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## Unfinished Democracy: Transitional Justice in Taiwan

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### Abstract

The article attempts to describe Taiwan's progress and a difficult position in practicing transitional justice during its democratic process. The first section reviews Taiwan's democratic progress and the impact on the implementation of transitional justice caused by a regime transition type. The second section describes Taiwan's authoritarian rule period, from February 28 Incident to the White Terror's political types of political cases. The third section analyses the reasons for Taiwan's unfinished transitional justice. The article claims that during Taiwan's political engineering of transitional justice, compensation for the victims was almost the only act of it and at the same time lacking legal or moral prosecution of the inflictors and the truth discovery. Taiwan has never had an opportunity to reflect on the damage caused by the system of the authoritarian rule, so that many inflictors or cooperators of the system have continued to serve in the democratized government in key positions, which has resulted in the prevailing phenomenon of impunity. Such a handling mode to compensate the victims, not willing to investigate the inflictors and seeking the historical truth, cannot solve the crime left by the authoritarian era alone, but it can also bring about a serious crisis of democratic governance in Taiwan.

**Keywords:** Transitional Justice, Human Rights, Political Reconciliation, Taiwan

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### Preface

The way a new democratic government deals with compensation or investigations against the previous authoritarian regime's violations of human rights is an important political engineering tool to system design and policy planning to integrate the supporters and victims of the previous authoritarian regime as well as to find a balance to avoid "too many memories or too much forgotten" [Minow, 1990] in order to achieve political reconciliation and ensure that the immoral conduct

will never again be repeated, is the subject of continuing concern of the democratic transition society.

Like many Asian countries, Taiwan has experienced a period of colonial history and an authoritarian rule. From 1947 to 1987 Taiwan experienced a period of enforced martial law. In modern history, there is no country that has experienced such a long period of martial law. After abolishing martial law in 1987, Taiwan began to enter the liberalisation process, marching forward towards the so-called third wave of democratization. In 1996, Taiwan's direct presidential election was held and Li Deng-hui was elected as the first democratically elected president. It is the symbol of an important milestone in Taiwan's democratization. In 2000, it experienced for the first time the rotation of ruling parties. The opposition party candidate Mr Chen Shui-bian was elected president, defeating the Chinese Kuomintang, that had ruled Taiwan for nearly half a century. In 2008, Kuomintang was once again in power, Taiwan experienced two peaceful transitions of political power, in accordance with the statement of two-turn-over test [Huntington, 1991], successfully achieving the "democratic consolidation" stage.

Since the abolishment of martial law in 1987 till now, i.e. for more than twenty years, Taiwan's democratic achievement has been considerably approved and praised internationally. However, there are still some issues deliberately suppressed and not properly solved in the past, that have gradually emerged. Transitional justice is one of such obvious examples. On transitional justice issues, Taiwan has followed the approach of "compensating the victims, but not investigating the inflictor". However, such a financial compensation mechanism cannot handle all the political and social effects caused by transitional justice issues alone, but even affect Taiwan's democratic development and political stability.

This article attempts to describe Taiwan's progress and a difficult position in practicing transitional justice during its democratic process. The first section will be the review of Taiwan's democratic progress and the impact on the implementation of transitional justice caused by a regime transition type. The second section will describe Taiwan's authoritarian rule period, from February 28 Incident to the White Terror's political types of political cases. The third section will analyse the reasons for Taiwan's unfinished transitional justice. This article claims that during Taiwan's political engineering of transitional justice, compensation for the victims was almost the only act of it and at the same time lacking legal or moral prosecution of the inflictors and the truth discovery. Taiwan has never had an opportunity to reflect on the damage caused by the system of the authoritarian rule, so that many inflictors or cooperators of the system have continued to serve in the democratized government in key positions, which has resulted in the prevailing phenomenon of impunity. Such

a handling mode to compensate the victims, not willing to investigate the inflictors and seeking the historical truth, cannot solve the crime left by the authoritarian era alone, but it can also bring about a serious crisis of democratic governance in Taiwan. How to seriously face the transitional justice is an important topic for deepening Taiwan's democracy.

## What Is Transitional Justice: The U.N. Integrated Viewpoint

The so-called "transitional justice" refers to the idea that after a society's transition from the authoritarian democratic society, the government rehabilitation work for justice restoration and social reconciliation should amend the political, ethnic or racial split caused by the previous government's political oppression by violating human rights during the authoritarian period. It seeks to recognise the victims and also tries to achieve peace, reconciliation and democracy. Thus "the International Center for Transitional Justice" has coined the following definition of transitional justice:

Transitional justice is a response to the past institutional, large-scaled and human rights violation. It seeks the recognition of the victims and also tries to achieve peace, reconciliation and democracy. Transition justice is not special justice, but the justice pursuit in the changing society that has gone through the large-scale human rights violation. ... These changes are generally called democratic transitions, therefore such justice is called transitional justice.

Under this definition, transitional justice's main works include: 1) Compensation for the people or their families who suffered from losing their bodies, freedom and lives, returning the confiscated property. 2) Investigation and finding out legal or moral responsibilities. 3) The whole presentation of the truth and history of political persecution<sup>1</sup>.

As an international organisation of ensuring basic human rights, the United Nations over the years has spared no effort to promote transitional justice, emphasising that the way a politically transitional country treats the legacy of the past is the premise of the establishment of society with the rule of law and social reconciliation<sup>2</sup>. To re-

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<sup>1</sup> The International Transition Justice Center's work can be divided into: 1. Establishing the truth about the past. 2. Prosecution of the perpetrators. 3. Reparation of the victims. 4. Memory and memorials. 5. Reconciliation initiatives. 6. Reforming institutions. 7. Vetting and removing abusive public employees.

<sup>2</sup> According to Ruti G. Teitel's observation, the second half of the twentieth century's transitional justice experience can be divided into three periods: 1) the first period dated after World War II, judgment at Nuremberg was its representative. 2) the second period's transitional justice was related to the so-called third wave of democratization. In particular when the Portuguese dictatorship collapsed in 1974, and

build trust of the society, it needs an official public acknowledgement of the fact that human rights were violated, asking the inflictors to take responsibilities and heal the wounds of the victims and their families. Therefore, in 2004 the former U.N. Secretary General Kofi Annan made a remark in the Council's report (S/2004/616) that in order to assist countries to guarantee basic human rights and maintain regional peace, the United Nations should pay special attention to the issues of transitional justice and the rule of law of the in or post-conflict states. Annan defined in this report "transitional justice" as "all procedures and mechanisms conducted and established, while the society handles legacy caused by a large-scaled abuse of power. It eradicates responsibilities, adheres justice and achieves reconciliation" [UN, 2004].

And at the U.N.'s official agencies, the Office of the High Commissioner for Human Rights is the major body to promote and implement the works of transitional justice. So far, the Office of the High Commissioner for Human Rights has provided support to more than 20 countries' transitional justice programmes in the world, including assistance in establishing the national consultation plan, support for the setting up of the truth commission and the establishment of mechanisms and reparations programmes of judicial accountability. On the other hand, in order to provide every country's transitional justice reference, the Office of the High Commissioner for Human Rights published "the Rule-of-law tools for post-conflict States", providing a complete scheme including prosecution, compensation, accusation, amnesty and truth commissions, as well as the collection of practical experiences and methods as important reference criteria for any country that pursues transitional justice.

Except for the relevant guidelines and stipulation of March 24 as the annual international observances for understanding the truth and defending the victims, emphasising the importance of keeping the memory of the victims, understanding the truth and publishing a series of reports, on September 26, 2011, during the nineteenth session of the United Nations' Human Rights Council, the further confirmation of the appointment of the Special Rapporteur of the promotion of truth, justice, reparation and guarantees of non-recurrence was made. His term of service is three years and he is responsible for transitional justice-related affairs. On 22 March, 2012 during the nineteenth session of the United Nations' Human Rights Council, the former director of the International Center for Transitional Justice Pablo de Greiff

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many authoritarian regimes in South Europe, Asia, Latin America and Eastern Europe collapsed, the democratic countries in transition had to properly handle the legacy of authoritarianism, so democratic consolidation and implementation became the main topic of this period. 3) the third period appeared at the end of the twentieth century, pursuit of the transitional justice gradually became customary instead of a special case. The international law of war and international humanitarian law of war became substance of justice. NATO's intervention in Kosovo in 1999 was a milestone in this period.

was officially appointed as the Special Rapporteur of the promotion of truth, justice, reparation and guarantees of non-recurrence. His term of service is three years and he is responsible for transitional justice-related affairs. This also demonstrates the determination of the U.N.'s promotion of transitional justice. Since Pablo de Greiff took office, he has continuously promoted a holistic approach of transitional justice, emphasising the “promotion of truth”, “justice”, “compensation” and “a guarantee of not happening again”. These are the four elements of transitional justice, not random combinations of concept and experience, but related to each other having a complementary relationship. The experience of promotion of transitional justice in many countries has shown that the equal treatment of these four elements is to the advantage of transitional justice, and the target of reconciliation could not be realised on the premise of absence of these elements.

For example, judicial prosecution requires not only the pursuit of truth, but also calls for an action, based on the revealed truth, just only revealing the truth is not enough to compensate for the damage caused by crime. The compensation scheme needs to be carried on simultaneously with the prosecution, the beneficiaries of the compensation scheme would be more willing to take the compensation as compensation, instead of merely discretionary compensation measures. The final report of the Truth Commission itself is a compensation measure that helps to rebuild the citizen trust. And without the measures of a structural reform, such as vetting, it is not enough to ensure that violations will not occur again. Pablo de Greiff has also emphasised that the promotion of transitional justice is a process of pursuing civil trust. With the process of pursuing the truth, people can realise the fear and distrust between the victims and bystanders, citizens and the state under the dictatorial regime. They can also realise how under the dictatorial regime, fear exerts an unparalleled influence on life and effects the system maintenance because of timidity, cowardice and weakness caused by the political fear of bystanders. As the late political philosopher Judith Shklar said, the political fear provides epistemic foundation, that helps us understand the basis of political world and its limitations [Shklar, 1987].

On the other hand, in the hegemony context constructed by the previous dictatorial regime's violence system, it is difficult for political victims to present exactly the history which is different from that one presented by the mainstream society and give a strong response to the truth contradictors who denied their history. Therefore, through the process of prosecution or pursuing the truth to let the victims and their families answer the oppression state of political aphasia and recognise again their ability of thinking, speech and action, would be an important step of the political reconciliation process. The goal of authoritarian regimes is to deprive the victims of

the opportunity to air their views, their experience and their power of description of their historical role. Thus, to present the victims' voice and correct the political aphasia is an important prelude to the truth discovery process. And the implementation of compensatory measures can demonstrate how a political system seriously faced all kinds of violations in the past, so as to encourage the citizens' confidence in the system. Finally, the personal vetting of public officials can show the determination of building the systematic criterion in the new democratic system, rebuilding the criterion of civil servants recruitment, remaining in employment and discipline supervision and prevent from cronyism to enhance trust in the system. If the system is still full of inflictors, the victims may not be willing to trust it, even though some of the inflictors might have been prosecuted.

More importantly, the goal of transitional justice is not only the one of collective healing and compensation, but to restore the political victims and their families' political subjectivity, rebuild their rights and self-esteem of citizenship and make them become not only the providers of the truth, but also the participants of collective memory reconstruction and the citizens who actively defend collective memory. For example, in 2007 during the Peruvian election, political victims' groups pointed out a definitely improper human rights violation record of a candidate, and they demonstrated to express their demands. Their roles are not only the ones of the protectors of collective memory, but also the gatekeepers that prevent from democratic retreat and authoritarian restoration.

This way of transitional justice which emphasises comprehensiveness was approved on the experience level. The set up study carried on by three political scientists Leigh A. Payne, Tricia D. Olsen, and Andrew G. Reiter, covering 848 mechanisms in 161 countries over 40 years, showed that one mechanism that applies (amnesty, trial, truth commission) usually does not have a positive effect on the protection of democracy and human rights, therefore these authors emphasised that different mechanisms' integration approach is better for the promotion of human rights and democracy [Olsen et al. 2010].

It is not easy to address and face the darkness of history, especially when those torts and institutions have once existed in a legal state and caused long-term fear and the silence of people. But from the integration approach we can see that when a society can, from the above-mentioned work, declare democracy and human rights values it respects and also declares this society's injustice of the past, and it will not choose to forget and ignore, but will face the mistakes and prevent from further blunders. Through the truth and history, we will remind and educate future generations that democracy cannot be established in a society without historical justice. However, political persecution often results in a large-scale and a long-term

social disruption, so that the work of pursuing transitional justice has a high degree of political sensitivity.

On the other hand, due to the different historical and political environment of different countries, different ways are often adopted to deal with the above-mentioned works, such as the investigation of the inflictors, because this work often endangers political stability and the social disruption of a new democracy, so that different countries take different approaches. Samuel Huntington [1991] has pointed out that after the establishment of a new democratic government, the factors which decide whether it will retrospect the crimes committed by the authoritarian regime or not, are not often moral or considered ethical but simply political. It means that the nature of the democratic transition process<sup>3</sup> and the balance of powers<sup>4</sup> during the transition period<sup>5</sup> and afterwards would be an indication of whether or not and how the country should conduct transitional justice. Therefore, according to the differences between historical and political contexts, the countries should handle carefully the authoritarian legacy in different ways, so that the social disruption can be reconciled and the democratic culture can consolidate a new democracy.

## Taiwan's Authoritarian Regime and Political Transition

Many scholars have described that before 1947, the Kuomintang regime in Taiwan had been an authoritarian regime, and the so-called authoritarian regime was "limited, rather than a pluralistic and responsible regime; a spiritual, rather than ideological regime; a controlling, rather than mobilising regime" [Linz, 1975]. In addition, unlike the Philippines or any other colonised countries, which were established by

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<sup>3</sup> Huntington has pointed out that the three ways of democratic transition will lead to different transitional justice promotion types: 1. Transformation: the new ruling elite conducts transformation from top to bottom. While the new ruling elite after transformation, still retains great political power (such as Spain and Taiwan). 2. Replacement: launched by the opposition, such as the Czech Republic. 3. Trans-placement: jointly launched by the ruling and opposition parties, such as Argentina, Chile, and South Africa.

<sup>4</sup> In other words, after the democratic transition, the proportion of various political forces in the power structure will have an impact on the proceedings of transitional justice. For example, the larger the older forces of the authoritarian regime are, the more difficult it will be to resolve the transitional justice issue.

<sup>5</sup> The nature of an authoritarian regime will decide if the transitional justice can be put forward. For example, Tina Rosenberg thought that the communist regime in Eastern Europe is a criminal regime. It was ruled by ideological indoctrination and asked people to participate actively, support and cooperate, so there was less political violence during the ruling period. On the contrary, the Latin American regimes were the regimes of criminals, who put high pressure on ruling during their governing period. There has been much brutal political violence, but mainly aimed at political opponents.



Western democratic powers, Taiwan's institutionalisation began in the period of Japan's imperial colonial ruling. For this reason, Taiwan's inheritance of human rights and democratic values is considerably low [Cheng, 1989, p. 473].

In 1945, the Kuomintang took over Taiwan from the hands of Japan and ruled the territory. Later the Kuomintang led by Chiang Kai-Shek fled from the Communist Party Forces in China and retreated to Taiwan in 1949. After Chiang's retreating to Taiwan in 1949, he established *de facto* a state – the Republic of China (R.O.C.) representing the political authority he had lost in China. The same year, Taiwan Garrison Command declared implementation of the martial law. Yet, the implementation of the martial law had been based on the civil war, and it was set up to be used as a temporary measure. And yet the implementation of the martial law in Taiwan lasted for 38 years. It ended in 1987. At that time, the political atmosphere of the country had obviously restricted human rights and extended them to the social area by repressing social movements. In the culture area, the state resorted to the ideological indoctrination and manipulation of mass media, so that Taiwan's media were in the shackles of a series of strict legal norms and policy control of the media<sup>6</sup>.

According to Chao and Myers' views, this kind of authoritarian regime is firmly committed to four political rules, the depicted boundaries between the acceptable and unacceptable political behavior.

1. Freeze temporarily the 1947 Constitution and take "Temporary Provisions effective during the period of the Communist Rebellion" as a basis of all laws in Taiwan's ruling period to meet the political realities that dominated only in the Taiwan province. Many civil and political rights were inhibited and circumscribed<sup>7</sup>, and therefore the constitutional structure gave way to the authoritarian rule.
2. Maintaining one-party rule of Kuomintang. KMT emphasised that the anti-China policy had not ended. Even if Kuomintang regime had transferred to Taiwan, under incompatible thinking, the R.O.C. authorities still insisted that there is only one China, and the Republic of China is the sole representative of it.
3. Promoting local participation, but not allowing new political parties to assign candidates for election. In 1948, the Kuomintang government through "Temporary Provisions effective during the Period of Communist Rebellion" delayed the

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<sup>6</sup> The main sources of laws and regulations are "Temporary Provisions Effective During the Period Communist Rebellion", "martial law" and "law of publication". See Tien [1989, ch. 9].

<sup>7</sup> In fact, the Constitution lists the important civil and political rights. For example, article 9 to article 24 of the Constitution includes the freedom of speech, assembly and association, the freedom of writing and publication, the freedom of worship and the freedom of confidential communication; the right to work, property, education and the right to take examination to a public service and so on. The R.O.C. Constitution seems to be the same as that of most democratic countries in the world, but these rights were limited on the basis of Emergency Provisions.



legislature elections on the central hierarchy level, so the election competition was limited to the local level [Cheng, 1989; Tien, 1989].

4. Permitting a limited space for the freedom of thought, but did not allow the existence of anything to do with Marxism, Leninism, socialism or any hypocritical criticism that might shake the legitimacy [Chao, Myers, 1994, p. 216]. The Kuomintang promulgated an ideology based on Sun Yat-sen's "Three People's Principles", in addition, the separatism and defense of Taiwan's independence were also prohibited.

Under the fetter of colonial rule and the authoritarian regime, undoubtedly, there were a lot of human rights violations which had occurred in the past authoritarian regime period. During the implementation of the martial law, human rights were violated. In the name of endangering national security, people could be easily arrested, imprisoned or executed. For example, the prohibition of organising political parties by people, and a partial deprivation of the freedom of speech, the freedom of assembly, the freedom of association and the freedom of communication. We can say that, the picture of Chiang Kai-shek's one-party dictatorship is a right-wing government with a half-Leninist and semi-colonial mixture.

In February 1947, that is the previous year before "the Universal Declaration of human rights" was issued, the Kuomintang government triggered riots across the island, "February 28th incident". Nearly thousands of people were massacred, "clearing up rebels report to the people" issued to search the country and eliminate rebels, setting up another state terror period. The peak of the state terror period occurred in 1955, widely known as the "White Terror" period.

Although under such a harsh political rule, ironically, the Kuomintang did not refuse to accept the validity of norms of the international human rights. In those days, the KMT was not only the U.N. member state, but it was also a permanent member state of the U.N. Security Council. The KMT government did not only assist with the adoption and signing the "Universal Declaration of Human Rights", but it also ratified and delivered "the Convention of the Prevention and Punishment of the crime of Genocide" [Huang, 2001, p. 3]. Although the KMT hypocritically set a domestic law version of the Convention of the crime of genocide, and included it in Taiwan's law books, but at the same time, "White Terror" reached a peak. In 1971, before Taiwan quit the United Nations, the R.O.C. had indeed signed and ratified seven human rights conventions, such as the International Convention of Civil and Political Rights, as well as the International Convention of Economic, Social and Cultural Rights (two conventions for short), though once the official documents were completed, they were locked in the Foreign Ministry's archival repository. In order to highlight the "Free China" image, the KMT government took these conventions

as the country's decorative facade. During the Cold War, the American government regarded the R.O.C. importance as a non-communist bloc ally, and accompanied it to combat the People's Republic of China, until president Carter took office and decided to complete the normalisation of relations with the People's Republic of China. Since 1945, the United States has accepted and protected the KMT that it could rule the Taiwan island effectively, emphasising that the Kuomintang regime was the sole legitimate government of China. After the Korean War broke out in July, 1950, Taiwan was taken by the United States as the "cornerstone of the Pacific Rim", an effort to prevent an expansion of communist forces<sup>8</sup>. As the U.S. ally and with the United States' support, despite the Kuomintang government had lost its legitimate right to rule in mainland China, it still maintained its declaration as the sole legitimate representative before 1949 [Tien, 1989, p. 217]. "Return to the mainland" slogan strengthened the position of the Kuomintang regime, and as a reason for internal implementation, the Kuomintang regime could strengthen the authoritarian rule.

In addition, since the outbreak of the Korean War, the United States committed to defend Taiwan. Chiang Kai-shek had peace of mind without the danger of concentrating power in his hands and took the clearing-the-country measures immediately.

Under the martial law, a vigorous civil society could not exist. One reason was that most of the local elite in the "White Terror" period was killed, imprisoned, terrified or forced to flee, therefore an organised counterforce against the authorities was difficult to form. The other reason is that the implementation of the martial law successfully destroyed all the political counterforces that attempted to form some structures.

With the lifting of the martial law in 1987, Taiwan entered the process of liberalisation, and became a part of the so-called "the third wave of democratization". People's fears began to extinct, and as Lee Teng-hui was elected president in 1996, Taiwan was transformed to a stable, open and democratic system. Lee Teng-hui often referred to the norms of the human rights to describe and comment his ruling and distinguished it from the others, such as Lee Teng-hui and Lee Kuan Yew's opposing positions. Lee Teng-hui severely criticised Lee Kuan Yew's so-called Asian Value Discourse, and was proud of his democratic achievements. The western media called him "Mr. Democracy".

However, after the system change, Kuomintang did not collapse and it kept its ruling until 2000. This could be regarded as a special case among the countries in the third wave of democratization. When the process of democratization was launched,

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<sup>8</sup> In 1954, the Sino-American Mutual Defence Treaty let China and America become the military alliance under the global strategy of Eisenhower-Dulles to contain the communist camp with military allies. See Tien [1989, p. 217].

the western countries relieved stress on Taiwan's democratic transition practice and transferred focus to other countries. Although the Kuomintang government did not deregulate certain civil and political rights, it did not actively open up more other rights, either. With an unreal image of a democratic country, the pressure from the anxious international community decreased. Finally, the Democratic Progressive Party as the opposition party, successfully defeated the Kuomintang government in the election in 2000. The new government used some measures to express its opposition. In May 2000, President Chen Shui-bian of the DPP promised in his inauguration speech that he would abide by the international human rights standards and hold an independent human rights conference, with reference to the recommendations of the Amnesty International and the International Commission of Jurists, in order to achieve his oath<sup>9</sup>. Meanwhile, President Chen Shui-bian established the Advisory Committee of Human Rights for which the Vice-President took the sole responsibility, and established the Commission of Human Rights Education in the Ministry of Education.

However, during the eight years of ruling by DPP, its promotion of transition justice did not exceed the Lee Teng-hui era. They focused on the issues such as redress for the Kaohsiung Incident and the recovery of the KMT party assets. The former one was at stake with the self-evaluation from outside the party becoming the ruling party and the publication of related books; the latter made Taiwan's society ignore the real meaning of transitional justice, so many people regarded the idea of the "recovery of the Kuomintang assets" as synonymous with transitional justice and the distinction between blue and green parties. Until the second term, President Chen Shui-bian began to take more specific transitional justice measures. For example, in 2004 he directly gave an order to the Defense Department with the political force to inspect the rebellion case. But once more the alternation of political parties in 2008 made the KMT regain power, and during the new presidency, Ma Ying-jeou's attended the official ceremony of the "February 28 Incident" and the "White Terror" year by year, yet, he was not willing to apologise. At the same time he also uninterruptedly paid homage to the dictators such as Chiang Kai-shek and Chiang Ching-kuo at their mausoleum, showing his remembrance to the former heads of state. It is obvious that the leader who represented the KMT regime did not understand the moral and cognitive conflict between the two, not to mention any measures related to the transitional justice conducted by this man or his regime.

As Samuel Huntington [1991] pointed out, that after the establishment, the factors which decided whether or not or how the new democratic government retracts crimes

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<sup>9</sup> See <http://www.taiwanheadlines.gov.tw/chen/chen01.htm>

of the authoritarian regime were not moral or considered ethical but the nature of the democratic transition process as well as the power of balance during and after transition decided whether or not and how this state conducts transitional justice. When Taiwan's transitional justice project was conducted by the ruling elite from top to bottom, the old ruling elite after the transition, still retained a great political power in Taiwan. As a result, during the democratization process, unlike in other emerging democratic countries, Taiwan did not establish a dedicated institution like "the commission of truth and reconciliation" to deal with transitional justice, resources and public power. On the contrary, Taiwan government's dealing with the authoritarian legacy overweighed compensation for victims of political cases, paying almost no attention to the introspection of the flawed system, even the works related to the cardinal democratic values such as a serious investigation of historical truth, and tracing legal or moral responsibilities.

## Taiwan's White Terror Political Case Type

After the declaration of the martial law in Taiwan on the 20<sup>th</sup> of May in 1949, according to "the martial law" Article 8 (the expansion of military jurisdiction), the crime of insurrection and treason committed during the martial law period could be judged by military authorities or by court. And since the criminal law was promulgated and implemented in 1935, Article 100, paragraph 1 states: the one who intended and began to implement damage to the state, usurpation of the land or change of the country's constitution by illegal means, subversion of the government, could be sentenced to seven years' imprisonment, and the first colluder would be sentenced to life imprisonment. The second paragraph: the one who prepares or conspires to commit the previously mentioned crimes could be sentenced to imprisonment, at least six months to five years. It means that not only could the conspirators be punished, and the idea of "begin to implement" was not only limited to the use of violent and coercive methods, but also the common crime of insurrection could be committed on grounds of the ideological level.

Thus, in 1948 the Republic of China entered the period of the Communist Rebellion, in 1949 Taiwan imposed martial law, which ended in 1987. During those 38 years of the martial law regime, many civilians were involved in the crime of insurrection, treason, like all kinds of political cases mentioned above, and were judged by the martial court improperly including the native Taiwanese or Mainlanders and all kinds of occupation at different levels of education. Those who held an official post in the army were judged more severely by the martial court because of the nature

of ruling at that time. Among so many political victims, the well-known ones after the lifting of martial law were interviewed several times or wrote down their memoirs, so that future generations could learn little about them and the incidents. But there are more political victims who have never told others about their own experiences and who died gradually without leaving historical witnesses<sup>10</sup>.

After the lifting of the martial law in Taiwan, many scholars got engaged in political case studies<sup>11</sup> but due to the lack of oral history, the blockade of archives, we are still unsure how many people suffered from political persecution during the long period of martial law, and we have no statistical analysis of the case type so that the description of the “political victims” research number is vague and the gap is very big. Citing the survey of Hsieh Tsung-min [2007], Li Hsiao-feng [2001] thought that there were 140 thousand people suffering but Hsieh Tsung-min who based on Li Ao’s saying, believed that there were in total over 29 thousand political cases. This was due to the long-term negligence of Taiwan’s transitional justice works, and the lack of activity and blockade of the opening of official political archives, so the whole image and the number of political victims of the White Terror could not be really obtained. However, we still have some access to the powerful file of reference from the currently known data. The most worthy reference data: one is the showdown inspection of the rebellion in which Chen Shui-bian of DPP gave order to the Ministry of Defense to conduct after he had been reappointed. The “inspection on the special case of rebellion and spies for China’s communists trial during the martial law period” was published by the Ministry of Defense in 2005. The case file shows the rebellion and spies during 1945–1994 who were sentenced by the Ministry of Defense. There were in total 16,132 people involved, including the arrested, sentenced as well as those who possessed only a case card data. The second was the number of 7,838 people who received compensation till April 2013, after “the Compensation Ordinance on

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<sup>10</sup> By the end of 2007, a group of Taiwanese scholars along with culture and history workers who were concerned about transitional justice set up “the Committee of truth and reconciliation in Taiwan”, beginning a long-term “interview program of political victims in the authoritarian regime period”, which trained nearly 100 young interviewers and conducted interviews with 239 victims and their families, many of them were of old age but it was the first time they gave a detailed account of their suffering experience. There were also young scholars like Lin Chuan-kai who, at their own expense, conducted oral history interviews with the underground Communist Party members in the fifties, to clarify Taiwan’s White Terror history. In these civil spontaneous actions of “pursuing historical truth”, we could gradually join together to track people’s experiences during the authoritarian period. One of the most important discoveries was to dig out more types of cases and a further analysis of the structure and influence on history.

<sup>11</sup> Such as Jang Yan-shian’s study of the Taiwan independence case, Chen Cui-lien’s [2009] study of the spy system, Fan Yen-chiu [2009] study of indigenous rebellion against the elite, Wu Jui-jen [2008] research into the establishment of the state, Chang Yen-hsien, Chen Feng-hua [2000] interview study of Hsueh Hua-yuen, Yang Hsiu-ching [2004] study of the history of Taiwan’s authoritarian regime and democratic process, Li Shiao-feng’s study of political cases types.

the false trial cases of rebellion and bandit spies during the martial law period” had passed, including 6,638 people sentenced or subject to resocialisation. The Compensation fund has got a large number of official political archives and statistics of the death penalty time and provincial statistics through the victims’ own statement, which is very good for reference. Although the exact data remain an estimation for further study, and the above conclude two political cases and the related criteria are different, but the above indirect data are available as the basic framework for White Terror case analysis. For example, whether there were 16,132 or 6,868 cases and in the fifties those cases accounted for 60 or 70 percent of all.

**Table 1. Taiwan’s Postwar (1945–1994) Rebellion and Bandit Spies Trials Statistics**

Year	Quantity	Percentage
1945–1949	398	2.47%
1950–1959	9,478	58.75%
1960–1969	1,844	11.43%
1970–1979	1,532	9.50%
1980–1989	2,850	17.66%
1990–1994	30	0.19%
Total	16,132	100.00%

Source: Chiu jung-chu, Hsieh Hsin-ju [2006, p. 68].

Year	Quantity	Percentage
1949–1950	1,395	20.31%
1951–1960	3,807	55.43%
1961–1970	933	13.59%
1971–1980	634	9.23%
1981–1989	99	1.44%
Total	6,868	100.00%

Source: By May 12 2008, estimated by legal section of the compensation foundation on the false trial cases of rebellion and bandit spies during the martial law period.

On the other hand, according to the compensation data statistics of the compensation foundation of the rebellion false trial cases and bandit spies during the martial law period, there were 57% Taiwanese political prisoners, other provinces accounted for 43%. With regard to their occupation, most of them were soldiers and civil servants. The rest of them belonged to all kinds of occupations, including a quite large number of students. Although there were more victims of Taiwanese origin, but the proportion of the involved mainlanders to the whole population is higher. All the involved represented many trades and professions: after 1953, Taiwan approximately broke up with the Communists. In order to affirm the ruling entity and

the number of refugees to be resettled, a census was conducted in 1956. At that time the non-native population was about 930,000 plus 270,000 of the military personnel without a permanent address, which constituted 13%, i.e. 9.37 million of Taiwan's population. However, the proportion of mainlanders involved was 30% of the total, among them the death penalty proportion was up to 23% of the total death penalty<sup>12</sup>.

**Table 2. Compensation Foundation and Jang Yan-shian “Provincial and Death Penalty Statistics According to Written Courts’ Decrees”**

Category	Province	1949–1960	1961–1987	Total
General	Native	2,799	449	3,248
	Mainlander	907	514	1,421
Death penalty	Native	600	12	612
	Mainlander	139	47	186

Source: the project plan of the compensation foundation on the false trial cases of rebellion and bandit spies during the martial law period “the analysis of number and type of Taiwan’s post war political cases (1949–1987), p. 61. Led by Chiu Jung-chu and co-led by Chang Yen-hsien and Tai Pao-tsun. Realization time from September 2008 to June 2009 (Unpublished).

This type of political cases has quite a heterogeneous nature. For example, Chang Yen-hsien (Project Plan [2008]) has pointed out that according to the detailed cases in the written judgments, it could be divided into 18 categories. With regard to the quantity, “underground Communists”<sup>13</sup> constituted one-third of the total, but since 1961, the decline has been quite big. The “suspected bandits” also represented one-third, evenly divided during the whole martial law period<sup>14</sup>. In addition, the “traitors favored by propaganda” represented 30%, especially after 1961, the proportion increased a lot<sup>15</sup>.

<sup>12</sup> But in addition to the known political cases, there is still unknown the number of mainlander political victims who died in the July 13 event on Penghu’s, Navy Pioneer Camp, all kinds of collective secret executions or in the cases which can be known well till now.

<sup>13</sup> By the end of 1945, Tsai Shiau-chian and the others, planned the Working Committee of the Taiwan province, adopting the Leninist revolutionary vanguard party principles, clandestine activities and single-line leadership. So, at that time, several underground organisations such as the Working Committee of the Taiwan Province, Taiwan Democratic Self-Government League, Patriotic Youth Association, etc., were in fact all consensually developed underground systems. They were led by the East China Bureau of Shanghai and guided by several commissioners of the Working Committee of the Taiwan province, trying to develop the “Municipal Working Committee” and “District Working Committee” and other three “Posts and Telecommunications, Students and Mountain Working Committee”. In the local system, the “branches”, “groups” and “peripheral organisations” were developed according to township’s administrative regions.

<sup>14</sup> The so-called “suspected bandits” includes ideological leftists, bandit spy supporters, hiding the message of the bandit spies, hiding up, employment or suspected attach to the bandit spies, not confessing one’s crime, being captured, etc.

<sup>15</sup> “Traitors favored by propaganda” includes propaganda for bandits, listening bandit’s broadcast, graffiti, publishing dissatisfied remarks. Today the above mentioned behavior seems to belong to the



**Table 3. Compensation Foundation and Jang Yan-shian “Provincial and Death Penalty Statistics According to Written Judgments”**

Case classification	1949–1960	1961–1987	Total
The underground Communist Party	339	134	473
Suspected bandits	183	258	469
Traitors favored by propaganda	45	271	316
Taiwan independence organisations	6	52	58
Reading groups	5	25	30
Democratic movements	1	2	3
Indigenous independence movements	0	2	2
Other political forces or groups	13	5	21
Political power struggle	0	1	1
Soldiers going over to the enemy	16	11	27
Leaking military secrets	22	45	67
Leaking official secrets	5	3	8
Illegal military groups	4	3	7
The intention of mutiny	2	3	5
The intention of using forces against the government	0	3	3
Students drafted into the army	2	0	2
Framing others	14	30	44
Others (including being not guilty)	3	1	4
Total	660	849	1,509

Source: a project plan of the compensation foundation of the false trial cases of rebellion and bandit spies during the martial law period “the analysis of number and type of Taiwan’s post war political cases (1949–1987), p. 58. Led by Chiu Jung-chu and Chang Yen-hsien and Tai Pao-tsun. Realisation time from September 2008 to June 2009 (Unpublished).

## The Unfinished Task of Taiwan’s Transitional Justice

During Li Teng-hui’s term of office, the first commemoration of the February 28 Incident appeared overseas in the 1950s, but only in 1987 the “February 28 Incident Peace Promotion Association” and the vindication movement started by the Presbyterian Church on the island, revealing the twilight and giving different sounds together with Taiwan’s emerging social movements. On March 23<sup>th</sup>, 1995, the Legislative Yuan passed “The February 28 Incident Disposition and Compensation Act”, and in December the same year, the Executive Yuan set up the “February 28 Incident Memorial Foundation”. In 1997, the whole text of “The February 28 Incident Disposition and

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free thought and expression level, but the penalty for it could be resocialisation ranging from three years to life sentence.

Compensation Act” was corrected, and the word “compensation” was changed into “indemnification”. On June 17<sup>th</sup>, 1998, the Legislative Yuan passed “The Compensation Act” of the false trial cases of rebellion and bandit spies during the martial law period”; till July 31<sup>th</sup>, 2014, a total of 8,030 people accepted compensation<sup>16</sup>.

During Li Teng-hui’s term of office, in addition to the compensation as well as the memorial events, the transitional justice issues still could not make progress. Wu Nai-te thought that the reason why transitional justice could not be successfully pushed forward in Taiwan was that the ruling party of the authoritarian regime after the democratic transition, under the leadership of Li Tenghui, stayed in power for over a decade. It was impossible that the KMT automatically examined its human rights violations in the past, more impossible to deny its own past. Li Teng-hui’s long-term career in public service during the authoritarian regime and with the relationship between him and Chiang Ching-kuo, established the basic direction and tone for Taiwan’s pursuing transitional justice [Wu Nai-te, 2006, pp. 1–34]. During Li Teng-hui’s term of office, he set up “The February 28 Incident study group” to study the truth about this incident, published “The February 28 Incident Reports”, built many memorials dedicated to “The February 28 Incident” victims and they were given compensation. And so the White Terror victims were grateful to Li Teng-hui. However, 38 years of the long White Terror in Taiwan’s postwar history did not get any clear a long time after lifting the martial law. The scars of the people who suffered were still fresh, but they already did not know the origins of it. Even though the democratic changes had been introduced in Taiwan, the Taiwanese society did not have an opportunity to understand their dark history and a wave of national violence which had taken place around the whole island. So, later almost all disputes related to the White Terror were lost during the transitional justice work because of the political and social context. The significance of the so-called “historical truth” reappeared through various examples of human rights violations in the past authoritarian regime. For example, after interviewing some historians about political prisoners, they concentrated on

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<sup>16</sup> In terms of compensation of victims, “The February 28 Incident Memorial Foundation” was established in 1995. “The compensation foundation on the false trial cases of rebellion and bandit spies during the period of martial law” was established in 1998, which was responsible for compensating the victims of the White Terror political repression. The compensation objects of these two foundations were different, but with the same compensation standard. The compensation for executions or disappearances was six million NT. The compensation for imprisonment was 500 000 NT for each year, with the maximum imprisonment compensation not more than 5 million NT. The compensation for property loss was up to 2 million NT, but one person could get no more than six million NT in total. That is, if a victim was in custody for 10 years, the compensation for property loss he could get was only one million NT. If he was in custody longer than 12 years, the compensation he could get in total was five million NT. Compared to other countries, such as Argentina, the compensation standard was not generous. Argentina’s annual per capita income is only one-third of Taiwan’s, but the compensation for those who lost their lives is 22,000 USD (more than 7 million NT) [Wu Nai-te, 2006].

a few, selected people and most of the records portrayed those participants who took part in political incidents, it is not only difficult to describe more clearly a ruling structure at the same time neglecting the stories of life of those particular individuals in the context of social interaction. As a result, the Taiwan community fails to clearly sketch the ruling structure of the martial law period, so that the Taiwan community, which formerly lacked the awareness of the White Terror, got a one-sided impression of political cases. This caused the backlash in a democratic society, such as acknowledging that it was the martial law that ensured Taiwan not to be taken over by the Communists during the civil war with the KMT. Or else, the Taiwan society often regarded “pursuing historical truth” as “tearing ethnic groups” and provoking “the wounds of history”. This is not only because of people’s ignorance about “transitional justice”, but also because of the lack of democratic and historical education in Taiwan. If stories of the people had not been recorded in annals and spread in the society, then those figures would have been used by many different authorities to their advantage and the so-called “history” would have become an useful tool for the official service. Therefore, from the oral history of the White Terror we could learn that among those who suffered political persecution, some were accused of being traitors with revolutionary aspirations in their whole life, but there were still some victims who, because of fear or for self-protection reasons, admired and believed the government and their leaders, who apparently did the harm. And those women who belonged to the families of political prisoners and were under political and social oppression, never got an aura of political victims but had experienced so much suffering, which would also never be justified. The historical image of the White Terror was not just limited to the data and the process of “cases”. Furthermore, it was the real life experience of the political victims and their families. In the martial law regime and an atmosphere of political fear of that time, in addition to the political victims themselves, their families were also inevitably swept and overwhelmed by the political storm. Apart from the political oppression and fear, they had to face the collected social exclusion and indifference. However, Taiwan’s understanding of history of this period is still at the stage of repeating what others have said.

For example, in June 2011, the former premier Hau Pei-tsun, during his new book launch entitled “Interpretation of Chiang Kai-shek’s diary from 1945–1949” declared that “the saying of the White Terror is to demonise the KMT! Generals who came from mainland to Taiwan were mostly involved. There were no native Taiwanese at all”. Hau said that the spy cases found out in the martial law period, mostly related to the mainland generals, such as the chief of general staff Wu Shih, major general Tsai Hsiao-chieh, lieutenant general Li Yu-tang, as well as the espionage case of Wang Hsiao-po’s mother. They were all mainlanders. “There were no natives among

those who had been checked out“! Hau thought that Chiang Kai-shek and the KMT government’s conduct was “the first step to defend Taiwan”! In October 2011, when Hau Pei-tsun paid tribute to Chiang Kai-shek in Chiang Kai-shek Memorial Hall, once again he said: “There would be no freedom and democracy without martial law in the past. The media tend to reverse causation; the measures taken were very severe during the White Terror period and some injustice cases were caused by private grudges, but that was in order to eliminate communists hidden in Taiwan’s society. It was not a political mistake of martial law<sup>17</sup>”. Hau Pei-tsun’s statement highlighted that the terror of the state’s violence was because it had rationalised their way of persecuting people. After rationalisation, even if it did wrong, it does not have to understand or apologise. The lack of sentiments and ignorance to the authoritarian period in history and defense of human rights show that Taiwan’s government repeatedly missed the chance to investigate its past conduct of injustice, making no effort to achieve complete transitional justice<sup>18</sup>.

## Instead of a Conclusion

Comparing the current trends of the international communities, Taiwan is obviously outside the international trends. Taiwan’s democratization has more than 20 years. It has not only failed to establish dedicated agencies to handle transitional justice, but also the government and civil achievements of this work is not complete. In the political projects of transitional justice, Taiwan’s only action was the compensation to victims, but it almost did nothing in the area of legal or moral prosecution of inflictors and truth discovery. There is still a lot of unknown truth about the political trials of the February 28 Incident and the White Terror period. The controversy has arisen around the recent events of “the history curriculum” and “the citizen and social studies curriculum”, which were changed in senior high schools, trying to remove

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<sup>17</sup> His remarks triggered protests from groups such as Taiwan Association for Truth and Reconciliation, Taiwan Association for Human Rights, Dr Chen Wen-chen Memorial Foundation, Deng Liberty Foundation, Taiwan Alliance to End Death Penalty, Humanistic Education Foundation and Taiwan Labour Front, which published a joint statement that “No democracy without martial law? To condemn former premier Hau Pei-tsun’s remarks”.

<sup>18</sup> This fact highlighted that Hau Pei-tsun and those in power, as the state’s ruling elite still ignored the existence of the people who experienced violence afflicted by the state, even if the Compensation Foundation has been established for 10 years, the national archives gradually have been opened and the oral history materials continued to accumulate. The context of his remarks means that four thousand native victims who accepted compensation did not exist, all levels of the mainland victims who came to Taiwan. In 1949 the government did not exist, the low-level mainland victims in the Penghu case and the naval case, the anti-Communist freedom fighters and fellow mainland citizens who came to Taiwan in the 60s did not exist.

the fact of the White Terror history, highlighting the ruling authority's ignorance of the historical facts and obviously attempting to glamorise the authoritarian regime. Taiwan has never had an opportunity to reflect on the persecuting system of dictatorship. According to Article 10 of martial law, people can appeal from the determinate sentences of the military authorities. But the ruling authorities, in the eve of the lifting of martial law modified Article 9 in "The National Security Law", prohibiting appeal of the political cases. Later on, the Grand Justices in Interpretation no 272 decided that the regulation coincided with the constitutionality and necessity of maintaining stability and social order, so that Taiwan cannot prosecute, judge and investigate public officials who had been suspected of unlawful acts (including torture, illegal measures to get confessions, framing up), so many institutional inflictors or cooperators of the system continued to be in key positions in the government after democratization, which resulted in the prevalence of impunity. The government has not set up an investigative mechanism of "The Truth Commission" actively putting into resources the conduct investigation or published the historical truth, responding to the victims' dignity, sorting and opening archives, encouraging research and the promotion of human rights education, etc., so that the understanding of Taiwan's history in this authoritarian regime period has still been at the level of repeating what others say. Recently, the archives bureau has used the excuse of the "Openness of Government Information Act" and "Personal data Protection Law" to hinder the accessibility and usage of political archives, keeping the truth of a lot of political cases being unknown. More seriously, this way of compensating the victims but not investigating the inflictors and pursuing the truth cannot solve the legacy left by the authoritarian era, but it can cause a more serious crisis which may appear in Taiwan's democratic governance.

Because of the special diplomatic situation, for a long time Taiwan's society has not been familiarised with the United Nations and their related resolution documents, as well as the international human rights system of the United Nations, not to mention the understanding of the efforts the United States has recently made on transitional justice projects. Some people may question it, as Taiwan is not a member state of the United Nations, what sense it makes to discuss the United Nations' integrated approach to transitional justice issues, when reflecting on Taiwan's situation. In fact, on February 25–28, 2013, Taiwan held its first international review of the initial reports of two international conventions, among the members, several of which who had held important positions for a long time in the United Nations were scholars of international human rights law and promoters of transitional justice issues, such as Manfred Nowak and Theo Van Boven. Manfred Nowak has served as the special rapporteur of the United Nations for torture and other cruel, inhuman or degrading

treatment or punishment. He is an internationally renowned international human rights law scholar. The person worth mentioning is Professor Theo Van Boven. The Professor served as a special rapporteur of the United Nations' torture and other cruel, inhuman or degrading treatment or punishment and also as a special rapporteur for special report subcommittee of victims' rights to compensation. On December 16, 2005, the United States passed "The Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" of Resolution no. 60/147, in which there was pointed out the obligation of the state to assume responsibility for the massive violation of international human rights and humanitarian law, as well as to reaffirm the victims' rights to obtain compensation (General Assembly resolution no. 60/147), and it clearly defined what a victim is. This criterion was set by Van Boven and another scholar Cherif Bassiouni, which was also called Van Boven/Bassiouni Principles. During the review process, the transitional justice issues in the official report were not mentioned, fully showing the government's indifference toward the transitional justice issues. The author of this article represents Taiwan's Association for Truth and Reconciliation. In the review of the core documents and while raising the problems of our government's promoting transitional justice, the aim is to provide relevant information for review by the committee, expecting to get a positive response from Professor Van Boven and other members. Then during the review process of the official report, Professor Van Boven, as expected, raised this issue that was not in the official report, asking relevant departments to put forward specific proposals and responses. In 24 and 25 points out of the last 81 points (Concluding Observations and Recommendations) of the General Assembly, specific proposals on pushing forward the transitional justice were raised, echoing at the same time the basic elements which the United Nations highlighted, such as pursuing the truth, adhering to justice, making compensations.

24. Oppression and massive human rights violation before the lifting of martial law left huge scars in the R.O.C. (Taiwan's) society. In order to heal the historical wounds and compensate the victims, the government has taken some measures, including passing the February 28 Incident handle and compensate ordinance, and constructing the February 28 Incident monument. However, the transition period is not over, the government has to do more to help to bring about the reconciliation of society. The right to compensate should include recovery at the social and psychological level of the victims, as well as the right to pursue truth and justice.

25. Experts suggested that the government should take measures to reveal the whole truth of massive human rights violation during the White Terror era. In addition, as the justice compensation required, the government should confirm the

torture and suffering the victims experienced. In this regard, the government should ensure that the victims and the researchers are able to have effective access to the relevant national archives.

This is the first time Taiwan, according to its own approach and norms, has taken part in the review of the human rights report, which was compiled by the United Nations. After the meeting, President Ma Ying-jeou held an international press conference, vowing solemnly that he would take the experts' proposals to fulfill the idea of the "human rights ruling". When a year passed, as the international review ended, the spotlight was no longer on the report, the ruling government seemed to forget about the commitment to those suggestions. We were not surprised by the development of the situation. However, we should continue to make good use of specific recommendations made by the international experts to maintain close contacts with the international human rights network, air the voices of the international community, exerting pressure on the government and urging it to fulfill the specific recommendations made by the experts, so that the goal of achieving transitional justice will be no longer the politicians' political rhetoric of making promises and not keeping them. If we continue to ignore it, we will not ensure that the goal of being never again could be reached, we will also disregard the suffering of the political victims and their families. Taiwan has missed a lot of opportunities to pursue transitional justice. The way how to deal with these transformation projects related to the values such as democracy, justice and human rights, will be the government's urgent political commitment and it should be an important indicator for the people to examine the government's administrative achievement.

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