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# The Establishment of Indigenous Peoples Specialized Courts or Divisions



## ◆ Article 31, Paragraph 5 of the Code of Criminal Procedure [Mandatory Defense during Investigation]

If the accused or suspect, [...] who is an **aborigine**, has not retained a defense attorney during an investigation, the prosecutor, judicial police officer, or judicial police should notify a legally established legal aid agency to assign an attorney for the accused's or suspect's defense. However, if the accused or suspect requests an immediate interrogation or questioning, or if the defense attorney is not present after more than a four-hour wait, the interrogation or questioning may be commenced.

## ◆ Digest of the Supreme Court Judgement 107 Tai-Shang-Tzu No. 3084

Indigenous peoples, **due to factors such as traditional culture, customs, economic conditions, and education**, often **face difficulties in accessing legal information**. Compared to other defendants or suspects in the investigation stage, Indigenous defendants or suspects are at a greater disadvantage due to an unequal access to information, and their defense capacity is further weakened. Therefore, **the state should proactively provide defense attorneys from the investigation stage** to assist Indigenous defendants, **ensuring procedural fairness and demonstrating the constitutional protection of Indigenous peoples' fundamental rights as guaranteed by the Indigenous Peoples Basic Law**.







◆ **Article 30 of the Indigenous Peoples Basic Law** “The government shall respect tribal languages, traditional customs, cultures and values of indigenous peoples in dealing with indigenous affairs, making laws or implementing judicial and administration remedial procedures, notarization, mediation, arbitration or any other similar procedure for the purpose of protecting the lawful rights of indigenous peoples. In the event that an indigenous person does not understand the Chinese language, an interpreter who speaks the tribal language shall be provided.

For the purpose of protecting indigenous peoples’ rights and access to the judiciary, indigenous peoples’ court or tribunal may be established.” **To safeguard the judicial rights of Indigenous peoples, Taiwan has established Indigenous courts with the aim of defending Indigenous traditional culture and customs within the national legal framework. However, given the diversity of Indigenous cultures and customs across different tribes and regions, courts often lack comprehensive understanding of these traditions.**

The National Affairs Conference on Judicial Reform, organized by the Presidential Office, has proposed the creation of an Indigenous Judicial Advisory Committee, hence the Council of Indigenous Peoples has formulated the establishment of the **Indigenous Judicial Advisory Committee**. **In cases where there is doubt about whether an issue involves cultural conflict, the courts may consult the committee for opinions on whether cultural defense is applicable, providing a reference for case handling.**





原住民族委員會  
COUNCIL OF INDIGENOUS PEOPLES

### ※Article 19 of the Indigenous Peoples Basic Law [Paragraph 1]

Indigenous persons **may undertake** the following **non-profit seeking activities** in indigenous peoples' regions and the sea areas be promulgated by the central indigenous competent authority:

1. Hunting wild animals.
2. Collecting wild plants and fungus.
3. Collecting minerals, rocks and soils.
4. Utilizing water resources.

[Paragraph 2] The central indigenous competent authority shall consult with the central relevant authority before promulgate the sea areas in the preceding paragraph.

[Paragraph 3] The activities in Paragraph 1 can only be conducted for **traditional culture, ritual or self-consumption.**

### ※Article 21-1 of the Act on Wildlife Conservation:

[Paragraph 1]

Wildlife may be hunted or killed for **traditional cultural or ritual hunting**, killing, or utilization needs of indigenous people, regardless of Article 17, Paragraph 1; Article 18, Paragraph 1; and Article 19, Paragraph 1.

[Paragraph 2] Hunting, killing, or utilizing wildlife in the condition listed in the preceding Paragraph shall be approved by Authorities. The application process, hunting method, hunted species, bag limit, hunting season, location, and other regulations shall be prescribed by the CCA in conjunction with the national indigenous people's authority.

### ※Regulations for Indigenous Peoples on the Hunting, Killing and Usage of Wildlife by Reason of Their Cultures and Rituals





◆ Incident of Accidental Hunting of a Formosan Muntjac in Shoufeng Township's Baibao River [Judgement of Taiwan Hualian District Court Yuan-Su-Tzu No. 74 (2016)]  
[Culturally Conflicted Crime]

Issue:

**Determination of “non-profit use” under Article 19 of the Indigenous Peoples Basic Law**

Reasons for Judgement :

“...**‘Culture’ is a collective experience shared by a group. Culture not only shapes the personalities of its members but also significantly influences their behavioral choices. This concept of ‘culture’ is inclusive and encompasses all aspects of human existence**, not isolated expressions or closed intervals, but rather **an interactive process**. The cultural practices of Indigenous peoples are not necessarily expressed through rituals; even in **daily activities such as eating and living**, these can **be understood as cultural practices**. Traditional Indigenous communities live in close connection with their mountainous environments, and hunting the resources of these forests for personal use is an integral part of Indigenous cultural practice. As long as there is no profit-making activity involved, these actions remain a form of cultural practice. Therefore, the **‘non-profit use for personal consumption’ is a part of Indigenous traditional culture**. According to Article 21-1, Paragraph 1 of the Act on Wildlife Conservation, when the defendant took the mistakenly hunted Formosan muntjac to use for personal consumption, for family members, or for sharing according to traditional culture, they **did not commit** the offense under Article 41-1, Paragraph 1, Subparagraph 1 of the Act on Wildlife Conservation...”





## ◆ Judicial Yuan Interpretation No. 803 [Indigenous Hunting Case]

Interpretation Paragraphs 3-4:

“... Article 21-1, Paragraph 1 of the Act on Wildlife Conservation states: ‘Wildlife may be hunted or killed for traditional cultural or ritual hunting, killing, or utilization needs of indigenous people, regardless of Article 17, Paragraph 1; Article 18, Paragraph 1; and Article 19, Paragraph 1.’ The term **‘traditional culture’** should include the dietary and living culture passed down within the Indigenous tribes, where hunting wild animals for food for personal, family, or tools for tribal use, **without profit, aligns with the constitutional protection of Indigenous peoples’ cultural rights to hunt.**

When legislators regulate the **non-profit hunting, killing, and utilization of wildlife by Indigenous peoples based on traditional culture**, or when the competent authority issues regulations, such hunting, killing, and utilization **should not include protected species** unless there are special circumstances. **This is to balance the relevant constitutional values...**

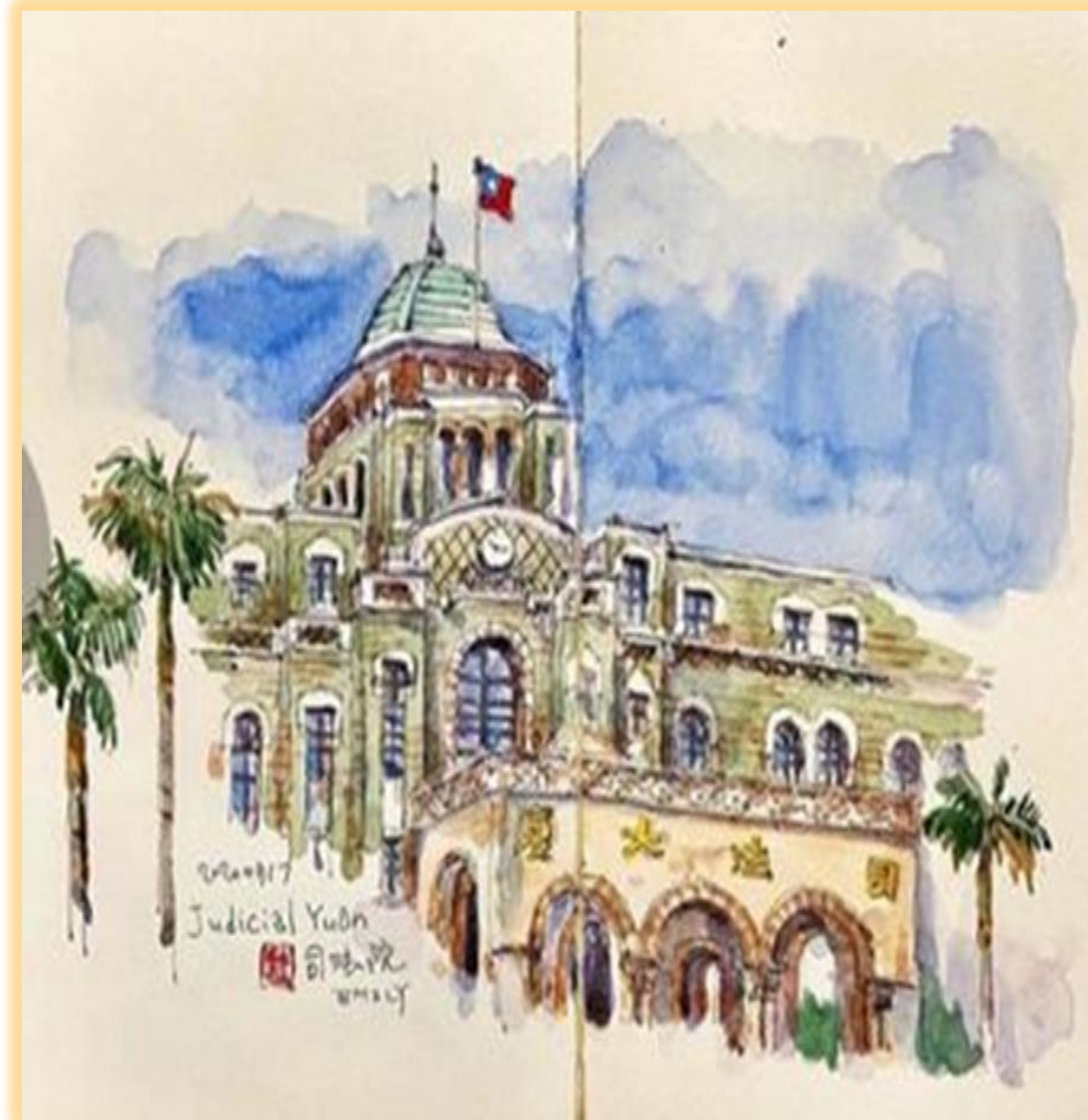




### ◆ Interpretation Paragraphs 5-6:

The first-half of Article 21-1, Paragraph 2 of the Act on Wildlife Conservation states that “Hunting, killing, or utilizing wildlife in the condition listed in the preceding Paragraph shall be approved by Authorities.” **The prior approval requirement for hunting does not violate** the principle of proportionality under the Constitution.

**Article 4, Paragraph 3 of the Regulations for Indigenous Peoples on the Hunting, Killing, and Usage of Wildlife by Reason of Their Cultures and Rituals states:** “Applicants must complete an application form... and apply to the township (town, city, district) office of the hunting location for approval by the competent authority of the directly governed municipality or county (city) at least 20 days prior to the hunting activity. However, for non-regular hunting activities, the application must be submitted at least 5 days prior to the activity...” Regarding the **time limits and procedures for non-regular hunting activities, the lack of reasonable flexibility in the case of unforeseen and sudden events** has resulted in excessive restrictions on the cultural rights of indigenous people to engage in hunting activities. This is a violation of the constitutional principle of proportionality, and such provisions should cease to apply from the date of this interpretation’s announcement. Until the relevant regulations are revised and published, the **competent authorities should adopt flexible and diverse measures based on the specific circumstances of each case regarding applications for non-regular hunting activities by indigenous people, without being restricted by the 5-day application requirement.** Additionally, Article 4, Paragraph 4, Item 4, of the Regulations, which states that “the application form should specify the following matters... 4. the species and quantity of animals to be hunted...” is also a violation of the constitutional principle of proportionality and should cease to apply from the date of this interpretation’s announcement.”

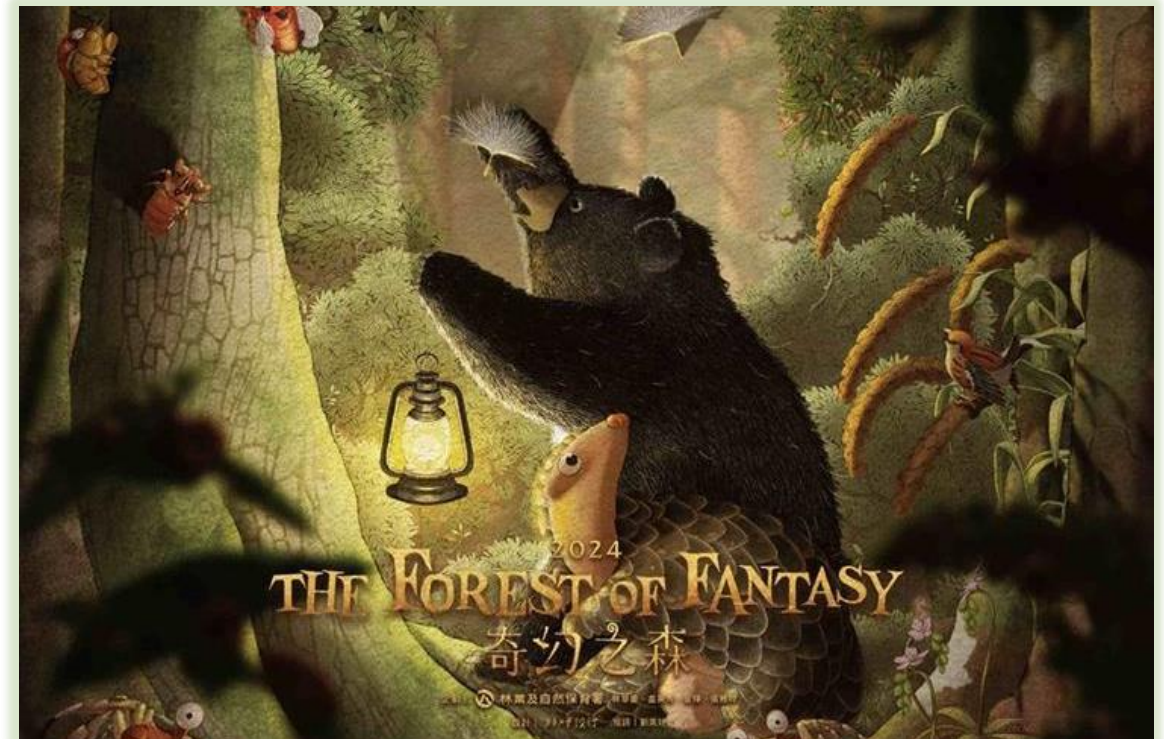




◆ General Explanation of the Draft Amendment to the Regulations for Indigenous Peoples on the Hunting, Killing, and Usage of Wildlife by Reason of Their Cultures and Rituals

In line with the Judicial Yuan Interpretation No. 803, which recognizes that indigenous peoples' hunting activities following their cultural traditions constitute a key aspect of their cultural rights and must be constitutionally protected, it has been deemed necessary to amend the current regulations. The existing regulations on indigenous hunting do not fully align with the traditional hunting culture of indigenous peoples, thus requiring revisions.

To achieve sustainable use of wild animal resources and ensure the stability of wildlife populations, the draft amendment proposes the **establishment of a temporary self-management system for hunting and a system for indigenous self-management of hunting**. This system would involve **monitoring wildlife resources** and **reporting hunting results by indigenous peoples** through a co-management mechanism between the government and indigenous autonomous governance of wildlife resources. The draft amendment has been developed. The name of the Regulations will also be revised to "Regulations for Indigenous Peoples on Hunting of Wildlife."



◆ Key Points of the Draft Amendment to the Regulations for Indigenous Peoples on the Hunting, Killing, and Usage of Wildlife by Reason of Their Cultures and Rituals:

1. Designation of the Competent Authorities: The competent authority for the **conservation of marine wildlife** is designated as the **Ocean Affairs Council**. (Amendment to Article 2)
2. Incorporation of Judicial Yuan Interpretation No. 803: **A provision is added allowing indigenous peoples** to hunt **for personal use**, in line with the interpretation. (Amendment to Articles 3 and 6)
3. **Endangered species and other species designated by the central authority cannot be hunted**. It is stipulated that except for hunting related to traditional culture, rituals, temporary self-management hunting, or indigenous self-managed hunting, **protected species cannot be hunted**. (Amendment to Article 7)
4. The requirement for the hunting permit to specify the species and quantity of animals to be hunted, as well as obtaining approval from tribal meetings, **is removed**. **New flexible procedures for application, acceptance, and reporting of hunting results, as well as timeframes for reporting in the case of emergency hunting, are introduced**. (Amendment to Articles 10, 11, and 15)
5. Provisions are added regarding **the application and review procedures for temporary self-management hunting, as well as the obligations and conditions for approval or termination**. (Amendment to Articles 16 through 20)
6. Provisions are added stipulating that **prior approval from the relevant tribes must be obtained when entering into self-management agreements for indigenous hunting. The terms and termination conditions of the administrative agreement are also regulated**. (Amendment to Articles 21 through 23)





台灣新聞

## 賽夏族與林務局釋前嫌 首簽夥伴關係共管山林

◎ 2018年02月08日



本報2018年2月8日台北訊，特約記者廖靜蕙報導

過去將林務局視為「阿問」（魔鬼）的賽夏族，如今消弭恩怨，共同攜手成為山林夥伴。賽夏族與新竹林區管理處於昨（7日）上午於立法院簽訂夥伴關係，為原住民行政機關互信合作、共謀永續發展樹立里程碑，也是原住民16族中，第一個與林務局作關係宣言的民族。林務局長林華慶致詞說，希望未來林務局成為賽夏族的天使。儘管台北風雨交加、冷冽刺骨，仍擋不住來自竹苗賽夏族民族議會代表滿腔熱情。他們與林務局新竹處簽訂夥伴關係的日子，也是終結過去長期來與林務局扞格的日子。宣言之前，他們以肉串及竹杯裝小米酒、傳統祭告祖靈的方式，在立法院與林務局一起祭祀祖先。



賽夏族與林務局新竹林區管理處於今（7日）上午於立法院簽訂夥伴關係。攝影：廖靜蕙

◆ Reconcile with the Forestry Bureau, pioneering the establishment of an indigenous forestry cooperative, and returning the the forests with legitimacy.

◆ Organize “Saisiyat Forest Guard” to patrol the mountains, protecting both the forests and the culture.

◆ Revive logging to see indigenous presence within the national system.

◆ Develop indigenous cultural industry and eco-tourism in traditional territories, paving the way home for Saisiyat children.

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文字／林慧貞

攝影／馬雨辰 鄭宇辰

核稿／張子午；責任編輯／張詩芸、黃鈺婷



## 重新伐下族人親手種的樹—— 與國家和解，賽夏族重返山林 的漫漫回家路

2022年，苗栗南庄首度出現賽夏族人組成的林業合作社，承包林務局伐木業務，寫下台灣林業史新頁——其中還包含曾參與盜伐的山…

2023.2.13







台灣新聞

## 「行政契約」共管狩獵將入法 獵人自律、生態永續

【當部落傳統遇上現代治理：原民狩獵自主管理專題】

◎ 2020年11月05日



環境資訊中心 特約記者賴品瑀 嘉義報導

「越多的權力、更大的責任！」鄒族特富野社頭目如此看待原民狩獵自主管理。日前第三屆「原住民族狩獵自主管理獵人大會」於阿里山舉辦，其中〈原住民族狩獵自主管理條例〉草案搶先亮相，供在場原民獵人團體討論。

此辦法完成後，未來將朝向各地獵人團體與政府簽訂「行政契約」的模式，逐步取代現行以主管機關許可的作法，企圖以科學監測與集體自律來重建原民狩獵文化，並確保生態永續。

且在林務局的規劃中，尚有發展林下產業、生態旅遊與共同管理保護區等，後續也將朝向



台灣新聞

## 「姓林的」與原民化敵為友 狩獵、林下經濟都可共管

【當部落傳統遇上現代治理：原民狩獵自主管理專題】

◎ 2020年11月06日



環境資訊中心 特約記者賴品瑀 嘉義報導

本週2至4日原民狩獵團體舉辦第三屆「獵人大會」，除各地狩獵團體，各地林管處、學術團隊也共同參與，為朝向自主管理狩獵的目標進行討論，準備以政府與狩獵團體簽訂「行政契約」的共管機制，尋求傳承原民傳統狩獵文化，並結合科學管理生態資源。

林務局局長林華慶更親自到場，宣告不僅是狩獵，林下經濟、森林副產物利用產業化與生態文化旅游等，都可望以行政契約與原民合作。此舉不但是返還原民傳統文化與自然資源權利，也將是分享權力、分擔責任共同守護山林資源的開始。



台灣新聞

## 狩獵自主管理計畫納東埔部落 首批 證

【當部落傳統遇上現代治理：原民狩獵自主

◎ 2020年12月15日



環境資訊中心 特約記者賴品瑀 南投報導

「獵人證不只是我們可以打獵的權利，更是一個責任。」南投舉行「狩獵自主管理宣誓暨獵人證授證儀式」，共有82位布農族獵人獲得獵人證，成為第一個發出獵人證的布農族部落。



東埔部落獵人鳴槍為自主管理宣誓祈福。賴品瑀攝。

### 不再偷偷摸摸 布農族獵人授證 重返山林的開端

這82位獵人，在經過傳統規範、生態、用槍安全、法律等課程後，獲得獵人證，承諾未來部落狩獵自治自律公約，掌握入山和狩獵情形回報，並建立原住民族自然資源治理權利。



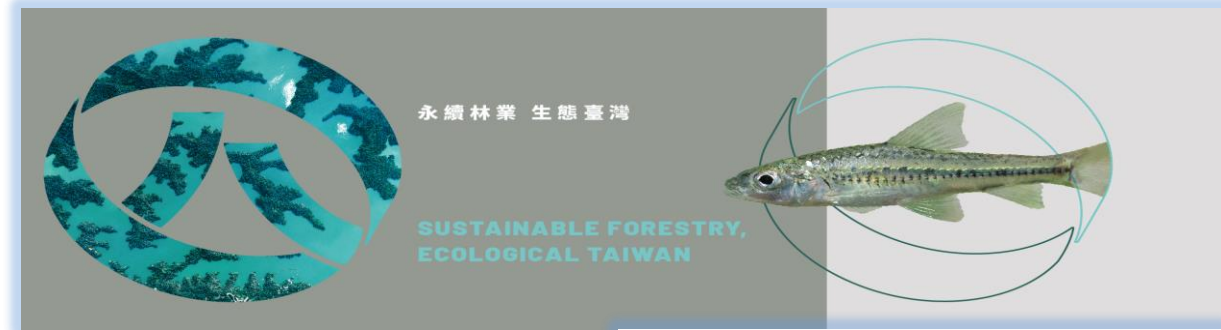


※ Different Administrative Authorities:

- ◆ Forestry and Nature Conservation Agency, Ministry of Agriculture
- ◆ Fishery Agency, Ministry of Agriculture
- ◆ Ocean Conservation Administration, Ocean Affairs Council

※ Different Regulatory Frameworks:

- ◆ Act on Wildlife Conservation
- ◆ Fisheries Act
- ◆ Draft of the Marine Conservation Act
- ◆ Coastal Zone Management Act





[Request for Confirmation of Sake (Salmon) Fishing Rights Case] (Sapporo District Court Reiwa 2 [Administrative Lawsuit] No. 22)

Nature of the Right: A balance between the constitutional protection of “property rights” and the “overall social interest”. Fishing rights are not part of the cultural rights or inherent rights.



Comparing [U.S. v. Adair], [Winter v. U.S.], and [Yurok Tribe et al. v. U.S. Bureau of Reclamation]:

A comparison of hunting, fishing, gathering, collective water rights, and the protection of the environment and species.

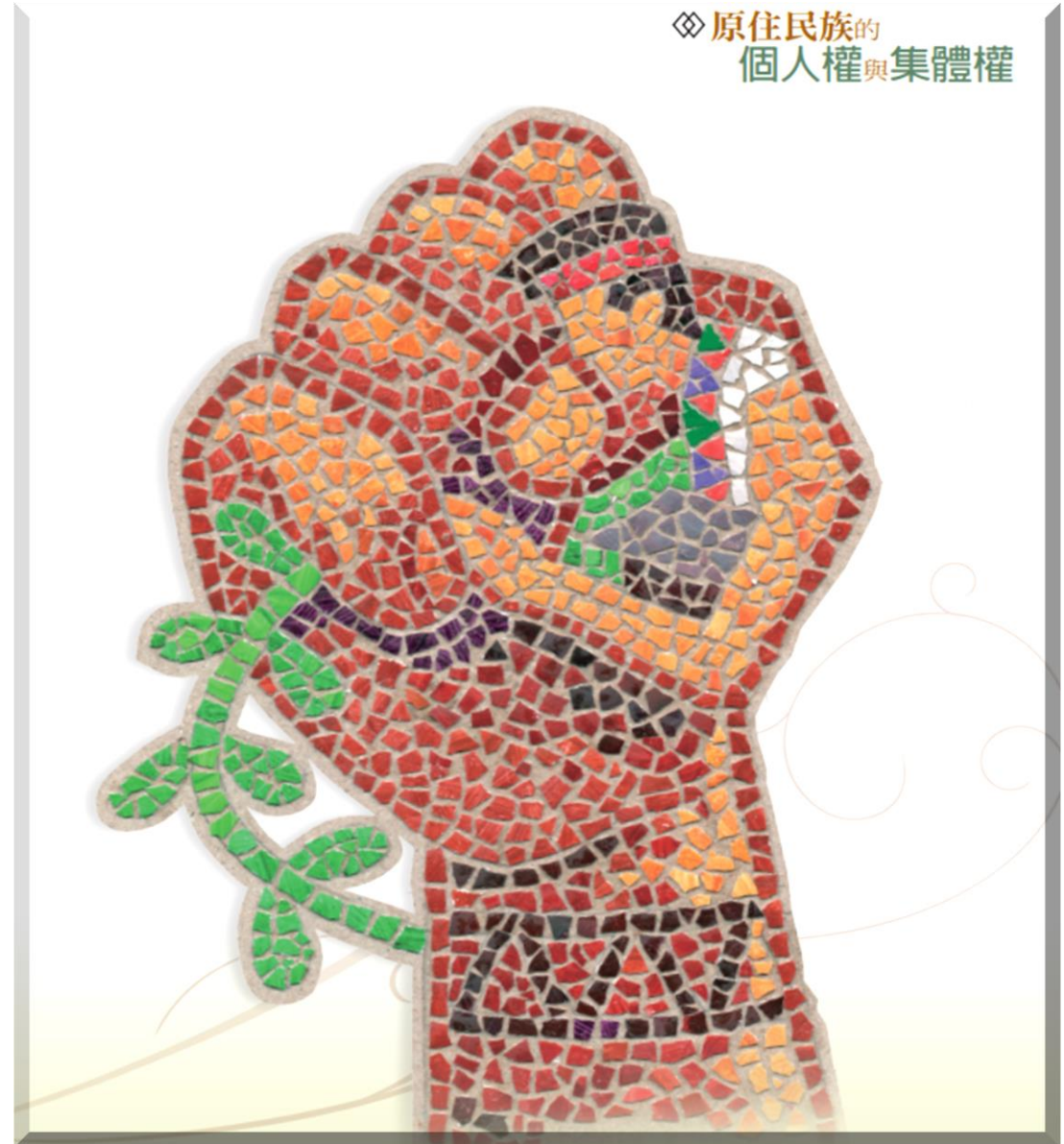


## ◆ Deepening the concept of collective rights

◆ Further extension of cultural rights based on Judicial Yuan Interpretation No. 803: **Rights to land and natural resource utilization**

◆ Taiwan Constitutional Court 111-Hsien-Pan-4 (2022) [The Indigenous Peoples Status of Children of Inter-marriage between Indigenous and Non-Indigenous Peoples Case] , Taiwan Constitutional Court 111-Hsien-Pan-17 (2022) 【Case on the Indigenous Peoples Status for the Siraya People】

◆ Explanation of the reasons for Article 16 in the draft amendment to the Regulations for Indigenous Peoples on the Hunting, Killing, and Usage of Wildlife by Reason of Their Cultures and Rituals: Indigenous hunting rights/collective cultural rights





# Symbiosis/Trust







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