

## **Uncompleted Transitional Justice in Taiwan: Repression of Religious and Spiritual Minorities and the Tai Ji Men Case**

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**ABSTRACT:** “Transitional justice” indicates legal and administrative provisions a newly established democratic country adopts to rectify the injustices of the past non-democratic regime, and punish those responsible for them. Taiwan was an authoritarian regime under the Martial Law until 1987, and did not really guarantee freedom of religion or belief, as evidenced by the repression of the New Testament Church and Yiguandao. After 1987, a post-authoritarian regime followed, which proclaimed religious liberty but still persecuted religious movements perceived as hostile to the ruling party. In 1996, a crackdown hit several of the largest religious movements active in Taiwan, including Fo Guang Shan, Chung Tai Shan, Tai Ji Men, the Taiwan Zen Buddhist Association, the Sung Chi-Li Miracle Association, and later Guanyin Famen. Its aftermath particularly affected Tai Ji Men, which continued to be falsely accused of tax evasion, and whose tax case was derived from the criminal case and is still unresolved today. The article reviews attempts by various democratic governments to implement transitional justice in Taiwan, and concludes that more should be done to complete the democratic process in the island.

**KEYWORDS:** Transitional Justice in Taiwan, Freedom of Religion in Taiwan, Tai Ji Men, Yiguandao, New Testament Church, Fo Guang Shan, Chung Tai Shan, Taiwan Zen Buddhist Association, Sung Chi-Li Miracle Association, Guanyin Famen.

### *Introduction*

This article first reviews the relationship between transitional justice and human rights, explaining that transitional justice not only assists post-conflict societies to move from authoritarian regimes to political democratization, but also deepens the political governance of a country ruled by the law.

In the second paragraph, the article follows the evolution of Taiwan from an authoritarian non-democratic regime under the Martial Law to a post-authoritarian regime, and finally to a full-blown democracy, although one where residual effects of the past non-democratic systems are still at work. Freedom of religion or belief (FORB) was not guaranteed in the Martial Law era, as evidenced by the cases of the New Testament Church and Yiguandao, discussed in the third paragraph.

FORB was also limited in the post-authoritarian era, and the fourth paragraph examines the politically motivated crackdown on several religious movements that happened in 1996. This crackdown had an aftermath with the 25-year-long and still unresolved Tai Ji Men case, discussed in the fifth paragraph. The sixth and seventh paragraphs examine the problems of Taiwanese democracy and the attempts by various governments, including the current one under President Tsai Ing-Wen, to effectively implement transitional justice, and lead to a conclusion arguing that more should be done.

### *1. Transitional Justice and Human Rights*

Transitional justice is a concept that emphasizes the need to confront historical errors and pursue the realization of social justice. The idea has existed as early as the classical Athens period (Elster 2004), but the corresponding theory was formulated only in the 20<sup>th</sup> century (Lundy and McGovern 2008). According to legal scholar Ruti G. Teitel (2003, 2005), the sources of modern transitional justice were the trial and punishment of war criminals after World War II. Therefore, the United Nations adopted the Convention on the Prevention and Punishment of Genocide in 1948. The Universal Declaration of Human Rights, the Nuremberg Trials, and the Tokyo Trials are all connected with transitional justice (Lundy and McGovern 2008; Leebaw 2008; Lincoln 2011).

Later, the development of transitional justice was closely related to the democratization movement of the international community in the post-Cold-War period, especially the political transformations in Latin America and Eastern Europe in the late 1980s. During these transitions, answering the question how to effectively solve the problem of systematic abuse by the former regimes was a requirement for the promotion of justice (Anders and Zenker 2014). At the end of the 20<sup>th</sup> century, with the collapse of the Soviet Union, many regimes

underwent competing processes of political transformation. Transitional justice at this stage reflected the uniqueness of the world political pattern in the post-Cold-War period, and was closely linked to the development of global international politics. As a result of such developments, transitional justice gradually became a new model for the governance principles of democratic and law-based countries, by providing a conflict resolution mechanism (Teitel 2005).

The need for “transitional” justice arises when a specific regime has committed major human rights crimes during its ruling period. After the regime is replaced, citizens hope that the state will rectify and compensate for these crimes, to overcome the past and create an entirely new situation (Teitel 2003). Transitional justice is part of a society’s transition from authoritarian to democratic (Arthur 2009). It is generally believed that the leaders of the succeeding regime have the responsibility to correct the mistakes and crimes committed by the old regime, vindicate historical injustice, and pursue social transformation. This is both a legal obligation and a moral responsibility a democratic society should not evade (Bohl 2006). Transitional justice ultimately emphasizes the protection of personal safety, the improvement of the quality of life, and the democratic development of political power to realize the universal values of human dignity and human rights protection (Hellsten 2012).

Transitional justice is based on the theory of social contract justice, emphasizing the dignity of humanity and the protection of human rights, and the realization of the ideal of the rule of law. It is the ultimate goal pursued by the transitional society to realize the ideal of democracy and the rule of law (Hellsten 2012). The goal pursued is political democratization. Without the operation of a democratic government, the concept of transitional justice will be difficult to implement. The two are closely interdependent (De Greiff 2012). Rehabilitation of historical injustice alone does not guarantee democracy. A democracy also includes elements such as regular elections, a sound civil society, and an independent judicial system. Conversely, democracy alone does not correct, rehabilitate, and make up for the harm caused by historical injustice (Barkan 2006).

Not only can transitional justice promote the democratic transformation of the society in transition, it is also an important tool for the implementation of human rights protection. Transitional justice does not mean passively bidding farewell to the authoritarian rule of the past only, it has also an active character that

implements democratic governance, and optimistically faces the future (Lundy and McGovern 2008, 273; Arthur 2009). Transitional justice investigates the illegal past of the old regime, and exposes the truth about human rights violations. Its ultimate goal is to establish a new social order that cherishes and protects human rights (Lundy and McGovern 2008).

Transitional justice, together with the promotion of human rights, is closely related to the development of international law. Through the formulation of the United Nations Charter, and the norms of other international conventions, individuals are endowed by international law with the legal foundation to request the redress of human rights violations from their own countries (Peté and Plessis 2007). The development of international human rights law has given to those who had been victims of state atrocities a basis for claiming compensation or redress from the state. Conversely, according to the relevant norms of international law, the state also has the obligation to protect the human rights of its citizens (McAuliffe 2013).

On the one hand, the state is obliged to prevent violations of human rights. On the other hand, once human rights are violated, the state should investigate what happened, take appropriate actions against the perpetrators, and provide compensation to the victims. Since the international law includes such a provision, the state is under an obligation to comply with it. Once the citizens' rights protected by international law are violated, the state has the responsibility and obligation to take a series of corrective measures and compensate for the violation. Specific actions must effectively respond to the actual needs of the victims (Peté and Plessis 2007).

Transitional justice is needed because, when certain countries try to overcome their past, they must use appropriate methods to solve the problems left by the old regimes. Otherwise, historical injustices will not be rehabilitated, and the society will not be able to complete a successful transformation. The common transitional justice mechanisms approved by the international community include judicial trials, the establishment of truth inquiry committees, public apologies, amnesties, restoration and compensation measures, and so on (Barkan 2006; Olsen, Payne, and Reiter 2010; Mihai 2010).

As an international organization that protects basic human rights, the United Nations have spared no efforts to promote transitional justice over the years (they

are summarized in Chen and Chung 2016, 15–7). Not everywhere, however, have they been followed.

## *2. Taiwan's Authoritarian Regime and Democratic Transformation*

Taiwan's democratic development has been divided into three stages: the authoritarian rule before the lifting of martial law in 1987, the post-authoritarian rule from 1988 to 2016, and the period inaugurated by the third party rotation in 2016. International scholars generally believe that democracy is a learning process, and a country can only be called democratic after it has experienced for three times a comprehensive rotation of the political parties in power (Caldwell 2018).

During the authoritarian regime from 1945 to 1987, there was no concept of human rights. Judicial control and legal delegation served the administrative power and the regime, allowing for complete administrative discrimination. Under the leadership of Chiang Kai-shek (1887–1975) and his son Chiang Ching-kuo (1910–1988), their party, the Kuomintang (KMT), ruled under the Martial Law of the Republic of China (Taiwan). This authoritarian government controlled the people and all groups through the Martial Law and the “Special Regulations on Mobilization and Rebellion.” Authoritarian governments rely on their powerful political parties, governments, military police, secret services, judiciary, tax bureaucrats, used as one whip force against any group, including religions, deemed to harm the “national security.” They are ruthlessly suppressed and persecuted.

A martial law gives the government enormous powers to eliminate any form of social dissent. In February 1947, a year before the Universal Declaration of Human Rights was issued, the KMT government repressed protests across Taiwan, in what was known as the “228 Incident.” The government issued the “Report on the Rebellious People,” searched the country, and wiped out the rebels. Tens of thousands died. This ushered in another period of national terror. The peak of the period of national terror came in 1955, and was known as the “White Terror.” The KMT government imprisoned, tortured, and executed thousands of people over a period of decades (Shattuck 2019).

### *3. Suppression of Religious Movements Under the Martial Law: The New Testament Church and Yiguandao*

Before Martial Law ended in 1987, the political atmosphere of the country obviously limited human rights, and extended the oppression to the social, cultural, and religious fields by suppressing independent movements. The state indoctrinated the citizens and manipulated the mass media ideologically. All media in Taiwan were under the shackles of a series of strict legal norms and policy control (Tien 1989). The Kuomintang government during this period allowed only limited space for freedom of thought, and forbade all promotion of Marxism-Leninism or socialism that might destabilize the legitimacy of its regime (Chao and Myers 2003; Chen and Chung 2016).

During the period of Martial Law, the ruling party and government forces went deeply into religion, and imposed strict restrictions on religious freedom. The freedom of religious belief theoretically guaranteed by the Constitution was denied in practice. If religious groups were perceived as having different political positions from the government, they were repressed. For example, Yiguandao, the New Testament Church (Mount Zion), and even the large Presbyterian Church in Taiwan, all suffered political persecution.

The New Testament Church is a Pentecostal movement founded by Christian Hong Kong movie star Mui Yee (1923–1966). After her death, Elijah Hong became the new leader, and established new headquarters at Mount Zion, near Kaohsiung, in Taiwan. What was called the “Mount Zion Incident” began in March 1974, when the authoritarian government of Taiwan arbitrarily declared the legal household registration certificates of New Testament Church members who lived communally there invalid, and set up checkpoints at the entrance of the area. The military and the police jointly raided the community, and arrested several members.

On April 1, 1980, the Supreme Administrative Court ruled that the household registration certificates were valid. In the meantime, however, members who lived in Mount Zion had been dispersed, including women and children, the church sanctuary and all the houses of the devotees had been demolished, and the property the members had left there looted or confiscated. In 1985, the military and police again raided the communities of the New Testament Church that had been reorganized across Taiwan. In several cases, devotees were beaten, leading

to cases of kidney bleeding, deafness, and even death from severe injuries. In the following years, the authoritarian government continued to display unprecedented violence against the believers. Only in 1987 was the New Testament Church allowed to return to Mount Zion, after the U.S. government had expressed its concern to Taiwan's authorities.

Yiguandao is a non-Christian salvationist new religion, which was banned in Mainland China in the 1950s. As a result, many members came to Taiwan hoping they would be allowed to freely practice their religion there. However, nationalist politicians were also suspicious of the fiercely independent salvationist new religion. In Taiwan, Yiguandao was labeled a *xie jiao* ("heterodox teaching," sometimes translated as "evil cult") and banned from missionary practice for thirty years, with several leaders arrested. A Western scholar of Yiguandao, Edward Irons, reports how during the Martial Law period leaders of Yiguandao were invited by the police to "drink a tea," after which they "disappeared" (Irons 2017). Yiguandao was legalized in Taiwan only in 1987, just before the lifting of the Martial Law.

Taiwan's authoritarian government lifted Martial Law on July 15, 1987, and Taiwan's gradual transition to democracy began. The indispensable elements of a democratic system are: (1) a political order aimed at protecting human rights; (2) the principles of separation of powers and checks and balances, which constitute the system designed to prevent state power from persecuting its own citizens; (3) the independence of the judiciary (as opposite to judicial control by the executive power), which is needed both to gain the citizens' trust and to protect human rights. The period from 1987 to 2016 was defined by scholars as the post-authoritarian regime. At the beginning of this period, the administrative power was still dominant, the judiciary was still under the control of the executive, and the legislative independence was still insufficient. The protection of human rights did not form the core value of governance, and the culture of purging dissent of the authoritarian system was still prevalent. Taiwan, on the other hand, held its first presidential elections in 1996. The president was directly elected by the citizens, which was a key indicator that the country was entering the democratic system.

#### *4. The 1996 Presidential Elections and the Post-Election Crackdown on Xie Jiao*

In the first presidential elections in Taiwan, held in March 1996, politicians were eager to enlist the support of religious groups, given the significant mobilization power they possessed. Some religions supported certain candidates during the process, which sparked a heated debate in Taiwan. The election was heavily contested but KMT's Lee Teng-Hui (1923–2020), who had already been the president from 1988 on, was reelected with 54% of the popular vote. Those who supported the candidates who lost were repressed after the elections, and paid a heavy price for their political choices.

Post-electoral punishment has been a constant of Taiwan's post-authoritarian rule. Until 2016, almost every presidential election has seen the legal prosecution of defeated presidential candidates under various pretexts, from James Soong (b. 1942) in 2000 to Ma Ying-Jeou (b. 1950) in 2008, and the current President Tsai Ing-Wen (b. 1956). After she lost the 2012 election, she was investigated for her role in the public investments in the company Yu Chang Biologics. Wong Chi-Huey, a world-famous scientist and former President of the Academia Sinica, Taiwan's main cultural institution, was also accused of corruption for political reasons in 2016.

Following the 1996 elections, Taiwan witnessed a series of heinous major murder cases, including the murder of a girl at the Air Force Command Headquarters of the Ministry of National Defense, and the assassinations of politician Liu Bang-You (1942–1996), feminist activist and politician Peng Wan-Ru (1949–1996), and others. These major incidents have not been resolved to this date, and in 1996 they put enormous pressure on the ruling authorities. To divert public attention, the ruling party government carried out a political purge at the end of 1996. Liao Zheng-Hao (b. 1946), the Executive Yuan's Minister of Justice, actively carried out a "religious crackdown" to purge dissidents. The crackdown was supported by the media, most of which were not independent from the ruling politicians.

Liao launched a comprehensive attack against dissident religious groups labeled as *xie jiao*, including investigations, tax inspections by the National Taxation Bureau (NTB), assets seizure, demolitions of "illegal" structures, and exorbitant fines. This elaborate campaign required the mobilization of a large number of media, judicial organs, national tax authorities, and so on. Angry ex-

members were encouraged to make vague accusations, each of which guaranteed a good three weeks of media headlines. The groups targeted in 1996 included the Buddhist orders Fo Guang Shan and Chung Tai Shan (led by Venerable Master Wei Jue, 1928–2016), the Taiwan Zen Buddhist Association (later the Shakyamuni Buddhist Foundation), founded by Zen Master Wu Jue Miao-Tian (b. 1934), the *menpai* (similar to a “school”) of qigong, self-cultivation, and martial arts Tai Ji Men, rooted in esoteric Taoism, and the Sung Chi-Li Miracle Association, a Taiwanese new religion whose founder is Master Sung Chi-Li (b. 1948).

### Fo Guang Shan

Master Hsing Yun (b. 1927) of Fo Guang Shan had publicly supported Chen Lu-An (b. 1937), one of the candidates who lost the 1996 presidential elections. In February 1996, the *Taiwan Times*, a media outlet controlled by the ruling party, accused Fo Guang Shan of four violations of law: illegal constructions, excessive reclamation of land, pollution through garbage, and tax evasion. The *Taiwan Times* published titles such as “Fo Guang Shan Bullying and Many Evil Deeds,” “Fo Guang Shan Happy Dances and Lawlessness,” “Fo Guang Shan Tax Evasion Is an Open Secret,” and others that made shocking allegations. Protests from nearby residents were orchestrated, and the Fo Guang Shan monastery was closed for three years. It reopened in 2000.

### Chung Tai Shan

Venerable Master Wei Jue of Chung Tai Shan had also supported Chen Lu-An, and his followers actively participated in collecting signatures for the candidate. Following the elections, Master Wei Jue was accused of fraud and tax evasion by the Taichung District Prosecutor’s Office. In 1990, the Shilin District Court pronounced Master Wei Jue not guilty.

### Taiwan Zen Buddhist Association

In December 1995, Zen Master Wu Jue Miao Tian gathered 60,000 persons in Taoyuan. It was one of the largest gatherings in Taiwan’s history, and it drew the suspicious attention of the ruling authorities. Some politicians attended the

event, including Chen Lu-An and Hsieh Chang-Ting (b. 1946), the vice-presidential candidate for the Democratic Progressive Party (DPP), which also eventually lost the elections to the KMT.

In the eyes of the KMT, Master Miao Tian was considered a supporter of Hsieh Chang-Ting. After the elections, he was indicted for fraud and tax evasion connected with the Columbarium Pagoda, the ossuary of the Tian Fo Temple. NTB officials announced to the media that they were assessing the value of the ossuary, and that the net profit Master Miao Tian had derived from it was 1.2 billion yuan. “Only for the profit-making business income tax, and personal comprehensive tax, together with supplementary taxes and fines, we may recover more than 2 billion yuan, plus business tax, housing tax, and land value tax, they announced. It will be something out of this world.”

These statements by government bureaucrats incensed the public opinion, and the original case of fraud was transformed into one of alleged massive tax evasion. When the Zen Master asked a professional accountant to file administrative relief procedures with the NTB, and obtain his organization’s tax file in accordance with the law, he discovered that the file contained only one newspaper clipping. Nonetheless, the campaign had placed the Zen Master under a significant financial and spiritual burden. Eventually, Master Miao Tian was exonerated from the main fraud charges connected with the ossuary, but found guilty of illegal acquisition of property and tax evasion, and finally sentenced to a jail term of eight months with probation. He decided to settle the tax case, and pay a part of what had been requested to be free from the NTB’s long-term entanglement.

#### Sung Chi-Li Miracle Association

Master Sung Chi-Li of the Sung Chi-Li Miracle Association had also been at odd with local KMT Taipei politicians, and had supported the defeated DPP vice-presidential candidate Hsieh Chang-Ting. After the elections, Sung was arrested for fraud in October 1996. He was convicted in 1997 and sentenced to seven years in jail, and the main temple of his Association was demolished by the police. The media depicted him as the quintessential “cult” leader defrauding his “victims.” In 2003, however, after a long legal battle, the Supreme Court overturned Sung’s conviction and stated that the Association’s activities were protected by the legal guarantees of religious liberty.

## Guanyin Famen

Emboldened by the initial success of their campaigns, politicians and prosecutors moved against another popular leader of a new religion, the Vietnam-born Supreme Master Ching Hai (b. 1950), the founder of Guanyin Famen. She was accused of amassing wealth through fraud and tax evasion, and decided to leave Taiwan and establish her residence abroad.

### *5. The Tai Ji Men Case*

Tai Ji Men was caught in the crossfire of the 1996 campaign against religious groups that did not support the KMT in the presidential elections, although it had not taken any political position. As later court decisions established, the Tai Ji Men case was built from the ground up on illegal and false premises. It emphasized the typical violations and injustices committed by a government that was not free from the toxic legacy of the authoritarian system.

Tai Ji Men is an ancient *menpai* of qigong, martial arts, and self-cultivation. According to the traditional etiquette and customs, disciples (*dizi*) show respect to their master through gifting. Dr. Hong Tao-Tze legally established Tai Ji Men Qigong Academy in 1966. Over the past 55 years, he and his disciples tirelessly worked to carry forward the essence of traditional Chinese culture, and promote love, peace, and a “culture of conscience” internationally. Since inception, they have never been accused of tax evasion, except for the six years from 1991 to 1996, for which the NTB issued illegal tax bills.

During the 1996 political purge against religious groups, Prosecutor Hou Kuan-Jen sent hundreds of police forces and investigators with guns and ammunition, together with several media, to search nineteen Tai Ji Men premises and the private homes of some *dizi*, arrested Dr. Hong, his wife, and two disciples, and prosecuted them the next year. Hou fabricated two unfounded accusations against Dr. Hong and his co-defendants—fraud and tax evasion. He alleged that the amounts of money given by *dizi* to Dr. Hong were not gifts but criminal proceedings of frauds, while he contradictorily alleged the same money as taxable tuition fees of a so-called cram school. Accordingly, he had all the properties of Dr. Hong and Tai Ji Men frozen and confiscated, and instigated the

NTB to issue tax bills for an alleged tax evasion. He also conducted a virulent media campaign against Tai Ji Men.

On July 13, 2007, the Supreme Court of Taiwan confirmed that Dr. Hong and Tai Ji Men were not guilty of fraud, tax evasion, or violation of the Tax and Tax Collection Acts. It also affirmed that “a gift made by a disciple to a master is a gift. It is exempt income under section 4 (17) of the Income Tax Act.”

American scholar Kenneth Jacobsen summarized the subsequent developments as follows, noting that what happened was a serious blow to Taiwan’s image as a Constitutional democracy:

On March 24, 2015, the Taipei High Administrative Court ruled in favor of Tai Ji Men regarding the 1996 income tax assessment, setting aside the assessment on the ground that the tax dispositions violated evidentiary rules and logical principles, and that the NTB of Taipei had never properly explored the [*menpai*] nature and characteristics of Tai Ji Men and the monetary gifts given by its members. On July 9, 2015, the Supreme Administrative Court rejected the appeal of the NTB of Taipei. The Administrative Court remanded the case to the NTB of Taipei for a legally appropriate disposition, while Hong’s assets remained in jeopardy. [...] In 2018, the Supreme Administrative Court ruled against the NTB in yet another case, finding that Tai Ji Men is an academy of Qigong, martial arts, and self-cultivation, not a cram school—the entire basis of the NTB’s illegal tax assessments.

Based on decisions of the Criminal Division of the Supreme Court in 2007, the Taipei High Administrative Court in 2015, and the Supreme Administrative Court in 2018 [...], and under pressure from other sources, both the National Taxation Bureau of Taipei and the National Taxation Bureau of the Central Area finally, after more than two decades, corrected the tax amounts for the honorariums for years 1991, 1993, 1994, 1995, and 1996 to zero. But in an apparent vendetta against Tai Ji Men and Hong, and in likely retaliation for their vindication in those other cases, these agencies continued to pursue taxes and fines for 1992, until in 2020, despite street protests with thousands of participants in Taiwan and statements by international scholars and human rights activists, properties belonging to Hong were seized and auctioned (Jacobsen 2020, 117–18).

On August 22, 2021, a shocking and distressing video was uncovered and released to the media. Tax collector Shih Yue-Sheng revealed in the video that Prosecutor Hou accused Tai Ji Men of tax evasion without evidence, and directly contacted Shih, who had never investigated Tai Ji Men, to provide false testimony, then used his testimony as the key evidence to prosecute Tai Ji Men for tax evasion.

Nearly 20 years after the incident, Shih confessed to the media that he had been pressured by Prosecutor Hou to falsely testify that he had found evidence of the tax evasion. Shih recalled that,

back then when people came to me about the case, I would tell them there's a problem with this case. But no one listened. We deal with taxes, therefore when you submit the case to us, we must analyze it before commenting on the case. Regarding the Tai Ji Men case, I suggested that we wait for the evidence. "How did you compute this amount?" I inquired. He showed it to me, and I asked him where did the amount come from. Because his answer was vague, I responded, "That's not correct." "This will not be discussed," he said. "Won't be discussed?" I inquired, "So, what are your plans?" "We're simply going to use it," he answered. "Have you ever considered that this was a loophole?" I said (Action Alliance to Redress 1219 2021).

Taxation is based on evidence, and Shih believed that the Tai Ji Men case should be postponed until such evidence would become available. If the calculation of the amount cannot be explained, the money should not be counted. However, the City Field Office of the Investigation Bureau insisted on doing so. This entire case was initiated and directed by Prosecutor Hou Kuan-Jen. This revelation proved that Prosecutor Hou's accusation of tax evasion against Tai Ji Men was wholly fabricated and deliberately constructed. It also exposed Taiwan's use of illegal taxation to carry out religious crackdowns during the democratic transition period. This further confirmed the validity of the 2007 criminal court decision, the 2015 Taipei High Administrative Court ruling, and the 2018 Supreme Administrative Court decision.

## 6. *A Failure of Democracy?*

What happened in 1996 was a clear violation of democratic principles and FORB, as religious and spiritual movements were targeted for political reasons. Even after 1996, the political party in power still mobilized many media, judicial organs, and national tax authorities with their powerful overall power putting together party and government, judicial system and tax administration.

"Religion" is usually associated with one or more specific beliefs and worship systems, either theistic or non-theistic. However, in human rights law, "religious freedom" also includes the right to support unconventional beliefs and non-religious beliefs, such as atheism or agnosticism. In 1993 *General Comment no.*

22 by the United Nations Human Rights Committee, interpreting article 18 of the International Covenant of Civil and Political Rights, explained that

article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms ‘belief’ and ‘religion’ are to be broadly construed (UN Human Rights Committee 1993, no. 2).

Beliefs about religion offer hope and comfort to billions around the world, and have an enormous potential for peace and reconciliation. However, they may also be a source of great tension and conflict. This complexity, and the difficulty of an inclusive definition of “religion” and “belief,” are reflected in the ongoing struggle to protect freedom of religion or belief in the context of international human rights.

The United Nations recognized the importance of freedom of religion or belief in article 18 of its 1948 Universal Declaration of Human Rights, Article 18. Similar provisions followed in other well-known United Nations documents (Marshall 2021).

The Constitution of the Republic of China (Taiwan) also includes the principle of freedom of religion in article 7 (“The people of the Republic of China are equal in law, regardless of gender, religion, race, class, or political party”) and article 13 (“The people shall have freedom of religious belief”). According to Judicial Interpretation no. 593, “The State shall observe the principle of neutrality and tolerance towards religion.” Interpretation no. 490 has a similar statement about freedom of religion: “its scope of protection includes the freedom of inner belief, the freedom of religious conduct, and the freedom of religious association.” Accordingly, Taiwan’s Constitution does guarantee the citizen’s freedom of religion or belief (FORB). But in fact, do people in Taiwan really enjoy FORB?

According to a study conducted by the Hudson Institute’s Center for Religious Liberty, FORB in various countries is statistically correlated with the existence of fundamental human rights and the success of democracy (Grim 2008, 42–7). The Pew Research Center (2012) noted that data collected between 2012 and 2013 showed that religious minorities were still the target of government restrictions and hostile acts in 61% of the countries around the world. FORB and democracy are so inextricably linked that democracy can only last where FORB is guaranteed (Grim 2009). Thus, it is important to understand the relationship between the development of democracy in Taiwan and FORB.

Under the Martial Law regime, i.e., before 1987, the authoritarian government in Taiwan did not fully guarantee FORB. The Martial Law allowed “restricting or prohibiting religious activities that interfere with public security,” established the authoritarian government’s control over religion, and offered a legal justification for multiple FORB violations, despite the wording of Taiwan’s Constitution. Although the KMT government claimed to give all religions freedom to develop, this was conditional. If religious groups agreed with the government, or were not suspected of not supporting it, most of them could enjoy religious freedom. However, if religious groups had different political views from the government, or if the KMT party felt it was not supported by certain groups, repression followed. We have seen how Yiguandao and the New Testament Church were persecuted, but others such as Soka Gakkai, the Unification Church, the True Jesus Church, the Jehovah’s Witnesses, and the Presbyterian Church (Laliberté 2009) also saw their activities limited by the KMT governments.

At the end of the Martial Law period, the KMT and government institutions gradually began to adopt relatively relaxed policies. At the same time, some oppressed religious groups became important forces that promoted the lifting of the Martial Law.

During the post-authoritarian period from 1988 to 2016, the relationship between political and religious conflicts gradually changed. Many social groups, and experts and scholars, demanded that the ruling government should not persecute religious groups without legal basis, and insisted that human rights should no longer be violated for political reasons as it had happened under the non-democratic authoritarian system. However, in the early stage of the post-authoritarian system, the protection of human rights was not a core value of the governance. The purge culture of the authoritarian system was still prevalent. The political purge and crackdown on religious movements after the 1996 presidential elections tried to eradicate several religious groups, showing that contradictions still existed.

A case in point was the relationship between the government and the Presbyterian Church, which criticized the authoritarian rule and several aspects of the KMT’s cross-Strait policies (Laliberté 2009, 55). Even in the year 2000, when the first non-KMT president, Chen Shui-Bian (b. 1950), was elected, the Presbyterian Church in Taiwan was still anxious about both the governmental

approach to religion and cross-Strait policies. When in 2008 the KMT recaptured the presidency with Ma Ying-Jeou, this anxiety became more intense as the Presbyterian Church, like others, perceived Ma as favorable to a reunification with Mainland China.

Why was Taiwan's implementation of FORB delayed? Italian scholar Massimo Introvigne (2021) compared Taiwan to South Korea, noting that the two countries were born under the threat of China and North Korea respectively, which explains why they were ruled by authoritarian regimes for many years and their democratic allies did not object. Due to this external threat, it was more difficult for Taiwan and South Korea to walk towards democracy than it was, for example, for Italy after Fascism. In Taiwan and South Korea, the transition from the autocratic regime to a democratic system was realized gradually. During the transition period, the old habits, ideas, and behaviors of the old bureaucrats still remained. One of the great tests for the new democracies was to accommodate religious minorities. Both South Korea and Taiwan restricted the activities of religious and spiritual movements during their transition to democracy, with consequences still at work today, as evidenced by the Tai Ji Men case.

### *7. Is There Transitional Justice in Taiwan?*

In many ways, Taiwan's post-Martial-Law political trajectory mirrored that experienced by Latin American and Eastern European countries in the post-Cold-War era. Taiwan was ruled by an authoritarian regime that maintained a firm grip on power by repressing and stifling dissent through complete control of society. In the 1990s, with the passage of time and the strengthening of democratic institutions, the international community, with the help of the Office of the United Nations High Commissioner for Human Rights (OHCHR), promoted a democratic trajectory in the countries that were once ruled by one-party systems or dictators. Both in Latin America and Eastern Europe the problem of transitional justice was addressed by the former non-democratic countries.

Compared with these international developments, Taiwan's post-Martial-Law approach to transitional justice was somewhat different. In 2008, Taiwan achieved its second rotation of ruling political parties, as the presidency had gone first from the KMT to the DPP in 2000, and now went back from the DPP to the

KTM. Yet, there was no dedicated body to deal with transitional justice, and the achievements of the government and the private sector in this area remained quite limited. Taiwan would have needed compensation for the victims of the authoritarian regime, a comprehensive serious investigation of historical truth, and of the legal and moral responsibility of those guilty of human rights violations. All this would have been needed to restore the citizens' trust in the institutions. However, no positive and clear action was taken.

Both the DPP and KMT administrations still limited accountability or the possibility of prosecution to abuses committed during the Martial Law period, excluding those perpetrated after 1987. This happened because a KMT-led coalition was still in control of the Legislative Yuan (Taiwan's Parliament) from 1987 to 2016, and was reluctant to promote transitional justice targeting wrongdoings the same party had committed in the past. With this historical burden, the KMT government's first post-transition legislation specifically addressing past abuses was the 1995 bill to restore the rights of individuals damaged during the Martial Law era. In its scope of application, as summarized by historian of Chinese law Ernest Caldwell, the Act was limited to

individual cases occurring during the period between May 20, 1949, and July 14, 1987, in which the defendants were either charged but found not guilty in courts-martial or were found guilty but can subsequently prove their confessions were coerced (Caldwell 2018, 463).

The second major part of the transitional justice judicial legislation passed by the KMT-dominated legislatures was the Incident Handling and Compensation Act of 28 February 1995. This bill specifically targeted the victims of the "228 incident," the violent repression of anti-government protests that started on February 28, 1947, and left tens of thousands dead. This was reflected in the first article of the Act, which provided the basic principle of "making citizens understand the truth of the [228] event, healing historical wounds, promoting national unity and harmony," and also established a timetable for compensation. The Act created a system

to provide the restitution of honor for victims or the descendants of those killed, wounded, tortured, detained, or imprisoned, and compensation for individuals or their families who had property damaged or confiscated during the period of state-sanctioned violence (Caldwell 2018, 464).

The last important piece of transitional justice legislation passed by the KMT-dominated legislature was a 1998 Act on compensation for improper trials based on trumped up sedition and espionage charges during the period of Martial Law. According to Caldwell,

This Act was the direct result of public dissatisfaction with the KMT government and legislature's lack of efforts to properly address the abuses occurring during the White Terror period. However, despite the public pressure for more comprehensive transitional justice legislation, the 1998 Compensation Act follows the KMT's trend of legislating compensatory acts while precluding any inquiries over the legitimacy of KMT rule or assigning any liability to specific individuals (Caldwell 2018, 466).

The DPP won two presidential elections, in 2000 and 2004, but a KMT-dominated coalition kept its majority in the Legislative Yuan. As a result,

Chen Shui-bian's two terms in office were fraught with persistent policy gridlock between the DPP-held executive and KMT-held legislature, with the latter opposing nearly all government proposals requiring legislative approval (Caldwell 2018, 467–68).

With President Ma Ying-Jeou, who was elected twice in 2008 and 2012, the KMT came to control again the presidency, the government, and the legislature at the same time. No formal transitional justice legislation was completed during Ma's two terms in office. In 2009, however, under President Ma, the Legislative Yuan ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and passed the Law on the Implementation of the Two Conventions. In 2013, ten international human rights experts were invited to Taiwan to conduct a review of human rights there. In the 81 “concluding opinions and suggestions” published, nos. 24 and 25 specifically pointed out the issue of promoting transitional justice in Taiwan, and put forward specific suggestions. After the meeting, President Ma held an international press conference and promised to implement the expert recommendations, and the ideal of “governing the country by human rights.” However, this commitment was not followed by effective action.

In 2009, Taiwan had adopted the two conventions as its domestic law, with the ultimate goal of strengthening its comprehensive human rights protection mechanism. This should have provided an opportunity for Taiwan to be more responsible for human rights issues, and further strengthen the protection of

human rights enjoyed by Taiwanese citizens (Shope 2012). In particular, the ICCR in paragraph 3 of article 2 asks the states

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

Therefore, Taiwan's adoption of the ICCPR raised the question how to properly correct and remedy human rights abuses related to the authoritarian rule of the KMT (Roth 2019).

During her 2016 presidential campaign, DPP candidate Tsai Ing-Wen included issues of transitional justice in her platform. She had long promised to apologize to Taiwan's aboriginal people on behalf of the government and, more generally, to "face the past and do everything possible to restore the historical truth." Tsai won the presidency with 56.1% of the vote, and the DPP won a legislative majority for the first time in Taiwan's democratic history. As Caldwell (2018, 474) reports,

In her inaugural speech, President Tsai reiterated the importance of transitional justice for Taiwan as a society to move forward. She stated that "the goal of transitional justice is to pursue true social reconciliation, so that all Taiwanese can take to heart the mistakes of that era." Throughout the speech, the scope of transitional justice was clearly expanded to reflect society's palpable discontent with the limited scope and time frame of the KMT legislation.

Tsai's inaugural address, which set out the goal of making investigations and pursuing the truth as a key mechanism for social reconciliation, also marked a departure from past practices, with special emphasis on Taiwan's democratic transition and historical justice (Shattuck 2019).

In July 2016, Tsai and the DPP government introduced the "Act Governing the Handling of Ill-Gotten Properties by Political Parties and Their Affiliate Organizations," and set up the CIPAS (Committee on Ill-Gotten Party Assets Settlement) to investigate and deal with property illegally acquired by the KMT and its affiliated organizations from August 15, 1945, to July 15, 1987. The Act

was only passed on 5 December 2017, and on May 31, 2018, a Transitional Justice Commission (TJC) with a larger mandate than CIPAS was established, to deal with all issues relating to legal files, despotic decisions, and wrongful convictions during the period between August 15, 1945, and November 6, 1992.

Article 6 introduced a so-called overlord clause, which allowed to go beyond the existing legal framework of criminal law and administrative law to revisit unjust decisions, and establish an effective relief mechanism to deal with the injustice and violation of human rights left over by the previous authoritarian governments. According to this article, by March 26, 2021, the TJC had cancelled a total of 5,837 criminal decisions of the Martial Law period, and started the corresponding proceedings for reparation, realizing the most important spirit of the transitional justice, “rehabilitating the reputations.”

CIPAS completed part of its mission in June 2019 with the establishment of an online database of property related to Taiwan’s political parties, which included 30 “significant cases” and 1,896 other cases. The TJC has an even more difficult task, to investigate issues related to Taiwan’s authoritarian past. The TJC is responsible for three main issues: (1) providing public access to political archive records; (2) removing signs of authority and preserving places where injustices occur; (3) correct judicial errors, restore historical truth, and promote social reconciliation (Shattuck 2019).

Comparing the scope of the transitional justice legislation in the KMT era and the DPP era, the difference is obvious. As long as the KMT retained an elected majority in the legislature, it could directly control the official position on transitional justice. Thus, the transitional justice legislation of the KMT emphasized reparation and limited recognition, while excluding any consideration of criminal responsibility, personal responsibility, or the need for amnesty. Since the DPP first opened up the scope of transitional justice legislation when it won a legislative majority after two decades of KMT rule, the DPP legislation now seeks to fill gaps in accountability, knowledge, and financial issues with specific legislative language.

However, not everyone is happy with the DPP’s transitional justice legislative agenda. Like the KMT’s legislation, the DPP’s bill also contains measures to limit the applicability of transitional justice. Both the 2016 Improper Property Act (The Act Governing the Settlement of Ill-gotten Properties by Political Parties

and Their Affiliate Organization) and the 2017 Act on Promoting Transitional Justice are limited in time to the period from 1945 to 1992, excluding any consideration of the need for transitional justice for victims of human rights abuses that occurred after 1992. In short, although President Tsai has won international recognition for her efforts to promote transitional justice, it is my conclusion that Taiwan still has work to do in this respect.

### *8. Conclusion*

Transitional justice emphasizes the concept of facing up to historical mistakes and pursuing the realization of social justice. It is the responsibility of leaders of successive regimes to correct the mistakes made by the old regimes in the past, and rectify the historical injustices. This is an obligation and responsibility that a democratic society should not avoid (Bohl 2006). Transitional justice must transcend the limitations of the past legal framework and use appropriate means to solve the problems left over by the old regime. Otherwise, historical injustice will not be righted, and the society will not be able to complete a successful transformation (Mihai 2010).

The Office of the United Nations High Commissioner for Human Rights (OHCHR) offers a full program of transitional justice. Based on its criteria, the Tsai administration should also confront the human rights cases of persecution of religious beliefs initiated by the KMT government in 1996, during Taiwan's post-authoritarian period. These cases are typical of the illegal and unjust acts perpetrated under the KMT government, although they occurred after 1992.

In particular, the Tai Ji Men case is a typical example of human rights violations by the post-authoritarian regime during Taiwan's slow transition to a democratic regime. It also shows that the tax system at work from 1992 to 2020 was still not a modern system respecting the principles of separation of powers and checks and balances for the purpose of protecting human rights, and still maintained residual effects of the authoritarian period, which continued to harm basic human rights and hinder social progress. The Tai Ji Men case also highlights that in Taiwan's post-authoritarian regime, administrative courts do not fully protect human rights and continue to serve as a tool to shield the mistakes of the administrative power.

The evidence is as follows: (1) More than 9,500 explanatory letters and orders of the Ministry of Finance govern the tax administration. The explanatory letters and orders go beyond the law, and make the executive power hegemonic over the legislative power, which seriously violates the principle of legal control of the tax system. The Legislative Yuan has no room to comment on the explanatory letters and orders. (2) The administrative courts do not understand the intricacies of the tax law, which means that they rely on the NTB's reports, with the result that more than 94% of tax cases are decided against the taxpayers, who have no effective remedy against unjust taxation. (3) The Ministry of Finance and its subordinate tax authorities, in addition to quoting laws and decrees, also use letters of explanation to offer frequent interpretations that are unfavorable to the citizens' rights and interests, and favorable to the NTB. (4) The Legislative Yuan itself cooperated with the administrative organs to give tax officials bonuses and promotion incentives, with the result that imposing excessive taxes has invisibly become the collective subconscious of tax collectors, and the original sin leading to violation of human rights. (5) If the citizens refuse to accept the administrative decisions of the tax collectors, they have to pay half of the tax to avoid enforcement before they could act for administrative relief, which discourages action. (6) Tax bureaucrats are afraid of admitting their mistakes, and for this reasons would never give up or admit defeat in a tax lawsuit. Nonetheless, in the infrequent event that they lose a court case, they are not punished for their past mistakes.

President Tsai deserves credit for the judicial reform she promoted after her second election in 2016. However, her reform is focused on criminal law, and does not extend to the authoritarian administration of tax law, which also violates human rights to a great extent.

As we have seen, Taiwan has incorporated two international conventions into domestic law in 2009. The two conventions require that effective remedies to protect human rights and rectify past injustices should be implemented. The judiciary may apply several different methods to effectively ensure the enjoyment of the rights recognized by the conventions, including direct application of the conventions, invocation of Constitutional or other legal provisions including similar concepts, or interpretation from the perspective of human rights under the conventions when applying domestic law. An independent and impartial administrative body, such as the Commission on Human Rights, could also be

entrusted to investigate cases of human rights violations promptly, thoroughly, and effectively so as to prevent the recurrence of such violations.

However, although Taiwan has become a democratic country under the rule of law, as of 2021 it has not yet fully dealt with the problem of transitional justice with respect to the past legal and tax authoritarian system. The current remedy system is still limited to the old framework, and there is no effective relief channel for the illegal administrative punishments after the decisions of the administrative courts. As a result, the way of redress for well-known and obvious miscarriages of justice is still blocked, obviously violating the obligations of the state stipulated in the two conventions.

President Tsai must face up to the various cases of human rights violations caused by the post-authoritarian regime after 1992. Taiwan should apply effective transitional justice to acts of tax authorities as well, transcend the limitations of the existing administrative procedural law and tax law, conform to the international conventions, ask the TJC to investigate all kinds of cases, cancel unjust court decisions that violated human rights, rectify all false cases, and realize the essence of transitional justice, “rehabilitate the reputations.” This is the real transitional justice that will make Taiwan a country of real democracy, rule of law, and human rights.

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