

Chapter 4

Pursuing Indigenous Self-Government in Taiwan

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Abstract This chapter introduces the ethnic structure of Taiwan and the status of the Indigenous Peoples in Taiwan. Efforts are then made to look into how the government has reacted to the appeal for Indigenous Peoples self-government since 2000, with a special focus on the various forms of the *Indigenous Self-government Bill*. Before offering some conclusions, we investigate controversial issues that have arisen during the dialogues among the government, scholars, and activists in recent years.

Keywords Indigenous peoples · Indigenous rights · Indigenous self-government · Indigenous Self-government Bill · Taiwan

4.1 Introduction

This chapter will examine historical and contemporary experiences of Indigenous Peoples in Taiwan. Against a background of colonialism and assimilation the chapter will document efforts made by Indigenous Peoples of Taiwan to arrive at the goal of self-government by the Democratic Progressive Party (DPP) and the Kuomintang (KMT) administrations since 2000. The focus will be on comparing the five versions of the *Indigenous Self-Government Bill*, particularly how the notion of “nation-to-nation” is embodied. And then, we will examine how Indigenous intellectuals have reacted to them. Finally, we will look into barriers that have arisen on the road to Indigenous self-government. Through this discussion the

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chapter will illustrate how the Indigenous Peoples in Taiwan have sought peacefully to protect their rights as enshrined in the *United Nations Declaration on the Rights of Indigenous Peoples* (2007).

4.2 Ethnic Structure of Taiwan

Taiwan is a settler society like Canada, United States, Australia, and New Zealand. Before settlers began arriving at the island four centuries ago, the Indigenous Peoples had resided here since time immemorial, people of Austronesian or Malayo-Polynesian descent (Li 2009; Moodley et al. 2009; Gray et al. 2009). While the original people lived right across the island, as a consequence of conquest and settlement by Han-Chinese invaders they gradually retreated to remote areas or succumbed to cultural assimilation. In recent times there has been a revival of some assimilated groups, reclaiming collective identity as *Plaines Indigenes* who had, by the 1930s, almost lost their Indigenous characteristics. In the old days, they had chosen to Sinicize themselves and become “human beings” in order to avoid systemic discrimination. In modern times some people from this background have begun to revive and assert their Indigenous identities.

Thus, there are four major ethnic groups in Taiwan: Indigenous Peoples, Mainlanders, Hakkas, and Holos, of which the latter three are descendants of those Han refugees-migrants-settlers of Mongoloid race sailing from China as recently as 400 years ago (Shih 1995).

As of June 2015, the Indigenous population of Taiwan is 542,973, constituting roughly 2.3 % of the 23,000,000 population of Taiwan (Taiwan, Council of Indigenous People 2015).¹ There are sixteen officially recognized Indigenous Peoples, including Amis; Ayal, Bunun, Hla'alua, Kavalan, Kanakanavu, Paiwan, Puyuma, Rukai, Saisiyat, Sakizaya, Sediq, Thao, Truku, Tsou, and Yami.² Their traditional territories occupy the Central Mountain Range and Orchid Island to the southwest. As tribal economies are in persistent crisis and lack job opportunities, an estimated one-third of the Indigenous population has no choice other than to squat in urban areas. In addition, there are some eight Plains Indigenous Peoples, including Babuza, Hoanya, Ketagalan, Makattao, Pazeh, Papora, Siraya, and Taokas.³ Most of them have lost their Indigenous status after World War II (Shih 2010). This deprivation of their Indigenous status has perpetuated their traditional acrimony with those groups that have status.

¹For indigenous perspectives, see Mona (2007) and Cheng (2010).

²The government has arbitrarily separated the Indigenous Peoples into the Hills and the Plains ones for the sake of administrative convenience.

³While some of the Siraya and the Makattao, along with the Kavalan, may be found in the east coast, the rest scatter around the great plains of the west.

In the past three decades, the Indigenous Movement in Taiwan, based on the idea of inherent Indigenous rights,⁴ has focused on three interlocked goals: the right to be indigenes, self-rule, and land rights. Being the “original resident” Peoples of Taiwan, they claim that they are not merely ethnic minorities but Indigenous Peoples. Further, they assert that Indigenous Peoples have never renounced their sovereignty that was seized by the aliens. Indigenous elites insist that Indigenous lands dispossessed centuries ago must be returned to the Indigenous Peoples. Buttressed by the idea of self-determination, they demand the establishment of self-government in place of present-day local administrative units. It is believed that only self-rule without being patronised can lead to true autonomy.

Over the years, the government seems to have realised that protecting Indigenous rights is a gesture of reconciliation even though different administrations have disparate ideas. For instance, the Democratic Progressive Party (DPP 2000–2008) embraced the appeals of the Indigenous Peoples to reclaim their inherent rights, while the Indigenous policy of the current Nationalist Chinese Party (KMT 2008–2016) government has been assimilationist by means of welfare colonialism in order to reach the goal of turning Taiwanese Indigenous Peoples into Han “human beings”.⁵ Although multiculturalism is now enshrined in the *Constitutional Amendment*, unfortunately, the mainstream society tends to consider Indigenous Peoples as objects for cultural consumption and, thus, scorn their efforts for protection of their rights.

In the area of Indigenous rights to property, traditional territories of the Indigenous Peoples are indiscriminately designated as Public Reserved Lands so that Indigenous Peoples have almost lost control of utilising resources on their lands. In the name of development, governments at all levels exploit Indigenous lands without consultations or permissions. In terms of rights to culture, while Indigenous languages are becoming extinct, the government has made efforts at neither revitalisation nor development, with the Ministry of Education and the Council of Indigenous Peoples (CIP) passing the responsibility to each other on the lack of Indigenous education demanded in the *Indigenous Education Law*.

Economically, the average income of the Indigenous Peoples is much lower than the national average while that of the unemployment rate is much higher than the latter. Socially, the non-Indigenous society tends to deem that the Indigenous Peoples are only fit for such activities as singing and dancing or careers in the military service.

Politically, as government largesse is linked to political patronage, the Indigenous Peoples have no free will during elections. In fact, affirmative action plans have been largely ridiculed, if not neglected. Even if the *Indigenous*

⁴For a general treatment of indigenous rights, see Anaya (2004).

⁵The term Han means the human beings and thus non-Han stands for non-human beings or barbarians.

Fundamental Law enacted in 2005 stipulates that those laws infringing Indigenous rights ought to be revised or abolished and that relevant laws are passed within three years, nothing has come into existence. Worst of all, the current government has attempted to sabotage the *Indigenous Fundamental Law* in the draft *Indigenous Autonomy Bill*, wherein the Indigenous councils are nothing but empty shells, devoid of any administrative and legal powers or land titles.

4.3 Efforts at Implementing Indigenous Self-Government

Before the 2000 presidential election, Chen Sui-bien, candidate of the then opposition DPP, signed a “Nation-to-Nation” partnership agreement with leaders of the Indigenous movement in Taiwan. Once elected, President Chen signed another agreement with these leaders and reconfirmed his determination to honour those pledges in the earlier agreement, including promoting Indigenous self-government. After his re-election in 2004, President Chen, to the surprise of the Indigenous Peoples, further announced that he would put up an exclusive chapter for the Indigenous Peoples in the much-discussed new constitution. While endeavouring to draft such a constitutional bill for themselves, Indigenous leaders were concerned that President Chen was only paying lip service to them.

So far, five versions of the *Indigenous Self-Government Bill* have been prepared, two by the DPP government and three by the succeeding KMT government. Bill A was drafted by experts on local government and fashioned after the *Local Institutions Law* in the spirit that the authority of the Indigenous government was delegated by the central government. It was then replaced by Bill B after being stalled during the process of cross-ministry reviews. The new simplified version was intended to be a model of procedural law rather than substantial foundation for future drafting of autonomous statutes, (read ‘treaties’) between each Indigenous people and the central government. Tactically speaking, it was purposefully calculated that this reduced bill would ease the painstaking process of lawmaking.

However, after heated deliberations in the Legislative Yuan (the national parliament) the government was forced to withdraw the bill because Indigenous legislators complained that no adequate Indigenous rights had been guaranteed in the bill. The Indigenous legislators forcefully insisted that some itemised list of Indigenous rights, especially financial support in certain proportion to the annual national budget, be specifically recognised in the bill. They argued that the bill-in-principle, without such details, was nothing but an undisguised hoax to deprive the Indigenous Peoples of their rights.

The outcome of this withdrawal of the *Indigenous Self-Government Bill* was that an *Indigenous Basic Law* was unexpectedly passed by the outgoing legislators in 2005. Praised as the Indigenous Constitution, the law may be considered as a de facto treaty between the Indigenous People and the state. Essentially a synthesis of abstract principles and concrete protections of Indigenous rights, the law designated the formation of an Enacting Committee under the Executive for its enforcement, where two-thirds of its members be reserved for the Indigenous Peoples.⁶ It also required concerned ministries and agencies to revise, within three years, relevant laws and statutes to embody its principles. Last but not least, it attached a requirement that there shall be a separate chapter for the Indigenous Peoples in the intended *Bill of Rights*.

At the time it was believed that, guarded by the three-layered protection from the *Indigenous Basic Law*, with a special chapter on Indigenous Peoples proposed for the *New Constitution* (Shih 2006), and a similar one pledged by President Chen for the *Bill of Rights*, Indigenous self-rule would enjoy a better fate. However, since there was no guarantee that the latter two could be eventually passed by the opposition-dominated Legislative Yuan, the bills had been drafted to include as many Indigenous rights as possible stipulated in the United Nations Draft Declaration on the Rights of Indigenous Peoples (1995).

Within the Council of Indigenous Peoples, a working group made up of ministerial delegates, Indigenous representatives, and scholars was established in early 2006 to assist further considerations of the above-mentioned enacting committee. Members worked under four substantive groups: administration, education-culture, economics-development, and Indigenous lands. While ministerial delegates were ready to protect their constituencies, Indigenous representatives were similarly eager to defend their local interests. This sometimes left scholars as crucial arbitrators when disputes arose. When civil servants threw doubts, if not ridicule, upon the whole idea of Indigenous rights, non-Indigenous participants *qua* scholars were forced to come up with legitimate rationale based on international laws, political philosophy, and practices from other countries that accord with the *Indigenous Basic Law*.

From time to time, civil servants claimed that Indigenous rights would conflict with national interests and thus demanded that their implementations be suspended. At this juncture, scholars pointed out that there is no necessary contradiction between Indigenous rights and national interests and where there is, some compensatory measures to Indigenous communities are warranted. In providing professional knowledge, scholars had to walk a thin line between the quarrelling parties, so that they would not be suspected of being agents of either.

⁶The members include the premier, 11 ministers, 23 indigenous representatives, and 5 experts and scholars. The author is honoured to be included in the last categories.

4.4 A Change of Government Undermines Progress on Self-Government

After the KMT political party returned to power through the 2008 election, Indigenous policy changed direction from the framework of protecting Indigenous rights to that of offering welfare, and from partnership to tutelage. At first, the Indigenous Peoples were excited as the President-elect, Ma Ying-Jeou, had promised during the Presidential campaign that his government would experiment with Indigenous self-rule. However, the euphoria that followed the historic pledge soon turned into disappointment and despair.

Three versions of the *Indigenous Self-Government Bill* have been introduced by the KMT government. At first, apparently misinterpreting the President Ma's authentic intentions, the Council of Indigenous People came up with Bill C, which is basically a synthesis of Bill A and B and acceptable to the Indigenous Peoples. However, after the cabinet reshuffle, the Premier's Office declared a so-called "Three No's" direct order, that is: no administrative readjustment, no adjustment of local authorities, and no interference with current rights and benefits for the Indigenous Peoples. As a result, the Council of Indigenous People drastically revised this version of the *Indigenous Self-Government Bill* in order to appease the government.

Under the revision, the would-be Indigenous governments become nothing but administrative units within the framework of the *Local Institutions Act* rather than autonomous ones equipped with sufficient executive, legislative, and judicial powers. Nor is revenue-sharing provided for at the county level as envisioned by Indigenous elites. Most disappointing of all, there is no land reserved for Indigenous governments. Finally, some articles were smuggled in to sabotage important articles of the *Indigenous Fundamental Law* such as the requirement for prior Indigenous consent for economic development of Indigenous lands and resources, and that of co-management. Last, but equally important, rampant verbal abuses were launched against Indigenous Peoples by officials, including President Ma himself who once asked members of CIP to behave as human beings.

In the face of serious demands from Indigenous activists, scholars, and legislators for a response to these measures the Council of Indigenous People in 2014 produced a newly drafted proposal for the *Indigenous Self-Government Bill*. According to a document leaked to the press, this is basically an interim arrangement whence the Indigenous areas will be under the management of a downgraded CIP without any significant autonomous powers. Under the so-called guideline of "Spatial Unity," the idea of self-government has been downgraded to the notion of "cultural autonomy."

4.5 Issues and the Roadmap

The fundamental question raised through all of these political machinations is whether the idea of Indigenous sovereignty is compatible with the existing state's indivisible sovereignty. From governmental perspectives there is doubt that sovereignty can be shared by Indigenous Peoples and the state. There are concerns that the territorial integrity of the state would be undermined if the Indigenous Peoples choose to exercise their right to self-determination and declare outright independence. Some opponents even argue that the Indigenous Peoples have never possessed any right to the lands except the right to exploitation. Others have gone so far as to dismiss the whole notion of Indigenous rights. Strongest resistances come from the Bureau of Forest Services and from the Bureau of Water Resources, whose jurisdictions largely overlap with the designated areas for Indigenous self-governments.

Logically, there are three choices facing Indigenous Peoples: to accept assimilation and welfare colonialism, to maintain self-government, or to seek independence. Each of these paths is fraught with difficulties and there are divisions between communities, often related to their particular circumstances. For instance, historically a series of alien rulers had sought at all costs to assimilate Plains Indigenes in western Taiwan, whose descendants are now almost inextinguishable from non-indigenes. In contrast, Indigenous Peoples who have been geographically segregated in mountain areas in central and eastern Taiwan are lucky enough to retain their cultural identities. These circumstances influence their positions on the difficult choices.

Some Indigenous people, for fear of discrimination, suspect the wisdom of resisting further assimilation. Judging that non-Indigenous peoples have only exploitation on their minds, they believe that the models of economic development and social welfare assured by the government are the only guarantee for progress. In their view the abstract principle of self-determination and the remote goal of self-rule are nothing but futile illusions. On the extreme of the spectrum, some Indigenous elites claim that only political independence can lead to authentic salvation, even though no serious effort has been made to promote this outcome. As a result, the middle path of self-government turns out to be a pragmatic compromise: while reserving their right to claim independence, Indigenous leaders would work with the government to prevent Indigenous governments from being empty shells.

The most crucial battleground is found in the appropriation of lands for Indigenous self-governments. Under Article 2 of the *Indigenous Basic Law*, two relevant terms are defined: "Indigenous Areas" means those areas traditionally occupied by Indigenous Peoples and sanctioned by the executive branch of the government, and "Indigenous Lands" includes traditional lands occupied by the Indigenous Peoples and current lands nominally reserved for them. It is understood that there is no genuine Indigenous self-government without any land base.

The CIP have largely finished preliminary surveys on traditional lands that had once been utilized by the Indigenous Peoples in the past. According to the maps of

traditional territories drawn based on oral narratives of the elders so far, some Indigenous Peoples have claimed that their tribal lands extend beyond the highly restricted “Indigenous Areas.” Nonetheless, it is not clear whether the “Indigenous Lands” will be returned to the Indigenous self-governments on the “Indigenous Areas.”

For an Indigenous self-government to work effectively with an eye to protect Indigenous rights, three aspects are crucial for meaningful institutional designs: authority, efficiency, and representativeness. First of all, to be truly autonomous, political authority of the Indigenous government must find its place in the Constitution. Otherwise, its uniqueness as a manifestation of inherent Indigenous rights would run the risk of being compromised, if not nullified, by a legislature dominated by non-Indigenes.

There are also concerns over which body is going to arbitrate between Indigenous self-governments and central/local governments when disputes arise. Without any precedent, four options have been suggested: the Parliament, the Constitutional Court, a special committee, and the President. Since Indigenous MPs comprise less than 5 % of Parliamentary members, it is doubtful how this mechanism, brought into being under the principle of one-man-one-vote, would be in any position to defend Indigenous rights, unless a parliamentary committee where Indigenous MP's dominate is created. While the Constitutional Court seems an impartial branch of the central government, it is still precarious to leave the future of Indigenous Peoples in the hands of an organ where no Indigenous judge would be a member.

There are suggestions that some kind of special committee is designed under the President, or the President is responsible to resolve disputes. Nonetheless, it is uncertain whether the President would consider himself/herself as the head of the state mandated by the dominant non-Indigenes only, or as a dispassionate arbitrator supported by the Indigenous Peoples as well. In the end, there is no answer for the following challenge: “If the relationship between the Indigenous Peoples and the state is considered as ‘partnership,’ shouldn’t there be an outside third party to play the role of arbitrator?” This question deserves further considerations not only among the Indigenous Peoples but also between elites from Indigenous and non-Indigenous sectors.

In terms of the scope of the self-government, there are debates over whether there shall be one pan-Indigenous government only, mixed-nation government, one national self-government for each Indigenous People, or as many tribal governments as possible. Since not all Indigenous Peoples opt for self-rule; at least in the short run, a pan-Indigenous self-government, even a confederation in the loosest sense, seems impractical. On the other hand, tribal governments appear to be the best model to express grassroots participation for direct democracy but caution should be made against low economy of scale.

Also, there have been conflicting views over what institutional arrangements work for representing the Indigenous Peoples. It appears that the goal of sufficient representation may at times contradict that of efficiency. Ideally, there would be one tribal council for each tribe. As a result, depending on the definition of tribe, it is

estimated that there would be at least 250 tribal councils. While retaining their autonomy, these tribal councils are expected to forge some form of coalition along cultural lines in order to bargain with the government. Depending on different patterns of tribal organisations, whether scattered or concentrated, these processes of internal integration warrant some cautious procedures.

4.6 Conclusion

Based on the rights to self-determination, the essence of Indigenous right to self-government is to have their own political, social, cultural, and economic arrangements. While adequate legislative, executive, and judicial powers are pre-conditions, there is no authentic autonomy without territorial and land bases. Under the liberal DPP government, the two versions of the *Indigenous Self-Government Bill*, the substantive Bill A and the procedural Bill B, were stalled by the divided government. So far, the current conservative KMT government has formulated three models of self-government. The most recent model on the agenda would merely transfer jurisdictions of Indigenous lands from other branches of the government to the CIP, making it a modern day Bureau of Indian Affairs.

The author was fortunate enough to deliver a speech on Indigenous Peoples' constitutional rights at the first assembly of Indigenous leaders and elders in history at Taichung, Taiwan, on 28 June 2006.⁷ At this historical occasion, these tribal leaders expressed their endorsement for the draft indigenous chapter of the new constitution. They also declared their determination to take back their traditional lands. Seemingly optimistic, the Thao People, a people with a population less than 1,000, has been recognised by the government, which has agreed to return a 150-acreage land to this people. And yet, no substantive progress has been made on the road to Indigenous self-government although some Indigenous assemblies have been formed, including the Atayal, Saisiyat, Sediq, Thao, and Truku assemblies.

While the DPP, even if not without some reservations, is willing to espouse the ideas of Indigenous rights to self-government, the KMT seems suspiciously determined to relegate it to the notion of self-administration at most, and self-management at worst. Engulfed between the philosophy of protecting Indigenous rights and that of welfare colonialism, the Indigenous Peoples, after more than four hundred years of deprivation, marginalisation, assimilation and domination, are still divided among themselves about the road ahead. For most Indigenous politicians, subservience appears to be the most beneficial deal that they

⁷The author was then co-convenor of the Indigenous Working Group for Promoting New Constitution, CIP. He also served as chairman of the Administrative Sub-committee of the Working Group for Enacting the Indigenous Basic Law, CIP.

can realistically strike. Nonetheless, having been exposed to the current of Indigenous rights protection in the world, the Indigenous intellectuals are not satisfied with being strangers on their own lands.

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