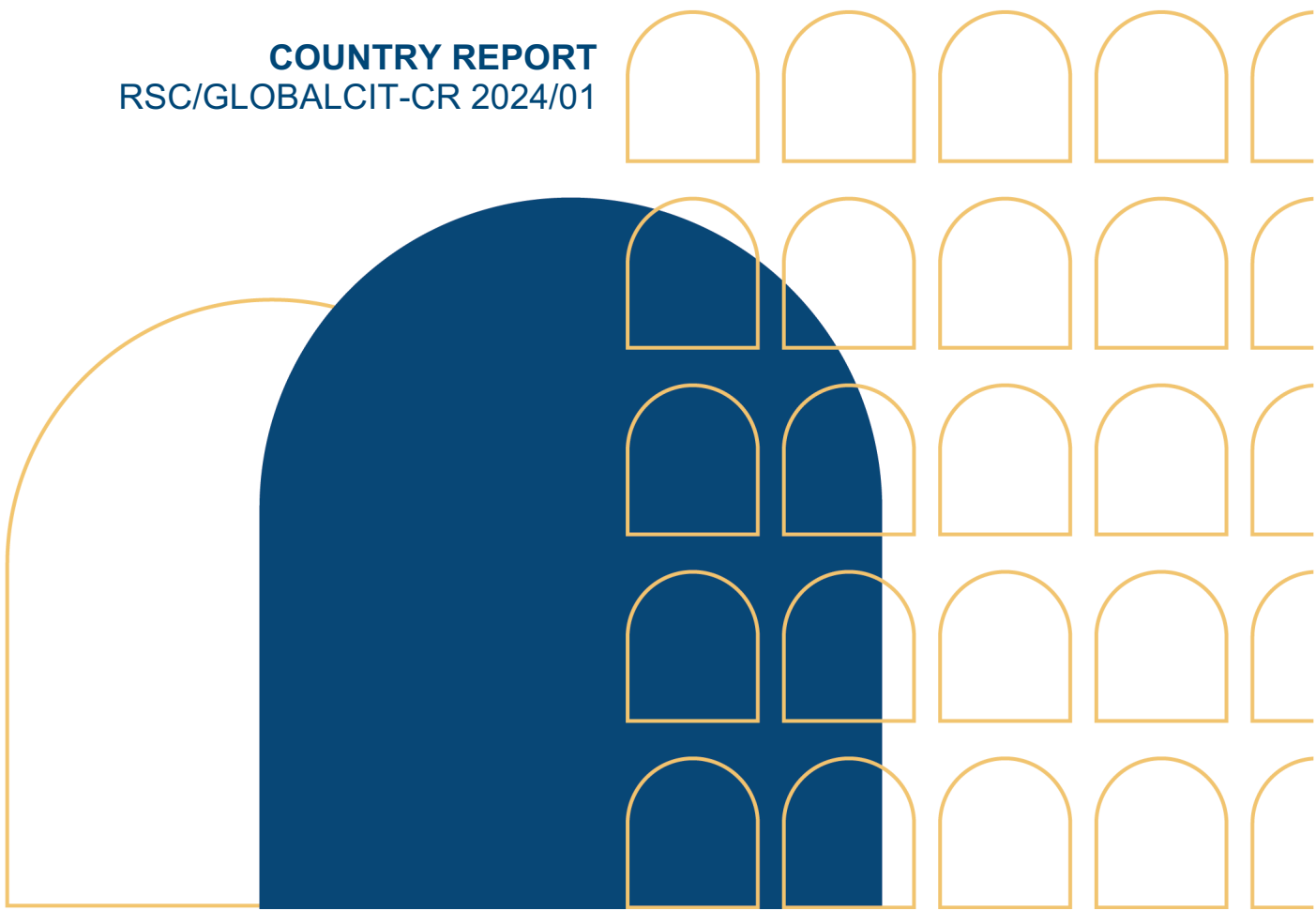


Report on Citizenship Law: Taiwan

Jing-Han Chen and Yi-Chen Huang

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RSC/GLOBALCIT-CR 2024/01



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Global Citizenship Observatory (GLOBALCIT)
Robert Schuman Centre for Advanced Studies
in collaboration with Edinburgh University Law School

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1. Introduction

Nestled in the Southwestern Pacific Ocean near the eastern coast of Asia, Taiwan, officially the Republic of China (ROC), grapples with complex sovereignty issues, particularly in its relationship with the People's Republic of China (PRC). Having its own government, military, and tax system, Taiwan has been functioning as an independent country for decades. The 1980s saw the onset of democratisation, transforming Taiwan into a robust democratic nation and reshaping Taiwanese citizenship. This report explores contemporary issues in Taiwanese citizenship, while providing a historical backdrop to the ongoing evolution of these dynamics.

Taiwan presents a mix of perplexing legal structures and precarious international status, creating in complicated citizenship dynamics. The legal framework, rooted in a Greater China ideology, further complicates the situation, resulting in fragile citizenship status, particularly when Taiwanese individuals travel abroad. Sovereignty debates of Taiwan are compounded by a lack of diplomatic recognition from much of the global community. Historical context also reveals internal conflicts among different groups of citizens within Taiwan, such as the Taiwanese residents (本省人, *benshengren*),¹ Chinese immigrants who arrived after World War II (外省人, *waishengren*),² and Taiwanese indigenous people, shaping citizenship practices.

The report's next section addresses contemporary discussions on Taiwanese citizenship. It highlights the household registration system, an infrastructure that records Taiwanese citizens in each household. These official records serve as the registration system for citizenship in Taiwan and influence the exercise of citizenship, such as the right to vote. The dynamic process of citizenship unfolds through legal reforms, including indigenous peoples' battles for naming rights, group and individual recognition, etc. Taiwanese citizenship is marked by ambiguity, challenges in distinguishing Chinese from Taiwanese, various naturalisation routes, and addressing statelessness caused by the Chinese Civil War and the Greater China ideology. The citizenship regime stemming from the ROC structure and discriminations against immigrants complicate the naturalisation process for immigrants and

¹ *Benshengren*(本省人), meaning local provincials.

² *Waishengren* (外省人), meaning "extra provincials," has several different translations. One common translation is "mainlander," but this translation can be confusing, as "mainlanders" in the ROC legal system refer to Chinese people, not the immigrants who came to Taiwan after WWII. Therefore, this report uses 'extra provincials' to emphasise the distinction from the local provincials, which also aligns with the term's nominal meaning. Similar usage can be observed here: Tomonori Sugimoto, "Settler Colonial Incorporation and Inheritance: Historical Sciences, Indigeneity, and Settler Narratives in Post-WWII Taiwan," *Settler Colonial Studies* 8, no. 3 (2018): 283–97.

presents challenges especially for migrant workers in Taiwan. The report's fourth segment explores initiatives, such as investment citizenship for Hong Kongers and prospective reforms aimed at easing naturalisation constraints for migrant workers.

2. History of Taiwanese legal framework and democratisation

This second part provides an overview of Taiwanese citizenship within both international and domestic contexts. The primary objective is to highlight a noticeable disparity within this contested citizenship. In the international context, it can be precarious and subject to interpretation by foreign authorities due to the ongoing dispute over Taiwan's statehood. Conversely, within the domestic domain, the understanding of statehood differs significantly, reflecting Taiwan's factual independent status. Therefore, this part illustrates the disparity between external and internal perceptions of statehood and its impact on Taiwanese citizenship, while also examining the evolution of Taiwanese citizenship.

2.1 After WWII, from Japanese colonisation to the sovereignty debates of Taiwan

The status of Taiwanese citizenship has been a longstanding issue in international law, primarily stemming from the sovereignty situation in Taiwan. This complexity is a result of Taiwan's lack of international recognition, the ongoing dispute about its national identity, and the geopolitical conflicts in the region. The origins of the sovereignty dispute can be traced back to the aftermath of World War II when Japan relinquished its rights to colonised territories, including Taiwan. The Potsdam Declaration,³ issued by China, Russia, the UK, and the US, declared that Taiwan would be handed over to China, although the diplomatic declaration itself was not legally binding. Following Japan's surrender, Chinese troops took control of Taiwan without a formal resolution regarding its legal status. With the outbreak of the Chinese Civil War in 1946, the Chinese Nationalist Party (Kuomintang), the leading party at the time, lost the war and retreated its government, the Republic of China (ROC), to Taiwan in 1949. Meanwhile, the Chinese Communist Party established the People's Republic of China. This further complicated the question of legitimate sovereignty over Taiwan. The Treaty of San Francisco, signed in 1951 and considered the main treaty between Japan and other states for WWII, intentionally deferred the resolution of Taiwan's sovereignty, while not including both the ROC or the PRC in the treaty. In 1952, under pressure from the U.S. to establish a front against communist expansion, Japan signed a separate treaty with the Republic of China (ROC), known as the Treaty of Taipei. This treaty addressed the issue of Taiwan's sovereignty by referencing the Treaty of San Francisco, in which Japan renounced all rights to Taiwan in Article 2, and stipulated in Article 3 that any disposition of property and nationals of Japan in Taiwan shall be the subject of special arrangements between the Government of the ROC and

³ Potsdam Declaration, "Proclamation Defining Terms for Japanese Surrender Issued," at Potsdam, July 26, 1945, <https://www.ndl.go.jp/constitution/e/etc/c06.html>

the Government of Japan.⁴ The sovereignty of Taiwan has been a subject of debate due to the absence of its participation in the main treaty, the Treaty of San Francisco.⁵ Additionally, the Treaty of Taipei was negotiated while the ROC only governed Taiwan and the peripheral islands since 1949. The sovereignty of Taiwan and the recognition of the ROC should be considered as two separate issues. One pertains to the transfer of sovereignty from Japan, while the other concerns the representation of the Chinese government after the Chinese Civil War. However, the governance of the ROC over Taiwan has linked the ROC government to the sovereignty of Taiwan since the end of WWII, complicating the issue of China's representation and Taiwan's international status.

Over the years, states like the US maintained an ambiguous stance on Taiwan's status, considering it unsettled, even though their recognition of the legitimate Chinese government shifted from the ROC to PRC. For example, in 1971, the PRC replaced the ROC at the United Nations following the UN General Assembly's Resolution 2758; however, the General Assembly Resolution 2758 only covered the transfer of seats between the ROC and the PRC.⁶ It did not mention Taiwan or the representative of Taiwan. The issue here lies in the interpretation of Resolution 2758, and it can only be understood to signify a change in the UN's recognition of the Chinese government. That is, this should not be extended to a final resolution regarding Taiwan's status, as the matter was not discussed in the resolution. Another significant change was brought about by the US. At the end of 1960s, the US changed its position during the detente with the Soviet Union and with the PRC by starting to establish a formal diplomatic relation with the PRC.⁷ In 1979, the US shifted its recognition of China from the ROC to the PRC. While it acknowledges the PRC's position regarding Taiwan, it refrained from formally recognising Taiwan as part of the PRC or as a fully sovereign state.⁸ The contestation of the state has far-reaching effects on its citizenship. For example, the UN's stance on Taiwan not only affects government-level disputes but also has a profound impact on individuals' rights. Taiwanese citizens often face challenges when dealing with UN institutions such as applying for positions or even visiting the UN for tourism or for work, and they may be forced to identify themselves as either Chinese nationals or residents of "Taiwan, province of China."⁹

The historical context reveals the contestation of Taiwan's statehood and the conundrum with the PRC. From the perspective of China, Taiwan remains an unresolved issue stemming from the Chinese Civil War. However, Taiwanese citizens believe that the

⁴ As article 2 did not clearly address that the rights go to the ROC, with the following article 3 stating that the two governments arranged the disposition of the property, it is argued that there is some ambiguity in such wording. Treaty of Taipei, at Taipei, 28 April 1952, <https://treaties.un.org/doc/Publication/UNTS/Volume%20138/v138.pdf>

⁵ James R Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2006), 199-200.

⁶ Restoration of the Lawful Rights of the People's Republic of China in the United Nations, <https://digitallibrary.un.org/record/192054>

⁷ Ali, S. Mahmud. *US-China Cold War Collaboration, 1971-1989* S. Mahmud Ali (London: Routledge, 2005).

⁸ Susan V. Lawrence and Wayne M. Morrison, "Taiwan: Issues for Congress," *Congressional Research Service* 2017 (October 2017):83.

⁹ Antonio Chiang, "Taipei Crisis, Beijing Opportunity," *The New York Times*, September 27, 1999.

sovereignty of Taiwan should be determined by the people of Taiwan, rather than external forces such as Japanese colonisation or Chinese threats. This longstanding debate surrounding Taiwanese citizenship and sovereignty remains a situational and sensitive matter in international law and geopolitics.

2.2 Taiwanese citizenship in the international domain

2.2.1 How a single country views Taiwanese citizenship

The status of Taiwanese people residing in foreign countries is influenced by Taiwan's international relations. As of 2024, only twelve states have officially acknowledged the Republic of China, Taiwan as a sovereign state.¹⁰ The majority of countries do not hold a formal diplomatic relationship with Taiwan, but they manage both the relationship with Taiwan as well as the recognition with citizenship of Taiwanese as exceptions. Consequently, the issue of Taiwanese citizenship becomes even more complex: some countries classify Taiwanese as Chinese and may not accept official papers issued by the ROC government, but they may still request the ROC passport to verify one's identity. Other countries do not classify Taiwanese individuals as Chinese, and this acknowledgement implies that these governments recognise that Taiwanese citizens are not governed by the Chinese government. For example, governments, such as the US, the UK and most European countries, offer partial recognition by accepting Taiwanese passports without formally recognising Taiwan as a state. This creates ambiguity regarding the legal and political status of Taiwanese citizenship in these countries. The situation for Taiwanese citizens in these states is influenced by the limitations imposed due to the absence of *de jure* recognition, despite established substantial relations.

For example, the British government does not recognise Taiwan as a state, so following this logic, it should result in Taiwanese citizens being ineligible for visas with their passports. According to the UK's requirements for citizens from territories or entities the UK does not recognise, they are required to utilise an alternative travel document called the Uniform Format Form (UFF) or IS.116, as stated by Entry Clearance Basics.¹¹ However, this regulation does not apply to holders of ordinary Taiwanese passports, who are permitted to have visas attached to their passports and are allowed to enter without entry clearance; but holders of diplomatic Taiwanese passports still require the IS.116. The holders of passports without an ID number, passports for nationals without household registration,¹² need to apply for visa. Individuals in the latter category, people without an ID number due to the lack of household registration, are not ordinary Taiwanese and usually do not possess formal citizenship exercise; for example, many of them are offspring of Taiwanese parents but reside abroad and may have dual nationality. Consequently, they may not consider registering in the household

¹⁰ Information from the Ministry of Foreign Affairs, Republic of China (Taiwan), accessed 3 February 2024, <https://www.mofa.gov.tw/AlliesIndex.aspx?n=0757912EB2F1C601&sms=26470E539B6FA395>.

¹¹ Check the guideline on suitability grounds under Section 3 of Part 9 of the Immigration Rules: Home Office, Suitability: refusal of entry on arrival in the United Kingdom and cancellation of extant entry clearance or permission, 1 June 2023.

¹² Discussions on Household Registration (Hukou) can be found in Section 3.2.

system, therefore not obtaining an ID number. As mentioned earlier, household registration is one of the foundational infrastructures for citizenship practices in Taiwan. Additionally, Taiwanese citizenship may entail additional obligations, such as compulsory military service for males. Not being registered in the household registration exempts them from such citizen obligations. To conclude, the majority Taiwanese people, those who use passports with an ID number, have no difficulties travelling to the UK.

Another illustration is the United States, which includes Taiwan in its Visa Waiver Program. The inclusion of Taiwan in this program is justified by referencing the Taiwan Relations Act, which clarifies the interpretation of the term “country” in relation to Taiwan, considering its informal relations with Taiwan.¹³ The Taiwan Relations Act indicates Taiwanese citizens as “people on Taiwan” to avoid having a formal, legal term referring to Taiwanese people.¹⁴ In short, although these countries allow Taiwanese citizens to enter using their passports, they do not officially recognise these passports as being issued by another recognised state. Instead, Taiwan is treated as an exception to the rules applied to other unrecognised states, specifically regarding passports, as perceived by the governments that admit Taiwanese passports. The substantial relations established between Taiwan and other states excluded the de jure recognition of Taiwan and the formal recognition of Taiwanese people’s citizenship attaching to Taiwanese legal structure.

2.2.2 The case of “Liu and others vs Norway”

The case of Liu and others vs Norway illustrates what Taiwanese people may confront with their ROC citizenship. The diplomatic relation between Norway and Taiwan has been deteriorating since 2010 with the following evidence stated by the Taiwanese people in Norway.¹⁵ Firstly, in 2010, the Norwegian Tax Administration (*Skatteetaten*) updated its citizenship registration system using ISO 3166 – Country Codes, resulting in a shift from Taiwan to China (*Kina* in Norwegian) for Taiwanese individuals renewing their residency cards. In the same year, the Nobel Peace Prize was awarded to the Chinese human right activist, Liu Xiaobo. Even though the Norwegian government could not influence the result of the Nobel Prize, the Chinese government commenced a series of boycotts against Norway both politically and economically. Since then, the Norwegian government has intended to restore

¹³ According to the Visa Waiver Program of the US government on the website of bureau of consular affairs:

“With respect to all references to “country” or “countries” on this page, it should be noted that the Taiwan Relations Act of 1979, Pub. L. No. 96-8, Section 4(b)(1), provides that “[w]henver the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.” 22 U.S.C. § 3303(b)(1). Accordingly, all references to “country” or “countries” in the Visa Waiver Program authorizing legislation, Section 217 of the Immigration and Nationality Act, 8 U.S.C. 1187, are read to include Taiwan. This is consistent with the United States’ one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.” <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html#reference>

¹⁴ “Taiwan Relations Act - Declares it to be the policy of the United States to preserve and promote extensive, close, and friendly commercial, cultural, and other relations between the people of the United States and the people on Taiwan, as well as the people on the China mainland and all other people of the Western Pacific area.” See in H.R.2479 - Taiwan Relations Act.

¹⁵ Joseph [pseud.], “Taiwan: My Name, My Right”—Crowdfunding Officially Launched,” accessed 24 January 2024. <https://drive.google.com/file/d/1PNdMui1OpdGpAq4LCh8QCvk-VnFOyr4F/view>

its relationship with China with various diplomatic efforts.¹⁶ Research also finds that the China's economic sanction against Norway has successfully influenced Norway's diplomatic policies.¹⁷ On the other hand, despite concerted diplomatic endeavours by Taiwan to rectify the misrecognition of its citizenship, these efforts ultimately proved unsuccessful. Taiwan-Norway relations cooled down and led to the closure of Taiwan's representative office in 2016 while Norway once again normalised its relationship with China.¹⁸ As a result, the Taiwanese people, Liu, Hong and Yin brought an administrative appeal against the Norwegian Directorate of Immigration (UDI) for registering their nationality as Chinese,¹⁹ and later brought the case before the courts in Norway. They argued that this registration violated their right to identity as Taiwanese, invoking the privacy rights as a pathway, based on Article 92²⁰ and Article 102²¹ of the Constitution of the Kingdom of Norway, Article 8 of the European Convention on Human Rights,²² and Article 17 of the International Covenant on Civil and Political Rights.²³ In 2021, they eventually brought the case to the European Court of Human Rights where they argued against their mandated registration as Chinese nationals, a status with which they neither identify nor possess. The situation was posited as an unjustified infringement on their right to identity within a democratic society, raising significant legal questions. However, the judge ultimately ruled the case as inadmissible.²⁴ Such a case depicts the plight of Taiwanese citizenship with the constant refusal to accept Taiwanese identity. The contestation of the Taiwanese sovereignty has made the diplomatic remedy to such scenario full of obstacles, and the judiciary system does not seem have a good answer to redress the false misrecognition of the Taiwanese citizenship.

¹⁶ Milne, Richard. 2016. "Norway Restores Diplomatic Relations with China." *FT.Com* (Dec 19). <https://www.proquest.com/trade-journals/norway-restores-diplomatic-relations-with-china/docview/1859690341/se-2>.

¹⁷ Kolstad, Ivar. "Too Big to Fault? Effects of the 2010 Nobel Peace Prize on Norwegian Exports to China and Foreign Policy." *International political science review* 41, no. 2 (2020): 207–223.

¹⁸ Milne, Richard. *supra* note 16.

¹⁹ Joseph [pseud.], *supra* note 15; admin HRWF, "NORWAY/TAIWAN: Taiwanese Registered as Chinese Citizens in Norway," *Human Rights Without Frontiers*, August 16, 2021, <https://hrwf.eu/norway-taiwan-the-european-court-of-human-rights-ruled-the-application-of-taiwanese-in-norway-inadmissible/>.

²⁰ Constitution of the Kingdom of Norway, §92:

The authorities of the state shall respect and ensure human rights as they are expressed in this Constitution and in the treaties concerning human rights that are binding for Norway.

²¹ Constitution of the Kingdom of Norway, §102:

Everyone has the right to the respect of their privacy and family life, their home and their communication. The search of private homes shall not be made except in criminal cases.

The authorities of the state shall ensure the protection of personal integrity.

²² European Convention on Human Rights, § 8, Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

²³ International Covenant on Civil and Political Rights, §17:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

²⁴ Case of Liu and others v Norway, no. 24859/21, July 15, 2021. Further information please refer to

https://twmmr.com/2021.07.15_Decision%20from%20the%20European%20Court%20of%20Human%20Rights.pdf

In international contexts, Taiwanese citizenship is often a subject of contestation and vulnerability of the misrecognition for Taiwanese citizens, as foreign governments frequently provide arbitrary interpretations and may deny Taiwanese citizenship to their convenience. However, the citizenship development within Taiwan presents a very different picture as it shows a strong and vibrant civil society involvement along the democratisation of Taiwan and an effective citizenship practice within Taiwan in contrast to the contestation of the citizenship as shown in foreign territories. The following section will continue to Taiwan's citizenship from the domestic perspective. It shows a very different picture compared to the one looking at the international aspects.

2.3 Democratisation and the evolution of Taiwan's sovereignty and citizenship

Democratisation starting from the late 1970s gradually changed the framework of Taiwanese citizenship through the amendment of the Constitution and legislation. The ROC had been under stress for de jure recognition in international terms, however, there was another tension within the regime as the ROC government maintained martial law in Taiwan between 1949 and 1987; the authoritarianism had not only impaired people's basic rights such as free expression, but also deprived their right to formulate citizenship practice and citizenship system from a bottom-up approach. With regards to democratisation, citizens of Taiwan have demonstrated a significant influence on the development and reform of citizenship in Taiwan.

During the period of living under dictatorship, the Taiwanese redefined themselves as part of their pursuit of democracy. They separated the concept of being Chinese and its association with Sinicization/(re)unification from Taiwanese identity. The process of defining Taiwanese identity began with the questioning of identity of Taiwanese citizens, including extra provincials (*waishengren*), meaning people from outside of Taiwan, external provinces under the ROC context, after World War II. In comparison, local provincials (*benshengren*), described people residing in Taiwan, including Han Taiwanese and indigenous people by the definition of the ROC government. Conflicts between these groups of people persisted for decades. After the ROC took over Taiwan after WWII, the Taiwanese people were faced with arbitrary property seizure, corruption in the bureaucracy, discrimination, and forcible extortion of rice, coal, and sugar for shipment back to China.²⁵ In 1947, the 228 Incident took place when an altercation between a government official and a civilian escalated into a widespread uprising.²⁶ This event marked a turning point in Taiwanese history, as the ROC government responded with violence, leading to the 'White Terror' period. In 1949, the KMT-led ROC government lost the Chinese Civil War and fled to Taiwan. That same year, the KMT imposed martial law, and the White Terror began. During this time, tensions flared between extra provincials

²⁵ Yanxian Zhang, *Er Er Ba Shi Jian Ze Ren Gui Shu Yan Jiu Bao Gao* [The Report of the Accountability of the 228 Incident], ed. Yanxian. Zhang, Di 1 ban. (Taipei: Cai tuan fa ren Er er ba shi jian ji nian ji jin hui [Foundation of 228], 2006); Xueji Xu, *Er er ba shi jian 60 zhou nian ji nian lun wen ji* [The February 28th incident of 1947, in retrospect on its 60th anniversary], ed. Xueji Xu (Taipei Shi: Taipei Wen Hua Ju, 2008); Zhangjian Huang, *Er Er Ba Shi Jian Zhen Xiang Kao Zheng Gao (Zeng Ding Ben)* [An Analysis of the Reality of 228], 2nd ed., Yuan Shi Cong Shu (Taipei Shi: Zhong yang yan jiu yuan, 2017).

²⁶ Zhang, *Er Er Ba Shi Jian Ze Ren Gui Shu Yan Jiu Bao Gao* [The Report of the Accountability of the 228 Incident]; Xu, *Er er ba shi jian 60 zhou nian ji nian lun wen ji* [The February 28th incident of 1947, in retrospect on its 60th anniversary]; Huang, *Er Er Ba Shi Jian Zhen Xiang Kao Zheng Gao (Zeng Ding Ben)* [An Analysis of the Reality of 228].

(waishengren) and local provincials (benshengren), resulting in prolonged conflicts. During the 228 Incident and the subsequent 'White Terror,' extra provincials (waishengren) were seen as oppressors and possessors, intensifying the tension between them and local provincials (benshengren).²⁷

The differentiation between benshengren and waishengren led to household registration disparities, affecting the proportion of people working in the public sector. Local provincials, who made up 85-90 per cent of the population, disproportionately shared civil servant positions.²⁸ This distribution was based on the plan of 39 provinces of Greater China, where the Civil Servant Examinations Act legalised proportional distribution. This arrangement continued until a major reformation in national examinations in 1962,²⁹ along with the amendment of the Civil Service Examinations Act, which was not formally eliminated until 1996.³⁰ The Greater China ideology gained prominence through the implementation of proportional representation among civil servants, affecting their employment rights and political participation. This approach eventually led to the concentration of vested interests within a specific group of individuals. Such systematic hierarchy within citizens was overturned at the legal level during democratisation.

During the 1980s, the ROC encountered mounting internal pressure as the Taiwanese populace increasingly disavowed the authoritarian regime led by the *Kuomintang* (KMT). Various social movements prospered during this era, including political movements that championed democracy. Additionally, there was a growing international push for democratisation, particularly from the United States.³¹ The lifting of martial law by the KMT government in 1987 marked a significant moment in the democratisation process of the 1980s. This led to gradual changes in Taiwanese politics such as allowing the formation of opposition political parties, the relaxation of restrictions on press licensing, and various reforms in education and political systems.³² Furthermore, the ROC's constitutional reforms began in

²⁷ This does not mean that extra provincials (Waishengren) were exempt from oppression. Many of them—scholars, students, and ordinary people—were imprisoned or otherwise persecuted during the White Terror.

²⁸ Dominic Meng-Hsuan Yang, *The Great Exodus from China: Trauma, Memory, and Identity in Modern Taiwan*, book (Cambridge: Cambridge University Press, 2021); Ko-hua Yap, "Cong Jie Mi Dang an Zhong Guer Zhan Hou Yi Ru Tai Wan de Wai Sheng Ji Ren Shu [Reassessing Number of Mainland Chinese Immigrants with Declassified Archival Data]," *Taiwan Historical Research* 28, no. 3 (2021): 211–29.

²⁹ According to Article 21(2) of the Civil Service Examination Act 1962, national examinations for civil servants should be distributed by provinces and regions based on population. These distributions should be announced by the Examination Yuan three months prior to the examination. The number of distributions should be five persons for populations of less than three million, and one more person for every one million in population. The admission number can be changed based on the standard proportion of the provinces. For provinces and regions where no one reaches the admission standard, the standard may be lowered, and the first person can be admitted on the basis of merit. However, if the admission standard is lowered by 10% and still no one qualifies, the vacancy for that specific province or region will be allowed.

³⁰ Relevant information can be seen in an article issued by the Examination Ministry: Li-Hsueh Chang, "Gong Wu Ren Yuan Gao Pu Kao Shi an Sheng Qu Ding e Lu Qu Zhi Du Yan Ge [Changes of Quota Enrollment for Civil Service General Examination by Provinces and Regions]," *Examination Forum Quarterly* 1, no. 2 (2011): 53–60, https://wwwc.moex.gov.tw/main/Forum/wHandForum_File.ashx?Forum_id=26.

³¹ Lawrence and Morrison, *supra* note 8.

³² J. Bruce Jacobs, "Myth and Reality in Taiwan's Democratisation," *Asian Studies Review* 43, no. 1 (2019): 164–77; Tak-Wing Ngo and Yi-Chi Chen, "The Genesis of Responsible Government under Authoritarian Conditions: Taiwan during Martial Law," *China Review (Hong Kong, China: 1991)* 8, no. 2 (2008): 15–48; Gary

1991, representing a new start from the authoritarian past while also serving the democratic transition.³³ As part of the democratisation reforms from the 1980s, the constitution of the ROC was indigenised/localised. This means that the ROC constitution needed to be changed to suit its application in Taiwan as it was drafted not in Taiwan but in China, resulting in a shift in the identity of its sovereign people from Chinese to Taiwanese.³⁴ The amendment to the constitution from 1991 established a division between a free area and a mainland area, with the rights of citizens limited to those residing in the free area, namely, the Taiwanese people. This amendment added the definition of a "free area" to Taiwan, contrasting it with the "mainland area," and limiting the right to vote to Taiwanese people alone.³⁵ The amendment not only acknowledged the de facto control of the ROC but also created a constitutional discourse of division between the ROC and the PRC. In the end, the amendment did not alter the main body of the constitutional law and left the sovereign claim over China in the text unchanged but it introduced differentiations between the free area, Taiwan, and the mainland with new texts, particularly in the right to vote for people of Taiwan and people of the mainland in the added body. This created a contradiction by disconnecting the political representation of the 'mainland' from Taiwan. That is, although the main text of the Constitution still includes constituencies such as Tibet and Mongolia, the amendment represented a different approach to the issue of representation and the ROC's de facto territory by restricting the application of the constitution in Taiwan and people of Taiwan.³⁶

Another form of systematic discrimination within the citizenship system targeted indigenous Taiwanese, resulting in the need for radical changes, such as reframing indigeneity and applying affirmative actions in the legal system. The concept of 'indigenous peoples' does not exist in the original ROC Constitution. The term of 'shanbao' (山胞) was first used to refer to indigenous peoples in the first amendment in 1991, and it has divided into "mountain-area shanbao" (山地山胞, as known as mountain-area compatriots) and 'plains shanbao' (平地山

Rawnsley and Dafydd Fell, "Democratization, Liberalization and the Modernization of Election Communication in Taiwan," (London: SOAS Research Online, University of London, 2005), 1–30; Jausieh Joseph Wu, *Taiwan's Democratization: Forces Behind the New Momentum* (Oxford: Oxford University Press, 1995).

³³ Jiunn-rong Yeh, *The Constitution of Taiwan* (London: Bloomsbury Publishing), 36.

³⁴ *Id.*, at 4.

³⁵ *Id.*, at 41.

³⁶ Before democratisation, it was challenging for Chinese residents to acquire ROC citizenship. For example, in 1950, when the ROC retreated to Taiwan, Chinese civilians had to obtain official household registration from the government, known as Hukou (戶口), Hukou system is the household registration, this is explained in Section 3.2, page 17. In 1951, some residents complained about receiving only a "refugee certificate" after arriving in Taiwan in 1950, expressing dissatisfaction with their uncertain refugee status. Meanwhile, other extra provincial residents, known as "Waishengren," who arrived earlier, were able to obtain Hukou with ease. During the Cold War era when the ROC claimed itself as the legitimate Chinese government, overseas Chinese had the option to apply for citizenship. Presently, overseas Chinese cannot obtain ROC citizenship. Before the PRC took over sovereignty in Hong Kong and Macau in 1997 and 1999, respectively, residents could apply for "overseas national" status, which was no longer applicable after the takeovers. Essentially, ROC citizenship is limited to individuals residing in Taiwan, but overseas Taiwanese may also apply for it. Before democratisation, the concept of overseas ROC nationals was more flexible, but after democratisation, it was limited to overseas Taiwanese or holders of ROC nationality. According to Section 1 of Article 3 of the Immigration Act, "Nationals" are defined as those who reside in the Taiwan Area, have their permanent residence registered at a household registry, and have the nationality of the Republic of China (hereafter to be called the State), or nationals who reside in the Taiwan Area and have no nationality of the State. As a result, constitutional amendments and subsequent legal changes limited the ability of mainland individuals, including those living abroad, to acquire ROC citizenship.

胞, as known as plains mountain compatriots,³⁷ meaning mountain compatriots in plains) in an attempt to disentangle the framework of the 'Great China' of the ROC Constitution and to highlight indigenous autonomy at the onset of the democratic transition.³⁸ However, this distinction is made between 'mountain-area shanbao' and 'plains mountain shanbao' inherited and derived from the convenient regulatory mechanism of colonial regime of Qing and Japanese rule, not from indigenous people themselves.³⁹ That is, whether during Qing rule when indigenous people were referred to as 'fan (番)' or 'shufan (熟番)', meaning savages and civilised savages, or in the more recent terms like mountain-area compatriots or plains mountain compatriots, the names are given from the perspective of the colonisers: either as savages or compatriots from the mountains; which purported to eliminate the peoplehood of indigenous people, also were deemed discriminatory.⁴⁰ In 1994, "the indigenous people" replaced "shanbao" in the constitutional amendment, marking a new chapter of indigenous rights.

This section commenced with an exploration of the international context of Taiwan's statehood and its impact on the practice of Taiwanese citizenship in foreign countries, revealing a citizenship that is both situational and precarious, marked by its vulnerable status on the international stage. On the domestic front, Taiwan's statehood is firmly established through factual independence, legislative measures, and the process of democratisation under the banner of the ROC. Consequently, the practice of Taiwanese citizenship presents a distinct contrast to its external counterpart. This discrepancy, stemming from the disparity between external and internal perceptions of Taiwan's statehood, results in varying manifestations of Taiwanese citizenship in different contexts, be it on foreign soil or within the domestic sphere. As a consequence, Taiwanese citizenship assumes both effective and precarious characteristics, shaped by this duality. While Taiwan's citizenship has made legal and functional advancements on the domestic front, the persistent challenge lies in the contestation rooted in its statehood, which continues to affect Taiwanese citizens abroad due to the lack of full recognition by foreign authorities.

3. The current citizenship regime

This Section explores how the Taiwanese citizenship regime operates in practice. Section 3.1 presents an overview of the legal regulation of citizenship. Then the following section

³⁷ In terms of "shanbao" (山胞), "mountain-area shanbao" (山地山胞, mountain-area compatriots) and "plains shanbao" (平地山胞, plains mountain compatriots), this paper employs the translations offered by the Taiwan Constitutional Court, please see Summary of TCC Judgment 111-Hsien-Pan-17 (2022) [Case on the Indigenous Peoples Status for the Siraya People], <https://cons.judicial.gov.tw/en/docdata.aspx?fid=2170&id=346962>, accessed 3 February 2024.

³⁸ Jiunn-Rong Yeh, *supra* note 33, at 227-228.

³⁹ Regarding the brief historical background of indigenous people in Taiwan, please refer to the section of 'Background of the Case' of Summary of TCC Judgment 111-Hsien-Pan-17 (2022) [Case on the Indigenous Peoples Status for the Siraya People], <https://cons.judicial.gov.tw/en/docdata.aspx?fid=2170&id=346962>, accessed 3 February 2024.

⁴⁰ Awi Mona, "Conceptualizing Indigenous Historical Justice Toward a Mutual Recognition with State in Taiwan," *Washington International Law Journal* 28 (2019): 662. Jiunn-Rong Yeh, *supra* note 33, at 228.

introduces the household registration as special institutional arrangement that distinguishes Taiwanese people from mainland Chinese people. Furthermore, Section 3.3 looks into the issues inherent in the legal framework of Taiwanese citizenship by analysing the ambiguities surrounding the definition of nationals and stateless persons in relation to the legacy of Greater China. Alongside the processes of democratisation and social movements, the legal status of citizenship for indigenous peoples in Taiwan is undergoing significant developments. This transition involves a shift from being recognised as part of the Great Chinese nation to asserting their own subjectivity and distinctness, which is different from the Han People. How the indigenous communities or groups seek legal recognition of their “Indigeneity” through constitutional challenges is explored in Section 3.4.

3.1. The legal regulation of citizenship

3.1.1 The acquisition of citizenship by birth or naturalisation

The Taiwanese citizenship can be acquired by birth or naturalisation. With respect to citizenship by birth, the principle of *ius sanguinis* dominates the current citizenship acquisition regime which continues the legacy of the 1929 Nationality Law of the ROC.⁴¹ The principle of *ius soli* is the exception where the child was born in the territory of the ROC, and his/her parents cannot be ascertained, or both were stateless persons.⁴²

The term ‘nationals’ of the ROC encompasses a wide-ranging idea as a result of the historical background and the constitution.⁴³ Those who possess ROC nationality are not necessarily eligible to exercise their citizenship rights in Taiwan. To put it another way, possessing ROC nationality is not sufficient to ensure eligibility for the full practice of citizenship rights in Taiwan. Taiwanese citizenship practice currently is linked with household registration; therefore, compared to the status of nationals, household registration may better ascertain and reflect the entitlement of citizenship rights in Taiwan.⁴⁴

Regarding the pathways to Taiwanese citizenship, the Taiwanese government has set different legal schemes for ROC nationals without the household registration, Hong Kong or Macao permanent residents, Chinese and foreigners. Foreigners have to go through a naturalisation process, known as *Gui Hua* (歸化), in order to obtain ROC nationality. Upon acquiring nationality, their legal status is altered to that of “ROC nationals without Taiwan household registration”. At this point, the naturalisation process has not finished. Upon fulfilling the residency period requirements, they become eligible to apply for “registered permanent residence” status, known as *Ding*

⁴¹ Choo Chin Low, “Report on Citizenship Law: China and Taiwan”, [GLOBALCIT], EUDO Citizenship Observatory, *Country Reports*, (October 2016): 18.

⁴² Article 2(1)(3) of Nationality Law: “A person shall have the nationality of the ROC under any of the conditions provided by the following Subparagraphs:..... 3. He/she was born in the territory of the ROC, and his/her parents can’t be ascertained or both were stateless persons.....”

⁴³ Further explanation please refer to Section 3.3.1.

⁴⁴ Further explanation please refer to Section 3.2.

Ju(定居).⁴⁵ The “registered permanent residence” status is comparable in significance for undergoing full naturalisation. Upon obtaining the “registered permanent residence” permit, they are required to complete the Taiwan household registration process and obtain the identity card, thereby satisfying the requirements for acquiring citizenship.

In addition, as mentioned in section 2.3, rather than making the new constitution, Taiwan opts to retain the ROC Constitution and establishes a division between a free area and a mainland area through the constitutional amendment. This implies that the ROC Constitution still deems mainland China as part of ROC territory, and ROC nationals without Taiwan household registration,⁴⁶ Hong Kong or Macao permanent residents, and Chinese citizens are classified as neither Taiwanese citizens nor as foreigners. Based on this mindset, ROC nationals without Taiwanese household registration, Hong Kong or Macao permanent residents, and Chinese citizens are all exempted from the *Gui Hua*(歸化) requirement.⁴⁷ However, in order to acquire Taiwanese citizenship, they still have to fulfil the requirements of applying for ‘registered permanent residence’ status.⁴⁸ This requirement seems easier for the PRC citizens to acquire the ROC citizenship; nevertheless, it is not the case. Only a limited number of the “people of mainland” can apply for naturalisation, and most of them are marriage immigrants and family members. Also, the waiting period of spouses of the mainland area can be even longer compared to other foreign spouses, 6 years⁴⁹ and 4 to 8 years,⁵⁰ respectively.

⁴⁵ The requirement of residence period for apply for ‘registered permanent residence’: reside in the Taiwan Area for the 1-year continuous residency or, the 2-year continuous residency and more than 270 days of residency or, the 5-year continuous residency and more than 183 days of residency. Please see Article 10(1) and 10 (3) of Immigration Act.

⁴⁶ In terms of ‘ROC nationals without Taiwan household registration’, it refers to ROC nationals who are residing abroad currently, or ROC nationals who have acquired or restored the ROC nationality but have *never* registered their household registration at any household registry in Taiwan. Please see Article 3(5) of Immigration Act.

⁴⁷ Kuo-Yun Chung, “Hun Yin Yi Min Fa Lü Di Wei Yu Quan Li Zhi Fen Xi” [An Analysis of the Legal Status and Rights of Marriage Migrants,] in “Xin Yi Min De Lao Dong Quan Li Yu Fa Zhi” [New Immigrants’ Labor, Rights and Legal System], ed. Chuen-Jen Yang (Taipei: Chuliu Publisher, 2011), 38. It is worth noting that, in terms of pathway to citizenship for the mainland China spouses, they are regulated by Act Governing Relations between the People of the Taiwan Area and the Mainland Area rather than Nationality Law.

⁴⁸ In terms of the requirement for apply for ‘registered permanent residence’, for ROC nationals without Taiwan household registration, please refer Article 10(1) and 10 (3) of Immigration Act; for Hong Kong or Macao permanent residents, please refer Article 29 of the Regulations Governing Permits for Hong Kong and Macao Residents Entering the Taiwan Area and Setting up Residence or Registered Permanent Residence in Taiwan; for Chinese citizens, please refer to Article 16(2), 16 (4) and 17(5) of Act Governing Relations between the People of the Taiwan Area and the Mainland Area.

⁴⁹ For marriage immigrants of the mainland area, please refer to Article 17 of Act Governing Relations between the People of the Taiwan Area and the Mainland Area: ... Any person having a spouse residency in the Taiwan Area, which is permitted in accordance with the provisions of Paragraph 1, for at least four years, and during which its lawful residency in the Taiwan Area each year is no less than 183 days may apply for long-term residency... For any person who has obtained permission for long-term residency in the Taiwan Area in accordance with the provisions of the preceding two paragraphs, the period of residency shall be unlimited. Any person who has obtained permission for long-term residency may apply for permanent residency in the Taiwan Area provided that the following provisions are met:
1. Having resided lawfully in the Taiwan Area for two consecutive years and the residency period is no less than 183 days annually...

⁵⁰ For marriage immigrants, not including the Chinese marriage immigrants, that currently have domicile in the territory of the ROC, and have legally resided in the territory of the ROC for more than one hundred and eighty-three (183) days each year for at least three(3) consecutive years, are eligible to apply for naturalisation

Marriage immigrants from the mainland area are also asked to cancel their PRC household registration before the acquisition of Taiwanese citizenship;⁵¹ this step is in parallel, but not entirely equivalent to, renouncing nationality by the other foreign marriage immigrants.⁵²

In terms of acquisition of citizenship by naturalisation for foreigners, the official statistics have found that the number of naturalised Taiwanese has remained stable over time. On average, there have been 3,500 new naturalisations each year from 2016 to 2021.⁵³ Among these new naturalised Taiwanese, over 90 per cent (19,590 out of 21,446) of them are female spouses of Taiwanese citizens, and further those who are originally from Vietnam accounted for over 81% (15,890 out of 19,590).⁵⁴

The following table illustrates the trend in the approval of the number of “registered permanent residence” status approved for Chinese citizens, Hong Kong permanent residents, Macao permanent residents and ROC nationals without Taiwanese household registration:⁵⁵

(as known as Gui Hua(歸化)), based on Article 4(1)(1) of Nationality Act. Then, their legal status is altered to that of “ROC nationals without Taiwan household registration”. Upon fulfilling the residency period requirements, they become eligible to apply for “registered permanent residence” status, please refer to Article 10 of Immigration Act:

A national without household registration in the Taiwan Area may apply to the National Immigration Agency for permanent residence if he/she meets one of the following conditions:

1. A person’s spouse and minor children as stated in Subparagraphs 1 to 11 of Paragraph 1 of the preceding Article, must have accumulated at least three hundred and thirty-five (335) days of residence in the State within one (1) year, or have accumulated at least two hundred and seventy (270) days of residence in the State each year within two (2) consecutive years, or have accumulated at least one hundred and eighty-three (183) days of residence in the State each year within five (5) consecutive years, and their original qualifications for residence remain unchanged. Where they reside in the Taiwan Area pursuant to Subparagraph 2, Subparagraph 4 or Subparagraph 8 of Paragraph 1 of the preceding Article, they are exempted from the criterion of satisfying with the certain period and days of residence.

⁵¹ The people of the Mainland Area being the spouse of the people of Taiwan who has obtained permission for long-term residency may apply for ‘registered permanent residence’ status if the following requirements are met: (1) Having resided lawfully in the Taiwan Area for two consecutive years and the residency period is no less than 183 days annually; (2) Having integrity and no criminal record; (3) Submitting a proof of losing its original household registration; (4) Serving the national interests, Please refer to 17(5)(3) of Act Governing Relations between the People of the Taiwan Area and the Mainland Area.

⁵² It is noteworthy that the Taiwanese government asserts its sovereignty by regulating the mobility of Chinese/mainland residents through the issuance and scrutiny of travel documents. This action serves to contest the notion of Taiwan's sovereignty being subordinate to the People's Republic of China (PRC). See: Sara L. Friedman, “Marital Immigration and Graduated Citizenship: Post-Naturalization Restrictions on Mainland Chinese Spouses in Taiwan.” *Pacific Affairs* 83, no. 1 (2010): 73–93..

⁵³ Please see Official Statistics of Executive Yuan, the number of the naturalised Taiwanese is 3,050 in 2016; 4,923 in 2017; 3,223 in 2018; 3,097 in 2019; 3,470 in 2020; 3,683 in 2021. https://www.gender.ey.gov.tw/gecdb/Stat_Statistics_Query.aspx?sn=gvmCSsIfVrGegD1s3PeG9A%40%40&statsn=2Q9lfo%24P0c647DizBjl92A%40%40&d=&n=194153, accessed 3 February 2024.

⁵⁴ Id.

⁵⁵ Please see Official Statistics of National Immigration Agency, <https://www.immigration.gov.tw/5385/7344/7350/8883/?alias=settledown&sdate=201601&edate=201712&fbclid=IwAR0acoeaATryj6cccspotUznWpSAD8dOMcgRAvol8WTuGRacReUw1z7XAw2s>, accessed 8 March 2024.

	Chinese citizens	Hong Kong permanent residents	Macao permanent residents	ROC nationals without Taiwan household registration
2020	2,149	1,576	134	7,309
2021	2,169	1,685	91	7,110
2022	2,487	1,296	124	10,688
2023	5,085	1,432	227	13,138

Source: Official Statistics of National Immigration Agency

It was worth noting that of the 207,305 foreign marriage immigrants, around 139,731 had acquired ROC nationality between January 1987 and September 2023, amounting to a rate of 67.4 per cent. Among 382,091 Chinese marriage immigrants, around 156,419 have acquired the 'registered permanent residence' status, with a rate of 40.9 per cent, according to official statistics.⁵⁶ It is evident that foreign marriage immigrants and Chinese marriage immigrants had significantly different rates of obtaining the 'registered permanent residence' status. The possible rationale behind this phenomenon will be explained in Section 3.1.4.

3.1.2 The loss of citizenship

In the case of natural-born Taiwanese citizens, their citizenship can only be renounced upon their voluntary and explicit request, and the government does not have the authority to forcibly revoke it. Upon request, and with the permission of the Ministry of the Interior, where Taiwanese citizens meet one of the following conditions, they can apply to renounce their Taiwanese citizenship: (1) when children living with their foreign (/foreign adoptive) parents acquire the same nationality as their foreign (/foreign adoptive) parents; (2) Being the spouse of a foreigner; (3) those who voluntarily acquire a foreign nationality.⁵⁷

Even among those who meet the conditions for loss of citizenship, there are some exceptions. Those who are performing their military service or holding public office are not permitted to renounce their Taiwanese citizenship.⁵⁸ In addition, where a person is a criminal defendant under investigation or trial, a civil defendant, or required to pay overdue tax or arrears of tax penalty, Taiwanese citizenship cannot be lost.⁵⁹

⁵⁶ Please see Official Statistics of National Immigration Agency, <https://www.immigration.gov.tw/5385/7344/7350/8883/?alias=settleddown&sdate=201601&edate=201712&fbclid=IwAR0acoaATryj6cccspotUznWpSAD8dOMcgRAVol8WTuGRacReUw1z7XAw2s>, accessed 3 February 2024.

⁵⁷ Article 11 of the Nationality Law.

⁵⁸ Article 12 of the Nationality Law.

⁵⁹ Article 13 of the Nationality Law.

In contrast, revocation powers can only be exercised to naturalised citizens.⁶⁰ For example, those who have been found by a judicial court final ruling to have become naturalised citizens by colluding to participate in a fraudulent marriage or adoption.⁶¹ Another example is those who do not submit a certificate of loss of original nationality within the prescribed period, one year after the naturalisation for people who are eligible in age to voluntarily renounce their original citizenship, the approval of naturalisation can be revoked.⁶² According to official statistics, the number of losses of the ROC nationality remain stable, which is around between 650-900 each year over the past two decades.⁶³

3.1.3 Dual Nationality

In terms of the eligibility for dual citizenship, as Choo Chin Low has indicated, in principle, the tolerance of dual citizenship only is applicable to natural-born citizens as opposed to the naturalised citizens.⁶⁴ For naturalised citizens, renouncement of the original citizenship is required⁶⁵ with the exception to the highly skilled foreigners or experts which are recognised by the government.⁶⁶ For those who acquired Taiwanese citizenship by birth, dual citizenship is tolerated. However, dual nationals cannot hold certain public offices stipulated by Article 20 of the Nationality Law.⁶⁷

This provision was challenged in the Constitutional Court by Mr. Liu, a Taiwanese citizen, who has worked as medical personnel holding a public service position in Taiwan since 1991. Mr Liu acquired the Canadian citizenship in 2004.⁶⁸ In 2012, the authority, the Health Department of the Taipei City Government found that Mr. Liu had acquired Canadian nationality in 2004, thereby relieving his duty retrospectively. He argued that the impugned act exclusively permits dual nationals to hold public offices in educational institutions, such as presidents of public universities, teachers who concurrently serve as administrative governors of public school, with the approval of the competent administrative authority. However, this provision fails to make exceptions to the medical personnel, and this different treatment is not compatible with the principle of equality and the right to hold public offices enshrined in the Constitution.

⁶⁰ Article 19 of the Nationality Law.

⁶¹ Article 19(2) of the Nationality Law.

⁶² Article 9(2) of the Nationality Law.

⁶³ According to official statistic, the number of losses of the ROC nationality is 814 in 2002, 869 in 2003, 824 in 2004, 803 in 2005, 792 in 2006, 715 in 2007, 780 in 2008, 844 in 2009, 838 in 2010, 740 in 2011, 722 in 2012, 680 in 2013, 652 in 2014, 759 in 2015, 623 in 2016, 751 in 2017, 807 in 2018, 858 in 2019, 881 in 2020, 902 in 2021 and 892 in 2022. Please refer to Official Database, Ministry of the Interior, <https://data.gov.tw/dataset/62557>. The official statistic only provides the number of (voluntary) losses of the ROC nationality in the case of born Taiwanese citizens. The number of citizenships being revoked is not disclosed.

⁶⁴ Choo Chin Low, *supra* 41, at 25.

⁶⁵ Article 9(1) of the Nationality Law.

⁶⁶ Article 9(4) of the Nationality Law.

⁶⁷ Article 20 of the Nationality Law.

⁶⁸ The Taiwan Constitutional Court, *Judicial Yuan Interpretations No 768*, <https://cons.judicial.gov.tw/en/docdata.aspx?fid=100&id=310949>, accessed 3 February 2024.

The Constitutional Court in *JY Interpretation No 768* ruled that the impugned act is based on rationality basis review.⁶⁹ The Court considered that the state should have greater discretion over whether dual nationals are eligible for holding certain types of public offices or not. The Court ruled that the aim of the impugned act of ensuring the sense of loyalty and trust between servants and the state is a legitimate goal, and further ruled that disallowing civil servants who have dual nationality is considered as an appropriate method to attain the legitimate goal. Thus, the impugned act is not contrary to the principle of equality or the right to hold public offices enshrined in the Article 7 of the Constitution.⁷⁰

3.1.4 Features of the Legal Regime of Taiwanese citizenship

Discrimination in citizenship acquisition

Discrimination in the citizenship system of Taiwan is a critical issue stemming from sex discrimination to discrimination against immigrants. One example is that, between 1945 and 2000, the Nationality Act of the ROC restricted the citizenship rights of female citizens in several ways. Firstly, female citizens who married foreigners could not pass on their citizenship to their children. Secondly, if a child was born out of wedlock, females could only pass on their nationality if the father refused responsibility for fatherhood or was unknown or stateless. Finally, while male citizens' female spouses could be granted nationality automatically, female citizens' male spouses had to apply for naturalisation and meet strict requirements.⁷¹ The new Nationality Act, amended in 2000, abolished the sex difference present in the old Act. However, according to Article 2(2) of the Nationality Act, individuals born before 9 February 1980 can only apply to the law as it existed before the amendment, and they are unable to acquire their mother's nationality.

Following Taiwan's democratisation, migrant workers and marriage migrants emerged as the predominant immigrant groups. Migrant workers are deliberately excluded from the possibility of naturalisation, a stance underscored by research highlighting their alarming exposure to severe exploitation and discrimination.⁷² In a strategic move to preserve domestic industry, the government introduced a wave of low-cost laborers throughout the 1990s.⁷³

As of September 2023, the reported number of migrant workers in Taiwan was 748,678. Among them, 516,815 were industrial migrant workers, while 231,863 were classified as

⁶⁹ When the Constitutional Court apply "rational basis review," it means that the Court presumes that the impugned act to be constitutional by giving legislatures deference. In addition, the plaintiff bears the burden of proof proving that impugned act is unconstitutional.

⁷⁰ *Id.*

⁷¹ Chao-ju Chen, "Gendered Borders: The Historical Formation of Women's Nationality under Law in Taiwan," *East Asia Cultures Critique* 17, no. 2 (2009): 289–314.

⁷² Yen-Fen Tseng, "Yin Jin Wai Ji Lao Gong De Guo Zu Zheng Zhi [Expressing Nationalist Politics in Guestworker Program: Taiwan's Recruitment of Foreign Labor]," *Taiwanese Journal of Sociology* 32, no. 32 (January 1, 2004): 1–58; Mei-Chun Liu, "Lian Jia Wai Lao Lun Shu de Zheng Zhi Jing Ji Xue Pi Pan [A Critique from Marxist Political Economy on the 'Cheap Foreign Labor' Discourse]," *Taiwanese Journal of Sociology*, no. 38 (2000): 59–90,.

⁷³ Yen-Fen Tseng, *supra* note 72.

household social welfare workers. Most migrants originate from Southeast Asian countries. The following table presents official statistic on industrial migrant workers and household social welfare workers, categorised by their countries of origin:

	Total	Vietnam	the Philippines	Indonesia	Thailand	Malaysia
industrial migrant workers	516,815	233,811	124,098	91,153	67,750	3
household social welfare workers	231,863	27,490	27,928	176,041	404	-
	748,678					

Sources: Official Database, Ministry of Labour⁷⁴

According to Article 5 of Enforcement Rules of the Nationality Act, the duration of stay of the migrant workers should be excluded in the calculation of the legal residential requirements of naturalisation process.⁷⁵ Under the present regulatory scheme, most migrant workers in Taiwan will never have the chance to become Taiwanese citizens. Due to the limitation on the legal stay, the longest legal stay for the industrial migrant workers is 12 years while for the household migrant workers it is 14 years.⁷⁶ Once the legal residential period is reached, they are not allowed to re-enter to work in Taiwan as migrant workers.

Circumstances have changed for highly skilled workers recently. Due to the decline in birth rates and the increase in labour force, the Taiwanese government launched the Retention of Foreign Intermediate Skilled Workforce Program (移工留才久用方案) in 2022, increasing the incentives for the temporary migrant workers to permanently stay and contribute to Taiwan.⁷⁷ This scheme paves the way for the migrant workers to apply for indefinite leave to remain in Taiwan (永久居留). Once the temporary migrant workers have worked in Taiwan for 6 years, the employers could apply for the employee to be converted into the foreign intermediate skilled workers if they meet certain requirements such as satisfying salary condition eligibility

⁷⁴ Please refer to Official Database, Ministry of Labor, <https://statdb.mol.gov.tw/statiscla/webMain.aspx?sys=100&kind=10&type=1&funid=wqrymenu2&cparm1=wq14&rdm=l4y9dcli>, accessed 3 February 2024.

⁷⁵ Please see Article 5 of Enforcement Rules of the Nationality Act: "I. The calculation of the duration of legal stay in the ROC as prescribed in Article 3 to Article 5 of this Act shall include the duration of legal stay as permitted by the Alien Resident Certificate or Alien Permanent Resident Certificate acquired before this Act was amended and enforced on 9 February 2000. II. Under any of the following circumstances, the duration of stay shall not be included in the calculation of the legal stay period as defined in the preceding Paragraph: 1. Where the applicant is permitted by the Ministry of Labor to engage in work prescribed in Subparagraph 8 to Subparagraph 10 of Paragraph 1 of Article 46 of the Employment Service Act....." Paragraph 1 of Article 46 of the Employment Service Act: " Unless otherwise provided in the Act, the work that a foreign worker may be employed to engage in within the Republic of China is limited to the following:..... (8) Marine fishing/netting work. (9) Household assistant and nursing work. (10) Workers designated by the Central Competent Authority in response to national major construction project(s) or economic/social development needs."

⁷⁶ Paragraph 4 and 6 of Article 52 of Employment Service Act.

⁷⁷ Please refer to Retention of Foreign Intermediate Skilled Workforce Program, <https://www.ey.gov.tw/Page/5A8A0CB5B41DA11E/bad691ec-b013-4a38-9e35-92d2eff33623>, accessed 3 February 2024.

and the required skill level.⁷⁸ After 5-years as foreign intermediate skilled workers, then they can apply for permanent residence in Taiwan.⁷⁹

In contrast, marriage migrants possess the legal entitlement to pursue naturalisation; however, marriage migrants originating from China contend with more stringent regulations compared to their counterparts from other countries. This discrepancy predominantly arises from the ambiguity surrounding the citizenship status of PRC citizens, coupled with debates concerning their potential influence on Taiwan's democratic landscape.⁸⁰ One of the current common debates concerns the six-year residence naturalisation, in contrast to the four-year residence needed by non-Chinese marriage immigrants. Chinese marriage immigrants were even perceived as products facilitated by matrimonial agencies, and the migrants themselves were regarded as posing a threat to the "quality of the population."⁸¹ As a result, marriage migrants were commonly referred to as "foreign brides," highlighting their marital status and the commercial aspects of their relationships. This designation soon came to be recognised as discriminatory, prompting the government, civil society, and marriage migrants to introduce alternative terms like "New Taiwanese Residents," "New Taiwan Immigrants," and "New Taiwanese Female Immigrants" to counteract these racially biased and sexist expressions.⁸² Debates over naturalisation periods and the social stigmatisation faced by marriage migrants further show the multifaceted nature of discrimination in Taiwanese society. Efforts to challenge and redefine discriminatory labels demonstrate a collective pursuit of equity and recognition.

The revision of the good character requirement

Prior the 2016 revision of the Nationality Law, one of the requirements for naturalisation is to demonstrate "good moral character," this was interpreted as behaving "decently" and having "no records of crime".⁸³ The requirement was criticised for being abstract and further for its

⁷⁸ Those foreign workers who have worked in the manufacturing industry, slaughterhouse industry, construction industry, the agriculture and long-term care sector in Taiwan for 6 years or more, and overseas Chinese and foreign students who have obtained an associate degree or higher from an educational institution in Taiwan, who meet salary condition eligibility and the required skill level, their employers can apply for them to be re-designated intermediate skilled foreign workers., please see <https://fw.wda.gov.tw/wda-employer/home/mid-foreign-labor/index?locale=en>, accessed 3 February 2024.

⁷⁹ Those intermediate skilled foreign workers have worked in Taiwan for 5 years or more, once they receive a higher salary (NTD 50,500) or have a more advanced skill level, they can apply for indefinite leave to remain. Please see <https://fw.wda.gov.tw/wda-employer/home/mid-foreign-labor/index?locale=en>, <https://www.ey.gov.tw/Page/5A8A0CB5B41DA11E/bad691ec-b013-4a38-9e35-92d2eff33623>, accessed 3 February 2024

⁸⁰ Hsiao-Chuan Hsia, "Imaged and Imagined Threat to the Nation: The Media Construction of the 'foreign Brides' Phenomenon' as Social Problems in Taiwan," *Inter-Asia Cultural Studies* 8, no. 1 (2007): 55–85; Hsiao-Chuan Hsia, "Wai Ji Xin Niang Xian Xiang Zhi Mei Ti Jian Gou [The Media Construction of the 'Foreign Brides' Phenomenon]," *Taiwan: A Radical Quarterly in Social Studies*, no. 43 (2001): 153–96.

⁸¹ Id.

⁸² Wai ji xin nian gyan li de yi guo hun yin [Transnational marriages in the eye of the "Foreign Brides," Digital Archive Taiwan], <https://digitalarchives.tw/Exhibition/4564/4.html>, accessed 3 February 2024; Hsiao-Chuan Hsia, "Cong wai ji xin niang dao xin zhu min zou liao duo yuan [How far is the distance between 'Foreign Brides' to 'New Residents'?]" *Independent Opinion*, 31 January 2018, <https://opinion.cw.com.tw/blog/profile/65/article/6576>, accessed 3 February 2024.

⁸³ Article 3(3) of the 2000 Nationality Law. Choo Chin Low, *supra* note 41, at 26.

interpretation as being subject to broad discretion by the authority.⁸⁴ This requirement was revised in 2016, and the Ministry of the Interior, the competency authority, issued the Regulations for the Assessment Criteria of No Illicit or Illegal Behaviour, attempting to define the scope of the “illicit or illegal behaviour”.⁸⁵

During the effective period of the 2005 Nationality Law, Ms. Wu (武翠姮), a Vietnamese woman, married to a Taiwanese man, went through the naturalisation process to acquire Taiwanese citizenship conditioned with providing a certificate of loss of original nationality, namely Vietnamese, within one year from the day of approval of naturalisation.⁸⁶ However, the court found that Ms. Wu had a sexual relationship with another Vietnamese man during her marriage and gave birth to a child whose natural father is the Vietnamese man.⁸⁷ Following her divorce from the Taiwanese man, she gave birth to another child, the father of whom is also the Vietnamese man.⁸⁸ Accordingly, Ministry of the Interior, the competent authority, revoked her naturalisation because she did not meet the “good character” requirement based on the suspected adultery.⁸⁹ Ms. Wu was rendered stateless.⁹⁰

After all the remedies were exhausted, a constitutional challenge was brought by Ms. Wu against the provision of the “good moral character” as behaving “decently” and having “no records of crime” in the 2001 Nationality Law. Ms Wu argued that, since the aforementioned provision is only applicable to naturalised and not to natural-born citizens, it is incompatible with the principle of equality. The Constitutional Court dismissed the petition in 2018, because the Nationality Law had been revised in 2016, removing the contented provision.⁹¹ Despite the dismissal of the case, three dissenting judges argued that there is a constitutional character to citizenship. For his reason, the court should deem the case admissible and proceed to discuss its merits.⁹² Eventually, the Constitutional Court did not address the question of whether the provision, which allows for the revocation of citizenship for naturalised citizens and potentially renders them stateless, is compatible with the Constitution or not. Hence it left Ms. Wu still deprived of her Taiwanese citizenship.

⁸⁴ Choo Chin Low, *supra* note 41, at 26.

⁸⁵ Regulations for the Assessment Criteria of No Illicit or Illegal Behavior, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0030034>, accessed 3 February 2024.

⁸⁶ Article 9(1) of Nationality Act.

⁸⁷ Please refer to Taipei High Administrative Court Judgment (104) Su Tze No. 727. 臺北高等行政法院判決 104 年度訴字第 727 號

⁸⁸ Taipei High Administrative Court Judgment (104) Su Tze No. 727.

⁸⁹ Article 19(1) of the Nationality Law.

⁹⁰ In the Review of Taiwan’s Second Report on the Implementation of CEDAW in 2014, Conclusions and Recommendations of the Review Committee also mentioned this point in para. 20: “The Review Committee is also concerned that even after naturalization, her citizenship can be revoked if she incurs a criminal record within five years of marriage.”, please see Review of Taiwan’s Second Report on the Implementation of CEDAW, *Conclusions and Recommendations of the Review Committee*, 26 June 2014.

⁹¹ Huitai Zi No. 12266[會台字第 12266 號], <https://cons.judicial.gov.tw/docdata.aspx?fid=98&id=326508>, accessed 3 February 2024.

⁹² Please refer to the dissenting opinions filed by Justice Sheng-Lin JAN, Justice Jui-Ming HUANG (joined by Justice Jau-Yuan HWANG).

3.2 Special institutional arrangements -Household Registration (Hukou)

The Hukou system in Taiwan is a household registration system that identifies individuals within a household. Similar systems can be found throughout East Asia, such as the Koseki system in Japan, the Hộ Khẩu system in Vietnam, and the former Hoju system in South Korea. Originally, the Taiwanese Hukou system was established during Japanese colonisation to differentiate Taiwanese and Japanese, serving as an apartheid system. Later, it separated local provincials (benshengren) from extra provincials (waishengren) and then separated military populations from the general population before democratisation. The Hukou system was reformed in 1992 with the amendment of the Household Registration Act, no longer registering people's occupation or their "original province," which was previously used to differentiate between local provincials and extra provincials. In addition, the household registration became the decisive mechanism to distinguish between Taiwanese people and people of mainland China based on Article 2 of Act Governing Relations between the People of the Taiwan Area and the Mainland Area.⁹³

The system now serves as a local population registration mechanism at the household level, identifying individuals as voters in elections, covering them under National Health Insurance, and making them eligible for social welfare and other benefits. In addition, the Constitutional Court of Taiwan in *Judicial Yuan Interpretations No. 558*⁹⁴ elaborated on the relationship between Taiwan's household registration and the right of people to enter or leave the country prescribed in Article 10 of the Constitution.⁹⁵ The Constitutional Court has affirmed that ROC nationals who have the household registration should enjoy a greater degree of the right of people to enter or leave the country, compared with those who are ROC nationals without household registration.⁹⁶ As Hsiu-Yu Fan has argued, although the varying degrees of the right of people to enter or leave the country arising from household registration does not exist in the Constitution, the Constitutional Court has confirmed the constitutionality of the household registration mechanism.⁹⁷

The Hukou system also serves as the registration system for citizens in each household and as the final step in naturalisation. Immigrants who have met the requirements for registered permanent residence, *Ding Ju*(定居), for full naturalisation, such as the three-year continuous residence for marriage immigrants,⁹⁸ and have completed the naturalisation procedure, must then register in the Hukou system to obtain a National Identity Card—the final step to obtain

⁹³ Chien-Liang Lee, "Ren Min Yu Guo Jia 'Shen Fen Lian Jie' De Fa Zhi Quan Yao Yu Fa Li Tan Suo: Jian Lun Tai Wan Ren Guo Ji De Qi Cheng Duan Xu Wen Ti"[A Legal Analysis of the "Status-Connection" Between the People and State, with Regard to Problems Concerning the "Nationality" of the Taiwanese], *National Taiwan University Law Journal* 36(4) (2007):19.

⁹⁴ The Taiwan Constitutional Court, *Judicial Yuan Interpretations No. 558*, English version, <https://cons.judicial.gov.tw/en/docdata.aspx?fid=100&id=310739>, accessed 3 February 2024.

⁹⁵ Article 10 of the Constitution of Republic of China (Taiwan): "The people shall have freedom of residence and of change of residence."

⁹⁶ The Taiwan Constitutional Court, *Judicial Yuan Interpretations No. 558*, *supra* note 94.

⁹⁷ Hsiu-Yu (Tori) Fan, "Restrictions on citizens' exits reconsidered: Taiwan, young democracy under threat," *International Migration* 00 (2022): 10.

⁹⁸ Article 4 of Nationality Act.

Taiwanese citizenship. Although the household registration system is more flexible than in the past, the welfare and voting systems still heavily rely on the Hukou system. While someone living in Taiwan can still be insured by the National Health Insurance without being registered in the Hukou system, the welfare and voting systems depend on it. Unregistered individuals may obtain ballots for the presidential election but not for other elections.⁹⁹ Hence, the Hukou system in Taiwan today plays an important role in the administration system and serves as an example of the utility of citizenship documents in daily life.

3.3 Specific rules and status for certain (numerically and politically important) groups

3.3.1 Confusion on the definition of nationals

As explained in the historical background, the ROC legal structure provided an ambiguous definition for the citizenship which results in a complex citizenship framework. One of the fundamental issues of the obscure citizenship is the legal status for the Chinese people (i.e., people of the mainland area) in the constitution and law. Because of its legacy of being the former Chinese government, the ROC has not broken its ties to China fully just as the constitution has maintained, whereas the government of the ROC does not endorse the assertion of competing with the PRC for the sovereignty of China either.¹⁰⁰ This creates a window that the people of the mainland area should be considered as the nationals from certain perspectives of the law while in practice they are treated as foreigners. The previous section, section 2, has pointed out the shift of sovereignty of the people from Chinese to Taiwanese along with the amendment of the constitution and the Immigration Law also denotes that people of Taiwan are its nationals in the law. Furthermore, the “Act Governing Relations between the People of the Taiwan Area and the Mainland Area” is designed to comply with the amendments to the Constitution in terms of cross-strait relations; its first article says, “This Act is specially enacted for the purposes of ensuring the security and public welfare in the Taiwan Area, regulating dealings between the peoples of the Taiwan Area and the Mainland Area, and handling legal matters arising therefrom before national unification.”¹⁰¹ The language used in the act governing the people of the mainland area seems parallel to that used for the people of the Taiwan area; the first article mentions “before national unification” in accordance with the Constitution, but does not use the terms ‘nationals’ or ‘citizens’ to describe the individuals under discussion. The essence of the act governing the people of the mainland area is to establish a different way of governing immigrants from China. Nationals without household registration are not included in this category, nor are residents of Hong Kong and Macau.

⁹⁹ Those who have ROC nationality without Taiwanese household registration and are now living in a foreign country do not have the right to vote in the civil servants’ election. However, they might have the right to vote in presidential election if all requirements are met: (1) have reached the age of 20; (2) have once registered household and lived in Taiwan for more than 6 consecutive months; (3) within the specified time limit handled the registration of elector with the government agency of household registration at the location of the original domicile when he/she migrated to the foreign country.

¹⁰⁰ This has been explained in Section 2.1.

¹⁰¹ This is the official translation of the regulation. See: Act Governing Relations between the People of the Taiwan Area and the Mainland Area, §1(1992).

However, individuals from the mainland area and residents of Hong Kong and Macau are not listed as "foreigners" in the Immigration Act. Section 12 of Article 11 of the Immigration Act regulates reasons for denying entry to nationals without household registration, which must be applied *mutatis mutandis* to people from the mainland area or residents of Hong Kong or Macau. Therefore, while ROC citizenship is now associated with the Taiwanese people, and the term 'nationals' may refer to individuals living outside of the Taiwan area, as the legal system allows nationals without household registration (such as Chinese, Tibetans, and others who are nationals without citizenship), the citizenship status of Chinese people, including those from Hong Kong and Macau, remains ambiguous under the law.

The unclear definition of Chinese people under the ROC legal structure has yielded different interpretations over the years. On 15 February 2023, the Taiwan High Court Kaohsiung Branch upheld a ruling by the District Court of Kaohsiung that the State Compensation Law should be applied to Chinese cases in order for them to receive compensation.¹⁰² The court based its decision on an administrative ruling issued by the Ministry of Justice in 1993 (No. 16337), which states that Chinese individuals should be considered citizens of Taiwan.¹⁰³ The judicial ruling prompted several declarations from administrative bodies to clarify that mainlanders/Chinese are not citizens of Taiwan. The Mainland Affairs Council, a government organisation responsible for cross-strait affairs in Taiwan, issued a statement. Firstly, it clarified that it has never referred to people from mainland China as nationals of the ROC. Secondly, it used the Immigration Act and Nationality Act to define the nationals of the ROC as residents of Taiwan or individuals who hold ROC nationality but do not live in Taiwan. Thirdly, it explained that the State Compensation Law can only be applied to foreigners on the basis of the principles of equality and reciprocity. As the circumstances with the PRC are unclear, the Ministry of Justice should be the authority for further interpretation.¹⁰⁴ Later, the Executive Yuan, the head of the administrative body in the government, issued an administrative ruling. The ruling stated that the people of Mainland China should not be considered nationals of Taiwan. The previous rulings that referred to people of Mainland China as citizens of the ROC should not be applied to future cases.¹⁰⁵

3.3.2 Stateless Persons under Taiwanese Citizenship Regime

In addition to the citizenship confusion of people from the PRC, the ROC also faces a related statelessness issue connected to the legacy of Greater China. After the Chinese Civil War in 1949, overseas Chinese people experienced a dilemma over their nationality, leading to some

¹⁰² Taiwan High Court Kaohsiung Branch (110) Zhong Shang Guo Zi No. 5 (台灣高等法院高雄分院民事判決 110年度重上國字第 5 號)

¹⁰³ Ministry of Justice (82) Fa Lu Jue No. 16337 (法務部 82 年 8 月 5 日法律決 16337 號)

¹⁰⁴ "Clarification: The MAC Never Stated that "Mainland Chinese People are Nationals of the Republic of China" in a Written Response to the Kaohsiung District Court. Mainland Affairs Council Press Release No. 008." 17 February 2023, Mainland Affairs Council, https://www.mac.gov.tw/EN/News_Content.aspx?n=A921DFB2651FF92F&sms=37838322A6DA5E79&s=699A6229FDF98141, accessed 3 February 2024.

¹⁰⁵ Executive Yuan (112) Yuan Tai Fa Chang Zi No. 1121023848 (行政院 112 年 5 月 24 日院臺法長字第 1121023848 號)

statelessness cases.¹⁰⁶ This issue extends to several other groups, including Tibetan exiles, stateless descendants of Chinese Civil War refugees, and Chinese descendants from Indonesia. The ROC government faced a situation where two divisions of soldiers fled to Northern Thailand and Burma/Myanmar between 1949 and 1954. They later stayed there as an anti-communist base, and some of them obtained Thai citizenship in the 1980s because of their participation against communist powers in Thailand.¹⁰⁷ Many of their children went to Taiwan for study and work but were often refused with residency rights as they do not hold ROC citizenship on paper. These individuals initiated campaigns for their ROC citizenship, leading to the introduction of Article 16 of the Immigration Act in 1999. However, this article had a sunset clause, only addressing those who arrived before 21 May 1999. This created a statelessness conundrum for some of the ROC military background group from Thailand and Burma/Myanmar. Indonesian statelessness is addressed in the same article. The context was based on the anti-Chinese movement of Indonesia in the 1980s and many Chinese descendants who might have had relations to the ROC fled to Taiwan for refuge. For humanitarian reasons, the Indonesian Chinese who experienced oppression were allowed to be granted residence rights.¹⁰⁸

Tibetan exiles, unlike the previous groups, migrate to Taiwan for various reasons and apply for residence and citizenship. However, the Greater China structure of the ROC creates a unique legal framework for the Tibetans, framing them as nationals and outsiders simultaneously. This ambiguity results in visa and residency challenges for Tibetan exiles. Some Tibetans did not pass the statelessness requirement and were seen as having effective citizenship in India or Nepal, facing the risk of deportation. In 2019, six Tibetans filed lawsuits, and the Supreme Administrative Court issued a preliminary relief allowing some undocumented Tibetan refugees to stay in Taiwan.¹⁰⁹ However, the Taipei High Administrative Court ruled that these Tibetans are not stateless but rather Nepalese nationals.¹¹⁰ The court referred to the Convention on Certain Questions Relating to the Conflict of Nationality Law to argue that states have the authority to determine who their nationals are, as a way to exercise their sovereignty. Other states should not deny the nationality of the deciding states to avoid conflicts of sovereignty.¹¹¹ The Tibetan exiles have since appealed to the Supreme Administrative Court, but the Supreme Administrative Court upheld the ruling of the Taipei High Administrative Court.¹¹² Subsequently, the Tibetan exiles brought these constitutional

¹⁰⁶ Lara Tien-Shi Chen, "Stateless or Belonging to Taiwan or PRC? Nationality and Passport of Overseas Chinese," in *Routledge Handbook of the Chinese Diaspora*, ed. Chee-Beng Tan (London: Routledge, 2013), 326–38; Leo Suryadinata, "Indonesian Policies toward the Chinese Minority under the New Order," *Asian Survey* 16, no. 8 (August 17, 1976): 770–87.

¹⁰⁷ Lara Chen Tien-Shi, *supra* note 106; Daisuke Wakamatsu, "Tai Wan Xian Dai Shi Shang De Guan Fang Guo Zu Zhu Yi Yu Tai Mian Gu Jun Xing Xiang [Nationalism and the Image of the 'Isolated Forces in Myanmar and Thailand' in Contemporary Taiwanese History]," *Osaka University Forum on China*, no.2013-5, 2013, 1-8.

¹⁰⁸ Liu Yui-Chiu, "Lai Tai Bi Nan De Yin Ni Hua Qiao Ren Qiu Yi Min Shu Yun Zhuan An Shen Cha [Immigration Agency Allowed a Special Review on Indonesian Overseas Chinese Who Came to Taiwan to Seek Asylum]," *Radio Taiwan International*, September 20, 2017; Matthew Strong, "Ethnic-Chinese Refugees from Indonesia Want Taiwanese Citizenship," *Taiwan News*, September 20, 2017.

¹⁰⁹ Supreme Administrative Court Ruling 784, (2020).

¹¹⁰ The Taipei High Administrative Court Verdict (109) Su Tze No 87 (2021).

¹¹¹ The Taipei High Administrative Court Verdict (109) Su Tze No 87 (2021).

¹¹² Supreme Administrative Court Verdict (110) Shang Tze No 655 (2023).

challenges against the judgment of Supreme Administrative Court, as well as the applicable regulations, and also initiated the preliminary injunction. On 29 December 2023, the Constitutional Court found that their petition was manifestly unfounded and then dismissed it. Also, the Constitutional Court denied their petition for the preliminary injunction.¹¹³

Additionally, there are cases of stateless children whose parents were migrant workers. According to ROC law, children of non-Taiwanese parents do not obtain Taiwanese citizenship. Migrant workers who become undocumented may find it difficult to register their children in their original countries' systems, resulting in statelessness.¹¹⁴ After several NGOs initiated a campaign for the children, these stateless cases are now handled as special individual cases for obtaining Taiwanese citizenship.

3.4 Constitutional citizenship and indigeneity

It has recently attracted scholarly attention for the issue of indigeneity citizenship.¹¹⁵ Within the framework of indigenous people coexisting within the state, it is important to note that the indigenous people hold dual identities as both citizens of the state and members of their own tribes. Tensions between the government and the indigenous tribes are shown in that how the indigenous rights to self-governance and self-determination are respected in the modern states. A main issue encountered by some indigenous people in Taiwan is the insufficient acknowledgment of their indigeneity.

Until now, there are 16 indigenous tribes that are officially recognised: Amis, Atayal, Paiwan, Bunun, Pinuyumayan, Rukai, Tsou, Saisiyat, Yami, Thao, Kavalan, Truku, Sakizaya, Sediq, Hla'alua and Kanakanavu.¹¹⁶ The population of the indigenous people numbers approximately 580,000 people, which accounts for 2.5 per cent of Taiwan's population.¹¹⁷ The Taiwanese government has launched affirmative action programs, granting indigenous peoples to enjoy preferential treatment such as for university admission, civil servants exams. Nevertheless, that preferential treatment could only benefit the indigenous peoples which have an officially recognised indigeneity, defined by the Status Act for Indigenous Peoples. The Pingpu tribes, which is neither 'mountain indigenous peoples' (previously as mountain shanbao) and 'plain-land indigenous peoples' (previously as plains shanbao), is not officially recognised

¹¹³ Taiwanese Constitutional Court Ruling (112) Xian Cai Tze No 150 (2023), <https://cons.judicial.gov.tw/docdata.aspx?fid=5498&id=351474>, accessed 29 December 2023.

¹¹⁴ Susan Kneebone, "Nationality and Identity in Regulation of International Marriage Migration in Southeast and East Asia: Children As Pawns of the State?," *U of Melbourne Legal Studies Research Paper*, no. 734 (2016),.

¹¹⁵ For example, Kirsty Gover, "Indigenous Citizenship in Settler States," in *The Oxford Handbook of Citizenship*, eds. Ayelet Shachar, and others (Oxford: Oxford University Press, 2017), 453–477. Annamari Vitikainen "Indigenous Citizenship, Shared Fate, and Non-ideal Circumstances," *Citizenship Studies* 25, no.1 (2021):1-19. Juan Pablo Ramaciotti and Jo Shaw, "Constitutional citizenship and indigeneity: The case of Latin America," *University of Edinburgh School of Law Working Paper* no. 2023/04(2024): 1-41.

¹¹⁶ Please see Council of Indigenous Peoples, The Tribes in Taiwan, <https://www.cip.gov.tw/en/tribe/grid-list/index.html?cumid=5DD9C4959C302B9FD0636733C6861689>, accessed 3 February 2023.

¹¹⁷ According to the Official Statistics of Dept. of Household Registration, Ministry of Interior, the population of the indigenous people numbers 585,455 (updated March 2023).

by the authorities as indigenous legal status.¹¹⁸ The rationale behind this is based on the main reasons: (1) the authorities considers that the Pingpu group has been highly assimilated with the Han society and they have lost their language and culture as opposed to the “mountain-area indigenous people” and “plains mountain indigenous people”¹¹⁹ and (2) expanding the scope of indigenous groups would dilute the limited resource allocation.¹²⁰

With the implementation of the Constitutional Court Procedure Act on 4 January 2022, one of the most salient transformations is the introduction of a ‘constitutional complaints’ mechanism.¹²¹ The Taiwan Constitutional Court has rendered two landmark and important constitutional judgments relating to indigenous rights and indigenous legal status, which are prolonged dispute and debate in Taiwan. More importantly, on the Indigenous People Status of Children of Intermarriage between Indigenous and Non-indigenous People Case, it was the first time that the Constitutional Court of Taiwan constitutionalised the right to recognition of indigenous identity.¹²² The Court takes the same stances on the following the Indigenous Peoples Status for the Siraya People Case.

While the two cases primarily addressed the legal status of indigenous people, they also explored how the state defines and establishes the boundaries of indigenous people who are officially acknowledged, along with the corresponding rights and responsibilities that come with it. The two landmark cases not only demonstrated the importance of the right to recognition of indigenous identity in being elevated and constitutionally protected as fundamental rights by the Taiwan Constitutional Court, but also offered valuable resources for examining the relationship between Constitutional Citizenship and indigeneity. That is, the concept of constitutional citizenship in Taiwan encompasses the Han people as well as the indigenous people.

3.4.1 The indigenous people status for children of intermarriage between indigenous and non-indigenous people case

A constitutional challenge was brought against a provision in the Status Act For Indigenous Peoples that stipulates that whether a child of intermarriages between indigenous peoples and non-indigenous peoples acquire indigenous status depends on the family name/surname the children adopt. If the child adopts Han(漢)’s parent’s family name, then the child cannot acquire

¹¹⁸ According to the Council of Indigenous Peoples, the population of the Pingpu people numbers approximately 980,000 people. Please see Council of Indigenous Peoples, ‘110 Yuan Min Zong Zi Di 110067226 Hao Han [Council of Indigenous Peoples Letter Yuan-Min-Zong-Zi No. 110067226] (原民綜字第 110067226 號函)’, <https://cons.judicial.gov.tw/docdata.aspx?fid=38&id=310021>, accessed 3 February 2024.

¹¹⁹ Please refer to oral argument statement for constitutional review provided by Council of Indigenous Peoples, at 13 (2022).

¹²⁰ Please refer to oral argument statement for constitutional review provided by Council of Indigenous Peoples, at 22 (2022).

¹²¹ Regarding the context of Constitutional Court Procedure Act, please refer to the official website of Constitutional Court of R.O.C. (Taiwan), <https://cons.judicial.gov.tw/en/docdata.aspx?fid=5239>, accessed 3 February 2024.

¹²² TCC Judgment 111-Hsien-Pan-4 (2022) 【The Indigenous People Status of Children of Intermarriage between Indigenous and Non-indigenous People Case】 , English version, please see <https://cons.judicial.gov.tw/en/docdata.aspx?fid=2170&id=346959>, accessed 3 February 2024.

indigenous status. The Constitutional Court held that the impugned provision is unconstitutional, violating the indigenous peoples' right to personal identities and racial equality enshrined by the Constitution.¹²³

In terms of determination of the indigenous legal status, the impugned act adopts the combination of *ius sanguinis* and identities principles rather than *ius sanguinis* principle solely. The rationale behind the act is to respect and confirm the indigenous identity, and to maintain the stability of the indigenous identity and reallocate the resource by the requirement of "taking the surname of the indigenous father or mother", or "using the indigenous peoples traditional name".¹²⁴

It is worth noting that parents are allowed to give their children's surname by their own choice, either the father's or the mother's surname.¹²⁵ Nevertheless, in practice, over 98 percent of children adopt their father's surname.¹²⁶ It could also be seen that a child of mixed blood usually takes Han's father surname in the family of Han's father and indigenous mother based on Han's tradition which bear the father's surname. In addition, one of the plaintiff's mothers is the indigenous person with a Han surname and without the indigenous surname due to past colonial rule on the Indigenous peoples. While the child adopts his/her mother's Han surname, they could not convey and inherit indigenous culture via taking the mother's Han surname.¹²⁷ This has created a very awkward predicament where the children delivered by the indigenous mother cannot acquire the indigenous status.¹²⁸

The Constitutional Court confirmed that lineage is a fact that existed prior the Constitution and the law and recognised that it is closely intertwined with the right to recognition of indigenous identity, shall be protected by the Constitution as a starting point.¹²⁹ As Chao-ju Chen has pointed out, the case touched upon the issue of the intersection of race and sex discrimination.¹³⁰ The Court found the direct discrimination as violation of racial equality and the indirect discrimination as violation of gender equality. Yet the Court chose to review the case mainly from the perspective of violating racial equality and slightly from the perspective of violating gender equality. The reason why the Court adopted the method is because there

¹²³ TCC Judgment 111-Hsien-Pan-4 (2022), *supra* note 122.

¹²⁴ TCC Judgment 111-Hsien-Pan-4 (2022), *supra* note 122.

¹²⁵ Article 1059(1) of Civil Code: "Parents should agree in writing before filing the child's birth registration regarding if the child assumes the father's or mother's surname. Without such an agreement or when the agreement cannot be made, the surname should be determined by drawing lots at the Household Registration Office."

¹²⁶ Chao-Ju Chen, "Identity Choices at the Intersections: The Inequality of Cross-Border Motherhood and What to Do about It," in *House Rules: Changing Families, Evolving Norms, and the Role of the Law*, eds. Erez Aloni and Régine Tremblay (Vancouver: University of British Columbia Press, 2022), 59.

¹²⁷ Brief for Constitutional Review filed by the plaintiff Wu, at 19 (2018).

¹²⁸ Chuan-Ju Cheng, "Yuan Zhu Min Shen Fen Fa' Zhong 'Xing Shi Bang Shen Fen' Tiao Kuan De Wei Xian Fen Xi" *National Chung Cheng University Law Journal* 40 (2013): 1-40.

¹²⁹ TCC Judgment 111-Hsien-Pan-4 (2022), *supra* note 123.

¹³⁰ Chao-ju Chen, *supra* 126, at 52.

was not enough empirical data to prove the existence of sex inequality caused by the provision in question.¹³¹

The Constitutional Court has required the Legislative Yuan to amend laws to protect indigenous rights based on the spirits of the Judgments within two years from the announcement date. On 18 December 2023, the Legislative Yuan passed the amendment to the Status Act, making the legal requirements for acquiring indigenous legal status more lenient to align with the judgment of the Constitutional Court.¹³² In the current act, a child of intermarriages between indigenous peoples and non-indigenous peoples can acquire indigenous legal status through three methods: registering with the traditional name of their indigenous parent, registering with an indigenous name and a Han's name simultaneously, or by registering with the surname of their indigenous parent, but not the traditional indigenous name.¹³³

3.4.2 The indigenous people status for the Siraya people case

The controversy revolves whether the Siraya people (one of the Pingpu peoples) have the indigenous people legal status from the constitutional dimension.

The Taipei High Administrative Court Division No.3 refers a question of constitutional law to the Constitutional Court for preliminary ruling, arguing that Article 2 of the Status Act for Indigenous Peoples (the impugned provision), which only allowed those who meet the certain requirements to belong to "Mountain indigenous peoples" and "Plain-land indigenous peoples" to be entitled to acquire the indigenous legal status, violated the Pingpu peoples' right to be recognised as indigenous peoples which should be protected in Article 22 of the Constitution through jurisprudential inference and judicial interpretation, the Principle of Equality prescribed by Article 7 of the Constitution, and the protection of indigenous peoples stipulated in Article 10, Paragraph 11 and 12 (First Sentence) of the Additional Articles of the Constitution.

One of the requirements is that they or their ancestors must register with the administration office by the designated time of 1956, 1957, 1959 and 1963.¹³⁴ There were some who missed the registration date or some who are reluctant to register because they identified themselves as neither "Mountain indigenous peoples" nor "Plain-land indigenous

¹³¹ Please refer to the concurring opinion of TCC Judgment 111-Hsien-Pan-4 (2022) filed by Justice Jau-Yuan HWANG (joined by Chief Justice Tzong-Li HSU and Justice Ming-Yan SHIEH, with Justice Hui-Chin YANG joining from part one to part four), para. 22.

¹³² Rachel Lin and Jason Pan, "Indigenous status law updated," *Taipei Times*, Dec 19, 2023.

¹³³ Article 3 of Status Act For Indigenous Peoples 2024.

¹³⁴ Tay-sheng Wang, "Taiwan Fa lü Shi Zai Si Fa Wei Xian Shen Cha Shang Zhi Yun Yong- Yi Xi La Ya Zu Yuan Zhu Min Shen Fen Ren Ding An Wei Li"[The Application of Taiwan's Legal History in Constitutional Review-Taking The Indigenous Peoples Status for the Siraya People Case as an Example], *Formosan Jurist* 15 (2022): 9-10.

peoples” and they were not allowed to register using their Pinpu tribes name.¹³⁵ Therefore, they were excluded from the formal recognition of the indigenous peoples.

Concerning the preliminary ruling, the Constitutional Court of Taiwan on 28 October 2022 has ruled that the impugned provision which excluded Taiwanese indigenous peoples (mainly the Pingpu Peoples) from its application for formal Indigenous status were unconstitutional. It violates their right to recognition of indigenous identity and the protection to their indigenous culture enshrined in the Article 22 of the Constitution of Taiwan.

It is worth noting that the Constitutional Court of Taiwan has emphasised that as long as Austronesian Taiwanese peoples meet the elements of “(1) preserving their cultural characteristics such as their ethnolect, custom, and tradition until present; (2) maintaining their ethnic identity; (3) having a verifiable historical record of them being Austronesian Taiwanese peoples,” they should be officially recognised to have the Indigenous Peoples Status.¹³⁶

The Council of Indigenous Peoples, the competent authority, articulated that Article 4, Paragraph 1, Subparagraph 2 of the Additional Articles of the Constitution clearly stipulated that only the “Plain-land indigenous peoples” and “Mountain indigenous peoples” are entitled to have the right to stand for election of indigenous legislators. On this basis, the competent authority further argues only these two groups have the indigenous legal status recognised by the Constitution, and that thus the Pingpu Peoples do not have the indigenous legal status from the constitutional dimension. Moreover, the Council of Indigenous Peoples argued that it should be resolved through the constitutional amendments process, not through constitutional complaints in order to achieve the goal of recognising the Pinpu Peoples as indigenous legal status.

Nevertheless, the Constitutional Court of Taiwan countered this argument, and ruled that the aim and the scope of the article relating to legislative election design system (Article 4, Paragraph 1, Subparagraph 2 of the Additional Articles of the Constitution) should be distinguished from the article proclaimed the importance of protecting the right of indigenous identity (Article 10, Paragraphs 11 and 12 (First Sentence) of the Additional Articles of the Constitution). Therefore, it is inappropriate to infer that Article 4, Paragraph 1, Subparagraph 2 of the Additional Articles of the Constitution represents the intentional exclusion of the Pingpu people from the formal recognition of the indigenous peoples.¹³⁷ The Constitutional Court of Taiwan required that the Legislative Yuan, the Council of Indigenous Peoples and the related competent authority must amend the impugned provision or legislate a special law or regulations in accordance with this Judgment within the three years from the announcement of this Judgment in 2022.

¹³⁵ Tay-sheng Wang, Expert Opinion for The Indigenous Peoples Status for the Siraya People Case, at 13-16 (2022).

¹³⁶ TCC Judgment 111-Hsien-Pan-17 (2022) 【Case on the Indigenous Peoples Status for the Siraya People, <https://cons.judicial.gov.tw/en/docdata.aspx?fid=2170&id=346962>.

¹³⁷ TCC Judgment 111-Hsien-Pan-17 (2022) 【Case on the Indigenous Peoples Status for the Siraya People】 , para. 25-29.

Following a preliminary ruling issued by the Constitutional Court, the Taipei High Administrative Court was able to decide on the original administrative case. On 11 May 2023, the Taipei High Administrative Court ruled against the plaintiffs. In accordance with the Constitutional Court's judgment, the Taipei High Administrative Court concluded that the provision in question still applies to the 16 officially recognised indigenous tribes until it is amended. As a result, the plaintiffs do not fulfil the legal requirements for being classified as plain-land indigenous peoples, and their claim to be registered as such is unfounded.¹³⁸ Nonetheless, the Taipei High Administrative Court emphasised the efforts of the Indigenous Recertification Movement and acknowledged a silver lining for the Siraya People in the pathway towards acquiring Indigenous Peoples Status, even though the plaintiffs lost the administrative case.¹³⁹

In summary, the two salient Constitutional Court judgments have affirmed the importance of the indigenous peoples' right to personal identities enshrined by the Constitution, demonstrating the relationship of constitutional citizenship and indigeneity. The Constitutional Court leaves to the legislatures to promulgate or amend laws to protect indigenous right based on the spirits of the Constitutional Court Judgments. Although it seems that significant progress had been made in the indigenous peoples' right, it raises criticism that the relationship of dominance between the government and the indigenous peoples is strengthened based on the cultural pluralism rather than internal decolonisation.¹⁴⁰

4. Current political debates and reform plans

4.1 Concerns on Hong Kongers' right of residence via the investor residence scheme

In light of the gradual erosion of Hong Kong's autonomy under China's authoritarian regime, many Hong Kongers have started to flee to Taiwan and seek residency. According to official statistics, the number of Hong Kong residents who have obtained residence in Taiwan has increased from 4,057 in 2016 to 11,173 in 2021, and the number of Hong Kong residents who have obtained "registered permanent residence" status¹⁴¹ has increased from 1,086 in 2016 to 1,685 in 2021.¹⁴²

In addition, there has been an upward trend in the number of Hong Kongers acquiring residence permits via investor residence scheme, from six in 2014 to 472 (investors and their

¹³⁸ Press Release of Taipei High Administrative Court 107-Yuan-Su-Keng-Yi-1, May 11, 2023 <https://tpb.judicial.gov.tw/tw/cp-2000-2083692-67554-061.html>, accessed 3 February 2024.

¹³⁹ Id.

¹⁴⁰ Jeroen Van Bekhoven, "Reforming the Constitution; Reforming the Postcolonial State? Indigenous Peoples and Constitutional Reforms in Taiwan," *Asian Journal of Comparative Law* 14, no. 2 (2019): 278.

¹⁴¹ The concept of "registered permanent residence" status of Hong Kong residents is explained in Section 3.1.1.

¹⁴² Statistic from Mainland Affairs Council Republic of China (Taiwan). <https://data.gov.tw/dataset/33249>; https://www.mac.gov.tw/big5/data/112_香港居民來臺居留、定居人數統計表.csv. Also see Jieh-min Wu, "The Hong Kong-Taiwan Nexus in the Shadow of China," *The Asia-Pacific Journal | Japan Focus* 20(16) (7) (2022): 8.

dependants) in 2019.¹⁴³ Taiwan's investor residence scheme establishes different investment threshold levels on ROC nationals without Taiwanese household registration,¹⁴⁴ namely Hong Kongers and Macaos, Chinese citizens and foreigners. Among all the groups, Taiwan has set the lowest investment threshold (at least NT\$ 6,000,000) for Hong Kongers, and the shortest (at least one year of physical presence) pathway to acquire Taiwanese citizenship through submitting applications for 'registered permanent residence' status.¹⁴⁵

According to the research project report by Ministry of the Interior in 2020, many Hong Kongers fled to Taiwan through the investor residence scheme after the implementation of the Hong Kong National Security Law.¹⁴⁶ However, the investor residence or citizenship scheme has been tightened following a thorough government review due to national security concerns.¹⁴⁷ Many Hong Kongers' applications for permanent residence have been pending even though they have met all the requirements.¹⁴⁸ Because of the uncertainty, some of them have decided to leave Taiwan and relocate to other countries such as the UK and Australia.¹⁴⁹ Moreover, the authorities have added additional requirements besides the requirement of at least one year of physical presence, requiring Hong Kongers to operate a company continuously for three years and to employ at least two Taiwanese employees, or have two-year continuous residency and more than 270 days of residency in Taiwan each year.¹⁵⁰

Until now, Taiwan has no asylum law. In fact, since 2005, the Legislative Yuan has been discussing the asylum law bill, however, it has still been sitting in parliament.¹⁵¹ The main concern for it not yet having passed is the "China factor",¹⁵² namely how to interpret and define

¹⁴³ Jo-Yin Lee, Wei-Hsiang Huang, and Sheng-Chun Hung, "Wo Guo Tou Zi Yi Min Zhi Du Zhi Tan Tao Yu Jian Yi: Yi Wai Guo Ren Ji Gang Ao Ju Min Wei Zhu"[*Discussion and Suggestions for the Taiwan Immigrant Investor Programs for Foreign Nationals and Hong Kong/Macao Residents*], *Ministry of The Interior Research Project Report (2020)*: 39.

¹⁴⁴ In terms of 'ROC nationals without Taiwan household registration', it refers to ROC nationals who are residing abroad currently, or ROC nationals who have acquired or restored the ROC nationality but have *never* registered their household registration at any household registry in Taiwan. Please see Article 3(5) of Immigration Act.

¹⁴⁵ Regarding the 'registered permanent residence' status, please refer to Section 3.3.1.

¹⁴⁶ *Id.*

¹⁴⁷ Chen Yu-fu and Liu Tzu-hsuan, "Agency Cracks Down on Sham Hong Kong Investments Used for Immigration Bids," *Taipei Times*, December 06, 2022. Jieh-min Wu, *supra* note 142, at 9.

¹⁴⁸ Jieh-min Wu, *supra* note 142, at 9. It is worth noting that the Control Yuan issued the investigation report on August 2023, urging Mainland Affairs Council, National Immigration Agency, and the Investment Commission of the Ministry of Economic Affairs to amend relevant regulations of investor residence or citizenship schemes. They should clearly inform potential applicants the specific application practices to avoid exercising arbitrary discretion, please see Press Release 19 August 2023 of the Control Yuan, https://www.cy.gov.tw/News_Content.aspx?n=125&sms=8912&s=26922, accessed 3 February 2024.

¹⁴⁹ Lily Kuo and Alicia Chen, "Taiwan offered hope after they fled Hong Kong. Now, they're leaving again," *The Washington Post*, May 31, 2022. Helen Davidson, "Neither citizens nor foreigners: Hongkongers struggle to adapt to life in Taiwan," *The Guardian*, June 22, 2022.

¹⁵⁰ Press Release on 11 March 2022 from Mainland Affairs Council Republic of China (Taiwan).

¹⁵¹ Clarence Chou and Chiu Ee-ling, "Taiwan urgently needs refugee law," *Taipei Times*, September 15, 2019.

¹⁵² Kristina Kironka, "Taiwan's Road to an Asylum Law: Who, When, How, and Why Not Yet?," *Human Rights Review* 23(2022): 241.

the term of ‘refugee’ and whether it should apply to Chinese people.¹⁵³ In order to provide a safe haven for Hong Kongers, Taiwanese NGOs have advocated on March 2022 that the Taiwanese government should initiate the existing asylum residence visa mechanism based on Article 18 of Laws and Regulations Regarding Hong Kong & Macao Affairs and Article 25 of Enforcement Rules of the Act Governing Relations with Hong Kong and Macau which proclaimed that Taiwan’s government should provide the necessary assistance to Hong Kong or Macao Residents whose safety and liberty are immediately threatened for political reasons.¹⁵⁴

According to the media report,¹⁵⁵ the Taiwan government secretly launched in July 2022 confidential special/ad-hoc measures for residence and potential citizenship applications for Hong Kongers to mitigate anxiety.¹⁵⁶ Nevertheless, the confidential special measures were full of uncertainty and opacity, it seems that many Hong Kongers might consider leaving Taiwan and relocating to other countries.¹⁵⁷

4.2 Taiwan Employment Gold Card and proposal for the New Economic Immigration Bill

Against the backdrop of the decline in birth rate, the ageing population, and the high demand for labour, the Taiwanese government has rolled out the Taiwan Employment Gold Card for Professionals Scheme since February 2018 following the promulgation of the Act for the Recruitment and Employment of Foreign Professionals, which is a 4-in-1 documents that includes the work permit, resident visa, alien resident certificate, and re-entry permit.¹⁵⁸ It grants foreign special professionals the right to stay and work in Taiwan for one to three years, allowing them to seek jobs, employment, and transfer work freely.¹⁵⁹ Once they are legally resided in Taiwan for at least three years, and for more than 183 days per year on average, and then they are eligible to apply for permanent residency within two years of the mentioned qualifications.¹⁶⁰

¹⁵³ Nai-Yi Sun, “Developments in the Law in 2019: Constitutional Law,” *NTU Law Journal* 49 (Special Issue) (2020): 1511.

¹⁵⁴ Please see Press Release, March 03, 2022, <https://www.civilmedia.tw/archives/109209>, accessed 3 February 2024.

¹⁵⁵ Hung-chin Chen and Chen-hao Lee, “Bu Neng Shuo De Zhuan An Cuo Shi Gang Ren Shen Qing Gong Zuo Xu Ke Zui Kuai Wu Nian Na Shen Fen Zheng” [The unspeakable special measures for Hong Kong people to apply for work permits in as shortly as five years to get an identity card, *Mirror media*, July 30, 2022. Jieh-min Wu, *supra* note 142, at 9.

¹⁵⁶ *Id.*

¹⁵⁷ Cheng-Hsin Li, “Hong Kong’s wave of migration: Hong Kong immigration wave: HongKongers are caught in a legal and national security dilemma in Taiwan. Will the second wave of migration come one after another?” *BBC News Chinese*, January 20, 2023.

¹⁵⁸ Introduction on The Taiwan Employment Gold Card, <https://goldcard.nat.gov.tw/en/>, accessed 3 February 2024.

¹⁵⁹ *Id.*

¹⁶⁰ Please refer to the website of Taiwan Employment Gold Card Office, <https://goldcard.nat.gov.tw/en/tags/aprc/>, accessed 3 February 2024.

According to the official statistics, the number of valid golden cards was 5,969, and the number of the permit of golden cards was 6,880 until 28 February 2023.¹⁶¹ Moreover, the top four countries of immigrants, the United States (29%), Hong Kong (13.9%), Japan (7.4%), the United Kingdom (6.2%), accounted for slightly more than half of the permits of the Taiwan Employment Gold Card.¹⁶²

In addition, Taiwan launched the proposal for the New Economic Immigration Bill in November 2018, with the aims to relax regulations on foreigner professionals and attract foreign mid-level technicians, overseas compatriots and investors as means to overcome the labour shortages.¹⁶³ Nevertheless, the Bill has not been implemented because the term of the legislature has expired and it was returned by the Legislative Yuan to the Executive Yuan in December 2018.¹⁶⁴

5. Conclusion

Taiwanese citizenship emerges as a product of intricate negotiations between divergent sovereign ideologies and international demands within the context of cross-strait dynamics. Since the aftermath of World War II, Taiwan's sovereignty has been entangled in geopolitical power plays, resulting in an ambiguous state sovereignty that has significantly impacted its citizenship landscape.

Built upon the framework of the ROC, Taiwanese citizenship has long embraced a Greater China ideology that stands in stark contrast to the PRC concept of Chinese identity. This distinction was particularly pronounced during the authoritarian era when the ROC vied for recognition as the legitimate representative of China. Despite this historical backdrop, Taiwanese citizenship continues to grapple with the lack of formal international recognition, making it susceptible to foreign governments leveraging its recognition to improve relations with China. This phenomenon, as exemplified by the Norwegian case discussed in this report, underscores the geopolitical intricacies at play. Ethnic tensions within Taiwan, notably between local provincials (*benshengren*), extra provincials (*waishengren*), and indigenous peoples, further complicate the citizenship landscape. Systematic differentiation between these groups has led to varying citizenship practices, including the right to work as civil servants and engage in political activities, which only began to equalise with the advent of democratisation. Navigating the international practice and domestic construction of Taiwanese citizenship

¹⁶¹ Please refer to official statistics, https://foreignalentact.ndc.gov.tw/Content_List.aspx?n=C1CF93F959DF191A, accessed 3 February 2024.

¹⁶² Id.

¹⁶³ Introduction on New Economic Immigration Bill, English version, <https://ws.ndc.gov.tw/Download.ashx?u=LzAwMS9hZG1pbmlzdHJhdG9yLzEwL3JlbGZpbGUvMC8xMjEzOS9jZmlxZWU1MS0yNTQ0LTQ3ZmUtYTczYi05MTEyMjlyOGJiZTQucGRm&n=MS4yTmV3IEVjb25vbWljIEltbWlncmF0aW9uIEJpbGwtbm90aWNlIHBlcmlyZCBmcm9tIDlwMTgwODA2IHRvIDEwMDUucGRm&icon=..pdf>, accessed 3 February 2024

¹⁶⁴ Please refer to introduction on the New Economic Immigration Bill, https://www.ndc.gov.tw/Content_List.aspx?n=10F8A9E4711F6510, accessed 3 February 2024.

highlights its vulnerability on the global stage. Domestically, Taiwan's statehood is firmly established through independence, legislation, and democratisation under the ROC. The contrast between internal and external perceptions of statehood results in a dual nature of Taiwanese citizenship, presenting both effective and precarious characteristics due to the ongoing challenge of limited international recognition.

Transitioning to the present citizenship framework, this report examined various facets of Taiwanese citizenship, delving into the challenges faced in the legal arena and parliamentary discussions. This dynamic process of shaping Taiwanese citizenship unfolds amidst contradictions stemming from the ROC's legal structure, the localisation/indigenisation efforts, and geopolitical concessions. The predicaments faced by indigenous communities in gaining recognition for both their collective and individual identities underscore the necessity for reframing indigenous citizenship. Distinct pathways to acquiring citizenship impose specific requirements on various immigrant groups seeking naturalisation. The complicated citizenship system within the Taiwanese legal framework strives to align with the ROC's structure and the attitude to exclude non-Taiwanese residents. This approach has led to stringent immigrant policies, particularly targeting blue-collar and marriage immigrants, the latter of which also intersects with the loss of citizenship. Similar trends are observed among stateless individuals, who typically retain ROC affiliations grounded in Greater China ideology and historical ties; however, such affiliations may not necessarily yield benefits, as evidenced by the plight of Tibetan exiles.

The contemporary legal narrative of Taiwanese citizenship not only unravels the complex contextual layers but also spotlights the journey of a burgeoning democracy, grappling with its authoritarian past while redefining citizenship in response to the ROC-PRC conflict and a vibrant society. The recent influx of Hong Kongers has further ignited discussions on Taiwan's refugee policy, intertwining with national security concerns, particularly given the involvement of the PRC. While strides toward immigrant policy improvements appear promising, it is crucial to acknowledge that shifts in citizenship policies may not always follow a linear trajectory, often encountering discrepancies along the way.

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