# Belt and Road Initiative: the interplay between corruption, plea-bargaining and civil alternative dispute resolution

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## Abstract

**Purpose** – This paper aims to determine whether a connection can be formed between corruption, plea-bargaining and civil alternative dispute resolution.

**Design/methodology/approach** – Academic articles and textbooks are examined as are relevant reports by various academic institutions.

**Findings** – Despite the similarities between plea-bargaining and civil alternative dispute resolution, the differences between the two overwhelmingly supersede their similarities. As such, there is unlikely to be an interplay between corruption, criminal plea-bargaining and civil alternative dispute resolution.

**Research limitations/implications** – There are limited data available in relation to the prevalence of corruption activities by Chinese officials within the Belt and Road Initiative. Any discussions within this study is based on the impressionistic observations of the author, which may not reflect the true state of affairs in China.

**Practical implications** – Those who are interested in examining the relationship between the criminal plea-bargaining and civil alternative dispute resolution will have an interest in this topic.

**Originality/value** – The value of the paper is to demonstrate the difficulties in cross-fertilizing criminal law procedures with civil dispute resolution.

**Keywords** Belt and Road Initiative, China, Corruption, Plea-Bargaining, Civil alternative dispute resolution

**Paper type** Research paper

## 1. Introduction

The Belt and Road Initiative ("**BRI**") aims to promote social and economic development through the implementation of infrastructure projects (The World Bank, 2019). However, infrastructure projects within the BRI are generally massive and more expensive than what most countries can afford (Russel and Berger, 2019). To obtain sufficient funding, a country might enter into loan agreements with the Chinese Government and its state-owned banks. Such loan agreements often contain confidentiality clauses that restrict the disclosure of contractual terms and/or the existence of a debt (Gelpern *et al.*, 2021). This author takes the view that the secluded nature of loan agreements may entice a country to use underhanded means (such as bribes) to elicit favourable contractual terms from Chinese officials. The manifestation of such arcane workarounds and side deals could, deplorably, lead to the proliferation of corruption within the BRI.

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Fortunately, President Xi Jinping has extended the reach of China's domestic anti-corruption campaign ("**Campaign**") to include the surveillance of BRI projects worldwide (Weinland, 2019). As of December 2022, the Campaign has ensnared approximately 4.7 million Chinese officials (Liu and Li, 2022). The indictment of Chinese officials raises a question as to whether such officials would enter into plea-bargaining agreements with prosecutors to protect their *mianzi (面子)* (i.e. social status and prestige) and *guanxi (关系)* (i.e. relationship) with other high-ranking officials. Such an act is akin to how commercial parties in a dispute would enter into alternative dispute resolutions (e.g. negotiations and mediations) ("**ADR**") to sustain business relationships. The potential interplay between corruption, plea-bargaining and the civil ADR procedures thus raises an interesting question as to the suitability of cross-fertilizing criminal law with civil dispute resolution.

## 2. Thesis

This article serves to examine whether a connection can be made between corruption, criminal plea-bargaining and the civil ADR procedure. After an assessment has been made on whether such a connection is present, this article would then go on to consider whether Chinese officials, who are indicted under the Campaign, would enter into a plea-bargaining agreements with prosecutors to protect their reputation and relationships with other high-ranking officials.

Before examining these issues, this article will briefly establish the following conceptual background, namely, the:

- purpose of the BRI and its projects;
- nature of confidentiality clauses within BRI loan agreements;
- extent of corruption by Chinese officials within BRI projects;
- nature and effectiveness of the Campaign;
- relationship between plea-bargaining and corruption within the BRI; and
- connection between criminal plea-bargaining and civil ADR.

## 3. Brief background

### *3.1 Purpose of the Belt and Road Initiative and its projects*

Adopted by the Chinese Government back in 2013, the BRI is a global infrastructure development plan of President Xi Jinping that aims to build connectivity and co-operation across the following six main economic corridors (OECD, 2018), as shown in Figure 1.

The purpose of the BRI is to facilitate regional trade, investment and infrastructure network by closely linking the two-ends of Euro-Asia, Africa and Oceania through the use of

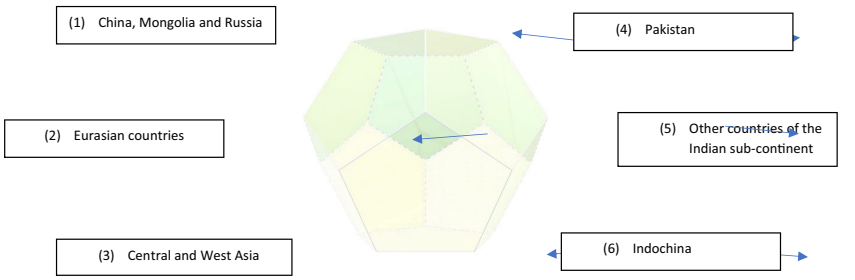


**Figure 1.**
List of the six main economic corridors within the BRI

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"overland routes" (known as the "Belt") and "maritime routes" (known as the "Road) (Lai, 2019). This is illustrated in Figure 2.

Under the BRI, various infrastructure projects have been implemented (United Nations ESCAP, 2021), including, amongst others, the:

- "Padma Bridge Rail Link" in Bangladesh;
- "Mombasa-Nairobi Standard Gauge Railway" in Africa; and
- "Kunming-Vientiane Railway" in Laos.

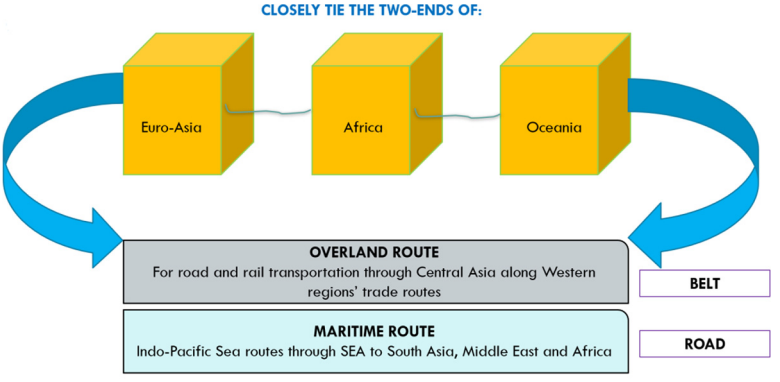
The average cost for such infrastructure projects increased from approximately US$394m in 2021 to US$456m in 2022 (Wang, 2022). However, such costs are often more expensive than what a developing country can afford. For example, the "Kunming-Vientiane Railway" in Laos is estimated to cost approximately US$5.95bn, of which Laos is responsible for contributing roughly US$1.78bn. This amount represents approximately 12% of Lao's gross domestic product ("**GDP**"), which pushes Laos towards a deficit given that its debt level in 2016 has already reached a dangerous 68% of its GDP (Russel and Berger, 2019). As such, to cover the extensive costs of infrastructure projects, developing countries (such as Laos) may enter into loan agreements with the Chinese Government and its state-owned banks.

### *3.2 The nature of confidentiality clauses within Belt and Road Initiative loan agreements*

Recent studies show that loan agreements with Chinese state-owned entities (which would include BRI loan agreements) contain "confidentiality clauses" which restrict the disclosure of all the terms and conditions connected with the loan agreements (Gelpern *et al.*, 2021).

Given the confidential nature of such loan agreements, this author will rely on findings made by researchers at AidData (a research lab at William and Mary), who were able to identify and collect electronic copies of 100 Chinese loan agreements by reviewing public sources such as the debt information management systems, official registers and gazettes as well as parliamentary websites (Gelpern *et al.*, 2021).

Notably, the confidentiality clauses stipulated within the various Chinese loan agreements impose an obligation on borrowers to keep all the terms and conditions within the loan agreements confidential. An example of such a clause is as follows:




**Source:** Created by author

**Figure 2.** Flowchart of how the BRI facilitates trade, investment and infrastructure network through the "overland" and "maritime" route

> The Borrower shall keep all the terms, conditions and the standard of fees hereunder or in connection with this Agreement strictly confidential. Without the prior written consent of the Lender, the Borrower shall not disclose any information hereunder or in connection with this Agreement to any third party [. . .].

[Emphasis added]

Given the confidential nature of such loan agreements, it is unlikely that countries, who struggle to fulfil their debt obligations under the loan agreements, would seek the assistance of the "Paris Club creditors" (i.e. to obtain debt treatments such as the postponement and/or reduction of the debt). Instead, such countries may potentially use underhanded means (such as bribes) to elicit favourable debt relief from Chinese officials. The secluded nature of loan agreements may therefore lead to the prevalence of corrupt acts between sovereign debtors and Chinese officials within the BRI.

### *3.3 The extent of corruption by Chinese officials within Belt and Road Initiative projects*

According to a recent study, it was found that 35% of infrastructure projects within the BRI have encountered "corruption scandals, labour violations, environmental hazards, and public protests" (Malik *et al.*, 2021). It is therefore interesting to briefly examine the extent of which Chinese officials have been indicted for corrupt acts within the BRI.

The most prominent example is the corruption scandal involving the 1Malaysia Development Berhad ("**1MDB**"), which is Malaysia's state-owned fund. In 2016, investigators found that monies borrowed by 1MDB "were quickly misappropriated" and that such monies "followed a circuitous path among private banks, offshore companies and funds [. . .] and roughly $1 billion landed in the private accounts of Malaysian Prime Minister Najib Razak" (Hope *et al.*, 2016).

Based on a series of undisclosed meetings, it was found that, back in 2016, senior Chinese officials had offered to assist 1MDB and Prime Minister Najib Razak ("**Najib**") by using China's power to influence the United States as well as other countries to drop charges against Najib; and inflating the cost of infrastructure projects (Teoh, 2023). In return, Malaysia offered "lucrative stakes in railway and pipeline projects for [the BRI]". Notably, Najib signed "$34 billion of rail, pipeline and other deals with Chinese state companies, to be funded by Chinese banks and built by Chinese workers" (Wright and Bradly, 2019).

Another example of corruption within the BRI involves the "Standard Gauge Railway" ("**SGR**") project in Kenya. In brief, under the BRI, Kenya entered into a US$3.8bn contract to "build the 472 km [railway] linking the Port City of Mombosa with Nairobi, the Capital City of Kenya" (Irandu and Owilla, 2020). Service for the SGR was launched in June 2017 (Okoth, 2020).

In 2018, Kenya's railway officials raised a red flag over an "unusually high number of refunds" [i.e. an average of six (6)% of refunds per day on tickets sold]. The amount of refunds were alarming as SGR was losing approximately 1,000,000 Kenyan Shillings per day. This triggered an investigation against SGR (Okoth, 2020). In the same year, the *Daily Nation* (one of Kenya's largest newspapers) reported that the Ethics and Anti-Corruption Commission detectives in Mombasa had arrested three senior Chinese officials and their four Kenyan counterparts for attempting to bribe the Directorate of Criminal Investigations officers who were looking into corruption tied to the SGR Project (Okoth, 2020). In 2022, the *New York Times* reported that the SGR has since "turned into a fiasco, the target of lawsuits, criminal investigations over corruption. . ." (Dahir, 2022). Regrettably, the hefty cost of the SGR project (i.e. $4.7bn as of 2022) has led to "corruption and greed among the political elite" (Dahir, 2022).

The above examples illustrate how the nature of BRI projects as well as the confidential nature of loan agreements provide the catalyst for corrupt acts to flourish within the BRI.

Fortunately, the recent expansion of President Xi Jinping's Campaign arguably provides a layer of safeguard against illicit acts within the BRI.

*3.4 Nature and effectiveness of the campaign*

At the 18th National Congress of the Communist Party of China ("**CPC**") held in 2012, President Xi Jinping (then the general secretary of the CPC) vowed to combat corruption by clamping down on corrupt high-ranking Chinese officials (Han *et al.*, 2022). This led to the establishment of the Campaign, which was premised on the fact that "failing to fight against corruption would doom the party and the state" (Bradsher, 2012). Given the scale of BRI projects, the CPC has expanded the Campaign overseas to "monitor the activity of Chinese companies" that participate in BRI-related projects (Weinland, 2019).

In December 2022, President Xi Jinping declared "overwhelming victory" in China's fight against corruption as the Campaign had successfully ensnared 4.7 million Chinese officials (Liu and Li, 2022). Given the extent of indictments as well as the expansion of the Campaign to the BRI, this raises an interesting question as to whether Chinese officials, who are indicted for BRI-related corrupt acts, would enter into plea-bargaining agreements with prosecutors to save their *mianzi (面子)* (i.e. social status and prestige) and *guanxi (关系)* (i.e. relationships) with other high-ranking Chinese officials.

## 4. The relationship between criminal plea-bargaining and corruption within the Belt and Road Initiative context

*4.1 Introduction*

The act of Chinese officials entering into plea-bargaining agreements with prosecutors to save their reputation and/or relationships is akin to how commercial parties in a civil dispute would enter into ADR (e.g. negotiation and mediation) to sustain business relationships. The potential interplay between corruption, plea-bargaining and the civil ADR procedures thus raises two interesting questions:

*Q1.* Whether a connection can be formed between corruption, criminal plea-bargaining and the civil ADR procedure.

*Q2.* Whether Chinese officials, who are indicted under the Campaign, would enter into plea-bargaining agreements with the prosecutors to protect their reputations and relationships.

Before addressing the above issues, it is necessary to briefly examine the following conceptual background, namely, the:

- history and nature of plea-bargaining in China; and
- the relationship between plea-bargaining and corruption.

*4.2 History of plea-bargaining in China*

Historically, China was reluctant to introduce plea-bargaining into its legal system (Weng *et al.*, 2022). The term "bargaining" (the direct translation is "交易" [pronounced as "jiao yi"]) originates from commercial transactions. As such, there was great resistance in accepting such a term within the criminal context as many people in China believed that providing leniency towards an accused person would contravene the principle of equality (i.e. that accused persons who commit the same crime should receive the same punishment) (Lu, 2021).

The magnitude of resistance against plea-bargaining eventually dulled against the backdrop of decreasing judicial efficiency (which was brought upon by the 2012 Criminal Procedure Law

["**CPC**"] revision). Notably, prosecutors and judges were struggling with heavy workload and difficult trials, which led to a significant backlog of cases within the criminal courts. In 2018, China decided to revise its CPC to formally introduce a system of plea-bargaining (Lu, 2021).

*4.3 Nature of plea-bargaining in China*

In China, plea-bargaining (also known as "negotiated public cooperation" or "negotiated justice") is a procedure under which:

- an accused person and the prosecutor would negotiate on "sentencing" rather than "charges" (i.e. a charge cannot be dropped); and
- lawyers are not involved in the negotiation process (Chen, 2022).

It is pertinent to note that the 2018 CPC does not make any reference to words such as "plea-bargaining", "sentencing negotiation" or "prosecution-defence negotiation", as these words are likely to compromise the seriousness of the criminal procedure system (Chen, 2022).

Under the plea-bargaining procedure, accused persons have the option to plead guilty and accept punishment in any procedural stages (Chen, 2022), as illustrated in Figure 3.

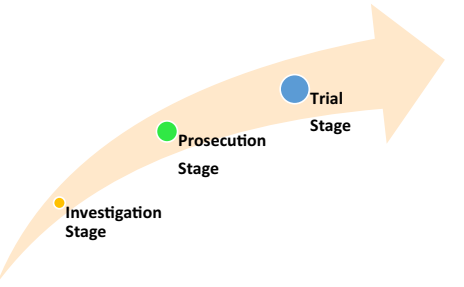
For example, if an accused person pleaded guilty and accepted punishment during the "prosecution" stage, the prosecutor will provide an opportunity for the accused person to negotiate on "sentencing". Once an accused person accepts a "sentencing proposal" from the prosecutor, the accused person will sign a "recognizance". The "sentencing proposal" and "recognizance" will then be submitted to court. In rendering a judgement, a court tends to adopt the "sentencing proposal" from the prosecutor (Chen, 2022).

To encourage accused persons to plead guilty and accept punishment expeditiously, some places in China have incorporated a "sequence leniency sentencing mechanism" under which the severity of the punishment is adjusted in accordance with the stage at which an accused person pleads guilty and accepts punishment. This is illustrated in Figure 4.

*4.4 Plea-bargaining and corruption*

On 26 October 2018, the Standing Committee of the National People's Congress introduced the "immediate judgement" procedure within criminal trials. The "immediate judgement" procedure only applies to the prosecution of an accused person who meets each of the following conditions:

- charged with an offence that has a penalty of not more than three (3) years' imprisonment; and
- the accused person agrees to undertake the "immediate judgement" procedure by pleading guilty and accepting the penalty proposal (Vandepol, 2019).




**Source:** Created by author

**Figure 3.**
Flowchart on the procedural stages of the plea-bargaining process

The purpose of the "immediate judgement" procedure is to speed-up trials for straightforward corruption and bribery cases. As such, a court would generally conclude a case within 10–15 days upon the accused person's acceptance of the "immediate judgement" procedure. This timeline is shorter than an ordinary trial procedure which can take up to three months (Vandepol, 2019).

It is interesting to note that the "immediate judgement" procedure is *quasi-plea-bargaining*, as it motivates an accused person to assist in criminal investigations and to willingly plead guilty in exchange for a less severe punishment. Given the similar nature between the "immediate judgement" procedure and "plea-bargaining", the analysis written in the following paragraphs equally applies to the "immediate judgement" procedure.

## 5. The connection between criminal plea-bargaining and civil alternative dispute resolutions

### *5.1 Introduction*

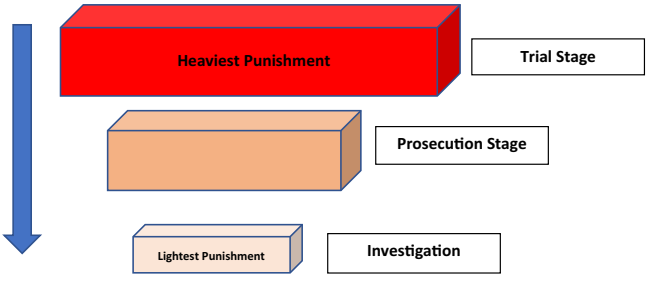
Plea-bargaining (including the "immediate judgement" procedure) is a procedure where prosecutors undertake "sentencing negotiations" with accused persons. Such negotiations are akin to private individuals entering into civil ADR (i.e. negotiation and/or mediation) to resolve their disputes.

The potential connection between criminal plea-bargaining and the civil ADR thus raises an interesting question as to the suitability of cross-fertilizing criminal law with civil dispute resolution. This is important for two reasons:

(1) First, the plea-bargaining procedure was only formally introduced in the 2018 CPC. This means that the process of plea-bargaining has not been comprehensively formulated within China's criminal justice system. As such, this author believes that it would be beneficial for China to observe the implementation of the system of negotiation and mediation within the civil context, and to ascertain whether it could adapt any civil ADR concepts within its plea-bargaining procedure.

(2) Second, the study of both criminal law procedures and civil ADR procedures *could* potentially benefit *both* criminal law scholars and civil ADR scholars in China:

- On the one hand, criminal law scholars can adapt from studies done on civil ADR, including, the psychological dynamics of negotiation; significance of procedural justice; and neurobiological aspects of negotiation (O'Hear and Schneider, 2007)). The adaptation of techniques within civil ADR, which is similar to that of criminal plea-bargaining, could better facilitate the "negotiation" process between a prosecutor and an accused person.




**Source:** Created by author

**Figure 4.**
Flowchart of the magnitude of punishment within the "sequence leniency sentencing mechanism"

- For example, in relation to sentencing negotiations, criminal law scholars could provide studies on the neurobiological aspects of negotiation, which in turn, would educate prosecutors on the psychological state (including personal background influences) of an accused person. This could better equip prosecutors with the ability to come up with sentencing proposals that are in line with the personal motivations and circumstances of accused persons. In turn, this could increase the likelihood of settlement agreements being made under the plea-bargaining procedure.
- On the other hand, civil ADR scholars could benefit from the scrutiny that criminal law scholars have towards: the culture of the courthouse; and the influence of sentencing guidelines on settlements (O'Hear and Schneider, 2007). The adaptation of the criminal "sentencing guidelines on settlement" within civil ADR could potentially promote consistency in the way negotiations are conducted between commercial parties. For example, in the Singapore High Court decision of *Takaaki Masui v Public Prosecutor* [2020], Justice Chan Seng Onn recognized at [121] that criminal sentencing guidelines often assist future sentencing courts to work towards achieving goals such as:
  - promoting consistency in sentencing while maintaining an appropriate level of flexibility and discretion for sentencing courts; and
  - encouraging transparency in reasoning, especially when future courts apply a similar methodology which requires them to explain their reasoning processes at different stages of the sentencing analysis.
- When such criminal sentencing guidelines are applied within the civil ADR context, this could enable independent third parties (such as mediators) to apply a consistent methodology in facilitating parties to reach a settlement for a particular type of dispute. For example, where a civil dispute concerns "acrimonious commercial parties", a mediator could adopt a method of facilitation that places a higher priority on the "outcome" of the dispute (e.g., monetary incentives) rather than mending the "relationship" between the parties. If such a method successfully leads to a settlement between those parties, the mediator can then adopt the same methodology for a similar future dispute. Such a practice may enable a mediator to produce consistent results in similar disputes, whilst adopting a certain degree of discretion and flexibility within the specific methodology (given that no two disputes would have an identical factual matrix).

To better assess the potential for cross-fertilizing criminal law procedures with civil ADR procedures, this section will examine the following conceptual background before concluding whether there is indeed an avenue for the interplay between the two procedures:

(1) the nature of civil ADR in China; and

(2) the similarities and differences between plea-bargaining and civil ADR.

### *5.2 Nature of civil alternative dispute resolutions in China*

In China, there is a "deep-rooted historical preference for informal and non-adversarial means of dispute resolution" as such non-confrontational ADR procedures ensure that *mianzi (面子)* (i.e. social status and prestige) and *guanxi (关系)* (i.e. relationship) are maintained (Rungao, 2023). As such, it is unsurprising for commercial parties to undertake ADR procedures such as "negotiations" and/or "mediations" to resolve an on-going civil dispute.

As the focus of this article is to examine the interconnectedness between criminal plea-bargaining and civil ADR (in general), this article will not go into an in-depth discussion of the individual characteristics of "negotiations" and "mediations". Instead, Table 1 will provide a *brief* overview of the nature of "negotiations" and "mediations" in China.

*5.3 Five similarities between criminal plea-bargaining and civil ADR (shown in Figure 5)*

*5.4 Five differences between criminal plea-bargaining and civil ADR (shown in Figure 6)*

## 6. Analysis

*6.1 Whether a connection can be formed between corruption, criminal plea-bargaining and the civil alternative dispute resolutions*

Notwithstanding the similarities between the criminal plea-bargaining procedure and civil ADR procedure (which are discussed on Page 17), this author takes the view that it is difficult to formulate a seamless connection between the two procedures due to the following reasonings:

| S/No. | ADR procedures | Nature |
|---|---|---|
| 1. | Negotiation | a) Prior to the commencement of a legal action, commercial parties may undertake "negotiations" to resolve their differences in a non-adversarial manner (Wang *et al.*, 2020)<br>b) Many commercial parties in China would attempt to "*negotiate*" as this is the "*least expensive*" option which aims to preserve the relationship between the parties (Trusticcs, 2020)<br>c) A third-party must be involved in the negotiation process as "*third party intervention to a dispute, whatever the degree, is an indispensable factor to ADR [in China]*" (Rungao, 2023)<br>d) As people in China focus on *building relationships*, negotiation can be very long process (Staff, 2023). |
| 2. | Mediation | a) Mediation is popular in China as it is believed to be an important process for "*realizing the official goal of a harmonious society in China*" (Zhao, 2022)<br>b) Mediation involves the use of an independent third-party mediator who guide disputing parties to "*negotiate and resolve*" the dispute at hand. The mediator's role is therefore to initiate, sustain or revive negotiations between the parties (Zhao, 2022)<br>c) For mediation to be successful, it may be necessary for parties to disclose to the mediator "*the true facts of the dispute as well as their wishes and basic conditions for arriving at a settlement through mediation, including the upper limit of the amount of compensation and the lowest acceptable amount of compensation*" (Wang *et al.*, 2020)<br>d) Mediation conducted are usually confidential and conducted on a "without prejudice" basis (i.e., subject to certain exceptions, negotiations between the parties are not admissible in later court proceedings should parties fail to settle within the mediation) (Zhou and Zheng, 2022) |

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**Table 1.** The nature of mediation and negotiation

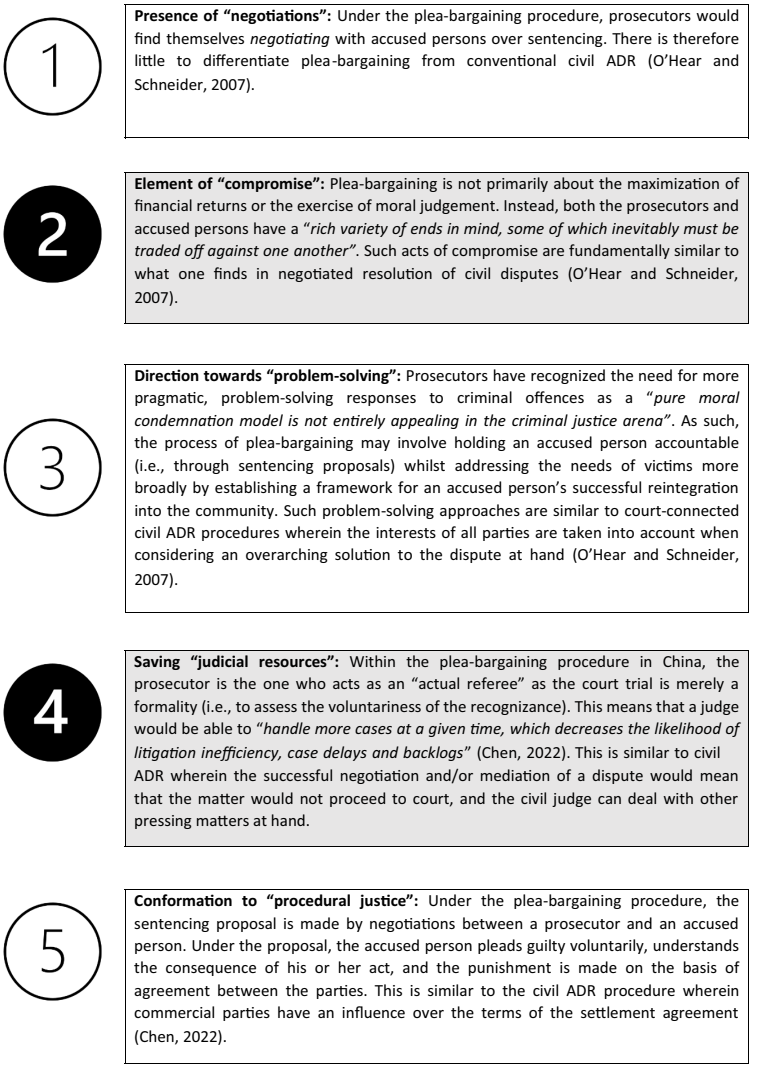


**Figure 5.**
List of similarities between plea-bargaining and civil ADR

**Source:** Created by author

- First, the existence of "negotiations" within the criminal plea-bargaining procedure (including the "immediate judgement" procedure) and civil ADR procedure *superficially* creates an impression that the procedures are similar in nature. However, the criminal plea-bargaining procedure is *fundamentally* distinct from the civil ADR procedure as the main aim of negotiations under the former is to *condemn* an accused person, whereas the main focus under the latter is to *resolve* disputes between commercial parties. The lack of a need to come to a "resolution" under the plea-bargaining procedure eliminates the potential for plea-bargaining to be *akin* to the civil dispute resolution procedure.

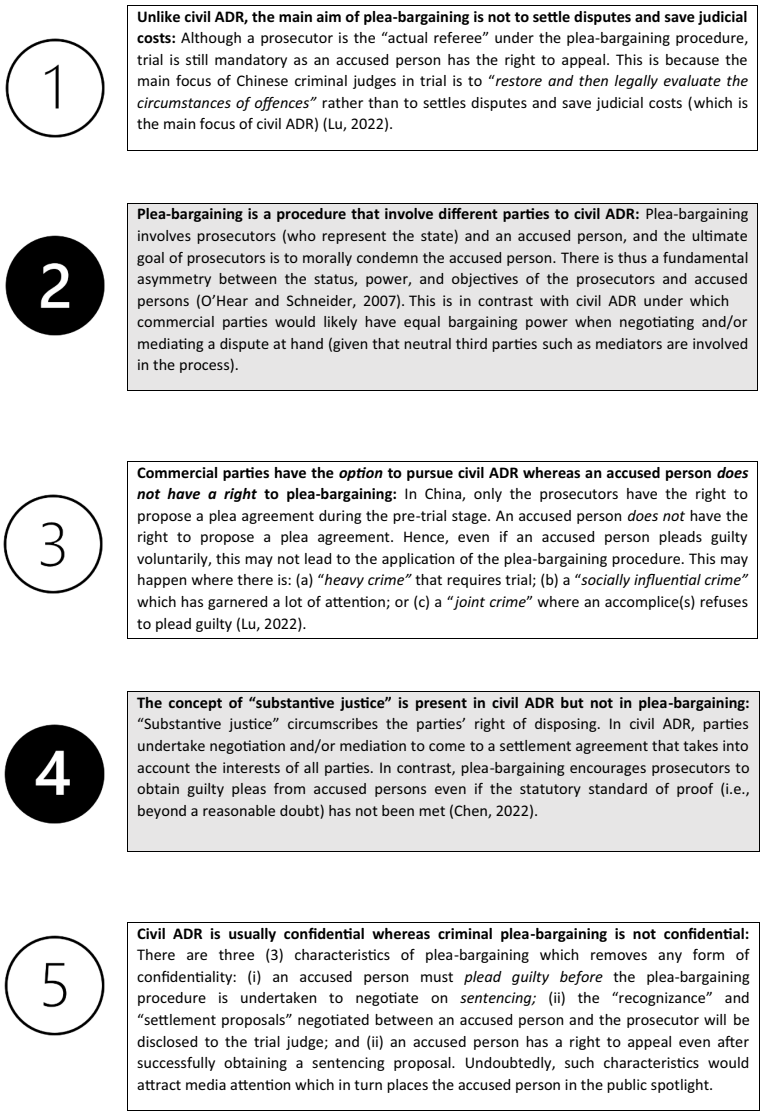


**Figure 6.**
List of differences between plea-bargaining and civil ADR

- Second, the *circumscription* of an accused person's right to the plea-bargaining procedure (i.e. only the prosecutor has the right to propose plea-bargaining to the accused person) can be directly contrasted with the *flexibility* that the civil ADR procedure provides to parties (i.e. parties are encouraged to *explore* the different options within the ADR processes). The absence of a choice within the plea-bargaining, thereby contravening the value that the civil ADR procedure places on party autonomy.
- Third, the "criminal" nature of the plea-bargaining procedure provides a stark contrast with the "neutrality" of the civil ADR procedure. As mentioned above,

many people in China believe that providing a route for criminals to "bargain" interferes with the principle of equality (i.e. that an accused person who commits the same crime as another should receive the same punishment). On this basis, it would be difficult to seamlessly incorporate concepts of civil ADR procedure within the criminal plea-bargaining procedures given the conflicting nature of the processes.

The fundamental asymmetry between the two procedures therefore leads to the conclusion that there is no interplay between corruption, criminal plea-bargaining and civil ADR. Ultimately, the plea-bargaining process is a distinct form of "negotiation" whose goal is the *moral condemnation* of accused persons rather than the *resolution* of disputes (which is the main aim of civil ADR).

*6.2 Whether Chinese officials who are indicted under the campaign would enter into plea-bargaining agreements with prosecutors to protect their reputation and relationships*

There are, potentially, two schools of thought:

(1) One argument could be that Chinese officials, who are indicted under the Campaign, would not be able to enter into plea-bargaining agreements with the prosecutors to protect their reputation and relationship. Notably, the Campaign greatly emphasizes on the need to crack down on corrupt officials both within and outside of the BRI. Given that the right to plea-bargaining lies with the prosecutors, it is implausible that prosecutors would offer the plea-bargaining procedure to a corrupt Chinese official. The imposition of harsh punishments would serve as a deterrence against corruption (i.e. the greater the punishment, the greater the deterrence). As such, it would be absurd for prosecutors to offer leniency towards the sentencing of a corrupt official.

(2) Alternatively, given the Campaign's efforts in clamping down on corrupt Chinese officials, one might argue that Chinese officials may enter into plea-bargaining agreements with the prosecutors under which the prosecutors might offer lighter sentences in exchange for confidential information (such as underhanded transactions within BRI loan agreements) which could, potentially, lead to the indictment of other corrupt Chinese officials.

This author takes the view that the second argument triumphs the first argument. The imposition of harsher punishments *might potentially* deter the occurrence of corruption within the BRI. However, given the confidential nature of BRI loan agreements, many corrupt Chinese officials could hide behind the veil of secrecy to avoid detection, which inevitably compromises the deterrent effect of "harsher punishments". On this basis, it is more likely that prosecutors would offer plea-bargaining agreements (with favourable sentencing proposals) to Chinese officials indicted under the Campaign in exchange for the *hidden* identities of other corrupt Chinese officials.

That said, even if a Chinese official were to accept a prosecutor's proposal to enter into a plea-bargaining agreement, this would not protect the reputation and relationships of the Chinese official. The reasoning is twofold:

(1) First, a Chinese official who is indicted under the Campaign must plead guilty before the plea-bargaining process comes into play. By pleading guilty, the Chinese official is admitting to the commission of an offence, which in turn would taint his or her reputation.

(2) Second, "settlement proposals" executed under the plea-bargaining procedure would have to be disclosed to the court. This means that such settlement proposals would come within the public domain – eliminating any potential for a Chinese official to hide away from public scrutiny.

Conclusively, once a Chinese official is indicted under the Campaign, it is highly unlikely that the plea-bargaining procedure would offer the cloak of anonymity required to save his or her reputation and relationships. Instead, the public nature of the plea-bargaining process acts as a catalyst towards the moral condemnation of such corrupt Chinese officials.

## 7. Conclusion

Conclusively, there is unlikely to be an interplay between corruption, criminal plea-bargaining and civil ADR. Although there are various similarities between criminal plea-bargaining and civil ADR, this author is of the view that the differences between the two overwhelmingly supersede their similarities. Notably, the criminal plea-bargaining procedure (including the "immediate judgement" procedure) does not allow Chinese officials to protect their "mian zi" and "guan xi" given the public nature of the plea-bargaining procedure (e.g. the "settlement proposal" is disclosed in court). This is in contrast with the main aim of the civil ADR procedure, which is to protect the relationships and reputations of commercial parties through the veil of confidentiality and non-prejudicial negotiations.

Further, the criminal plea-bargaining procedure in China only focuses on varying the *magnitude* of the punishment, rather than the *dismissal* of criminal liability (i.e. the dropping of criminal charges). As such, a Chinese official would be publicly tainted with a criminal record *even if* he or she successfully obtains a favourable settlement proposal under the plea-bargaining procedure. This is incongruous to the function of civil ADR, which encourages parties to *privately* settle their disputes so as to prevent the commencement of public civil proceedings; once a civil proceeding commences, parties are unlikely to escape the public imposition of civil liability. The confidential nature of civil ADR therefore provides a layer of confidentiality that is, unfortunately, absent within the criminal plea-bargaining procedure.

Incidentally, the highly public nature of the plea-bargaining procedure provides an indirect method to pierce through the opaqueness of confidentiality clauses within BRI loan agreements. In other words, even if the confidentiality clauses provide a shield for corrupt Chinese officials to carry out underhanded BRI-related transactions, the existence of the plea-bargaining procedure may possibly act as a sword which pierces through the armour of secrecy. This is because Chinese officials who are indicted under the Campaign may attempt to negotiate with prosecutors by providing confidential information in exchange for a lesser sentence. Such disclosures made under the plea-bargaining process could potentially lead to the indictment of other corrupt Chinese officials, which in turn brings forth the justice that President Xi Jinping has vowed to take against corrupt Chinese officials within the BRI.

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