

# Ignoring its own laws, China is set to execute a Briton with an apparent history of severe mental illness, writes Jerome A. Cohen

## Arbitrary justice

China's Supreme People's Court has just announced a death penalty decision of great importance to the British government and the European Union, as well as Chinese and foreign human-rights advocates. In September 2007, Akmal Shaikh, a British subject of Pakistani descent, was detained at Urumqi (烏魯木齊) airport in Xinjiang (新疆) on charges of drug smuggling. He was convicted and sentenced to death in October 2008 and now confronts execution next Tuesday.

In a country that executes thousands every year, his case would be unexceptional – were it not for his alleged history of severe mental illness.

Although transparency is lacking in this case, as in so many others on the Chinese mainland, it appears that Central Asian smugglers, manipulating Shaikh's delusional ambitions to become a pop star in China, persuaded him to take in a suitcase containing 4kg of heroin.

Chinese legislation exempts from criminal responsibility someone unable to recognise or control his misconduct, and provides for reduction

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of punishment in cases of partial mental capacity. But Shaikh's 30-minute first instance trial ignored this major aspect of justice.

By the time of Shaikh's second instance trial, on May 26, the London-based rights organisation, Reprieve, had sent British forensic psychiatrist, Dr Peter Schaapveld, to Urumqi in the hope of conducting an examination that would confirm Shaikh's condition and inform the court's review. Unfortunately, without explanation, Schaapveld was denied an interview with Shaikh. He was also not permitted to attend the judicial hearing.

Moreover, the authorities, which had initially indicated that they would allow a local doctor to evaluate Shaikh, changed their mind. The reviewing court thus had the benefit of no expert opinion on this

crucial issue. It did, however, apparently allow the defendant the opportunity, against the advice of his lawyers, to deliver a rambling, often incoherent, statement that caused the judges to openly laugh at him.

The second instance court affirmed Shaikh's death sentence and, although both his fitness to stand trial and his

mental state at the time of the offence were in doubt, the Supreme People's Court has now agreed.

Yet there has been no indication that the mental condition of the condemned has ever been professionally evaluated, despite concerns expressed by the British government and the EU, as well as Reprieve and other organisations that have

compiled massive evidence that Shaikh has long suffered from a serious bipolar disorder.

According to Schaapveld, Shaikh's condition very likely produced a delusional psychosis that enabled professional drug smugglers to manipulate him to act as their unwitting agent.

In these circumstances, one might have expected the Supreme People's Court to comply with Chinese law and international legal standards by requiring a thorough mental evaluation of Shaikh before rendering a final judgment.

However, in some recent highly publicised capital cases, in which mentally disturbed defendants were charged with heinous offences such as multiple murders, the Supreme People's Court failed to insist on psychological evaluations in accordance with fair procedures. Last year's execution of police-killer Yang Jia is only the most notorious illustration.

Yet, Chinese courts have sometimes met the challenge. Several years ago in Beijing, for example, an American, ultimately diagnosed as a paranoid-schizophrenic, killed his Chinese wife because of the delusion that she was poisoning him. The trial court called for a thorough examination by experts at a local mental hospital.

After careful study, six specialists submitted a report that recognised the severity and relevance of the defendant's mental condition. When the victim's family objected to their conclusion, the court sought a second evaluation by another group of experts. When they rendered a similar opinion, the court reduced what would otherwise have been a death sentence to a prison term of 15 years. Although a verdict of not guilty by reason of insanity might have been warranted, and would have resulted in the defendant's confinement in a facility more likely to offer better treatment than a prison, at least his life was spared.

Sadly, it is now too late for a similar evaluation in Shaikh's case, although British clemency pleas may yet succeed. In any event, the National People's Congress should enact legislation that will confirm detailed procedural protections to guarantee a fair and accurate mental assessment whenever the defence reasonably requests.

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