

Issue 3

Indigenous Special Proceedings and Legal Aid

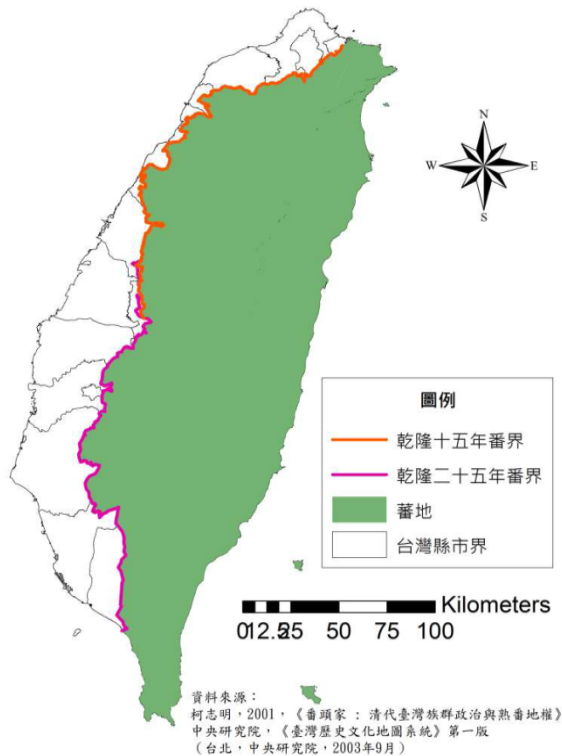
Ping-Chin Lin, Director of Staff Attorney
Legal Center of Indigenous Peoples, Legal Aid Foundation
2024.9.4

2024.9.4 International Forum on Indigenous Peoples Legal Aid

Taiwan's indigenous peoples face similar issues of land loss, but there is no mechanism like the **Māori Land Act** or the **Māori Land Court** to address these issues.

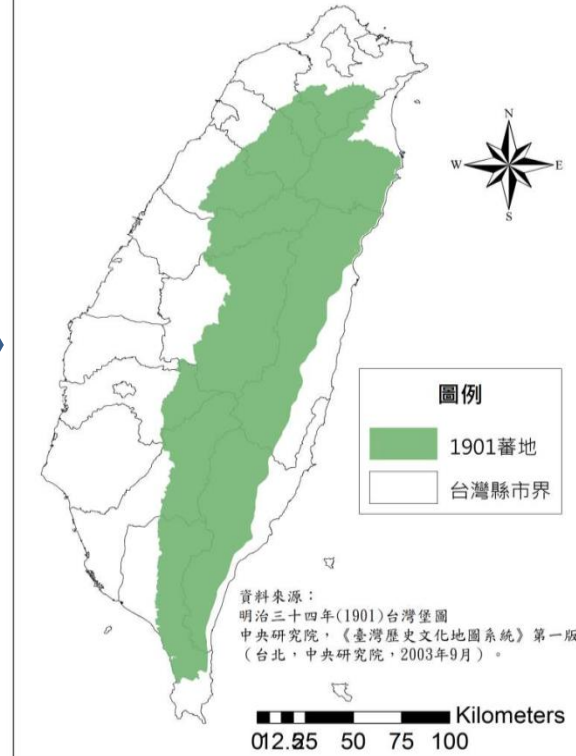
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清治時期原住民傳統領域範圍



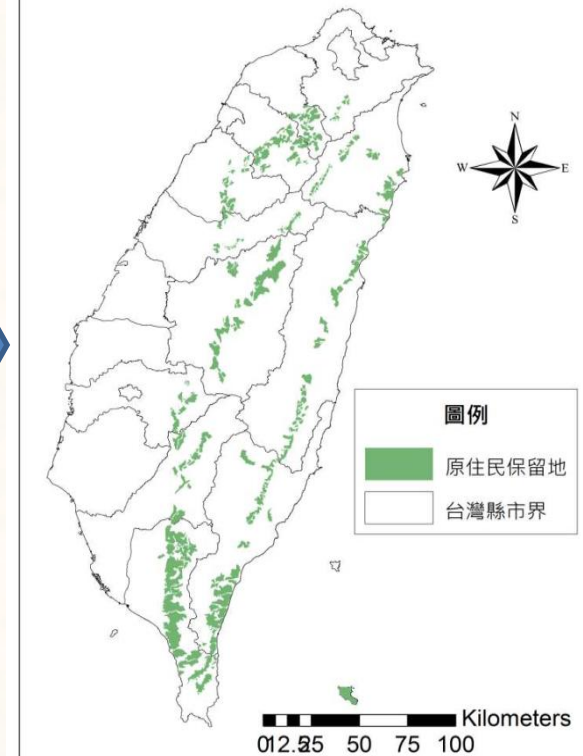
1901: close to 1.5 million hectare

日治時期原住民傳統領域範圍



Now: close to 270 thousand hectare

國府時期原住民保留地範圍



(Source: Kuan, Da-wei, *The Evolution and Challenges of Indigenous Reserved Land*.)

How Does Taiwan Address Indigenous Land Issues?

The state has not established an agreement with Indigenous peoples based on equal sovereignty.

Article 10 of the Additional Articles of the Constitution :

11. The state shall affirm cultural diversity and actively preserve and develop indigenous languages and cultures.
12. The State shall also guarantee and provide assistance and encouragement for indigenous education, culture, transportation, water conservation, health and medical care, economic activity, land, and social welfare, measures for which shall be established by law.

Article 20 of the Indigenous Peoples Basic Law
(February 5, 2005):

1. The government recognizes indigenous peoples' rights to land and natural resources.
2. The government shall establish an **indigenous peoples' land investigation and management committee** to investigate and manage indigenous peoples' land. The organization and other related matters of the committee shall be stipulated by law.
3. The restoration, acquisition, disposal, plan, management and utilization of the land and sea area owned or occupied by indigenous peoples or indigenous persons **shall be regulated by laws**.

Council of Indigenous Peoples: The impact is too significant, and it is difficult to reach a consensus. At this stage, the issue is being addressed through a "split legislation" approach.



To date, it has not yet been established.



The "Indigenous Peoples Land and Sea Act" has not yet been passed.

Stuck in the dilemma of majority rule: Taiwan's Indigenous population only accounts for 2.52% of the total population + isolated voting.

Non-Judicial Resolution Mechanisms



Presidential Office Indigenous
Historical Justice and
Transitional Justice Committee
(2016.8.1-2024.5.20)

Vice President Lai: The committee has completed its phase-specific tasks, and the Indigenous Hope Project will continue to be promoted.

Executive Yuan Indigenous
Peoples Basic Law Promotion
Committee
(2005.12.8 till now)

	Presidential Office Committee	Executive Yuan Committee
Purpose	To implement the Indigenous Peoples Basic Law, promote historical justice and transitional justice, and establish the foundation for Indigenous self-governance.	To review, coordinate, and promote matters related to the Indigenous Peoples Basic Law.
Mission	<ol style="list-style-type: none">1. Collect, compile, and reveal historical truths about the violations and deprivation of indigenous rights caused by foreign regimes or immigration.2. Plan administrative, legislative, or other measures for the restoration, compensation, or restitution of the rights violated or deprived from indigenous peoples.3. Conduct a comprehensive review of laws and policies that have discriminated against indigenous peoples or violated the Indigenous Peoples Basic Law and propose amendments.4. Actively implement the United Nations Declaration on the Rights of Indigenous Peoples and other related international human rights conventions.5. Collect information, compile opinions, and conduct consultations and discussions on other matters related to indigenous historical justice and transitional justice.	<ol style="list-style-type: none">1. Plan, review, coordinate, and promote matters related to indigenous autonomy, education, language and culture, health and welfare, employment, economic development, natural resources, and traditional land and territory under this law.2. Coordinate and supervise the drafting of regulations related to this law.3. Coordinate and promote other matters related to this law.
Convenor	The President (emphasizing the equal relationship between the state and Indigenous peoples)	The Premier
Working Groups	Establish working groups on land, history, reconciliation, etc.	Special project groups may be formed as instructed by the convenor based on business needs.
Frequency	Held once every three months.	Held once every four months.

Can't the current laws and existing systems address the land issues?

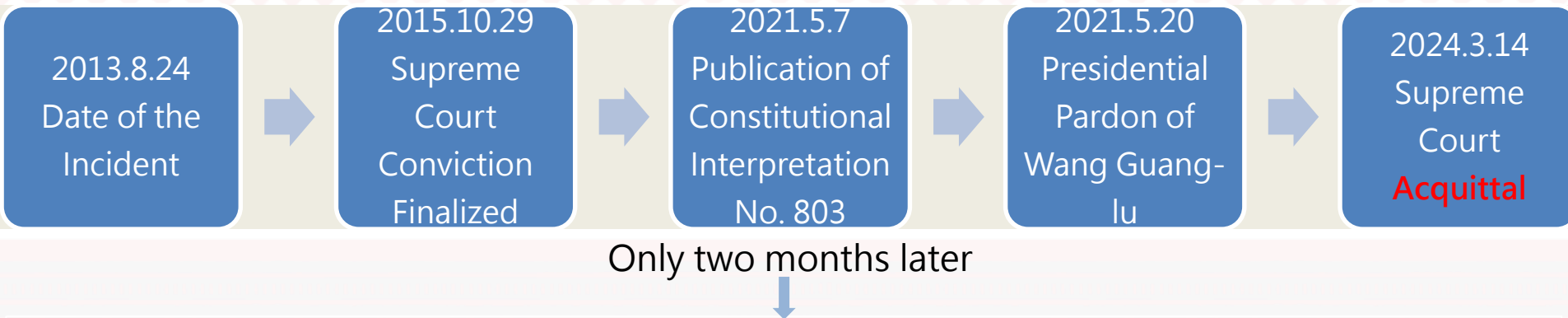
- Regulations on Development and Management of the Land Reserved for Indigenous People  Acquire **existing** Indigenous reserved land.
- Regulation of the Review and Reclassification of Public Land into Indigenous Reserved Land  Add **new** indigenous reserved land
- It is difficult to expect that reclassifying public land as indigenous reserved land will lead to the restoration of more land to indigenous peoples.
- Common issues with reclassifying indigenous reserved land:
 - 1) Legal elements are too abstract: The requirement that indigenous peoples must have used **public land left by their ancestors** before February 1, 1988, **and continue to use it today**.
 - 2) The passage of time makes it increasingly difficult to provide evidence: Witnesses grow older or pass away.
 - 3) Public land management agencies are unwilling to cooperate: Although they do not have the right to approve, they can unilaterally veto, leaving indigenous peoples without recourse.
 - 4) Private disputes among indigenous peoples: Administrative agencies stay out of these conflicts.
 - 5) Lack of rigor in the recognition process: For example, four-neighbor certification documents are overly simplistic, site inspections are not publicly announced, and administrative agencies do not proactively investigate.
 - 6) Issues with the composition of the “Indigenous Reserved Land Rights Review Committee,” the review process, and the appeal mechanism: **The Indigenous Tribunal** under the Administrative Court has severely misunderstood the situation.

Taiwan Indigenous Peoples' Tribunal

- Basis for Establishment
Article 30 of the Indigenous Peoples Basic Law (February 5, 2005): “The government shall ... (abridged). For the purpose of protecting indigenous peoples’ rights and access to the judiciary, **indigenous peoples’ court or tribunal** may be established.”
- Establishment Date: January 1, 2013
- Challenges
 - 1) Traditional legal education in Taiwan does not emphasize education on ethnic cultures, and judges generally lack multicultural literacy. Although there are training courses, they remain insufficient.
 - 2) Frequent rotations of judges prevent long-term appointments.
 - 3) Cases are assigned based on “indigenous identity,” which covers too broad a scope, and sometimes “indigenous identity” itself is contested; the actual number of cultural conflict cases is too few to accumulate experience.
 - 4) In addition to judges, lawyers and (specialized) prosecutors lack expertise in indigenous affairs.
 - 5) In cultural conflict cases, cultural evidence is often not investigated. Empirical studies indicate that investigating cultural evidence is positively correlated with favorable rulings.

Indigenous Tribunal— the Bunun Hunter Wang Guang-lu Case

- **Case Overview:** In August 2013, Wang Guang-lu, a member of the Bunun People, went hunting in the mountains because his mother wanted to eat wild game. He used a hunting rifle that he had found by the riverbed and successfully hunted a Formosan serow and a muntjac. However, he was later sentenced to three years and six months in prison for violating the **Firearms, Ammunition, and Knives Control Act and the Act on Wildlife Conservation**.



Pingtung District Court Criminal Judgment No. 63 of 2023 (May 27, 2024)

- The case also involved an indigenous person who hunted a protected wildlife species **for non-commercial purposes to create personal decorations**.
- The defendant **consistently admitted to the crime** during both the investigation and court proceedings, resulting in a lighter sentence.
- The judge demonstrated cultural sensitivity by investigating the significance of the feathers of the hunted Mountain Hawk Eagle, which have a deep cultural connection with the Paiwan People in the Kaohsiung and Pingtung area. The judge also confirmed that the defendant held the status of a community leader, responsible for hunting the eagle to create traditional headdresses.
- However, the judge did not apply the latest Supreme Court interpretations and ultimately found the defendant guilty.
- The judgment also did not mention that the **prosecutor** or **defense lawyer** invoked the latest judicial precedents.

The Establishment of the Indigenous Judicial Advisory Council

- **Basis for Establishment:** Article 30 of the Indigenous Peoples Basic Law and the “Presidential Office’s National Conference on Judicial Reform.”
- **Need:** The cultures of the various Indigenous Peoples differ, and the traditional customs of different communities also vary. The courts may find it difficult to fully understand and grasp these differences.
- **Mission:** To assist **courts and prosecutors** in determining whether a case involves cultural conflict by providing advisory opinions or by offering opinions on whether a cultural defense is valid.
- **Context:** Rather than leaving the decision to individual judges who may lack specialized knowledge, it is more reasonable to have a **diverse institution with various areas of expertise** provide assistance and opinions.
- The law does not clearly specify how to apply for advisory opinions. In principle, courts and prosecutors may request them on their own initiative or upon the application of the parties involved.
- The first term began on August 1, 2021, and ended on July 31, 2024. To date, there have been no court rulings explicitly based on the advisory opinions provided by the Council.

Legal Aid for Indigenous Peoples in Taiwan

▲ Constitutional Protection of Indigenous Peoples' Rights ▲

Article 10, Paragraphs 11 and 12 of the Additional Articles of the Constitution (April 25, 2000)

Indigenous Peoples Basic Law (February 5, 2005)

▲ In September 2017, the Presidential Office released the “Judicial Reform National Conference Final Report” ▲

Establishing effective mechanisms to safeguard indigenous peoples’ judicial rights, and enhancing the cultural sensitivity and relevant expertise of judicial professionals regarding indigenous issues.

▲ **Legal Aid Foundation** as a front-line provider of legal aid ▲

The Foundation should implement the protection of indigenous peoples’ judicial rights and advocate for the safeguarding of their fundamental rights.



Specific Policies of the Legal Aid Foundation for Providing Indigenous Legal Services

- 2012: Established the “Accompanying Attorney for Indigenous Peoples during Police and Prosecutorial Interrogation Program.”
- 2013: Entrusted by the Council of Indigenous Peoples to implement the “Indigenous Legal Aid Project.”
- 2018: Established the Indigenous Legal Service Center; 2020: Established the Western Office:
 - ✓ Processing indigenous legal aid applications.
 - ✓ Staff lawyers responsible for handling specialized indigenous cases.
 - ✓ Outreach services to indigenous communities: “Mobile Legal Aid,” on-site legal consultations, and legal education promotion.
 - ✓ Lawyer training programs: specialized lectures, “Classrooms in Communities,” and academic seminars.



Current Status of Legal Aid for Indigenous Peoples in Taiwan - Number of Cases

From 2004 to 2023, the Legal Aid Foundation assisted indigenous persons in a total of 102,357 legal aid cases. The number of approved legal aid cases has remained stable over the past five years. There has been no shortage of legal aid lawyers, and the quality of legal aid continues to improve.

Year	Approved Cases
2004-2018	48,150
2019	10,900
2020	11,478
2021	9,613
2022	10,685
2023	11,531
Total	102,357

Number of Indigenous-related Cases Handled by Prosecutors and Police Over the Years

year	Cases Requiring Lawyer Assignment (a+b)			Cases Where No Lawyer Was Assigned Due To Withdrawal Of Application Or Other Factors		Cases Rejected For Not Meeting Eligibility Criteria
	Cases Where A Lawyer Was Actually Assigned (a)	Cases Where Lawyer Assignment Was Unsuccessful (b)	Assignment Success Rate 【a/(a+b)】	Applicant Withdrew After Applying	Party Indicated That Legal Assistance Was Not Needed	
2012	178	16	91.75%	32	0	5
2013	1,256	50	96.17%	384	2,328	6
2014	1,069	83	92.80%	39	6,103	1
2015	1,235	125	90.81%	14	12,198	0
2016	1,071	149	87.79%	15	15,757	3
2017	1,269	99	92.76%	64	16,736	6
2018	1,242	80	93.95%	39	19,000	2
2019	1,293	43	96.78%	19	18,356	0
2020	1,453	70	95.40%	20	18,232	2
2021	1,365	23	98.34%	30	16,353	0
2022	1,553	21	98.67%	52	17,876	0
2023	1,760	45	97.50%	19	18,006	0
Total	14,744	804	94.83%	727	160,945	25

Types of Indigenous Legal Aid Cases

- As of 2023, the total number of indigenous legal aid cases approved by our organization is **102,357**. The number of cases by type is shown in the table below, with **criminal cases** being the most common, accounting for approximately 56.21% of all indigenous legal aid cases.
- Civil cases are the next most common, at 28.90%, followed by family cases (12.89%) and administrative cases (1.54%).

Type	Number of Cases	Percentage (%)
criminal	57,537	56.21 %
civil	29,585	28.90 %
family	13,189	12.89 %
administrative	1,579	1.54 %
other	467	0.46 %
Total	102,357	100.00 %



Tamazuan Community's Opposition to Mining



Opposition to C.P. Group Chicken Farm



Dahdah Community Geothermal Exploration

✂ Conclusion: "Where there is a need,
Legal Aid is there."

Fengping River Hydropower Plant in Zhuoxi Township



Wanli Hydropower Plant in Wanrong Township



Opposition to Taiwan Cement Corporation's Waste Incineration

