiple Functions of Change Decision*

The first is the "substantive dispute resolution function". The process of change decision is actually an illegal or improper elements of the abstraction, and legal and reasonable requirements to replace the process, is the review organ in the case of the facts of the original illegal and improper administrative action to adjust to the reasonable and lawful state of the steps. Its biggest role lies in the timely resolution of administrative disputes that have been characterized.

The second is the "efficient and convenient function". As a direct error-correcting reconsideration decision, the reasonable application of the change decision can avoid procedural vacillation and improve the efficiency of administrative dispute resolution. On the one hand, the reconsideration body in the original administrative organ to make the administrative act of supervision and review of the administrative act should be corrected and adjusted to correct the error can avoid the applicant to return to the administrative procedure, improve the effectiveness of dispute resolution, at the same time, the reconsideration body has been the efficient use of the facts of the case to reduce the part of the operation of the administrative procedure is not necessary, as well as the people, financial, physical input and consumption, and thus reduce the reconsideration body.

The third is "procedural function". Change decision as a direct error correction system to avoid the complexity of the revocation of the decision and other indirect error correction system, to a certain extent, to avoid procedural idleness, reduce the possibility of the same case into the reconsideration process again.

*3.3 Core Positioning of the Change Decision*

Under the target orientation of administrative reconsideration as the main channel for resolving administrative disputes, the system of change decision should be at the core of the administrative reconsideration decision system. From the function of the system, change the

[1] See Yu Lingyun and Dong Jiale. (2024). The Application of Administrative Reconsideration Changing Decision. *Zhejiang Social Science*, (2), p. 71.

[2] See Jiang Bixin. (2012). On the Substantive Settlement of Administrative Disputes. *People's Justice*, (19), p. 13-18.

decision has the comparative advantage of the substantive resolution of administrative disputes and its own unique advantages, at the same time both dispute resolution, high rate and procedural triple function, in line with the goal of administrative reconsideration, reflecting the fundamental purpose of reconsideration for the people.

3.3.1 Legal Basis

The core positioning of the administrative reconsideration decision has a normative basis in law. The newly revised Administrative Reconsideration Law optimizes the decision system of administrative reconsideration, and refines the decision to change. In the order of change decision in the first place, and at the same time expand the scope of application of the decision to change, strengthen the review of the right to change the depth of review, highlighting the reasonable use of the decision to change.

3.3.2 Theoretical Basis

The core status of the administrative reconsideration change decision has a theoretical basis. Compared with the previous administrative reconsideration decision system, which focuses on revocation, repositioning the change decision as the core of the administrative reconsideration decision system has the following outstanding advantages. First, the change decision directly responds to the people's real demand, avoiding the administrative procedure of idling or entering into the litigation, thus reducing the people's energy consumption and waste of resources. Second, the application of the change decision can simultaneously realize the triple function of internal supervision of the administrative system, the relief of the rights of the administrative relatives and the substantive settlement of administrative disputes. [1]After the decision is made, the original administrative organ of the administrative act made by the review organ of the timely supervision and correction, the role of the applicant's illegal and improper administrative act disappeared and corrected. The applicant's right to obtain redress, the dispute is settled.

3.3.3 Practical Basis

It has the realistic demand to solve the administrative disputes fundamentally. With the development of society, the administrative relative's interests demand more and more diversified, the increase of administrative disputes is inevitable, and the current administrative disputes show more and more complicated, professional trend, the characteristics of administrative reconsideration itself makes it become the solution to the above specialization, complexity of the administrative disputes of the first choice, and in the administrative reconsideration, change the decision of the characteristics of the administrative reconsideration organs make it become the reconsideration organs in the consideration of the decision of first choice target.

The application of change decisions has rich practical experience. In 1990, China first made relevant provisions on the change of decision in the Regulations on Administrative Review. Over the years, change the decision in administrative reconsideration has been widely practiced, many times to achieve remarkable results, in which the reasonable use of the decision to change the contribution can not be ignored.

Realistic conditions for the realization of the function of the change decision are gradually emerging. The new Administrative Procedure Law on the review organ staff specialization, professional level of provisions, enhance the professional level of the review organ, improve the scientific and credibility of the conclusion of the review. In addition, the new Administrative Procedure Law has enriched the way of applying for reconsideration, established the agency system of administrative reconsideration, the material correction system, etc. to facilitate the citizens to apply for and participate in the administrative reconsideration, and safeguard the lawful rights and interests of the parties concerned, so that administrative reconsideration to become the main channel to resolve administrative disputes has become a possibility, and also let the change of decision to substantively resolve the administrative disputes of decision-making has a greater space to play.

## 4. Improvement of the Administrative Reconsideration Change Decision System

As mentioned above, the new Administrative Review Law has transformed the core of the administrative review decision system into the

[1] See Li Yue. (2023). On Substantial Resolution of Administrative Disputes in the Perspective of Changing Decisions of Administrative Review. *China Law Review*, (5), p. 222.

change decision. Therefore, it should focus on the repositioning of the dominant function of the change decision,[1] optimize the relevant system and supporting facilities of the change decision according to the requirements of effectiveness, convenience and fairness in the application of the change decision, and realize the substantive settlement of administrative disputes by clarifying the scope of application, typologically constructing the applicable circumstances, and perfecting the relevant system.

*4.1 Clarifying the Scope of Application of Change Decisions*

The new Administrative Reconsideration Law singles out the decision to change an administrative reconsideration, which to a large extent solves the problem posed by the mixed legislation of several types of decisions. However, in terms of content, there are still some provisions that are relatively vague. In order to make the application of the decision to change more normative and reasonable, the scope of application of the change decision should be clarified. Specifically, the following difficulties need to be resolved.

First, the relationship between "incorrect application of the basis" and "application of the basis is not legal" should be clarified. The new "administrative procedure law" Article 63 and Article 64 of the administrative reconsideration of the type of decision on the scope of application of the expression have a certain degree of overlap. From a textual point of view alone, the scope of "unlawful application of the basis" is narrower than that of "incorrect application of the basis". In addition to the category of "unlawful", "inappropriate" also includes unreasonable and other types of errors in the application of the basis. In the Exposure Draft of the Revised Administrative Review Law, the provisions on the application of the basis are expressed only in Article 75 on the application of the change decision. Therefore, it should be considered that when there is an error in the basis of application, priority should be given to the application of the change decision in order to ensure that its function of substantively resolving administrative disputes is given full play.

Second, the establishment discretionary standard of "inappropriate content". The judgement of the appropriateness of the content is affected by certain subjective factors of the administrative organs, and the results of different administrative organs on the same case sometimes inevitably have certain differences. At this time, there is the original administrative organ to make the discretionary power, the initial judgement should be respected by the reviewing body of the controversy. [2] If the negative attitude, once the review body feels that the content is inappropriate to change the original administrative act will inevitably appear around the phenomenon of the same case different judgments. Therefore, can be set on the "content is inappropriate" judgment benchmark, give the review body in a little authority within the scope of the right to change.

Third, the distinction between "unclear facts, insufficient evidence" and "unclear main facts, insufficient evidence". According to the new "Administrative Reconsideration Law" Article 63, Article 64 of the provisions of the former applies to change the decision, the latter applies to revoke the decision, the core lies in the fact that the hierarchy and the effectiveness of the evidence: the main facts need to refer to the civil procedural law in the definition of the "basic facts" standard, limited to the administrative in relation to the qualification of the subject matter, the nature of the case determination, rights and obligations and the substantive impact of the results of the main facts, and indirect facts are auxiliary, derivative facts. The determination of insufficient evidence is based on the lack of evidence of the essential core essential facts, unlawful methods of obtaining evidence, substantial contradictions between the evidence or unlawful exclusion of forensic evidence and other circumstances. [3] Therefore, it is possible to establish an "essential facts-core evidence" review system through judicial interpretation that clarifies the rules for determining the two types of facts and evidence and removes the legal ambiguity in the application of this type of review decision.

[1] See Deng Youwen. (2023). The Realistic Dilemma, Functional Positioning and Institutional Optimization of Mediation in Administrative Review. *China Administration*, (1), p. 32.

[2] See Huang Xuexian. (2024). The Change Decision in the New Administrative Review Law and Its Improvement. *Law Review*, (1), p. 145.

[3] See Guan Baoying. (2022). Study on the Insufficiency of the Main Evidence of Administrative Behavior. *Journal of Shanghai University of Political Science and Law (Rule of Law Series)*, (1), p. 44.

*4.2 Addition of Exceptions to the Prohibition of Unfavorable Changes*

The new Administrative Reconsideration Law is based on the relevant system of China's Administrative Procedure Law, and provide that a more unfavorable change decision may be made against the applicant when a third party makes a contrary request. In fact, only such an exception is too one-sided. First of all, Article 3 of the new law clearly stipulates that the administrative reconsideration organs should adhere to the principle that error must be investigated, and there is a certain conflict between the prohibition of unfavorable changes in itself and the principle that error must be investigated. Second, administrative reconsideration is different from administrative litigation, the scope of review of administrative reconsideration is greater than the administrative litigation; administrative reconsideration review intensity than the administrative litigation is also more stringent. Therefore, in relation to the provisions of the administrative litigation law needs to make differentiated adjustments, for example, can try to expand the prohibition of adverse changes in some special areas of the exception. Before the trial implementation is not mature, taking into account the specificity of individual cases, the article can be added to the "and other circumstances" to make the provision has a certain degree of underpinning.

*4.3 Typological Construction of Applicable Circumstances*

When the new law has enumerated the applicable circumstances of the administrative reconsideration change decision, in order to determine the scope of the change decision "to change as much as possible", and to break through the fence of fuzzy boundaries of the application of the change decision, the scope of application enumerated in the new law can be used as a benchmark for the application of the change decision to carry out a typology of the construction of the applicable circumstances.

4.3.1 The Category of Improper Exercise of Discretion

Administrative discretion in the maintenance of fair, just and reasonable administration at the same time, but also can be free, flexible specific and bring certain risks and challenges[1], in order to prevent the discretion of arbitrary, ambiguous, elusive, the discretion must be regulated. In administrative reconsideration, the reconsideration organ must be the original administrative act of legality, reasonableness of a comprehensive review. In the case of the facts are clear, the evidence is sufficient, based on the correct, only the content is not appropriate, if the court needs to the original administrative conduct of the reasonableness of a comprehensive review. Based on the supervisory function of administrative reconsideration and the unique hierarchical system within the administrative organ, the reconsideration review must not only examine the legality of the administrative act in each case, but also effectively supervise the administrative discretion of the original organ.

4.3.2 Failure to Correctly Apply the Basis Category

The first is the incorrect application of the provisions on which the administrative act is based, such as the failure to apply the new law when there is both a new and an old law. The second is the absence of legal provisions on which the administrative act is based. In the reconsideration body has found the facts of the case are clear, the evidence is solid, the procedure is lawful only if there is an error in the application of the basis should be applied to change the decision, the original administrative organ of the administrative act of the application of the basis for adjustment.

4.3.3 Unclear Facts, Insufficient Evidence Category

For the original administrative act of the facts are unclear, insufficient evidence of the case, but after the review body has been examined by the facts of the case, obtain sufficient evidence, according to the facts and evidence, directly deal with the applicant and the original administrative organ of the dispute to make a change in the decision. In this category, there is a dispute over the understanding of the expression "unclear facts and insufficient evidence", such as how to define the facts and evidence here, and whether it includes only the main facts and evidence[2]. At the same time, there is a question as to whether a case must

[1] See Jiang Mingan. (2009). On Administrative Discretion and Its Legal Regulation. *Hunan Social Science*, (5), p. 55.

[2] See Li Yue. (2023). On Substantial Resolution of Administrative Disputes in the Perspective of Changing Decisions of Administrative Review. *China Law Review*, (5), p. 224.

have both unclear facts and insufficient evidence in order to comply with this provision. Therefore, depending on the extent of the review body's powers to investigate and obtain evidence, it should make a case-by-case assessment and prioritise the application of the change of decision to the cases within its competence.

*4.4 The Improvement of the Relevant System*

Solving the existing problems of the administrative reconsideration change decision system is a systematic project, in addition to the need to improve the change decision system itself, improve the degree of refinement of the legislation, but also need to improve the entire environment of the reconsideration as well as the related system[1]. Starting from many aspects, strengthen the cooperation between the system, enhance public awareness and participation, only in this way can give full play to the functional value of administrative reconsideration, to build a harmonious society to provide legal protection.

4.4.1 Accelerate the Construction of Review Personnel

The effective operation of the administrative reconsideration system to support the reconsideration of the professionalism of the personnel as a support, the current reconsideration authorities in China are faced with a shortage of talent reserves, the reality of weak legal professionalism dilemma: a large number of reconsideration of the lack of systematic background in legal education, it is difficult to accurately apply the rules of law, resulting in the reconsideration of the decision of the impartiality of the doubt,[2] grass-roots reconsideration authorities, the phenomenon is particularly obvious. To this end, it is necessary to strengthen team building in three aspects: first, strict professional access and training, set standards for personnel selection in accordance with the new legal norms, and improve the regular business training and pre-appointment evaluation mechanism; second, push forward the reform of professionalism, realize the separation of review positions from the functions of the legal department, and establish an independent professional sequence and fixed staffing; third, introduce external professional forces, and absorb experts and scholars through the Administrative Review Commission to participate in case deliberation and build a "professional judgment + neutral supervision" composite decision-making mechanism.

4.4.2 Improving the Public System of Review Decisions

Publication of administrative reconsideration decisions is a cornerstone of the system for promoting administrative supervision and safeguarding the credibility of reconsideration, and has a dual value in realizing the goal of "the main channel for resolving administrative disputes": on the one hand, publication of individual cases pushes the administration to act in accordance with the law and prevents the abuse of power; on the other hand, it provides a model of practice for improving the reconsideration system. Article 79 of the new Administrative Procedure Law should be used as the basis for improving the disclosure rules in three aspects. First, to strengthen the time limit constraints, to establish a time-limited public mechanism after the conclusion of the case, taking into account the efficiency and quality. Second, to ensure the comprehensiveness of the disclosure of reconsideration decisions, requiring that the full text of the decision letters of all completed cases be made available on the Internet, and synchronizing the "full disclosure of the contents of individual cases" with the "systematic disclosure of the total volume of cases". Third, the implementation of categorized publicity, according to change, revocation and other types of decisions to establish a special database, dynamic monitoring of the rate of application of change decisions, to ensure that the principle of "change as much as possible" is put into practice. This will not only enhance the transparency of the review, but also provide a standardized sample for academic research, forming a virtuous circle of system optimization.

**5. Remarks**

The new Administrative Reconsideration Law has refined the application of the change decision and placed it in a prominent position, making the change decision the core of the administrative reconsideration decision system.

[1] See Cui Menghao. (2020). Reconstruction of the Decision System of Administrative Reconsideration. Doctoral Dissertation, East China University of Political Science and Law, p. 109.

[2] See Liu Xin and Chen Yue. (2016). Analysis of the Effectiveness and Progress of the Reform of the Administrative Reconsideration System — Research Report on the Administrative Reconsideration System. *Administrative Law Research*, (5), p. 56-57.

Based on the positioning of administrative reconsideration as the main channel for resolving administrative disputes, the priority application of the change decision is conducive to realizing the goal of resolving administrative disputes on the merits. However, the applicable circumstances stipulated in the legislation are ambiguous, and the applicable priority is not clearly stipulated in the legislation. In practice, the review authority based on various factors may be difficult to change the change of the decision to be ignored, little use, the status quo of prudent use. However, the reasonable application of the change decision system is not only the above problems, such as the expansion of the scope of application of the change decision, in the administrative agreement and other administrative behavior in the specific operation of the rules and so on. Under the goal orientation of the main channel of resolving administrative disputes, giving full play to the functional value of the change decision is the key to realising the substantive resolution of administrative disputes. Only when the change decision of administrative reconsideration is properly applied can the natural advantages of administrative reconsideration be fully realized. Therefore, whether in the future legal practice or theoretical research, the application of the change decision needs to be further studied and resolved.

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# Judicial Inconsistencies and Legislative Gaps in Service Period Agreements for Special Treatment: An Empirical Study

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**Abstract**

Along with the constant growth of the demand for advanced talents in our labor market, more and more employers are attracting talents by offering special treatment. Based on the principle of consideration in contracts, the service period system for special treatment has emerged. However, the 22nd article of the Labor Contract Law, which is also known as the "sponsored training service period" in academic circles, raises questions about whether the service period for special treatment is legally recognized. The academic community has different views on this issue. For disputes between employers and employees regarding the service period for special treatment, the views of the courts across the country are not consistent. Through the collection and sorting of judicial cases on the service period for special treatment, this article finds that the main problems in such cases are inconsistent identification of the nature of the service period, huge differences in the standard of return of special treatment, and weak legal support and logical reasoning in the reasoning part. Based on the problems existing in judicial practice, this article suggests that the legislation should expand the scope of service period, increase the review of service period reasonableness, unify the standard of return of special treatment, and restructure the existing default penalty system to match it. In this way, the service period system in labor contracts can be improved.

**Keywords:** the labor contract, service period, special treatment

## 1. Introduction of the Issue

With the promulgation of the Labor Contract Law in 2007, the service period system for labor contracts was formally established in legal form. Arising from the Labor Law's protective orientation toward employees, this system emerged to address employers' concerns about bearing training costs and other investments while employees might abuse their statutory right to resign with notice. It establishes a balanced consideration relationship between both parties, facilitating harmonious and stable labor relations. As one of only two circumstances permitting liquidated damages clauses under China's Labor Contract Law, the service period system requires employers to provide legally recognized professional technical training as a prerequisite for application.

Years after its establishment, the service period

system has seen extensive implementation, accompanied by various disputes in practice. With rapid socioeconomic development, enterprises increasingly demand high-end talent. To enhance job attractiveness, some employers offer special treatment including relocation allowances, household registration in first-tier cities, and arrangements for children's schooling to recruit professionals. These substantial investments often lead employers to stipulate corresponding service periods and liquidated damages in employment contracts to prevent premature resignations after obtaining such benefits.

The core issue lies in Article 22(1) of the Labor Contract Law: "Where an employer provides special training expenses for professional technical training to an employee, it may enter into an agreement with such employee specifying a service period." Special treatment clearly falls outside the scope of professional technical training, yet current legislation remains silent on whether service period agreements may be established for special treatment.

If the essence of service periods lies in employers providing professional technical training beyond basic employment obligations, thereby establishing new consideration relationships through employees' temporary waiver of resignation rights[1], their purpose being to safeguard employers' returns on human capital investments while balancing labor relations stability, then special treatment as another form of human capital investment theoretically raises the question: Should employers' legitimate interests in such investments also be protected through service period mechanisms?

Although current labor legislation contains no explicit provisions regarding service periods for special treatment, numerous related cases have emerged in practice. Faced with statutory gaps, courts must render judgments, resulting in prominent inconsistencies in similar case adjudications. Critical issues remain unresolved, including whether to expand service period applicability to special treatment and how to determine liability for breaches under such expansion. This necessitates systematic analysis of current judicial approaches to service period disputes involving special treatment, aiming to identify solutions for these practical challenges.

## 2. Current Judicial Adjudication Status of Service Period Agreements Involving Special Treatment

This study conducted searches in the judicial case database of the "Alpha Platform" using the following methodology: limiting the cause of action to "labor disputes" in advanced search settings, restricting keywords to the same paragraph, and iteratively replacing search terms with "special treatment + service period," "welfare benefits + service period," "relocation allowance + service period," "talent recruitment fee + service period," "research startup fund + service period," and "household registration + service period." After retrieving 143 judgments from 2013 to 2024 and eliminating duplicate cases through manual screening, 124 valid judgments were ultimately obtained. Key methodological principles include: 1) iterative keyword substitution while maintaining other search criteria; 2) selecting only final judgments as individual samples for cases adjudicated at multiple court levels; 3) defining "special treatment" in this study as benefits explicitly distinct from professional technical training and fixed remuneration, excluding contentious categories such as educational advancement and standardized residency training.

The selected cases primarily involve disputes over whether employees who resigned before completing agreed service periods must reimburse special benefits — including household registration in first-tier cities, relocation allowances, research startup funds, and spousal employment arrangements—provided by employers beyond standard compensation to attract talent.

### *2.1 Disputes over the Legal Characterization of "Service Periods" for Special Treatment*

The fundamental issue lies in determining whether service period agreements tied to special treatment are legally valid and how to characterize their nature. While the Labor Contract Law explicitly permits service period agreements for professional technical training, it remains silent on whether special treatment may trigger such obligations. Consequently, judicial interpretations diverge significantly. Among the 124 analyzed cases, four primary viewpoints emerge regarding the legal nature of service

[1] Cheng, Xiaoyong and Meng, Gaofei. (2014). The Application of the Service Period System in Labor Contracts. *People's Judicature*, (17), p. 74.

period agreements involving special treatment, distributed as follows:

**Table 1.**

| Legal Nature | Recognition of Service Period Agreements | Undefined Nature | Prepaid Labor Remuneration | Welfare Benefits |
|---|---|---|---|---|
| Quantity | 47 | 63 | 3 | 11 |
| Proportion | 37.9% | 50.81% | 2.41% | 8.87% |

2.1.1 Recognition of Service Period Agreements for Special Treatment

The recognition of service periods and the characterization of special treatment service periods directly affect the issue of returning special treatment when employees resign prematurely. Only by clarifying the legal nature of special treatment service periods can scientifically reasonable reimbursement formulas be established. In judicial decisions recognizing service period agreements for special treatment, there are primarily two reasoning approaches: one avoids invoking Article 22 of the Labor Contract Law while affirming the validity of special treatment service period agreements, while the other analogizes Article 22 of the Labor Contract Law to demonstrate compliance with legal provisions.

2.1.1.1 Reasoning by Circumventing Article 22 of the Labor Contract Law

Given that the Labor Contract Law explicitly permits service period agreements only for professional technical training, literal interpretation suggests no statutory basis for service period agreements based on special treatment. Consequently, many courts validate the legality and reasonableness of such agreements through alternative legal perspectives. For instance, some courts uphold service period agreements for special treatment under the principle of good faith, arguing that special treatment enhances employee retention and protects employers' legitimate interests in workforce stability and recruitment [1]. Others validate these agreements by deeming them compliant with essential validity requirements for civil juristic acts and free of statutory invalidity grounds[2].

However, this approach of circumventing the Labor Contract Law raises concerns. Labor law aims to protect workers' rights and balance labor relations through appropriate intervention in private law domains. While the Labor Contract Law permits party autonomy, such autonomy must operate within its legal framework to achieve legislative objectives. This necessitates that courts cannot disregard the Labor Contract Law when assessing the validity of employment contract terms.

2.1.1.2 Reasoning Based on Article 22 of the Labor Contract Law

This line of decisions analogizes Article 22 to justify special treatment service periods. Proponents argue by positive analogy that service period agreements for enhanced special treatment should be permitted to protect employers' human capital investments and mitigate workforce instability [3]. They also contend that such agreements protect employees from full reimbursement obligations upon premature termination. Some decisions employ reverse reasoning, noting that while Article 22 specifically addresses professional training, it does not categorically prohibit other service period agreements[4].

While containing reasonable elements, this approach risks overextending statutory interpretation. The Labor Contract Law stipulates: "Where an employer provides professional technical training to an employee, it may enter into a service period agreement." From a purely logical perspective, this does not inherently preclude other service period agreements. However, jurisprudentially, this constitutes potential overreach in statutory interpretation.

2.1.2 Undefined Nature

[1] Beijing (0114) Primary Civil Case No. 2020 (2022).

[2] Beijing (0108) Primary Civil Case No. 18200 (2023).

[3] Beijing No. 2 Intermediate Court Final Civil Case No. 6836 (2022).

[4] Guizhou No. 1 Intermediate Court Final Civil Case No. 2146 (2020).

Data reveals that only 37.9% of judgments explicitly recognize special treatment service period agreements, while half avoid characterizing their validity and directly rule on special treatment reimbursement. This judicial avoidance results in significant discrepancies in reimbursement standards across cases. Notably, most courts refrain from expressly invalidating such agreements while declining to affirm their validity, with only 25% (31/124) of judgments explicitly declaring special treatment service periods invalid.

2.1.3 Special Treatment as Prepaid Labor Remuneration or Welfare Benefits

A minority of decisions characterize special treatment as prepaid labor remuneration or welfare benefits. However, these judgments typically fail to provide substantive reasoning for such characterization or evaluate the legality of corresponding service period agreements[1].

*2.2 Undetermined Standards for Reimbursement of Special Treatment*

Based on the collected sample data, significant disputes persist in judicial practice regarding the validity of service period agreements for special treatment between employers and employees. While employers may mitigate losses through liquidated damages clauses in professional technical training service periods, no unified standard exists for whether employees must reimburse special treatment upon premature termination when the validity of special treatment service periods remains unsettled. Among 124 sample cases, 105 addressed reimbursement of special treatment, with courts applying the following reimbursement standards:

**Table 2.**

| | No Reimbursement | Discretionary Reimbursement | Proportional Reimbursement | Full Reimbursement |
|---|---|---|---|---|
| Quantity | 7 | 43 | 30 | 25 |
| Proportion | 6.67% | 40.95% | 28.57% | 23.81% |

2.2.1 No Reimbursement

Only seven judgments ruled that employees need not reimburse received special treatment. These decisions reasoned that the agreements specified only service periods and liquidated damages without explicit reimbursement terms, and employers failed to substantiate actual losses [1]. Such rulings typically involve non-material special treatment (e.g., urban household registration). However, this approach overlooks employers' implicit costs. For instance, securing urban household registration—a scarce resource—represents a significant employer investment in talent recruitment. Permitting employees to retain such benefits without compensation after premature resignation unfairly disadvantages employers and incentivizes arbitrary job-hopping.

2.2.2 Discretionary Reimbursement

Common in non-material special treatment cases, courts determine reimbursement amounts by weighing factors such as employee income, tenure, and employer costs. While this protects employers' legitimate interests, adjudicated amounts vary excessively. For example, Beijing courts issued starkly divergent compensation awards (differing by 225,000 yuan) in similar cases involving household registration benefits: Beijing No. 1 Intermediate Court Final Civil Case No. 8841 (2022) versus Beijing No. 3 Intermediate Court Final Civil Case No. 142 (2022)[2].

2.2.3 Proportional Reimbursement

Predominantly applied to material special treatment (e.g., housing subsidies, relocation fees), courts calculate reimbursement using the formula:

Reimbursement Amount = (Total Special Treatment / Agreed Service Period) × Remaining Unfulfilled Period.

Though scientifically sound for material benefits, this method cannot directly apply to

[1] Beijing (0108) Primary Civil Case No. 57653 (2021).

[2] Beijing No. 1 Intermediate Court Final Civil Case No. 8841 (2022) ordered the employee to compensate the employer 250,000 CNY; Beijing No. 3 Intermediate Court Final Civil Case No. 142 (2022) ordered the employee to compensate the employer 25,000 CNY.

non-material special treatment.

2.2.4 Full Reimbursement

Twenty-five judgments ordered full reimbursement or compensation per contractual terms. This extreme approach, juxtaposed with non-reimbursement rulings, disproportionately neglects employees' rights. While employees breached service terms, partial performance should warrant proportional retention of benefits.

## 3. Core Issues Requiring Resolution Under Current Legislation

Analysis of the 124 judgments reveals two critical legislative gaps: (1) no explicit legal basis for special treatment service periods, and (2) unresolved standards for reimbursing material/non-material special treatment upon premature termination. Thus, legislation must first determine whether to expand the Labor Contract Law's service period scope and subsequently establish reimbursement criteria.

### *3.1 Whether to Expand the Service Period Scope Under the Labor Contract Law*

There remains significant controversy regarding whether to expand the scope of application for service periods. Scholars opposing this expansion argue that legislation should only recognize service periods for financially sponsored training. The primary rationale for this view is that service periods for sponsored training represent development-oriented talent competition, whereas service periods tied to special treatment constitute poaching-oriented talent competition. Development-oriented talent competition encourages employers to cultivate talent and increase human resource pools, whereas poaching-oriented competition merely leads to employers poaching talent through welfare benefits without contributing to talent resource growth. Given China's current circumstances, policy should prioritize encouraging development-oriented talent competition while restricting poaching-oriented competition[1].

Supporters of expansion contend that service period systems should not be limited to specialized technical training but should also include special treatment arrangements. Legal norms arise from societal needs, and solely regulating specialized technical training fails to meet practical demands. Judicial practice reveals frequent disputes where employers agree upon service periods with employees through special treatment, leading to systemic issues. Excluding such cases from service period regulations would result in inconsistent rulings in similar cases, undermining judicial authority and fairness.

This paper posits that incorporating special treatment into the scope of service periods may represent a preferable choice. First, pressing issues in judicial practice demand resolution. Whether special treatment can be contracted for service periods is a tangible problem in practice. Since one purpose of law is to address societal issues, lingering uncertainties over whether poaching-oriented talent competition inhibits talent development cannot justify tolerating unresolved practical problems. Second, service periods aim to safeguard employers' rights to recoup human capital investments by restricting employees' right to terminate with notice, thereby striking a new balance beyond normal rights and obligations. Employers provide special treatment to attract and retain talent. If employees, after receiving such significant benefits, remain entitled to arbitrarily terminate labor contracts without rigid constraints, employers' interests would be manifestly harmed, potentially tipping the relationship into a state of reverse imbalance[2]. Thus, there is a need to restrict employees' right to terminate with notice to restore equilibrium.

### *3.2 Standards for Reimbursing Special Treatment (or Compensating Employer Losses) Upon Employee Resignation in Breach of Agreed Service Periods*

For employers, providing special treatment serves as a means to attract and retain high-caliber talent, constituting a form of human capital investment. Breach of agreed service periods through premature resignation necessitates reimbursement or compensation for such special treatment to offset employer losses. A refusal to reimburse disregards employers' financial harm and fails to safeguard their right to returns on human capital investments, while full reimbursement unjustly ignores the labor contributed by employees during fulfilled service periods. Consequently, establishing scientifically sound reimbursement standards is

[1] He, Ping and Su, Yu. (2009). On the Economic Functions of Labor Law: Retrospect and Prospect. *Studies in Law and Business*, (3), p. 138.

[2] Xu, Jianyu. (2014). On the Determination of the Service Period. *China Labor*, (6), p. 14.

imperative to balance employer-employee interests and unify judicial adjudication criteria.

Special treatment can be primarily categorized into material and non-material types. For material special treatment, the current liquidated damages system may serve as a reference to determine proportional reimbursement. Material special treatment, such as relocation allowances, research grants, or housing benefits, is quantifiable in monetary terms due to its market value, enabling direct formulaic calculations. When employees breach service period agreements by resigning prematurely, courts must balance mitigating employers' human capital investment losses against recognizing the labor contributed during the fulfilled service period, rendering proportional reimbursement a rational approach.

For non-material special treatment, the most pressing issue in practice is inconsistent judicial standards leading to widely divergent discretionary compensation amounts. However, precise calculation formulas remain unfeasible for non-material benefits. Thus, principle-based criteria must be established. A foundational principle must be affirmed: non-material special treatment, such as urban household registration in first-tier cities—a scarce resource with inherent economic value—cannot be denied its economic significance or the costs employers incur to provide it, even absent direct monetary quantification.

## 4. Recommendations for Improving Legislation on Special Treatment Service Periods

### *4.1 Expanding the Scope of Service Period Application and Establishing Restrictions*

The scope of application for service periods stipulated in Article 22 of the Labor Contract Law no longer meets practical demands. As a prevalent phenomenon, service periods tied to special treatment should also receive legal recognition and protection. However, while expanding the scope of service periods, corresponding restrictions must be imposed.

On the one hand, it should be clarified that service periods linked to special treatment only restrict employees' right to terminate with prior notice. Employees' termination rights are divided into immediate termination and termination with prior notice. Immediate termination arises when employers engage in illegal acts, in which case employers cannot reasonably expect employees to continue fulfilling the labor contract. Therefore, only the right to terminate with prior notice may be restricted.

On the other hand, the duration of service periods should also be limited. Scholars in China have long advocated for reasonableness review of service period durations[1], yet such reviews remain rare in practice. Among the 124 cases examined in this study, no court reviewed the reasonableness of agreed service periods. If courts fail to assess the reasonableness of service periods during proceedings, adjudication will only address the return of special treatment benefits. Excessively long service periods would thereby be deemed legally valid by default, unfairly restricting employees' freedom to choose employment and undermining their rights.

In conclusion, this paper argues that while expanding the scope of service periods, it is imperative to clarify that such periods restrict employees solely to their right to terminate with prior notice. Additionally, a reasonableness review of service period durations must be introduced to examine whether the duration aligns with the special treatment provided and whether employers unduly restrict employees' freedom to resign.

### *4.2 Standardizing the Compensation Criteria for Special Treatment and Establishing a Liquidated Damages System for Service Periods*

Regarding compensation standards for special treatment, material special treatment should be refunded according to the formula: Refund Amount = (Total Value of Special Treatment / Agreed Service Period) × Remaining Unfulfilled Period. For non-material special treatment, compensation should be determined through a holistic evaluation of factors such as the employer's investment costs and the treatment's scarcity, as previously argued in this paper.

After standardizing the compensation criteria for special treatment, the critical issue lies in differentiating it from the liquidated damages system, necessitating a reconstruction of the service period liquidated damages regime. China's Labor Contract Law strictly limits the application of liquidated damages to service periods and non-compete agreements. However,

[1] Guo, Wenlong. (2006). The Service Period Should Have a Reasonable Duration. *China Labor*, (10), pp. 42-43.

under Article 22 of the Labor Contract Law, liquidated damages for service periods are capped at the training costs provided by the employer and must not exceed the proportional share of such costs attributable to the unfulfilled portion of the service period. This formulation primarily serves to restore benefits or revert to the status quo after contract termination, merely requiring employees to return gains they should not retain. It fails to address compensation for the employer's reliance interests.

While compensatory liquidated damages protect employees' freedom to choose employment, they inadequately account for the employer's opportunity costs and anticipated gains[1]. For service periods tied to special treatment, compensation or restitution focuses solely on restoring or returning the special treatment itself. The liquidated damages system should fulfill dual functions: compensation for damages and performance guarantee[2]. Otherwise, even with agreed service period terms, the absence of additional liability for employees would fail to safeguard the employer's legitimate interests.

In conclusion, the law should restore the fundamental functions of liquidated damages, enabling them to fulfill their inherent role as a performance guarantee. Legislatively, restrictions on the amount of liquidated damages could be relaxed, permitting parties to negotiate terms autonomously, while allowing employees to request an appropriate reduction for excessively high damages to avoid infringing on their lawful rights. The criteria for determining liquidated damages should incorporate a comprehensive assessment of the value of the special treatment provided by the employer, the employer's loss of opportunity costs due to the forfeiture of anticipated labor utilization rights, and other necessary expenses.

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[2] Wang, Hongliang. (2014). Rethinking the Functional Orientation of Liquidated Damages. *Law Science*, (2), p. 116.

[1] Jiangsu (0381) Primary Civil Case No. 6577 (2019) held that special treatment constitutes prepaid labor remuneration; Jiangsu (0111) Primary Civil Case No. 9768 (2019) classified special treatment as a welfare benefit.

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# On the Administrative Law Protection of Marine Data Property Rights

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**Abstract**

With the rapid development of the marine economy and the swift progress of information technology, marine data, as an emerging factor of production, is increasingly valued. However, there are still many challenges in defining, protecting, and utilizing marine data property rights. This paper aims to explore the administrative law protection of marine data property rights, analyze the legal attributes of marine data property rights, review the current status of marine data property rights protection in China, and draw on international experiences to propose countermeasures for improving the administrative law protection of marine data property rights in China.

**Keywords:** marine data, data property rights, administrative law protection

## 1. Introduction

Marine data refers to information related to the marine environment, resources, and ecology obtained through observation, measurement, investigation, and analysis. With the continuous progress of marine observation technology and the increasing number of marine economic activities, both the quantity and quality of marine data are rapidly improving. Marine data plays an important role in marine resource management, marine environmental protection, and marine disaster early warning, and is an important support for promoting the high-quality development of the marine economy. However, the unclear definition of marine data property rights and the imperfect protection mechanisms restrict the effective utilization and value realization of marine data. Therefore, strengthening the administrative law protection of marine data property rights is of great significance.

## 2. Legal Attributes of Marine Data Property Rights

### *2.1 Definition of Marine Data Property Rights*

With the rapid development of marine science and technology, the volume of global marine data is constantly expanding. Marine data has become an important cornerstone for promoting the marine economy, scientific research, and security. The oceans cover about 71% of the Earth's surface and bear important human demands for resources, transportation, and climate, among other aspects. (Song Wei, Ding Shuixin, Dong Mingmei et al., 2025) Marine data property rights refer to the rights to possess, use, benefit from, and dispose of marine data. The

subjects of marine data property rights can be government agencies, research institutions, enterprises, or individuals, while the objects are marine data with specific value and significance. The objects of marine data property rights have characteristics such as intangibility, replicability, and non-consumption, which make the protection of marine data property rights different from traditional property rights protection.

*2.2 Legal Characteristics of Marine Data Property Rights*

Intangibility: Marine data exists in electronic form and does not occupy physical space, making it difficult to possess and control the objects of marine data property rights in a physical manner, unlike traditional property rights.

Replicability: Marine data can be copied and disseminated infinitely, which increases the difficulty of protecting marine data property rights and is prone to causing infringement.

Non-consumption: Marine data is not consumed or diminished during use, which determines that the use of marine data property rights is different from traditional property rights. Marine data can be used multiple times to generate different values.

Value: Marine data has economic, scientific, and social values and is an important resource for the development of the marine economy.

*2.3 Relationship Between Marine Data Property Rights and Related Rights*

Relationship with Intellectual Property Rights: Marine data property rights are related to intellectual property rights but also differ. Marine data property rights may involve data collection, organization, and analysis, which may include elements of copyright, patent rights, and other intellectual property rights. However, marine data property rights focus more on the overall control and utilization of marine data, rather than merely the creative expression or technological innovation of the data.

Relationship with Property Rights: There is a significant difference between marine data property rights and property rights in terms of the form of the object, but there are similarities in rights protection. For example, both require clear identification of the right holder and object, prevention of infringement, and legal remedies.

## 3. Current Status of Marine Data Property Rights Protection in China

*3.1 Imperfect Legal System*

Currently, China has not yet enacted specific laws and regulations for the protection of marine data property rights. Although laws such as the "Civil Code", "Data Security Law", and "Marine Environmental Protection Law" involve content related to data protection and the utilization of marine resources, they lack clear definitions and protection provisions for marine data property rights. This results in a lack of clear legal basis for handling marine data property rights disputes, which is not conducive to the effective protection of marine data property rights.

*3.2 Incomplete Administrative Management System*

The administrative management of marine data property rights involves multiple departments and levels, including the State Oceanic Administration, Ministry of Natural Resources, and Ministry of Industry and Information Technology. However, the current administrative management system for marine data property rights in China is still not complete, with issues such as unclear responsibilities and poor coordination between departments. This makes it difficult to form a united effort in the protection, utilization, and management of marine data property rights, affecting the effective utilization and value realization of marine data.

*3.3 Lack of Data Sharing Mechanisms*

Marine data has the characteristic of shareability, and different departments and institutions need to share marine data to achieve optimal allocation and efficient utilization of resources. However, China has not yet established a complete marine data sharing mechanism, with data barriers and silos existing between different departments and institutions. This leads to underutilization of marine data and restricts the effective protection of marine data property rights.

*3.4 Frequent Infringements and Difficulty in Curbing*

Due to the imperfect protection mechanisms for marine data property rights, infringements occur frequently and are difficult to effectively curb. Some enterprises and individuals collect, use, and disseminate marine data without authorization, infringing on the legitimate rights

and interests of marine data property rights holders. At the same time, due to the intangible and replicable nature of marine data property rights objects, infringements are often difficult to detect and evidence, bringing great difficulties to rights protection efforts.

## 4. International Experience in Marine Data Property Rights Protection

### *4.1 United States*

The United States is one of the countries with a relatively comprehensive system for protecting marine data property rights. The U.S. government places great emphasis on the development and utilization of marine data resources and strengthens the protection of marine data property rights through a series of laws, regulations, and policy measures. For example, laws such as the "Ocean Law" and "Marine Resources Conservation Law" clearly stipulate the collection, organization, analysis, and sharing of marine data. Additionally, the U.S. government has established a comprehensive marine data sharing mechanism and management system, promoting the effective utilization and value realization of marine data.

### *4.2 European Union*

The European Union has also achieved significant success in protecting marine data property rights. The EU promotes the connection between marine science and policy, providing a common strategic agenda and framework for action, effectively integrating and enhancing Europe's marine exploration and observation capabilities. The European marine observation network covers five sea areas and has formed five regional operational oceanography systems in the Baltic Sea, North-West Continental Shelf, Arctic, Mediterranean, and Black Sea. (EuroGOOS, 2023) The EU has also enacted laws such as the "EU Data Protection Regulation" to strengthen data protection, which includes the protection of marine data property rights. The EU has established the European Marine Observation and Data Network (EMODnet) and other marine data sharing platforms, promoting the sharing and exchange of marine data among different countries and regions. In addition, the EU focuses on strengthening international cooperation and exchange to promote the establishment and improvement of a global marine data property rights protection system.

### *4.3 Summary of International Experience*

From the practices of the United States and the European Union, it is clear that strengthening the protection of marine data property rights requires efforts in formulating comprehensive legal systems, establishing sound administrative management and sharing mechanisms, and enhancing international cooperation and exchange. These international experiences provide valuable references and insights for improving the administrative law protection of marine data property rights in China.

## 5. Countermeasures for Improving the Administrative Law Protection of Marine Data Property Rights in China

### *5.1 Enact Specific Laws and Regulations for Marine Data Property Rights Protection*

To strengthen the protection of marine data property rights, China should quickly enact specific laws and regulations for this purpose. These laws and regulations should clearly define the concept of marine data property rights, including the subjects, objects, and content of the rights, providing a clear legal basis for their protection. Additionally, they should stipulate systems for the registration, trading, and licensing of marine data property rights to promote their effective utilization and value realization.

### *5.2 Establish a Sound Administrative Management System for Marine Data Property Rights*

To enhance the administrative management of marine data property rights, China should establish a sound administrative management system. First, it is necessary to clarify the responsibilities and authorities of different departments and institutions in the protection of marine data property rights to avoid issues such as unclear responsibilities and poor coordination. Second, a cross-departmental coordination mechanism should be established to strengthen communication and cooperation among different departments and institutions, forming a united effort to advance the protection of marine data property rights. Additionally, supervision and evaluation of marine data property rights protection efforts should be strengthened to ensure the effective implementation of policies and measures.

### *5.3 Develop a Comprehensive Marine Data Sharing Mechanism*

To promote the effective utilization and value

realization of marine data, China should develop a comprehensive marine data sharing mechanism. First, a unified national marine data sharing platform should be established to facilitate the sharing and exchange of marine data among different departments and institutions. Second, standards and norms for marine data sharing should be formulated to clarify the scope, methods, and procedures for data sharing. (Xu Xiaoqing, 2024) Furthermore, supervision and evaluation of marine data sharing efforts should be strengthened to ensure the effective advancement of this work.

*5.4 Strengthen Enforcement of Marine Data Property Rights Protection*

To effectively curb the occurrence of marine data property rights infringements, China should strengthen enforcement efforts. First, the crackdown on marine data property rights infringements should be intensified, with legal liabilities being pursued against infringers. Second, publicity and education efforts regarding the protection of marine data property rights should be enhanced to raise public awareness and degree of attention. Additionally, technical support and strength of guarantee should be increased to improve enforcement efficiency and accuracy.

*5.5 Promote International Cooperation and Exchange*

To contribute to the establishment and improvement of a global marine data property rights protection system, China should actively promote international cooperation and exchange. First, China should participate in the formulation and improvement of international rules for marine data property rights protection, contributing Chinese wisdom and strength. Second, cooperation and exchange with other countries and regions in the protection of marine data property rights should be strengthened to jointly promote the development of global marine data property rights protection. Additionally, research and analysis of international trends and dynamics in marine data property rights protection should be enhanced to provide beneficial references for China's efforts in this area.

## 6. Case Analysis

*6.1 Case 1: Marine Data Infringement by a Research Institute*

Case Summary: A research institute used marine data collected by a company for scientific research without authorization and published the research results publicly. The company discovered this and filed a complaint with the relevant departments, demanding compensation for losses.

Case Analysis: This case involves the infringement of marine data property rights. The research institute's unauthorized use of the company's marine data for scientific research and public dissemination of the results infringed upon the company's marine data property rights. This case highlights the imperfections in China's marine data property rights protection mechanisms, particularly the lack of supervision in data collection and utilization. To strengthen the protection of marine data property rights, China needs to establish a more comprehensive legal system and enhance enforcement efforts.

*6.2 Case 2: EU EMODnet Marine Data Sharing Platform*

Case Summary: The European Union established the European Marine Observation and Data Network (EMODnet) marine data sharing platform, which promotes the sharing and exchange of marine data among different countries and regions. The platform covers data resources in multiple aspects of the marine environment, resources, and ecology, providing strong support for scientific research, policy-making, and public services.

Case Analysis: The collection and management of marine environment field measurement data are the basis for monitoring marine environmental changes, marine environmental protection, marine resource development, marine disaster prevention and mitigation, marine engineering construction, and marine national defense security. This case demonstrates the European Union's successful experience in marine data sharing. (Yu Ting, Wang Haibo & Dong Mingmei, 2013) By establishing a comprehensive marine data sharing mechanism and management system, the EU has promoted the sharing and exchange of marine data among different countries and regions, enhancing the effective utilization and value realization of marine data. This case provides valuable insights for China to improve its marine data sharing mechanism.

## 7. Conclusion

The administrative law protection of marine data property rights is an important safeguard for promoting the high-quality development of

the marine economy. However, China's current protection of marine data property rights still faces issues such as an imperfect legal system, an incomplete administrative management system, the lack of a data sharing mechanism, and frequent infringements. To strengthen the protection of marine data property rights, China should take efforts in enacting specific laws and regulations for marine data property rights protection, establishing a sound administrative management system, developing a comprehensive marine data sharing mechanism, strengthening enforcement efforts, and promoting international cooperation and exchange. Through the implementation and improvement of these measures, China will be able to better protect the legitimate rights and interests of marine data property rights holders and promote the sustainable and healthy development of the marine economy.

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