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ADEQUATE OR NOT? JUDICIAL ACCOUNTABILITY AND CRIMINAL JUSTICE REFORMS IN CHINA

JIANG, Na<sup>1\*</sup>, HAN, Rong<sup>2</sup>

<sup>1</sup>*Professor of law, Beijing Normal University (in China), Ph.D. in Law (U.K.); Deputy General-Secretary of the International Association of Penal Law (AIDP) China Branch;*

<sup>2</sup>*L.L.M. candidate, Law School of Beijing Normal University*

**\*Corresponding Author:-**

Email: [na.jiang@bnu.edu.cn](mailto:na.jiang@bnu.edu.cn)

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From 2014 to 2015, the shortcomings of the Chinese justice system were once again made clear with the identification of thirteen serious wrongful convictions.<sup>1</sup> In some cases in question, innocent people were executed. The Ministry of Public Security (MPS), the Supreme People's Court (SPC) and Procuratorate (SPP) have responded to these cases by introducing specific measures to deepen reforms to the justice system, including and not limited to life-long responsibility.<sup>2</sup> Does introduction of this new system as a part of official responses adequately ensure that justice can be done by mending the fundamental flaws that led to wrongful convictions? In order to answer this question, it is necessary to examine what occurred in each of typical cases.

### **1. Case Huugjilt**

The sad case of Huugjilt has led to calls for further reforms, and it is easy to see why. The wrongful conviction and execution of Huugjilt, an 18-year-old worker, followed a case in which he was presumed guilty and subjected to police torture. Close cooperation among the police, the prosecutors and the courts ensured that Huugjilt never had a real chance to establish his innocence.<sup>3</sup> Huugjilt was wrongly found guilty of a combined rape and murder which had occurred in Hohhot in April 1996. He was executed only 61 days after his arrest. In fact, the crimes were committed by a serial rapist and killer, who turned up nine years later and confessed to having committed crimes in ten separate cases.<sup>4</sup> Huugjilt was finally exonerated posthumously by a retrial court in 2014.

The Huugjilt case occurred in April 1996, at the beginning of several "Strike Hard" campaigns in China. At that time, the authorities preferred to speed up the period for solving cases even though doing so would increase the risk of judicial errors. They were not interested in cautiously investigating the facts and checking evidence to prevent injustices. In order to achieve the goals of the campaigns, police investigators abused their power to quickly solve Huugjilt's case by misidentifying him as the guilty party. Prosecutors, failing to check police errors, favored evidence of guilt obtained by the police over evidence of innocence. Huugjilt was immediately convicted and sentenced to death by the Intermediate People's Court (IPC) at a trial which lasted less than one hour.<sup>5</sup> Defense lawyers were present, but spoke only a few words. Huugjilt's appeal against this judgement was rejected by a local Higher People's Court (HPC). Five days after his appeal had been rejected, the innocent Huugjilt was executed for rape and murder.<sup>6</sup>

### **2. Case NIAN Bin**

In February 2008, 31-year-old NIAN Bin was wrongly convicted of poisoning two children.<sup>7</sup> On 27 July, 2006, both children, who lived next to NIAN Bin's room in Pingtan County of Fuzhou province, suddenly died of poisoning after eating dinner.

Following twelve days of investigation, local police hastily considered NIAN Bin and his wife to be suspects and thus tortured him to confess contrary to the facts on 7 August, 2006. Based on his confession, the police announced that they had swiftly solved the case and the Procuratorate prosecuted him for the crime of poisoning, a crime distinct from murder in law. Eight years later, his conviction was finally corrected by the Fujian HPC, after he had been sentenced to death four times at nine different trials.

The biased police tortured NIAN Bin to extort his confession and also faked more evidence of guilt that was consistent with his false confession. Once he confessed during interrogation, the police officially reported their success in solving the case through local media, which misled the public to consider NIAN Bin to be as a criminal and to press the courts to convict him.<sup>8</sup> In fact, they just found a suspect whom they could force to confess. According to law, no accused can be convicted before trial. However, the conclusions reached during the police investigation had a decisive influence on the later prosecution and trial. Undoubtedly, NIAN Bin was wrongly convicted based on police evidence.

The Fuzhou IPC convicted NIAN Bin and sentenced him to death in February 2008. He appealed to the Fujian HPC, but was rejected in 2010. Until 22 August 2014, the HPC decided that NIAN Bin was factually innocent.<sup>10</sup> If any court had excluded the errors in the police evidence, the accused NIAN Bin would have been exonerated earlier, so that his wrongful conviction could have been prevented.

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<sup>1</sup> See Checking Twelve Major Injustices that Were Corrected in 2014: A Need for Ten Years on Average to Correct Errors, 163 NEWS *pengpai xinwen wang* (22 December 2014), <http://news.163.com/14/1222/19/AE3F9B7C00014SEH.html>

<sup>2</sup> See MA Xueling, The Systems of Police, Prosecutors and Courts Successively Issue Reform Opinions that Include over 200 Specific Measures, China News Net [*zhongguoxinwenwang*] (27 February 2015), [http://news.jcrb.com/jxsw/201502/t20150227\\_1480430.html](http://news.jcrb.com/jxsw/201502/t20150227_1480430.html)

<sup>3</sup> MA Shuangyou, MA Shuangyou: Three Points on Explaining Reasons for Holding Those Responsible for the Injustice of Inner Mongolia, 21CCOM (30 January 2015), [http://www.21ccom.net/articles/china/gqmq/20150130119812\\_all.html](http://www.21ccom.net/articles/china/gqmq/20150130119812_all.html)

<sup>4</sup> WANG Xiaoyu, The Whole Story of the Huugjilt Case: Another Man Confessed the Course of Murder Nine Years After Huugjilt Being Shot, IFENG [*fenghuang jujiao*] (12 November 2014), [http://news.ifeng.com/a/20141112/42452914\\_0.shtml](http://news.ifeng.com/a/20141112/42452914_0.shtml)

<sup>5</sup> WANG Lili, The Inner Mongolia Victim Huugjilt's Mother: The Judgement Being Sentenced at Trial in Less than One Hour, QLWB (31 October 2014), <http://www.qlwb.com.cn/2014/1031/239502.shtml>

<sup>6</sup> See China Voice: Justice Comes Too Late for Huugjilt, XINHUA (17 December 2014), <http://en.people.cn/n/2014/1217/c90882-8823796.html>

<sup>7</sup> See Deadline for death sentence in Fujian murder case extended, South China Morning Post (25 May 2013) <http://www.scmp.com/news/china/article/1245885/deadline-death-sentence-fujian-murder-case-extended>

<sup>8</sup> See Classic Readings: An Interview with CHEN Ruihua on Why Courts Are Afraid of Acquittals, SINA (1 April 9), 9 PHOENIX WEEKLY 2015, [http://blog.sina.com.cn/s/blog\\_707849470102vt7y.html](http://blog.sina.com.cn/s/blog_707849470102vt7y.html)

<sup>10</sup> See ZHANG Yiqian, Lawyers provide free legal help to exonerate wrongfully convicted individuals, Global Times [*huanqijishibao*], (3 December 2014), <http://www.globaltimes.cn/content/894844.shtml>

### 3. Comments

The above cases reveal widespread abuses of power contrary to law and justice. The first innocent, Huugjilt, was wrongly convicted and swiftly executed in 1996 according to the *1979 CPL*, effective 1980, whereas the second innocent had been wrongly convicted and sentenced to death four different times according to the *1996 CPL*, effective 1997. The *1996 CPL* introduced the adversarial system to replace the inquisitorial system which dominated during the validity of the *1979 CPL*. However, even under the *1996 CPL*, police investigation, which should have been replaced by court trial as the center of the criminal process, still contributed to the second innocent's four convictions. If laws then effective had been well implemented to ensure the centrality of the trial, NIAN Bin's convictions would have been prevented.

In fact, many fundamental flaws still inherent in China's justice system ensure that investigation remains at the center of the criminal process. Torture, the presumption of guilt, close cooperation among police, prosecutors and courts, as well as political, economic or administrative restraints on them, often influences their decision-making widely and deeply, even in capital cases. A combination of such flaws frequently makes the mechanism for preventing wrongful convictions unworkable. Essentially, wrongful convictions happen because investigation, prosecution and adjudication work in practice as administrative processes, and thus the police, prosecutors and judges are more interested in getting a good performance evaluation by any means than in delivering just outcomes. To better prevent such convictions, all institutional restraints that act as the root causes of wrongful convictions should be totally removed.

Among the CDRG's four major measures, namely improvements relating to justice officers' accountability and position safeguards, along with unified management of personnel, finance and property, are relevant to, but not adequate enough to counteract, the root causes of the convictions. For instance, judges' life-long accountability for wrongful convictions cannot effectively prevent wrongful convictions because judges are often not decision-makers, but follow their leaders or the trial committee. Although position safeguards protect judges from any revenge against them for an unpopular decision, judges usually cooperate with prosecutors or the police and rationally do not check their potential errors. Also, the unified management of personnel, finance or property cannot ensure judges' independence from the undue interference of local authorities. Only institutional remedies can remove the biggest obstacles to justice. Otherwise, no law can be well-implemented to ensure justice in an administrative process that urges the three agencies to jointly control crime.

As the case studies demonstrate, neither the *1979 CPL* nor *1996 CPL* can achieve justice because of institutional obstacles. Under pressure to severely or swiftly solve cases, e.g., due to intervention through conviction rate rankings, slogans or the manipulation of hostile atmospheres, crime control becomes the core goal of justice institutions in practice so that there is no justice at all in the administrative process. The police often seek coerced confessions, as doing so is the most economical and convenient means of investigation. Such confessions can be used as evidence justifying prosecutions and convictions with the intent of deterring crime, rather than seeking justice. Apart from their core goal, biased internal assessment systems usually encourage the police to swiftly solve cases or discourage prosecutors from withdrawing prosecution cases and courts from acquitting the accused. It is the assessment based on crime control that often misleads justice officers to wrongly judge the effectiveness of existing preventive mechanisms.

However, the failure of several previous rounds of reform to prevent the frequent occurrence of such convictions invites skepticism on the likelihood that current reforms will succeed. Based on deep lessons from cases like Case Huugjilt<sup>11</sup> and Case NIAN Bin<sup>12</sup>, the authorities continue to adopt new strategies for deepening justice reforms in order to promote substantive changes for better preventing wrongful convictions in future. Many reformers' recommendations aim to minimize the high risk of wrongful convictions by mending major flaws in the justice system.

Since 2014, China has started the classified management of justice officers in some courts and procuratorates<sup>13</sup> and improved justice officers' accountability and position security, as well as on local courts' or procuratorates' personnel, financial and property management.<sup>14</sup> These basic measures make the reforms sound more administrative than substantial. Nonetheless, such measures that reproduce order<sup>15</sup> would not produce justice or the comprehensive rule of law. Therefore, the newly introduced judicial responsibility system cannot suffice to mending major justice flaws.

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<sup>11</sup> See China Focus: Trial reopens for rape-murder case with "convict" executed in 1996, XINHUA (20 November 2014), available at: [http://news.xinhuanet.com/english/indepth/2014-11/20/c\\_133803747.htm](http://news.xinhuanet.com/english/indepth/2014-11/20/c_133803747.htm)

<sup>12</sup> See Chinese man compensated for 8-year wrongful custody, XINHUA (17 February 2015), [http://news.xinhuanet.com/english/2015-02/17/c\\_134003629.htm](http://news.xinhuanet.com/english/2015-02/17/c_134003629.htm)

<sup>13</sup> See JIA Yang *et al.*, Four Major Reforms including the Classified Management of Justice Officers, PROSRATORIAL DAILY (14 March 2015), [http://newspaper.jcrb.com/html/2015-03/14/content\\_181438.htm](http://newspaper.jcrb.com/html/2015-03/14/content_181438.htm)

<sup>14</sup> See The Latest News on Fully Developing the Pilots of Judicial Reforms in 2016 across All China, YJBYS (10 December 2015), available at: <http://yjby.com/jiuyezhidao/news/898507.html>

<sup>15</sup> Jackson J, Bradford B, Hough M, Myhill A, Quinton P and Tyler TR (2012a) why do people comply with the law? Legitimacy and the influence of legal institutions. *British Journal of Criminology* 52(6): 1051 - 1071.