

USALI Perspectives

Exonerating Those They Prosecuted: Prosecutorial Reforms in China, the US, and Taiwan

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Published May 12, 2022

Traditionally, prosecutors have focused on putting criminals in jail. That narrow focus is now broadening to some extent on both sides of the Pacific as prosecutors in China, Taiwan, and the United States give significant attention to redressing wrongful convictions. The following is a brief comparison of reform efforts in those three jurisdictions.

China

Within China's traditionally inquisitorial criminal justice system, [prosecutors' official duties](#) include not only investigating and prosecuting

criminal cases, but also supervising and rectifying cases where error is suspected. In practice, however, although courts must accept prosecutors' petitions to reopen cases, prior to the early 2010s, prosecutors acted to reopen only a handful of cases. The prosecutorial leadership considered redressing wrongful convictions so insignificant that before 2014, the president of the Supreme People's Procuratorate (SPP) never wrote a single word about it in his annual reports to the National People's Congress.

A turning point came in 2013, after a series of wrongful convictions surfaced. In some cases, defendants were exonerated [after the real perpetrators were discovered](#). In other cases, [supposed victims of murder reappeared alive and well](#). Under public pressure, senior Chinese officials finally started to openly address the issue of miscarriages of justice and to call for system reforms.

One of the major obstacles to rectifying erroneous convictions was resistance from local police, prosecutors, and courts that were involved in the original wrong decisions. To address this, the SPP issued the 2018 [Regulations on People's Procuratorates Reviewing Criminal Petition Cases in Another Location \(Provisional\)](#), which requires five types of cases to be reviewed by a provincial-level procuratorate outside the original province of prosecution. Second, with the 2021 [Regulations on People's Procuratorates' Circuit Prosecutorial Work](#), the SPP launched a supervision mechanism in prisons to review retrial applications filed by inmates. Third, the SPP revised its [rules on handling complaints and petitions](#) in criminal cases by requiring timely written responses to petitioners. The revised document explicitly encourages prosecutors to increase procedural transparency through public hearings, and to provide explanations for their decisions. Fourth, the SPP issued a [regulation making prosecutors](#)

[accountable for their mistakes](#). During the first eighteen months after this regulation went into force, the SPP reviewed 246 cases that had been rectified after 2018 and imposed sanctions on 511 prosecutors.

As a result of these reforms, the number of criminal retrials brought by prosecutors nationwide has jumped from around 300 per year in the early 2000s to 800-900 in each of the past few years.

The United States

American prosecutors are also playing a growing role in helping the wrongfully convicted. The first Conviction Integrity Unit (CIU) [was established](#) inside a prosecutor's office in Santa Clara, California in 2002. Since then, more than 74 such offices have been created in the US and have supported 61 exonerations. The [National Registry of Exonerations](#) (NRE) defines a CIU as a long-term operational division of a prosecutorial office that works to prevent, identify, and remedy false convictions.

Unlike Chinese prosecutors, who sometimes review cases across jurisdictions, CIUs review cases prosecuted by their own colleagues in the same district attorney's (DA's) office. This mechanism has both advantages and disadvantages. The chief advantage is the CIUs' close

connection to the police and ready access to case files and evidence in police custody. Some attorneys at CIUs have publicly stated that they have been able to access police-held evidence that was inaccessible to defense attorneys.

One of the many drawbacks of the intra-jurisdictional CIU system is that it may disincentivize thorough investigations of wrongful convictions. Some prosecutors are concerned that a CIU's work could undermine the credibility of an entire DA's office. For this reason, CIUs tend to be established when a new, usually liberal DA takes office, as was the case in Brooklyn and Philadelphia.

Whereas in China the rectification of wrongful convictions is a statutory responsibility of prosecutors, in the US, prosecutors' creation of a CIU is rooted in a public commitment by the DA. Each CIU operates according to its own internal guidelines. According to John Hollway, executive director of the [Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania](#), each CIU has "independently defined its structure, scope, and operation, often in reaction to a limited number of unique cases." He [writes](#) that few CIUs "have written protocols, policies, or procedures, and what protocols do exist have rarely been made public." Nongovernmental organizations such as the Quattrone Center and [the Innocence Project](#) advocate policies, practices, and reforms based on

lessons learned from re-investigations. According to the NRE, [among the 129 exonerations that occurred in 2020, 35 were attributable to NGO-CIU cooperation.](#)

Taiwan

Taiwan, like mainland China, has an inquisitorial criminal justice system, and its prosecutors are empowered to oversee the overall implementation of laws. Unlike their counterparts in the US, prosecutors in Taiwan have the statutory duty to present the full story of a case with both inculpatory and exculpatory evidence, both before and after a conviction. Taiwan's [Code of Criminal Procedure](#), as amended in 2020, requires prosecutors to file a motion for retrial both in the interest of a convicted person when new evidence or new facts are discovered, and against the interest of an acquitted person if new evidence of guilt is discovered.

Some Taiwanese reformers found inspiration in American CIUs. In 2014, a progressive legislator proposed that case review groups be set up inside local prosecutors' offices, and directly referenced American CIUs. The Taiwan Innocence Project (TIP), a civil society organization that advocates for wrongfully convicted persons, promoted the CIU model to the Ministry of Justice (MOJ). Ultimately, Taiwan did not establish CIUs but did embrace

the idea that prosecutors should facilitate exonerations.

Building on the existing statutory requirements for prosecutors, the MOJ's Supreme Prosecutors Office in 2016 issued [case review guidelines](#) and [established a working group](#) composed of prosecutors and external experts to proactively review controversial death penalty cases. In 2017, the MOJ released [post-conviction review guidelines for prosecutors](#). The TIP reported that after the Code of Criminal Procedure was revised to expand the scope of cases eligible for retrial in 2015, retrials initiated by prosecutors [increased more than three-fold](#), from 16 in 2014 to 54 in 2016. Zheng Xingze (鄭性澤) became the first death-row inmate whose case was reviewed for retrial by prosecutors. He was exonerated in 2017.

Conclusion

Despite the substantial legal, political, and societal differences among China, the United States, and Taiwan, within one decade all three jurisdictions established channels for prosecutorial review to redress wrongful convictions. Besides having in common strong incentives to avoid executing the innocent, law scholars [on both sides of the Taiwan Strait](#) often study [one another's criminal retrial procedures](#). More importantly, all three jurisdictions have come to acknowledge the possibility of criminal justice professionals making mistakes, a critical first step toward redressing wrongful convictions. It allows prosecutors to reconsider their own prosecutions and challenge the finality of court decisions. As Lo Ping-Cheng, a founder of TIP, put [it](#), the optimal model for civil society to correct and prevent errors in criminal justice is to work not against prosecutors, but with them.



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Suggested citation:

Johannes Chan, “A Reputation Tarnished: Reflections on the Resignation of Overseas Judges from Hong Kong’s Court of Final Appeal,” in *USALI Perspectives*, 2, No. 23, May 26, 2022, <https://usali.org/usali-perspectives-blog/a-reputation-tarnished-reflections-on-the-resignation-of-overseas-judges-from-hong-kongs-court-of-final-appeal>.

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