

Contribution to EMRIP Study on Report on Recognition, Reparations and Reconciliation

Submitted by Association for Taiwan Indigenous Peoples' Policies (ATIPP)
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On Indigenous Peoples' Day—August 1, 2016—President Tsai Ing-wen apologized on behalf of the government to Taiwan's Indigenous Peoples. After the apology, there are several measures taken to implement the commitments made by the apology and to pursue the realization of recognition, reparation and reconciliation.

I. The establishment of Presidential Office Indigenous Historical Justice and Transitional Justice Committee after the national apology

Governmental Measure:

The Presidential Office Indigenous Historical Justice and Transitional Justice Committee (hereafter referred to as Indigenous Justice Committee), to be chaired by the president herself, was then established. The Indigenous Justice Committee has its regular meetings every 3 months, working hand-in-hand with one representative for each of the 16 Indigenous Peoples, three representatives for all Pingpu Indigenous Peoples, two representatives from relevant government agencies, and seven scholars and experts. There are 5 thematic subcommittees to study pertinent issues and put them forward for discussion at committee meetings, including subcommittee on land matters, subcommittee on culture, subcommittee on languages, subcommittee on history, and subcommittee on reconciliation. With respect to the measures that the committee plans and recommends, the Executive Yuan Committee to Promote Review and Implementation of the Indigenous Peoples Basic Law shall be the entity that handles deliberative and coordination matters connected with follow-up work.

Dispute:

There were doubts and questions raised by Indigenous society regarding the selection process of the Indigenous representatives to the Committee. There were critics pointing out that the government failed to engage Indigenous people with sufficient information to fully and effectively participate in the process. In addition, the Committee is of ad hoc nature, meaning the operation of the Committee in terms of fund and administrative

resources heavily relies on relevant government bodies. There is neither stable and independent source of fund, nor sufficient manning quotas. Most importantly, the Committee has no investigative power. People questioned without investigative power, how could this Committee to obtain sufficient and needed correct information? Therefore we strong urge the government to establish an independent body with substantial investigative power to comprehensively investigate the cases and official archives of violation against the rights of Indigenous Peoples caused by government's inappropriate policies.

Case Study:

After the establishment of the Indigenous Justice Committee, it initiated the investigation on the truth of nuclear waste storage on Orchid Island (Lanyu) of the Tao Peoples. However, within the investigation report, it only stated that the government established the nuclear waste storage plant without the knowledge of the Tao Peoples on Orchid Island, but it failed to reveal why the decision was made so. In addition, the demand of the Tao Peoples and local residents to remove the nuclear waste hasn't been dealt with despite more than 3 decades of protest and appeal. The only measure taken was to provide compensation, which only tear apart and divide the local communities even more.

II. The initiative to delineate and announce Indigenous traditional territories and lands

Governmental Measure:

The term “ traditional territories” was first used in the legal document in Taiwan when the Indigenous Peoples Basic Law was adopted in 2005. According to the Basic Law, “When governments or private parties engage in land development, resource utilization, ecology conservation and academic research in indigenous land, tribe and their adjoin-land which owned by governments, they shall consult and obtain consent by indigenous peoples or tribes, even their participation, and share benefits with indigenous people. (Article 21)” But the measure and procedure of consultation and obtaining consent and how to define the area of traditional territories are not provided. Therefore, after the national apology in 2016, the Council of Indigenous Peoples announced the "Regulations for Demarcating Indigenous Traditional Territories and Lands" (hereafter referred to as Regulations of Demarcation) on February 18, 2017 to pursue the legalization of specific delineation procedures.

Dispute:

The "Regulations for Demarcating Indigenous Traditional Territories and Lands" has aroused many disputes. The most disputed was article 3 of the Regulations of Demarcation that limits the definition of "traditional territories" to merely in the area of "public land". This way of definition mixes the concept of sovereignty of traditional territories with property rights of public as well as private. Also, with the limitation on public land, even if the demarcation is completed, Indigenous Peoples' right to Free Prior Informed Consent (FPIC) cannot be implemented on the private land within the demarcated areas. There are doubts questioning this is to weaken the sovereignty of Indigenous Peoples toward their traditional territories. It also provoked the conflict between owners of private lands and Indigenous Peoples regarding practice of collective right on traditional territories.

In addition, the procedure of demarcation is very time-consuming. There is also the possibility of overlapping, meaning the same area of land could be claimed by different communities or Peoples. Since the Regulations of Demarcation was in force in 2017, there is only the Thau Peoples located in the central part of Taiwan completed the legal procedure of demarcation, but now the Thau is encountered the obstacle of repeal of the demarcation due to defective administrative procedure. There are currently various development projects carried out within Indigenous Peoples' traditional territories in full swing. Despite of the Regulations of Demarcation is already in force, when the demarcation is not completed with legal procedure, Indigenous Peoples still have no stand to claim their right to FPIC.

Case Studies:**A. "Golden Sea Resort" Project**

The "Golden Sea Resort" Project is within the traditional territories of the Kararuan Community of the Amis Peoples in Taitung. The total project area is 11.3 hectares. Within the area of the project, there were originally both public and private lands. According to the current legislations, FPIC of Indigenous Peoples should be obtained before the project to be conducted. However, the public lands were sold to the company operating the project by the public sector, meaning the public lands are now private lands. While article 3 of the Regulations of Demarcation excludes private lands from the area of

traditional territories, the local Indigenous community and people can no longer claim their FPIC.

B. “Baosheng Aquarium Ecological Recreation Area” Project

The “Baosheng Aquarium Ecological Recreation Area” Project is located in the traditional territories of the Pisirian Community and the Kihau Community of the Amis Peoples in Taitung. The community members have tabled many questions regarding this project, including fail to implement Indigenous Peoples’ FPIC. However, the representative of the company operating the project replied, “ We have bought all the lands for the project. Those lands are private lands, so there is no need to obtain Indigenous Peoples’ FPIC. We already showed our greatest sincerity by having a meeting with the local people. The local people have no right to express their opinions or table any demand.” In addition, in the same area, there is another development project, “Man Di Fu Recreation Area”, and until now, there is no sign of implementing FPIC.

C. Repeal of Thau Peoples’ Traditional Territories

The Thau Peoples located in Sun Moon Lake in the central mountainous area of Taiwan has spent more than 1 year to complete the legal procedure of the demarcation in order to defend their traditional territories from various development projects. The Council of Indigenous Peoples has made the official national proclamation in June 2018. But the local government of the administrative district, Yuchih Township Office, was resentful its administrative area was overlapped with Thau Peoples’ public lands of traditional territories. The Yuchih Township Office allied with its superior Nantou County Government and submit an appeal against the proclamation of Thau Peoples’ traditional territories demarcation. The Petitions and Appeals Committee of the Executive Yuan made the decision on January 25, 2019, stated, “ The proclamation procedure of the Thau Peoples’ traditional territories is defective. Therefore it is confirmed that the proclamation of Thau Peoples’ traditional territories is repealed.”

There are actually more cases obviously indicate that the current version of the Regulations of Demarcation that exclude private lands from traditional territories indeed weaken Indigenous Peoples right to FPIC. In addition, there are several Indigenous activists, including Panai Kusui, Nabu Istanda Husungan and Mayaw Biho, have been

camping in front of the Presidential Office to protest against the Regulations of Demarcation, especially article 3, since February 2017. Until now it's more that 700 days, they are still there to protest.

III. The establishment of the Legal Center of Indigenous Peoples, Legal Aid Foundation

Government Measure:

In September 2017, the Office of the President released the Report of National Conference on Judicial Reform to establish effective measures that safeguard the rights and interests of Indigenous Peoples; elevate the cultural sensitivity of professionals in the judicial system; and improve legal knowledge related to indigenous peoples. As a front-line legal aid provider, the Legal Aid Foundation has the responsibility to realize and advocate for the judicial rights and basic rights of indigenous peoples.

The Legal Aid Foundation of Taiwan established the Legal Center of Indigenous Peoples (LCIP) in eastern Taiwan in March 2018 to provide legal aid specifically to the Indigenous Peoples with the hope to reconcile the conflict between the national legal system and the traditional practices of Indigenous Peoples. Its works include the following:

- A. Staff attorneys to be in charge of handling special cases of Indigenous peoples.
- B. Legal Aid Right Away: Community-based legal service
- C. Training Workshops for Legal Aid Attorneys
- D. Community-Based Walking Workshops of Legal Aid Attorneys and Staff
- E. Academic Forums and Seminars

Disputes:

However, there are some difficulties and challenges of Legal Aid of Indigenous Peoples since its establishment:

- A. Insufficient infrastructure causing the barrier of accessing transportation, making Indigenous people in remote areas difficult to apply for legal aid.
- B. Due to factors such as distance, traffic, and cultural differences, promoting legal aid services to the indigenous community is difficult.
- C. Lack of awareness about rights, not knowing how to seek assistance or defend their rights.

- D. 100-year-long predicament faced by Indigenous peoples and the newly emerging laws regarding Indigenous peoples result in the legal practitioners' insufficient knowledge of Indigenous Peoples' traditions and legal system.
- E. Therefore, compared to the general cases, it takes more time and effort for an attorney to handle Indigenous cases.

IV. The “Plain (PingPu) Indigenous Peoples” was announced to be added as the 3rd kind of Indigenous status.

Governmental Measure:

Following the national apology, the Executive Yuan has announced the “Plain (PingPu) Indigenous Peoples” to be added as the 3rd kind of Indigenous status in addition to the lowland and highland Indigenous Peoples as the response to the Plain Indigenous Peoples' long term demand for name restoration in October, 2016. In August 2017, the Executive Yuan passed the draft of the "Amendment to the Status Act For Indigenous Peoples" to add the "Plain (PingPu) Indigenous Peoples" and listed it as the Legislative Yuan Priority Review Act.

Dispute:

However, the political right of the current “Plain (PingPu) Indigenous Peoples” status is not guaranteed in the Constitution, meaning that the members of the Plain (PingPu) Peoples can not represent their Peoples to run for the election. The protection of their social and cultural rights is also uncertain. The Executive Yuan has neither proposed any plan for relevant law amendment, nor for the procedure of recognition and identification in terms of status, ethnic groups and community so far. The Working Group on Plain (PingPu) Indigenous Affairs of the Council of Indigenous Peoples has submitted a “Letter of Intent on the Identification of the Plain (PingPu) Indigenous Peoples” to the Executive Yuan in 2015. In the Letter of Intent, it was stated clearly that the government shall recognize the Plain (PingPu) Indigenous Peoples as Indigenous Peoples and the members of the Plain (PingPu) Indigenous Peoples have the same Indigenous status. However, with the Letter, it was also expressed that regarding the relevant rights pertaining to the Indigenous status should be restored gradually in accordance with different Plain (PingPu) Indigenous Peoples/Nations' actual social, economic, political and cultural conditions and differences.

Case Study:

The PingPu representative of the Eastern District of the Indigenous Justice Committee was dissatisfied with the draft “Amendment to the Status Act For Indigenous Peoples” because there was no transparent consultation with the Plain (PingPu) Indigenous Peoples. He claimed that the identity of the Plain (PingPu) Indigenous person should directly restore to the "lowland Indigenous Peoples" and obtain full rights as any other Indigenous person. There should not be any separation of Plain (PingPu) Indigenous Peoples deliberately from other Indigenous Peoples or to treat them differently. Although the PingPu representative of the Southern District expressed her wish that the revision of the Status Act For Indigenous Peoples could be completed as soon as possible, she believed that if the rights of the Plain (PingPu) Indigenous Peoples are to be regulated in different legislation, it will cause unsettling and it is also violates the Constitutional. In addition, in the international review of the ICCPR & ICESCR in 2017, the International Review Commission pointed out that the classification of the identity of the Indigenous Peoples as Mountain, Lowland and Plain (PingPu) Indigenous Peoples is contrary to the self-identification of the Indigenous Peoples.

V. Other Relevant Measures of Recognition, Reparations and Reconciliation: Transitional Justice Committee (TJC)

Government Measure:

The Transitional Justice Commission was established by the Executive Yuan on 31 May 2018. The commission is responsible for the investigation of actions taken by the Kuomintang between 15 August 1945 and 6 November 1992. The Act on Promoting Transitional Justice was passed by the Legislative Yuan on 5 December 2017. The act sought to rectify injustices committed by the authoritarian Kuomintang government of the Republic of China on Taiwan. The act permitted the Transitional Justice Commission to be established and investigate actions taken from 15 August 1945, the date of the Jewel Voice Broadcast, to 6 November 1992, when president Lee Teng-hui lifted the Temporary Provisions against the Communist Rebellion for Fujian Province, Republic of China, ending the period of mobilization. The committee's main aims include: making political archives more readily available, removing authoritarian symbols, redressing judicial injustice, and producing a report on the history of the period which delineate steps to further promote transitional justice. There is one Indigenous member was pointed as one of the nine Commissioners. Every 6 months, the TJC should submit a report to the Minister of the Executive Yuan and the report is open to public.

The TJC has so far identified 38 political victims who were of Indigenous status. On December 9, 2018, all of the 38 Indigenous political victims were publicly and officially revoked from their criminal charges. However, during the past authoritarian rule era, the Indigenous status was not systematically registered, there are some victims with Indigenous status waiting for further identification.