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The Development of Taiwan's Transitional Justice

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Briefing the History of the 228 Incident and the White Terror

The "228 Incident" occurred shortly after World War two and the 50-year colonial rule by Japan. When the Kuomintang (KMT) government came to Taiwan, native Taiwanese and newly arrived Mainlanders shared rather different social values and national identities. In the first half of the twentieth century, the Taiwanese enjoyed a relatively higher level of law and order and better infrastructure and public service, while China suffered from prolonged civil wars and a decade of Japanese aggression. On the ground, the Chief Executive Officer Chen Yi appointed by the Nanjing government was stubborn and closed-minded, therefore, he could not understand the common people. In addition, the KMT government officials and army were corrupt and ill-disciplined, which made the relationship between the KMT government and the local people extremely tense. In terms of the economy, due to the civil war that is going on in Mainland China, the government imposed various control measures, industrial production was interrupted and the inflation and unemployment rates were high.

The immediate fuse of the "228 Incident" was triggered by the mishandling of a cigarette-smuggling case by the police officers. This led some Taipei citizens to go out to the streets and protest on February 28, 1947. The conflict quickly spread across the whole island, turning into a large-scale political and armed uprising. Local leaders took the opportunity to demand comprehensive reforms and self-governance. Armed conflicts broke out in many parts of the island.

Taipei City was the epicenter of this political storm but spread to almost all counties including Taichung, Chiayi, and Kaohsiung. Violence broke out on the streets and many islanders and mainlanders were either killed or injured. Because the KMT's well-trained army was trapped in the civil war in mainland China, the local troops alone could not effectively suppress the uprisings. Therefore, the central government in Nanjing sent larger and better-equipped troops to Taiwan to suppress the uprisings. This came to an end when soldiers and police shot and killed people in the streets. The number of victims has never been accurately counted but the estimated range is from 1,000 to 100,000 people. The 2021 "Report on the Truth and Transitional Justice of the February 28 Incident" (published by the Memorial Foundation of 228) shows that the number of death and disappearances ranges from 8,324 to 11,841. In the list of reparation filed by the Foundation, there are merely 686 death and 181 disappearance cases.

Unlike the 228 Incident, which lasted only for a short period of time, the White Terror lasted 38 years. This includes the thousands of judicial trials that occurred in the period from 1949 to 1987 under martial law. Situated in the Cold War period, the KMT implemented a special criminal law, the Regulations on Punishing Rebellions, with the aim to eradicate hidden spies and agents from Mainland China and arrest their local allies. Later on, the series of laws were used to target political dissidents and even left-leaning intellectuals. Moreover, the law was implemented with little respect for due process and thereby often violated human rights. The Taiwan garrison command and other intelligence agencies arrested, killed, tortured, beat, force-disappeared, and confiscated property to take total control over the island, resulting in a large number of unjust deaths, imprisonment, injuries, and property and health damages. The military courts dealt with nearly 30,000 to 70,000 political cases and there is an estimate of 200,000 victims.

The Development of Transitional Justice in Taiwan

Taiwan's transitional justice mainly began after the lifting of martial law in 1987 which ushered in a decade of democratic transition. The KMT still maintained the ruling power until 2000. During the 1988 presidential inauguration, President Lee Teng-hui called on people to “forget the past and move forward.” Since the lifting of the law, there had been persistent voices calling for redressing judicial wrongs from the civil society, rebuilding a new constitutional order, convening an inclusive national meeting, and proposing a timetable for democratic reforms. For example, the Wild Lily student movement in 1991 demanded democratic reforms and the dissolution of the two-layer National Assembly system.

In response to the demands from social movements, President Lee Teng-hui pushed for a series of reforms. One of which was to set up an investigation committee on the 228 incident, combining the capacity of the government, civil society, and academia, to conduct a large-scale investigation and research on the 228 Incident. On February 28, 1992, the "228 Incident Investigation Report" was published and this is often considered the starting point of Taiwan's transitional justice process. Taiwan has undergone three party turnovers after lifting martial law. Therefore, in this article, we divide the development of Taiwan's transitional justice into four stages: from 1988 to 2000 (KMT President Lee Teng-hui in power), from 2000 to 2008 (DPP President Chen Shui-bian in power), from 2008 to 2016 (KMT President Ma Ying-jeou in power), and after 2016 (DPP President Tsai Ing-wen in power).

(1) From 1988 to 2000 (KMT President Lee Teng-hui in Power)

In addition to launching the investigation for the 228 Incident, Lee Teng-hui's contributions toward transitional justice also included announcing amnesty for the prisoners of the Formosa Incident, responding positively to several large social protests that demand democratic reforms, and passing three legislations on reparation and restoration of rights for political victims during the authoritarian era.

The Lee Teng-hui era can be characterized as the transition period from an authoritarian regime to full democracy in Taiwan. His attitude towards transitional justice shifted during his 12 years in power. From the beginning, he called on the people to forget the past and look forward. In the middle of his tenure, in response to the pressures from civil society, he launched a transitional justice measure for victims and their family members of

the 228 incident. However, for White Terror in Taiwan, it was only toward the later stage of his tenure that he apologized to the political victims of this incident. These changes also signaled the attitude change of the Kuomintang's attitude from denial to admitting the political mistakes made during the martial law period.

Several legislative proposals championed by civil society organizations were also adopted by the Lee Teng hui administration.¹ Three pieces of legislation regarding transitional justice were passed by the parliament: The 228 Incident Disposition and Reparation Act (1995), Regulations on Restoration of People's Injured Rights during the Martial Law Period (1995), and Reparation Act for Wrongful Trials on Charges of Sedition and Espionage during the Martial Law Period (1998). The latter two legislations are related to the White Terror, and all the three legislations were proposed by the legislators of the opposition party and accepted by the ruling party.

The president himself also admitted the critical role of civil society in Taiwan's democratization process.² The 228 incident involved large-scale ethnic conflict and government crackdowns on local elites in a compact period of time. In contrast, the cases of the White Terror took place over a span of three decades during the Martial Law era; the state's violation of human rights spread over time and space targeted individuals of different ethnic backgrounds. Due to the wide range and length of the White Terror, identifying and vindicating the victims of this incident is relatively harder than the 228 Incident. Therefore, Lee Teng-hui's transitional justice effort to redress the 228 incident is deemed to be more successful than efforts regarding the White Terror (Wu, Chun-ying, 2021).

(2) From 2000 to 2008 (DPP President Chen Shui-bian in power)

During the Chen Shui-bian government, the Democratic Progressive Party (DPP) was the largest political party but did not hold more than half of the seats in the parliament. The KMT and the People First Party (PFP), the opposition, formed the KMT-PFP coalition, or the so call pan-blue. The coalition held more than half of the legislative seats, rendering the Chen Shui-bian eight-year government a minority government.

In 2002, the Chen Shui-bian government implemented measures to restore the 228 and White Terror victims' reputations. The victims submitted applications and those who passed the review were issued "Reputation-restoration Certificates" by the President. In the same year, the Chen Shui-bian government also designated two sites, "Jingmei Detention Center" and "Lyudao Prison", as historical injustice heritages to commemorate the White Terror. The government then build Human Rights Memorial Parks on these two sites a few years later, which was later converted into an exhibition space to show visitors how the authoritarian governments suppressed human rights, and promote human rights education.

President Chen Shui-bian's transitional justice work task duties included the investigation into the KMT's illegal party assets. In 2004, the Ministry of Finance established the "Special Management Committee on Party Assets as the State Assets" to deal with improper party assets that KMT garnered during its authoritarian rule. At the end of the same year, the ruling party (DPP) tried to pass the legislation, "Act of Ill-gotten Properties by Political Parties Settlement" in the Legislative Yuan but was blocked by the opposition, the KMT-PFP coalition.

¹ Wu, Chun-ying (2021, August 28–29). A Framework for Transformational Justice in the Lee Teng-hui Era. Symposium on "Lee Teng-hui and democratization in Taiwan," Taipei, Taiwan. <https://www.drnh.gov.tw/var/file/3/1003/img/23/526263652.pdf> (in Chinese)

² In President Lee Teng-hui's opening remarks for the seminar on "The 20th Anniversary of People's Direct Presidential Election and the Development of Democracy in Taiwan."

As the DPP did not hold majority seats in the parliament and the transitional justice projects did not garner high attention and support from the public, achieving transitional justice during this period was difficult. Chen Shui-bian once changed the name of the Chiang Kai-shek Memorial Hall into the "Democracy Memorial Hall" in 2007. However, after the KMT returned to power in 2008, the name was changed back to the "Chiang Kai-shek Memorial Hall." During this time, many of Chen Shui-bian's transitional justice reforms proposals were postponed.

(3) From 2008 to 2016 (KMT President Ma Ying-jeou in power)

During Ma Ying-jeou's administration, there were several important developments in Taiwan's transitional justice. In 2009, the government expressed its willingness to re-open the investigation into the Lin I-hsiung's Family Massacre case and the Dr. Chen Wen-cheng's Murder case, both were prominent cases during the martial law period. The Prosecutor's Office of the High Court set up a "special investigation unit" to be in charge of the two cases. However, the result of the investigation still concluded non-prosecution of all the perpetrators in Dr. Chen Wen-cheng's Murder case.³ In 2011, Ma Ying-jeou's administration established the National Human Rights Museum Preparatory Office under the Ministry of Culture to supervise the Lyudao Prison and Jingmei Human Rights Cultural Parks, both sites being former prison and detention centers.

In the 228 Commemoration of 2021, the Taipei City Government invited former President Ma Ying-jeou, a second-generation Mainlander, to attend. However, one of the event co-organizers believed that "Ma Ying-jeou has never expressed regrets or apologies for the 228 incident", so they withdrew from the event. Hearing this news, the former President Ma immediately said that he had "apologized for 30 years" for the 228 incident, and was therefore "very aggrieved." Looking back, the former President has repeatedly apologized on behalf of the Kuomintang for the 228 Incident and the White Terror victims. It can also be argued that he apologized repeatedly the most among the politicians. However, there are still many people in Taiwan who think that apologies from the "perpetrators" were not sincere as President Ma did not support measures that truly redressed the aftermath of the human rights abuse.⁴

Some Taiwanese transitional justice scholars argue that for Ma Ying-jeou, transitional justice is just political rhetoric that lacks substantive meaning.⁵ Ma Ying-jeou, after taking office, continued to apologize to the bereaved families of the 228 victims every year and received some understanding from them. However, some consider his apology as just lip service and deny it.⁶

During this period, advocating for the commemoration of political victims of the White Terror also emerged on two large university campuses, National Cheng Kung University (NCKU) and National Taiwan University

³ The two cases were kept being investigated by the Transitional Justice Committee, which was established in 2018; however, in the press conference of the results of the investigation released in 2020, the committee only came up with the conclusion that "the possibility of the authoritarian government being involved in the cases cannot be excluded."

⁴ Central News Agency. (2013, February 28). President apologizes again for 228 Incident. Taiwan News. <https://www.taiwannews.com.tw/en/news/2160065>, (2013, July 16). Ma apologizes to White Terror victims. Taiwan Today. <https://taiwantoday.tw/news.php?unit=2&post=3077>, and Vince Tai. (2021, February 27). Ma Ying-jeou's lack of sincerity in his apology on 228 is common sense. Up Media. https://www.upmedia.mg/news_info.php?SerialNo=107280 (in Chinese)

⁵ Wu, Rwei-ren. (2015). Transitional Justice as Politics. *Taiwan Human Rights Journal*, 3(1), 93-102. (in Chinese)

⁶ Cheng, Chung-Lan. (2017, December 14). Taiwan promotes "transitional justice" again. Which other countries have tried it? BBC News. <https://www.bbc.com/zhongwen/trad/chinese-news-42349290> (in Chinese)

(NTU). On February 28, 2012, the statue of Chiang Kai-shek at the NCKU campus was splashed with red paint, and the actions were found to be affiliated with the NCKU student association. After the incident, the "NCKU Removal of the statue of Chiang Kai-shek from University Campus Alliance" was formed. In June of the same year, the NTU students lobbied to rename the campus square where Dr. Chen's body was found, and a formal proposal was on the agenda of the NTU's administration meeting. In 2013, a proposal by NCKU students to name "Nylon Square" in memory of human rights defender Mr. Nylon Cheng, a pioneer in advocating for freedom of speech and Taiwan independence, was rejected by NCKU. In 2015, the NTU officially approved the name of the campus square to the "Dr. Chen Wen-chen Incident Memorial Square" to memorize Dr. Chen Wen-cheng.

(4) After 2016 (DPP President Tsai Ing-wen in power)

On May 20, 2016, Taiwan elected its first female president, Dr. Tsai Ing-wen, and experienced a political turnover for the third time. After the election, the DPP controlled both the executive branch and the parliament, allowing it to push ahead with its transitional justice agenda. The DPP first passed the "The Act Governing the Settlement of Ill-gotten Properties by Political Parties and Their Affiliate Organizations" and created the Ill-gotten Party Assets Settlement Committee. At the end of 2017, the Legislative Yuan passed the "Act on Promoting Transitional Justice." In May 2018, the Transitional Justice Commission was officially launched and in July 2019 the Legislative Yuan passed the Political Archives Act. This period ushered in a new phase of Taiwan's transitional justice development that began to deal with the perpetrators beyond reparation. The aforementioned two acts and other bills aimed at confiscating improper or illegal party assets acquired during the authoritarian rule, as well as removing authoritarian symbols, disclosing historical truth and investigating crimes, and making institutional corrections to the authoritarian party-state system's legacy.⁷

In 2021, President Tsai Ing-wen proposed the next three tasks for Taiwan's transitional justice. First, ramp up efforts to investigate political archives, in particular, the archives of intelligence agencies to clearly reveal the authoritarian government's repression and surveillance of the people. Second, with the disclosure of these political archives, the government seeks to investigate the historical truth. Only by restoring the process of layer-by-layer persecution during the authoritarian rule, publishing reports, and proposing follow-up policies and legal systems, can Taiwan's transitional justice be brought to end the "no-perpetrator, only victims" criticism. Third, enhance cooperation among various government agencies. For example, discussing the reparation plans, dealing with authoritarian symbols, and taking care of the senior victims require cooperation among various government agencies, in addition to the Transitional Justice Commission.

The Implementation of Transitional Justice Mechanisms in Taiwan

The concept of Transitional Justice emerged along with the third wave of democratization from the 1980s to the 1990s. In Taiwan, the initiation of transitional justice efforts can be said to have started after the lifting of martial law in 1987. However, it was not until May 18, 1992, that the two laws that define political crimes, the "Betrayers

⁷ Arata Hirai. (2020). Rethinking Transitional Justice in Taiwan from the comparative perspective. *Journal for the Study of the Party Assets*, (5), 25-61. (in Chinese)

Punishment Act" and "Article 100 of the Criminal Law" (the crime of rebellion), were officially abolished. This move denotes the end of the White Terror and ushers in the agenda of transitional justice.

Thousands of cases of human rights violations that occurred during the martial law period (from 1949 to 1987) in Taiwan were collectively referred to as "White Terror political cases." The exact number of political victims during the White Terror period still cannot be accurately calculated. According to the government's official data and estimates, there were more than ten thousand cases and more than two hundred thousand victims during the 38 years of the White Terror.⁸ In 2021, Taiwan's Transitional Justice Commission released the "Taiwan Transitional Justice Database," which compiled the data of people who were prosecuted during the authoritarian period. The total number of cases stands at 13,683 with some individuals being involved in more than one case. This database is now the most complete quantitative document of the White Terror victims.

In order to restore the political, ethnic, or racial cleavage caused by the authoritarian government's violations of human rights, government policies sought the forgiveness of victims and attempted to achieve social harmony, reconciliation, and peace. Transitional justice involves fact-finding, prosecution of perpetrators, reparation for victims, commemorations, reconciliation initiatives, and other institutional reforms.⁹ Although the transitional justice process in Taiwan has developed over three decades, some parts of the development are still weak. As the political victims gradually wither away, the pace of transitional justice remains slow, especially in the aspects of fact investigation and the prosecution of perpetrators.

The Current Trends Regarding Transitional Justice in Taiwan

In Taiwan, there is not much research on the topic of transitional justice in political science. Wu (2006) mentioned that compared to other countries, Taiwan's achievements in transitional justice are not worthy to be proud of.¹⁰ The characteristic of Taiwan's transitional justice is "compensating the victims and forgetting the perpetrators." The extent to which the perpetrators should be held accountable is the issue of morality, the moral line of transitional justice. He quoted the perspective of Huntington (1991) that the characteristics of the third wave democratization countries' transitional justice are initiated from the top, so retrospective punishment or historical justice is impossible. The KMT government continued to rule for the following decade after the transition. Since KMT continued to control the presidency (1986-1999; 2008-2016) and the parliament (1986-2016), it was able to block many transitional justice initiatives.¹¹

Jiang (2007),¹² based on the International Center for Transitional Justice's definition, suggests that the specific

⁸ Chiu, Rong-jeo, "Review on Political Cases During the Martial Law Period in Taiwan", in Zixiu Ni ed., *Law and History of Political Cases during the Martial Law Period*, (Taipei: the Compensation Foundation for Improper Verdicts, 2001), pages 143-144. (in Chinese)

⁹ Bassiouni, M. C. (1996). Searching for peace and achieving justice: The need for accountability. *Law & Contemp. Probs.*, 59, 9.

¹⁰ Nai-Teh Wu (2006). Transitional Justice and Historical Memory: The Unfinished Business of Taiwan's Democratization. *Reflection*, (2), 1-34. (in Chinese)

¹¹ The experiences of transitional justice in the third wave of democratization are heterogeneous. After the Philippines was overthrown, it did not talk about transitional justice at all; while in Korea, which peacefully transferred its power, active engagement in transitional justice was taken.

¹² Yi-huah Jiang (2007). Transformational Justice in Taiwan and Its Reflections. *Reflection*, (5), 64-81. (in Chinese)

work of transitional justice includes establishing the truth about the past, prosecution of the perpetrators, reparation of the victims, memoir and memorials, reconciliation initiatives, reforming institutions, vetting and removing abusive public employees. Taking the transitional justice work of the 228 Incident in Taiwan as an example, until 2007, Taiwan has (more or less) established the truth about the past, repaired the victims, published memoirs and memorials, established reconciliation initiatives, and reformed institutions. However, no effort has been made on prosecuting the perpetrators, nor on vetting and removing abusive public employees. One direct reason is that the 228 Incident occurred more than seventy years ago and almost all the perpetrators have passed away. Similarly, most of the White Terror cases took place in the 1950s, the beginning of the cold war era. Most of the perpetrators have also passed away or retired long ago. There are, indeed, a few prosecutors and judges that were involved in prosecuting dissidents in the 1970s, who are still alive or even in position. However, it is too sensitive to predict how much political and social unrest will be caused by removing or punishing these people and it is uncertain where to set the scope of the investigation.

In 2016, when Tsai Ing-wen took office as president, the Legislative Yuan passed the first draft of the "Act on Promoting Transitional Justice," and one month later, the Ill-gotten Party Assets Settlement Committee began to deal with the KMT's party assets. At this time, there seemed to be a dual-pronged approach to "punishment" and "reconciliation" on both ends of the spectrum (Yeh, 2017). However, the Tsai Ing-wen government, which pledged to ramp up the transitional justice process, had not succeeded in Taiwan's transformational justice as no progress in the aspects of prosecution of the perpetrators and vetting and removing abusive public employees were made in his second term. Even the White Terror fact-finding report promised by the president in 2016 has been overdue until now. One main reason is that the KMT filed a lawsuit to delay the process. The other reason is that the DPP does not want the implementation of transitional justice to leave the general public with an impression of political persecution, which may harm its election performance.

Taiwan's transitional justice since the lifting of martial law has shied away from holding the individual perpetrators accountable. The DPP government chose to prioritize holding institutional perpetrators accountable and postponed pursuing individual perpetrators to avoid social unrest. Taiwan does not plan to prosecute or purge individual perpetrators. The DPP government in 2018 set up the Transition Justice Commission to deal with the transitional justice issue. The mission of the committee is to "[make] political archives more readily available, removing authoritarian symbols, redressing judicial injustice, and producing a report on the history of the period which delineates steps to further promote transitional justice."¹³ Theoretically, it includes both institutional and individual perpetrators. Focusing on institutional perpetrators, the DPP targets KMT, KMT's ill-gotten assets, and the social organization that affiliated with the ruling party during the authoritarian rule. For individuals, the authoritarian strongmen have long passed away and their descendants do not participate in politics. The high-ranking officials who are acclaimed for stringing economic development have less to do with the conduct of the two political events and have also passed away. As indicated, most of the low-level officials who enforce the crime have almost all gone. The first remaining issue is a few judges and prosecutors who dealt with the participants of the Formosa Incident in the early 1980s. The DPP government has no intention to deal with them. A more important issue is the

¹³ Veteran democracy advocate to lead transitional justice work. <https://focustaiwan.tw/politics/201803270025>

symbols of the strongmen which include monuments, historical descriptions, and some political symbols. In Taiwan, dealing with the two authoritarian leaders tends to arouse the sensitive nerve of ethnic antagonism between native Taiwanese and Mainlanders. Therefore the government chose to postpone the issue.

In the 1990s and 2000s, the idea of transitional justice does not resonate strongly with many people. As the first DPP president, Chen Shui-bian's transitional justice plan does not receive much political and social support. During that period, most people still hold certain levels of Chinese identity and many people still identify with the KMT. In addition, the experiences of fast economic growth during the authoritarian period induce them to approve of the governance of the KMT rule. As a result, people are less willing to criticize the KMT. In the past decade, the percentage of Taiwanese who identify themselves as Taiwanese gradually becomes the absolute majority, and the percentage of people who identify with KMT declines. This is especially because the young generation receives a history education that focuses much more on Taiwan and less on China and has more coverage of the authoritarian rule, a version different from the parents' generation. To them, KMT is synonymous with the old authoritarian regime. In addition, they grew up in the democratic period and did not experience rapid economic growth during the authoritarian rule. They tend not to have authoritarian nostalgia. Instead, they are exposed more to many liberal ideas and dislike authoritarian values. In short, in the future, the legacy of authoritarian rule such as monuments, organizations, symbols and will face greater pressure to be demolished or transformed.

To hold the perpetrators to account, one needs to adequately assess the responsibility they have to take. To do this, clarifying the international political context will be the key. The White Terror took place during the Cold War. In the 1950s, the political and military threats posed by communist China were immense and imminent. The KMT government lost all its territory on the mainland and fled to Taiwan in 1949. Many western governments believed that the Republic of China would not be able to survive and that communism would soon be the only doctrine on the island. The Korean War in the early 1950s induced the U.S. to recognize the importance of Taiwan in the East Asia islands chain and decided to help Taiwan defend itself. Soon afterward, Taiwan experienced the Kinmen Bombs in 1958 in which China heavily bombed the island of Kinmen for two months which was followed by much smaller scale bombings that continued until 1979. Given the background, some of the harsh measures to stabilize the regime on the island are likely to be understandable. Actually, the number of cases and severity of punishment were also the most pronounced in this phase of the authoritarian rule. Of course, there is no due process for the trials at that time and many of the victims are innocent, but such an international political context should also be part of the conversation. So far, this dimension is still missing in the discussion.

After the 1960s, the tension between the communist camp and the non-communist camp was less severe and the political and military situation in Taiwan Strait had been mostly stabilized. International conflicts between the camps in East Asia still exist such as the military conflicts between North and South Vietnam in the 1960s to 1970s and eventually the fall of South Vietnam in 1975, and the confrontation between South and North Korea. The necessity of imposing political repressions to ensure the security of Taiwan was reduced significantly. Repressions in this period serve to a significant degree only to secure authoritarian rule. In short, when pursuing transitional justice, the levels of external threats Taiwan faced in different periods should be taken into consideration when assessing the responsibility that government decision-makers and law-enforcers should bear.

So far, the discussion and redress of transitional justice focuses mainly on the legacy of KMT's authoritarian

rule and largely ignores the aftermath of Japanese colonial rule. Although Taiwan experienced Japanese rule before the end of WWII the reparation of the Taiwanese who served in the military of Imperial Japan and the Comfort women issues have not been properly redressed. Few political parties and CSOs seem to be very interested in pointing out the issue of redressing the wrongdoing during the Japanese rule. To avoid irritating Japan, an important ally of Taiwan, and counter China's military threats, both parties in Taiwan, to a different degree, appear to choose to omit the issue. As most of the victims are aging, this is an issue that needs to be addressed soon. ■

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