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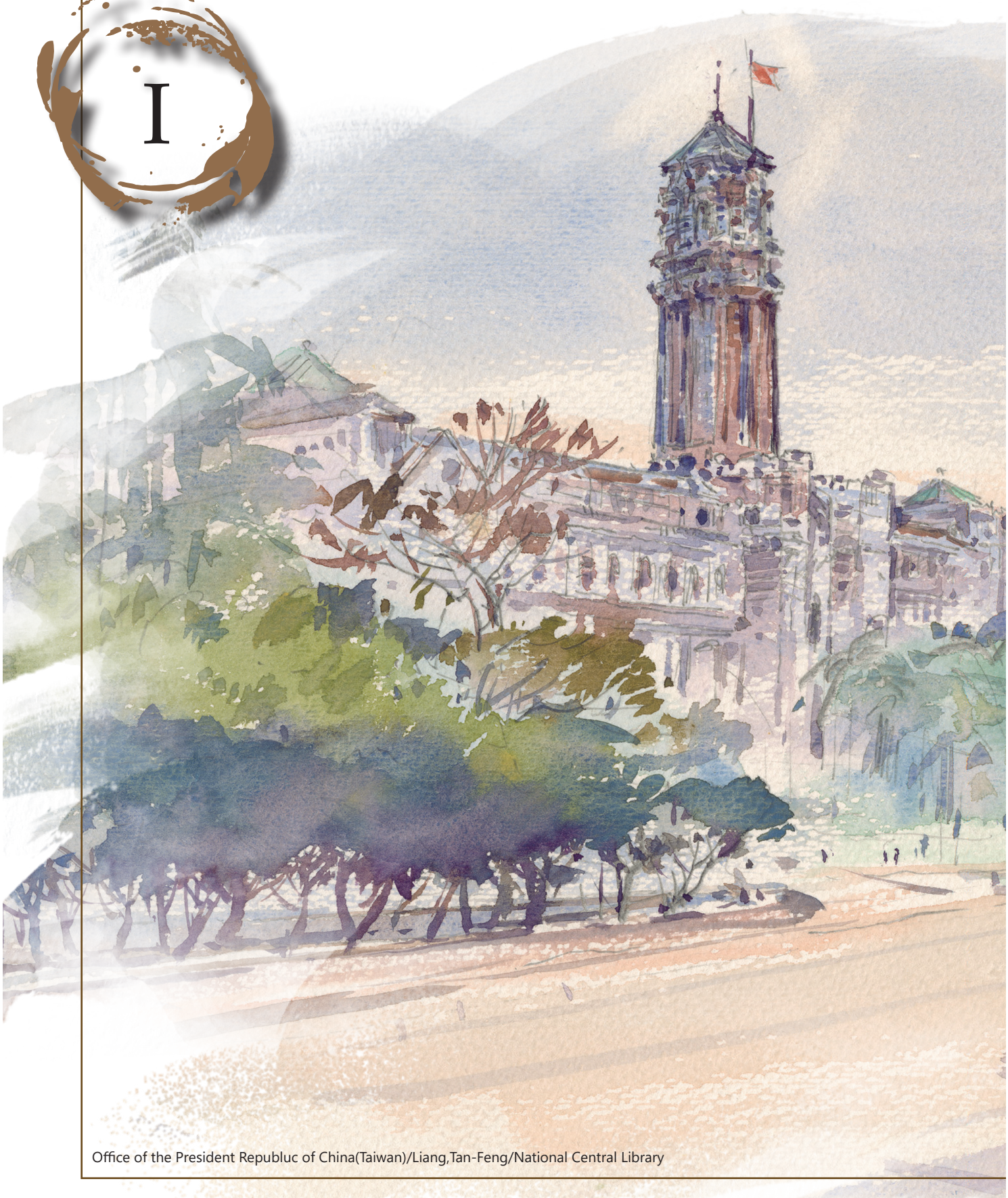


Office of the President Republuc of China(Taiwan)/Liang,Tan-Feng/National Central Library

Historical overview of prosecutorial entities

Chapter 1
Overview of the prosecutorial system of the Republic of China

At the onset of the 20th century, China first encountered its nascent experience with the separation of powers of the Western democratic system for independence of the executive branch and judicial powers of government. At the time, the Qing dynasty government had experienced transformations compelled by the invasion of the Eight-Power Allied Forces, and imposed revolutionary changes designed to quell the populace. From 1905 (the 31st year of the Kuanghsu era) they modelled themselves after the successful Meiji Restoration in Japan which sent missions to Europe to learn and borrow from their constitutional governance models, deploying five major government Ministers to investigate foreign constitutional government and establishing the Constitutional Review Commission. In the following year of 1906, change began with the bureaucratic structure, as the Penal Ministry originally tasked with criminal punishment was changed to the Judicial Ministry responsible for administering justice. Also, the Dali Temple-Court of Judicature and Revision was transformed to the Dali Yuan-Ministry of Judicature and Revision in charge of judicial adjudication and promulgated the Dali Yuan-Judicature and Revision Trial Organization Law. In accordance with Article 12 of the "Judicature and Revision Trial Organization Law" the judicial bodies and courts subordinate to the Dali Yuan Ministry of Judicature and Revision were required to have prosecutors, and the prosecutorial offices should be established under the court, creating China's first system of public prosecutors. And according to Article 13: Prosecutors are responsible for representing the nation in prosecuting criminal matters. Prosecutors may request application of proper laws, and prosecutors shall ensure proper enforcement of judgements. Prosecutors not only represent the nation in effecting public prosecutions, but also serve to supervene appropriate judicial explication and interpretation of the applicable law, along with practical execution of

criminal judgments, and thus belonging to the judicial branch of government, rather than the executive. In accord with the 1908 Register of Official Duties of Officers of the Dali Yuan, the Dali Yuan includes a Chief Prosecutor Office, with a Chief Prosecutor at the civil service Minor Grade Three level, and prosecutors at the lower Major Grade Five level.[1] In 1910, the Qing Dynasty promulgated the "Court Organization Law", mirroring the European and Japanese legal systems while creating an independent "Prosecution Office" outside of the "Trial Court". In the same year, the provisions of the "Draft Criminal Suit Act" provided for institution of criminal proceedings solely by prosecutors charged with representing the nation. Although the draft was not formally implemented, the Prosecution Offices at all levels of Qing Dynasty China exercised the criminal suit principles in the provisions of the legislation in handling cases.[2]

In 1912 (the first year of the Republican era), following establishment of the Republic of China, the Northern government in principle succeeded to the Qing Dynasty's legal system, maintaining the separation of the Prosecutors Office and the Trial Courts, with independence of their respective budgets and administration, while jointly belonging to the Judicial Ministry responsible for supervising administration of the judiciary. The Prosecutor General Office included a Prosecutor General, supervising the work of the High Court and District Court Chief Prosecutors, who were charged with responsibility for investigation, initiating public prosecutions, prosecuting litigation, and supervising implementation of criminal penalties and judgments.[3] Later, the National Government in 1927 reversed the originally independent prosecutorial system, and assigned prosecutors to the various court levels, devolving the duties of investigation, initiating public prosecutions, prosecuting litigation, and supervising implementation of criminal penalties and judgments, as well as assisting in private prosecution cases and prosecuting Qui Tam Relator and private prosecution cases, which gave rise at the time to the question of whether prosecutorial offices should be independent of the Courts. In 1947, when the National Government established and began implementing the "Constitution of the Republic of China", the courts were delineated in the constitutional structure, and operated

1.This Duty Roster is found in the Dali Yuan Statistical Compendium in the Kuanghsu 34th Year Edition, and is now accessioned to the collection of the National Palace Museum, in accession number: NPM 000013.

2.Wang, Tay-Sheng "Prosecutorial History in Taiwan- Systemic and Operational Status", Taipei, published by the Ministry of Justice, January 2008, pages 1-40 to 1-44.

3.Id. Pages 1-45 to 1-60.

in accordance with the Court Organization Act and various litigation organic and procedural regulations, with the Prosecutor Offices and prosecutors undergoing only nominal changes.[4]

Xinxian Waterfall, Wulai / Liang, Dan-Feng / Ntional Library

4.Id. Pages 1-67 to 1-68.

Chapter 2
Previous Taiwan judicial system before introduction of the prosecutorial system (pre-1895)

Taiwan's contemporary prosecutorial system traces its roots back to the 32nd year of the Kuanghsu Era in the Qing Dynasty, 1906, with promulgation of the provisions of Article 12 of the Dali Yuan-Judicature and Revision Trial Organization Law providing that the Dali Yuan subordinate Courts would all have prosecutors assigned to them. The following year (1907) witnessed formal institution of the Dali Yuan officialdom, declaring the entity to be the nation's supreme body for judicial review, with a concomitant Prosecutor Office serving as the nation's Supreme Prosecutorial organization. However, the Taiwanese public began their encounter with the prosecutorial experience beginning from 1896 in the era of Japanese sovereignty with the promulgation of the Taiwan Government-General (Soutokufu) Court Regulations and its' prosecutorial system.[1]

Prior to this time, Taiwan had never installed prosecutors. The indigenous Formosans generally appealed to the laws of nature, and believed that providence would punish infractions. For violators of the law, it was thought that natural justice would penalize the guilty. Whenever an adult suffered an early demise, or a child died or took ill, or a family lost its means of survival, such incidents or circumstances were interpreted to mean that heavenly justice had been imposed, or even a literal death penalty. Given the weltanschauung, prior to the onset of such a disastrous circumstance, families and tribes must engage in pre-emptive ceremonial rituals designed to eliminate such instances of disaster or ill fortune, and a guilty party might ritually slaughter a pig as a sacrifice to atone for their crime, while asking for a shamaness to pray to the ancestral spirits for their providential protection. Hence, for the indigenous Formosans, when

1.Wang, Tay-Sheng, Prosecutorial History in Taiwan- Systemic and Operational Status , Taipei, published by the Ministry of Justice, January 2008, Preface by the Minister of Justice.
Ministry of Justice "Intergenerational Justice- Annals of a Century of the Prosecutorial System", Taipei, published by the Ministry of Justice, May 2008, page 4.

seeking to penalize criminals, their purpose was not the lex talionis, eye for an eye approach to punishment, but rather to ensure that the entire nation would avoid the risk of disaster brought on by the ancestors and spirits.

Since the indigenous Formosans already believed in divine punishment, there was little need to resort to the lex talionis, or to pay back blood for blood, in revenge, nor were there any punishments such as detention or the death penalty, with at most there being financial impositions or separation of the criminal from the tribe by banishment. When tribal members were faced with disputes, most did not resort to vengeance or fighting, but rather relied on intervention of tribal chiefs for mediation. But sometimes when the parties refused to accede to mediation, there would be a more formal determination by an adjudicatory process including "judgment by tests", where divine judgment would be imposed, as determined by the means of three tests, including first (level) hunting, hunting, and wrestling, which the tribal members thought would represent the ancestral spirits or divine spirits determination of right and wrong, and as the means of apprising the nation of the results of the adjudication among the disputants.[2]

Taiwan Indigenous Ancestral Offerings Festival. Formosan Indigenous Regions Outlook, by Hideo Suzuki, published in 1935 by the National Taihoku University Library

2.Museum of the Judiciary, URL: https://www.judicial.gov.tw/museum/evolution.htm , last visited on February 4, 2010.

In 1624, the Dutch (East Indies Company) arrived at the Dayuan, Taiwan, port (of Ampeng, in today's Tainan Anping District), and started establishing their occupation and possession of regional government which exercised influence throughout western Taiwan. By 1642, Taiwan witnessed the arrival of Spanish influence in the north, and the Dutch engaged and defeated the Spaniards who left the island, which had been largely conquered by the Dutch.[3] After the middle of the seventeenth century, the Dutch acquired possession and occupied territory in south, central and eastern Taiwan, which were added to the areas under their control. The Netherlands charted the Dutch East Indies Company (Vereenigde Oost Indische Compagnie, VOC) to govern its colonies, including Taiwan, where the Company's jurisdiction was also applied. [4]The Governor of Taiwan and the Taiwan Legislative Council formed the Taiwan Commonwealth Government to administer Taiwan, and there was a Taiwan Company Court under jurisdiction of the Taiwan Legislative Council which served as the highest judicial body responsible for adjudicating VOC employee civil and criminal disputes. Subordinate to the VOC Company Court were the municipal court responsible for adjudicating freemen in the cities in criminal and major civil cases with persons of Chinese heritage. There was also a Local Leaders Tribunal responsible for minor cases involving persons of Chinese heritage, but there was still no prosecutorial system at the time.[5]

From the end of March 1661 to the beginning of February in the following year, the Ming Dynasty Iân-pêng-ông Koxinga (Earl of Iân-pêng) led an armada from Amoy (Hsiamen) in mainland Chinese Fukien to battle the Dutch in Taiwan, and quickly conquered Provintia, Zeelandia and Fort Utrecht, compelling the Dutch to surrender and abandon their possessions in Taiwan under threat of paramount force. Koxinga successfully ended the Dutch VOC's 38 year colonial rule in Taiwan, and began the era of the Ming Dynasty Koxinga rule of Taiwan.[6]

3.The Dutch era in Taiwan, in Wikipedia. URL: https://zh.wikipedia.org/wiki/ The Dutch era in Taiwan, last visited on December 27, 2017.

4.Wang, Tay-Sheng, Prosecutorial History in Taiwan- Systemic and Operational Status, pages 1-7 to 1-12.

5.Id. Page 3.

6.Wikipedia article: Siege of Fort Zeelandia. URL: tps://zh.wikipedia.org/wiki/□□□□□□□□. Last visited on December 27, 2017.

In 1683, the Qing Dynasty dispatched Shi, Liang to retake Taiwan, and Koxinga's grandson, Zheng, Ke-Shuang, surrendered on July 15. In 1684 Taiwan was integrated into the Qing Dynasty's governance footprint, as a portion of Fukien Province, inaugurating onset of the Qing rule of Taiwan, until 1885 and the inauguration of Taiwan Province.

The Qing Dynasty central judicial bodies were composed of three entities: The Grand Court of Justice (Dali Temple), the Ministry of Punishments and the Censorate (Ducha Yuan). All the nation's criminal cases were first adjudicated by the Ministry of Punishments, then appeals could be taken to the Censorate, and final appeals heard by the Grand Court of Justice. For death penalty cases tried by the Ministry of Punishments, the Grand Court of Justice would hear appeals, and then it would issue draft written orders for superiors to approve.[7] The local judiciary was divided into four levels. The first level was the District Court of the county. But to avoid local allegiances, undue influence (nepotism, conflict of interest), customs and other causes affecting judicial integrity, there were also established courts at the regional and provincial levels with officers (Major Yin Grade) as judges, acting independently of local government. Since most civil servants of the Major Yin Grade were not adroit in the law, they would assign Secretary-Confidante (scrivener clerk), who would act as magistrates or commissioners to hear all cases, and serve as law clerks to draft all decisions and orders; at the second grade were the Fu officers, attached to the regional and provincial courts, with Fen Shou Dao officers;[8] the third grade were all the provincial An Cha Shi Si Inspectors, and the fourth grade were each province's Circuit Inspectors or pan-regional Governors.

The Qing Dynasty judicial procedures were largely continued from the prior system, with a victim in a criminal or civil matter lodging a complaint to initiate a lawsuit, to redeem private rights, although a third party could lodge a criminal complaint. And certain persons such as a Tongwu, Baojia, or Circuit Official who had knowledge of a conspiracy or traitors, owed duties to avoid misprision of felony or treason. As for crimes by public officials, there was an inspection system, with roving officers pursuing public prosecutions, to be adjudicated in the

7.Tai, Yen-Hui, History of Chinese Jurisprudence, Taipei: San Min Publishing, 8th edition, September 1989, page 145.

court of first instance by the Major Yin Grade officer at the county or regional level, without any representative of public organs acting in the role of pursuing public integrity crimes. set up a "prosecution office" outside the "trial court". It was only in 1906, that the Qing Dynasty established prosecutors within the Dali Yuan courts in accordance with the provisions of the Dali Yuan-Judicature and Revision Trial and Organization Law, and the Prosecutor Office established as an independent entity outside the Judicial Courts according to the Court Organization Law of 1910.

The Old House near Hsuan Chuang University/2018/Yeh,Tzu-Hsin

8.Fen shou dao were originally two officers deployed to the Bu or An offices, to supervene provincial level officials, offices directly under the regional or provincial level, the Fu, or directly governed municipalities under regional or provincial rule, with the Fen Shou Dao serving as the court of second instance. See page 149, History of Chinese Jurisprudence, by Tai, Yen-Hui.

Chapter 3
Prosecutorial system during Japanese Colonial period (1895 ~ 1946)

Section 1 Period of military government

In the year of 1894, namely the Chia Wu year, China and Japan engaged in the Sino-Japanese War, and the Qing Dynasty lost, compelling it to sign the Treaty of Shimonoseki, requiring the Qing to pay a substantial indemnity and permanently cede Formosa and the Pescadores. On May 8, 1895, Japan obtained to the sovereignty of Formosa and the Pescadores. In order to rule Taiwan, a supreme administrative body known as the Taiwan Soutokufu or Formosan Government General was formed. After Japan underwent the Meiji Restoration, it adopted a western judicial system, implementing the western prosecutorial system, but the Japanese government did not fully apply this new system just being deployed in Japan Proper to its newly administered Taiwan.

On May 21, 1895, the Japanese government promulgated the Taiwan Soutokufu Formosan Government-General Provisional Court Regulations, creating the Civil Affairs Bureau, Bureau of the Army, and Bureau of the Navy, under the Government-General (Soutokufu), and within the Civil Affairs Bureau it established the Department of Justice responsible for civil and criminal judicial matters. On June 17, the government announced its inauguration, but as a result of popular resistance among the Taiwanese, military government was implemented for eight months starting from August 6. To prepare for inaugurating administration, the Local Administration System was promulgated on June 28, providing that criminal adjudication would be handled by the County Police Departments. On August 6 of the same year, military government began in accordance with the provisions of the Taiwan Soutokufu Formosan Government-General Regulations, which replaced the Local Administration System, reassigning judicial jurisdiction to the Department of the Adjutant General in the Bureau of the Army,

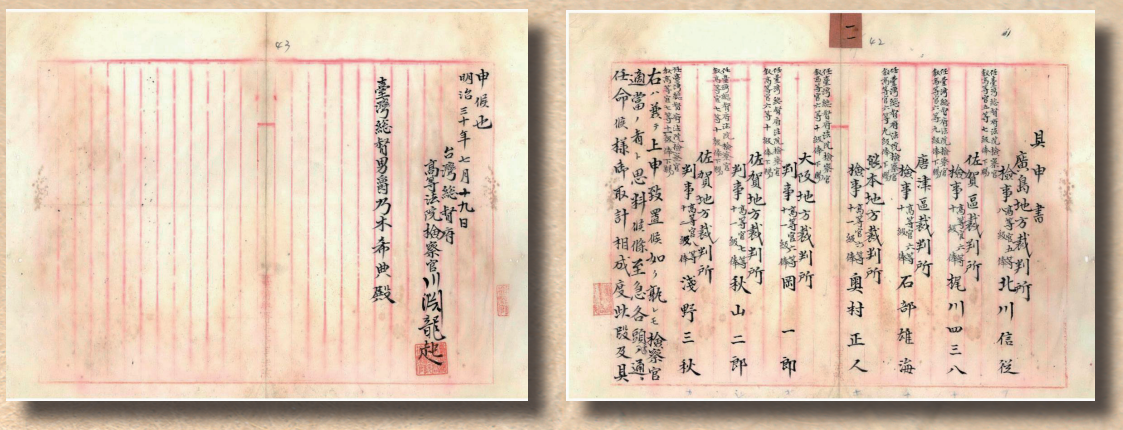
thereby creating military commission adjudication. On November 20, 1895, the government promulgated Article 3 of the Taiwan Inhabitants Control Directive providing for designation of Army Military Police officers, Garrison commanders, base (uniform command) commanders, all local administrators, the Minister of Police (or Police Bureau chiefs) or Police Department Chiefs (or Brigade Captains) as prosecutors charged with responsibility investigate criminal evidence and institute proceedings before courts or branch courts.[1] On October 7 of the same year, the Formosan Government-General issued a military government directive establishing the Formosan Government-General Taiwan Soutokufu Court System, with nomenclature distinct from that of Japan's "Adjudicatory Body", and instead referring to judicial bodies as "Courts". This system did not explicitly include establishment of prosecutors, nor did it include inspectors or other specialized prosecutorial personnel. In other words, there was no prosecutorial system during the era of military government, but because of the Japanese criminal procedural system provisions governing use of inspectors, it was established that there could be specific officers devolved with duties of prosecutorial affairs, and serving as prosecutors in the sense of the laws governing adjudication.

Section 2 the period of civil government

From April of 1896, Taiwan under Japanese governance entered into the phase of civil government, and in May of the same year, the Formosan Government-General Taiwan Soutokufu Court Regulations were issued, establishing from July 15, the Formosan Government-General Taiwan Soutokufu Court, which had a system of three levels of adjudication in courts of first instance, and appeals to a High Court, and further review to an Appeals Court of Review, all of which were located in Taipei. In addition, there were District Courts created in Taipei, Yilan (Gilam), Hsinchu, Miaoli, Taichung, Changhua, Douliu, Puli, Chiayi, Tainan, Hengchun, and the Pescadores. These Courts had judges and prosecutors, which were distinct in nomenclature from the terms used in Japan Proper or the Japanese mainland for adjudicators and inspectors, and these officers were employed by the Formosan Governor-General, with few formal qualifications

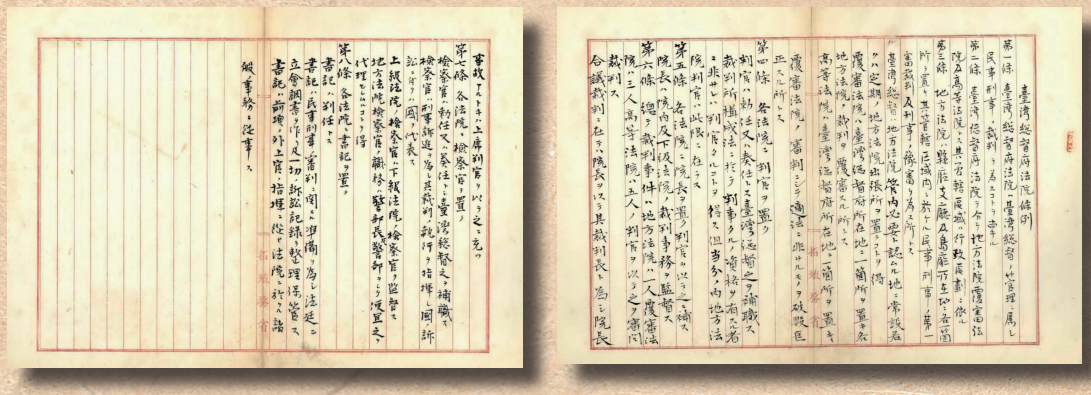
1.Hsieh, Pi-Lien. Taiwan Judicial System during Japanese Sovereignty. Tainan: published by the Tainan Bar Association, December 2003, pages 1-2.

required. But at the time, it was common that judges and prosecutors were selected from Japan's local inspectors and judges for deployment to Taiwan, serving as the first cohorts of Taiwan's nascent local prosecutorial system.



On July 19, 1897, the government of Japan deployed inspectors and adjudicators from across Japan to serve as prosecutors in the Formosan Government-General Courts / National Museum of History, Taiwan Historica, Archival accession number: 00000227011

On May 1, 1896, the Taiwan Soutokufu Formosan Government-General issued Legal Directive #1, the Taiwan Soutokufu Formosan Government-General Court Regulations, establishing the Formosan Government-General Taiwan Soutokufu Court, which began operations from July 15, and pursuant to Article 7 therein, all of the Courts on the islands were to appoint prosecutors with specified prosecutorial duties.



On May 1, 1896, the Taiwan Soutokufu Formosan Government-General Promulgated Legal Directive #1 "Taiwan Soutokufu Formosan Government-General Courts Act" establishing the Formosan Government-General Taiwan Soutokufu Court, and pursuant to Article 7 therein, all of the Courts on the islands were to appoint prosecutors with specified prosecutorial duties. National Museum of History, Taiwan Historica, Archival accession number: 00000055004.

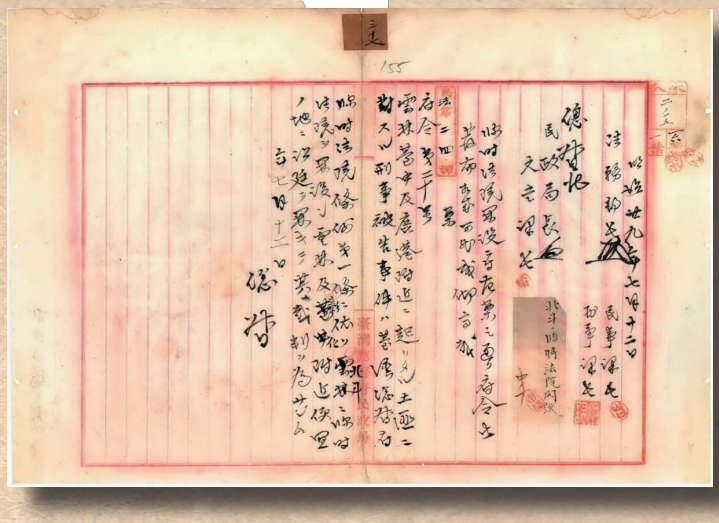
On July 19, 1897, amendments to the Taiwan Soutokufu Court Regulations were promulgated, adopting a two-tier judicial system of first and second instance, and in Article 9 providing for each level of Court to establish a Prosecutor Office, directly subordinate to the Taiwan Governor-General, with territorial jurisdiction concomitant to that of the said affiliated Court. The Regulations also provided that the superintendent court prosecutors could direct and supervise the prosecutors at the lower court. Each Prosecutor Office was assigned a Chief Prosecutor, who was selected among prosecutors, to direct and supervise the Prosecutor Office activities, and the duties and responsibilities of prosecutors were specifically stipulated: to conduct investigations, initiate public prosecutions, prosecute cases, and supervise implementation of criminal penalties and sentences. This established the mutual independence of the prosecutorial entities and the Courts from each other in exercising their respective duties.[2]

During the early years of Japanese colonial rule in Formosa, there were intermittent rebellions throughout the island (province), and to assiduously address this public unrest, and quell sedition, while ensuring expeditious prosecution and adjudication of cases, on July 11, 1896, the Taiwan Soutokufu Provincial Court Regulations were promulgated by Legal Directive #2, and provided that: intending to overthrow the government or seize the national territory, or other acts of sedition affecting the public order were declared crimes; intending violent opposition to government was declared a crime; intending assault or battery to the person of a senior official was made a crime; or acts of treason, and any violation of the "Racketeer Penal Control Act". Whenever the Taiwan Government-General thought it necessary, it could establish a Provisional Court, not subject to the usual jurisdictional restrictions of ordinary courts. These interim courts were not subject to territorial jurisdiction limitations on their venue, and could be established as necessity warranted to deal with incipient political rebellions, and the decision of a Provisional Court would be final. The Governor-General could also appoint ad hoc prosecutors and assign judges to specific cases, for expeditious handling of political crimes, in exercise of sovereign authority. Adjudication was conducted on an interim basis by ad hoc judges and

2.Wang, Tay-Sheng, Prosecutorial History in Taiwan- Systemic and Operational Status , Taipei, published by the Ministry of Justice, January 2008, pages 1-13 through 1-17. Tsai, Jung-Lung, Historical Annals on the Sixtieth Anniversary of the Taiwan Pingtung District Court, pages 6-9.

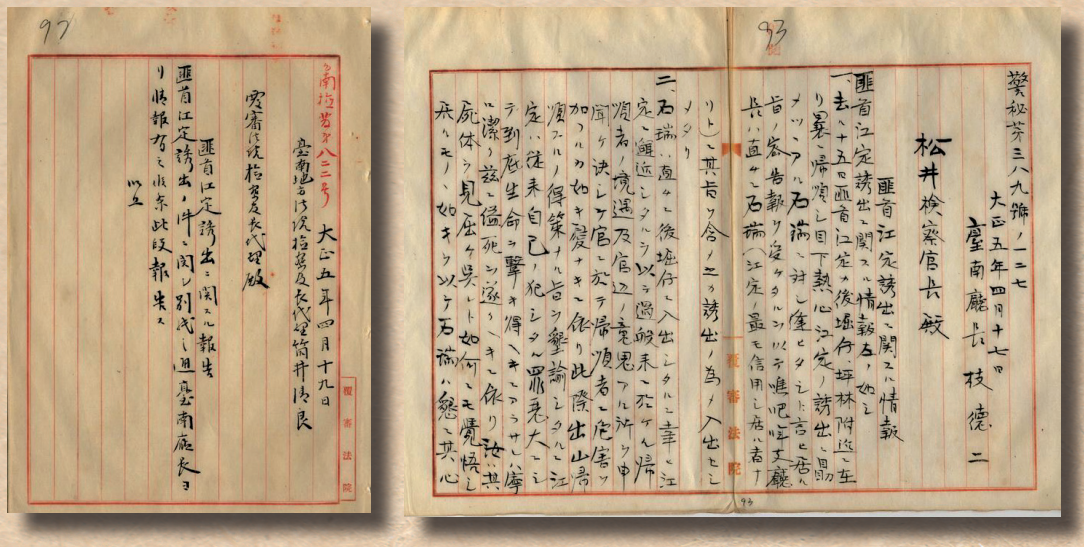
prosecutors detailed from the usual courts, typically these were from judges with qualifications for the High Court or Court of Appeals; prosecutors were also normally deployed from the High Court or Court of Appeals prosecutors. Adjudication was conducted by a court of three judges, and the court of first instance was final.

On July 12 of the same year, the Taiwan Governor-General responded to rebellion incidents near Yunlin, Taichung, and Lukang, issuing Government-General Directive #20 to establish the Beidou Provisional Court, and acting on authority of the Provisional Courts Act created six provisional courts to prosecute the Selai Temple Incident (or, Tapani Indicent). The Provisional Court Act was not terminated until August 8, 1919, with supplemental amendments to the Taiwan Soutokufu Court Regulations also eliminating the Court of Appeals, and establishing a High Court, for courts of a third instance. But for the special crimes of sedition or treason, a sole court of first instance remained final, with jurisdiction lodged exclusively and originally in the Taiwan High Court.[3]

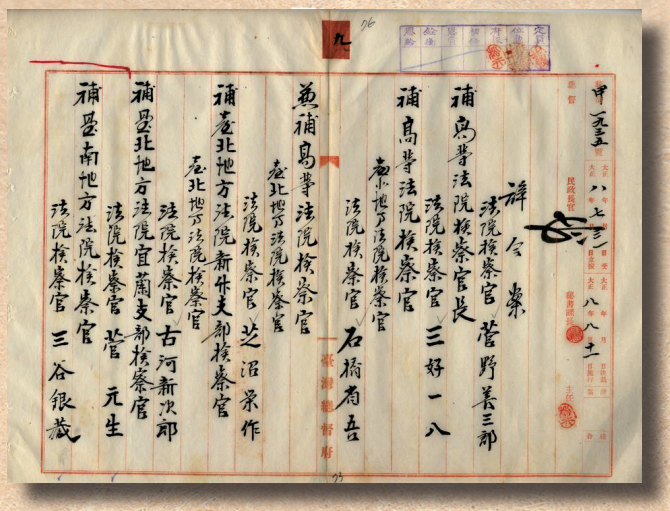


On July 12, 1896, in accordance with the authority of the Taiwan Soutokufu Provisional Court Regulations, in response to rebellion incidents near Yunlin, Taichung and Lukang, by Government-General Directive #20 the Beidou Provisional Court was established/ National Museum of History, Taiwan Historica, Archival accession number: 00000059037.

3.Wang, Tay-Sheng, Legal Reforms during Japanese sovereignty on Formosa, Taipei, Lienching Publishing, page 137.



Criminal intelligence reports from the Tapani Incident of April 17 and 19, 1916, regarding the main suspect, one Mr. Chiang, by prosecutors under the Taiwan Government-General Courts. (National Museum of History, Taiwan Historica, Archival accession number: 00002503016).



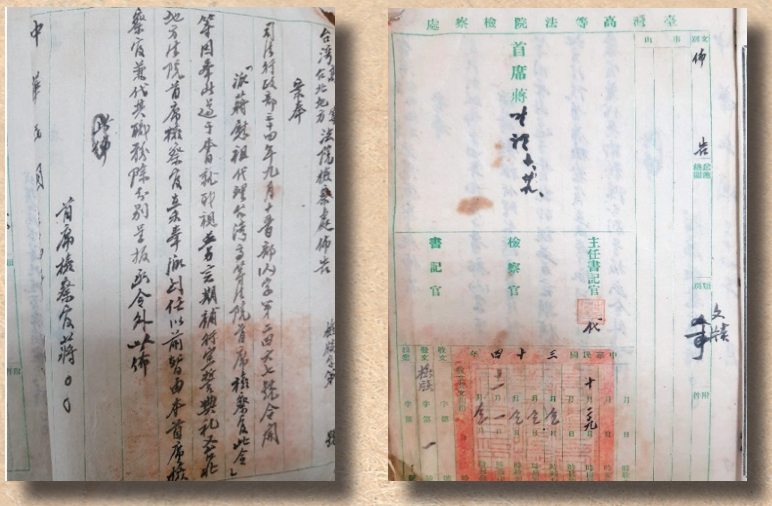
Left image: August 31, 1919, Zensaburo Kanno is appointed Chief Prosecutor of the Taiwan High Court/ National Museum of History, Taiwan Historica, Archival accession number: 00002977009X002

Right image: Taiwan High Court Chief Prosecutor Zensaburo Kanno (1935)/ National Taiwan University Library

Chapter 4
Taiwan Judiciary Historical Overview

Section 1 Pre-martial law era (1945~1949)

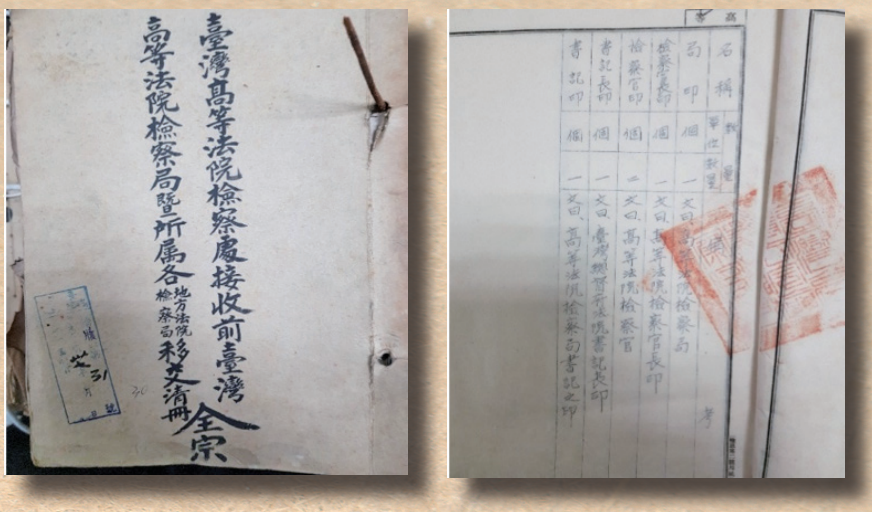
Upon defeat of the Empire of Japan in the second World War in the Pacific, and its unconditional surrender to the Allied Powers on August 14, 1945, the National Government acting on behalf of the victorious powers and the United Nations at war with Japan accepted the surrender of Taiwan on October 25, 1945, and on that date began applying on Taiwan the rule of law of the Republic of China. On September 15, 1945, the National Government dispatched Mr. Chiang, Wei-Tsu of the Ministry of Judicial Administration to serve as the first acting Prosecutor General for the Taiwan High Court Prosecutors Office. Mr. Chiang, Wei-Tsu arrived to Taiwan at the end of October, and began serving as the Prosecutor General for the Taiwan High Court on November 1, when he took over operations of the High Court Prosecution Bureau of the Taiwan Soutokufu. After Mr. Chiang, Wesi-Tsun arrived on Taiwan, along with his delegation of officials charged with taking over judicial administration, a Judicial Reform Group was formed and composed of the Taiwan Executive Officer Administrative Office Committee on the Rule of Law and the Taiwan Provincial Occupation (Take-



The September 15, 1945, National Government Ministry of Judicial Administration commission of Mr. Chiang, Wei-Tsun to serve as the acting Taiwan High Court Chief Prosecutor; and the public notice of November 1, 1945.

Over) Committee, with responsibility to plan and administer taking over of the judiciary. And from November 1, 1945, the take over work began, with the change in nomenclature of the Taiwan Soutokufu High Court Prosecutorial Bureau to the Taiwan High Court Prosecutors Office. From that date, the former Chief Judge of the Taiwan Soutokufu High Court, Judge Masaho Takano, ceased exercising the duties of his office, and operations began in Taiwan pursuant to the prosecutorial system of the Republic of China. The District Court "Prosecutorial Bureau" was renamed to "Prosecutors Office". At the time there were only five District Courts along with the Taiwan High Court, and branches of the Taipei District Court in Yilan, and of the Tainan District Court in Chiayi), while each District Court bore the appellation of Taiwan preceding the locality, and each Court's Prosecutorial Bureau was renamed the Prosecutors Section. Chiang Wei-Tsun was concurrently serving at the Chief Prosecutor of the Taiwan Taipei District Court Prosecutors Section, responsible for supervising the take over operations by the Prosecutors Section.

During the early period of the takeover, most of the prosecutors were detailed from mainland China to Taiwan to handle take over operations. On December 8, 1945, Chief Prosecutor Chiang, Wei-Tsun apprised the Ministry of Judicial Administration: "The Ministry is kindly requested to provide means of transportation for the dispatch of prosecutorial personnel, many of whom remain unable to come to Taiwan and are temporarily in Chungking and Shanghai, impeding the complete take over of all prosecutorial operations across Taiwan. And, given recent requests from the Provincial Civil Affairs Bureau and localities, in light of the responsibility of prosecutorial work to investigate crime and maintain the public order, it is urgent that the take over not be further delayed. Hence, sixty some personnel were detailed from the Fuzhou region, along with officers from Taipei, Hsinchu and Taichung, and on September 15, 1945, Mr. Chiang, Wei-Tsun was appointed by the National Government Ministry of Judicial Administration to serve as the acting Chief Prosecutor of the Taiwan High Court Prosecutors Office; and from November 1, 1945, the formal commission of appointment was officially promulgated, and take over operations began across the island." On December 9, 1945, the Taiwan High Court Prosecutors Office held its inaugural Takeover Committee meeting, and determined that take over operations would begin with the Hsinchu, Taichung, Tainan and Kaohsiung District Courts' Prosecutor Offices, along with the Chiayi and Yilan branches Court Prosecutor Offices.



The Table and Contents and Index of the Dockets and Dossiers of the Take Over of the Taiwan High Court Prosecutorial Bureau of the Taiwan Government-General

The takeover of Taiwan's judiciary was a critical task for the Taiwan High Court Prosecutors Office during the immediate aftermath of the surrender. Besides turning over assets and taking over cases, as well as personnel assignments and adjustments, and change in the official court language, the judiciary also underwent de-Japanification, and decolonization processes, to transform the rule of law and prevailing judicial culture. On January 10, 1946, all of the take over operations were completed.

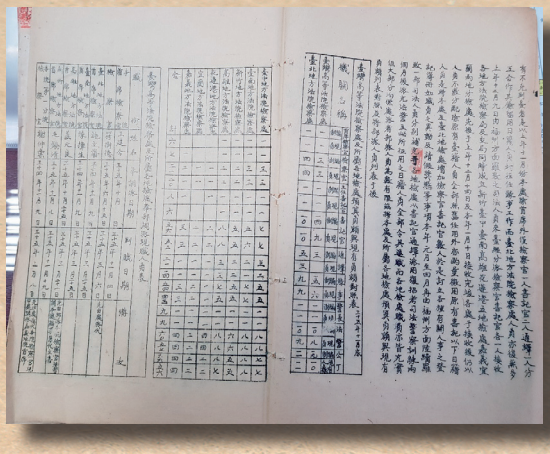
During the early takeover period, to ensure smooth implementation of reforms and effect personnel issues, on December 21, 1945, the first Province Wide Judicial Committee was conducted under leadership of the Chief Prosecutor Wang, Chien-Chin, who reported on the outstanding case volume and organizational personnel slot assignments, along with difficulties facing the various judicial entities, with the committee adopting a system of proposals and debate to ensure adequate consideration of means of resolution.

As for criminal cases, because of the change in the civil servants handling such matters, and amendments to the Criminal Code and Criminal Procedures, along with questions such as the

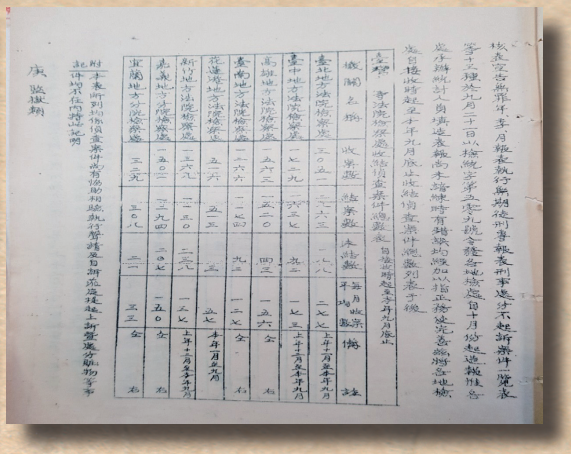
choice of law for pending cases, all reposed significant needs for ample preparation. Thus, on January 10, 1946, the National Government issued Chungking Directive 959, promulgating the Regulations on the Handling of Criminal Cases by Taiwan Courts, and defining nomenclature such as the original prosecutor, the original court, the incident, the case, and the then applicable law. These rules specifically delineated the jurisdiction for cases under investigation or adjudication, as well as the choice of law to be applied, effect to be given lawsuits arising from incidents, and effect given to Prosecutors'Orders by the former prosecutors, and the principles and efficacy to govern orders and decisions already in service of mandate.

In February 1947, with the occurrence of what has come to be popularly known as the 228 Incident (massacre, genocide), many of the judicial officers from mainland China requested to leave Taiwan. During mid-May of the same year, Ke, Chih-Tan was detailed to Taiwan to serve as Chief Prosecutor of the Taiwan High Court Prosecutors Office, and delegated to prepare a report to the Ministry of Judicial Administration, which stated: "In consequence of the public disturbances unabated, there is much popular anxiety, affecting progress in judicial activity, and many persons from mainland China are in fear of their lives, seeking reassignment or leave to depart Taiwan. Moreover, given the modest emoluments of office, and difficulties in living standards, appeals to mainland personnel to detail to Taiwan have become all the more impeded, and vacant staffing slots cannot be filled".

To summarize the early era of the takeover, from November 1, 1945, when Chief Prosecutor Chiang, Wei-Tsun began taking over the duties of the Prosecutors Office of the Taiwan High Court, until May 16, 1947, the succeeding or acting Chief Prosecutor role had been devolved in turn on Chen, Cheng-Cheng, Shih, Wen-Fan, Lou, Ying, Fu, Shu-Te, and Wang, Chien-Chin, respectively. Over the short period of but one year and ten months, the position was held for an average of only about three months, with the sole exception of Wang, Chien-Chin being the only Chief Prosecutor to remain in the office over six months, demonstrating the difficulty with which any significant progress of prosecutorial duties were faced.



1946 Province Wide Judicial Committee Work Report: Taiwan High Court Prosecutors Office Personnel Assignments Chart



1946 Province Wide Judicial Committee Work Report: Taiwan High Court Prosecutors Office Total Caseload Statistics Chart

Section 2 Martial Law Era (1949~ 1987)

I. Implementation of martial law in the Taiwan Province and the Quemoy and Matsu regions

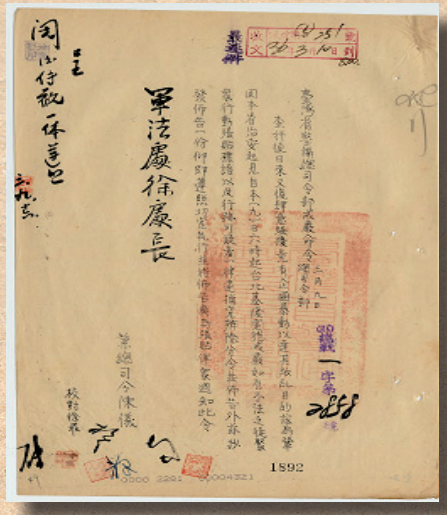
The rule of law in Taiwan of the Republic of China began from October 25, 1945, and formal operations of its prosecutorial system were implemented from November 1 of the same year. The Constitution was established in 1946, and took effect nationwide throughout the Republic of China from December 25, 1947, inaugurating the nation's era of constitutional governance.

In February 1947, the 228 Incident occurred in Taiwan, and the Governor of the Taiwan Provincial Government and concomitantly the Commander of the Taiwan Garrison Command, General Chen, Yi, issued Commander in Chief Directive 2586 on February 28, 1947, with the purported objective of securing the public order and safety, and declaring the municipality of Taipei and its adjacent areas to be under interim martial law. And on March 9, of the same year, Commander in Chief First Directive 2858, it was noted there were recurring incidents of harassment resorting to violent means, and to secure the public order of the Province, from

March 9, 1947, martial law was declared in Taipei and Keelung.

Then in consequence of the civil war in China among the Nationalist and Communist forces, the National Government giving due consideration to the existing political circumstances, in May 1948 amended the Constitution pursuant to the Temporary Provisions Effective During the Period of National Mobilization for the Suppression of the Communist Rebellion, and on December 10, 1948, President Chiang, Kai-shek promulgated the Martial Law Order. At the time, the Taiwan Province was remote from the seat of government, and not included within the territorial or geographic scope of the general Martial Law Order. It was only until May 19, 1949 that General Chen, Cheng, Governor of Taiwan Province and concomitant Commander of the Taiwan Garrison Command, issued the Taiwan Provincial Martial Law Directive, and announced that from the following day (the 20th) that martial law would take effect in Taiwan and the appurtenant and adjacent islands, and the Pescadores.

In light of the deteriorating conditions on mainland China, at the time the acting President Li, Tsung-Jen issued a second nationwide Martial Law Directive on July 7, 1949. On October 9, 1949, the central government formally relocated to Taiwan to continue its work, and the communist party took control over the mainland region. Given the state of opposition in the Cross Straits, and the proximity of both Quemoy County and Lienchiang County to Fukien Province, on June 23, 1956, the Executive Yuan issued the "Quemoy and Matsu Region Military District Political Operations Interim Guidelines", to implement political affairs in the military district. The state of martial law continued in effect across the Taiwan region until July 15, 1987, when President Chiang, Ching-Kuo issued a Presidential Directive, formally terminating martial law from that day, after being in effect for a total of 38 years and 2 months. Then in the 1991, the Temporary



On February 28, 1947 and Match 9, 1947, General Chen Yi, Governor of Taiwan Province and Commander of the Taiwan Garrison Command twice issued Martial Law Directives

Provisions Effective During the Period of National Mobilization for the Suppression of the Communist Rebellion were terminated. But given the unique prevailing circumstances affecting Quemoy and Matsu at the frontlines, and the state of armed opposition by the communist forces within line of fire, such that the areas could be attacked at any time, as the communists had not agreed to not resort to use of force to attack Taiwan, compelling the maintenance of the status quo as a military district, the outer island commanders continued to operate under the necessity of interim martial law, which lasted until November 7, 1992, when both the interim state of martial law and the military district were terminated after 43 years in effect.

II. Martial Law Era Military Court Adjudication Allocation

(I) Martial Law and Case Assignment Act

On November 19, 1934, the Republic of China promulgated its first Martial Law Act. The Act provided that "during martial law, acts appertaining to or arising from local administration in areas under police control, or military affairs handled by judges, shall be subject to command by the supreme command of the location", "during martial law, local administration and judicial affairs in affected areas shall be subject to control by the supreme command of the location, and said supreme command of the location shall exercise command authority over the local administrators and judges". On May 19, 1949, amendments were made to the Martial Law Act, providing for detailed regulations to govern jurisdiction of judicial cases during martial law. These provided: "during martial law in areas appurtenant to armed opposition, any case involving offenses against the internal security of the state, offenses against the external security of the state, offenses of inteference with public order, offenses against public safety, offenses of counterfeiting currency, offenses of counterfeiting securities, offenses of forging instruments or seals, offenses of homicide, offenses against abandonment, offenses of abrupt taking, robbery and piracy, offenses of extortion and kidnapping for ransom, offenses of destruction, abandonment, and damage of property, or crimes specially provided for by criminal law, may be adjudicated by military authorities sua sponte, or transferred by them to Courts for adjudication". On January 31, 1949, the Act was again amended, to expand the geographic scope of the territorial jurisdiction of the military authorities to military districts, providing that:

"in military districts, any acts of offenses against the internal security of the state, offenses against the external security of the state, offenses of inteference with public order, offenses against public safety, offenses of abrupt taking, robbery and piracy, offenses of extortion and kidnapping for ransom, or crimes specially provided for by criminal law, may be adjudicated by military authorities sua sponte, or transferred by them to Courts for adjudication."

Although the Martial Law Act provided for a distinction between judicial jurisdiction over areas appurtenant to armed opposition and military districts, but given the superior powers of the military authorities, in practice, determining whether a matter affected military affairs was naturally only subject to determination by the military authorities; and given that in the military districts, jurisdiction over many types of crimes would be determined by the military authorities. This resulted in practical limitations on the exercise of authority by the usual judicial authorities, and it can be said that during martial law, the judiciary was subject to the leadership and command direction of the Commander in Chief.

To show due regard for the proper responsibilities of judicial authorities, in April 1951, the Executive Yuan issued the "Taiwan Province Martial Law Era Military Justice entities and (civil) Judicial authorities Case Assignment and Allocation Provisional Guidelines", providing that cases adjudicated pursuant to Article 8 of the Martial Law Act by military justice entities, shall be limited to cases with serious impact on military or local security, with all other cases assigned to (civil) courts for adjudication. Then to make the regulations more practical, the aforesaid guidelines were amended and took effect from June 1, 1951, as the "Allocation Guidelines for Taiwan Province Martial Law Era Military Justice Entities Sua Sponte Adjudication and Case Transfer to (Civil) Courts for Adjudication". These guidelines provided that military justice entities should sua sponte adjudicate the following cases: 1. crimes involving military personnel; 2.crimes violating the Temporary Provisions Effective During the Period of National Mobilization for the Suppression of the Communist Rebellion and the Suppressing Rebellion Act; 3. crimes violating the Punishment of Thieves and Bandits Act; 4. And crimes involving non-military persons conspiring with military personnel to violate the Suppression of Smuggling Act, and crimes violating the Penal Code provisions interdicting public endangerment or impairing the public

order. Later, it was variously provided that counterfeiting documents, illegal entry, major opium crimes, criminal sale of military arms and ammunition, and arson of forests were also allocated to military justice for adjudication.

In October 1954, in accordance with the spirit of Article 9 of the Constitution providing "Except those in active military service, no person shall be subject to trial by a military tribunal", the Executive Yuan amended the aforementioned Guidelines, providing that military justice cases for sua sponte adjudication should be limited to 1. Crimes involving military personnel, and 2. Violations of the Temporary Provisions Effective During the Period of National Mobilization for the Suppression of the Communist Rebellion and the Suppressing Rebellion Act. All other cases were to be tried before the usually constitute civil court judicial authorities.

On April 1, 1967, the Executive Yuan once again amended the aforesaid guidelines with issuance of the "Allocation Guidelines for Taiwan Province Martial Law Era Military Justice Entities Sua Sponte Adjudication and Case Transfer to (Civil) Courts for Adjudication". These provided that military justice authorities should take sua sponte jurisdiction over cases involving: 1. military personnel; 2. violations of the Temporary Provisions Effective During the Period of National Mobilization for the Suppression of the Communist Rebellion and the Suppressing Rebellion Act; 3. violations of Article 77 or 78 of the Army and Navy Penal Code regarding cases of theft of military fuels, as well as violations of Article 4 Paragraphs 1, Subparagraph 3, and Paragraphs 2 and 3 of the Suppression of Robbery Act, and violations of Articles 14 and 15 of the Conflict Era Transportation and Electronics, Telecommunications Equipment and Materiel/ Facilities Protection Act. Later, the Ministry of National Defense determined that some cases could be appropriately handled by the civil courts, and the Executive Yuan again amended the aforementioned Guidelines taking further effect from September 4, 1967. Upon amendment, Article 2 of the Guidelines stipulated that military justice authorities should only exercise jurisdiction over the following cases: 1. those involving military personnel; 2. violations of the Temporary Provisions Effective During the Period of National Mobilization for the Suppression of the Communist Rebellion and the Suppressing Rebellion Act, 3. violations of Article 77 or 78 of the Army and Navy Penal Code regarding cases of theft of military fuels, as well as violations of

Article 4 Paragraphs 1, Subparagraph 3, and Paragraphs 2 and 3 of the Suppression of Robbery Act, and violations of Articles 14 and 15 of the Conflict Era Transportation and Electronics, Telecommunications Equipment and Materiel/Facilities Protection Act governing theft and damage, or receiving or transporting, holding, selling, retaining for pawn or as collateral, or destroying anything infringing Articles 2 Paragraph 1 Subparagraph 4 and 8 regarding transportation equipment and materiel/facilities.

The aforesaid Guidelines were amended a number of times, with the scope of military justice cases and civil cases changing as well, which affected prosecutors exercising their judicial authority to investigate cases as the scope of authority changed with the amendments. During the martial law era, prosecutors and the Taiwan Garrison Command did not enjoy routine interlocution; even in principle, where criminal cases should have been heard by military adjudication, most of the cases were in fact heard before the civil courts. And it was only a few cases of sedition, treason or major crimes (such as the first bank robbery in Taiwan in 1980 by a culprit named Lee, ＊-Ke) which were investigated and tried by military justice authorities.

On April 1, 1967, the Ministry of Judicial Administration issued the "Allocation Guidelines for Taiwan Area Martial Law Era Military Justice Entities Sua Sponte Adjudication and Case Transfer to (Civil) Courts for Adjudication"

(II) Restrictions to Court of Second Instance Prosecutorial Entity Criminal Investigation Authority

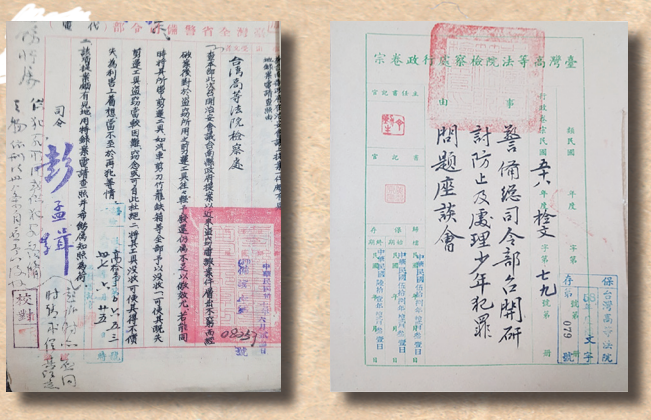
In September 1945, in preparation for the Japanese surrender, a Taiwan Province Garrison Command was established in Chungking to handle responsibility for repatriation of Japanese soldiers in Formosa, administering the takeover of Taiwan, and maintaining Taiwan's public order, under leadership of the first Commander, General Chen, Yi. In 1947, the name was changed to the Taiwan Province Wide Garrison Command, under command of General Peng, Meng-Chi. In 1948 the name was restored to its original one, and was referred to as the Garrison Command or Garrison. In 1949, after the National Government retreated to Taiwan, Chen, Cheng, the Governor-General of Taiwan, concomitantly served as the Garrison Commander. In May 20, of the same year, the Taiwan Province Garrison Command promulgated Province Wide Martial Law.

In accordance with the provisions of the Code of Criminal Procedure (promulgated July 28, 1928, and of effect from September 1), the High Court had original jurisdiction as the court of first instance over crimes of sedition, treason, interference with foreign relations. But on May 20, 1949, Martial Law was proclaimed in the Taiwan Province, and in accord with Article 3, Paragraph 8 of the Martial Law Act, and the provisions of the "Taiwan Province Martial Law Era Military Court and Civil Court Case Allocation Guidelines", whether in areas of exchange of fire or military districts, acts of sedition, treason, and other crimes specifically

Sedition cases assigned to the High Prosecutors Office in 1954, official documents allocating the case for adjudication, and the final judgment opinion.

provided for in criminal law, the military justice authorities could unilaterally determine whether to exercise jurisdiction. Hence, during the Martial Law era, the treason cases originally allocated to the Taiwan High Court Prosecutors Office (hereafter, the High Prosecutors Office) as court of first instance, were almost all investigated and adjudicated by the military courts, with the High Prosecutors Office handling very few treason cases.

In accord with the provisions of the Martial Law Act, the Taiwan Garrison Command exercised jurisdiction over all criminal cases arising in areas under exchange of fire, for adjudication by the military justice authorities. In military districts as well, jurisdiction over cases such as sedition, treason, interference with the public order, public endangerment, robbery, burglary, piracy, threats, kidnapping for extortion, and special crimes were also determined by the military justice authorities who exercised sua sponte adjudication or transferred the cases to (civil) courts for trial. In May 1951, the "Interim Guidelines for the Taiwan Province Martial Law Era Military Justice and Civil Judicial Authorities Case Allocation" provided in Article 8 that: "military justice authorities handling cases under Article 8 of the Martial Law Act, shall be limited to major cases affecting military or local security, and the remaining should be assigned to the civil courts for adjudication". As a result of the amendments, military court and civil court case jurisdiction would change over time, but generally, the major cases and incidents affecting the public safety and security would be subject to military justice jurisdiction. And in accord with Article 11 of the Martial Law Act, in all places subject to martial law, the supreme commander has authority to issue legal regulations and directives to restrain or limit or apply other measures, affecting the public liberty, public gatherings and association, rights of



Left image: June 23, 1948, the Taiwan Garrison Command issues a telegram directive to the High Prosecutors Office to abide by the decisions of the Security Meeting, and confiscate all criminal tools used in thefts.
Right image: In 1969 the Taiwan Garrison Command held the "Conference on Prevention and Handling of Youth Offender Issues", inviting the High Prosecutors Office to attend and participate.

movement and residence, freedom of press and speech, and rights of private correspondance. The Taiwan Garrison Command was the supreme command authority in Taiwan Province during martial law responsible for the public order, and convened relevant security meetings to which the High Prosecutors Office would detail representatives of the prosecutorial entities to attend.

III. Establish the Taiwan Region Criminal Data Center

Criminal defendants and the information of their crimes are relevant to choice of law and implementing punitive penalties. In the early era, each Court and Prosecutor Offices had their own management of offender records, and the system was a havoc. The Taiwan District Court Prosecutor Offices established a uniform Criminal Offender Information Card, but these were limited to the cases handled by each Court's Prosecutor Offices, so there were instances of repeat prosecutions or repeat verdicts, which seriously adversely affected the rights of defendants and the reputation of the judiciary.


臺灣高等法院檢察處刑事被告索引卡

High Prosecutors Office early era Criminal Defendant Information Card

In 1967, the Ministry of Judicial Administration considered deploying a Nationwide Criminal Defendant Information Center, to provide detailed criminal information for use by the Courts, Prosecutor Offices, and other agencies involved in handling crimes. On February 14, 1968, the Ministry of Judicial Administration convened all relevant agency heads for a meeting which resulted in determining to establish the Nationwide Criminal Information Center affiliated with the Supreme Court Prosecutors Office, with each provincial Criminal Information Center affiliated to the Provincial High Court Prosecutors Office. On March 21, 1968, the Ministry of Judicial Administration issued Taiwan 1968 Directive Criminal (Section 2) Decision 1910, in conjunction with the aforesaid determinations of the High Court Prosecutors Office Chief

Prosecutor, to prepare for the required planning. On May 31, 1968, the High Prosecutors Office issued Prosecutorial Criminal Information Directive 11483, to transmit the plan for the Taiwan Region Criminal Information Center to the Ministry of Judicial Administration for review and approval, and on August 7 of the same year, it was approved for provisional implementation pursuant to Taiwan 1968 Directive Criminal (Section 2) No. 5082.

On August 1, 1968, the High Prosecutors Office established the Taiwan Region Criminal Data Center, with three sections for Criminal Information, Crime Fingerprints, and Outstanding Warrants (Wanted Persons/Fugitives).

(I) The Criminal Information Section

The Criminal Information Section was responsible for preparing criminal defendant data cards, detention custody cards, civil rights deprivation cards, nolle prosecui cards; and from the judgments of all levels of courts, preparing cards for court orders.

(II) The Crime Fingerprints Section

The Crime Fingerprints Section was responsible for duty to collect criminal, involuntary servitude, and reeducation student fingerprints for analysis and comparison; and to elucidate repeat offenders from similar fingerprint images, to provide for use in sentence determination.

(III) The Outstanding Warrants (Wanted Persons/Fugitives) section

The Outstanding Warrants (Wanted Persons/Fugitives) section was responsible for preparing wanted persons data cards; cancelling wanted status as appropriate;repeat outstanding warrants from different courts, and contact after apprehension; warrant and cancellation data collection, collation, analysis, and statistics; and preparing for publication lists of wanted persons and fugitives for all entities under the High Prosecutors Office.

After establishment of the Taiwan Region Criminal Data Center endeavored to ensure the Center's various operations were smoothly implemented, and for expeditiously obtaining the relevant data collection, collation, and earliest provision of complete and effective data to all

level of Court Prosecutor entities. The High Prosecutor Office Chief Prosecutor Chou, Hsuan-Kuan used the opportunity provided for by convening Chief Prosecutor Work meetings to task all Prosecutor Offices to provide their utmost cooperation with the efforts. On September 2, 1968, Chief Prosecutor Chou, Hsuan-Kuan Chou noted during a report to the Chief Prosecutor Work meeting that: "in the past, each District Court's Prosecutor Office implementation of detention custody penalties were less than ideal in effect, so as the High Prosecutors Office is now assiduously endeavoring to collect such criminal data for cards, meeting the need to ascertain detailed information, allowing for supervision at any time, all Chief Prosecutors and their subordinate prosecutors are tasked to enhance their efforts, and for persons subject to involuntary servitude or reeducation penalties, we are planning and designing their data cards, for which we ask that you begin to prepare the relevant information to enable registration." And as a result of the Chief Prosecutor Work meeting of December 9, of the same year, tasking all District Court Prosecutor Office to enhance their efforts, but also directed the responsible persons to provide their advice for any areas of difficulty or reforms, and to maintain close liaison with the Criminal Data Center, to make necessary improvements together. And on April 26, 1969, during the Chief Prosecutor Work meeting, it is moreover provided that all District Court Prosecutor Offices which had not timely submitted their data cards, court orders and judgments, and various tables to the Criminal Data Center, should be tasked by the District Court Prosecutor Offices to enhance their efforts in this regard. In January 1970, to ensure the name corresponded to reality, the Taiwan Region Criminal Data Center attached to the High Court Prosecutors Office was changed to the Taiwan High Court Prosecutors Office Crime Data Section.

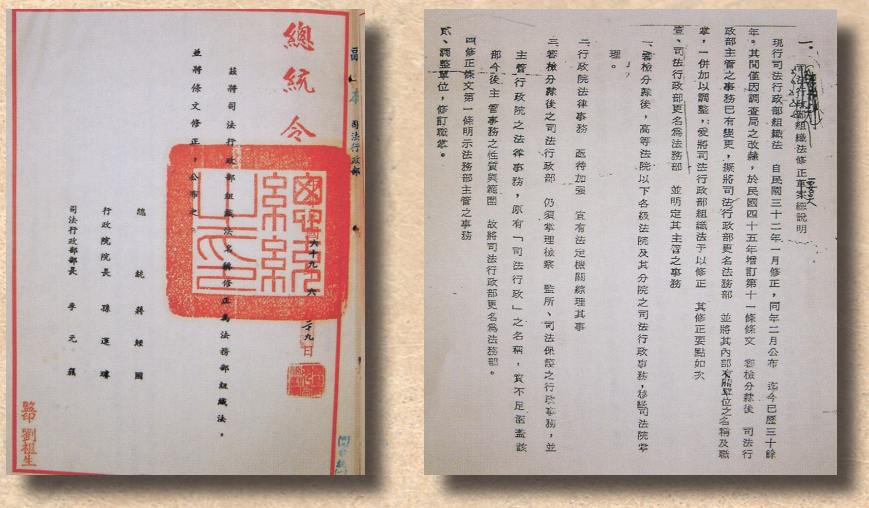
Original site of the Taiwan Region Crime Data Center established in August 1968

IV. Administrative Separation between Judges and Prosecutors

On August 15, 1960, Judicial Yuan Grand Justices Conference Interpretation No. 86 declared that: Article 77 of the Constitution establishing the Judicial Yuan as the nation's supreme judicial body, responsible for adjudication of civil and criminal cases, refers to the adjudication by all level of Courts for civil and criminal suits. All courts subordinate to the High Court handling civil and criminal case adjudication, should thus be subordinate to the Judicial Yuan. This Interpretation further noted that: Article 77 of the Constitution establishes the Judicial Yuan as the nation's supreme judicial body, providing it with authority to supervene adjudication in civil and criminal suits. Adjudication refers to handling of civil and criminal cases at all level of courts, and Article 82 of the same law (the Constitution) provides that the Judicial Yuan and all level of courts shall be organically organized by (statutory code) law, within the Judicial Code, to ensure a uniform judicial system. In reliance on this principle, all courts subordinate to the High Court and branch courts, should be subordinate to the Judicial Yuan, and all relevant legislation should be appropriately amended, to ensure conformity with the principles enunciated in Article 77 of the Constitution.

After the Judicial Yuan Grand Justices Conference Interpretation 86, until April 4, 1979, it was only then announced by President Chiang, Ching-Kuo during a Chinese Kuomintang Party Central Committee meeting that there would be Administrative Separation between Judges and Prosecutors. After that time, the executive and legislative branch entities began implementing all manner of efforts needed to achieve the separation of powers and finalize the legislation. Initially, the Ministry of Judicial Administration in 1979 organized the Work team for summary of regulations related to Administrative Separation between Judges and Prosecutors, under the Ministry of Judicial Administration and Judicial Yuan designated Committee Members, to work to amend the Court Organization Act and related legislation. On April 9, 1980, Li, Yuan-Tsu, the Minister of Judicial Administration, on interpellation to the Legislative Yuan explained the implementation of the administration separation between the judges and prosecutors, and that the "Ministry of Judicial Administration" was renamed to the "Ministry of Justice", with its respective internal organization and duties duly amended. On June 29 of the same year, the

President promulgated amendments to the "Court Organization Act", with the original name of Chapter 5 "Establishment of the Prosecutors Office and Prosecutors" duly amended to "Prosecution organs", and the prosecutors originally deployed under the courts were amended to be an independent prosecution organ. On July 1 of the same year, the courts at all levels under the High Court were changed to be subordinate to the Judicial Yuan, and the Ministry of Judicial Administration was renamed the Ministry of Justice. The Supreme Court Prosecutors Office and the High Court and all subordinate Court and branch Court Prosecutor Offices, on the one hand were subordinate to the Ministry of Justice, and on the other hand, attached to the independent exercise of the judicial power by the Courts at all levels, working in parallel with the Courts, without being subordinate to one another. After the separation of powers of the judiciary and the prosecution, internal organization of all level of Prosecution organs required adjustments, including addition of Accounting Offices, and Statistics Offices, responsible for accounting and statistical duties.


總統令

茲將司法行政部組織法之名稱修正為法務部組織法，並將條文修正，公布之。

總統 蔣經國

行政院院長 孫運璿

司法行政部部長 李元簇

一、現行司法行政部組織法，自民國三十二年一月修正，同年二月公布施行已歷三十餘年。其間僅因調查局之改隸，於民國四十五年增訂第十一條條文，將檢分離後，司法行政部主管之事務已有變更，爰將司法行政部更名法務部，並將其內部有關單位之名稱及職掌，一併加以調整；爰就司法行政部組織法予以修正，其修正要點如次：

一、司法行政部更名為法務部，並明定其主管之事務。

二、「審檢分離後，高等法院以下各級法院及其分院之司法行政事務，移歸司法院掌理。」

三、審檢分離後之司法行政部，仍須掌理偵察、監所、司法保護之行政事務，並主管行政院之法律事務，原有「司法行政」之名稱，實不足涵蓋該部今後主管事務之性質與範圍，故將司法行政部更名為法務部。

四、修正條文第一條明示法務部主管之事務。

五、調整單位，修訂職掌。

This document is the Presidential proclamation of June 29, 1980, amending the name of the Court Organization Act, and its articles and text, with an explanation thereof. Photo taken from the Ministry of Justice edited "Historical Heritage, Moving Forwards", of March 2007.

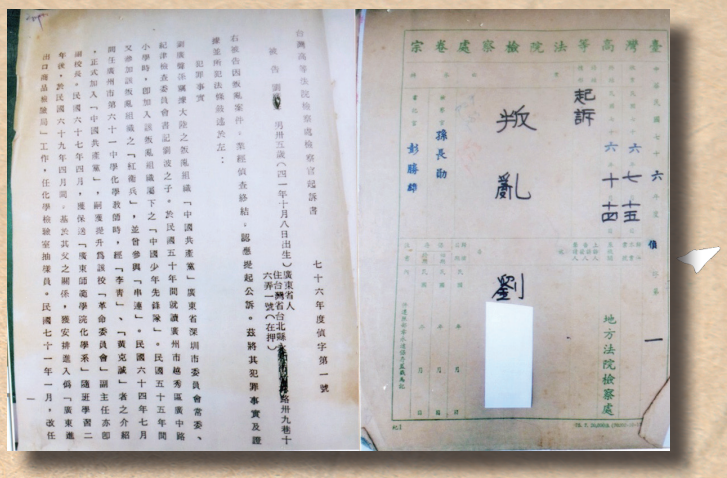
Section 3 Post Martial Law Era Selected Excerpts of Pro Democracy Movement Alleged Criminal Cases

On July 15, 1987, President Chiang, Ching-Kuo announced termination of Martial Law which had been enforced in the Taiwan Region since February 1949, and it entered into the annals of history. The cessation of martial law inaugurated the nation's evolution from a dictatorship to an emerging democracy, freedom and human rights awareness, along with economic and social advances heralding a new era. Concomitant to the end of martial law, the President also announced the phasing out of laws arising in conjunction with the Martial Law Act including the Suppression of Rebellion Act and the Suppression of Thieves Act. On May 1, 1991, the era of national mobilization was announced to be at an end, and with the ever increasing demand of the citizenry for liberty and human rights, government also began allowing formation of new political parties and a free press. On May 16, 1992, the President promulgated amendments to Article 100 of the Criminal Code regarding sedition.

With termination of martial law, military courts would no longer handle ordinary criminal cases, and the judiciary regained its original and complete jurisdiction over ordinary criminal cases, with prosecution entities enjoying resumed jurisdiction nunc pro tunc.[1] The Ministry of National Defense announced reductions in sentence or release of 237 persons convicted by military courts during the Martial Law era, as appropriate to the circumstances. At the time, the High Prosecutors Office Chief Prosecutor Chen Han from the date eliminating martial law appointed three prosecutors, Sun, Chang-Hsun, Chen, Yao-Neng, and Yeh, Chin-Pao to be responsible for follow up investigation of treason cases referred to the High Prosecutors Office from the Taiwan Garrison Command. Among these, for fugitive warrants, the Taiwan Garrison Command cancelled outstanding warrant notices, and the High Prosecutors Office announced on the same day its reissuance of the warrants. With the change in investigation and initiation of suit in treason cases to the High Prosecutors Office, defendants before the Taiwan Garrison Command were transferred to custody of the High Prosecutors Office, and these fugitives

1.Wang, Tay-Sheng, Prosecutorial History in Taiwan- Systemic and Operational Status, Taipei, published by the Ministry of Justice, January 2008, page 1-87.

began returning to Taiwan with the aim of fostering and advocating the views of Taiwanese independence.



After the end of martial law, the dossier and criminal information complaint for the first treason case by the High Prosecutors Office was 1987 Investigation No. 1

During this timeframe, prior to cessation of martial law, there were demands to end martial law, and after its termination, there were ever more strident calls from social movements demanding amendments to Article 100 of the Criminal Code. In 1987, the Cross Straits opened to family reunion visits, and as mutual interchange among the residents of the Cross Straits developed, questions arose as to visits to Taiwan by members and officials of the Chinese Communist Party, as well as whether investing in China would constitute material aid to communism. Also of concern were whether these could be considered illegal or inappropriate acts of sedition or treason, which might affect the social order, political stability and national security, all of which challenged the wisdom and the resolve on enforcement of the frontline prosecutors in the High Prosecutors Office.

I. The case of Hsu, Hsin-Liang

Hsu, Hsin-Liang was the subject of a fugitive warrant alleging treason by the High Prosecutors Office, and in September 1989 he illegally returned to Taiwan, and on October 2, 1989 he was interrogated by High Prosecutors Office Prosecutor in charge of the case, Chen, Yao-Neng, at the Taipei Detention Center, while a gathering of public support for Hsu, Hsin-Liang developed before the Taipei Detention Center and a stand off between the police and the public lasted for several hours in an attempt to maintain the order.

II. The case of Cheng, Nan-Jung

After the end of martial law, the founder of the Free Era Journal, Cheng, Nan-Jung was alleged to have committed treason by publicly supporting the Taiwan independence movement, and in 1989 the High Prosecutors Office assigned the matter for investigation. Since Cheng, Nan-Jung was wanted and did not turn himself in, the Prosecutor in charge issued a warrant for his arrest as permitted by law, and tasked the Taipei Municipal Police Department to serve thereof. Cheng, Nan-Jung resisted the attempt to arrest him, and on April 7, 1989, committed self-immolation at the Free Era Journal publishing offices.

Section 4 Post Martial Law Era Excerpts of Cases Alleging Sedition and Treason

I. The case of Lin, Cheng-Yi (now known as Lin, Yi-Fu)

Lin, Cheng-Yi, (now known as Lin, Yi-Fu) was a Captain of the 2nd Company of the 5th Battalion, 851 Brigade, 284th Division, Army Infantry assigned to Mashan, Quemoy. At around 8:30 to 10:30 om on May 16, 1979, he left his duty post and by means unknown escaped to mainland China to join forces with the enemy. At the time, the National Defense entities considered the matter one of a missing officer, and on May 16, 1980 he was declared by the judicial authorities to be legally dead. On May 29, 2002, domestic media reported: Lin, Yi-Fu, currently serving as a National People's Consultative Committee member in China and Director

of the Chinese Economy Research Center of Beijing University, was in fact Lin, Cheng-Yi who had been declared missing from Taiwan's 284th Division, Army Infantry. Lin, Cheng-Yi was at the time a Chief Economist at the World Bank and a senior official responsible for development economics, as well as a Board member and Standing Committee member for the 3rd Chinese Overseas Friendship Committee, and a representative from Beijing to the 11th National People's Congress, along with being a Vice-Chairman of the Chinese Association of Industry, and Vice Chairman of the Economics Committee of the National People's Consultative Committee, so it can clearly be said he was working for communist Chinese entities. He was charged with violating Article 24-1 of the Army and Navy Criminal Code regarding suspicion of surrendering to the enemy. On November 15, 2002, the Ministry of National Defense High Military Court Prosecutors Office issued a warrant, and with the amendments of the Military Adjudication Act of August 13, 2013, the Ministry of National Defense High Military Court Prosecutors Office transferred the case to the Fukien High Court Prosecutors Quemoy Prosecutors Branch Office for investigation, and the Fukien High Court Prosecutors Quemoy Prosecutors Branch Office issued a warrant on January 13, 2014. And as Lin, Cheng-Yi was under suspicion of having fled to mainland China in 1979, and his crime of surrender being a continuing one, which had not terminated, there was a tolling of the statute of limitations which were deemed not to have started running, until cessation of Lin, Cheng-Yi's surrender to the enemy (by announcing he formally disavows any connection to Chinese communist party entities), for which the crime had been continuing for 37 years and six months, so as to ensure Lin, Cheng-Yi could not avoid criminal responsibility by arguing the statute of limitations had expired.

II. The case of Liu, Kuang-Chun

In 1994, Liu, Kuang-Chun, who was serving in the National Security Bureau as a Colonel, Group 3 (Cashier), General Affairs Office, and was by law a person in active duty military service in accordance with Article 6 of the Army, Navy and Air Force Criminal Code. In that capacity he embezzled classified funds of the National Security Bureau for the "Feng Tian Special project", and said expense funds were not required to be duly accounted for in the National Security Bureau's normal internal controls system, but instead were merely subject to biannual report

to the Comptroller General for review and approval then submission for final approval by the Director of the Bureau, leaving an opportunity for embezzlement to go unnoticed. From 1995 to May 2000, funds were embezzled for certificates of deposit and short term interest bearing accounts, by which a total sum of NT$192,200,007 were embezzled from the trust funds of the public fisc. As a result of impending internal audit reviews which might alert the National Security Bureau to the embezzlement, and subject him to severe criminal penalties, he determined to smuggle himself abroad to escape criminal punishment. Liu, Kuang-Chun willfully and knowingly that the communist Chinese and our nation are engaged in a state of armed opposition, and that they are for purposes of Article 10 of the Army, Navy and Air Force Criminal Code deemed to be enemies, and that it is not lawful to surrender to the enemy or engage in espionage for the enemy, while further intending to surrender to the enemy or to harm the national security, did reveal official documents subject to a duty of confidentiality and thereby engage in espionage activities for the enemy. On September 3, 2000, prior to departing the borders to escape detection and arrest, without authorization, personally copied the "Feng Tian Speical project", "Dang Yang Special project" and "Ming De Special project" which were classified as Top Secret or Eyes Only, and other special project documentation. On September 3, 2000, while departing from the border, he carried the said secret documentation originals and copies to mainland China and surrendered to the enemy, and began working for the communists as a spy, revealing and delivering the said secret documents to the communist authorities, aiding in their analysis and continuing to engage in espionage activities. From March 2002, Ming Pao, Sing Tao Daily and Next Magazine published these secret documents and information received in mainland China, which revealed the special expenses allocated to developing our foreign relations, and severely harming the national security. Thus, there were allegations of violations of Article 4 Paragraph 1 Subparagraph 1 of the Anti-Corruption Act, regarding unlawful possession of public property, surrendering to the enemy contrary to Article 24 Paragraph 1 of the Army, Navy and Air Force Criminal Code, as well as engaging in espionage activities for the enemy contrary to Article 17 Paragraph 1 Subparagraph 2, and violations of Article 2-1, and Article 5-1 Paragraph 1 of the National Security Act prior to its amendment, by relaying to the mainland area or transmitting confidential documents or information obtained in the course of public affairs.

Since it was obvious that Liu, Kuang-Chun had fled and is a fugitive, in regard to the allegations of violations of Article 4 Paragraph 1 Subparagraph 1 of the Anti-Corruption Act, regarding unlawful possession of public property, he was respectively the subject of warrants issued by the Ministry of National Defense High Military Court Prosecutor Office and the Taipei District Court on September 28, 2000, and May 21, 2004, but for which the statute of limitations will expire as from September 27, 2025 and August 4, 2024, respectively. And with amendment of the Military Adjudication Act of August 13, 2013, the Ministry of National Defense High Military Court Prosecutor Office transmitted the case to the Taiwan Shih Lin District Court for investigation, and the Taiwan Shih Lin District Court Prosecutor Office issued a warrant on September 6, 2013, for which the statute of limitations shall run until September 27, 2025. In consequence of the fact that the aforesaid cases statutes of limitations will soon expire, in January 2021, the National Security Bureau enquired of the Taiwan High Prosecutor Office for its opinion on the violation of the Anti-Corruption Act by Liu, Kuang-Chun, and the continuing effectiveness of the outstanding fugitive warrants. This Office studied the matter and determined that Liu, Kuang-Chun had violated the Army, Navy and Air Force Criminal Code provisions interdicting surrendering to the enemy, which is a continuing crime, so that the statute of limitations should be tolled and only begin to run from the date of the cessation of the continuity of the crime, such that while Liu, Kuang-Chun remained engaged in continuing treasonous aid and comfort and surrendering to the enemy, which had not abated, the statutes of limitations would not have yet begun to run. Thus, the National Security Bureau issued a criminal complaint to the Taiwan High Court regarding the surrender to the enemy and crime of espionage by Liu, Kuang-Chun, and this Office issued a fugitive warrant on April 23, 2021. Also, given that the surrender to the enemy by Liu, Kuang-Chun still continues, and has yet to cease, the statute of limitations have yet to begin to run. Hence, Liu, Kuang-Chun cannot argue that the statute of limitations have expired, and attempt to thus avoid all of his criminal liability and responsibility.

Chapter 5
Sino-American Mutual Defense Treaty and SOFA Extraterritorial Jurisdiction (1954~1979)

On December 3, 1954, the governments of the Republic of China and United States signed the Mutual Defense Treaty between the United States of America and the Republic of China, which was popularly known as the Sino-American Mutual Defense Treaty, and was a military mutual defense treaty.

In the early years of American forces defense support in Taiwan, the American forces and their dependents enjoyed immunity from our civil and criminal jurisdiction, such that our courts could not exercise such jurisdiction. But in 1957, with the Liu, Tzu-Jan incident, when Liu, Tzu-Jan invaded the home of an American officer and was beaten to death, the US forces exercised extraterritorial jurisdiction and found the American officer not guilty, resulting in public unrest and protests called the May 24 Incident. Then there was also an incident with an American soldier and the death of legislator Liu, Kung-Tao hit by an automobile on Chung Shan South Rd. in Taipei, resulting in massive public demands to retain some jurisdiction over American forces in Taiwan, and on August 31, 1965 an agreement was signed with America, the Status of Forces Agreement between the Republic of China and the United States of America (hereafter, US ROC SOFA), providing that for criminal acts in Taiwan by American forces, within specified limits, jurisdiction could be asserted, and complete jurisdiction was provided for dependents of American forces, support personnel and clerks of American forces, and their dependents.

In accord with the US ROC SOFA (April 12, 1966 to December 31, 1979), and the Act for Handling Criminal Cases involving American Forces in the ROC arising during the US ROC Mutual Defense Period, jurisdiction over crimes committed by American forces in Taiwan were in principle conceded. However, with the exception of six kinds of cases including impairing the national security of the Republic of China, homicide or manslaughter, robbery, rape, arson, and illegal possession or sale or transport of drugs, along with other individual cases where

by agreement of the Sino-American Joint Commission, seriously affecting the national judicial interest, it was permitted to rescind the waiver of jurisdiction (and the case would be tried by Taiwan). Also, for a repeat offender, the waiver of all or part of jurisdiction may be rescinded, unless the United States has investigated some or all, as to which to protect the defendant's rights waiver of jurisdiction may not be granted. For a number of crimes, Taiwan still maintained a claim of jurisdiction: for example, for cases where American forces aid a fugitive in escaping, then Taiwan could rescind the waiver of jurisdiction.

For crimes by American forces in Taiwan, where important judicial interests of Taiwan were at stake, and the Executive Yuan determined to rescind the waiver of jurisdiction, then Taiwan's judiciary could exercise jurisdiction. During this period, when handling criminal cases involving American forces District Courts Prosecutor Offices were required to present their prosecutorial files together with an explanation of whether the waiver of jurisdiction should be rescinded, for submission to the Taiwan High Court Prosecutors Office with their specific recommendation, which were then forwarded to the Ministry of Judicial Administration for review and approval of a final determination. During this process, there would be several referrals to superior authority for decision. Also, when a case was noted for investigation, the High Prosecutors Office would issue an opinion to the Ministry for review and direction.

In the framework of the US ROC SOFA Agreement, criminal jurisdiction allocation was affected by the establishment of diplomatic relations by the US with the government of the People's Republic of China from January 1, 1979, and the US formally notified Taiwan that the Sino-American Mutual Defense Treaty would terminate as from January 1, 1980, and the US Taiwan Defense Command and the Military Advisory Group would completely depart from Taiwan, with the last US forces leaving Taiwan on May 3, 1979, at which time the presence of American forces on Taiwan ended.

Liu, Tzu-Jan incident and aftermath of protests in front of the US Embassy from United Daily News

Chapter 6
Termination of Jurisdiction by Military Courts and Commissions Adjudication System (2013)

In July 2013, Hung, Chung-Chiu, an Army Sergeant scheduled to end conscription on the sixth of the month, who had carried a mobile phone with photographic capabilities into the base, in violation of security and secrecy provisions, was sentenced to self-discipline incommunicado in the punitive barracks by the Enlisted Soldiers Disciplinary Committee, and died in custody on July 4, only two days before his scheduled date to discharge. Hung weighed 98 kilograms, and in the punitive barracks solitary confinement cell on July 3, the temperature outside was already at the red notice level, so Hung was unable to physically bear the weather, but the military penal barracks continued to compel his drilling, resulting in a sun stroke and heat exhaustion causing diffuse intravascular coagulation DIC leading to death. Hung's death was considered by the populace as another incident of bullying and abuse in the military, resulting in much consternation and public debate.

After the incident, the Ministry of National Defense undertook an administrative investigation and the military prosecutors also performed a judicial investigation, since the case involved the rights of conscriptees, and there was very much concern from the public and heavy media attention. On July 15, 2013, the Ministry of National Defense released its administrative report, holding that there was negligence and mistakes in the solitary confinement process by the Sixth Army Corps, the 542nd Armored Brigade, and 269nd Mechanic Brigade. The remarks of the spokesperson for the Supreme Military Court Prosecutor Office invoked the secrecy of prosecutorial investigation processes, causing the public to lack confidence in the military judicial adjudication processes, and the question as to whether the military adjudication system enjoyed exclusive jurisdiction. The civil sector "Public 1985 Action League" called for two series of protests through a "Civic Education Movement" and an "August Snow Movement" (together

known as the White Shirt Military Movement) demanding the military open to the public and that military adjudication should be governed by the rule of law. With the high degree of public concern and acute media attention, the Legislative Yuan expeditiously passed through all three readings new legislation on August 6 amending the "Military Trial Act", providing that for persons in military service in peacetime other than for violations of Articles 44 through 46 and Article 76 Paragraph 1 of the Criminal Code of Armed Fprces, and other than the aforesaid provisions of the Criminal Code of Armed Fprces, and as provided by any special laws, would be prosecuted and penalized in accord with the Criminal Code; and jurisdiction would be exercised by judicial authorities. The amendments were promulgated on August 13 by the President by Directive Presidential Order (Section 1) Yi Tzu 10200156091. The amendments were to take effect in two phases. The first phase provided that peacetime violations of Article 44 governing torture and abuse, Article 45 governing improper punishment, Article 46 regarding interdiction of subordinates reporting complaints and crimes, and all crimes stipulated in Article 76 Paragraph 1 of the Criminal Code of the Armed Forces, by currently serving military personnel would be investigated and adjudicated by civil judicial authorities. The additional amendments took effect five months later (to wit, January 13, 2014), with the transfer to the civil judicial authorities for investigation and adjudication; and prisoners and detainees would be transferred to the custody of the Agency of Corrections, Ministry of Justice (MOJ).

White Shirt Military Movement organizes 250,000 protesters on Ketagalan Avenue/ Liberty Times

And in accord with amendments to Article 237 of the Military Trial Act, prior to implementation from August 6, 2013, cases which had already begun investigations, adjudication, or penalties, as provided in Article 1 Paragraph 2, would be handled as follows: where investigation and adjudication were as yet incomplete, cases under investigation would be transferred to the appropriate prosecutors for investigation, and cases under trial would be transferred to the appropriate court for trial. But for case procedures already undertaken as by law provided, before implementation of the amendments, their effectiveness would not be affected. For cases already finally determined, no appeal or opposition would be allowed to the said court. But where there was cause for retrial or extraordinary appeal, then in accordance with the Code of Criminal Procedure, a motion for retrial or petition for extraordinary appeal could be lodged. For cases where the criminal penalty had not been implemented or was underway, the penalties would be transferred to the supervision of prosecutors to implement. To ensure expeditious implementation of the amendments, this Office supervised all Prosecutor Offices in accord with the Ministry of Justice promulgated "Principles governing Prosecutor Agencies Handling of Post-Military Trial Act amendment cases transferred from military judicial authorities" for transfer of cases under investigation by military justice authorities, cases (penalties) not yet completed, and prisoners in incarceration, or defendant detainees, and on the morning of August 15, 2013 all outstanding cases of military justice of the first phase were transferred to civil courts. The Judicial Yuan also completed establishment of the specialized military courts for civil, criminal and administrative law. Altogether, the military courts transferred 177 cases affecting a total of 217 defendants, and 1,149 case files, along with 255 pieces of evidence. There were fifteen detainees transferred (6 from the Bade Brig, and 9 from the Zuoying Brig), of which 4 were transferred to the Taiwan High Court, and 2 to the Taiwan Taoyuan District Court, with 8 sent to the Taiwan High Court Kaohsiung Branch, and 1 sent to the Taiwan Kaohsiung District Court. The Military District Court Prosecutor Offices also transferred one defendant detained in custody under investigation for treason, who is being investigated by prosecutors of this High Prosecutors Office.

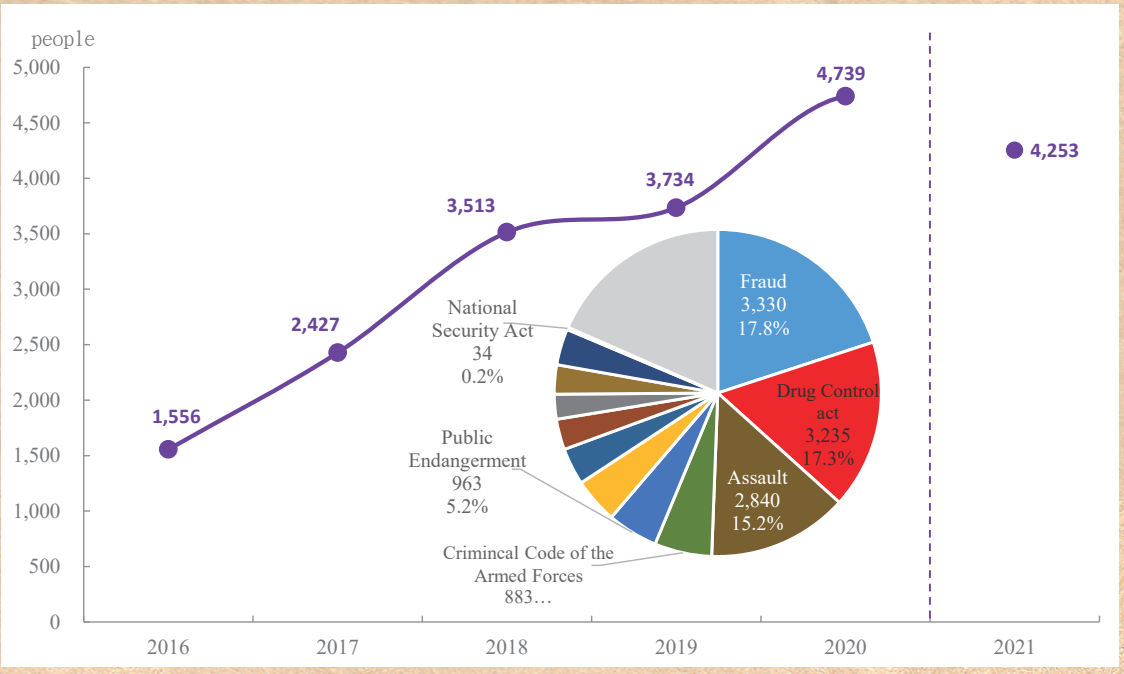
Investigations of Military Personnel Suspected of Involvement in Crimes

Units: cases, %

Year	Number of cases of infractions and violations by military personnel	103-110 increase in cases from 2014 to 2021
2013 to June 2021	13508	
2013	395	
2014	658	
2015	700	
2016	865	293.77%
2017	1416	
2018	2210	
2019	2116	
2020	2557	
2021	2591	

Note: This chart relies on new cases of District Court Prosecutor Office investigations, and Miscellaneous Complaint cases with docket notations of Kuang, mentioning a Military connection.

District Court Prosecutor Office Military Personnel Case Final Disposition Statistics



Chapter 7
The Act of Citizen Participation of Criminal Judgment (Implemented from 2023)

In light of the fact that our nation has long had a professional judiciary with adjudication solely by judges, and the citizenry have lacked any means of participation, along with the high degree of specialized knowledge involved, most of the public find themselves unable to readily understand the significance of judicial opinions and processes through attending court or reading news reports, resulting in important judicial cases lacking sufficient public appreciation, causing the public to lack trust in the judiciary. Thus, how to improve the transparency of the adjudication process, and the public understanding and confidence in the judiciary, have become important issues facing our nation's judicial reform processes over the years. In 1999, during the Nationwide Judicial Reform Conference, it was proposed that we model efforts after the German and Austrian experiences of popular participation, to study how to include the citizenry in the adjudication system. Later, the Judicial Yuan variously proposed draft legislation for the "Professionals Participation in Adjudication Interim Act", "Popular Participation in Adjudication Interim Act", and the "Citizenry Observation of Adjudication Interim Act". But as to which system should be adopted, there was still no uniform consensus even after the 2016 Judiciary Reform National Conference, though the desire to include the citizenry within the adjudication system remained unchanged. Thus, the Judicial Yuan on June 29, 2017 invited representatives from all sectors including the Ministry of Justice to engage in discussion[1], and on July 22, 2020, the Legislative Yuan passed on a third reading the "Act of Citizen Participation of Criminal Judgment", empowering the citizen judges to participation inruling along with professional judges.

The Act of Citizen Participation of Criminal Judgment has seven chapters and 113 Articles; including its preambular Main Principles, Applicable Cases and Jurisdiction, Citizen Judges

and Reserve Citizen Judges, Adjudication Procedures, Penalties, Citizenry Participation in Adjudication System Efficacy Evaluation, and Appendices. Besides Articles 17 to 20, and 33 taking effect from the date of passage, and Article 5 Paragraph 1 Subparagraph 1 taking effect from January 1, 2026, the other provisions would take effect from January 1, 2023. Giving due regard to overhead efficacy and limited judicial resources, the Act provides that it applies only to District Court cases of the court of first instance where the prosecutor has sought conviction for a major crime carrying a penalty of ten or more years incarceration in the criminal information complaint, which ensures that public participation will be in highly significant and important cases of public concern to showcase the system. Also, to ensure that the Citizen Judges can smoothly participate in adjudication, for rigorous concentrated procedural development and oral adjudication, summary procedures governing proving evidence will be admitted in adjudication[2]. Also, to avoid the citizen judges subjective sense being adversely affected by the case dossier, therefore, the procedures will be different from the existing criminal proceedings including that the dossier will not be provided together, as well as the conduct of discovery of evidence and the precedents in the pleadings, and the independent introduction and interpretation of evidence by the parties. Naturally, these changes to procedures will pose significant challenges for adjudication, prosecution and defense. But, it is believed that realization of the Act of Citizen Participation of Criminal Judgment, will aid in ensuring out judicial transparency, reflecting the public expectation for proper legal process, and achieving the goals of enhancing the citizenry's understanding and confidence in the judiciary. (Written by Prosecutor Meng,Yu-Mei)

1.See the Prefatory Remarks of Director Su, Su-E, in the Judicial Yuan publication "Theory and Praxis in Citizen Participation in the Criminal Adjudication System"

2.See the legislative history for Article 5 of the Citizen Judge Act.

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