

China's Forensic System: Critical Comments on the "Latest" Flaw

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Abstract

The article will critically examine the fundamental flaws that have been newly discovered from the "latest" case studies. In recent decades, numerous miscarriages of justice have occurred in China mainly due to the insufficient or improper use of forensic evidence. Comments on the "latest" flaw will start from an overview of the notorious wrongful conviction in Case ZHANG Gaoping and ZHANG Hui whose exonerations in 2013 were based on the proper use of forensic techniques such as DNA testing. The case highlights the injustice that results when forensic evidence is ignored in favour of wrongful confessions extorted under police torture. It has been suggested that China's several waves of forensic science reform cannot lead the current forensic identification to objective, fair or reliable forensic evidence. The "latest" founded flaw entrenched in its forensic system failed to be solved by technical, financial, administrative or legal progress only. In essence, the 2005 reform on forensic identification is flawed to its core, albeit being recently identified. This is primarily because in law forensic experts inside police can conduct identification to provide forensic evidence on cases investigated by police, which cannot ensure necessary check or balance to prevent or reduce forensic errors in practice.

Keywords

Forensic System, Critical Comments, The Latest Case, Flawed Reform

1. Introduction

In its transition towards the adversarial process, China's forensic science reform has promoted the diversity of forensic sectors among institutes outside courts so as to increase the independence of and supervision over forensic experts, in their producing forensic evidence for preventing injustice. Over the past 3 decades from the first national "Strike Hard" Campaign in 1983 (Pearson, 2011), however, numerous miscarriages of justice have

occurred in China due to the insufficient or improper use of forensic evidence. Recently, some of these cases have finally corrected through the proper use of forensic techniques such as DNA testing (He & He, 2012).

2. The Latest Case Study

On March 2013, ZHANG Gaoping and ZHANG Hui were exonerated of raping and murdering a 17-year-old girl after DNA evidence linked the crime to another man (Li, 2013). The two men had spent ten years in jail after confessing to murder and rape under torture from police and their fellow inmates. The men were convicted even though DNA was found under the fingernails of the victim that did not belong to either man. The DNA evidence was ignored until 2011 and 2012, when police finally confirmed that the DNA was that of Gou Haifeng, who had confessed to murdering of another girl and were executed in 2005 (Shen & Wang, 2013). In response to this new evidence, the ZHANGs were finally exonerated in the last year¹.

The case of the ZHANG Gaoping and ZHANG Hui highlights the injustice that results when forensic evidence is ignored in favour of wrongful confessions extorted under police torture. The ZHANGs' exonerations were made possible by forensic evidence reforms in China that are intended to protect forensic experts of providing impartial evidence against biased authorities and exclude illegally obtained evidence from being used in convicting the innocent. Concerning protection, the *Decision on Administrative Issues of Forensic Identification (2005 Decision)* attempted to increase independence of forensic experts from authorities, mainly by abolishing court or procuratorate forensic agencies, developing social and restricting police ones at least in regulation². But more protection and independence was needed for forensic experts so as to prevent illegal factors from interfering with the reliability of forensic evidence provided by them. Furthermore, the new *Criminal Procedure Law of the PRC (CPL)*, effective 2013, excludes illegally obtained evidence and protects expert witnesses' cross-examination in court³, albeit generally for human rights. China's reformers aim to shake up the justice system and improve human rights⁴ by reforming its forensic science. For much of China's history, China's justice system has focused more on obtaining convictions for the authorities' convenience (Boehler, 2013) or giving severe and swift punishments for suspected crimes to calm down popular indignation (Trevaskes, 2006) than on determining the truth of the allegations against the accused. Also, police and prosecutors have traditionally relied more on confessions of guilt to obtain convictions than on physical evidence, so as to show a high rate of conviction or satisfying numbers of detected/solved cases as their work achievement (Boehler, 2013). This is needed for their subsequent promotion to higher positions, which appears to constitute a vicious circle of the game on rates or numbers, such that "[n]umbers make leaders" and "leaders make numbers"⁵. As a consequence of these two traditions, China's organizations for gathering and evaluating forensic evidence are generally underdeveloped, and function primarily for the benefit of the State, rather than for the accused. Although China has undertaken several waves of forensic science reform, it is doubtful that the current "uniform" system of forensic identification⁶ could ensure the objectivity, fairness and reliability of forensic evidence.

3. Flawed Reform at the Core

Unfortunately, remained problems cannot be solved only by technical, financial or administrative progress. An institutional flaw is that in law police agency experts can conduct identification to provide forensic evidence on cases investigated by police, namely, police being responsible for investigation and identification in same cases. Although the 2005 reform, mainly including the 2005 *Decision*, is intended to restrict forensic sectors affiliated to the police, these sectors still dominate forensic investigation. Police agencies providing expert witnesses ap-

¹See "Hangzhou five seek delayed justice", China Daily (4 July 2013).

<http://article.wn.com/view/WNATC3240E8F167FD9E962BB5A8CD677932E/>

²See "National People's Congress Standing Committee's Decision on Administrative Issues of Forensic Identification" (National People's Congress, 1 October 2005) [*qunguo renmin daibiao dahui changwu weiyuan hui guanyu sifa jianing guanli wenti de jue ding*].

<http://www.lawtime.cn/info/yiliaoylfg/2011031523817.html>

³See "Criminal Procedure Law of the People's Republic of China (2012 Amendment)".

<http://www.ceolaws.net/html/criminal/Criminal%20Procedure%20Law%20of%20the%20Peoples%20Republic%20of%20.html>

⁴See "CPC announces decision on comprehensive reform", Xinhuanet (12 November 2013).

http://news.xinhuanet.com/english/china/2013-11/12/c_132882325.htm

⁵"The Numbers Game", Science (1 June 2013).

⁶See "China Has Already Formed the Uniform Administrative System of Forensic Examination" [*woguo sifa jianing tongyi guanli tizhi yijing xingcheng*], Legal Info (23 November 2012).

http://www.legalinfo.gov.cn/moj/zgsfjd/content/2012-11/23/content_4008067.htm?node=685

pear to be popular with more advantages over social ones in personnel, experience, funding or administrative ranking. Even after the implementation of the *CPL* from 2013, the dominance of the police agencies remains secure (Wong, 2011), detrimental to impartial evidence due to their potential to seek for a high conviction rate.

The 2005 reform is flawed to its core. In its long march towards the abolition of forensic sectors inside authorities, China has allowed police forensic agencies to retain key forensic functions for investigative purposes, such as identifying the cause of victims' death or determining what weapons caused injuries. It fails to really ensure forensic experts' independence from police agencies but leads police agency experts to conduct more than 90% of China's forensic investigative tasks in practice⁷. It cannot succeed so long as the police continue to oversee the collection, analysis and interpretation of forensic evidence. Given the potential conflict of interests between impartial experts and police involving torture, the institutional flaw appears to constitute fundamental injustice at the core, leaving much room for wrongful convictions. While the 2005 reform purports to empower independent forensic experts, moreover, courts and police limit their ability to testify in court. Police agencies may not permit impartial forensic experts to testify against police given the "numbers game"⁸, and even in court, judges might exclude independent forensic testimony on the grounds of trial efficiency without cross-examination. Particularly when evidence is uncertain, forensic experts themselves are unwilling to testify in court, but police experts are willing to interpret uncertain evidence in favour of the police, thus leaving the defence at a disadvantage.

Particularly with the increasingly rapid development of forensic science and technology that has placed great pressure on China's forensic system⁹, China cannot yet perform enough/adequate forensic investigation to ensure that criminal trials are fair. Although the central authorities have been proactive in taking efforts to improve China's capacity for forensic investigation (Xu, 2005), the on-the-ground effects on forensic reforms in different provinces have been mixed. The exclusive power of law enforcement bodies (such as police, procuratorate and courts) to initiate forensic examination means that there is no guarantee that applications for conducting a necessary or urgent forensic examination on controversial points will be successful. Given widespread corruption and non-uniform standards in practice (Teng, 2011), some of under regulated forensic agencies have been frequently accused of depriving most applicants of the right to a forensic examination. The imbalance between the authorities' power to initiate identification and accused right to apply for it seems to leave much chance of power abuse in handling applications because the accused can apply for forensic identification but the right may be abused by authorities by not ordering investigations. In some cases impacted by the above problems, the needs of applicants and forensic experts are inadequately considered and their due rights are not protected. Even if applicants are granted forensic re-examination, the probability of inconsistent appraisals is still very high, e.g., almost 100% difference in psychiatric appraisals (Guo, 2012). Under such circumstances, courts often judge their merits based on the administrative ranking of forensic sectors or professional titles of experts, in distinguishing between expert appraisals that seem reliable.

References

- Boehler, P. (2013). Supreme People's Court Judge Urges End to Wrongful Convictions. *South China Morning Post*. <http://www.scmp.com/news/china/article/1232279/supreme-peoples-court-judge-urges-end-wrongful-convictions>
- Guo, H. (2012). Research on Several Legal Issues of Judicial Psychiatric Identification. *Faxuejia*, 2, 121-136. http://law.ccssn.cn/fx/fx_sfjdx/201310/t20131029_739887.shtml
- He, J. H., & He, R. (2012). Empirical Studies of Wrongful Convictions in Mainland China. *The University of Cincinnati Law Review*, 80, 1277-1292. <http://scholarship.law.uc.edu/uclr/vol80/iss4/11>
- Li, X. R. (2013). Sorry' Is Not Enough for Wrongful Convictions. *Shanghai Daily*. <http://www.shanghaidaily.com/Opinion/chinese-perspectives/Sorry-is-not-enough-for-wrongful-convictions/shdaily.shtml>
- Pearson, G. (2011). Policing Serious Crime in China: From "Strike Hard" to "Kill Fewer" By Susan Trevaskes. *British Journal of Criminology*, 52, 230-233.

⁷"The Ministry of Public Security's Implementation the National People's Congress Standing Committee's Decision on the Administrative Issues of Judicial Identification to further Strengthen Police Agencies' Criminal Law Science", *Lawtime* (2011). <http://www.lawtime.cn/info/jianding/sfjdlaw/2010111148778.html>

⁸*Supra* note 5.

⁹See "The Ministry of Public Security Pushing Hard the Legalization, Standardization and Modernization of Forensic Identification" [*zhongguo gong'an bu litui sifa jianding fazhi hua biaozhun hua he xiandai hua*], *China News* (19 Jan., 2006). <http://www.chinanews.com/news/2006/2006-01-19/8/680202.shtml>

- Shen, X. W., & Wang, Q. B. (2013). ISSUU—July 2013 by China Newsweek Corporation. <http://issuu.com/newschinamag/docs/july13>
- Teng, B. (2011). Blood, Justice and Corruption: Why the Chinese Love Their Death Penalty. <http://content.time.com/time/world/article/0,8599,2075010,00.html>
- Trevaskes, S. (2006). Severe and Swift Justice in China. *British Journal of Criminology*, 47, 23-41.
- Wong, K. C. (2011). *Police Reform in China* (p. 300). CRC Press. <http://dx.doi.org/10.1201/b11378>
- Xu, J. H. (2005). Deepening Reform on Judicial Identification, Realizing Several Transitions and Ensuing Judicial Justice. http://www.legalinfo.gov.cn/moj/zgsfjd/2005-10/25/content_220040.htm

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