



# Understanding Causes for Wrongful Convictions in Vietnam: a View from the Top and the Bottom of the Iceberg

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## Abstract

Wrongful convictions have severe consequences and effects on the values, dignity, and self-esteem of the innocent and their beloved ones. While Vietnam is implementing the rule of law to ensure the protection of citizens' fundamental rights, recent and serious wrongful conviction cases suggest a need to enhance the effectiveness and credibility of criminal justice reform. Using several cases for examples from Vietnam, this study examines two levels of factors that contribute to wrongful convictions: (i) the acknowledged causes (the top of the iceberg) and (ii) the hidden roots (beneath the surface). In addition, we compare the case of Vietnam to the findings from other Asian nations, notably those of East Asia. We conclude that the causes for wrongful convictions are embedded in the criminal justice process and culture, and eradication of wrongful convictions requires careful planning and innovative reforms that address the root causes of the problems. Relevant policy and practical recommendations are offered to deal with the factors leading to wrongful convictions in Vietnam.

**Keywords** Vietnam · Wrongful convictions · Causes · Asia · Comparative · Official misconduct

## Introduction

In recent years, Vietnam's criminal justice system has been more effective in addressing human rights and responding to transnational crimes and maintaining national security. New legislation in Vietnam's criminal justice system sets the goals of safeguarding justice and human rights first and foremost, a component of which requires reduction of wrongful convictions. Wrongful convictions have weakened public trust in the criminal justice system, violated human rights, and affected the integrity of the rule of law. Yet, at the domestic level, wrongful convictions are still persistent.

Vietnamese legal scholars have started examining wrongful convictions, particularly after the Communist Party of Vietnam (CPV) called for judicial reforms in the 2000s (Dao,

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2020; Thai, 2020). These scholars have paid little attention, however, to the fundamental reasons that lead to wrongful convictions. While the CPV encouraged the combination of inquisitorial and adversarial models in criminal proceedings, the legal ideology to identify and recognize hidden factors of wrongful convictions has not been seriously considered in the process. In other words, the hidden factors contributing to wrongful convictions are still not reviewed and assessed alongside the surface elements of wrongful convictions in Vietnam.

Thus, this study proposes to examine two research questions: What are the acknowledged causes of wrongful convictions in Vietnam, and what are the hidden roots of wrongful convictions in Vietnam?

Our study classifies factors that contributed to wrongful convictions in Vietnam based on selected criminal cases. We also compare these factors with other Asian countries, especially those of China due to the two countries' similar political-legal-ideological characteristics. The paper concludes with a series of recommendations for preventing wrongful convictions in the future.

## Wrongful Convictions in Asia: a Literature Review

Comparisons on the nature and context of wrongful convictions between English and non-English speaking countries on the international scale, including in Asia, are scarce. The distinctive legislative frameworks (civil and commonwealth law) and criminal justice systems between the inquisitorial and adversarial models tend to lead to differing perspectives on wrongful convictions. Literature comparing and contrasting these issues among Asian countries is generally lacking, except for some initiatives since the 2010s (He & He, 2011; Jiang et al., 2010; Jiang, 2015a, 2015b; Wu, 2011).

We used Scopus, the largest abstract and citation database for peer-reviewed literature, with the Boolean operators (AND, OR) to search 'wrongful convictions' in 52 Asian countries/territories (by 31 December 2021). Although the query results produced 741 abstracts, only 36 articles were finally selected for discussion below based on three primary criteria: document type (research articles only), subject area (on wrongful convictions only), and language (English only).

Of the 52 Asian countries, only ten countries were included, accounting for around 20% of the 52 countries. Publications of the ten countries primarily came from East Asia, mainly China and Japan. China had the largest number of publications on this topic, with 21 articles, while Japan had the second most publications with five articles. Both Hong Kong and Taiwan, as special territories, had two articles, and Israel, South Korea, Singapore, Indonesia, Cyprus, and Iraq/Afghanistan had one publication each. Jiang Na stood out as the most prolific author among the selected, with eight articles published between 2013 and 2018.

Five main causes for wrongful convictions could be identified among the Asia-related studies. The first was false confession, which was classified as one of the specific concerns in several countries. False confession, for instance, was recorded as the top evidence error (alongside eyewitness identification, DNA evidence, victim testimony, and jailhouse informants) in Singapore (Chen & Chua, 2010) and Hong Kong (Hui & Lo, 2015), while in Japan, it formed 'a significant number' of wrongful convictions (Ito, 2013, p. 1250) and was 'usually the primary proximate cause' (Johnson, 2015, p. 6). The data raises the

question of why an innocent person would admit to a crime that they had not committed, despite potentially devastating consequences that confessions would have on their lives.

Some of the selected studies employed survey questionnaires (Hui & Lo, 2015; Jiang et al., 2010; Liang et al., 2019; Sumampouw et al., 2021), while others used case studies to explain why and how false confessions were submitted by police in cases of wrongful convictions (He, 2021; Jiang, 2015a, 2015b; Wu, 2011). One of the leading causes of false confession is torture and illegal interrogation methods employed by the police. This is identified as the second reason for the admission of guilt in several wrongful conviction studies. While torture remained ‘the most common factor’ (Wu, 2011, p. 254) and/or ‘the first and foremost main cause’ for wrongful convictions in China (Jiang, 2013a, p. 391), it is also considered one of the ‘various techniques of physical and psychological tortures in order to obtain a confession’ by the Japanese police’ (Ito, 2013, p. 1270). Methods of securing an admission, including ‘torture during the preliminary inquiries in the earlier interrogation period’ (Jiang, 2015a, p. 163), have been identified in China as recently as within the last 5 years (Guo, 2019; He, 2021; Jiang, 2018a, 2018b, 2018c; Liang et al., 2019; Lin et al., 2019; Zhong & Dai, 2019; Zhuo, 2021).

Misconduct in criminal procedure, including investigative and prosecutorial misbehaviour, forms the third reason. Investigative misconduct by the police occurs in almost all cases of Asian wrongful convictions. Examples include the failure to collect relevant evidence, improper preservation, and/or the manipulation of evidence in China. For example, in the area of evidence manipulation, Zhong and Dai (2019) listed and clarified four forms, including (1) neglect/suppression of exculpatory evidence, (2) fabrication of physical evidence, (3) concealment of evidence, and (4) forcing the suspects/ victims/ witnesses to falsify evidence (Zhong & Dai, 2019). The latter has been routinely achieved through torture, threat, inducement, and deception during the investigative interrogation of detained suspects at locations other than the detention centre, such as the investigator’s workplace or the crime scene (Lin et al., 2019, p. 1118). These activities are also quite similar in Japan and Singapore. Accordingly, verbal violence, intimidation, psychological pressure, coercion, and deceit are some specific forms of police misconduct applied through ‘tunnel vision’ (Chen & Chua, 2010, p. 104; Ito, 2013, p. 1250). Alongside police misconduct, prosecutorial misconduct is another major factor in wrongful convictions in China and Japan. In China, for example, it is held that prosecutors rarely check or restrict incidents of police torture and coerced confessions to prevent wrongful convictions; neither do they effectively supervise the legality of the court work to remedy such errors timely (He, 2015; Jiang, 2015a, 2015b). Explaining this problem, Jiang (2013b, p. 147) claimed that the police, judiciary, and procurator in China often fail to exercise ‘mutual restraint’ over each other’s work. Instead, these ‘three-chief’ meetings (the police chief, procurator general, and president of the court) ‘tend to coordinate and seldom restrain each other, offering few checks and balances between them’ (Zhong & Dai, 2019, p. 264). Meanwhile, in Japan, the police and prosecutors tend to arbitrarily select the best parts of an interrogation to be presented in court while hiding the coercive or abusive parts, which may lead to a wrongful conviction (Ito, 2013).

Fourthly, although witnesses are central to solving crimes, their accounts are not always reliable, sufficient, or complete. Such inaccuracies in witness testimonies can contribute to wrongful convictions (Soukara, 2020; Sumampouw et al., 2021). Failures in accurate and objective eyewitness accounts in China often exist in multiple forms, including (1) eyewitness misidentification of the suspect, (2) inconsistent and/or dishonest witness testimony, (3) erroneous identification of corpses (in the case of murder), and (4) using questionable information from jailhouse informants (Zhong & Dai, 2019, p. 270). Similar to China,

there lacks clear legislative guidelines in Singapore that require eyewitnesses to testify in court in order to allow their testimonies to be used as evidence, which can be unfair to the accused (Chen & Chua, 2010, p. 127). In Indonesia, a study shows that police officers ( $n=270$ ) and psychologists ( $n=63$ ) did not have optimal knowledge about eyewitness memory, either adults or children, which could lead to wrongful convictions (Sumampouw et al., 2021, p. 12).

Last but not least, the influence of political and/or legal work is considered a factor leading to wrongful convictions in China, rather than in the rest of Asian countries. In particular, Zhong and Dai (2019, pp. 263–265) reviewed 141 erroneous convictions (involving 206 defendants) from China and found that the form of political-legal works led by the Political-Legal Affairs Committee (PLAC) via conducting ‘three-chief’ meetings and the political importance in maintaining social stability via highlighting the police’s dominant role in criminal justice system are likely to lead to wrongful convictions. The authors concerned that ‘political factors are sensitive information to the authorities and most likely underreported’ (Zhong & Dai, 2019, p. 272). Accordingly, pressure to clear a case, intervention of PLAC, orders from a leader(s), and strike-hard criminal policy are top main factors impacted on the rate and nature of at least 37 wrongful convictions (Zhong & Dai, 2019, pp. 272–273).

## Crime, Justice, and Wrongful Convictions in Vietnam

Situated in Southeast Asia and with around 100 million population, Vietnam has aimed at establishing the legal system and maintaining social order since the implementation of the Renovation Period and Open-Door policy in the 1990s. Alongside the political stability, economic development, and increasing living standards, its crime rates are relatively low. While violent crimes remain uncommon, petty crimes are quite frequent, and the transnational crimes (e.g., human trafficking, drug trafficking, smuggling migrants, and wildlife trafficking) have become increasingly more complicated since the 2000s (Luong, 2019, 2020, 2021).

It is difficult to assess the exact nature of crime in Vietnam because there have been no systematic, official, national statistics on crime and criminal justice activities. Despite that in recent years, efforts have been made to collect and publish crime-related statistics nationally in order to prevent crime; consistent indexes and criteria have yet to be developed in Vietnam (Luong, 2019, 2020, 2021). It is thus unlikely to make meaningful comparisons of crime and criminal justice data between Vietnam and other parts of Asia, let alone the world.

According to the annual reports of the Supreme People’s Procuracy, over the past 5 years (2017–2021), the number of criminal cases brought to the first-instance trial has ranged from 57,879 to 65,696 (av. 61,287), while the number of defendants has ranged from 95,141 to 113,276 (av. 110,355), representing a slight upward trajectory in both the number of cases and defendants over the span of 5 years. Most of the defendants were accused of crimes of violence, property, and drugs.

The Vietnamese criminal justice system has established three pillars to combat crime: the investigative police, the procuracies, and the courts. Accordingly, the investigative agencies are responsible for ascertaining crimes and offenders under the Criminal Procedure Code of Vietnam, except for all military cases belonging to the investigative agencies of the People’s Army. In Vietnam, more than 98% of crimes are investigated by the

police's investigative agencies. While the procuracies exercise the right to prosecute and oversee judicial activities, the courts shall exercise judicial power. Although the Constitution requires judges and people's assessors to conduct trials independently and obey only the law, this principle has not reached the full level of judicial independence in practice.

Vietnam's government has essentially established a power structure in which control is exercised horizontally and vertically in the criminal justice system. Its Criminal Code controls all sectors of the country and penetrates every corner of society, including crime prevention. All criminal justice agencies operate at four levels, from the top to the grassroots, including the central, provincial, district, and commune. Accordingly, a special mechanism with a dominant position for three state bodies governs the process of investigation, prosecution, and adjudication based on their close coordination. To handle a complex criminal case, a joint-meeting mechanism amongst the leaders of the three procedure-conducting bodies/agencies (investigation, prosecution, and court) is often set up to serve as an ad hoc steering committee, known as the 'three-internal-affairs roundtable.' It serves as the most important pillar in the investigation, prosecution, and trial; meanwhile, the defense counsels and the accused persons only possess a weak position and are dependent on procedure-conducting agencies. Although the 2013 Constitution issued the central role of the court to ensure judiciary activities via their hearings and judgments (article 102), the criminal justice system in Vietnam still operates through a symbiotic relationship among the three-internal-affairs roundtable. Accordingly, the constituents of this roundtable coordinate and collaborate, rather than restrain each other. While the public security forces (police) serve as the 'sword and shield of the party' to prevent and combat crimes, the prosecutors and judges are the main actors in accusing the defendant and proving one's criminality (Grossheim, 2018). This reality stems from both the characteristics of an inquisitorial model (influenced by the French before 1945 and by the former USSR and China after 1959 as Vietnam officially joined the Socialist legal system) and the functional role of the investigating bodies of the Ministry of Public Security. The courts often look forward to receiving the cut-and-paste activities of procurators which are based on police investigations, rather than exploring the cases independently (Khuat, 2007). Such a practice has led to several mistakes and wrongful convictions with consequential effects in Vietnam.

Since the 2000s, the CPV had identified establishing the rule of law as the central pillar in criminal justice reform's strategies. It requests all criminal justice agencies to follow the laws and respect the highest standard of code of conduct during investigating, prosecuting, and judging. Although wrongful conviction has been considered a severe concern in the rule of law initiative since the 2000s, its related assessments are still limited and lacking due to the strict release of publicly accessible data. Only one full report by the National Assembly Committee's Supervision on Wrongful Convictions and Exoneration (the 2015 Report) was published in 2015 (National Assembly of Vietnam, 2015). According to the Report, between October 2011 and September 2014, the three internal affairs agencies investigated and prosecuted 219,506 cases with 338,379 defendants. Among the investigated and prosecuted, there were 71 wrongful convictions that accounted for 0.02% of defendants. Among the 71 wrongful convictions, 31 cases were suspended at the investigative stage due to insufficient evidence to charge the offenders after the investigation, and 12 cases were suspended on the grounds of failure to identify the offender. At the prosecution and trial stages, nine cases were adjourned by prosecutors after the police could not provide enough evidence to prove the defendant's guilt beyond a reasonable doubt, while judges acquitted the defendants in 19 cases where investigators and prosecutors tended to apply the presumption of guilt rather than the presumption of innocence principle when handling the cases. Although the rate of wrongful convictions is low based on this report,

its effects are impactful both on the wrongfully accused and on the legitimacy of the Criminal Procedure Code. To fully understand the nature of the wrongful conviction in Vietnam, we turned to case studies to analyse and assess the causes.

## Data and Method

For the purpose of this study, we selected four cases based on three criteria. First, these cases have been officially acquitted by the State Compensation Department and the Ministry of Justice. Second, these cases have been assessed for public release by all the highest state bodies in the political and legal departments and the criminal justice system, including the Central Committee for Internal Affairs, the Standing Committee for Judicial Reform, the Supreme People's Procuracy, the Supreme People's Court, and the Ministry of Public Security. Finally, these cases are mentioned in the National Assembly Committee's Supervision Report. The 2015 Report on wrongful convictions issued by the National Assembly Committee is the first, and only report that documents and analyses wrongfully convicted criminal cases in Vietnam to-date. The four cases included in this current study were featured in the 2015 Report as exemplary, high-profile cases of wrongful convictions. The goal of this Report is to illustrate the experiences and lessons drawn from the four cases, so that Vietnamese criminal justice agencies may avoid similar mistakes in the future (Dao, 2020; Thai, 2020).

All facts in the four cases were excerpted from official statements by the court and/or prosecution agencies where we have accessed the documents. They include the decisions of protestation by the Supreme People's Procuracy based on re-opening procedures and the decisions for cassation by the Supreme People's Court. A summary of each case is presented below.

### Case 1: Nguyen Thanh Chan

The Nguyen Thanh Chan case occurred in the northern Bac Giang province in 2003. Mr. Nguyen (born in 1961, Bac Giang) was imprisoned for murder. On 15 August 2003, Mrs. Nguyen Thi Hoan (31 years old) was found dead in Nguyen's village with multiple stab wounds. From 23 to 27 September, around 30 men were interrogated by the police and then released, including Nguyen. However, on 29 September, Nguyen confessed to committing this crime and was detained for investigation and charged with murder. In March 2004, the People's Court of Bac Giang province sentenced Nguyen to life imprisonment, although he claimed that he had been subjected to police torture and had provided a false confession. Four months later, the SPC rejected the appeal and supported the first-instance judgment without changing the decision.

However, on 25 October 2013, Mr. Ly Nguyen Chung, who lived in the same village as Nguyen and the victim and was not yet 15 years old at the time, confessed to being the perpetrator of the murder and robbery. After committing the crime, Ly, following his father's advice, fled to Lang Son and then to Dak Lak, hiding in many places until the day he surrendered. He was jailed for 12 years for murder and robbery. Nguyen was officially vindicated in November 2013 and freed before receiving an official exoneration and apology, and over seven billion VND (around USD350,000) in state compensation.

## Case 2: Huynh Van Nen<sup>1</sup>

The Huynh Van Nen case occurred in the southern Binh Thuan province in 1993. On 21 May 1993, residents at Tan Minh commune, Ham Tan district, discovered a woman's body in Mr. Hai Hoang's cashew garden. This case became known as the 'Cashew Garden Case'. The police investigation agency identified the victim as Ms. Duong Thi My, but no suspect was yet identified. Five years later, on 23 April 1998, another murder and robbery occurred at the same place; the victim was Mrs. Le Thi Bong this time. On 17 May 1998, the police investigation agency of Binh Thuan province detained Mr. Huynh on suspicion of murder. On 31 August 2000, at the first-instance trial, Huynh testified that due to being subjected to forced bowing and torture during police interrogation, he confessed to murdering Mrs. Le and robbing her of a gold ring weighing 3.75 g. The People's Court of Binh Thuan province still sentenced the defendant to life imprisonment. Huynh did not file an appeal, and the first-instance judgment took legal effect.

During the investigation, the police also forced Huynh to confess that he and six members of his wife's family killed Ms. Duong on 18 May 1993. From this testimony, the police reopened an investigation of the cold case. After holding trial hearings twice at the provincial level, the court found Huynh and his wife's family guilty of murder, robbery, and non-denouncement. However, their guilt had been denied by the SPC at the headquartered level twice. In the final appellant's statement in March 2005, the SPC in Ho Chi Minh City requested the criminal investigation's police to re-investigate this case. Given the length of time since the occurrence, both the investigative police and prosecutors failed to provide physical evidence to convict Huynh and his accomplices. Thus, all defendants were exonerated with a public apology and state compensation.

Yet Huynh was not released and continued to serve a life sentence for Mrs. Le's murder until another offender was arrested in 2015. Mr. Nguyen Tho, who had changed his name and fled to Cambodia and many southern localities of Vietnam. He was arrested and detained for 2 years for assaults in 2010 in Soc Trang province. After his release, he moved to Dong Thap province where, on 10 October 2015, he was stopped by the traffic police in the Hong Ngu district for an identity check. He could not prove his identity and was thus taken to the police station, where he revealed his true name and confessed to the Mrs. Le murder. Twelve days after Nguyen Tho surrendered, Huynh, who was wrongly sentenced to life in prison for the alleged murder of Mrs. Le, was released on bail. Two months later, Huynh was officially vindicated before receiving an official apology and exoneration with over ten billion VND (around USD500,000) in compensation.

## Case 3: Han Duc Long

The Han Duc Long case occurred in the northern mountainous region of Bac Giang province in 2005. On 26 June 2005, a murder took place in Yen Ly village, Phuc Son commune, Tan Yen district, and the victim was Ms. Nguyen Thi Yen (born in 2000). The autopsy showed that Ms. Nguyen was raped and then killed. Because no one had been arrested after a 4-month investigation, by law, the police had to suspend the case temporarily. However, the police continued to call on public assistance. Accordingly, the police were contacted

<sup>1</sup> During writing this paper, we received the bad news that Mr Huynh has passed away on 13 September 2022. Rest in peace!

by Ms. Ngo Thi Khuyen (born in 1930) and her daughter Truong Thi Nam (born in 1960), both accusing that Mr. Han, from the same village, had raped them. The investigative agency arrested Han based on his initial confession.

In March 2007, the People's Court of Bac Giang province sentenced Han to death at the first-instance trial. The Supreme People's Court, acting as the court of appeals in this case, upheld the judgment and punishment. In 2009, however, the Court's Judicial Council cancelled two previous cassation trial judgments and requested a re-investigation. By September 2011, the trial court issued a death sentence again for the second-instance trial, and ruling was affirmed by the appeals' court. In November 2014, the Judicial Council of the Supreme People's Court then issued a cassation decision to annul both the first-instance and appellate judgments based on insufficient grounds for the criminal prosecution and failure to prove beyond a reasonable doubt. Therefore, on 20 December 2016, the People's Procuracy of Bac Giang province suspended the case and released Han. Although the authority has publicly apologized, as of December 2021, no official compensation has yet been awarded.

#### **Case 4: Nguyen Hong Ngoc Anh**

The Nguyen Hong Ngoc Anh (Mrs. Nguyen) case occurred in the Central Highlands region in Phu Yen province in 2005. On 5 July 2012, the Drug Crime Investigation Division of Phu Yen province caught Ms. Vo Thi Thu Phuong and Ms. Nguyen Thi Ngoc Suong trafficking heroin. Through the investigation process, the police determined that Mr. Le Trong Thanh, a drug user, ordered an associate in Ho Chi Minh City, Mr. Tu Pham Quang Vinh, to set up a trafficking network. From 25 March to 4 July 2012, the syndicate operated successfully on multiple occasions without attracting the attention of the police. During this period, Mr. Tu received heroin and money indirectly from Mr. Le on 16 occasions for transporting drugs, while his wife, Mrs. Nguyen Hong Ngoc Anh, was involved on 11 occasions. After multiple proceedings, all offenders were brought to trial by the court and the judgment took legal effect without the appellant requirement, except in the instance of Mrs. Nguyen. Between 2014 and 2017, her previous judgments have been re-prosecuted and re-judged twice by criminal justice agencies.

On 17 August 2018, the People's Procuracy of Tuy Hoa city asked the Forensic Science Department (of the Ministry of Public Security) to examine the handwriting of the case investigator Nguyen Viet Cuong. The examination results showed that the investigator manipulated and faked the evidence against Mrs. Nguyen. While the criminal justice agencies could not demonstrate her guilt, the investigator was arrested and given a suspended 18-month jail sentence for falsifying case files. As of December 2021, the public apology and compensation process have not been completed for Mrs. Nguyen.

## **Results**

This section analyses four specific wrongful conviction cases to address our main research questions. The so-called 'top of the iceberg' reflects the factors that led to wrongful convictions directly. The 'bottom of the iceberg' explores the hidden factors that contributed to these cases.

## Direct Causes Leading to Wrongful Convictions (the Top of the Iceberg)

### Failure to Gather Proof of Evidence

Unsuccessfully collecting and assessing evidence led to many wrongful cases. In Case 1, the police were negligent in recording many essential traces at the crime scene before arresting and detaining Mr. Nguyen. This includes the treatment of fingerprints and blood-stains on the electric switch and the backdoor. Most physical evidence was not properly collected and/or scientifically examined. The formation mechanisms and direction of blood traces at the scene were not assessed by forensic experts. The omission of this evidence steered the investigation to focus on the suspect's confessions. For example, the length and width of the footprints at the scene were compared to those of the suspect's and deemed to 'approximate' his size. This was presented as solid evidence to prosecute and sentence him in both the trial and appeal hearings.

In Case 2, Mr. Huynh was convicted wrongfully of murder in much the same vein. Important pieces of evidence at the scene of Mrs. Le's murder were not collected, such as a padlock, parachute rope, and the amount of gold jewellery. Importantly, the rope seized at the scene was not consistent with the evidence for strangulation on the victim's neck. Different rope sizes were used in the experimental investigation by the police. In addition, different footprints at the scene were not accessed and evaluated as significant to the case. On the other hand, Mr. Huynh's footprints, which are shorter and narrower than those at the crime scene, were presented as incriminating evidence.

### Failure to Comply with Requirements of Investigative Techniques

In addition to poor techniques of evidence collection and errors in evidence evaluation, some cases were conducted via inappropriate criminal investigation methods. For example, in Case 2, investigators conducted experiments, which failed to simulate similar conditions of the crime and the criminal/victim. Indeed, the physical characteristics of the suspect and the person who acted as the suspect were much different — a man named DDV was asked to stand in for the suspect (Mr. Han), who was taller than Mr. Han, and a banana tree (approximately 10 kg) was used in place of the victim that was much lighter than the victim's weight (approximately 14–15 kg lighter). What is more, these investigative activities were based on the investigator's subjective constructions.

Regarding experimental techniques, when conducting the investigation in Case 1, the police only examined the suspect's actions at the scene. They ignored checking and testing Mr. Nguyen's accurate timelines from locations A to B before allegedly murdering the victim. In Case 3, the police neglected to conduct an experimental investigation to double-check the fictitious story told by Mr. Huynh in his detailed confession on the process of killing the victim.

### Extorting Confession Through Torture

All of the suspects in the selected cases denied the accusation of criminal involvement several times during their respective interrogations. Yet, they were forced to give false statements. The signed testimonies of Mr. Nguyen, Mr. Huynh, and Mr. Han were taken after several rounds of torture. Torture seems to be the best instrument to break down a suspect's

willpower. Under those wrongfully convicted convicts' untold words, torture is applied in physical (e.g., lengthy interrogations and deprivation of sleeping, beating, hitting, and locking by handcuff to the window) or mental forms (e.g., providing steaming rice without salt and limiting family contact in the pre-trial period) (Cases 1 to 3).

Consequently, the suspects felt they had no choice but to confess. For example, in Case 1, Mr. Nguyen wrote a confession admitting not only to raping the victim but also beating her with a beer bottle and stabbing her with a knife. He even stated exactly the hiding place of the weapon based on the police-instructed script. In another scenario, while the confessions of Mr. Huynh (Case 2) and Mr. Han (Case 3) revealed multiple changes and inconsistencies, their petitions to prove their innocence were ignored. Once again, these confessions were presented and accepted as solid evidence in court. At the same time, all the defendants' reflections about police torture have been consistently ignored or rejected because no evidence was recorded in the interrogation process. Yet, under the 2015 Criminal Code, criminal suspects or offenders do not have the right to remain silent, instead they shall provide an honest statement and show repentance to be able to record their extenuating circumstances of criminal liability (Article 51, clause 1.b).

### Misconduct and Illegal Behaviour

Official misconduct in investigation, prosecution, and adjudication can lead to cases of wrongful convictions. All four cases have exposed misconduct by Vietnamese criminal justice agencies at various levels, particularly at the investigation and prosecution stages, and to a lesser extent at the trial stage.

In Case 1, both the intended and unintended acts of the investigators worked entirely against the suspect. The process for the defendant (Mr. Nguyen) to identify the weapon (a sharp knife at the scene) was not objectively conducted. Mr. Nguyen was tortured several times in jail in order for him to practice how to identify the knife based on investigators' instructions. In addition, the police did not investigate the victim's lost property, such as her golden rings and cash. Despite the victim's autopsy photographs showing that the victim's finger was imprinted with a ring, this detail was not fully described in the autopsy report. The police also overlooked the defendant's phone conversations when the crime was being committed. Such a record could have been easily located and verified with the telephone service provider(s) regarding specific numbers and times of conversation. However, the investigators ignored any such phone call record.

Furthermore, when Mr. Nguyen complained and reported torture by the investigator, the prosecutor ignored his complaint and removed two of the handwritten documents outlining this complaint in his file before sending the file to the court. In addition, the appellant judge disregarded the defense lawyer's evidence, which conflicted with the investigative findings of the police. Instead, the judge only relied on Mr. Nguyen's self-incriminating confessions at the police station to convict him of murder without paying attention to the counterargument session during the hearing. All detectives, prosecutors, and judges associated with the misconduct in this case have been charged with negligence leading to severe consequences on duty (Article 360, the 2015 Criminal Code) and falsifying case files (Article 375), after Nguyen was exonerated.

Likewise, the investigators in Case 2 did not take sufficient testimonies to clarify where, why, and how Mr. Huynh killed the victim. Although they were aware of the different sizes of the footprints at the scene, the investigators still concluded that the prints were the same size to support their arguments. Nor did they objectively gauge the method of attack by

asking how the V-shaped haemorrhagic bruise on the victim's body was formed. Moreover, some prosecutors did not objectively monitor and check the police actions.

As for Case 3, the investigators did not clarify the differences between the witness statements and the suspect's confessions in the two related murders. In the first case, the rape and murder in May 2005, while those investigators had not yet clearly demonstrated Mr. Han's conflicting testimonies at different times, they also failed to prove inconsistencies in eyewitness accounts. In the second case, the rape in September 2005, investigators had missed proof and evidence to blame Han's copulative act by the two accusers (victims). Accordingly, his guilt was established partly on accusations by two women in one family (one of whom was over 70 years of age). While criminal investigative agencies assumed that Han may have certain pathologies or suffer from mental illness, they did not request specialists to perform a psychiatric evaluation before arresting and prosecuting him.

In addition, some investigators even falsified the suspects' statements to accuse and wrongfully prosecute them. For instance, after additional investigations involving Case 4, the investigator added to the transcript of testimony a handwritten statement accusing Mrs. Nguyen Hong Ngoc Anh of being an accomplice in the drug trafficking case. Analysis of the handwriting later showed evidence to charge the investigator with falsifying the case file.

### **Hidden Roots Leading to Wrongful Convictions (the Bottom of the Iceberg)**

Apart from the reasons discussed above, some invisible issues in the Vietnamese criminal justice system and its related mechanisms and governing principles are also responsible for wrongful convictions in Vietnam. This section highlights these points as being the hidden roots that lead to wrongful convictions.

#### **Lacking Presumption of Innocence in Criminal Procedures**

Besides the evident factors in the above explanations, none of the cases followed the presumption of innocence — an effective legal principle for ensuring the accused person's rights to mitigate the possibility of wrongful conviction. On paper, the presumption of innocence was introduced in the 1988 Criminal Procedure Code that 'No one shall be possibly found guilty and subject to punishment before the conviction of the court takes effect' (Article 10). However, many of the presumption of innocence requirements have been seriously ignored in practice.

In the four cases, for example, the presumption of guilt by police dominated. The denials and explanations of the accused, along with their defense lawyers' statements, are considered recalcitrant and tortuous under the views of criminal justice agencies. Instead, they were compelled to support and imitate the investigators' instructions to reconstruct acts, as seen in Cases 1, 2, and 3. In Case 4, the investigator recorded Mrs. Nguyen's statements during an interview, and added his words to 'reflect' Nguyen's plans with others for transporting and trading illegal drugs. The absence of the presumption of innocence was the main cause of the wrongful convictions in Cases 1, 2, and 3; as from the onset, investigators were fixated on the accused's guilt. In Case 4, although the presumption of innocence had been constitutionalized in the highest legal documents in Vietnam, the investigator still ignored it and even manipulated the evidence to extend detention times for investigation multiple times.

The presumption of innocence requires treating the accused as innocent until they are convicted. Being considered recalcitrant and tortuous, all the accused suffered from physical and/or mental abuse during the investigative period. Such abuses occurred in the detention centres without supervision, although under the Criminal Procedure Code, prosecutors have the authority and duty of supervising investigative activities.

Additionally, in almost all cases, reasonable doubts existed but did not encourage further official investigations to ascertain legal evidence; alternatively, both investigators and prosecutors used ‘approximate numbers’ to accuse the defendants. For example, when investigators collected the suspected footprints at the crime scenes in Cases 1 and 2, they used them to compare with the real sizes of Mr. Nguyen (Case 1) and Mr. Huynh (Case 2). Later, this was presented as evidence to prosecute them without official testimonies or scientifically certified identifications.

### **The Domino Effects of the Three-Internal-Affair Model**

The typical model for wrongful convictions in Vietnam forms a domino effect through the police, prosecution, and the trial process. In all four selected cases, the starting point for wrongful conviction was that the investigating bodies misidentified the suspect. For example, in Cases 1 and 2, investigators were under extreme pressure from their superiors to complete the investigation in a timely manner. This resulted in the torture of Mr. Nguyen and Mr. Huynh for coerced confessions.

The Vietnamese criminal justice system is primarily operated by the ‘three-internal-affairs’ model that coordinates and collaborates together in moving the criminal cases through each process. This model has distinctive strengths and weaknesses. While it provides the most powerful tools to these three already powerful authorities that allow the criminal justice system functioning effectively, there is a potential lack of transparency and accountability when power is unchecked. All four wrongful conviction cases have originated from those overwhelming state powers and functions. In Case 2, all 12 officials (investigators, prosecutors, and judges) from the three-internal-affairs roundtable (between 1995 and 1998) admitted their wrongdoings in handling Mr. Huynh’s case, which led to his 17-year incarceration (from 1998 to 2015). However, those 12 officials only received a verbal warning and remained in their posts due to the expiration of the statute of limitations for penal liabilities. The investigators, prosecutors, and the judge in Mr. Nguyen’s case (Case 1) were charged with intentionally falsifying the case file or negligence of duty. Yet, all of them argued that they complied with the procedural requirements set forth by the three-internal-affairs roundtable, as well as the internal rules of each of the respective bodies. These two cases showed that the mechanism of the three-internal-affairs roundtable is ingrained in the mindset of judicial officers and has a domino effect on how cases are processed.

### **Limited Role of Defense Lawyers in Criminal Proceedings**

In criminal proceedings, defense lawyers play an essential role in finding out the truth of the case, thus preventing injustice and wrongful convictions, and ensuring the protection of the defendant’s rights. Paradoxically, in our selected cases, defense lawyers’ voices and arguments were frequently neglected or dismissed, and the lawyers faced various obstacles by the judicial agencies (Ngo, 2018, p. 158; Pham, 2008, p. 333). Before the final exonerations, most defense lawyers in these cases spent years defending and appealing their cases

at all levels (e.g., Cases 1, 2, and 3). Some (in Case 2) had requested to prosecute investigators identified as the key players leading to the wrongful conviction. Others (in Cases 1 and 3) had to quit and/or stop their pro bono defense when the judicial agencies refused to accept their specific arguments in the litigation.

According to the Criminal Procedure Code, defense lawyers can participate in the proceedings from the pre-trial detention and investigation period to the time of prosecuting the accused. However, in all four cases, the lawyers' defense activities were restricted at the investigation stage due to various obstacles presented by the police. The lawyers often found it difficult to obtain an official permission to contact their clients after they were charged and detained. There is also a lack of existing legal framework for defense lawyers to operate under which would allow the lawyers to properly perform their role in consulting and discussing the wrongful conviction situations with their clients (Cases 1 and 3). The defense lawyers were also limited in their abilities to challenge the governmental infringement of their clients' rights. In Cases 2 and 4, for example, the accused in both cases were advised not to invite a lawyer but to report truthfully to the police in order to seek leniency. The accused had little understanding of the law and were in custody or temporary detention, possibly suffering psychological instability and anxiety. Some suspects (e.g., Mr. Nguyen and Mr. Han) were not aware that they had a right to legal representation, while others such as Mr. Huynh had to rely on a court-appointed counsel due to lack of funds to hire a lawyer.

## Discussion and Conclusion

The analyses of the four wrongful conviction cases show that the main reasons for wrongful convictions in Vietnam come from the misconduct of the criminal justice agencies in the investigation, prosecution, and, to a lesser extent, trial. This finding is rather consistent with the available literature in many Asian countries. Remarkably, both democratic (Hong Kong, Japan, Singapore, and Taiwan) and communist states (China and Vietnam) have recognized the high rate of wrongful convictions stemming from malpractice at the very start of the criminal investigation process by the police agencies (Chen & Chua, 2010; He, 2016; He & He, 2011; Ito, 2013; Jiang, 2018c; Lin et al., 2019). Under the pressure of the investigatory body, innocents become the suspects and are subject to torture to extract a confession. As He (2016, p. 65) argues, the malpractice in China's criminal investigation process may be characterized as 'from confession to evidence' instead of 'from evidence to confession'. In Vietnam, investigators have wrongfully conducted their investigations to collect evidence and prove the 'truth' of their cases, which is analogous to other Asian countries (Guo, 2019; He, 2021; Jiang, 2018a, 2018b, 2018c; Liang et al., 2019; Lin et al., 2019; Zhong & Dai, 2019; Zhuo, 2021). They have neglected the presumption of innocence, and instead applied the presumption of guilt in their cases. The investigating bodies also side-stepped the appropriate procedural standards to gather documents, physical objects, and testimonies from eyewitnesses and other persons relevant to the case. The procuracies rendered the charge based on their investigative counterparts' findings in all four selected cases. In the end, the court's judgments largely accepted the accusation in the procuracies' indictments (e.g., Cases 1, 2 and 3). Although the disagreement between the investigating bodies and procuracies sometimes led to the latter asking the former to conduct further examinations, the investigative bodies often insisted on their initial conclusions.

Accordingly, and finally, the procuracies compromised and sided with the police to prosecute the accused (Case 4).

Various causes for wrongful convictions in Asia have been revealed in previous studies. These include false confession by torture, misconduct of judicial practitioners, forensic errors, eyewitness misidentifications, and political factors (Chen & Chua, 2010; Guo, 2019; He, 2021; Jiang, 2018a, 2018b, 2018c; Liang et al., 2019; Lin et al., 2019; Soukara, 2020; Zhong & Dai, 2019; Zhuo, 2021). Almost all of these causes are similarly present in the Vietnamese criminal justice agencies: the only exception is eyewitness misidentification, which was not recorded as a leading cause for wrongful convictions in Vietnam. In contrast to China (Liang et al., 2019; Zhong & Dai, 2019), Cyprus (Soukara, 2020), Indonesia (Sumampouw et al., 2021), and Singapore (Chen & Chua, 2010), information from eyewitness testimonies in Vietnam, as shown in our four selected cases, was utilized by the police as a secondary pathway to identifying guilt. Both the police and prosecutors never relied on eyewitness statements as the main source of evidence to prosecute the accused and the selected cases show that eyewitness testimonies were not fully taken into consideration. Rather, the process of taking eyewitness statements and the resulting statements were often ‘adapted’ by the investigating bodies to align with the rest of the evidence that led to wrongful convictions.

Arguably, drawing from the identified causes in Vietnam, wrongful conviction originates first and foremost from the investigators’ subjective misperception of the person who commits the offence during the investigation. The Vietnamese police employed dubious methods to fulfil their burden of proof, such as torture to extort a confession. They tried to align these findings with their initial misjudgement during the investigation. This is similar to that presented in studies from China, Japan, Taiwan, and Singapore (Chen & Chua, 2010; Guo, 2019; He, 2021; Ito, 2013; Jiang, 2018a, 2018b, 2018c; Johnson, 2015; Liang et al., 2019; Lin et al., 2019; Soukara, 2020; Zhong & Dai, 2019; Zhuo, 2021). In these jurisdictions, investigators are not restricted by the checks and balances from the procuracies and the courts, and thus can defend their investigation conclusions. As a result, the Vietnamese criminal justice outcomes mainly lean on the investigative bodies’ findings. Mr. Khuat Van Nga, former Vice-President of the People’s Supreme Procuracy, affirmed that “It needs the mighty to expose the fact that all the results of the judicial process are based on the investigation bodies’ documents. After receiving the case dossier from those policing investigation agencies, the prosecutors and the defense lawyers considered these documents the basis for incriminating or exonerating. As the dossier transmitted to the courts, the courts just utilize it for hearing (Khuat, 2007). This fact is attributed to the feature of the inquisitorial procedure model. Furthermore, as Zhong and Dai (2019) described in their research, it enters the political sphere in China when all the investigating bodies, procuracies, and courts disregard the checks and balances among each other.

Besides the common causes for wrongful conviction in Vietnam, which are similar to those of other Asian countries (the top of the iceberg), there are three key underlying causes (the bottom of the iceberg). First, the crime control model in Vietnam’s criminal justice system is characterized by complex operations and collaborations among the ‘three-internal-affairs’ mechanism which is quite similar to the ‘three-chief’ meeting in China (Zhong & Dai, 2019). Stemming from the joint task of effectively controlling and combating crime, and of navigating complicated cases, the mechanism of the coordination among the three-internal-affairs agencies remains the most effective in maximizing the limited resources of the criminal justice system. This mechanism is useful to save the limited resources by investing more in the investigation phase, but less in other phases of the criminal proceedings. While in theory, those agencies are required to work independently

and separately when judging one's guilt in court, in reality; however, all four wrongful convictions have demonstrated the close internal relations among these agencies. In Case 1, for example, Judge Pham Tuan Chiem, who chaired the appellate trial panel, denied his negligent and unfair treatment of the defendant, Mr. Nguyen. Instead, the judge insisted that the decisions of the judicial agencies had been corrected and that he was merely following them.

Secondly, pressuring each criminal justice agency's quota and conviction rate places stress and pressure on the investigating, prosecuting, and hearing phases. A pre-set minimum ratio of 90–95% of conviction rate is preferred for the three-internal-affairs agencies (Dao, 2020; Thai, 2020). Once case proceedings begin, these quotas and rates will be used to assess legal officers' performance, either promoting one's rank or upgrading one's job. This practice represents part of the hidden factors that may lead to official misconduct in the criminal justice system. Concerning the investigating bodies, these mandatory quotas may compel investigating officers to discover the 'right' offenders by all means. Misjudgments are unavoidable under such pressure. Once the initial misconceptions are formed, it is difficult to change course at later stages of the criminal investigation because police are often under 'pressure to clear a case' (Zhong & Dai, 2019, p. 272). Thus, our findings affirm the drawback of the crime control model with its inquisitorial procedure and proceedings in socialist countries such as Vietnam as one major reason for wrongful convictions. Similar concerns have been raised in China with the political regime under the leadership of the Communist party (Zhong & Dai, 2019). Accordingly, all criminal justice agencies, including police, prosecution, and the court, 'work together' rather than impose 'the necessary checks on each other'. Although the police, prosecutors and courts have distinct roles in the justice system in the authoritarian party-state, they often operate in an 'assembly line' (Jiang, 2015b, p. 120). Chinese prosecutors pay more attention to cooperating with the police in handling cases than imposing the necessary restraints to curtail abuses of power during the investigation (He, 2015; Jiang, 2013a, 2015a).

Lastly, limiting the role of defense lawyers in criminal proceedings is another hidden factor leading to the high rate of wrongful convictions in Vietnam. All three murder-related cases (Cases 1, 2, and 3) demonstrate the critical support of defense lawyers who volunteered to pursue those cases. Many of these individuals have faced tremendous pressure to prove their client's innocence under the obstacles, barriers, and threats of the police. These concerns led them to withdraw or work towards a compromise with the authorities rather than pursuing a complete exoneration for their clients (Ngo, 2018; Pham, 2008). Since the 2000s, the CPV and the three-internal-affairs agencies have attempted to transform from traditional ideologies and policies of the interrogation model to the litigation model to enhance defense lawyers' status within the criminal justice system. However, Vietnamese defense lawyers still face significant challenges under the mixed models with limited capacities to protect the rights of their clients. The failures of Mr. Nguyen (Case 2) in both trial and appellant hearings demonstrate the grave mistakes of the three-internal-affairs agencies when neglecting the lawyers' evidence and arguments in courts.

In light of the issues revealed by this study regarding wrongful convictions and official misconduct in the criminal investigation and trial, we propose some key reform measures to reduce wrongful convictions in Vietnam.

The first involves implementing the presumption of innocence with more transparent and objective approaches at all stages of the criminal process. The presumption of innocence principle requires that all suspects charged with a crime without sufficient grounds for a conviction based on the law must be acquitted by the judge. However, in reality, there are at least three significant obstacles to ensuring this principle in Vietnam, including (1)

the illegal process of collecting, examining, and evaluating evidence; (2) insufficient evidence to convict the accused; and (3) when the first two obstacles are not removed, the accused are treated as the culprits and convicted by the officials. Our cases revealed that when evidence is not sufficient, legal authorities tended to make subjective inferences in order to obtain a conviction. For example, in Cases 1, 2, and 3, crucial physical evidence such as blood, hair, fingerprints, knives used in the crime commission and other relevant physical evidence were largely uncollected or analysed.

The second involves recording the interview and interrogation processes. All four cases involved interrogations that were not recorded, either in an audio or a video form. Before the current Criminal Procedure Code was passed in 2015, Vietnam did not require such recordings as part of the electronic evidence submitted in criminal proceedings. This is similar to China. All defendants in Cases 1, 2, and 3 appealed and complained about the police misconduct. In the operation of the police investigation, the process ‘from evidence to confession’ had been replaced by the process ‘from confession to evidence’ through coercion, forced confession, and torture (He, 2016, p. 65). By contrast, in Case 4, although the investigator was not accused of using torture, he falsified the accused’s statements to demonstrate her guilt. All these practices proceeded without recordings; thus, most complaints relating to police torture were not treated seriously. While the 2015 Criminal Procedure Code represented an important step forward by requiring recordings of key evidence gatherings, it is equally important to implement strict regulations and laws in monitoring and preventing official abuse of power (e.g., the use of forced bowing and corporal punishment by officials, suppressing, altering, or falsifying suspects’ statements).

The third involves distinguishing duties and responsibilities among judicial agencies.

The model for Vietnam’s three-internal-affairs roundtable is similar to China’s ‘three chief meeting’ (Zhong & Dai, 2019). It has been established and applied to the most important cases involving complex circumstances in criminal convictions. The final decisions are often based on the prior consensus of joint opinions among judicial agencies. It may pressure the procurators and judges to render charges or judgements based on their views and the newly discovered facts as they still largely depend on the outcomes of the police investigation as part of the core constraints of the three-internal-affairs roundtable currently. This model holds an interchangeable role in the investigation, prosecution, and hearing stages, pressuring the legal professionals, particularly defense lawyers, to follow. Although each regulation of the Ministry of Public Security, Supreme People’s Procuracy, and Supreme People’s Court issued their cooperative relations restraining each other, our analyses of the four cases suggest that these agencies worked closely in the investigation, prosecution, and hearing stages to accuse the defendants. Notably, the investigators play a dominant role in this tripartite relationship and largely enjoy an immunity for wrongfully accusing and/or convicting an individual.

Last, but not the least, there is a need to enhance defense lawyers’ roles in the criminal justice system in Vietnam. Most wrongful convictions have been exonerated only after many complaints and appeals from the innocent’s relatives and defense lawyers via social media campaigns (Ngo, 2018; Pham, 2008). It is rare for wrongful convictions to be exposed by one of the three-internal-affairs agencies in Vietnam. Therefore, we support the notion of expanding the lawyers’ participation at the pre-detention stage, which would allow them to effectively participate in legal proceedings and react in a timely manner to malpractice in criminal investigations. Further, it is necessary to strengthen the roles of cross-examinations by allowing prosecutors and defense lawyers to more fully present evidence and arguments at the trial phase so as to have a more transparent and objective litigation.

In summary, wrongful convictions lead to severe consequences and effects. Such occurrences trample the values, dignity, and personality of the victims and their beloved ones, and cause emotional and financial strains on them. Our current study is based on four prominent and serious wrongful conviction cases in Vietnam. However, the small number of these cases influences our generalization in the discussion. Thus, the conclusions of this study may not sufficiently depict the legal and judicial reform process needed to vindicate all wrongfully convicted persons in Vietnam. However, the recent cases discussed in our study exposed some long-lasting issues of the criminal justice system as Vietnam's judicial structure remains largely unchanged. Owing to this fact, our conclusions are still highly relevant and accurate to address our questions. Compared to other Asian countries, this study finds some underlying elements at the bottom of the iceberg in the Vietnamese criminal justice system besides commonly mentioned factors identified as the top of the iceberg. The causes for wrongful convictions are closely related to the inherent features of the criminal procedure model and its culture and are not easy to address. The eradication of wrongful convictions requires innovative, bold, and careful planning in future judicial reforms. The four recommendations we proposed in this study should be the first steps towards protecting the rights of the accused and their defense lawyers and maintaining the independent obligations among the three-internal-affairs agencies during criminal justice proceedings.

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## Declarations

**Conflicts of Interest** The authors declare no competing interests.

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