



# Problems and prospects: China's response to wrongful convictions

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## Abstract

This article describes the difficulties involved in the implementation criminal justice reforms. These difficulties are caused by deep flaws that affect how China responds to wrongful convictions and that dampen the prospect for their prevention or remedy. Through new case studies, it critically examines the difficulties associated with the implementation of mechanisms for preventing or remedying such convictions, both before and after the Criminal Procedure Law of the PRC (2012 CPL). It further proceeds to further analyze deep flaws in China's justice system, indicating that the prime reasons for the constant failure of justice reforms is due more to institutional practices than to attitudinal or cultural practices in China. It finally concludes by suggesting that, in order to mend the major flaws and fill the implementation gap between law and practice, authorities should learn from China's past and from relevant overseas experience to better prevent wrongful convictions.

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**Keywords:** Implementation difficulty; Institutional problems; Response to wrongful convictions; Prospects for better prevention

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## 1. Introduction

Since 2005, China's criminal justice system has undergone several waves of reforms, initiated as official responses to wrongful convictions in capital cases. The scope of the reforms broadly covers the relationships between the police, prosecutors and courts, the relationships between each of these

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three institutions and the ruling Chinese Communist Party (“CCP”) and the substantive powers of these three ones. As part of the reforms, more adversarial procedures were introduced to the trial process, as mechanisms for preventing or remedying injustices. While justice reform intensified when the Political-Legal Committee (“PLC”) of the CCP started its 2013 crusade against such convictions,<sup>2</sup> current institutional, cultural or attitudinal practice may weaken the implementation of the new reforms. Institutional practices refer to traditional Chinese approaches to justice institutions. Such approaches include the inadequate funding of such institutions, co-operation between the police, prosecutors and the judiciary under the coordination of local political-legal committees (“local PLCs”). They also involve the evaluation of the police's, prosecutors' or judges' work performance, respectively based on detection, prosecution or conviction rates. Cultural practices may be defined as methods of work based around the shared values of Chinese justice society. For example, more attention is paid to striking down on alleged criminals than to protections against wrongful conviction; state power is prioritized over individual rights, substantive than procedural issues, and on a presumption of guilt rather than of innocence. Attitudinal practices are defined as passive attitudes taken to avoid conflicts between institutions. These practices actually contribute to a very high rate of detection or conviction. From 2011 to 2013, Beijing police's clearance rates are respectively 97.89%, 98.91% and 99.16% in murder cases, followed with 98.54% as of September 10, 2014.<sup>3</sup> These data are dramatically higher than murder clearance rates in other countries, such as Canada (i.e., 75% in 2010)<sup>4</sup> and the United States (i.e., 62.5% in 2012).<sup>5</sup> The proportion of accused offenders eventually found guilty was reported to be nearly 100% in China,<sup>6</sup> more than 2011 conviction rates in the United States (i.e., 93%),<sup>7</sup> or United Kingdom (i.e., “83 percent”).<sup>8</sup> Given the frequency of wrongful convictions, China's police and justice system is often esteemed to be far from meeting international standards.

The recent discovery of several wrongful convictions has revealed major flaws in China's justice system.<sup>9</sup> For example, in 2013, five such convictions were finally rectified, namely

<sup>1</sup>PLCs are bodies that oversee China's justice system and all legal enforcement authorities. The Central PLC is responsible for coordinating the system as a whole, while local PLCs oversee the work of the police, prosecutors and courts in respective provinces, municipalities, counties or autonomous regions. In practice, local PLCs play the actual role of directly intervening in trials and judicial decisions, further limiting judicial independence.

<sup>2</sup>See “The CCP's Central Political-Legal Committee Issued the First Guideline on Preventing Unjust Cases” [zhongyang zhengfawei chutai shouge fang yuanjia cuoan zhidao yijian], XINHUA NET (13 August 2013), [http://news.xinhuanet.com/2013-08/13/c\\_116929042.htm](http://news.xinhuanet.com/2013-08/13/c_116929042.htm).

<sup>3</sup>“Beijing Police's Detention Rate for Eight Serious Crimes Hitting A Record High in Ten Years”, China News Network (September 14, 2014), <http://news.sina.com.cn/c/2014-09-14/191830851732.shtml>; “Beijing police: the murder detection rate being 98.54% in this year”, People Network (September 14, 2014), <http://legal.people.com.cn/n/2014/0914/c42510-25657969.html>.

<sup>4</sup>See Tina Hotton Mahony & John Turner, “Police-reported clearance rates in Canada, 2010”, <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11647-eng.htm>.

<sup>5</sup>See The FBI, “Clearances”, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/offenses-known-to-law-enforcement/clearances>.

<sup>6</sup>See “The Conviction Rate of Chinese Criminal Cases in Being nearly 100%”, <http://www.360doc.cn/3g/article.aspx?id=255647>; “China has 99.93 per cent conviction rate”, Sydney Morning Herald (March 10, 2014), <http://www.smh.com.au/world/china-has-9993-per-cent-conviction-rate-20140310-hvh5w.html>; Terence McCoy, “China scored 99.9 percent conviction rate last year”, The Washington Post (11 March 2014), <http://www.washingtonpost.com/news/morning-mix/wp/2014/03/11/china-scored-99-9-percent-conviction-rate-last-year/>.

<sup>7</sup>See United States Department of Justice, “United States Attorneys' Annual Statistical Report for Fiscal Year 2011”, [www.justice.gov/usao/reading\\_room/reports/asr2011/11statrpt.pdf](http://www.justice.gov/usao/reading_room/reports/asr2011/11statrpt.pdf).

<sup>8</sup>Sentencing Council, “Facts and figures”, <http://sentencingcouncil.judiciary.gov.uk/facts/facts-and-figures.htm>.

<sup>9</sup>See WANG Lin, “Wrongful Convictions Expose Deep Flaws In China's Justice System”, THE ECONOMIC OBSERVER (23 July 2013), <http://www.eeo.com.cn/ens/2013/0723/247176.shtml>.

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