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Difficult paths: Slow progress in preventing wrongful convictions in China

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ABSTRACT

China has made new changes to its criminal justice system, as stated in the 2016 White Paper. In this sense, all reforms leading to the prevention of wrongful convictions can be regarded as an essential step towards a modern justice system. But police torture continues to occur because of a lack of judicial and prosecutorial restraints on police actions. The danger of ineffective defence against tortured confessions in the Chinese context is so grave that the underlying aim of the reforms has actually been defeated. This article assesses what effects the reforms have had on China's practice and whether or not they will prevent future wrongful convictions. The latest data and case studies will demonstrate the main pitfalls of the reforms, both in how the new laws or regulations are written and how they are implemented. Further substantive reforms are needed to achieve better justice and more human rights progress.

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1. Introduction

As in many western countries, China has made the prevention of wrongful convictions a priority over the recent decade, so as to better respect the rule of law and enhance human rights progress (Roach, 2010a). The Chinese Central Government highly stressed its new progress on the judicial protection of human rights in a 2016 White Paper, which sets forth the Government's official assessment of its own achievements (The State Council Information Office of the People's Republic of China, 2016a). However, the White Paper ignores and even whitewashes over the limits of existing reforms. In fact, current laws on crime, justice or rights are not properly implemented (Jiang, 2013a). Particularly, police torture continues to occur due to a lack of judicial and prosecutorial restraints on police actions.¹ Tortured confessions and rules that render defence counsel ineffective further lead to wrongful death sentences and executions. Such problems are so grave that the underlying aim of providing better justice and protecting human rights has been frequently defeated. Has the new progress on the prevention of wrongful convictions been accompanied by a step back?

This article provides a critical examination of the 2016 White Paper of human rights by focusing on the latest reforms' impact on preventing torture from leading to future wrongful convictions in practice. Section 2 will describe the Chinese justice system following the Zhao-reforms, including a survey of the problems that need to be solved, an overview of previous reform attempts and their shortcomings, and a summary of the current reforms. Section 3 will proceed to examine the

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¹ The 2012 *Criminal Procedure Law of the PRC* states that the police are "responsible for investigation, detention, execution of arrests and preliminary inquiry in criminal cases", prosecutors are "responsible for procuratorial work, authorizing approval of arrests, conducting investigation and initiating public prosecution of cases" and courts are responsible for trial.

implementation of the latest reforms in order to assess their actual effects on promoting the prevention of wrongful convictions resulting from torture in practice. It will rely on case studies and reliable data to provide an accurate assessment. Section 4 will address new changes to the Chinese criminal justice system from an official perspective in order to analyze the official position's features and potential problems, like its focus on facial (as opposed to substantive) progress. A contrast between official expectations of the effects of the new reforms and their limited implementation suggests that institutional restraints are responsible for the persistence of torture. Section 5 will reflect on China's slow progress towards a modern justice system in order to explore the difficulties it has faced in preventing wrongful convictions. Finally, the article will conclude with suggestions for further substantive reforms which need to be taken in order to shorten China's long march towards better justice.

2. Overview of the Chinese justice system following the Zhao-reforms

China's justice system is transitioning from the inquisitorial tradition to the adversarial process. Even before the post-Zhao reform, the first round of the movement for preventing wrongful convictions was motivated by the wrongful conviction of SHE Xianglin in 2005. Following his exoneration, fundamental flaws in the criminal justice system have received broad attention from the media, Chinese authorities and scholars. Some academic recommendations were proposed and adopted by the authorities, e.g., the restoration of the Supreme People's Court (SPC) power to conduct final reviews of death sentences, and the restriction of the High People's Courts' (HPC) power to remand cases for retrial. The Supreme People's Procuratorate (SPP),² the SPC, the Ministry of Public Security (MPS) and the Ministry of Justice (MOJ) have promoted such reforms.

Similarly, responding to the ZHAO Zuohai's exoneration in 2010, the four institutions mentioned above and the Ministry of State Security (MSS) jointly released a second round of regulations in order to exclude confessions obtained through torture from use as evidence. The current *Criminal Procedure Law of China (2012 CPL)* also provides for exclusionary rules as a basic law. China further introduced "more adversarial processes with defense's cross-examination on prosecution witnesses, in an attempt to strengthen the accused's right to defense" (Jiang, 2013b).

Apart from governmental prosecution similar to prosecutors in many other countries, Chinese prosecutors are responsible for reinvestigating cases after the police's investigation and supervising law enforcement activities in the criminal process.³ Actually, Chinese prosecutors hardly perform their own investigations and merely check over police evidence. Different from other countries', Chinese prosecutors can apply exclusionary rules by law,⁴ as distinct from exercising discretion to exclude false evidence from the record. But they often "pay more attention to cooperating with the police in handling cases than to imposing necessary restraints on the police's abuse of power during investigation", and "only correct errors that are harmful to their cases" (Jiang, 2015).

Article 7 of the 2012 CPL requires the police, prosecutors and courts to cooperate with and "check each other to ensure the correct and effective enforcement of law". Also, the 2012 CPL specifies their common goal of fight against crime. But actually they "work together on the same line" rather than impose "the necessary checks on each other" (Jiang, 2014a). Specifically, police officers still use torture, given that torture is a high-benefit, low-risk way to obtain convictions. Prosecutors cannot perform their duties because they are detrimental to their performance indicators. Trial courts, "nominally responsible for deciding cases by law" fail to have the final say, but "are predisposed to side with the police and prosecutors, acquiescing to their collection and tailoring of evidence according to the needs of conviction" (McCoy, 2014). Conversely, courts demand "the defence provide proof of innocence that it is systematically prevented from obtaining" (Jiang, 2014b). All three institutions face pressure to obtain "full conviction rates" (China has 99.93 per cent conviction rate, 2014), so courts and prosecutors tolerate police torture imposed on suspects and their false confessions even in deciding capital cases.

Concerning the role of Chinese judges, they are theoretically impartial arbitrators, but cannot ensure due process in practice mainly because the criminal process follows a crime-control model that involves administrative fact-finding elements, leading to a plea of guilt, in order to achieve substantive justice. The police and prosecutors are so concerned with establishing suspects' guilt as to decide cases for judges before trial. Facing the police with a high political status and prosecutors who can supervise court work and hold accountable judges at the same administrative level, judges hardly check police or prosecutorial evidence of conviction, but deem the accused's conviction as the core value of trials.

Also, serious or controversial cases are still supposed to be ultimately decided not by judges but by trial committees⁵ that do not attend court hearings. The court president decides whether cases are difficult, complicated, serious or controversial enough so as to submit to the trial committee by law. If yes, judges will merely provide information and recommendations to trial committees that will further consider cases and make the initial decisions. Together with the impact of crime control,

² As the *Constitution of the PRC* states, the SPP are "State organs for legal supervision" and "the highest procuratorial organ" directing "the work of the people's procuratorates at various local levels and of the special people's procuratorates", while exercising "procuratorial power independently" by law. (Articles 129, 131, 132).

³ Articles 37, 129 and 131 of the Constitution of the PRC; Articles 3 and 6 of the 2012 CPL.

⁴ Article 57 of the 2012 CPL.

⁵ The 2012 CPL Article 180 authorizes a collegial panel to request the court president to decide whether or not to submit difficult, complicated or major cases to the trial committee, for its discussion and decision, and requires the panel to execute the decision. The collegial panel is not part of the trial committee.

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