

## Fulfilling a promise to Aborigines

Written by Liu Chiung-hsi 劉清希  
Saturday, 29 June 2019 03:58

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On May 5, 2016, the Council of Indigenous Peoples announced the Executive Yuan's draft regulations governing the establishment of organizations for Aboriginal communities as public juristic persons based on the Indigenous Peoples Basic Act (原住民族基本法). The regulations are intended to enable Aboriginal communities to establish legal entities to allow them to gain the experience and ability needed to enhance their autonomy.

On Aug. 15 that year, President Tsai Ing-wen (蔡英文) visited Orchid Island (Lanyu, 蘭嶼) and reiterated the pledge to implement autonomy for Aboriginal communities and allow them to become legal entities entitled to exert their collective rights.

On March 20, 2017, at a meeting of the Presidential Office's Indigenous Historical Justice and Transitional Justice Committee, Tsai again stressed that the status of public juristic person is an important component of Aboriginal autonomy. Three years after Tsai's administration took office, one wonders if it would ever fulfill these promises.

The community — referred to as “a tribe” in the Indigenous Peoples Basic Act — is the entity comprising Aboriginal languages, cultures and rights to sustainable use of natural resources. More than 700 Aboriginal communities across the nation have been ruled by the authoritarian regimes of Imperial Japan and the Republic of China across at least three and as many as six generations.

For these communities, social and cultural sustainability are already endangered. With less than a year left in her term, Tsai should therefore keep a close watch on the Cabinet to ensure that these communities are given public juristic person status to set them on the road toward sustainable development.

I have asked the council time and again about the progress of these regulations. At the Austronesian Forum in August last year, officials told me the draft was still under review due to opposition from many township offices. This is unacceptable.

Article 2 of the draft states that all local governments — from township offices to city and county governments — are obliged to assist Aboriginal communities to obtain status as public

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juristic persons and provide the guidance they need to facilitate operations. If local authorities fail to fulfill these responsibilities, it is the council's responsibility to oversee and direct the local governments.

There are a few countries where villages and communities enjoy self-governance under autonomous township offices. In Germany, for instance, more than 100 communities have achieved renewable energy self-sufficiency, and power generation exceeding their community needs.

On personal visits, I have seen the importance that autonomy plays in these villages' developments. It has rid indigenous communities in the Mexican state of Oaxaca of drug dealers and crime, allowing them to make the best use of their rights to land and natural resources for economic development.

Even if township and city mayors and county oppose public juristic person status for Aboriginal communities, they should follow the law once the regulation is passed and implemented. Their opposition is not a reason for the Tsai administration to delay discussion of the draft regulations.

As for other possible conflicts within Aboriginal communities, such as disputes over the traditional cultural institution of chieftain or relations with borough offices and community development associations, the draft also provides flexible measures based on democratic principles. The public entity established through public juristic person status is the only representative of its community, culture and natural sovereignty. If a dispute over territory or its culture's intellectual property rights cannot be settled by the public entities representing the two communities, they can go to court.

Once the indigenous community public juristic person gets under way, Aboriginal communities would be able to act in accordance with Article 4 of the draft, for example, implementing matters required by the law, such as carrying out tasks commissioned by administrative authorities, operating the community's public enterprises, establishing funds and managing village assets.

Taiwan is finally catching up with the global green economy trend: Since 2016, the Agriculture

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and Food Agency has been pushing environmentally friendly farming, and starting last year, the Bureau of Energy has been encouraging community development of green energy generation.

The Forestry Bureau and the Fisheries Agency should follow suit by promoting sustainable use of forestry and marine resources by Aboriginal communities in compliance with the UN Declaration on the Rights of Indigenous Peoples and the Convention on Biological Diversity as a replacement for the Forest-Mountain-Borough-Sea Initiative and the current collaborative natural resource management by the government and local Aboriginal communities. This could turn such communities across the nation into ecological villages in three to five years after their ratification as public juristic persons.

The status would also protect Aboriginal communities' rights from being infringed, prevent destruction of the ecological environment and stop Aboriginal society and culture from further disintegration.

For example, in April last year, the Taitung County Government leased out a parcel of land of about 200 hectares on the north bank of Jhihben River (池坪) to the Shengli Energy Co preparatory office — a subsidiary of Singapore-based Vena Energy, which won the bid through a public tender for a solar power development project — without obtaining the consent of the Aboriginal communities.

It was not until June 1 this year that the local government remedied the situation by holding a vote to consult the communities and obtain their consent as required by Article 21 of the basic law. However, the voting procedure did not include the Kasavakan community, which shares the land as part of their traditional territory. Meanwhile, in the Katatipul community, non-Aboriginal residents also participated in the vote, which should have invalidated the vote, in which “yes” votes exceeded one-half of the total number of votes.

If these communities had enjoyed public juristic person status, they could have arranged a public tender for a solar power development project themselves. This would have given them not only the NT\$20 million (US\$643,294) they would now get over the next 20 years — a mere one-10th of what the company is paying — but rather more than NT\$100 million. The rest would be paid to higher-level governments, such as the city office and the county and central governments.

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Taiwan claims to be a democratic nation built on human rights, but autonomy for Aborigines is not on par with other developed nations. The implementation of sovereignty requires a governing institution. The Tsai administration must help Aboriginal communities obtain public juristic person status soon to comply the UN Declaration on the Rights of Indigenous Peoples and Taiwan's Indigenous Peoples Basic Act.

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Translated by Chang Ho-ming

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