

Judicial Reform and Indigenous Tribunal

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真相 和解

還原真相 實現正義

Presidential Office Indigenous Historical Justice and Transitional Justice Committee

總統府原住民族歷史正義與轉型正義委員會設置要點

蔡英文總統在2016年8月1日「原住民族日」代表政府向原住民族道歉，並宣布設置「總統府原住民族歷史正義與轉型正義委員會」

◇ 原住民族歷史正義與轉型正義委員會 ◇

<https://indigenous-justice.president.gov.tw/default.aspx>

NEWS

2019.03.14 Presidential Office news release following ninth meeting of Presidential Office Indigenous Historical Justice and Transitional Justice Committee

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Presidential Office Indigenous Historical Justice and Transitional Justice Committee

On Indigenous Peoples' Day—August 1, 2016—President Tsai Ing-wen apologized on behalf of the government to Taiwan's indigenous peoples and announced plans to establish the Presidential Office Indigenous Historical Justice and Transitional Justice Committee (hereafter referred to as Indigenous Justice Committee), to be chaired by the president herself. The committee will work hand-in-hand with representatives of the various indigenous peoples in pursuit of historical justice.

The Establishment of the Indigenous Tribunal

- Judicial Yuan Official Letter No. 1010028460, October 8, 2012
- The Judicial Yuan designated nine district courts in Taiwan—Taoyuan, Hsinchu, Miaoli, Nantou, Chiayi, Kaohsiung, Pingtung, Taitung, and Hualien—to **establish specialized indigenous courts (divisions) starting January 1, 2013**. It also requested that by the end of November 2012, judges be selected to handle these cases and participate in training sessions. The scope of cases and case number designations are attached for reference.
- According to Article 30, Paragraph 2 of the Indigenous Peoples Basic Law, the government may establish indigenous courts or tribunals to safeguard the judicial rights of indigenous peoples. Additionally, Article 13, Paragraph 2 of the Judicial Affairs Allocation Guidelines for Civil, Criminal, Administrative, and Special Professional Cases allows the Judicial Yuan to designate courts to establish specialized indigenous courts or divisions. **In consideration of the unique nature of indigenous affairs and the need to respect indigenous customs, cultures, and values**, please comply with these instructions.

原住民專業法庭審理案件範圍類型及案號字別一覽表

案件別	審理案件範圍類型	案號字別	備註
刑事案件	被告為原住民之刑事案件，不論何種犯罪類型，均由原住民族專業法庭（股）審理。	案號字別：於原有字別前加註「原」字，以資區別。	
民事事件	<p>一、應由原住民專業法庭（股）審理之民事事件類型：</p> <p>（一）兩造當事人為原住民、部落、原住民族之民事事件（不區分案由）。</p> <p>（二）一造當事人為原住民、部落、原住民族之下列事件：「返還（交還）土地」、「損害賠償（包括債務不履行及侵權行為）」、「履行或終止契約或租約事件」、「第三人異議之訴」、「返還不當得利事件」、「排除侵害」、「確認土地或房屋所有權存在或不存在」、「確認耕作權或地上權存在或不存在」、「確認租賃關係存在」、「塗銷耕作權或地上權登記」、「分割共有物」、「確定界址」、「遷讓房屋」、「債務人異議之訴」。</p> <p>二、得聲請由原住民專業法庭（股）審理之民事事件類型：</p> <p>一造當事人為原住民、部落、原住民族而非屬前項（2）案由之民事事件，經當事人聲請由原住民專業法庭（股）審理，受訴法院認為適當者。</p>	案號字別：於原有字別前加註「原」字，以資區別。	基於原住民族專庭（股）審理之民事事件類型並非專屬管轄，故有關得聲請由原住民族專庭（股）審理之民事事件，其聲請應於當事人為本案言詞辯論前為之，並由承辦法官將該訴訟事件簽請院長或經院長授權之庭長核准後報結，將事件移送原住民族專業法庭（股）審理。至於已為本案言詞辯論者，基於訴訟經濟，應認不得再為前開聲請。

* 有關原住民族專業法庭（股）之庭（股）數及法官是否兼辦其他案件部分，屬法院院長權限，由被指定之法院院長為之。

Review of Resolutions of the National Conference on Judicial Reform

On May 13, 2017, the Presidential Office held the third additional meeting of the first group of the National Judicial Reform Conference.

Resolution Summary:

Government agencies and departments should establish effective mechanisms to safeguard the judicial rights of indigenous peoples.

Additionally, they should enhance the cultural sensitivity of judicial professionals and improve their knowledge of legal matters related to indigenous peoples, in order to implement the spirit of Article 10, Paragraph 12 of the Additional Articles of the Constitution, the United Nations Declaration on the Rights of Indigenous Peoples, and the Indigenous Peoples Basic Law, which aim to protect the judicial rights of indigenous peoples.

Short-term

Cultivate the cultural sensitivity of judicial personnel regarding cultural conflicts and ensure the protection of indigenous peoples' judicial rights:

(1) For judicial personnel handling indigenous cases (**including judges, prosecutors, lawyers, and police, etc.**), in addition to regularly offering systematic on-the-job training courses, relevant agencies should arrange practical workshops in indigenous communities to enable these professionals to gain a deeper understanding of indigenous cultures and lifestyles.

(2) Regarding the selection of the future indigenous tribunal judges, it is recommended that **the Judicial Yuan explore the establishment of a professional certification system for indigenous judges**. Judges should be encouraged to obtain such certifications, and those with certification should be given priority when selecting judges for indigenous tribunal.

(3) Policies should (e.g., by considering the inclusion of “Indigenous Law” as an elective subject in the bar exam) **encourage universities and law schools to offer courses related to indigenous studies**, helping legal professionals understand the standards for adjudicating cases involving cultural conflicts.

Mid-term

- Review the scope of indigenous case hearings, and **consider establishing an Indigenous Judicial Advisory Committee**. The system of public participation in trials should take into account cultural factors in indigenous cases.
 - 1) The Judicial Yuan should review the scope of cases handled by indigenous tribunals, including those involving cultural conflicts where the parties do not hold indigenous status. Additionally, **the establishment of a circuit court system for indigenous cases should be considered**.
 - 2) It is recommended that the Council of Indigenous Peoples explore the establishment of an Indigenous Judicial Advisory Committee. When there is uncertainty as to whether a case involves cultural conflicts, **the committee can provide advisory opinions or opinions on whether cultural defenses are valid**, which can serve as references for handling the case.
 - 3) When **drafting legislation for public participation in trials**, the Judicial Yuan should consider incorporating cultural factors in Indigenous cases (for example, by referring to foreign legal practices that involve the inclusion of elders or community representatives in the trial process).

長期部分及 其他決議

Our country should refer to legislative examples from other nations and **explore the feasibility of recognizing Indigenous customary law and establishing indigenous tribunals** to realize the spirit of judicial autonomy for Indigenous peoples.

The Judicial Yuan should strengthen its promotional efforts by using television, radio, and digital media to promote indigenous people's rights. This will encourage more indigenous people to use these mechanisms. Additionally, police agencies should ensure that indigenous individuals are informed of their rights and reminded that they can seek legal advice for their cases via telephone.

原住民族司法諮詢會設置要點總說明

依據原住民族基本法第三十條：「政府處理原住民族事務、制定法律或實施司法與行政救濟程序、公證、調解、仲裁或類似程序，應尊重原住民族之族語、傳統習俗、文化及價值觀，保障其合法權益，原住民有不諳國語者，應由通曉其族語之人為傳譯。政府為保障原住民族之司法權益，得設置原住民族法院或法庭。」我國為保障原住民族司法權益，設立原住民族專庭，期能在國家法制下捍衛原住民族傳統文化慣習，惟我國原住民族各族文化不一，且不同部落之傳統慣習亦有差異，法院對之無法全盤掌握且深入瞭解。

「總統府司法改革國是會議」研擬增設原住民族司法諮詢委員會，爰本會研擬成立「原住民族司法諮詢會」，於法院認定案件是否為文化衝突案件有疑義時，得請原住民族司法諮詢會出具諮詢意見或提出文化抗辯是否成立之意見，作為辦理案件參考依據。

綜上，為設計適宜的原住民族司法諮詢會型態與功能，進一步釐清原住民族訴訟案件是否涉及傳統文化慣習，以提供意見供法院於判決時參考，爰擬具「原住民族司法諮詢會設置要點」，共計六點，其要點如下：

- 一、訂定目的及依據。(第一點)
- 二、諮詢會任務。(第二點)
- 三、諮詢會組成型態、任期以及會議召開及議決程序。(第三點至第四點)
- 四、委員應迴避及當事人申請迴避之情形。(第五點)
- 五、委員為無給職，諮詢會所需經費由原住民族委員會編列。(第六點)

Traditional Indigenous Dispute Resolution Mechanisms

- In Yami (Tao) society, gold foil is often regarded as the price for compensating one's guilt. A whole piece of gold foil symbolizes compensation for one person who was accidentally killed (substantive norm).
- After the terms of compensation are agreed upon, on the appointed date, the parents or brothers of the offender bring the compensatory gold foil and a pig to the victim's home, accompanied by the person who mediated the reconciliation. The pig is placed at the doorstep, and the gold foil is handed over as compensation. Direct relatives from both sides are invited to participate, with male relatives from both parties holding rifles (Teinalulut), gathering around the pig. The victim's side chants over the pig, then stabs it with a rifle. The pig is then taken outside, where its hair is burned off with straw before it is brought back, butchered, and cooked. The meat is then shared among all participants (procedural norm).

The Alignment Between Procedural and Substantive Norms

- One of the characteristics of the Indigenous judicial system is **the integration** of “substantive and procedural” norms.
- In contrast, the core concept of modern judicial systems emphasizes **the separation** and equal importance of “procedural justice” and “substantive justice.”
- The establishment of an indigenous judicial system must ensure that **procedure and substance complement each other**. Only by incorporating the normative spirit of indigenous law into the national legal system can a judicial system that aligns with the **legal consciousness of the communities** be established.

Preliminary Discussion on Establishing an Indigenous Judicial System (Part I)

- The “**no law amendment principle**” may not be sufficient to build an indigenous judicial system that aligns with community normative frameworks.
- Within the existing national judicial system, the establishment of specialized indigenous tribunals can only address certain “**substantive regulations**.” However, it still differs from the traditional “**procedural regulations**” of indigenous peoples.
- As American scholar James Yaffe once said, “**Custom-made justice**, like custom-made clothing, can only fit properly when the tailor invests a significant amount of time and shows **full respect for the customer**.”

Preliminary Discussion on Establishing an Indigenous Judicial System (Part II)

- From the “**Accidental**” Beechwood Case to the “**Inevitable**” Opportunity for a Pluralistic Judicial System.
- Recommendations from the 3rd Plenary Session of the Judicial and Legal Committee, 7th Legislative Yuan, 5th Session: In the Supreme Court Judgment No. 7210 of 2009 and Taiwan High Court Judgment No. 565 of 2009, the traditional culture and customs of the Atayal Indigenous people are elaborated in detail. The Judicial Yuan is requested to ask the Taiwan High Court to forward these judgments to serve as references for judges.

Conclusion

- Exploring **the judicial systems of various groups**, including procedural and substantive regulations.
- Reflecting on the **positioning** of the indigenous judicial system within the national legal framework.
- Turning the “Beechwood Case” from an accident into an inevitability.