



# Justice delayed, justice denied

*In Taiwan, criminal cases can go on indefinitely and defendants can be detained for years, even decades, on end. A proposed speedy and fair trial law aims to tackle the problem — but critics say it would only make the situation worse*

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ILLUSTRATION: BLAKE CARTER

On Dec. 21, 1987, a young boy disappeared while walking home from school in Hsinchu. Lu Cheng (陸正) was only 9 years old. His family never saw him again.

Shortly after his disappearance, Lu's family was contacted by the kidnappers, who demanded a ransom that the family then paid. But the kidnappers did not return their young victim, nor was his body ever found.

Twenty-two years later, the case of Lu's murder is not finished. It is currently Taiwan's longest-running ongoing criminal case. Of the 12 original defendants, three are still in court — Chiou Ho-shun (邱和順) Lin Kun-ming (林坤明) and Wu Shu-chen (吳淑貞) — fighting their convictions. Some of the suspects were also charged in a separate crime that occurred the same year — the murder and dismemberment of Ko Hung Yu-lan (柯洪玉蘭), a female insurance agent.

Taiwan has almost 200 ongoing criminal cases that have lasted for more than 10 years. A draft law proposed by the Judicial Yuan — the "Fair and Speedy Criminal Trials Act" (刑事妥速審判法) — aims to resolve cases like these. But critics are taking sharp aim at the bill, calling it "perverse" and warning that it would cause more miscarriages of justice.

The case of Chiou, Lin and Wu (commonly known as the Lu Cheng case or, in legal circles, as the Chiou Ho-shun case) is one of Taiwan's most controversial — none of the evidence in either crime was ever linked to the defendants. Fingerprints found on a bank slip handled by Lu's kidnapper did not match those of any of the people arrested by police. Prosecutors claimed a recording of the kidnapper's voice matched that of one of the 12 defendants, but the whereabouts of the tape are unknown.

The defendants were arrested based on a tip and held incommunicado for months, during which time they were tortured and confessed. The sounds of torture were caught on audio tapes of the interrogations, and in the 1990s several police officers were impeached and convicted of torture and lying to the court.

Yet the defendants' confessions were used against them in court and all were convicted.

Then, six years ago, a man named Hu Guan-bao (胡關寶) made a chilling confession just before his execution. Hu, who had headed a kidnapping gang, said he had killed Lu. The confession was ignored.

Chiou has spent more than two decades in a cell at Taipei Detention

Center while his case continues. He has been through trial after trial. At every High Court trial he is convicted, after which the Supreme Court — like clockwork — orders a retrial based on flaws in the case. His case goes back to the High Court, where he is again convicted. He is now in his 12th High Court trial.

Of the three defendants still in court, Chiou faces the death penalty, while Lin and Wu face prison terms of 17 and 11 years, respectively — shorter, ironically, than the 22 years they've spent waiting for the case to be resolved. Lin, like Chiou, has spent those 22 years in the Taipei Detention Center. Wu, a woman, is allowed to live at home while the case proceeds.

Of the other nine original defendants, one died in prison and the rest eventually dropped their right to appeal after losing hope of being acquitted.

In Taiwan's criminal system, trials for murder and other serious crimes can bounce indefinitely between the High Court and Supreme Court. This is because the Supreme Court can remand a case to the High Court for retrial as many times as it likes.

## JUDICIAL PING-PONG

The result is that some cases become stuck in a kind of legal limbo. In legal circles, this situation is called *shangchong xiaxi* (上沖下洗) — being "flushed up and washed back down" between the High and Supreme courts.

This is especially common in controversial cases, lawyer Lin Feng-jeng (林峰正), executive director of the Judicial Reform Foundation, said in an interview.

"Experience shows that the longer a case runs, the less likely it is to be either truthful or just," reads a statement on his foundation's Web site.

Chiou's case is a classic example. Even more troubling, defendants can be detained indefinitely while their case undergoes retrial after retrial.

This fall, the Judicial Yuan responded to calls for change by proposing the Fair and Speedy Criminal Trials Act. The proposed legislation aims to stop long-running cases in three key ways:

- If a case has lasted more than 10 years (there are currently 187 such cases), the courts would be empowered to simply drop it — in which

case the defendant would be found neither guilty nor innocent — or to commute the sentence, after which the ruling would be final.

- If a case has already lasted six years (there are currently 203 such cases) and the defendant has been found innocent three times by the High Court, the not-guilty verdict would be final.

- If a case has lasted six years and been remanded by the Supreme Court for retrial at the High Court at least three times, and the High Court again convicts the defendant, the judgment would be final unless it violates the Constitution, a constitutional interpretation by the Council of Grand Justices or legal precedent; or if there is a substantial misunderstanding of the facts in the crime.

The draft law was passed by the Judicial Yuan on Oct. 15 but has yet to be put to a vote in the legislature.

But the proposal has drawn condemnation from lawyers, academics and others. The Judicial Reform Foundation and Taichung District Court Judge Chang Sheng-hsin (張昇星) are among its most vocal opponents.

Chang, who has published a series of op-eds in newspapers attacking the law, says it "perverts legal theory."

"How did [the Judicial Yuan] calculate these magic numbers?" he wrote in the *United Daily News*. Why "six years with three retrials" and not "seven years with two retrials?"

"Some [feel] the draft expressly assumes that the defendant is guilty," he told the *Taipei Times*. "Otherwise why does the defendant have to win three times to be declared innocent?"

"The whole draft law should be scrapped," he said.

The Judicial Yuan is ignoring the real reasons a case like Chiou's can last 22 years, he said. "The situation can't be fixed with a law."

Chang said the Supreme Court is a big part of the problem. It has the power to give a final ruling in controversial cases, but instead often continues to order retrials to avoid issuing a judgment that could draw criticism from the legal community.

The Supreme Court is shirking its responsibility, Chang said. And the Fair and Speedy Criminal Trials Act, if enacted, would make that even easier — the court could simply drop a case after 10 years.

But what if the person detained for 10 years was actually innocent? The courts could let the person go without having to admit their error by declaring them innocent.

## PRESSURE TO CONVICT

This is a denial of justice, Chang said, because if an innocent person has been wrongfully detained, he or she is entitled to damages under the Compensation for Miscarriages of Justice Act (冤獄賠償法). Yet if there is no final acquittal, the former defendant cannot apply for compensation.

Furthermore, although it would theoretically be possible to reopen a case that has been dropped, this would only apply if new evidence or facts are found, which Chang said would be highly unlikely.

Chang said the Supreme Court is also just too big — it is the largest final court of appeal in the world, with around 100 judges — and this leads to very different interpretations of the law.

There has been talk of downsizing for a decade, Chang said, but the number of Supreme Court judges continues to increase.

One of the lawyers in the Chiou case, Greg Yo (尤伯祥), said the law is not only pointless, it's dangerous. It would "cause even more miscarriages of justice," he said.

Lin Feng-jeng of the Judicial Reform Foundation said the real problem the Judicial Yuan needs to tackle is the quality of its own judges.

Many judges do not believe in the presumption of innocence, he said in an interview, even though this is guaranteed under Article 154 of the Code of Criminal Procedure (刑事訴訟法).

Judges are under a lot of pressure to put the "bad guys" behind bars, he said, even when there isn't enough evidence. After all, the public wants to see justice served. In some cases, judges may think, "this person couldn't possibly be innocent," he said, even if there's little or no evidence. "They don't want to let someone get away."

Furthermore, in retrials, judges are reluctant to overturn the decisions of other judges. Reputations are at stake. When a case is retried, three new judges are selected at the same court, but these judges are the colleagues of those who ruled in the previous trial.

They don't want to contradict their colleagues, he said. "Otherwise, how can you explain cases like Su Chien-ho [蘇建和]. The evidence is so unreasonable."

Lin Feng-jeng was referring to the case known in English as the "Hsichih Trio," Taiwan's most infamous murder trial. The trio — Su, Liu Bing-lang (劉秉郎) and Chuang Lin-hsun (莊林勳) — were on death row for years until their case was reopened. Lawyers say there is no evidence linking them to the 1991 murders they stand accused of, and that they were tortured into confessing. The case is being retried at the High Court.

Su You-chen (蘇友振), the head of the trio's defense team, has also panned the proposed amendment, calling it "unsettling" in a recent op-ed.

Su, Liu and Chuang are at least fortunate in one sense: Perhaps because of intense public pressure, they are no longer in detention while their case continues. One of the three has since finished university. Another is a staffer at an NGO.

But Chiou and Lin Kun-ming have not been as lucky. Nor are they likely to be released any time soon.

Last May, Chiou's lawyer Greg Yo filed an application with the Council of Grand Justices, asking them to rule on whether indefinite detention is constitutional. The justices have yet to respond.

How can Taiwan allow detention without limit, Lin Feng-jeng asked?

"These people have never had their sentences finalized, but in reality, they're serving life in prison."

NOTE: For more information on the Chiou case, see the article titled "Groups pan judges over case marred by torture" on Page 2 of the May 22, 2009 edition of the *Taipei Times*, or read the article online at [www.taipeitimes.com/News/taiwan/archives/2009/05/22/2003444235](http://www.taipeitimes.com/News/taiwan/archives/2009/05/22/2003444235)