

CHINA'S NEW RULES ON EVIDENCE IN
CRIMINAL TRIALS

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I. INTRODUCTION

On June 25, 2010, China's Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, Ministry of State Security, and Ministry of Justice formally published two sets of rules regarding the use of evidence in capital cases and the procedure for excluding confessions by criminal suspects that had been obtained through illegal means such as torture. First announced at the end of May, these new rules have been the subject of much discussion in recent weeks.

To make the content of these new rules available to a broader audience, Dui Hua has produced English translations of the texts, released in three separate blog posts on Dui Hua's *Human Rights Journal*, available at <http://www.duihua.org/hrjournal/evidence/evidence.htm>.

II. NOTICE FROM THE SUPREME PEOPLE'S COURT, SUPREME PEOPLE'S PROCURATORATE, MINISTRY OF PUBLIC SECURITY, MINISTRY OF STATE SECURITY, AND MINISTRY OF JUSTICE REGARDING THE ISSUE OF "RULES CONCERNING QUESTIONS ABOUT EXAMINING AND JUDGING EVIDENCE IN DEATH PENALTY CASES" AND "RULES CONCERNING QUESTIONS ABOUT EXCLUSION OF ILLEGAL EVIDENCE IN HANDLING CRIMINAL CASES"

To the Higher People's Courts, People's Procuratorates, Public Security Departments (Bureaus), State Security Departments (Bureaus), Justice Departments (Bureaus) of each province, autonomous region, and municipality; the Military Court, Military Procuratorate, and Security Department of the General Political Department of the People's Liberation Army; and the Production and Construction Corps Division of the Xinjiang Uyghur Autonomous Region Higher People's Court and the People's Procuratorate, Public Security Bureau, Justice Bureau, and Prison Management Bureau of the Xinjiang Production and Construction Corps:

In order to further perfect our nation's criminal procedure system and in accordance with the central government's

general plan for deepening reform of legal institutions and work mechanisms, the Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, Ministry of State Security, and Ministry of Justice have recently, following extensive investigation and research, jointly established "Rules Concerning Questions About Examining and Judging Evidence in Death Penalty Cases" and "Rules Concerning Questions About Exclusion of Illegal Evidence in Handling Criminal Cases" (hereafter the "two sets of rules"), which we hereby issue to you and request compliance and implementation.

So that the two sets of rules may be stringently and thoroughly implemented in the course of executing the law, we hereby issue the following opinions:

A. *Fully Recognize the Enormous Significance of the Establishment and Implementation of the Two Sets of Rules*

The two sets of rules set higher standards and stricter demands on law enforcement organs' handling of criminal cases, especially death penalty cases. As such, they are extremely significant for the perfection of our nation's criminal procedure system, increasing the quality of law enforcement and handling cases, and promoting socialist rule of law construction. The central government places a high priority on these two sets of rules, and Comrade Zhou Yongkang, member of the CPC Politburo member and secretary of the Central Politics and Law Committee, led a full session of the Central Politics and Law Committee that also served as a briefing on reform of the legal system [at which] serious discussions of the two sets of rules [took place]. He called on people's courts, people's procuratorates, public security organs, state security organs, and judicial administration organs at all levels to carry out their duties in accordance with the law; strictly implement the two sets of rules; pay attention to facts, evidence, the law, and responsibilities; guarantee quality in handling cases; punish crime, protect human rights, and uphold justice in accordance with the law; and ensure that each criminal case handled can withstand scrutiny of the law and history. Relevant organs in each province, autonomous region, and municipality must implement national laws fully and correctly, carry out the criminal justice policies of the Party and state at a high level, and actively increase publicity work in order to give full recogni-

tion to the enormous significance of adopting the two sets of rules.

B. *Resolutely Arrange and Begin Training for the Two Sets of Rules*

People's courts, people's procuratorates, public security organs, state security organs, and judicial administration organs should seriously and immediately begin training and study of the two sets of rules, taking practical circumstances into consideration and employing different channels and methods. Care must be taken to arrange specialized training sessions for relevant personnel in order to ensure that each person involved in handling criminal cases fully grasps the details of the two sets of rules.

C. *Stringently and Thoroughly Implement the Two Sets of Rules*

These two sets of rules not only fully set out the fundamental principles for evidence in criminal procedure and detail standards of proof; they also further specify with respect to the collection, fixing, examination, judgment, and use of evidence. They not only establish the meaning and extended meaning of illegal evidence, but also standardize in detail the procedures and burden of proof [used] in investigating and excluding illegal evidence. Truly implementing these two sets of rules will inevitably play a major role in raising the standards of law enforcement and improving the quality of law enforcement personnel. Each unit concerned should stringently and thoroughly implement the two sets of rules in their practice of executing the law and firmly establish the equal importance of punishing crime and protecting human rights and the equal importance of substantive and procedural law. Evidence must be collected, examined, and judged fully, objectively, and in accordance with the law. Facts and evidence must be checked in order to raise the quality of criminal adjudications and ensure that the two sets of rules are implemented so that each criminal case can be handled in an ironclad manner. Summing up and reporting in a timely manner to central bodies in charge any new situations and problems encountered in the course of implementation, as well as new experiences discovered, must be resolute.

Finally, “Rules Concerning Questions About Examining and Judging Evidence in Death Penalty Cases” may be used as a reference for implementation in handling other criminal cases.

Supreme People’s Court, Supreme People’s Procuratorate,
Ministry of Public Security, Ministry of State Security,
Ministry of Justice
June 13, 2010

III. RULES CONCERNING QUESTIONS ABOUT EXCLUSION OF ILLEGAL EVIDENCE IN HANDLING CRIMINAL CASES

In order to standardize legal practices and promote fairness in the execution of the law, these rules are established in accordance with the Criminal Procedure Law and relevant judicial interpretations and in combination with the actual work of the people’s courts, people’s procuratorates, public security organs, state security organs, and judicial administration organs in handling criminal cases.

Article 1: The category of illegal oral evidence includes statements by criminal suspects or defendants obtained through illegal means such as coerced confession as well as witness testimony or victim statements obtained through illegal means such as use of violence or threats.

Article 2: Oral evidence that has been determined to be illegal in accordance with the law shall be excluded and may not serve as the basis for conviction.

Article 3: In the course of examining whether to approve arrest or initiate prosecution, the people’s procuratorates shall exclude illegal oral evidence in accordance with the law and may not use it as the basis for approving arrest or initiating prosecution.

Article 4: If, between the time that a copy of the indictment has been delivered and the time the trial commences, a defendant alleges that his or her pretrial confession was obtained illegally, he or she should submit a written motion to the people’s court. If the defendant has real difficulties with writing, he or she may make the accusation orally to be recorded by a people’s court employee or the defendant’s defense counsel, a

copy of which the defendant shall sign or affix with his or her thumbprint.

The people's court shall deliver a copy of the defendant's written motion or record of accusation to the people's procuratorate prior to the commencement of the trial.

Article 5: If, prior to commencement of the trial or during the trial, a defendant or his or her defense counsel alleges that the defendant's pretrial confession was obtained illegally, the court should conduct an investigation in court immediately following the prosecutor's recitation of the indictment.

If, prior to the conclusion of courtroom debate, the defendant or his or her defense counsel alleges that the defendant's pretrial confession was obtained illegally, the court shall also conduct an investigation.

Article 6: If a defendant or his or her defense counsel alleges that the defendant's pretrial confession was obtained illegally, the court shall request that he or she provide relevant leads or evidence with respect to the alleged illegal obtaining of evidence, such as the person(s), time, place, manner, and content.

Article 7: If, upon investigation, the court has questions about the legality of the way the defendant's pretrial confession was obtained, the prosecutor shall provide interrogation transcripts, original audio or video recordings of the interrogation or other evidence and request that the court notify other individuals present at the interrogation or other witnesses to provide testimony before the court. If it is still not possible to eliminate suspicion of coerced confession, [the procuratorate shall] request that the court notify the interrogator(s) to provide testimony before the court and confirm that the confession was obtained legally. If the prosecutor cannot provide evidence at the time of the hearing, he or she may recommend that the court postpone the trial proceedings in accordance with Article 165 of the Criminal Procedure Law.

Having been notified in accordance with the law, interrogators or other individuals shall testify before the court.

If the prosecutor submits an officially sealed [written] explanation that has not been signed or sealed by the interrogator(s)

concerned, the document may not serve as evidence that the evidence was obtained legally.

Prosecution and defense may cross-examine evidence and carry out debate with regard to the question of whether the defendant's pretrial confession was obtained legally.

Article 8: If the court has questions about the evidence submitted by either the prosecution or defense, it may adjourn the proceedings and conduct investigation and verification of the evidence. If necessary, the court may notify the procurator or defense counsel to be present.

Article 9: If, in the course of the trial, the prosecutor recommends postponement of the trial proceedings in order to submit new evidence or conduct additional investigation, the court should agree.

If the defendant or his or her defense counsel requests [that the court] notify an interrogator, other individuals present at the time of interrogation, or other witnesses to appear in court and the court determines it to be necessary to do so, the court may announce postponement of the trial proceedings.

Article 10: Following the court's investigation, the defendant's pretrial confession may be read in court and subjected to cross-examination under one of the following circumstances:

- (1) The defendant or his or her defense counsel do not provide leads or evidence of illegally obtained evidence;
- (2) The defendant or his or her defense counsel has provided leads or evidence of illegally obtained evidence, [but] the court has no questions about the legality of the way the defendant's pretrial confession was obtained;
- (3) The prosecutor provides credible and sufficient evidence that is able to eliminate [questions about whether] the defendant's pretrial confession was obtained illegally.

A defendant's pretrial confession that is read in court should be considered together with the defendant's statement in court and other evidence before determining whether it may serve as the basis for conviction.

Article 11: If the prosecutor does not provide evidence to confirm the legality of the defendant's pretrial confession, or the evidence provided is not credible or sufficient enough, that confession may not serve as a basis for conviction.

Article 12: If a defendant or his or her defense counsel alleges that the defendant's pretrial confession was obtained illegally and the people's court of first instance does not investigate [the allegation] and uses the defendant's pretrial confession as a basis for conviction, the people's court of second instance shall conduct an investigation into whether the defendant's pretrial confession was obtained legally. If the procurator does not provide evidence to confirm [legality] or the evidence provided is not credible or sufficient enough, the defendant's confession may not be used as a basis for conviction.

Article 13: If, in the course of the trial, the procurator, the defendant, or his or her defense counsel alleges that written testimony of a witness who has not appeared in court or a written statement by a victim who has not appeared in court was obtained illegally, the party who submitted the evidence shall verify that the evidence was obtained legally.

With regard to the evidence mentioned in the preceding paragraph, the court should carry out an investigation with reference to the relevant provisions of these rules.

Article 14: If material or documentary evidence is obtained in a manner that clearly violates the law and may have an impact on the fairness of an adjudication, redress or some reasonable explanation should be made, otherwise that material or documentary evidence may not serve as a basis for conviction.

Article 15: These rules are effective from July 1, 2010.

IV. RULES CONCERNING QUESTIONS ABOUT EXAMINING AND JUDGING EVIDENCE IN DEATH PENALTY CASES

In order to handle death penalty cases, punish crime, and protect human rights with fairness and caution and in accordance with the law, these rules are established in accordance with the provisions of the Criminal Procedure Law of the PRC and other relevant legal provisions and in combination with legal practice.

A. *General Provisions*

Article 1: The Criminal Law and Criminal Procedure Law must be strictly implemented in handling death penalty cases in order to ensure the cases' quality and that the facts are clear, the evidence is credible and sufficient, procedures are legal, and the law is applied correctly.

Article 2: The facts used to determine guilt in a case must be based on evidence.

Article 3: [Police] investigators, procurators, and judicial officers shall stringently obey legal procedure and fully and objectively collect, examine, verify, and make determinations about evidence.

Article 4: Only evidence that has been examined and verified to be true through an investigation process in court involving presentation, identification, and cross-examination may be used as a basis for conviction and determining sentence.

Article 5: In death penalty cases, determination of the facts of the defendant's crime must be based on credible, abundant evidence.

Credible, abundant evidence means:

- (1) All of the facts used to convict and determine sentence are proven by evidence;
- (2) Each item of evidence used in conviction must have undergone a legal process [by which it is] examined and verified to be true;
- (3) There is no contradiction between items of evidence or between an item of evidence and the facts of the case, unless the contradiction can be reasonably ruled out;
- (4) In cases involving offenses committed jointly, a defendant's position and role [in the crime] have been fully examined;
- (5) The process of determining the facts of the case based on evidence comports with logic and empirical rules, and the conclusion drawn from the evidence is the only one [possible].

In handling death penalty cases, proof of each of the following facts must be based on credible, abundant evidence:

- (1) [Whether] the crime charged was committed;

- (2) [Whether] a defendant committed the criminal act and the time, place, manner, consequence, and other details of the criminal act committed by that defendant;
- (3) Circumstances regarding a defendant's identity that have an influence on conviction;
- (4) [Whether] the defendant possesses criminal responsibility;
- (5) The defendant's culpability;
- (6) Whether the offense was committed jointly and what the defendant's position and role was in that joint offense;
- (7) Facts warranting heavier punishment for the defendant.

B. *Examination and Determination of Different Types of Evidence*

1. *Physical and Documentary Evidence*

Article 6: In examining physical or documentary evidence, emphasis shall be placed on the following:

- (1) Whether the physical evidence is the original object or the documentary evidence is the original document; whether photographs, video recordings, or replicas of physical evidence or duplicates or facsimiles of documentary evidence match the original items or documents; whether physical or documentary evidence has been identified and verified; whether photographs, video recordings, or replicas of physical evidence or duplicates or facsimiles of documentary evidence were reproduced by more than two people; whether the producer has a signed, written explanation concerning the production process and the location of the original document or item;
- (2) Whether the procedure and methods of collection for physical or documentary evidence are in compliance with the law and relevant regulations; whether physical or documentary evidence that was obtained through on-scene investigation, inspection, search, or confiscation have corresponding records or invoices; whether the records or invoices are signed by [police] investigators, the persons who possessed the items, and witnesses, and whether an ex-

planation is provided if the signature of the person who possessed the items is absent; whether the distinguishing features, number, quality, and names of the items are clearly described;

(3) Whether physical or documentary evidence was damaged or altered in the process of collection, storage, or authentication;

(4) Whether physical or documentary evidence has any relation to the facts of a case. Whether biological evidence, traces, or items left at the scene and related to the crime, such as bloodstains, fingerprints, hair samples, or bodily fluids, that satisfy the conditions for testing have undergone DNA testing, fingerprint analysis, or other testing methods, and whether they have been determined to match relevant biological samples, biological characteristics, or items from the defendant or victim;

(5) Whether all physical or documentary evidence related to the facts of a case has been collected in full.

Article 7: If any bloodstains, fingerprints, footprints, handwriting samples, hair samples, bodily fluids, human organs, or other traces or items possibly related to the facts of a case are discovered through on-scene investigation, inspection, or search and either ought to have been recovered but were not or ought to have been tested but were not, with the result being that there remain doubts about the facts of the case, the people's court shall explain the situation to the people's procuratorate, and the people's procuratorate may additionally collect or obtain evidence and produce a reasonable explanation or return the case to the investigating organ to conduct additional investigation or obtain relevant evidence.

Article 8: Physical evidence used as a basis for conviction should be the original item. Only when the original item is inconvenient to transport or difficult to preserve, or, in accordance with the law, must be kept in storage or disposed of by the relevant department or returned may a photo or video recording be shot or a replica produced that reflects the original likeness or content. A photograph, video recording, or replica of physical evidence may serve as a basis for conviction only after having been compared with the original item and found to have no errors, subjected to authentication as true, or un-

dergone some other method able to prove it to be a true [copy]. Any photograph, video recording, or replica that does not reflect the original likeness and distinguishing features of the original may not serve as a basis for conviction.

Documentary evidence used as a basis for conviction should be the original item. Duplicates or facsimiles may only be used when there is real difficulty in obtaining the original document. Duplicates or facsimiles of documentary evidence may serve as the basis for conviction only after having been compared with the original items and found to have no errors, subjected to authentication as true, or undergone some other method able to prove it to be a true [copy]. Any documentary evidence that has been altered or shows traces of alteration that cannot be reasonably explained or any duplicate or facsimile of documentary evidence that does not reflect the original document and its content may not serve as a basis for conviction.

Article 9: Any physical or documentary evidence obtained through on-site investigation, inspection, search, or confiscation that is not accompanied by a record of on-site investigation or inspection, a search record or record of requisition, or an invoice of items confiscated may not serve as a basis for conviction if its origins cannot be verified.

If there are any of the following flaws in the procedures or methods used to collect physical or documentary evidence, [the evidence in question] may be used if the relevant officer rectifies [the error] or provides a reasonable explanation:

(1) For physical or documentary evidence that has been collected or obtained, the record of on-site investigation or inspection, search record, record of requisition, or invoice of items confiscated is not signed by the investigator, the person who possessed the items, or witness, or the distinguishing features, number, quality, or names of the items are not clearly described;

(2) For photographs, video recordings, or replicas of physical evidence or duplicates or facsimiles of documentary evidence that have been collected or obtained, there is no notation that they have been checked against the original items and found to be identical, the time of production is not noted, or the

signature (chop) of the person (unit) from whom [the evidence] was collected or obtained is missing;

(3) Photographs, video recordings, or replicas of physical evidence or duplicates or facsimiles of documentary evidence do not have a written explanation from the person who produced them about the production process and the location of the original document or item or that explanation has not been signed.

(4) There are other flaws in the procedures or methods [used to] collect physical or documentary evidence.

If there are questions about the source of or collection procedures for physical or documentary evidence and no reasonable explanation is given, that physical or documentary evidence may not serve as a basis for conviction.

Article 10: Physical or documentary evidence that satisfies the conditions for identification should be identified by a party to the case or a witness, or, if necessary, submitted for authentication.

2. *Witness Testimony*

Article 11: In examining witness testimony, emphasis shall be placed on the following:

(1) Whether the testimony is [based on] the direct perception of the witness;

(2) Whether at the time given the testimony of the witness might be influenced by his or her age, cognitive level, capability of recollection and expression, or physiological or psychological state;

(3) Whether the witness has an interest with respect to a party in the case or the outcome of the case;

(4) Whether the testimony was obtained using procedures and methods in compliance with the law and relevant regulations; whether violence, threats, inducements, deception, or other illegal methods of obtaining evidence were used; whether there were violations of regulations requiring witnesses to be questioned individually; whether the transcript was checked for accuracy by the witness and a signature (chop) or fingerprint affixed; whether in questioning

a juvenile witness his or her legal representative was called to appear and whether the legal representative did appear or not;

(5) Whether the witness testimony corroborates other testimony or evidence or whether there are contradictions;

Article 12: Witness statements obtained through violence, threats, or other illegal means may not serve as a basis for conviction.

Testimony by witnesses who are clearly under the influence of alcohol, narcotics, or psychotropic drugs such that they cannot properly express themselves may not serve as a basis for conviction.

Witness testimony involving conjecture, opinion, or inference may not be used as evidence, except empirical judgments based on daily life that accord with the facts.

Article 13: The following kinds of witness testimony may not serve as a basis for conviction:

(1) Testimony obtained without questioning witnesses individually;

(2) Written testimony that was not checked for accuracy by the witness and a signature (chop) or fingerprint affixed;

(3) Questioning of a deaf-mute or a member of an ethnic minority or foreigner who does not understand the local common vernacular or written language, when a translator should have been provided but was not.

Article 14: If there are any of the following flaws in the procedures or methods used to obtain witness testimony, [the testimony in question] may be used if the relevant officer rectifies [the error] or provides a reasonable explanation:

(1) The [record] does not provide the name of the questioner, recorder, or legal representative or the start and stop time or place of the interview;

(2) The location where the witness was interviewed does not comply with regulations;

(3) The interview record does not note that the witness was told that he or she should give a truthful statement and that intentionally giving false testi-

mony or withholding evidence of a crime is punishable under the law;

(4) Interview records show that the same interviewer was interviewing a different witness at the same time.

Article 15: Under the following circumstances, the people's court should call a witness to give testimony before the court. Written testimony from a witness who has been summoned in accordance with the law but who does not testify in court may not serve as a basis for conviction if there is no way to verify it under cross examination:

(1) The people's procuratorate and the defendant and his or her defense counsel disputes the testimony of a witness and that witness testimony [will have] a major impact on conviction or sentencing;

(2) Others the people's court determines should appear in court to give testimony.

When the testimony of a witness in court contradicts his or her pretrial testimony, if the witness can provide a reasonable explanation in court for recanting his or her [earlier] testimony and there is related evidence to corroborate it, [the court] should accept the testimony given in court.

[The court] should listen to the opinions of the procurator appearing in court and the defendant and his or her defense counsel regarding the written testimony of a witness who does not appear in court and make a general determination in consideration of other evidence. If contradictions appear in the written testimony of a non-appearing witness and those contradictions cannot be ruled out and there is no corroborating evidence, [the testimony] may not serve as a basis for conviction.

Article 16: When witness testimony concerns state secrets or individual privacy, it should be kept secret.

When a witness testifies in court, the people's court may, if necessary, take protective measures such as restricting the publication of the identity of the witness, limiting questioning, shielding the face, or altering the voice.

3. *Victim Statements*

Article 17: The aforementioned provisions for witness testimony should be applied as relevant for the examination and determination of victim statements.

4. *Defendant Declarations and Defense Statements*

Article 18: In examining a defendant's declarations and defense statement, emphasis shall be placed on the following:

(1) Whether the time and place of the interrogation and identity of the interrogator was, at the time of interrogation, in compliance with the law and relevant regulations; whether there were fewer than two investigators interrogating the defendant; whether defendants were interrogated individually;

(2) Whether the interrogation record was produced and revised in compliance with the law and relevant regulations; whether the interrogation record noted the start and stop times and location of the interrogation; whether at the first interrogation the defendant was told of his or her procedural rights such as [the rights] to request recusal or engage a lawyer; whether the defendant checked [the interrogation record] for accuracy and affixed a signature (chop) or fingerprint; whether fewer than two interrogators signed [the interrogation record];

(3) Whether a person proficient in sign language or a translator is present for interrogations of individuals who are deaf-mute, ethnic minorities, or foreigners; whether, in an interrogation of a juvenile accomplice, his or her legal representative was called to appear and whether or not the legal representative did appear;

(4) Whether a defendant's declaration was obtained through illegal means such as coercing confession; if necessary, [the court] may request a defendant's medical examination records from the time of entry in the detention center;

(5) Whether a defendant's declarations have been consistent or, if the statements have changed, whether reasons for the changes were given; whether all of the defendant's declarations and defense statements have been included in the case file; and, if all of the declarations and defense statements that ought to be in the file are not, whether an explanation has been provided;

- (6) Whether the defendant's defense statement comports with the circumstances of the case and common sense, or whether there are contradictions;
- (7) Whether the defendant's declaration and defense statement is consistent with the declarations and defense statements of co-defendants, or whether there are contradictions.

In the aforementioned situations, if the investigating organ has provided audiovisual documentation, it ought to be examined in combination [with the relevant declarations].

Article 19: If a defendant's declaration has been obtained through use of illegal means such as coercing confession, it may not serve as a basis for conviction.

Article 20: Defendant declarations may not serve as a basis for conviction under the following circumstances:

- (1) The interrogation transcript has not been checked for accuracy by the defendant and a signature (chop) or fingerprint affixed;
- (2) Interrogation of a person who is deaf-mute or does not understand the local common vernacular or written language without providing the required person proficient in sign language or a translator.

Article 21: If there are any of the following flaws in the interrogation record, it may be used if the relevant officer rectifies [the error] or provides a reasonable explanation:

- (1) The interrogation times, interrogators' names, or name of the legal representative are recorded in error or there are contradictions;
- (2) The interrogators did not sign their names;
- (3) The record of the first interrogation does not note that the person being interrogated was informed of his or her procedural rights.

Article 22: [The court] should examine a defendant's declaration and defense statement in consideration of all of the evidence submitted by the prosecution and defense as well as all of the defendant's declarations and defense statements.

If a defendant's pretrial declarations are consistent but he or she retracts the declaration during the trial proceeding without providing a reasonable explanation for the retraction or if the defense statement contradicts the totality of the the evi-

dence in the case, when the pretrial declaration is corroborated by other evidence [the court] may accept the defendant's pretrial declaration as reliable.

If a defendant has repeatedly changed his or her pretrial declaration or defense statement but admits guilt during the trial proceeding, [the court] may accept the declaration made at trial as reliable if there is other evidence that can corroborate that declaration. If a defendant has repeatedly changed his or her pretrial declaration or defense statement and does not admit guilt during the trial proceeding, without other evidence to corroborate the pretrial declaration [the court] may not accept the declaration made at trial as reliable.

5. *Expert Opinions*

Article 23: In examining expert opinions, emphasis shall be placed on the following:

- (1) Whether the expert should have recused himself or herself but did not;
- (2) Whether the expert and his or her organization possess legal qualifications;
- (3) Whether the expert evaluation procedures were in compliance with the law and relevant regulations;
- (4) Whether the [processes for] sourcing, obtaining, storing, and transporting the specimen were in compliance with the law and relevant regulations; whether the record of how the evidence was obtained or the invoice of items seized is in order; whether the specimen is sufficient and reliable;
- (5) Whether the procedures, methods, and analytical process [used in] the expert evaluation satisfy the required professional inspection and evaluation procedures and techniques;
- (6) Whether the formal criteria for the expert evaluation have been satisfied; whether the explanation includes identification of the subject for evaluation, the party requesting the evaluation, the institution conducting the evaluation, the evaluation requirements, the evaluation process, the inspection methods, and the date of the certification report; whether the expert institution has affixed the appropriate chop and

the expert conducting the certification has signed [the report] and affixed a chop;

- (7) Whether the expert opinion is clear;
- (8) Whether the expert opinion is relevant to a fact of the case needing to be proven;
- (9) Whether the expert opinion contradicts other evidence; whether the expert opinion contradicts the inspection record or relevant photographs;
- (10) Whether relevant persons were notified of the expert opinion [results] in a timely manner in accordance with the law; whether the parties to the case dispute the expert opinion.

Article 24: Expert opinions may not serve as a basis for conviction under the following circumstances:

- (1) The expert institution lacks the legal qualifications and capacity or the matter for certification exceeds the institution's area of expertise or capabilities;
- (2) The expert lacks the legal qualifications and capacity, lacks the relevant professional technical skills or job title, or violates the regulations on recusal;
- (3) There are errors in the evaluation procedures or methods;
- (4) The expert opinion has no relevance to the subject needing confirmation;
- (5) The subject being evaluated is not the same as the specimen or sample that was sent for inspection;
- (6) The source of the specimen or sample sent for inspection is unclear or was contaminated such that it does not meet the conditions for evaluation;
- (7) There are violations of specific evaluation standards;
- (8) The expert report lacks a signature or chop;
- (9) Other violations of relevant regulations.

If there are questions about an expert opinion, the people's court should call on the expert to give testimony in court or prepare an appropriate explanation, or it may also order additional evaluation or a new evaluation.

6. *Records of On-Site Investigation and Inspection*

Article 25: In examining records of on-site investigation and inspection, emphasis shall be placed on the following:

(1) Whether the on-site investigation or inspection was conducted in accordance with the law; whether the record was produced in compliance with the requirements of the law and relevant regulations; whether the officers conducting the on-site investigation or inspection and witnesses signed the report or affixed their chops;

(2) Whether the record of on-site investigation or inspection is complete, detailed, accurate, and standard in format; whether the subject, time, place, persons on the scene, scene location, and surrounding environment of an on-site investigation or inspection are recorded accurately; whether the location and characteristics of the scene, items, individuals, and corpses, as well as the process of on-site investigation or inspection are accurately recorded; whether the written description matches physical objects or drawings, video recordings, or photos; whether the manner and methods used to fix [the location] of evidence is scientific and standard; whether the crime scene, items, or traces were damaged or fabricated and whether the crime scene was in its original state; whether distinguishing features or injuries of individuals were disguised or altered;

(3) When additional on-site investigation or inspection is carried out, whether there are contradictions with [earlier] investigations and whether reasons can be provided to explain the need for additional on-site investigation or inspection;

(4) Whether the record of on-site investigation or inspection corroborates or contradicts other evidence, such as the defendant's declaration, the victim's statement, or the expert opinion.

Article 26: If a record of on-site investigation or inspection clearly does not comply with the law and relevant regulations and no reasonable explanation is provided, it may not be used as evidence.

If a record of on-site investigation or inspection does not list any witnesses, if the investigating officer(s) or witnesses did not sign [the record] or affix a chop, or if the investigating officer(s) violated the regulations on recusal, [the court] should consider other evidence in the case in examining the authenticity and relevance [of the record in question].

7. *Audiovisual Materials*

Article 27: In examining audiovisual materials, emphasis shall be placed on the following:

- (1) Whether the source of the audiovisual materials is legal and whether threats, inducements, or other violations of the law and relevant regulations were used against the party in the course of production;
- (2) Whether the identity of the producer or the possessor and the time, place, and conditions of production are clearly stated;
- (3) Whether [the material] is the original or, if a reproduction, how many copies there are; if the audiovisual material obtained is a reproduction, whether an explanation is provided regarding the inability to obtain the original, the process of reproduction, and the location of the original; whether the signature or chop of the reproducer and the person in possession of the original audiovisual material [has been provided];
- (4) Whether the content and production process are authentic or whether [the material] has undergone rearrangement, addition, deletion, editing or other fabrication or alteration;
- (5) Whether the content is relevant to the facts of the case.

If there are questions about audiovisual materials, an expert evaluation should be conducted.

The authenticity and relevance of audiovisual materials should be examined in consideration of other case evidence.

Article 28: Audiovisual materials may not serve as a basis for conviction under the following circumstances:

- (1) The authenticity of the audiovisual materials cannot be established following examination or expert evaluation;
- (2) There is dispute about the production of the audiovisual materials or the time, place, and manner with which they were obtained and no reasonable explanation or requisite proof can be provided.

8. *Other Provisions*

Article 29: In examining electronic evidence such as electronic mail, electronic data exchange, online chat transcripts, blogs, mobile telephone text messages, or electronic signatures or domain names, emphasis shall be placed on the following:

- (1) Whether electronic evidence stored on a storage medium such as a computer disk or CD has been submitted together with the printed version;
- (2) Whether the time, place, target, producer, production process, and equipment for the electronic evidence is clearly stated;
- (3) Whether production, storage, transfer, access, collection, and presentation [of the electronic evidence] were carried out legally and whether individuals obtaining, producing, possessing, and witnessing the evidence affixed their signature or chop;
- (4) Whether the content is authentic or whether it has undergone cutting, combination, tampering, or augmentation or other fabrication or alteration;
- (5) Whether the electronic evidence is relevant to the facts of the case.

If there are questions about electronic evidence, an expert evaluation should be conducted.

The authenticity and relevance of electronic evidence should be examined in consideration of other case evidence.

Article 30: Under the following circumstances, identification [of evidence] arranged by the investigating organ shall be carefully examined and may not serve as a basis for conviction if their authenticity cannot be verified:

- (1) The identification was not conducted under the direction of the investigating officer(s);

- (2) The person doing the identification was shown the target of identification beforehand;
- (3) Persons doing the identification did not carry out the identification process individually;
- (4) Except specifically in the identification of corpses and locations, the identification target was not placed in the midst of other targets with similar distinguishing characteristics, or the number of targets provided for identification did not comply with regulations;
- (5) The person doing the identification was clearly given a hint or there is suspicion that he or she was instructed about what to identify.

Identification results may be used as evidence under the following circumstances if the relevant officer rectifies [the error] or provides a reasonable explanation:

- (1) The identification was directed by fewer than two investigators;
- (2) The person doing the identification was not asked detailed questions about specific distinguishing characteristics of the identification target;
- (3) No standardized identification record was produced specifically to document the process and results of identification or the investigator(s), person doing the identification, or witness did not sign or affix a chop to the identification record;
- (4) The identification record is too simple, with only results and no [record of the] process;
- (5) The case file has only the identification record and no photos or video of the investigation target, so that there is no way to know whether the identification was authentic.

Article 31: In examining documents such as the investigating organ's record of how a case was solved, it should be noted whether the explanatory document is signed by the officer(s) in charge and the chop of the organ in charge affixed.

If there are questions about how a case was solved or there are questions about the basis by which suspicion of a defendant was determined to be major, additional explanation from the investigating organ shall be requested.

C. *General Examination and Use of Evidence*

Article 32: The probative force of evidence shall be examined and judged in combination with the specifics of the case, the degree of relevance between each item of evidence and the fact to be proven, and the relationship between items of evidence.

Only pieces of evidence that are intrinsically related, that together point toward a fact to be proven, and that reasonably rule out contradictions may serve as a basis for conviction.

Article 33: If no direct evidence exists to prove that a criminal act was committed by the defendant, the defendant may still be convicted if the following conditions are met:

- (1) Indirect evidence to be used as the basis for conviction has been examined and verified to be true;
- (2) Indirect evidence to be used as the basis for conviction is mutually corroborating, there are no contradictions that cannot be ruled out or questions that cannot be explained;
- (3) Indirect evidence to be used as the basis for conviction forms a complete body of proof;
- (4) The facts of the case established by the indirect evidence lead to only one conclusion and can rule out all reasonable doubt;
- (5) The reasoning with which the indirect evidence is used comports with logic and empirical judgment.

Extreme caution should be used in imposing the death penalty for a conviction based on indirect evidence.

Article 34: Deeply concealed physical or documentary evidence uncovered through a declaration or identification made by the defendant may [be used] to convict if it is corroborated by other evidence proving the fact of the crime and the possibility that the statement was based on collusion, coercion, or inducement can be ruled out.

Article 35: Physical, documentary, and other evidence collected by the investigating organ using special investigative measures in accordance with relevant regulations may serve as a basis for conviction if the court has verified it to be true.

The court shall, in accordance with the law, not reveal procedures and methods [used in] special investigative measures.

Article 36: Once the defendant has been convicted, the people's court should examine the following circumstances having an influence on sentencing, in addition to those that are specified by law:

- (1) The cause of the crime;
- (2) Whether the victim was at fault and the degree of fault and whether [the victim] was responsible for exacerbating a conflict and the degree of responsibility;
- (3) Whether the defendant's immediate family members assisted in apprehending the defendant;
- (4) The defendant's normal behavior and whether he or she has shown remorse;
- (5) Whether the victim filed an associated civil suit for compensation and whether the victim or the victim's immediate family have shown understanding toward the defendant;
- (6) Other circumstances influencing sentencing.

If there are circumstances that warrant lenient or reduced punishment as well as circumstances that warrant heavier punishment, [the court] shall consider the circumstances in their entirety in accordance with the law.

If circumstances warranting lenient or reduced punishment cannot be ruled out, extreme care should be used in imposing the death penalty.

Article 37: Evidence should be used with care in the following circumstances and accepted as reliable if other evidence can corroborate it:

- (1) Statements, testimony, or declarations made by victims, witnesses, or defendants who are physically or mentally handicapped, who have definite difficulty in understanding or expression with respect to the facts of the case but who have not [fully] lost their ability to understand and express themselves properly;
- (2) Testimony benefiting a defendant given by a witness who is a relative or having other close ties to that defendant, or testimony harmful to a defendant given by a witness having a conflict of interest with that defendant.

Article 38: If the court has questions about evidence, it may call on the appointed procurator or the defendant and his or

her defense counsel to produce additional evidence or provide an explanation. If it is necessary to conduct verification, [the court] may call a recess in order to investigate and verify evidence. If the court conducts an external investigation outside the courthouse, it may, if necessary, call on the appointed procurator and defense counsel to be present. If either the appointed procurator or the defense counsel or both parties are not present, the court's record shall become part of the case file.

The court may solicit opinions from the appointed procurator and defense counsel regarding evidence supplemented by the people's procuratorate or defense counsel or obtained through the court's external investigation and verification. If the two sides are not in agreement and one side requests that the court hold a hearing to investigate, the court shall hold a hearing.

Article 39: If a defendant and his or her defense counsel claim [that the defendant] voluntarily surrendered but the relevant organ has not established this fact, [the court] shall request that the relevant organ provide documentation or request that the relevant personnel testify and judge, in consideration of other evidence, whether [the claim of] surrender is valid.

If there is incomplete documentation to prove whether or how a defendant assisted in the apprehension of other co-defendants such that it is impossible to determine whether the defendant rendered meritorious service, [the court] shall request that the relevant organ provide documentation or request that the relevant personnel testify and judge, in consideration of other evidence, whether [the claim of] meritorious service is valid.

If a defendant reported or exposed crimes committed by another person, [the court] should examine whether or not the veracity [of the report] has been investigated; if it has not been investigated, it shall be investigated at once.

If there is incomplete documentation to prove whether the defendant is a repeat offender, [the court] shall request the relevant organ provide documentation.

Article 40: Generally, [the court] shall use household registration records as a basis of proof in examining whether a defendant was at least 18 years old at the time the crime was commit-

ted. If there is a dispute over the household registration records and investigation finds there to be valid documentation of birth or testimony from an uninterested party confirming that the defendant was not at least 18 years old, [the court] should find that the defendant was not 18 years old. If there is no household registration record or documentation of birth, [the court] shall make a general judgment based on census records, testimony from an uninterested party, or other evidence; if necessary, [the court] may conduct an investigation of skeletal age and use the results as a reference in judging the defendant's age.

When contradictions between items of evidence cannot be ruled out and there is insufficient evidence to prove that a defendant was at least 18 years old at the time the alleged crime was committed, if there is truly no way to determine [the truth, the court] may not determine that he or she was at least 18 years old.

Article 41: These rules take effect on July 1, 2010.

