

# From Vulnerability to Resilience: Disaster Recovery Laws and Indigenous Adaptive Strategies in Taiwan

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## ABSTRACT

Disasters impose unequal risks and impacts on particular groups. This article discusses, from a legal and anthropological perspective, the vulnerability and resilience of Taiwanese Indigenous people affected by disasters. Part II of this article reviews the history of outside powers influencing the legal, social, cultural, economic, and environmental conditions of Indigenous communities, thus decreasing their wellbeing and capacity to deal with disasters. Part III looks at the post-Typhoon Morakot recovery as a case study to examine state laws and Indigenous actions made in response to disasters. While the government rushed to pass laws for strict land regulation and permanent housing resettlement as major reconstruction methods, Indigenous communities exhibited a multitude of strengths and flexibility of strategies adapting to the changing environment. Based on this analysis, Part IV suggests that disaster laws should safeguard Indigenous rights and incorporate diverse Indigenous insights to achieve effective and equitable protection for affected people.

## I. INTRODUCTION

In August 2009, Typhoon Morakot struck Taiwan with heavy rain that led to floods and mudslides, destroying many Indigenous villages in mountain areas.<sup>1</sup> Due to the disaster's impact, thousands of Indigenous people moved from their damaged homes to resettlement sites.<sup>2</sup> After relocation, Indigenous people faced various challenges associated with displacement, some of which continue to exist more than a decade after the Typhoon disaster.<sup>3</sup> In October 2020, a group of Rukai tribal members protested in front of the Pingtung Government building against the

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<sup>1</sup> 2009 *Mo lake Taifeng* (2009 莫拉克颱風) [2009 *Typhoon Morakot*], Guojia Zaihai Fangjiu Keji Zhongxin (國家災害防救科技中心) [NAT'L SCI. & TECH. CTR. FOR DISASTER REDUCTION], <https://den.ncdr.nat.gov.tw/1132/1188/1204/2447/2505/> (last visited Feb. 7, 2023).

<sup>2</sup> XINGZHENG YUAN MOLAKE TAI FENG ZAIHOU CHONGJIAN TUIDONG WEIYUANHUI (行政院莫拉克颱風災後重建推動委員會) [TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL, EXECUTIVE YUAN], CHUANGXIN XIELI CHONGJIAN YONG XU JIAYUAN (創新協力：重建永續家園) [INNOVATION AND COOPERATION: REBUILDING SUSTAINABLE HOMES] 62-69 (2011).

<sup>3</sup> See MOLAKE DULI XINWEN WANG (莫拉克獨立新聞網) [INDEPENDENT NEWSNET OF MORAKOT], ZAI YONGJIU WU LI XIANG JIA: MOLAKE ZAIHOU SANNIAN, "YONGJIU WU" YU REN DE GUSHI (在永久屋裡想家：莫拉克災後三年，“永久屋”與人的故事) [MISSING HOMES IN PERMANENT HOUSES: STORIES ABOUT PEOPLE AND PERMANENT HOUSES, THREE YEARS SINCE THE DISASTER OF TYPHOON MORAKOT] 180-92, 199-203, 206-14 (2013); YUNG-LUNG CHEN (陳永龍) & YEN-LIANG CHIU (丘延亮), FANG TIANZAI YU RENHUO: YUAN ZHUMIN KANGZHENG YU TAIWAN CHULU (防天災禦人禍：原住民抗爭與台灣出路) [RESIST NATURAL DISASTERS AND MAN-MADE CALAMITIES: ON HOMESTEAD RESILIENCE AND TAIWAN'S ALTERNATIVES] 32 (2014).

government's decision to demolish their house in the resettlement site of Rinari.<sup>4</sup> Protesters claimed they lacked residential space at the resettlement site and, in desperation, they built a house without a permit.<sup>5</sup> Nevertheless, the Pingtung Government tore down the house.<sup>6</sup> This case highlights the long-term problem that, since the disaster, Indigenous people have been unable to develop sustainably under disaster recovery laws and policies. For example, poor quality housing at several resettlement sites have continued to endanger the safety of relocated people.<sup>7</sup> These issues require a full examination of post-disaster recovery to improve the rights of affected Indigenous groups.

In Taiwan, Indigenous peoples are minorities particularly susceptible to disaster risks and impacts. Studies show disasters can disproportionately harm certain people when it comes to ethnicity, poverty, gender, age, and disability.<sup>8</sup> Socially and economically disadvantaged people usually live in hazardous areas and lack necessary resources to prevent risk, suffering more damage during disasters.<sup>9</sup> It is also harder for vulnerable people to recover because they sustain significant loss during disasters but do not have savings or insurance for reconstruction.<sup>10</sup> Currently, Indigenous peoples represent 2.5% of the Taiwanese population.<sup>11</sup> In 2017, the average annual income of Indigenous households was 37% lower than the general household income, and the Indigenous poverty headcount (5.6%) was four times as high as the national poverty

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<sup>4</sup> Lu Kai Huajia Zifen Kangyi Ping Xian Fu Kaoliang Gong'an Reng Jiang Chai Wei Jian (魯凱畫家自焚抗議屏縣府考量公安仍將拆違建) [*Rukai Painter Set Himself on Fire to Object, Pingtung County Government Would Still Demolish the Illegal Construction Due to Safety Concerns*], Zhongyang Tongxunshe (中央通訊社) [CTR. NEWS AGENCY] (Oct. 13, 2020, 4:39 PM), <https://www.cna.com.tw/news/firstnews/202010130215.aspx>.

<sup>5</sup> *Id.*

<sup>6</sup> Yongjiu Wu Bu Yongjiu Mo Lake Zaihou Ruhe Chongjian Shenghuo? (永久屋不永久 莫拉克災後如何重建生活?), [*Permanent Housing Is Not Sustainable. How to Reconstruct Life After Typhoon Morakot Disaster?*], HUANJING ZIXUN ZHONGXIN (環境資訊中心) [ENV'T. INFO. CTR.] (Feb. 1, 2021), <https://e-info.org.tw/node/229353>.

<sup>7</sup> See CONTROL YUAN, INVESTIGATION REPORT 258-70 (2022).

<sup>8</sup> See Daniel A. Farber, *Disaster Law and Inequality*, 25 L. & INEQ. 297, 302-08 (2007).

<sup>9</sup> *See id.*

<sup>10</sup> *See id.*

<sup>11</sup> Renkou Tongji Ziliao (人口統計資料) [*Demographics*], NEIZHENG BU HU ZHENGSI QUANQIU ZI (內政部戶政司全球資) [DEP'T OF HOUSEHOLD REGISTRATION], <https://www.ris.gov.tw/app/portal/346> (last visited May 28, 2022).

rate (1.35%).<sup>12</sup> More than a quarter of all Indigenous people live in mountain areas.<sup>13</sup> Thus, the Taiwanese Indigenous population bears greater disaster risks but has less capital to prepare for, respond to, and recover from catastrophes.

Indigenous peoples are particularly influenced by disaster impacts and environmental changes due to their close attachment to nature. Because tribal communities are highly dependent on water, forests, plants, animals, and other natural resources, these resources play important roles in Indigenous culture, economy, health, and other aspects of life.<sup>14</sup> When disasters strike, the population and distribution of all living things are greatly altered.<sup>15</sup> The environmental changes are likely to threaten the livelihoods and culture of Indigenous peoples, especially when combined with inappropriate government and legal interventions.<sup>16</sup>

In recent years, the situation of Indigenous peoples has become more dire as climate change has made weather patterns more unpredictable. It is likely that heatwaves will become more frequent and prolonged, as heavy precipitation becomes more intense, especially in midlatitude and wet tropical regions.<sup>17</sup> More importantly, the Intergovernmental Panel on Climate Change's report found that "risks are unevenly distributed and are generally greater for disadvantaged people and communities in countries at all levels of development."<sup>18</sup> Disastrous impacts are expected to increase poverty, inequality, and possibility of displacement for those who lack resources to mitigate the effects of disasters.<sup>19</sup>

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<sup>12</sup> YUAN ZHU MINZU WEIYUANHUI (原住民族委員會) [COUNCIL OF INDIGENOUS PEOPLES], TAIWAN YUAN ZHU MINZU JINGJI ZHUANGKUANG DIAOCHA (臺灣原住民族經濟狀況調查) [ECONOMIC STATUS SURVEY OF INDIGENOUS PEOPLES IN TAIWAN] 13-14, 35 (2017).

<sup>13</sup> 2023 Nian 1 Yue Yuan Zhu Minzu Renkou Shu Tongji Ziliao (2023 年 1 月原住民族人口數統計資料) [2023 January Demographic Statistics of Indigenous Peoples], YUAN ZHU MINZU WEIYUANHUI (原住民族委員會) [COUNCIL OF INDIGENOUS PEOPLES] (Feb. 10, 2023, 3:41 PM), <https://www.cip.gov.tw/zh-tw/news/data-list/940F9579765AC6A0/47862A05A8CB69E85BC66DABF004F889-info.html>.

<sup>14</sup> Garrit Voggesser et al., *Cultural Impacts to Tribes from Climate Change Influences on Forests*, 120 CLIMATIC CHANGE 615-16 (2013).

<sup>15</sup> Frances Seymour, *Forests, Climate Change and Human Rights: Managing Risks and Trade-offs*, HUM RTS. & CLIMATE CHANGE 207, 216-17 (Stephen Humphreys ed., 2009).

<sup>16</sup> *Id.*

<sup>17</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2014 SYNTHESIS REPORT 53, 58 (2014).

<sup>18</sup> *Id.* at 64.

<sup>19</sup> *Id.* at 73.

Although disasters often consolidate or exacerbate existing inequality, this important issue is rarely discussed rigorously in specific contexts, such as the Indigenous people affected by disasters. Modern disaster studies adopt the term “vulnerability” to conceptualize human weaknesses and inabilities to manage or withstand disturbances caused by hazards.<sup>20</sup> The definition, measurement, and model of vulnerability are analyzed to determine which elements are at play and how they contribute to human susceptibility to disasters.<sup>21</sup>

In contrast to theoretical analyses, empirical studies on vulnerability in practice focus on a few major disasters, such as the 2004 Indian Ocean earthquake and tsunami or the 2005 Hurricane Katrina. For example, after the Indian Ocean tsunami, women and children were the most vulnerable groups identified in Indonesia, India, the Maldives, Sri Lanka, and Thailand.<sup>22</sup> Discriminatory assistance, government inability, poor coordination, and low public participation contributed to the violation of their rights in the recovery process.<sup>23</sup> According to studies on Hurricane Katrina, the disaster had particularly devastating impacts on racial minorities and low-income individuals and families who lacked a vehicle to evacuate.<sup>24</sup> In contrast, much of New Orleans’ white population had left before the storm came, and the rest lived in dry areas where they could easily escape if the situation became perilous.<sup>25</sup> While these case studies offer valuable insights, situations vary greatly in different natural disasters and under various social conditions. Research on a wider range of areas and events is essential to produce a more comprehensive understanding of vulnerability and address problems of inequality in disaster settings.

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<sup>20</sup> See KRISTIAN CEDERVALL LAUTA, *DISASTER LAW* 29-30 (2015).

<sup>21</sup> See generally BEN WISNER ET AL., *AT RISK: NATURAL HAZARDS, PEOPLE’S VULNERABILITY, AND DISASTERS* (2003); Omar Dario Cardona, *The Need for Rethinking the Concepts of Vulnerability and Risk from a Holistic Perspective: A Necessary Review and Criticism for Effective Risk Management*, in *MAPPING VULNERABILITY: DISASTERS, DEVELOPMENT & PEOPLE* 37 (Greg Bankoff et al., eds., 2004); DAVID MATYAS & MARK PELLING, *DISASTER VULNERABILITY AND RESILIENCE: THEORY, MODELLING AND PROSPECTIVE* (2012).

<sup>22</sup> See generally LAUREL E. FLETCHER ET AL., *AFTER THE TSUNAMI: HUMAN RIGHTS OF VULNERABLE POPULATIONS* (2005); R.K. Larsen et al., *Vulnerability in the Context of Post 2004 Indian Ocean Tsunami Recovery: Lessons for Building More Resilient Coastal Communities* 8-9 (2008) (unpublished manuscript) (on file with the Stockholm Environment Institute), <https://mediamanager.sei.org/documents/Publications/SEI-WorkingPaper-Larsen-VulnerabilityPost2004IndianOceanTsunamiRecovery-2008.pdf>.

<sup>23</sup> See generally FLETCHER ET AL., *supra* note 22.

<sup>24</sup> See Arloc Sherman & Isaac Shapiro, *Essential Facts About the Victims of Hurricane Katrina*, *CTR. ON BUDGET & POL’Y PRIORITIES* (Sep. 19, 2005), <http://www.cbpp.org/9-19-05pov.htm>.

<sup>25</sup> JOHN MCOUAID & MARK SCHLEIFSTEIN, *PATH OF DECONSTRUCTION: THE DEVASTATION OF NEW ORLEANS AND THE COMING AGE OF SUPERSTORMS* 300 (2006).

Taiwan has frequently been hit by earthquakes and typhoons, so its experiences may provide useful information and practical insights for disaster law. Researchers who study the emergency decree issued for the 1999 Jiji earthquake argue that the presidential emergency power is not beyond legal control; instead, the legislature could restrict extreme presidential power, and the judiciary could review whether the president issues an emergency decree exceeding the power and scope authorized by the Constitution.<sup>26</sup> Other studies criticize the fragmented authorities of disaster management in Taiwan and suggest a powerful agency for effective rescue and relief services.<sup>27</sup> However, issues regarding unequal disaster risks and impacts on different communities in the Taiwanese society have not been well studied. To fill this gap, this article examines state laws and legal practices of vulnerability during disasters in Taiwan and discusses the specific situation of Indigenous peoples affected by disasters.

Using an interdisciplinary approach, this article discusses disaster reconstruction laws and Indigenous adaptive strategies in Taiwan from a combination of legal and anthropological viewpoints. Disasters raise complicated issues concerning legal, social, political, economic, cultural, biological, technological, and environmental conditions. The catastrophes

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<sup>26</sup> Shing-I Liu (劉幸義), *You Fe Lizue Jiaodu Lun Jinji Mingling Zhidu Benshen de Hefa Xing Wenti* (由法理學角度論緊急命令制度本身的合法性問題) [*Analyzing the Legality of Emergency Decree System from a Jurisprudence Perspective*], 56 YUEDAN FAXUE ZAZHI (月旦法學雜誌) TAIWAN L. REV. 18, 23 (1999); Jung-Jie Huang (黃俊杰), *Jiu'erwu Jinji Mingling Zhi Yingxiang Pinggu* (九二五緊急命令之影響評估) [*Evaluating the Effects of 925 Emergency Decree*], 5 TAIWAN L. J. 203, 208-09 (1999); Giin-tarng Hwang (黃錦堂), *Jinji Mingling Fazhi Hua Wenti Zhi Yanjiu* (緊急命令法治化問題之研究) [*Researching Issues of Legalizing Emergency Decree*], 8 XIN SHIJI ZHIKU LUNTAN DI (新世紀智庫論壇第) [TAIWAN NEW CENTURY FOUND. J.] 4, 8-9 (1999); Tzong-Li Hsu, *Discussing Issues of Emergency Decree Based on the 9/21 Earthquake Disaster*, 6 TAIWAN L. J. 85, 89-90; Chueh-An Yen (顏厥安), (緊急命令的性) *The Nature of Emergency Order: A Preliminary Thought*, 6 TAIWAN L. J. 92, 94-96 (2000); Chien-Liang Lee (李建良), *Qian Xi Jinji Mingling Zhi Xianfa Zhengyi Yi Cong Jiu'erwu Jinji Mingling Tan Qi* (淺析緊急命令之憲法爭議—從九二五緊急命令談起) [*Brief Analysis of the Constitutional Controversies Regarding Emergency Decree: Discussion on the 925 Emergency Decree*], 6 TAIWAN L. J. 97, 100-01 (2000).

<sup>27</sup> See generally KUANG-MIN CHANG (章光明) ET AL., *ZHONGYANG YU DIFANG ZAIHAI FANG JIU ZUZHI YU ZHINENG ZHI YANJIU* (中央與地方災害防救組織與職能之研究) [STUDY ON THE CENTRAL AND LOCAL DISASTER MANAGEMENT ORGANIZATION AND ITS FUNCTIONS (2000)]; Ban-Jwu Shih (施邦築), *Cong Mei, Ri Zaihai Fang Jiu Tixi Zhi Jiaodu Jianshi Woguo Zaihai Fang Jiu Tixi* (從美日災害防救體系之角度檢視我國災害防救體系) [*Review and Suggestion of Taiwan's Disaster Prevention and Response System from the Aspect of US and Japan Experience*], 29 YAN KAO SHUANGYUEKAN (研考雙月刊) [RSCH. & EVALUATION BIMONTHLY] 57 (2005); Chia-yu Chou (周佳宥), *Taiwan Zaihai Fang Jiu Fa Zhi Guoqu Xianzai Yu Weilai* (台灣災害防救法之過去、現在與未來) *The Past, Present, and Future of the Disaster Prevention and Protection Act in Taiwan*, 62 Faling Yuekan (法令月刊) [THE L. MONTHLY] 103 (2011).

represent both individual events and gradual processes in which nature and humans constantly shape each other.<sup>28</sup> From an anthropological perspective on disaster, the effect of nature on people greatly depends on social arrangements, power structures, cultural values, and belief systems.<sup>29</sup> People's vulnerability to disasters is both materially and socially constructed.<sup>30</sup> Disasters occur within a large framework of historical and structural processes, such as colonization and modernization, that have conditioned the phenomena.<sup>31</sup> Thus, it is critical to understand both the explicit result and the complex context of a disaster.

This study examines how state laws have influenced multiple aspects of the Indigenous experience in relation to disasters in the past and present. This article first reviews the history of Indigenous peoples in Taiwan to understand how government authorities have impacted the legal, social, cultural, economic, and environmental conditions of Indigenous people, thus influencing their right and capacity to handle disasters. Based on that history, this article uses post-Typhoon Morakot reconstruction as a case study to analyze state laws and Indigenous strategies because Indigenous communities were hardest hit by the Typhoon. In contrast to a traditional view that focuses on disaster "victims" and their weakness, this study explores the possibility that certain group characteristics, such as resilience to disasters and resistance to hegemony, may transform the disaster recovery process into a chance for sustainable development and self-determination.

The study of disaster laws in Taiwan carries important and broad implications for disaster management, social inequality, and Indigenous empowerment. By comparing how the Taiwanese government and Indigenous peoples responded to typhoon impacts, as well as their ideas regarding disaster adaptation, this article aims to provide suggestions for improving legal frameworks of disaster management in Taiwan and beyond. Furthermore, the analysis of the rights of Taiwanese Indigenous peoples can identify existing problems and promote better protection of the wellbeing and dignity of vulnerable groups, even in extreme disaster situations.

Part II of this article reviews the influence of outside powers on Taiwanese Indigenous peoples' lives and resources. Parts III and IV, respectively, discuss post-disaster recovery laws and Indigenous adaptive strategies in Taiwan after Typhoon Morakot in 2009. Part III examines reconstruction law and legal practices in the Taiwanese society, especially

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<sup>28</sup> See Anthony Oliver-Smith, *Theorizing Disaster: Nature, Power, and Culture*, in *CATASTROPHE & CULTURE: THE ANTHROPOLOGY OF DISASTER* 23, 23-26 (Susanna M. Hoffman & Anthony Oliver-Smith, eds., 2002).

<sup>29</sup> See *id.*

<sup>30</sup> See *id.* at 27-29.

<sup>31</sup> See Anthony Oliver-Smith, *Anthropological Research on Hazards and Disasters*, 25 ANN. REV. ANTHROPOLOGY 303, 314-15 (1996).

application of land zoning and relocation policies of Indigenous people affected by the disaster. Part IV analyzes how the Indigenous communities responded to the reconstruction law and adapted to the changed environment through different strategies. Based on this review, Part V discusses the vulnerability of Indigenous people in Taiwan during natural disasters in the face of government power and the possibility that traditional knowledge can enhance disaster law and promote indigenous resilience. Lastly, Part VI summarizes research findings and recommends future studies.

## II. LEGAL HISTORY OF INDIGENOUS PEOPLES IN TAIWAN

### A. Precolonial Era (– the Seventeenth Century)

The aborigines of Taiwan are Austronesians who lived on the island for more than six thousand years and had free geographic mobility before outside powers arrived on the island.<sup>32</sup> In the past, main production activities of the aborigines were farming, gathering, hunting, and fishing.<sup>33</sup> While the specific subsistence of each tribe varied, most aboriginal communities adopted “shifting cultivation,” the practice of cultivating a piece of land for several years then moving to another plot to allow the cultivated land to recover its soil fertility.<sup>34</sup> Tribes actively migrated and expanded over the whole island until Japan took over Taiwan in the late nineteenth century.<sup>35</sup> The aboriginal communities migrated for diverse reasons: finding fertile land and hunting ground, avoiding armed conflicts, and recovering from natural disasters or infectious diseases.<sup>36</sup> Usually,

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<sup>32</sup> REN-GUI LI (李壬癸著), TAIWAN NANDAO MINZU DE ZUQUN YU QIANXI (台灣南島民族的族群與遷徙) [ETHNIC GROUPS AND MIGRATION OF THE AUSTRONESIANS IN TAIWAN] 113 (1997); Mei-Ying Huang (黃美英), *Wei Rui Yan Buluo Liu Xia Lishi Jiyi: Taiya Qiyuan Shengdi Yu Rui Yan Buluo de Qianyi* (為瑞岩部落留下歷史記憶: 泰雅起源聖地與瑞岩部落的遷移) [*Preserving Historical Memory for Masitoban: Atayal's Sacred Homeland and Migration of the Masitoban Community*], 10 YUAN ZHU MINZU WENXIAN (原住民族文獻) [INDIGENOUS LITERATURE] 18, 18 (2013).

<sup>33</sup> See Chiou-mien Lin (林秋綿), *Taiwan Ge Shiqi Yuan Zhumin Tudi Zhengce Yanbian Ji Qi Yingxiang Zhi Tanta* (臺灣各時期原住民土地政策演變及其影響之探討) [*The Evolution and Influence of Aboriginal Land Policies in Different Periods in Taiwan*], 2 TAIWAN TUDU YANJIU (台灣土地研究) [J. TAIWAN LAND RSCH.] 23, 25-26 (2001).

<sup>34</sup> *Id.* at 26.

<sup>35</sup> See Tōichi Mabuchi, (馬淵東一), *Takasago-zoku No Idō Oyobi Bunpu: Daiichibu* (高砂族の移動 および分布) [*Migration and Distribution of the Formosan Aborigines (pt. 1)*], 18/1-2 MINZOKUGAKU KENKŪ (民族学研究) [JAPANESE J. ETHNOLOGY] 123, 133-34, 136-37, 145-48 (1954).

<sup>36</sup> See, e.g., TAIWAN SŌTOKUFU RIBANKA, TRANSLATED BY INSTITUTE OF ETHNOLOGY, ACADEMIC SINICA, AN INVESTIGATION OF THE ABORIGINES IN TAIWAN: THE OVERVIEW OF INDIGENOUS 138, 140-41, 146, 149, 151, 171, 181 (2011); Pukiringan

migration was not the result of one single cause but rather multiple hardships and pressures imposed on the communities.<sup>37</sup>

During the maritime expansion of western colonial powers, European explorers, missionaries, and traders came to Asia in search of resources, where they confronted natives.<sup>38</sup> To trade with China and Japan, in 1624, the Dutch established its authority in Taiwan based on the *terra nullius* theory, which means occupying land belonging to no one.<sup>39</sup> After continual conquering, the Dutch expanded its power to rule Indigenous communities on the southwest and northeast coast of Taiwan.<sup>40</sup> The Dutch settlers adopted a feudal system to supervise the obedient Indigenous communities and allowed them to decide minor tribal affairs.<sup>41</sup> Indigenous land titles were recognized, but the Dutch sometimes seized and conveyed wildlands to Han Chinese to recruit labor from mainland China across the strait to cultivate, trade, and hunt in Taiwan.<sup>42</sup>

The Dutch dominance came to an end in 1662 when Koxinga (Zheng Chenggong), a Ming Dynasty general, led his troops to defeat the Dutch in order to occupy Taiwan as a temporary base for the collapsed Ming Dynasty to attack the Qing Empire in China.<sup>43</sup> The Zheng government ruled a territory similar to the Dutch and allowed the Indigenous communities to manage internal affairs; however, the new ruler had a greater impact on the Indigenous people by promoting Chinese culture and belittling Indigenous identity.<sup>44</sup>

Additionally, Zheng government officials and soldiers cultivated any land that was seemingly unoccupied, even if such land might have been Indigenous farmland during the fallow period of shifting cultivation or hunting grounds for an Indigenous community.<sup>45</sup> Often, military force was

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Paljivuljung, A study of the Ancestral Origins and Migrations of Oral Narrative Literature in Paiwan, 98-109 (2014) (unpublished Ph.D. dissertation, Dept. of Ethnology, National Cheng-chi U.) (on file with the NCCU Institutional Repository).

<sup>37</sup> See, e.g., TAIWAN SŌTOKUFU RIBANKA, *supra* note 36, at 156, 178, 252, 259, 262, 270, 286, 299.

<sup>38</sup> See TAY-SHENG WANG (王泰升), LEGAL REFORM IN TAIWAN UNDER JAPANESE COLONIAL RULE, 1895-1945: THE RECEPTION OF WESTERN LAW 12-14 (2000).

<sup>39</sup> See TAY-SHENG WANG (王泰升), TAIWAN FALU SHI GAILUN (台灣法律史概論) [AN OVERVIEW OF TAIWAN LEGAL HISTORY] 23 (6th ed. 2020).

<sup>40</sup> See Mabuchi, *supra* note 35, at 127.

<sup>41</sup> TONIO ANDRADE, HOW TAIWAN BECAME CHINESE: DUTCH, SPANISH, AND HAN COLONIZATION IN THE SEVENTEENTH CENTURY 185 (2008).

<sup>42</sup> See *id.* at 118, 120-23.

<sup>43</sup> WANG, *supra* note 39, at 29-30.

<sup>44</sup> *Id.* at 30-31.

<sup>45</sup> Lin, *supra* note 33, at 28.

used for the reclamation of Indigenous land to pressure Indigenous people to submit and eventually retreat from their ancestral lands.<sup>46</sup> Under the Zheng rule, the land cultivated by Han settlers increased to more than 30,000 hectares, tripling the amount of land cultivated in the Dutch era.<sup>47</sup> Despite the impacts, the majority of the Indigenous people, especially those who lived in the mountains, kept their traditional practices and remained isolated from the outside world.<sup>48</sup>

### B. *The Qing Era (1683 – 1895)*

In 1683, the Qing empire defeated the Zheng band to terminate its twenty-one-year rule in Taiwan.<sup>49</sup> To reduce administrative costs and prevent the island from developing into a threat against the empire, the Qing government severely restricted migration to Taiwan.<sup>50</sup> In an effort to stabilize Taiwanese society, the authority further implemented segregation regulations that separated the Han Chinese and the Indigenous people to reduce their collisions. The aborigines were classified as “wild aborigines,” who were not under Qing governance, and “Sinicized aborigines,” who complied with the authority, paid head taxes, and served corvée such as building infrastructure and guarding neighborhoods under the government’s order.<sup>51</sup> Boundaries were set to keep the wild aborigines in the mountains, and the settlers were prohibited from entering the aboriginal reservations.<sup>52</sup> While the Sinicized aborigines and the Chinese settlers lived together, the legal system differentiated the two ethnic groups.<sup>53</sup>

Initially, the Qing government tried to maintain the aboriginal land system in Taiwan by recognizing aboriginal land titles and prohibiting land transactions; however, the regulations were gradually modified to meet the settlers’ needs.<sup>54</sup> In the early Qing period, the only legitimate way for Han

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<sup>46</sup> *Id.*

<sup>47</sup> AI-CHING YEN & KUO-CHU YANG, (原住民族土地制度與經濟發展) [LAND SYSTEMS OF INDIGENOUS PEOPLES AND ECONOMIC DEVELOPMENT] 92 (2004).

<sup>48</sup> WANG, *supra* note 39, at 31.

<sup>49</sup> *Id.* at 30.

<sup>50</sup> WANG, *supra* note 38, at 18-19.

<sup>51</sup> See TAY-SHENG WANG (王泰升), *Taiwan Falu Shishang de Yuan Zhu Minzu: Suowei Teshu de Renqun, Diyu Yu Fa Wenhua* (台灣法律史上的原住民族: 作為特殊的人群, 地域與法文化) [*Indigenous Peoples in the Legal History of Taiwan: Being a Special Ethnic Group, Territory and Legal Culture*], 44 *Tai Da Faxue Luncong* (臺大法學論叢) [NTU L. J.] 1639, 1651-53 (2015).

<sup>52</sup> See CHIH-MING KA (柯志明), *THE ABORIGINE LANDLORD: ETHNIC POLITICS AND ABORIGINE LAND RIGHTS IN QING TAIWAN* 41-52 (2001).

<sup>53</sup> *See id.*

<sup>54</sup> JOHN SHEPHERD, *STATECRAFT AND POLITICAL ECONOMY ON THE TAIWAN FRONTIER 1600-1800*, at 248 (1993).

settlers to acquire aboriginal land was by paying tribal head taxes on behalf of a tribe in exchange for the privilege to cultivate the aboriginal land.<sup>55</sup> This method was superseded by a split-ownership model when the restriction on renting aboriginal land was lifted in the 1720s.<sup>56</sup> In the dual-lease relationship, aborigines leased large tracts of land to Han Chinese developers, who acquired the rights to the land in perpetuity.<sup>57</sup> The developers invested capital in cultivation, divided the land into smaller parcels, and sublet the parcels to tenants.<sup>58</sup> With permanent rental rights, the Han developers made large profits and held actual control over the land parcels.<sup>59</sup> In contrast, the aborigines received a tiny amount of rent from the Han developers but lost substantial control of the land.<sup>60</sup>

The population and power of Han Chinese outpaced aboriginal communities, as an increasing number of Chinese migrants arrived and developed in Taiwan.<sup>61</sup> On plain areas, the aboriginal people became minorities whose traditions and languages were greatly influenced or even extinguished by the dominant Chinese culture.<sup>62</sup> Although the Qing government tried to reduce the exploitation of aboriginal land through new regulations, the Chinese settlers continued to cultivate and acquire aboriginal land by paying taxes, renting land, or defrauding the aboriginal land owners.<sup>63</sup> In the late eighteenth century, the restriction on transactions of aboriginal land was relaxed to allow settlers to buy aboriginal land.<sup>64</sup> The legal change reflected the social reality of continual land encroachment, and

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<sup>55</sup> Chih-Ming Ka (柯志明), *Qing Dai Taiwan Shu Fan Di Quan de Fenlei Yu Yanbian* (清代臺灣熟番地權的分類與演變) [*The Classification and Transformation of Aborigine Land Rights in Qing Taiwan*], 23 TAIWAN SHEHUI XUE KAN (台灣社會學刊) [TAIWANESE J. SOCIO.] 25, 37-38 (2000).

<sup>56</sup> WANG, *supra* note 39, at 83-84; SHEPHERD, *supra* note 54, at 254.

<sup>57</sup> WANG, *supra* note 39, at 84.

<sup>58</sup> *Id.*; SHEPHERD, *supra* note 54, at 254-55.

<sup>59</sup> WANG, *supra* note 39, at 84; SHEPHERD, *supra* note 54, at 254-55.

<sup>60</sup> Lin, *supra* note 33, at 29; WANG, *supra* note 39, at 84; SHEPHERD, *supra* note 54, at 255.

<sup>61</sup> WANG, *supra* note 39, at 35.

<sup>62</sup> Cheng-Feng Shih (施正鋒), *Ping Pu Zu Yuan Zhu Minzu Shenfen de Sangshi Yu HuiFu* (平埔族原住民族身分的喪失與回復) [*The Unrecognized Plains Indigenous Peoples in Taiwan: The Extinguishment and Restoration of Their Indigenous Status*], 2 J. TAIWAN INDIGENOUS STUD. ASS'N 111, 113 (2012).

<sup>63</sup> See SHEPHERD, *supra* note 54, at 267-72.

<sup>64</sup> See AI-CHING YEN (顏愛靜), TAIWAN DIQU YUAN ZHUMIN GE ZUQUN TUDI ZHIDU BIANQIAN ZHI YANJIU (台灣地區原住民各族群土地制度變遷之研究) [RESEARCH ON THE CHANGE OF LAND SYSTEMS OF TAIWANESE INDIGENOUS GROUPS: AN OVERVIEW] 88-89.

the Sinicized aborigines were alienated from the land that had been their most important source of subsistence.<sup>65</sup>

During most of the Qing-ruled period, Han settlers were prohibited from crossing the boundaries and cultivating land in wild aboriginal reservations, but the regulations were not effectively enforced.<sup>66</sup> The Han settlers and Sinicized aborigines continually moved onwards and occupied land in the wild aboriginal areas, forcing wild aborigines to retreat into more remote mountains.<sup>67</sup> Boundaries were modified several times to conform to the expanding area of cultivated land and the decreased living space of wild aborigines.<sup>68</sup> After the Mudan Incident in 1874, the Qing empire began to claim the wild aboriginal land as its territory and adopted a policy to pacify wild aborigines and open their land.<sup>69</sup> The government deployed troops, built roads, and cultivated wildland to established authority over some wild aboriginal communities in southern Taiwan and on the east and west side of the Central Mountain Range.<sup>70</sup> Yet, due to limited force in Taiwan, the Qing government was unable to control the wild aborigines in remote inland mountains.<sup>71</sup> The wild aborigines retained much of their traditional social structure, land ownership and management, and customary rules.<sup>72</sup>

### C. *Japanese-Ruled Period (1895 – 1945)*

The Qing empire lost the Sino-Japanese War and ceded Taiwan to Japan in 1895.<sup>73</sup> The Japanese government adopted the boundary from the Qing-ruled period that separated Han Chinese and Sinicized aborigines from wild aborigines, classifying Taiwan into two types of areas based on a colonist's standard of civilization.<sup>74</sup> The Sinicized aborigines were as "civilized" as the Chinese and Japanese people, so they lived in the so called Ordinary Administrative Zones governed by Japanese laws.<sup>75</sup> On the other

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<sup>65</sup> *Id.* at 89.

<sup>66</sup> WANG, *supra* note 51, at 1652, 1655.

<sup>67</sup> SANTARŌ OKAMATSU, PROVISIONAL REPORT ON INVESTIGATIONS OF LAWS AND CUSTOMS IN THE ISLAND OF FORMOSA 8 (1971).

<sup>68</sup> *See* KA, *supra* note 52, at 237-69.

<sup>69</sup> *See* WANG, *supra* note 39, at 57-58.

<sup>70</sup> *See* CHEN-HUA WEN (溫振華), HISTORY OF FORMOSA ABORIGINES: POLICY FORMULATION [QING-RULED PERIOD] (台灣原住民史政策篇(清治時期)) 109-20 (2007).

<sup>71</sup> *See* OKAMATSU, *supra* note 67, at 9; *id.* at 145.

<sup>72</sup> *See* Lin, *supra* note 33, at 30; OKAMATSU, *supra* note 67, at 9; WEN, *supra* note 70, at 145.

<sup>73</sup> *See* WANG, *supra* note 39, 111.

<sup>74</sup> *See* WANG, *supra* note 51, at 1660-61.

<sup>75</sup> Wei-ling Huang (黃唯玲), *Ri Zhi Shiqi "Pingdi Fan Ren" de Chuxian Ji Qi*

hand, the wild aborigines were “savages” not compliant with authority, so their living areas were the Special Administrative Zones ruled by a distinct legal system that granted the police huge discretion to handle aboriginal affairs depending on actual situations.<sup>76</sup>

The special governance of the tribes did not mean preservation; instead, the new ruler dramatically changed the life of the aborigines through modern economic and legal institutions. After acquiring Taiwan, the Japanese colonial government was eager to explore and utilize natural resources on the wildlands.<sup>77</sup> In 1895, the Government-General of Taiwan issued the Regulation Concerning Governmental Forests and Camphor Manufacturing to declare all mountains and forests state-owned property, except for property proven by official documents and private deeds.<sup>78</sup> This regulation made it almost impossible for aboriginal peoples, who had been marginalized under Qing governance, to provide formal documents as proof to assert their rights to the land.<sup>79</sup> Moreover, the Japanese government regarded wild aborigines as “birds and beasts” that were not eligible to possess land rights and obligations.<sup>80</sup> Using the Western theories of legal personhood and capacity, the colonial government denied the aboriginal title to their land.<sup>81</sup>

The significantly reduced area of Indigenous land disrupted the traditional practice of aboriginal people. In the 1910s, 309,689 hectares of forest and wildland were reserved for government use, and a larger area of 386,912 hectares were open for purchase, half of which were sold to private buyers.<sup>82</sup> In the 1920s, the Japanese authority designated parts of the forests and lands to support aboriginal livelihood and reward relocation, but these areas of the “land reserved for aborigines” were too small for the aboriginal people to maintain their traditional subsistence of shifting cultivation.<sup>83</sup> Hunting grounds were also reduced to discourage aboriginal hunting activities, extinguish the belligerent spirit of the aborigines, and restrict the

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*Falu Shang Daiyu* (日治時期 “平地蕃人” 的出現及其法律上待遇 (1895-1937)) [*Emergence and Legal Treatment of “Flatland Aborigines” under Japanese Rule (1895-1937)*], 19 TAIWAN HIST. RSCH. 99, 101-02 (2012).

<sup>76</sup> *Id.* at 102.

<sup>77</sup> TAIWAN SŌTOKUFU MINSEIBU (台灣總督府民政部), RIBAN SHIKŌ (理蕃誌稿) 20 (1911).

<sup>78</sup> SHIZUE FUJII (藤井志津枝), TAIWAN YUAN ZHUMIN SHI: ZHENGCE PIAN (台灣原住民史:政策篇) [HISTORY OF FORMOSA ABORIGINES: POLICY FORMULATION] 5 (2001).

<sup>79</sup> *Id.* at 6-7.

<sup>80</sup> Huang, *supra* note 75, at 125.

<sup>81</sup> *Id.*

<sup>82</sup> YEN & YANG, *supra* note 47, at 204.

<sup>83</sup> *Id.* at 205-09.

possession of firearms.<sup>84</sup> In 1930, the land reserved for aborigines accounted for only 15.56% of the original aboriginal land that had been taken by the Japanese government.<sup>85</sup> To make matters worse, many areas of the reserved land were infertile and cliffy parcels of land or locations different and distant from the traditional territory of a tribe.<sup>86</sup> Usually, it was not sustainable to farm the limited, fixed plots of the reserved land, so some aborigines either violated the laws against cultivating public land or had to accept the colonial government's suggestion to relocate.<sup>87</sup>

The Japanese authority employed settled agriculture and group relocation to eliminate aboriginal culture, exploit natural resources, and disperse the opposition of aboriginal people.<sup>88</sup> Starting in the 1900s, the colonial government encouraged aboriginal communities to move from remote mountains to more accessible regions at the foot of the mountains and in the lowlands.<sup>89</sup> This way, the government could strictly monitor the aborigines and "educate" them.<sup>90</sup> Following the small-scale, short-distance resettlement of aboriginal communities, the colonial authority enforced large-scale, long-distance relocation projects in the late Japanese period after the strongest Indigenous resistance act against Japan, the Musha Incident of 1930.<sup>91</sup>

The group relocation policy seriously disrupted the distribution and relationship of tribes. The colonial authority uprooted aboriginal communities involved in armed resistance, moving the rebellious

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<sup>84</sup> Sasala Taiban, *The Lost Lily: State, Sociocultural Change and the Decline of Hunting Culture in Kaochapogan, Taiwan* 124-26 (2006) (Ph.D. dissertation, Dept. of Anthropology, U. of Washington) (ProQuest).

<sup>85</sup> YEN & YANG, *supra* note 47, at 205-07.

<sup>86</sup> Shu-Ya Lin (林淑雅), *Jie/Zhong Gou Taiwan Yuan Zhu Minzu Tudi Zhengce (解/重構台灣原住民族土地政策) [De-/Reconstructing the Land Policies for Indigenous Peoples in Taiwan]* 75 (2007) (Ph.D. dissertation, Sch. of L., Nat'l Taiwan U.) (on file with the National Taiwan University library); Chuan-Ju Cheng (2010), *A New Legal Era for the Indigenous Peoples in Taiwan—Self-Government?* 29 (2010) (Ph.D. dissertation, Sch. of L., U. of Washington) (ProQuest).

<sup>87</sup> YEN & YANG, *supra* note 47, at 208-09.

<sup>88</sup> KAMEHIKO IWAKI (岩城龜彦), *TAIWAN NO BANCHI KAIHOTSU TO BANJIN (臺灣の蕃地開發と蕃人) [DEVELOPMENT OF ABORIGINAL LAND AND ABORIGINAL PEOPLE IN TAIWAN]* 172-74 (1936).

<sup>89</sup> TAIWAN SŌTOKUFU RIBANKA, *supra* note 36, at 8; Lin, *supra* note 86, at 74.

<sup>90</sup> TAIWAN SŌTOKUFU RIBANKA, *supra* note 36, at 8; Lin, *supra* note 86, at 74.

<sup>91</sup> Ko-hua Yap (葉高華), *Fen'erzhizhi: 1931-1945 Nian Bunong Zu Yu Fan Taiya Zuqun de Shehui Wangluo Yu Jituan Yizhu (分而治之: 1931-1945年布農族與泛泰雅族群的社會網絡與集團移住) [Divide and Rule: Social Networks and Collective Relocations of Bunun and Pan-Atayal Tribes], 1931-1945*, 23 *TAIWAN SHI YANJIU (臺灣史研究)* [TAIWAN HIST. RSCH.] 123, 126 (2016).

communities to centralized locations under surveillance and segregating them from compliant aboriginal people.<sup>92</sup> Other villages of disobedient tribes also relocated to unfamiliar, distinct environments to decrease their power.<sup>93</sup> By 1941, nearly one-third of the aboriginal households relocated.<sup>94</sup> An aboriginal community was either moved to another place or divided to smaller communities at different places.<sup>95</sup> Communities with different cultures or even conflict were merged into one, making it more difficult for the new community to consolidate and develop.<sup>96</sup> The integrity of aboriginal communities was damaged.<sup>97</sup> The locations for resettlement were for colonial purposes, not based on topographic and climatic considerations.<sup>98</sup> The government's arbitrary and compulsory arrangements affected the lives and capacities of the aboriginal people, rendering them vulnerable to changes in the environment and society.

D. *Republic of China Assimilation and Relocation Policy (1945 – 1987)*

As a consequence of Japan's surrender at the end of World War II in 1945, Taiwan became a province of the Republic of China (hereinafter the ROC) ruled by the political party, Kuomintang.<sup>99</sup> The ROC government strived to extinguish the Japanese legacy and foster Chinese culture.<sup>100</sup> All people in Taiwan, including Indigenous peoples, were required to speak Mandarin, register Chinese names, and study Chinese textbooks.<sup>101</sup> The identity of "wild aborigines" in the Japanese period was transformed to "mountain compatriots" to emphasize that Indigenous people and nonindigenous people were different only in residency, but shared the same

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<sup>92</sup> See TAIWAN SŌTOKUFU RIBANKA, *supra* note 36, at 153-54.

<sup>93</sup> *Id.* at 154.

<sup>94</sup> Ko-hua Yap (葉高華), *Riben Shidai Jituan Yizhu Dui Yuan Zhumin Shehui Wangluo de Yingxiang: Xingao Jun de Anli* (日本時代集團移住對原住民社會網絡的影響: 新高郡的案例) [*The Impact of Collective Relocation Policy on Social Networks of Indigenous People: The Case of Nitaka Gun*], 64 TAIWAN HIST. RSCH. 107, 109 (2013).

<sup>95</sup> *Id.* at 110-11, 118-21.

<sup>96</sup> *Id.* at 122-25.

<sup>97</sup> *Id.*

<sup>98</sup> See HAISUL PALALAVI (海樹兒友刺拉菲), *BUNONG ZU: BULUO QIYUAN JI BULUO QIANYI SHI* (布農族: 部落起源及部落遷移史) [ORIGIN AND MIGRATION OF THE BUNUN TRIBE] 196-97 (2006).

<sup>99</sup> WANG, *supra* note 39, at 115.

<sup>100</sup> FUJII, *supra* note 78, at 156-57.

<sup>101</sup> ZHE-YI TIAN (田哲益), *TAIWAN YUANZHUMIN SHEHUI YUNDONG* (台灣原住民社會運動) [TAIWANESE INDIGENOUS PEOPLES SOCIAL MOVEMENTS] 84-87, 94, 97 (2010).

nationality.<sup>102</sup> The Indigenous people, as well as nonindigenous individuals, were all ruled by the ROC laws, and the previous Special Administrative Zones were reorganized into thirty mountain townships.<sup>103</sup>

After the previous colonial authority left Taiwan, the Indigenous people had neither their cultural identity nor their land rights restored. The ROC government declared that it received Indigenous lands from Japan and kept them as state-owned properties.<sup>104</sup> The only change was in the name of the land from “lands reserved for aborigines” to “mountain reserved lands.”<sup>105</sup> The mountain compatriots lacked land ownership and were only allowed to take natural resources on the reserve land within a specific scope and quantity.<sup>106</sup> They had to apply and register at government offices to plant trees on the reserved parcels of land.<sup>107</sup> Harvesting timber also required official permission.<sup>108</sup> In contrast, the government had power to lease the land to private parties and use forest products, such as timber, for public infrastructure or auction.<sup>109</sup> All land management could be unilaterally decided by the government, with no requirement of consultation and consent of the mountain compatriots.<sup>110</sup>

In this period, the main policy of Indigenous administration was cultural assimilation and economic development.<sup>111</sup> For the ROC authority, the mountain compatriots were underdeveloped.<sup>112</sup> To elevate them, the government provided modern facilities and Chinese education in Indigenous villages.<sup>113</sup> Regulations were issued to encourage mountain compatriots to abandon their customs.<sup>114</sup> To increase agricultural production, the government issued detailed regulations to specify settled

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<sup>102</sup> FUJII, *supra* note 78, at 159-60.

<sup>103</sup> *Id.* at 162-64.

<sup>104</sup> *Id.* at 174-75.

<sup>105</sup> *Id.* at 176-78.

<sup>106</sup> TAIWAN SHENG ZHENGFU GONGBAO (台灣省政府公報) [TAIWAN PROVINCIAL GOVERNMENT GAZETTE], vol. 3, 37 Nien [1948], pp. 50-52.

<sup>107</sup> Taiwan Sheng Shandi Baoliu Di Guanli Banfa (臺灣省山地保留地管理辦法) [Regulation on the Management of Reserved Mountain Land in Taiwan Province], art. 30-31.

<sup>108</sup> *Id.* art. 22-24.

<sup>109</sup> *Id.* art. 7-8, 13, 19-20.

<sup>110</sup> TAIWAN SHENG ZHENGFU GONGBAO (台灣省政府公報) [TAIWAN PROVINCIAL GOVERNMENT GAZETTE], vol. 14, 49 Nien [1960], p. 171.

<sup>111</sup> *See* FUJII, *supra* note 78, at 184-86.

<sup>112</sup> *See id.*

<sup>113</sup> *See id.* at 186-90.

<sup>114</sup> *See id.*

farming areas and introduce new methods, such as using pesticides and cultivating terraces, for mountain compatriots to quit their “bad traditional practice” of shifting cultivation and hunting.<sup>115</sup> The goal was to increase the cultural and economic incorporation of the mountain compatriots into the mainstream nonindigenous society.<sup>116</sup> The policies made Indigenous peoples more vulnerable to outside changes when leaving their self-sustaining lifestyle and becoming dependent on the modern economy.<sup>117</sup>

The laws on Indigenous land had adverse effects on the livelihood of Indigenous people. While the ROC government encouraged the Indigenous population to adopt settled agriculture, in 1966, less than one-fifth (19.24%) of the reserved land was suitable for farming.<sup>118</sup> The percentage slightly increased to 23.60% in the 1990s, which was still quite insufficient for the Indigenous people.<sup>119</sup> Furthermore, by limiting mountain compatriots to use particular areas of the reserved land, the government utilized the “surplus” plots for industrialization.<sup>120</sup> The Regulation on Management of the Mountain Reserved Land in Taiwan Province was amended to open up more reserved land and ultimately led to further loss of Indigenous land to nonindigenous people.<sup>121</sup> In 1983, nearly 40% of the reserved land was used by the government and private parties, and another 10% to 20% were illegally transferred or rented to nonindigenous people.<sup>122</sup> The reserved lands were not fully used to achieve the original purpose of supporting the mountain compatriots.

The policy of relocation for development also had huge effects on the living space, economic livelihoods, social structure, and cultural preservation of Indigenous people. From 1946 to 1975, seventy Indigenous villages of more than 23,000 mountain compatriots had relocated from remote sites to more accessible locations.<sup>123</sup> The relocation worsened issues

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<sup>115</sup> TAIWAN SHENG ZHENGFU GONGBAO (台灣省政府公報) [TAIWAN PROVINCIAL GOVERNMENT GAZETTE], vol. 71, 40 Nien [1951], pp. 962-64.

<sup>116</sup> FUJII, *supra* note 78, at 193.

<sup>117</sup> *See id.*

<sup>118</sup> YEN & YANG, *supra* note 47, at 245.

<sup>119</sup> *Id.* at 247.

<sup>120</sup> FUJII, *supra* note 78, at 207-08.

<sup>121</sup> Taiwan Sheng Shandi Baoliu Di Guanli Banfa (臺灣省山地保留地管理辦法) [Regulation on the Management of Mountain Reserved Land in Taiwan Province], art. 6-7, 33; Taiwan Sheng Shandi Baoliu Di Guanli Banfa (臺灣省山地保留地管理辦法) [Regulation on the Management of Mountain Reserved Land in Taiwan Province], art. 34.

<sup>122</sup> ICYANG PAROD (夷將拔路兒), TAIWAN YUAN ZHU MINZU YUNDONG SHILIAO HUIBIAN XIA (台灣原住民族運動史料彙編下) [DOCUMENTARY COLLECTION ON THE INDIGENOUS MOVEMENT IN TAIWAN, VOL. 2], 898, 902 (2008).

<sup>123</sup> Ming-Lin Shieh (謝明霖), Shan Bao Qian Cun Yu Huanjing Tiaoshi Zhi Yanjiu

in the tribes. For example, in 1976, three Atayal communities in Nanchuang Township, Miaoli County, were moved from mountain areas to lower lands near the township office and main roads.<sup>124</sup> After relocation, the convenient traffic caused more tribal members to leave their homes and migrate to urban areas.<sup>125</sup> When the Indigenous people were away from their hometown, they suffered problems of low wages and job instability. Approximately 87% of them often changed jobs due to low educational levels, language barriers, and cultural differences.<sup>126</sup> As a result, it was harder for the decreased population in Indigenous communities to develop their economy and preserve their culture since an increased number of Indigenous people were far from their homeland and struggling in the dominant society.<sup>127</sup>

E. *Indigenous Movements and Reclaiming Rights (1987 – Present)*

Since the 1980s, Taiwan has gradually transitioned from authoritarian rule to a democratic country through political reforms and social movements.<sup>128</sup> Along with this change, Indigenous peoples began to realize the injustice done to them and established non-governmental organizations (“NGOs”) to promote the dignity and autonomy of their tribes in resistance to cultural assimilation, economic exploitation, and social discrimination.<sup>129</sup> The Indigenous people facilitated the Return My Land Movements to request that the government return Indigenous land and reserve more land for Indigenous tribes.<sup>130</sup> They also actively lobbied and

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Yi Miaoli Xian Nanzhuang Xiang Qian Cun Jihua Wei Ge'an Yanjiu (山胞遷村與環境調適之研究·以苗栗縣南庄鄉遷村計劃為個案研究) [The Environmental Adjustment and Migration of the Aborigines: A Case Study in Migration Plan of Miaoli County Nanchuang Township] 4 (1986) (M.A. thesis, Dep't of Geography, Nat'l Taiwan U.) (on file with the National Taiwan University library).

<sup>124</sup> See *id.* at 20-23.

<sup>125</sup> *Id.* at 74.

<sup>126</sup> See *id.* at 74, 77-78.

<sup>127</sup> See FUJII, *supra* note 78, at 228, 231-32.

<sup>128</sup> *Id.* at 236-37.

<sup>129</sup> ICYANG PAROD (夷將拔路兒), TAIWAN YUAN ZHU MINZU YUNDONG SHILIAO HUIBIAN SHANG (台灣原住民族運動史料彙編上) [DOCUMENTARY COLLECTION ON THE INDIGENOUS MOVEMENT IN TAIWAN, VOL. 1] 192 (2008).

<sup>130</sup> Because the reserved lands were not appropriately used to benefit and support the Indigenous peoples, they organized Return My Land Movements in 1988, 1989, and 1993 to request the ROC government to eliminate exploitation of Indigenous lands, grant Indigenous people's rights to the reserved land, and designate more areas as reserved land. See TIAN, *supra* note 101, at 110-25.

organized activities to rectify the name of tribes, restore Indigenous personal names and languages, and develop Indigenous education.<sup>131</sup>

Those efforts led to profound enhancement of Indigenous rights in the ROC legal system. Since 1991, the Amendment to the Constitution has guaranteed six reserved seats for Indigenous representatives in the Legislative Yuan, and the 1994 Amendment adopted a provision protecting the constitutional rights of “Indigenous people” to replace the previous discriminatory term of “mountain compatriots.”<sup>132</sup> The Council of Indigenous Peoples was created in 1996 as the first agency at the national level to have full authority over Indigenous affairs.<sup>133</sup> In 1997, the term “Indigenous people” in the Constitution was further changed to “Indigenous peoples” to highlight the individual rights of Indigenous persons and their collective rights.<sup>134</sup> The superior abstract constitutional principles were specified in legislation to promote Indigenous rights and culture, such as the Indigenous Peoples Basic Law of 2005.<sup>135</sup>

Legal reforms on Indigenous land and natural resources represent one of the most important improvements of Indigenous rights in Taiwan. In 1990, the Regulation on the Development and Management of the Land Reserved for Mountain Compatriots was promulgated to give Indigenous people the priority to apply for development projects on the reserved land.<sup>136</sup> The regulation also granted Indigenous people land rights in a shorter period.<sup>137</sup> Moreover, a broader range of “Indigenous land”—not only reserved land but also traditional territory—was recognized by the Indigenous Peoples Basic Law.<sup>138</sup> For the Indigenous land, if the

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<sup>131</sup> See *id.* at 51-59, 68-80, 88-92, 96-102.

<sup>132</sup> See FUJII, *supra* note 78, at 260-61.

<sup>133</sup> *Zuzhi Xitong* (組織系統) [*Organizational Structure*], YUAN ZHU MINZU WEIYUANHUI (原住民族委員會) [COUNCIL OF INDIGENOUS PEOPLES], <https://www.cip.gov.tw/zh-tw/menu/data-list/5CB34240F988D677-info.html> (last visited Feb. 18, 2023).

<sup>134</sup> FUJII, *supra* note 78, at 265.

<sup>135</sup> Yuan Zhu Minzu Jibenfa (原住民族基本法) [The Indigenous Peoples Basic Law], FAWU BU QUANGUO FAGUI ZILIAO KU (法務部全國法規資料庫) [LAWS & REGULATIONS DATABASE, MINISTRY OF JUSTICE], <https://law.moj.gov.tw/ENG/LawClass/LawHistory.aspx?pcode=D0130003> (last visited Feb. 18, 2023).

<sup>136</sup> Yuan Zhuming Baoliu Di Kaifa Guanli Banfa (原住民保留地開發管理辦法) [Regulation on the Development and Management of the Land Reserved for Mountain Compatriots], art. 23.

<sup>137</sup> Taiwan Sheng Shandi Baoliu Di Guanli Banfa (臺灣省山地保留地管理辦法) [Regulation on the Management of Mountain Reserved Land in Taiwan Province], art. 7; *Id.* art. 8-9.

<sup>138</sup> Yuan Zhu Minzu Jibenfa (原住民族基本法) [Indigenous Peoples Basic Law],

government and private sectors propose any plans for land development, resource utilization, or other uses, they must consult and obtain consent from the affected Indigenous community.<sup>139</sup> Indigenous people have the right to participate in land management and share benefits of such land use.<sup>140</sup>

Despite the progress of the legal system, at the societal level, Indigenous rights protection has not been completely fulfilled. In the past three decades, the Indigenous population has increased by more than half, but the land reserved for them has expanded by only 8.6%.<sup>141</sup> Even these limited areas of reserved land have not been fully returned to or used by the Indigenous people. A little more than half (54%) of the reserved land was registered by Indigenous people to have land rights, and the rest (46%) was held by the government or leased to public enterprises and nonindigenous private sectors.<sup>142</sup> In addition, the reserved parcels of land may not be the ancestral parcels of land of Indigenous peoples because the locations were decided by the Japanese and ROC authorities, not by the Indigenous peoples themselves.<sup>143</sup> Although the Indigenous Peoples Basic Law expanded the range of Indigenous land to include traditional territory, the definition and location of traditional territory are still under debate.<sup>144</sup>

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art. 2.

<sup>139</sup> *Id.* art. 20-23.

<sup>140</sup> *Id.* art. 21.

<sup>141</sup> See YEN & YANG, *supra* note 47, at 248; *Ge Zhixiashi (Xian, Shi) Baoliu Di Mianji, Bi Shu* (各直轄市(縣,市)保留地面積,筆數) [*Area and Number of Indigenous Reserved Land in Each Municipality, City, and County*], YUAN ZHU MINZU WEIYUANHUI (原住民族委員會) [COUNCIL OF INDIGENOUS PEOPLES], <https://www.cip.gov.tw/zh-tw/chart/data-list/337E91BC25E860F5/D02AC47415CC84FE-info.html> (last visited Mar. 16, 2023); *Indigenous Population*, MINISTRY OF THE INTERIOR, <https://statis.moi.gov.tw/micst/stmain.jsp?sys=220&ym=8400&yymt=11100&kind=21&type=1&funid=c0110501&cycle=4&outmode=0&compmode=0&outkind=1&fld0=1&cod00=1&cod10=1&rdm=ublkkfqr> (last visited Mar. 14, 2023).

<sup>142</sup> *Nian Yuan Zhuming Baoliu Di Quanli Fenpei Tongji Baobiao* (年原住民保留地權利分配統計報表) [*Statistical Report of Right to Indigenous Reserved Land*], YUAN ZHU MINZU WEIYUANHUI (原住民族委員會) [COUNCIL OF INDIGENOUS PEOPLES], <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwi6sKzvheP4AhXbqVYBHQc0Cm8QFnoEAcQAQ&url=https%3A%2F%2Fwww.cip.gov.tw%2Fdata%2Fnews%2Fdocument%2F202009%2F1601445151221-4.pdf%3Fs%3D37AFF42B3FC19ABD%26c%3D0655D014FBDC049AC8E62772ED9096E8%26fn%3DB3E5E1D38D21809D71BAA09F07B0C901&usg=AOvVaw3Ga9QXFxdgaUs6QviboG3e> (last visited Aug. 12, 2022).

<sup>143</sup> See YEN & YANG, *supra* note 47, at 208-10, 236-38.

<sup>144</sup> *Xiaoshi de 100 Wan Gongqing Chuantong Lingyu: Ruhe Qiangjiu Kuai Bei Kaifa Dai Jin de Taiwan Tudi* (消失的100萬公頃傳統領域:如何搶救快被開發殆盡的台灣土地?) [*Disappearance of 100 Hectares of Traditional Territory: How to Save the*

Compared to nonindigenous people, Taiwanese Indigenous people live at a higher risk because of the enduring effect of long-term marginalization and discrimination. Their life expectancy has been much lower than that of nonindigenous people. Compared to the life expectancy at birth of the general population, there was a gap of 7.7 years for all Indigenous people and 9.5 years for mountain Indigenous people.<sup>145</sup> The health status of the Indigenous population is highly related to their socioeconomic disadvantages.<sup>146</sup> They have been alienated from natural resources, and their traditional culture is regarded as backwards in modern society.<sup>147</sup> Under these pressures, Indigenous people are more likely to suffer mental and physical problems.<sup>148</sup> Low educational attainment, high rates of unemployment and poverty, and dependence on labor work and primary industry, along with inadequate access to health care in remote areas, are factors that predispose such communities to injury and disease.<sup>149</sup> These cultural, economic, social, and health hardships have increased the vulnerability to the impacts of hazards.

### III. RECONSTRUCTION LAW AFTER TYPHOON MORAKOT

#### A. *The Impacts of Typhoon Morakot and Legislation for Disaster Recovery*

In early August 2009, Typhoon Morakot hit Taiwan and caused severe damage.<sup>150</sup> With climate change, it has become increasingly difficult to predict extreme weather events.<sup>151</sup> The Typhoon passed through northern Taiwan but produced heavy rainfall in southern Taiwan.<sup>152</sup> Rainfall in Pingtung County on August 8, 2009 (1,402 millimeters) was the highest

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*Nearly Exhausted Land in Taiwan*], GUANJIAN PINGLUN WANG (關鍵評論網) [THE NEWS LENS] (Mar. 21, 2017), <https://www.thenewslens.com/article/63214/fullpage>.

<sup>145</sup> See NATIONAL HEALTH RESEARCH INSTITUTES, STATISTICAL YEARBOOK OF INDIGENOUS POPULATION AND HEALTH IN 2019, at 31-34 (2022).

<sup>146</sup> Kui Kasirisir, *How are You, My Tribe? The Health Relationship Among the Tribe, Ethnic Group, and the Self*, 63 J. NURSING 18, 20 (2016).

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> See Chao-chin Chang, *Poverty and Health: A Study of Social-economic Status and Aboriginal Health Problem*, 6 NAT'L CHIAYI U. GEN. EDUC. J. 461, 469-72 (2008).

<sup>150</sup> 2009 Typhoon Morakot, *supra* note 1.

<sup>151</sup> Jeremy Deaton, *Climate Change Could Make Weather Harder to Predict*, WASH. POST (Jan. 25, 2022, 11:24 AM), <https://www.washingtonpost.com/weather/2022/01/25/climate-change-weather-unpredictable/>.

<sup>152</sup> See 2009 Typhoon Morakot, *supra* note 1.

daily precipitation in Taiwan's recorded history.<sup>153</sup> The cumulative precipitation in southern Taiwan from August 6 to 10 was more than 2,500 millimeters, the highest ever.<sup>154</sup> The downpour triggered floods, mudflows, landslides, barrier lakes, bridge collapses, and levee breaches.<sup>155</sup> The disaster left 699 people dead or missing.<sup>156</sup> 140,424 houses were damaged, among which 1,766 houses were rendered completely uninhabitable.<sup>157</sup> The total economic loss reached almost two hundred billion new Taiwan dollars.<sup>158</sup>

Typhoon Morakot had a particular impact on Taiwanese Indigenous communities because, compared to nonindigenous people, more Indigenous people lived in mountain areas affected by the heavy rainfall. The 13,911 Indigenous people made up 72.5% of the Typhoon victims.<sup>159</sup> Many roads that had been the only routes to Indigenous communities were blocked or washed away by mudslides.<sup>160</sup> The Indigenous people were trapped in remote areas and ran out of food and water.<sup>161</sup> Critical infrastructure and private homes in the Indigenous communities were damaged or destroyed.<sup>162</sup>

When Typhoon Morakot caused severe damage, Taiwan lacked a legal framework to effectively regulate disaster relief.<sup>163</sup> It was not until

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<sup>153</sup> XINGZHENG YUAN MOLAKE TAIFENG ZAIHOU CHONGJIAN TUIDONG WEIYUANHUI (行政院莫拉克颱風災後重建推動委員會) [TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL], AIYU XI WANG BENG FA CHU HUO LI CHENG JIUZAI DI SAN GE MOLAKE TAI FENG HOU CHONJIAN ZHOU NIANJI NIANRI (愛與希望躍動生命力：莫拉克颱風災後重建三周年成果彙編) [LOVE AND HOPE BURSTING WITH VITALITY: ACHIEVEMENTS ON THE THIRD ANNIVERSARY OF POST TYPHOON MORAKOT RECONSTRUCTION 13 (2012) [hereinafter ACHIEVEMENTS].

<sup>154</sup> *Id.* at 18.

<sup>155</sup> 2009 *Typhoon Morakot*, *supra* note 1.

<sup>156</sup> ACHIEVEMENTS, *supra* note 153, at 1.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 23.

<sup>159</sup> *Id.* at 210.

<sup>160</sup> *Id.* at 24.

<sup>161</sup> *Id.*

<sup>162</sup> See 2009 *Typhoon Morakot*, *supra* note 1; Awi Mona (蔡志偉), *Qihou Bianqian, Shengtai Yongxu yu Yuanzhuminzu Shehui Wenhua Fazhan: Molake Fengzai de Fansi* (氣候變遷、生態永續與原住民族社會文化發展：莫拉克風災的反思) [*Climate Change, Ecological Sustainability, and Social-cultural Development of Indigenous People: The Reflection on Typhoon Morakot*], 6 TAIWAN YUAN ZHUMIN YANJIU LUNCONG (台灣原住民研究論叢) [TAIWAN INDIGENOUS STUDS. REV.] 27, 30 (2009).

<sup>163</sup> Yung-hua Kuo, *Disaster Laws and Management Authorities in Taiwan (1945-2019)*, 14 NTU L. REV. 219, 249-54 (2019).

2000 that Taiwan enacted its first disaster management statute, the Disaster Prevention and Protection Act, to establish government organizations for disaster management, including relevant authorities and responsibilities.<sup>164</sup> However, the statute paid little attention to detailed rules of disaster preparedness, response, and recovery. The law did not provide useful guidelines for a wide range of recovery works necessary for when a major disaster, such as Typhoon Morakot, caused extensive damage in Taiwan.

Without available laws for disaster response and recovery, the Taiwanese government had to immediately create laws to address problems caused by Typhoon Morakot. In previous disasters, such as Typhoon Alan on August 7, 1959, and the Jiji Earthquake on September 21, 1999, the presidents at the time issued emergency decrees to declare interim measures for the most urgent needs, which provided legislators with a few months to contemplate laws for intermediate and long-term issues.<sup>165</sup> Since 2000, successive presidents have refrained from issuing emergency decrees in response to hazards and pandemics.<sup>166</sup> The presidents were cautious of the extraordinary power and would utilize it as a last resort.<sup>167</sup> When existing laws were sufficient to deal with urgent problems, the presidents handled the crises in accordance with the statutes and did not issue an emergency decree.<sup>168</sup>

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<sup>164</sup> *Id.* at 248-49.

<sup>165</sup> *Id.* at 238-40.

<sup>166</sup> See Chin-Tian Chen (陳青田), *Zaihai Fang Jiu Fa Shizhi Xiaoying Yu Jinji Mingling Quan Fabu Shiji Zhi Yan Jiu* (災害防救法實質效應與緊急命令權發布時機之研究) [*Research the Effect of "Disaster Prevention and Response Act" and the Best Timing to Issue "Emergency Order Power"*], 4 J. TOKO U. 234, 238 (2010).

<sup>167</sup> See Zongtong Zhaokai Chaoye Lingxiu Fangzhi SARS Yiqing Huiyi (總統召開朝野領袖防治SARS疫情會議) [*The President Held Meeting with Leaders of the Political Parties for Preventing SARS Pandemic*], ZHONGTONGFU, ZHONGHUA MINGUO (總統府, 中華民國) [OFFICE OF THE PRESIDENT, REPUBLIC OF CHINA (TAIWAN)] (May 1, 2003), <https://www.president.gov.tw/NEWS/319>; *Queshui Yanzhong Ma Ying-jiu ying Fabu Jinji Mingling Qingyu? Fu: Bingwu Biyao* (缺水嚴重馬英九應發布緊急命令清淤? 府: 並無必要) [*Is it Necessary for Ma Ying-jeou to Issue an Emergency Decree to Dredge due to Serious Water Shortage? Presidential Office: No Need.*], ETODAY (Mar. 20, 2015, 6:46 PM), <https://www.ettoday.net/news/20150320/481677.htm>.

<sup>168</sup> See Zongtong Zhuchi Guojia Anquan Huiyi (總統主持國家安全會議) [*The President Presided over the National Security Council*], ZHONGTONGFU, ZHONGHUA MINGUO (總統府, 中華民國) [OFFICE OF THE PRESIDENT, REPUBLIC OF CHINA (TAIWAN)] (Aug. 14, 2009), <https://www.president.gov.tw/NEWS/13570>; *Shihui Zhongxin Pinggu Muqian Wu Banbu Jinji Mingling Zhi Biyao* (指揮中心評估目前無頒布緊急命令之必要) [*Central Epidemic Command Center Evaluated Currently No Need to Issue Emergency Decree*], TAIWAN CENTERS FOR DISEASE CONTROL (Oct. 26, 2009), <https://www.cdc.gov.tw/En/Category/ListContent/AHwuigegBBBmuDcbWkzoGQ?uaid=Ssvxrznidld2DVsgbg-vsw>; *Wuhan Feiyan Yiqing Shengwen Fabu Jinji Mingling?*

Soon after, the Legislative Yuan held an extraordinary session to make law addressing the needs and problems caused by Typhoon Morakot. Less than three weeks after the Typhoon disaster, the legislature passed the Special Act for Post-Typhoon Morakot Disaster Reconstruction (hereinafter “the Reconstruction Act”).<sup>169</sup> The statute provided financial assistance, laid down reconstruction principles, and loosened existing legal restrictions for swift disaster relief and recovery.<sup>170</sup> The statute also created the Typhoon Morakot Postdisaster Reconstruction Council (hereinafter “the Reconstruction Council”) to supervise and coordinate disaster recovery efforts.<sup>171</sup> The Reconstruction Council was composed of government officials, experts, scholars, private organizations, and civilians, amongst whom at least one fifth of the council members were representatives of Indigenous people and Typhoon victims.<sup>172</sup>

The legislation of the Reconstruction Act shows that, after years of effort, Indigenous peoples were able to defend their rights in the legal sphere. During the legislative process, Indigenous representatives expressed concerns about the bill proposed by the Executive Yuan, which did not mention public participation or cultural diversity in disaster recovery.<sup>173</sup> The Indigenous representatives from different political parties stood up to request that people living on affected lands, especially Indigenous people, not be relocated unless they agreed to it.<sup>174</sup> Consequently, the first two articles of the Reconstruction Act highlighted the principles of public participation and cultural diversity in post-disaster recovery, and Article 20 stipulated that “for risky and illegally developed land in affected areas... governments may, *after reaching an agreement with residents on the land...* restrict residence, order residents to resettle, or relocate entire villages.”<sup>175</sup>

While a step in the right direction, the Reconstruction Act revealed its limitations after it came into effect. Immediately following Typhoon

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Zongtong Fu: *Muqian Zan Wu Xuqiu* (武漢肺炎疫情升溫發布緊急命令？ 總統府：目前暫無需求) [Issuing an Emergency Decree When the COVID-19 Pandemic Continues to Grow? The Presidential Office: No Need for Now], TAIWAN NEWS (Mar. 18, 2020), <https://www.taiwannews.com.tw/ch/news/3899771>.

<sup>169</sup> ACHIEVEMENTS, *supra* note 153, at 8.

<sup>170</sup> Molake Taifeng Zaihou Chongjian Tebie Tiaoli (莫拉克颱風災後重建特別條例) [Special Act for Post-Typhoon Morakot Disaster Reconstruction] art. 6-27 [hereinafter Special Act] (2009).

<sup>171</sup> *Id.* art. 4.

<sup>172</sup> *Id.*

<sup>173</sup> Lifayuan Gongbao (立法院公報) Legislative Yuan Gazette, vol. 45, 98 Nien [2009], pp. 45-46.

<sup>174</sup> *Id.* at 48-49.

<sup>175</sup> Special Act, *supra* note 170, art. 1-2, 20 (2009) (emphasis added).

Morakot, the Reconstruction Act was passed before the actual situation of affected areas was clarified.<sup>176</sup> Furthermore, the statute was discussed for only two days prior to its passage.<sup>177</sup> In this short period, there was insufficient time to carefully consider all possible problems and solutions. Therefore, the Reconstruction Act had ambiguous terms that did not clearly instruct recovery activities. It also had rigid rules that did not cover diverse situations of the affected areas and communities. After the law was applied to Taiwanese society, it caused persistent controversies regarding land rights and housing policy among the affected Indigenous people.

### B. *Regulating Land Affected by Typhoon Morakot*

According to disaster management studies, removal from risky areas is a cost-effective strategy to reduce disaster risks and impacts.<sup>178</sup> As the population has grown dramatically around the world, people have reclaimed much disaster-prone land, such as coastal areas subject to sea level rise and erosion, floodplains and riversides, and land susceptible to wildfires.<sup>179</sup> However, to mitigate disaster risk, identifying high-risk and sensitive areas, avoiding development projects in these areas, and encouraging residents to move to other safe sites is recommended.<sup>180</sup> People should measure environmental conditions to limit land use and human activities compatible with hazard risks of that area. In addition, the beneficial functions of natural resources—such as buffering disaster impacts—should be restored to preserve nature and protect human safety.<sup>181</sup>

After Typhoon Morakot, Taiwan adopted the abovementioned recommendations for disaster management, and the government claimed that humans must stay away from the natural environment to prevent harm.<sup>182</sup> While conservation may have been helpful for disaster recovery, an issue was that residents in the affected areas were blamed for destroying the environment, and thereby causing floods, landslides, and other disasters.<sup>183</sup> The blame was combined with the long-term discriminatory belief that Indigenous people were unable to wisely manage land and thus

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<sup>176</sup> See INDEPENDENT NEWSNET OF MORAKOT, *supra* note 3, at 42; CHEN & CHIU, *supra* note 3, at 21, 33.

<sup>177</sup> See generally Lifayuan Gongbao, *supra* note 173, 1-81.

<sup>178</sup> DANIEL A. FARBER ET AL., *DISASTER LAW AND POL'Y* 406 (3rd ed., 2015).

<sup>179</sup> See *id.* at 26-28, 47.

<sup>180</sup> See ASSOCIATION OF FLOODPLAIN MANAGERS, *FLOODPLAIN MANAGEMENT 2050*, at 33-34 (Assembly of the Gilbert F. White National Flood Policy Forum, George Washington University, Nov. 6-7, 2007).

<sup>181</sup> See *id.*

<sup>182</sup> ACHIEVEMENTS, *supra* note 153, at 134.

<sup>183</sup> See INDEPENDENT NEWSNET OF MORAKOT, *supra* note 3, at 23-35.

triggering mountain hazards.<sup>184</sup> The media published opinions of government officials, experts, and scholars who called for restricting or prohibiting human activities in natural areas by relocating Indigenous communities away from the mountains.<sup>185</sup> However, this claim disregards the fact that the majority of the mountain lands was controlled by the government and developed by enterprises.<sup>186</sup>

In the beginning of the post-Typhoon Morakot disaster recovery, the Taiwanese government mapped hazardous areas of land and limited their use by removing Indigenous people from the areas to conserve the natural environment and protect human safety.<sup>187</sup> Article 20 of the Reconstruction Act authorized the government to designate deeply struck and illegally used lands as Special Zones to restrict residence and relocate residents from the areas if the governments and residents reached an agreement.<sup>188</sup> Based on the article, the Ministry of the Interior issued a regulation to illustrate eight types of vulnerable land.<sup>189</sup> The inclusive legal texts of the regulation gave government departments broad discretion to determine whether an area of land was hazardous and should be designated as a Special Zone.

To identify risky land in preparation for designating Special Zones, the Taiwanese government conducted investigations on land affected by typhoon impacts to evaluate environmental conditions, susceptibility to future disasters, and possible safety concerns.<sup>190</sup> In one month, the government investigated eighty areas of nonindigenous villages affected by Typhoon Morakot.<sup>191</sup> Of these nonindigenous villages, sixty were deemed unsafe, and twenty were deemed safe.<sup>192</sup> In a much shorter period of ten days, sixty-four areas of Indigenous villages were investigated: thirty-three were determined to be risky and thirty-one conditionally safe.<sup>193</sup> The

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<sup>184</sup> See CHEN & CHIU, *supra* note 3, at 26-27.

<sup>185</sup> See INDEPENDENT NEWSNET OF MORAKOT, *supra* note 3, at 24.

<sup>186</sup> CHEN & CHIU, *supra* note 3, at 24-25.

<sup>187</sup> See *id.* at 27, 33-35; ACHIEVEMENTS, *supra* note 153, at 209.

<sup>188</sup> Special Act, *supra* note 170, art. 20.

<sup>189</sup> Molake Taifeng Zaiqu Hua Ding Teding Quyu Anzhi Yongdi Kan Xuan Biangeng Liyong Ji Chongjian Zhuzhai Fenpei Banfa (莫拉克颱風災區劃定特定區域安置用地勘選變更利用及重建住宅分配辦法) [Regulations on Designating Special Zones, Choosing and Changing Resettlement Land, and Distributing Reconstruction Houses in Areas Affected by Typhoon Morakot], art. 2, para. 1.

<sup>190</sup> ACHIEVEMENTS, *supra* note 153, at 211.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> 98 NIANDU MOLAKE TAIFENG ZAIHAI BULUO JUZHU DI XIN KAN JIFUKAN ZUOYE JI ANQUAN PINGGU BAOGAO SHU JI HUA (FU KAN BAOGAO SHU) (98 年度莫拉克

conditionally safe villages required repair and small-scale construction to improve land stability; otherwise, the villages would become unsafe in the long run.<sup>194</sup>

The land investigation process was criticized for being hurried, careless, and having limited local participation. Government bureaucrats and scientists examined as many as nine sites in one day, spending little time investigating land conditions.<sup>195</sup> Some experts visited the sites for a few hours or relied on aerial photography to decide whether an Indigenous village was safe.<sup>196</sup> The experts focused on technical issues and construction safety but overlooked specific ecological, social, economic, and other contexts of each village.<sup>197</sup> Local people of Indigenous villages, social scientists (such as anthropologists and historians), and social workers had little chance to participate in the decision-making and contribute their opinions on the social and cultural aspects of the affected environment.<sup>198</sup>

Because the land assessment relied on limited investigation and particular points of view, the Indigenous communities were concerned with whether the assessment results were correct.<sup>199</sup> Due to these concerns, the Taiwanese government conducted further examinations of the affected areas of Indigenous villages.<sup>200</sup> This time, the investigation method emphasized on-site observation and communication with local people to understand their thoughts on how typhoon impacts have changed land conditions and sustainability.<sup>201</sup> In November 2009, officials and technicians reexamined thirty areas of Indigenous land, which led to more detailed analyses of the land condition and changes in the assessment results of seven areas of Indigenous land.<sup>202</sup> Other areas of Indigenous land were also investigated

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颱風災害部落居住地新勘及複勘作業暨安全評估報告書計畫 (複勘報告書)) [TAOLIN DIGITAL SURVEY ENGINEERING CO. LTD., REPORT OF NEW INVESTIGATION AND RE-EXAMINATION OF INDIGENOUS COMMUNITY LANDS AFFECTED BY 2009 TYPHOON MORAKOT DISASTER AND SAFETY ASSESSMENT: RE-EXAMINATION REPORT] 1 (2009).

<sup>194</sup> *Id.* at 2.

<sup>195</sup> CHEN & CHIU, *supra* note 3, at 122.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.* at 123-24.

<sup>198</sup> ACHIEVEMENTS, *supra* note 153, at 212; Jyh-Cherng Shieh, Jwu-Shang Chen & Wan-I Lin, *Skip to Permanence Without Transition? Policy-making in Post-Morakot Reconstruction*, 93 TAIWAN: RADICAL Q. SOC. STUD. 49, 55 (2013).

<sup>199</sup> ACHIEVEMENTS, *supra* note 153, at 212.

<sup>200</sup> *Id.*

<sup>201</sup> TAOLIN DIGITAL SURVEY ENGINEERING CO. LTD., *supra* note 193, at 1-3.

<sup>202</sup> *Id.* at 4-6.

to understand the actual situation and damage as a result of Typhoon Morakot.<sup>203</sup>

At the request of the Indigenous people, the investigation process was improved to evaluate the land condition through a more sophisticated process, but the assessment results were not accepted by all of the affected Indigenous communities.<sup>204</sup> Eventually, the government investigated a total of ninety-five areas of Indigenous land affected by Typhoon Morakot, in which sixty-seven affected lands (70%) were deemed subject to different levels of disaster risk.<sup>205</sup> Some Indigenous communities thought that their land was not as risky as the government determined.<sup>206</sup> They continued to express disagreement when the government proceeded to the next step of land zoning.<sup>207</sup>

### C. *Land Zoning and Indigenous Resistance*

To protect the rights of Indigenous people affected by Typhoon Morakot, the Reconstruction Act imposed legal requirements on disaster recovery efforts. According to the law, if reconstruction was to take place in an area where Indigenous people resided, the government would handle disaster reconstruction in accordance with the Indigenous Peoples Basic Law to protect their rights.<sup>208</sup> The government should respect the plural cultures of the Indigenous peoples in the disaster recovery process.<sup>209</sup> Article 20 of the Reconstruction Act also required the government to consult residents and landowners in disaster-prone areas to reach an agreement before designating their parcels of land as Special Zones.<sup>210</sup> The articles were designed to protect the self-determination of the affected people. Yet, evaluating the actual effects of rights protection requires a closer look at the legal practice of post-disaster recovery in Taiwan.

Regulating the land for disaster recovery was a complicated task that greatly influenced the life of local population and usually caused resistance if not properly considered and implemented. As discussed above, affected

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<sup>203</sup> *Id.* at 1-4; NIANDU MOLAKE TAIFENG ZAIHAI BULUO JUZHU DE ANQUAN PINGGU DI ER CI XIANCHANG HUI KAN JIHUA (98 年度莫拉克颱風災害部落居住地安全評估第二次現場會勘計畫) [GEOLOGICAL SOCIETY LOCATED IN TAIPEI, THE SECOND ON-SITE INVESTIGATION AND SAFETY ASSESSMENT OF INDIGENOUS COMMUNITY LANDS AFFECTED BY 2009 TYPHOON MORAKOT DISASTER] 1 (2009).

<sup>204</sup> See CHEN & CHIU, *supra* note 3, at 47; TAOLIN DIGITAL SURVEY ENGINEERING CO. LTD., *supra* note 193, at 1.

<sup>205</sup> ACHIEVEMENTS, *supra* note 153, at 211-12.

<sup>206</sup> CHEN & CHIU, *supra* note 3, at 46-47.

<sup>207</sup> ACHIEVEMENTS, *supra* note 153, at 216.

<sup>208</sup> Special Act, *supra* note 170, art. 1.

<sup>209</sup> *Id.* art. 2.

<sup>210</sup> *Id.* art. 20.

Indigenous people hardly participated in the process of land investigation.<sup>211</sup> They worried about the possible legal effects of zoning, such as forced migration and restrictions on land rights because the government did not provide accurate and adequate information to the affected people.<sup>212</sup> On the one hand, according to the Reconstruction Council, the purpose of zoning was to identify Typhoon victims to provide disaster relief and recovery assistance, which would not change any legal rights or limit land use in Special Zones.<sup>213</sup> On the other hand, the council stated that the use of vulnerable land must be limited and that human habitation was prohibited in risky areas.<sup>214</sup> A regulation was issued to authorize municipal, county, and township governments to order residents in the Special Zones to relocate.<sup>215</sup> If the residents refused, relocation would

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<sup>211</sup> ACHIEVEMENTS, *supra* note 153, at 212; Shieh et al., *supra* note 198.

<sup>212</sup> See CHEN & CHIU, *supra* note 3, at 32-39.

<sup>213</sup> XINGZHENG YUAN MOLAKE TAIFENG ZAIHOU CHONGJIAN TUIDONG WEIYUANHUI (行政院莫拉克颱風災後重建推動委員會) [TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL], MOLAKE TAIFENG ZAIQU HUA DING TEDING QUYU (莫拉克颱風災區劃定特定區域) [POLICY OF DESIGNATING TYPHOON MORAKOT AFFECTED AREAS AS SPECIAL ZONES] 1 (2009), [https://morakotdatabase.nstm.gov.tw/download-88flood.www.gov.tw/special\\_list/990112\\_98年12月30日第9次委員會議通過莫拉克颱風災區劃定特定區域說明書.pdf](https://morakotdatabase.nstm.gov.tw/download-88flood.www.gov.tw/special_list/990112_98年12月30日第9次委員會議通過莫拉克颱風災區劃定特定區域說明書.pdf); XINGZHENG YUAN MOLAKE TAIFENG ZAIHOU CHONGJIAN TUIDONG WEIYUANHUI (行政院莫拉克颱風災後重建推動委員會) [TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL], ZHENGFU TIGONG ZAIQU ZAIMIN ANQUAN SHENGHUO HUANJING: CHONGJIAN TIAOLI YU TEDING QUHUA SHE (政府提供災區災民安全生活環境: 重建條例與特定區劃設) [GOVERNMENT PROVIDING SAFE HABITAT TO TYPHOON VICTIMS IN DISASTER AREAS: RECONSTRUCTION ACT AND SPECIAL ZONE DESIGNATION] 5-6 (2010), [http://morakotdatabase.nstm.gov.tw/download-88flood.www.gov.tw/special\\_list/990106政府提供災區災民安全生活環境—重建條例與特定區劃設.pdf](http://morakotdatabase.nstm.gov.tw/download-88flood.www.gov.tw/special_list/990106政府提供災區災民安全生活環境—重建條例與特定區劃設.pdf).

<sup>214</sup> XINGZHENG YUAN MOLAKE TAIFENG ZAIHOU CHONGJIAN TUIDONG WEIYUANHUI (行政院莫拉克颱風災後重建推動委員會) [TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL], YAN SHANG MOLAKE TAIFENG ZAIHOU HUA DING TEDING QUYU YUAN ZHU JUMIN QIAN CUN YUANZE GONGZUO HUIBAO JILU (研商莫拉克颱風災後劃定特定區域原住居民遷村原則工作會報紀錄) [MEETING OF DISCUSSION ON PRINCIPLES OF DESIGNATING POST-TYPHOON MORAKOT SPECIAL ZONE AND RELOCATING RESIDENTS] 1-2 (2009), [http://morakotdatabase.nstm.gov.tw/88flood.www.gov.tw/files/committee\\_other/31.pdf?id=31&type=pdf&location=committee\\_other](http://morakotdatabase.nstm.gov.tw/88flood.www.gov.tw/files/committee_other/31.pdf?id=31&type=pdf&location=committee_other).

<sup>215</sup> *Molake Taifeng Zaiqu Hua Ding Teding Quyuan Anzhi Yongdi Kan Xuan Biangeng Liyong Ji Chongjian Zhuzhai Fenpei Banfa* (莫拉克颱風災區劃定特定區域安置用地勘選變更利用及重建住宅分配辦法) [REGULATIONS ON DESIGNATING SPECIAL ZONES, CHOOSING AND CHANGING RESETTLEMENT LAND, AND DISTRIBUTING RECONSTRUCTION HOUSES IN AREAS AFFECTED BY TYPHOON MORAKOT], FAWU BU QUANGUO FAGUI ZILIAO KU (法務部全國法規資料庫) [LAWS & REGULATIONS

be compulsory.<sup>216</sup> Faced with the inconsistent information, some affected people were confused, worried, and refused the proposed designation of Special Zones.<sup>217</sup>

The strong concern of zoning effects, along with land exploitation and involuntary migration, made the Indigenous people distrust and object to the government's disposition of their land. Indigenous people who refused land zoning blocked roads to their communities to protest when the government held public meetings in the affected areas.<sup>218</sup> Some Indigenous communities discussed with the government the proposed designation of Special Zones and eventually resisted zoning proposals by exercising their right, guaranteed by the Reconstruction Act, to not agree with the government.<sup>219</sup>

The respective numbers of Special Zones and Hazardous Zones indicate that, compared to nonindigenous people, Indigenous people were more suspicious of and opposed to land zoning and its subsequent legal restrictions on land. As required by the Reconstruction Act, if the government reached an agreement with landowners of disaster-prone parcels of land, the area was designated as a Special Zone.<sup>220</sup> Where landowners rejected zoning for parcels of affected land, the Ministry of the Interior designated these parcels as Hazardous Zones.<sup>221</sup> In other words, a Special Zone represented landowners' agreement with the proposed designation of zoning, and a Hazardous Zone represented rejection of the government's land zoning proposal. Table 1 shows, among all disaster-prone areas where nonindigenous people lived, nearly three quarters (74.49%) of the landowners agreed that their land was designated as Special

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DATABASE, MINISTRY OF JUSTICE], <https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=D0070183> (last visited Feb. 18, 2023).

<sup>216</sup> Molake Taifend Zaiqu Hua Ding Teding Quyu Anzhi Yongdi Kan Xuan Bianheng Liyong Ji Chongjian Zhuzhai Fenpei Banfa (莫拉克颱風災區劃定特定區域安置用地勘選變更利用及重建住宅分配辦法) [Regulations on Designating Special Zones, Choosing and Changing Resettlement Land, and Distributing Reconstruction Houses in Areas Affected by Typhoon Morakot], art. 4, para. 2.

<sup>217</sup> See CHEN & CHIU, *supra* note 3, at 32-35.

<sup>218</sup> XINGZHENG YUAN MOLAKE TAIFENG ZAIHOU CHONGJIAN TUIDONG WEIYUANHUI (行政院莫拉克颱風災後重建推動委員會) [TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL], MOLAKE TAIFENG ZAIHOU ZHONGJIAN WUZHOUNIAN CHENGGUO HUIBIAN (莫拉克颱風災後重建五周年成果彙編) [ACHIEVEMENTS ON THE FIFTH ANNIVERSARY OF POST TYPHOON MORAKOT RECONSTRUCTION] 46-47 (2014).

<sup>219</sup> ACHIEVEMENTS, *supra* note 153, at 213.

<sup>220</sup> Special Act, *supra* note 170, art. 20.

<sup>221</sup> ACHIEVEMENTS, *supra* note 153, at 218.

Zones.<sup>222</sup> In contrast, less than half (42.86%) of the Indigenous landowners agreed with the proposed designation of Special Zones.<sup>223</sup>

**Table 1: Numbers of Special Zones and Hazardous Zones**

	Special Zone	Hazardous Zone	Total
Nonindigenous area of land	73 (74.49%)	25 (25.51%)	98 (100%)
Indigenous area of land	27 (42.86%)	36 (57.14%)	63 (100%)
Total	100	61	161

Source: TYPHOON MORAKOT POSTDISASTER RECONSTRUCTION COUNCIL, ACHIEVEMENTS ON THE FIFTH ANNIVERSARY OF POST TYPHOON MORAKOT RECONSTRUCTION 51 (2014).

If the Indigenous communities in affected areas were not adequately consulted and in agreement with zoning, they would continue to challenge the zoning decision after their land had been designated as Special Zones. Specifically, Article 20 of the Reconstruction Act required an agreement between the government and residents in disaster areas, but the law did not provide a specific threshold or standard for such an agreement.<sup>224</sup> The Reconstruction Council noticed this issue but sidestepped it when issuing detailed regulations.<sup>225</sup> Not surprisingly, because there were no clear rules, controversies broke out when not all members of an Indigenous community agreed with the government on zoning proposals.<sup>226</sup> In several Indigenous communities, tribal members who disagreed with zoning tried to reverse zoning decisions through legal tactics of petitioning and litigation.<sup>227</sup>

<sup>222</sup> TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL, *supra* note 218, at 51.

<sup>223</sup> *Id.*

<sup>224</sup> Special Act, *supra* note 170, art. 20.

<sup>225</sup> *Zaiqu Hua Ding Quyu Caoan Jiang Caiguo Banshu Tongyi Rending Qian Cun Gongshi* (“災區劃定區域” 草案, 將採 “過半數同意” 認定遷村共識!) [*Disaster Area Designation Draft Would Adopt Simple Majority to Reach Community Relocation Agreement*], 88NEWS.ORG (Nov. 17, 2009), <https://museum02.digitalarchives.tw/teldap/2010/88news/www.88news.org/index7065.html?p=1162>; XINGZHENG YUAN MOLAKE TAIFENG ZAIHOU CHONGJIAN TUIDONG WEIYUANHUI (行政院莫拉克颱風災後重建推動委員會) [TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL], MOLAKE TAIFENG ZAIHOU ZHONGJIAN ZUOYE CHENGXU CANKAO SHOUCHE (莫拉克颱風災後重建作業 程序參考手冊) [POST-TYPHOON MORAKOT DISASTER RECOVERY WORK PROCESS HANDBOOK] app. at 262 (2013).

<sup>226</sup> TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL, *supra* note 218, at 50.

<sup>227</sup> *Id.*

For example, eleven members of the Adiri community brought a lawsuit to vacate the zoning decision on their lands after their petition was rejected.<sup>228</sup> Adiri is an Indigenous community of the Rukai tribe that consists of the upper and the lower Adiri.<sup>229</sup> Both areas of Adiri were impacted by Typhoon Morakot and designated as Special Zones by the government, but not all community members agreed upon the zoning of the upper Adiri.<sup>230</sup>

The plaintiffs claimed that the upper Adiri was not disaster prone, and that, without their consent, their lands should not be included in the Special Zone.<sup>231</sup> The plaintiffs also argued that they had explicitly rejected the zoning proposal in the public meeting, and that the Reconstruction Council officials had recorded landowners' dissenting opinions and had orally promised that every piece of land in Adiri would be designated separately based on the determination of each landowner.<sup>232</sup> However, a month after the meeting, the government designated all pieces of land of the upper Adiri as one Special Zone, including the plaintiffs' parcels of land.<sup>233</sup>

The challenge brought by the Adiri people was unsuccessful, and the court ruled in favor of the government's decision on land zoning.<sup>234</sup> According to the court, competent experts carried out the land safety assessment of Adiri.<sup>235</sup> As long as the government followed the administrative process to make a decision on disaster risk assessment, the court would defer to the government's judgement.<sup>236</sup> To achieve safe, speedy, and effective disaster recovery, the court interpreted the "agreement" in the Reconstruction Act as not requiring unanimous consent of all community members to land zoning proposal.<sup>237</sup> Lastly, after designating Adiri as a Special Zone, the government did not enforce the zoning

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<sup>228</sup> See *Tai-De Bao et al. v. Council of Agriculture, Executive Yuan* (Taipei Admin. High Ct. June 28, 2011), [https://judgment.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPBA,99%2c%e8%a8%b4%2c1677%2c20120628%2c2; LAVURAS ABALIWSU, ADIRI ON THE CLOUD: RECORD OF THE ADIRI COMMUNITY 124-25 \(2012\).](https://judgment.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPBA,99%2c%e8%a8%b4%2c1677%2c20120628%2c2; LAVURAS ABALIWSU, ADIRI ON THE CLOUD: RECORD OF THE ADIRI COMMUNITY 124-25 (2012).)

<sup>229</sup> ABALIWSU, *supra* note 228, at 122-23.

<sup>230</sup> *Id.*

<sup>231</sup> See *Tai-De Bao et al. v. Council of Agriculture, Executive Yuan* (Taipei Admin. High Ct. June 28, 2011), <https://judgment.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPBA,99%2c%e8%a8%b4%2c1677%2c20120628%2c2>.

<sup>232</sup> *Id.*

<sup>233</sup> ABALIWSU, *supra* note 228, at 122-23.

<sup>234</sup> See *Tai-De Bao et al. v. Council of Agriculture, Executive Yuan* (Taipei Admin. High Ct. June 28, 2011), <https://judgment.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPBA,99%2c%e8%a8%b4%2c1677%2c20120628%2c2>.

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

regulation to forcefully relocate the plaintiffs.<sup>238</sup> Tribal people were allowed to stay in or move out of the upper Adiri.<sup>239</sup> The actual practice was similar to the government's statement that zoning decisions would be made individually depending on the opinion of each landowner.<sup>240</sup> Thus, the court decided that the zoning decision did not violate the rights of the Adiri people.<sup>241</sup>

The Adiri case reflects problems of disaster recovery law when applied to the Indigenous people affected by Typhoon Morakot. The Reconstruction Act was passed in a hurry, having brief legal texts on the government's authority. The executive branch was exempt from a variety of legal restrictions and granted expansive power for disaster recovery, but that strong power could hardly be reviewed by the judiciary. The agencies had wide discretion and could easily justify their operation for reasons such as safety protection and efficient recovery.

Whether accidentally or intentionally, the terms in the Reconstruction Act were different from the language of other laws protecting Indigenous rights. While the Indigenous Peoples Basic Law required Indigenous people's "consent" on any decision on Indigenous land, the Reconstruction Act asked for "agreement" between the government and the affected people.<sup>242</sup> The threshold and process for reaching such agreement was unclear, so the statute did not effectively protect the self-determination of Indigenous peoples.<sup>243</sup>

The legal practice of disaster recovery also demonstrated that the government authority did not effectively communicate with Indigenous people or sincerely respect their opinion. In the public meetings, the government did not provide sufficient information on land zoning in the Indigenous language for the affected people to fully understand the zoning

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<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> See Tai-De Bao et al. v. Council of Agriculture, Executive Yuan (Taipei High Admin. Ct. June 28, 2012), <https://judgment.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPBA,99%2c%e8%a8%b4%2c1677%2c20120628%2c2>.

<sup>241</sup> *Id.*

<sup>242</sup> Yuan Zhu Minzu Jibenfa (原住民族基本法) [Indigenous Peoples Basic Law], art. 21-22; Special Act, *supra* note 170, art. 20.

<sup>243</sup> Cheng-Feng Shih (施正鋒), *Yuan Zhu Minzu de Qian Cun Huo Shi Chongjian* (原住民族的遷村或是重建) [*Relocation or Reconstruction of the Indigenous Peoples*], FORMOSA POST (Sep. 3, 2009) <http://faculty.ndhu.edu.tw/~cfshih/politics%20observation/newspaper/20090903.html>.

policy.<sup>244</sup> The court acknowledged that there were concerns of the communication process between the government and the Adiri people.<sup>245</sup>

When the government evaluated the Adiri community as disaster prone, in fact, some experts and researchers provided another view that the upper Adiri was not subject to the disaster risk of landslides.<sup>246</sup> The different view about the affected land, as well as Indigenous perspectives of the environment, were discredited in the zoning process.<sup>247</sup> Although the Reconstruction Act required the government to respect the local community, culture, and lifestyle, that legal requirement was easily sacrificed for speedy disaster recovery. For the Indigenous peoples, the involuntary zoning of land deprived them of control over their lives and resources, which further harmed the Indigenous people after the Typhoon disaster had already caused serious damage.

#### D. *Permanent Housing for Relocation Policy*

If the land has become unstable or unsustainable due to disasters, relocation may be a good way to recover from the impacts and avoid future risks.<sup>248</sup> Possible alternatives include resettlement of all or some portion of the affected communities to safer places and restoration of the affected areas to a stable environment.<sup>249</sup> During Typhoon Morakot, the floods and landslides damaged thousands of houses and critical infrastructure.<sup>250</sup> To provide safe places for recovery, the Reconstruction Council and NGOs were devoted to building permanent houses at relocation sites for the affected people.<sup>251</sup> In less than six months, 611 houses were built.<sup>252</sup> Three years after the disaster, 3,213 houses were completed, and more than 10,000 people moved from the Special Zones and Hazardous Zones to resettlement sites.<sup>253</sup>

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<sup>244</sup> See *Tai-De Bao et al. v. Council of Agriculture*, Executive Yuan (Taipei Admin. High Ct. June 28, 2011), <https://judgment.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPBA,99%2c%e8%a8%b4%2c1677%2c20120628%2c2>.

<sup>245</sup> See *id.*

<sup>246</sup> See *id.*

<sup>247</sup> *A Li Buluo Shenlun Ji: Shixin de Zhengfu Huangtang de KanCha* (阿禮部落沈淪記: 失信的政府荒唐的勘查) [*Suffering of the Adiri Community: The Untrustworthy Government and the Absurd Investigation*], HUANJING ZIXUN ZHONGXIN (環境資訊中心) [ENV'T. INFO. CTR. (Feb. 26, 2010), <https://e-info.org.tw/node/52175>].

<sup>248</sup> FARBER ET AL., *supra* note 178, at 397.

<sup>249</sup> *Id.*

<sup>250</sup> ACHIEVEMENTS, *supra* note 153, at 1.

<sup>251</sup> ACHIEVEMENTS, *supra* note 153, at 227-29.

<sup>252</sup> *Id.* at 230.

<sup>253</sup> *Id.*

Although permanent housing could have stabilized the lives of typhoon victims in the recovery of Typhoon Morakot, the problem lay in a simplistic idea that relocation was presumed to be the best way to help affected people recover from disaster impacts. As early as August 27, 2009, the Reconstruction Council decided that permanent resettlement was the main method for disaster recovery.<sup>254</sup> The government only provided temporary housing to displaced Typhoon victims in exceptional situations.<sup>255</sup> Other options for reconstruction were belittled or excluded before careful examination of the affected lands and communication with the affected people. In a later Reconstruction Council meeting, four Indigenous council members proposed adding an interim housing option that would allow the affected people to temporarily stay for a period to consider and develop long-term plans, but that suggestion was rejected.<sup>256</sup> When the affected people continued suffering from the shock of the destructive Typhoon disaster, they were pushed to make a difficult choice regarding relocation.<sup>257</sup>

Under pressure from the government and NGOs to achieve efficient disaster recovery, the affected people had to quickly decide whether to permanently leave their homes and relocate elsewhere.<sup>258</sup> If they decided to relocate, they would receive larger subsidies than those who chose other reconstruction methods.<sup>259</sup> The disproportionate assistance for relocation was likely to influence or even coerce the affected people into accepting resettlement, particularly for socioeconomically disadvantaged people who had suffered losses in the Typhoon disaster and relied on government support to rebuild their lives.

The relocation policy was strongly promoted and implemented in multiple ways. As discussed above, initially the government tried to limit or prohibit human habitation in the affected areas by designating these areas as Special Zones.<sup>260</sup> After the zoning policy was questioned and resisted by

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<sup>254</sup> TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL, RECORD OF THE 3RD MEETING OF TASK FORCE, TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL 1, 3 (2009), [https://morakotdatabase.nstm.gov.tw/88flood.www.gov.tw/files/committee\\_workgroup/9.pdf?id=9&type=pdf&location=committee\\_workgroup](https://morakotdatabase.nstm.gov.tw/88flood.www.gov.tw/files/committee_workgroup/9.pdf?id=9&type=pdf&location=committee_workgroup).

<sup>255</sup> *Id.* at 3.

<sup>256</sup> MORAKOT TYPHOON POST-DISASTER RECONSTRUCTION COUNCIL, RECORD OF THE 12TH MEETING OF TASK FORCE, TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL 3-4 (2009), [http://morakotdatabase.nstm.gov.tw/88flood.www.gov.tw/files/committee\\_workgroup/40.pdf?id=40&type=pdf&location=committee\\_workgroup](http://morakotdatabase.nstm.gov.tw/88flood.www.gov.tw/files/committee_workgroup/40.pdf?id=40&type=pdf&location=committee_workgroup).

<sup>257</sup> CHEN-LING HUNG, *SUNSHINE ON THE GREAT GORGE* 40, 42 (2012).

<sup>258</sup> *See* Shieh et al., *supra* note 198, at 74-76.

<sup>259</sup> *See id.* at 69-70.

<sup>260</sup> Special Act, *supra* note 170, art. 20.

the affected people, the government did not enforce the zoning effect of mandatory relocation.<sup>261</sup> In place of the law, the government employed housing assistance contracts as a tool to make the affected people relocate. To receive assistance for permanent housing, recipients were asked to sign a tri-party contract with the NGO that built the resettlement house and the government that provided the land at the resettlement site.<sup>262</sup> The contract clauses required the recipients to leave their home in the affected areas and not to return.<sup>263</sup> If the recipients violated the contract, the resettlement home would be confiscated by the government.<sup>264</sup>

A simple presumed solution cannot solve a wide range of problems because both human society and natural environments are complex. A single solution may be either too precise to be flexibly adapted to each case or too vague to provide useful suggestions.<sup>265</sup> In the aftermath of Typhoon Morakot, the land assessment results indicated that, in fact, not all affected land was too unstable to live on.<sup>266</sup> While an area might be habitable, it was difficult for the affected people to make a decision on relocation shortly after a disaster.<sup>267</sup> The rigid policy of permanent housing for relocation was unlikely to meet the various needs of individuals, households, and communities with different backgrounds and land conditions.

A reckless relocation policy was especially harmful to Indigenous people because it did not respect the collective, traditional decision-making process of the Indigenous people and because relocation usually caused alienation of cultural identity and separation from Indigenous communities. It was suggested that a collaborative decision-making process was more likely to protect Indigenous rights and achieve successful disaster recovery.<sup>268</sup> The affected people should have an option of interim housing where they can stay at temporary housing units for a period of time to gradually recover and develop long-term recovery plans. Affected communities should be provided with support, tools, and incentives to become self-sufficient and eventually able to move out of the temporary

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<sup>261</sup> See CONTROL YUAN, *supra* note 7, at 26-28.

<sup>262</sup> See INDEPENDENT NEWSNET OF MORAKOT, *supra* note 3, at 126.

<sup>263</sup> CONTROL YUAN, *supra* note 7, at 116.

<sup>264</sup> *Id.*

<sup>265</sup> Elinor Ostrom & Michael Cox, *Moving Beyond Panaceas: A Multi-tiered Diagnostic Approach for Social-ecological Analysis*, 37 ENV'T CONSERV. 451, 452 (2010).

<sup>266</sup> See ACHIEVEMENTS, *supra* note 153, at 209.

<sup>267</sup> See INDEPENDENT NEWSNET OF MORAKOT, *supra* note 3, at 58-61.

<sup>268</sup> OFFICE OF THE PRESIDENT, REVIEW REPORT OF THE CENTRAL GOVERNMENT SPECIAL BUDGET FOR TYPHOON MORAKOT RECONSTRUCTION 2009-2012, at 8 (2009), <https://www.president.gov.tw/Portals/0/Bulletins/paper/pdf/6892-1.pdf>.

houses and into their permanent residences, which could be relocation sites or their previous homes.<sup>269</sup>

The post-Typhoon Morakot reconstruction of relocation has caused problems associated with displacement and has overlooked other possible housing options that would have been flexible, adaptive, and helpful to affected people with special needs, such as Indigenous people with intimate connections to their lands. These issues are discussed in the next part by analyzing how the Indigenous communities have adapted to the disaster impacts, as well as the recovery laws and policies.

#### IV. ADAPTIVE STRATEGIES OF TAIWANESE INDIGENOUS PEOPLES

After Typhoon Morakot, as flooding and mudslides dramatically altered the landscape, Indigenous people in Taiwan struggled with pressure from the government, threats of natural hazards, and difficulties in rebuilding their homes and economy. Every Indigenous community chose its adaptive strategy according to its environmental, social, historical, and cultural context. Ultimately, different communities and individuals adopted different strategies to deal with disaster impacts and reconstruction laws, which this article classifies into three types: relocation to resettlement site, reconstruction at the same place, and return to ancestral land. The purpose of such classifications is to demonstrate the diversity of Indigenous adaptive strategies. Thus, the following discussion will not introduce the situations of each Indigenous community affected by the Typhoon, but will instead provide a comprehensive analysis of how the Indigenous communities recovered from the disaster in different ways.

##### A. *Relocation to Resettlement Site*

Relocation is an effective adaptive strategy when an area is disaster-prone or when, after a major disaster, the area becomes too risky and uninhabitable due to the effects of the disaster.<sup>270</sup> When it is obvious that a place will be destroyed again in the next disaster, Indigenous people aware of the risk may wish to move to another location. For example, after the flood in the Kaaluwan community caused by Typhoon Haitang in 2005, Kaaluwan community members sought government assistance for relocation from the floodplain to a safer site.<sup>271</sup> Similarly, mud and rocks

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<sup>269</sup> See FED. EMERGENCY MGMT. AGENCY, NAT'L DISASTER HOUS. STRATEGY 52-53 (2009), <https://www.fema.gov/pdf/emergency/disasterhousing/NDHS-core.pdf>.

<sup>270</sup> FARBER ET AL., *supra* note 178, at 397.

<sup>271</sup> See Ren Lin et al. v. Taitung County et al. (Taitung Dist. Ct. Feb. 17, 2015), <https://judgment.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TTDV,101%2c%e9%87%8d%e5%9c%8b%2c1%2c20150217%2c2>; Ren Lin et al. v. Executive Yuan et al. (Taiwan High Ct. Hualien Branch Ct. Nov. 30, 2016), <https://judgment.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=HLHV,104%2c%e9%87%8d%e4%b8%8a%e5%9c%8b%2c1%2c20161130%2c2>; Jun-Zhe Wang et al. v. Taitung County (Supreme Ct. Sept. 7, 2017),

caused by heavy rain in the area damaged assets of Indigenous people in Kucapungane.<sup>272</sup> Since 2007, Kucapungane community members have been considering relocation to prevent further harm from natural disasters.<sup>273</sup> While the Kaaluwan and Kucapungane people were engaging with the government in search of possible relocation sites and financial support, the excessive rainfall of Typhoon Morakot in 2009 caused floods and mudslides that seriously damaged the Indigenous communities.<sup>274</sup>

After Typhoon Morakot, relocation was adopted by the majority of people in the affected areas.<sup>275</sup> More than two thousand Indigenous households moved to resettlement sites, and 85% of the resettlement sites were distant from the previous location of their Indigenous village before Typhoon Morakot.<sup>276</sup> A major reason for relocation was concerns about safety. Indigenous communities terribly impacted by the disaster knew that their villages had become uninhabitable and decided to relocate.<sup>277</sup> Both the Kaaluwan and Kucapungane communities adopted relocation to prevent future risks.<sup>278</sup> In Nangnisalu village, mudslides seriously destroyed houses.<sup>279</sup> Nangnisalu villagers were terrified by their experience of the disaster and eager for a place without disaster risks and harms, so about 80% of the residents relocated to the Da-ai Community on the plain.<sup>280</sup>

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<https://judgment.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPSV,106%2c%e5%8f%b0%e4%b8%8a%2c1248%2c20170907>.

<sup>272</sup> See TAIBAN SASALA, HISTORICAL STUDY OF RUKAI TRIBE KUCAPUNGANE COMMUNITY 235-42 (2016).

<sup>273</sup> See *id.*

<sup>274</sup> See INDEPENDENT NEWSNET OF MORAKOT, *supra* note 3, at 356-57; Taiban Sasala, *From Reikai to Labelabe: Disaster and Relocation on the Example of Kucapungane, Taiwan*, 19 ANTHROPOLOGICAL NOTEBOOKS 59, 65-66 (2013); *Sunrise in Kaaluwan, Path to Reconstruction and Reconciliation*, ENV'T INFO. CNTR. (Aug. 6, 2016), <https://e-info.org.tw/node/117572>.

<sup>275</sup> See ACHIEVEMENTS, *supra* note 153, at 210.

<sup>276</sup> CONTROL YUAN, *supra* note 7, at 90.

<sup>277</sup> Tsui-jung Liu, *Climate Disaster's Impact on Indigenous People and Postdisaster Adaptation in Recent Years*, in TAIWAN ENVIRONMENTAL HISTORY 253, 264 (2019).

<sup>278</sup> See INDEPENDENT NEWSNET OF MORAKOT, *supra* note 3, at 268-69, 279-80; ACHIEVEMENTS, *supra* note 153, at 230.

<sup>279</sup> Liu, *supra* note 277, at 268.

<sup>280</sup> *Id.*; Interview with anonymous residents of Namasia District, in Kaohsiung, Taiwan (Aug. 28 & 31, 2017). In light of the general informality and number of these inquiries with a sizable number of individuals, many of whom would prefer to remain anonymous, the several meetings or exchanges from which this data was developed are not particularized with details of correspondents' names, dates, or the like in standard American "Bluebook" formatting. While confident that best efforts were made for

Factors that facilitated the decisions to relocate also included the need for assistance and pursuit of a better life. It is important for Indigenous communities to settle down and rebuild their lives after suffering huge property loss from the disaster. Resettlement housing was provided free of charge to eligible Typhoon victims so they could live in a safe place inexpensively.<sup>281</sup> This housing assistance was crucial for affected Indigenous people who were economically disadvantaged. At the time Typhoon Morakot occurred, the average income of Indigenous households was less than half of the general population in Taiwan.<sup>282</sup> Lastly, the Indigenous people relocated because health services and educational resources in remote Indigenous villages were usually limited, so they decided to move from mountain areas to more accessible resettlement sites on the plains.<sup>283</sup>

Relocation not only changed physical space but also had huge impacts on every aspect of life. After leaving their homes and lands, Indigenous people faced challenges associated with displacement. As mentioned in Section III(D), to receive resettlement housing, affected people signed a tri-party contract between the recipient, the government, and the NGO.<sup>284</sup> The contract required that the recipients not return to their previous residence in the affected area.<sup>285</sup> While the contract granted the relocated people the privilege to use the resettlement house, it did not grant them ownership of the land where the house was located.<sup>286</sup> Under these conditions, the relocated people did not have the right to modify or build new houses at the relocation sites, even if their families grew many years after the Typhoon disaster. If a house was constructed without the permission of the government, the house would be torn down, as mentioned in the Rinari case discussed at the beginning of this article.<sup>287</sup>

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accuracy and consistency in the approach, the authors take sole responsibility for the veracity of any unsourced information presented which has not been confirmed by this journal's editorial team.

<sup>281</sup> Shieh et al., *supra* note 198, at 70.

<sup>282</sup> COUNCIL OF INDIGENOUS PEOPLES, ECONOMIC STATUS SURVEY OF INDIGENOUS PEOPLES IN TAIWAN 2006, at 19 (2007); COUNCIL OF INDIGENOUS PEOPLES, ECONOMIC STATUS SURVEY OF INDIGENOUS PEOPLES IN TAIWAN 2010, at 40 (2011).

<sup>283</sup> See Sheng-Kai Chang, Living Adaptation of Reconstruction in the Tribal Village Relocation—the Case of Poftongaveoveo Community in Chiayi County 40-41 (2019) (M.A. thesis, Sch. of Soc. Sci., Nat'l Chengchi U.) (National Digital Library of Theses and Dissertations in Taiwan).

<sup>284</sup> See CONTROL YUAN, *supra* note 7, at 116.

<sup>285</sup> See *id.*

<sup>286</sup> See *id.*

<sup>287</sup> See *Permanent Housing Is Not Sustainable. How to Reconstruct Life After Typhoon Morakot Disaster?*, *supra* note 6.

Another legal issue was the influence of relocation on household registration. Relocated people were required to change their domicile with the household registration office in accordance with the Household Registration Act, given that they moved from the affected areas to the resettlement sites.<sup>288</sup> Nevertheless, the relocated Indigenous people hoped to keep their domicile as before because they wished to maintain a connection with the old community and return to their ancestral land one day.<sup>289</sup> The relocated people also resisted the change of domicile because the domicile registration would influence voting rights, social welfare, health insurance, and school zones.<sup>290</sup>

Economically, after Indigenous people moved from mountain areas to the resettlement site on plains, they faced the problem of unemployment. When Indigenous people lived in the mountain areas, they were close to farmland and practiced small-scale agriculture. After Typhoon Morakot, the relocated people had to farm their lands far away because they did not have arable land at the resettlement sites.<sup>291</sup> The government did not grant employment assistance in the long run.<sup>292</sup> NGOs and companies that had promised to help provided limited job opportunities near the resettlement site.<sup>293</sup> As a result, many of the relocated Indigenous people remained

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<sup>288</sup> 戶籍法 [Household Registration Act], art. 17 (2008).

<sup>289</sup> Liu, *supra* note 277, at 279-80; *The Pain Caused by Typhoon Morakot still Hurts Now!*, THINKING-TAIWAN (Aug. 11, 2014), <https://www.thinkingtaiwan.com/content/2971>.

<sup>290</sup> Liu, *supra* note 277, at 279-80; Interview with anonymous residents of Namasia District, in Kaohsiung, Taiwan (Aug. 28–30, 2017). In light of the general informality and number of these inquiries with a sizable number of individuals many of whom would prefer to remain anonymous, the several meetings or exchanges from which this data was developed are not particularized with details of correspondents' names, dates, or the like in standard American "Bluebook" formatting. While confident that best efforts were made for accuracy and consistency in the approach, the authors take sole responsibility for the veracity of any unsourced information presented which has not been confirmed by this journal's editorial team.

<sup>291</sup> See Chang, *supra* note 283, at 39-40, 61-62.

<sup>292</sup> See *id.* at 63-64.

<sup>293</sup> Interview with anonymous residents of Namasia District, in Kaohsiung, Taiwan (Aug. 29-31, 2017); Interview with anonymous former Morakot Post-disaster Reconstruction Council official, in Taipei, Taiwan (Sept. 15, 2017). In light of the general informality and number of these inquiries with a sizable number of individuals many of whom would prefer to remain anonymous, the several meetings or exchanges from which this data was developed are not particularized with details of correspondents' names, dates, or the like in standard American "Bluebook" formatting. While confident that best efforts were made for accuracy and consistency in the approach, the authors take sole responsibility for the veracity of any unsourced information presented which has not been confirmed by this journal's editorial team.

unemployed, and had to leave their homes and families to seek jobs in urban areas, or return to farm their lands in the mountains.<sup>294</sup>

Cultural challenges were significant for the relocated Indigenous people. Taking Nangnisalu villagers as an example, their resettlement site of the Da-ai Community was built by the Tzu Chi Foundation, a Buddhism missionary organization that had specific religious beliefs and disciplines, some of which conflicted with the customs and rituals of Indigenous tribes.<sup>295</sup> Cultural differences also occurred in resettlement communities consisting of people relocated from multiple villages and of various ethnic backgrounds. Generally, Indigenous people tended to solve problems through their traditional ways, regarding family as a unit of expression and deciding issues through consensus of tribal councils.<sup>296</sup> In contrast, believing the individualism of Western democracy institutions and the laws regulating neighborhood affairs, nonindigenous people preferred voting to decide community affairs and established a formal committee based on the Condominium Administration Act.<sup>297</sup>

Relocation was likely to make Indigenous people lose connections with their old communities, unique livelihoods, cultural spirit, and identity. In the aftermath of Typhoon Morakot, the land zoning and relocation policy caused Indigenous individuals and communities to leave their homelands.<sup>298</sup> For example, when the Kucapungane community moved to Rinari after Typhoon Morakot, it took one or two days to travel from Rinari to their traditional territory.<sup>299</sup> Having few arable lands at Rinari, some Kucapungane households still planted pigeon peas, millet, or other traditional crops, and the practice had more cultural meaning than economic benefit.<sup>300</sup> The lack of land made it much harder for the Kucapungane people to maintain traditional subsistence.<sup>301</sup>

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<sup>294</sup> See Chang, *supra* note 283, at 62-64; Interview with anonymous residents of Namasia District, in Kaohsiung, Taiwan (Aug. 28-31, 2017); Interview with anonymous former Morakot Post-disaster Reconstruction Council official, in Taipei, Taiwan (Sept. 15, 2017). In light of the general informality and number of these inquiries with a sizable number of individuals many of whom would prefer to remain anonymous, the several meetings or exchanges from which this data was developed are not particularized with details of correspondents' names, dates, or the like in standard American "Bluebook" formatting. While confident that best efforts were made for accuracy and consistency in the approach, the authors take sole responsibility for the veracity of any unsourced information presented which has not been confirmed by this journal's editorial team.

<sup>295</sup> See INDEPENDENT NEWSNET OF MORAKOT, *supra* note 3, at 199-204.

<sup>296</sup> See *id.* at 213.

<sup>297</sup> See *id.* at 206-14.

<sup>298</sup> See CONTROL YUAN, *supra* note 7, at 90-93.

<sup>299</sup> Taiban Sasala, *supra* note 274, at 71.

<sup>300</sup> *Id.* at 72.

<sup>301</sup> *Id.*

B. *Reconstruction at the Same Place*

Facing the terrible situation caused by Typhoon Morakot, the Reconstruction Act assumed that relocation was the primary disaster recovery measure for helping Typhoon victims. Indigenous peoples, however, have a strong attachment to their lands. Many were unwilling to leave their homes and resettle elsewhere.<sup>302</sup> Some Indigenous people in the Special Zones and the Hazardous Zones stayed in their homelands and tried to rebuild their homes in the same place where they had lived before the Typhoon disaster.<sup>303</sup>

A major reason for not relocating was that the government did not provide accurate and sufficient information about relocation and its legal effects.<sup>304</sup> What restrictions would be imposed on land if people relocated? How would the government deal with villages in the affected areas after the residents left? These questions were not clearly answered when Indigenous people were pushed to make decisions soon after the disaster. The affected Indigenous people worried about the consequences of violating the contract governing the resettlement house, which prohibited recipients of permanent resettlement houses from returning to their previous residences.<sup>305</sup> They were also concerned that the old community would perish if the residents left.<sup>306</sup>

The Indigenous people noted their concerns of choosing reconstruction at the original places over permanent housing at relocation sites. Resettlement houses were built in a short time, so the quality of housing units at some relocation sites were low.<sup>307</sup> For example, houses made of wood were subject to fire and water leakage.<sup>308</sup> The houses were

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<sup>302</sup> YA-HSIANG WANG ET AL., *AFTER HEAVY RAIN, SEEING RAINBOW* 114 (2012).

<sup>303</sup> *ACHIEVEMENTS*, *supra* note 153, at 210.

<sup>304</sup> *See HUNG*, *supra* note 257, at 47-49.

<sup>305</sup> Interview with anonymous resident of Namasia District, in Kaohsiung, Taiwan (Aug. 29–30, 2017). In light of the general informality and number of these inquiries with a sizable number of individuals many of whom would prefer to remain anonymous, the several meetings or exchanges from which this data was developed are not particularized with details of correspondents' names, dates, or the like in standard American "Bluebook" formatting. While confident that best efforts were made for accuracy and consistency in the approach, the authors take sole responsibility for the veracity of any unsourced information presented which has not been confirmed by this journal's editorial team.

<sup>306</sup> *Chongjian Cang Cu, Quefa Goutong/Ka Na Ka Na Fu Zu You Wenhua Mie jue* (重建倉卒，缺乏溝通／卡那卡那富族 憂文化滅絕) [*Hasty Reconstruction, Poor Communication: Kananavu Tribal People Were Worried about Cultural Extinction*], ZIYOU SHIBAO (自由時報) [LIBERTY TIMES NET] (Aug. 27, 2009, 6:00 AM), <https://news.ltn.com.tw/news/focus/paper/330473>.

<sup>307</sup> *See CONTROL YUAN*, *supra* note 7, at 192.

<sup>308</sup> *See CONTROL YUAN*, *supra* note 7, at 162-66; Chun-po Chuang, *Analysis of*

small and not well soundproofed.<sup>309</sup> Residents could hear voices of other family members or their neighbors in different rooms or on different floors.<sup>310</sup> Thus, they were unable to have complete privacy in their homes.<sup>311</sup>

Indigenous people have a close connection with their land and will make every effort to recover their homelands. For instance, after Nangnisalu village was terribly struck in the Typhoon disaster, dozens of Indigenous people returned Nangnisalu to repair their houses and recover the community at the original site.<sup>312</sup> The small group of Indigenous people spent approximately two years clearing debris and restoring local facilities.<sup>313</sup> Human resources were scarce, so they even cooked together and ate only two meals a day to utilize the manpower in the most efficient way.<sup>314</sup>

When the official policy encouraged relocation, there were fewer resources from the government for the communities to reconstruct at the original sites.<sup>315</sup> Without much public assistance, Indigenous people drew strength from their community to recover from the disaster.<sup>316</sup> They had close connections and shared personal experiences of the disaster, comforting and helping one another.<sup>317</sup> A villager who stayed in Nangnisalu emphasized the intimate relationship and mutual support among Indigenous individuals and their community.<sup>318</sup> Through cooperation, they worked together to develop small-scale businesses in unique handicrafts made by

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Agency-Driven Reconstruction in Relocated Sites of Shanlin Da-Ai and Rinari Permanent Housing Parks, 135-37 (2016) (unpublished M.A. thesis, Dept. of Fire Sci., Cent. Police U.) (on file with the National Digital Library of Theses and Dissertations in Taiwan).

<sup>309</sup> See Chang, *supra* note 283, at 37; Chuang, *supra* note 308, at 137.

<sup>310</sup> See Chuang, *supra* note 308, at 137.

<sup>311</sup> See *id.*

<sup>312</sup> WANG ET AL., *supra* note 302, at 120-121.

<sup>313</sup> *Id.* at 122.

<sup>314</sup> *Id.* at 122-23.

<sup>315</sup> Shieh et al., *supra* note 198, at 70.

<sup>316</sup> WANG ET AL., *supra* note 302, at 92-93, 122, 130.

<sup>317</sup> *Id.* at 122.

<sup>318</sup> Interview with anonymous resident of Namasia District, in Kaohsiung, Taiwan (Aug. 29, 2017). In light of the general informality and number of these inquiries with a sizable number of individuals many of whom would prefer to remain anonymous, the several meetings or exchanges from which this data was developed are not particularized with details of correspondents' names, dates, or the like in standard American "Bluebook" formatting. While confident that best efforts were made for accuracy and consistency in the approach, the authors take sole responsibility for the veracity of any unsourced information presented which has not been confirmed by this journal's editorial team.

their traditional skills.<sup>319</sup> The villagers tried to adjust their lifestyle and ways of subsistence to cope with the different conditions after the disaster.

Taiwanese Indigenous people who stayed on their lands also tried to recover economically through methods including ecotourism and small-scale agriculture. Ecotourism that introduced Indigenous tradition and natural scenery to visitors promoted Indigenous culture and provided job opportunities for local people.<sup>320</sup> Ecotourism was especially suitable on Indigenous land because visitors could see Indigenous heritage sites firsthand and listen to oral histories important to Indigenous culture.<sup>321</sup> In addition, the small-scale agriculture of traditional crops help conserve the natural environment.<sup>322</sup> Compared to cash crops of fruit trees, traditional crops of Indigenous people, such as Taiwan Green Taro, grow longer roots deep into the land, which can improve soil and water conservation and reduce disaster risks in mountainous areas.<sup>323</sup> Using methods appropriate for specific sites, it is possible that both the affected people and the environment can recover from the disaster.

### C. *Return to Ancestral Land*

Taiwanese Indigenous people found a third way to adapt to the changed environment after Typhoon Morakot: returning to ancestral lands where Indigenous communities had lived before the government previously relocated their ancestors several decades prior. Throughout the history of Taiwan, numerous Indigenous communities were relocated for government surveillance, cultural assimilation, and economic development. Maya village is an example of Taiwanese Indigenous peoples that authorities had relocated to strengthen government rule and economic development.<sup>324</sup> Previously, Maya was situated on the Min-quan Plateau, an area of upper land along the riverbank of the Qishan River.<sup>325</sup> In the late 1970s, the ROC government relocated Maya villagers from the plateau to the current site, near roads and traffic.<sup>326</sup>

The disaster of Typhoon Morakot indicated that a wrong decision on relocation would lead to disaster in Indigenous communities. Ancestors of Maya villagers lived on the upper land of the plateau because, based on their long-term experience and observation, it was a place away from the path of

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<sup>319</sup> WANG ET AL., *supra* note 302, at 124-27.

<sup>320</sup> ABALIWSU, *supra* note 228, at 10.

<sup>321</sup> *See* HUNG, *supra* note 257, at 170-71.

<sup>322</sup> *See id.* at 176-77.

<sup>323</sup> *See id.*

<sup>324</sup> WANG ET AL., *supra* note 302, at 112, 114.

<sup>325</sup> *Id.* at 114.

<sup>326</sup> *Id.*

a landslide.<sup>327</sup> The traditional wisdom passed down from ancestors taught the Maya people how to choose a safe place for settlement.<sup>328</sup> However, the government implemented the relocation project to move the Maya community from the Min-quan Plateau to lower land.<sup>329</sup> As an outcome, houses and infrastructures in Maya were seriously struck by floods and mudflows when Typhoon Morakot caused heavy rainfall in the area.<sup>330</sup>

After Typhoon Morakot, residents of the Maya village wished to return to the Min-quan Plateau, the previous residence before they had been relocated in the 1970s.<sup>331</sup> The tribal people made efforts to ask the government to loosen land-use regulations on the Min-quan Plateau so that the return project could pass the environmental assessment.<sup>332</sup> It was recognized by government officials and technicians that, compared to the lower land close to the Qishan River, the higher land of the Min-quan Plateau was safer.<sup>333</sup> However, when the Maya villagers planned to build houses on the ancestral land, the disaster recovery plan received limited government subsidies because such a plan was not encouraged by the Reconstruction Act.<sup>334</sup>

The Maya people sought and received financial support from NGOs, such as the Red Cross and World Vision, as well as private companies, such as the Delta Electronics Foundation.<sup>335</sup> After three years of efforts and struggles, a new elementary school and a public health center was built on the Min-quan Plateau, and the Maya community continued to construct more houses.<sup>336</sup> In this way, the tribal members have gradually moved back

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<sup>327</sup> See *id.* at 114-15.

<sup>328</sup> See *id.*

<sup>329</sup> *Id.* at 114.

<sup>330</sup> See Coral Lee, *A Long Road to Walk--Rebuilding Namasiya*, TAIWAN PANORAMA (Oct. 2009), <https://www.taiwan-panorama.com.tw/en/Articles/Details?Guid=a3dd73e1-a082-4861-97b7-4c68400e97c6&langId=3&CatId=10&postname=A%20Long%20Road%20to%20Walk--Rebuilding%20Namasiya>.

<sup>331</sup> WANG ET AL., *supra* note 302, at 114-15.

<sup>332</sup> WANG ET AL., *supra* note 302, at 115.

<sup>333</sup> *Id.*

<sup>334</sup> See *The Self-Constructed House in the Maya Village Covered with a Veil of Mystery*, 88NEWS.ORG (July 10, 2010), <https://www.88news.org/posts/5038/comment-page-1>.

<sup>335</sup> WANG ET AL., *supra* note 302, at 115-18.

<sup>336</sup> See WANG ET AL., *supra* note 302, at 116-19; Interview with anonymous resident of Namasia District, in Kaohsiung, Taiwan (Aug. 30, 2017). In light of the general informality and number of these inquiries with a sizable number of individuals many of whom would prefer to remain anonymous, the several meetings or exchanges from which this data was developed are not particularized with details of correspondents' names, dates, or the like in standard American "Bluebook" formatting. While confident that best efforts

to their homeland. Now, the ancestral land has become a safe place for government offices, medical services, educational facilities, and emergency shelters for Indigenous people in disaster situations.

## V. DISCUSSION AND SUGGESTIONS

### A. *Social and Environmental Injustice of Indigenous Peoples*

The legal history of Taiwanese Indigenous peoples shows that vulnerability is not only naturally caused but also socially constructed. State powers have shaped the legal, social, cultural, economic, and environmental conditions of Indigenous communities, thus influencing their ability to deal with disasters. For a long time, Indigenous people were forced to surrender ancestral land and abandon traditional culture. They have become socially and economically disadvantaged because of persistent exploitation and discrimination. Furthermore, forced migration was a major factor that directly exposed the Indigenous people to disaster risks. With little control over their lives and resources, the Indigenous people were vulnerable to the impacts but disadvantaged in recovery after disasters.

Traditionally, Taiwanese Indigenous peoples migrated for reasons of disease and mortality, poverty, conflicts with neighboring tribes, and land infertility.<sup>337</sup> The migration was relatively voluntary and less from the result of external forces.<sup>338</sup> For many Indigenous peoples, so-called “natural disasters” are an integral part of nature and their lives.<sup>339</sup> They have lived with natural disturbances for generations and have accumulated experiences and knowledge allowing them to coexist and cope with natural variations.<sup>340</sup>

In the past, the Indigenous peoples migrated due to environmental changes, but their migration has been influenced more by human elements since outside powers arrived and ruled Taiwan. In particular, modern states used planned relocation to dominate the Indigenous peoples. For example, the Indigenous community of Kucapungane was relocated to more accessible sites under development projects in the 1970s.<sup>341</sup> The ROC government, however, chose the resettlement sites without considering the opinions of community members and the specific social and environmental

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were made for accuracy and consistency in the approach, the authors take sole responsibility for the veracity of any unsourced information presented which has not been confirmed by this journal’s editorial team.

<sup>337</sup> Sasala, *supra* note 274, at 60.

<sup>338</sup> *Id.*

<sup>339</sup> CHEN & CHIU, *supra* note 3, at 289.

<sup>340</sup> *Id.*

<sup>341</sup> Taiban Sasala & Jie-Ming Chen, *The Relocation Project of Kuchapogan: A Social-anthropological View*, 2 TAIWAN J. INDIGENOUS STUD. 115, 119 (2009).

contexts of the Indigenous communities.<sup>342</sup> As an outcome, the relocation projects harmed the culture and subsistence of tribal members.<sup>343</sup>

The outcomes of relocation were usually negative or even tragic when Indigenous people were not entitled to determine their own future. The Kucapungane community was moved to low river terrace land on the riverbank.<sup>344</sup> For decades, Kucapungane has been continually damaged by mudslides and floods when typhoons caused excessive precipitation in Taiwan.<sup>345</sup> The Kalapi community was relocated by the Japanese and ROC governments a total of eight times, and at its eighth relocation site, Kalapi was struck by mudslides in Typhoon Morakot.<sup>346</sup> The Kaaluwan community was relocated to a floodplain near the Taimali River, and the village was flooded when the heavy rainfall of typhoons caused a dramatic increase in river water.<sup>347</sup> The Indigenous communities were exposed to high risks at the relocated sites.

When past inappropriate policies contributed to the occurrence of disasters in Indigenous communities, their capacity to recover from the disasters was influenced by laws. In 2009, the rain of Typhoon Morakot caused floods and mudslides that overwhelmed many Indigenous villages in mountainous areas.<sup>348</sup> In response to the terrible disaster, stricter land regulation became the central principles for recovering the affected areas.<sup>349</sup> Soon after the disaster, the Reconstruction Act was enacted to regulate disaster recovery policies and efforts.<sup>350</sup> Application of the law in Taiwanese society led to land zoning and relocation projects that restricted Indigenous land rights and usage.

Compared to the Indigenous people, the government dominated reconstruction work in the disaster recovery process, but it was often not held responsible for its poor performance in disaster management. When assessing the disaster risk and safety of affected land, the agencies did not spend time carefully investigating the conditions of the land. It was difficult for local Indigenous people to participate in land investigation processes and influence the assessment results. In addition, the Reconstruction Act was passed in a hurry and had ambiguous regulations on land zoning.<sup>351</sup>

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<sup>342</sup> *See id.* at 121-24.

<sup>343</sup> *See id.* at 119-21.

<sup>344</sup> Sasala, *supra* note 274, at 65.

<sup>345</sup> *Id.*

<sup>346</sup> *See* INDEPENDENT NEWSNET OF MORAKOT, *supra* note 3, at 300.

<sup>347</sup> *See id.* at 268, 279.

<sup>348</sup> 2009 Typhoon Morakot, *supra* note 1.

<sup>349</sup> *See* ACHIEVEMENTS, *supra* note 153, at 126-28.

<sup>350</sup> *Id.* at 8.

<sup>351</sup> *Id.*; Special Act, *supra* note 170, art. 20.

Consequently, even though the affected Indigenous people were not adequately informed of and consulted about zoning proposals and subsequent legal effects, the courts upheld the administrative decision on land zoning because it was at the discretion of the agency.<sup>352</sup>

The momentous event of Typhoon Morakot called on the Taiwanese society to seriously consider the needs of local communities affected by disasters. It also demanded re-examination of the legitimacy of the laws and policies that have ruled the Indigenous peoples in Taiwan. The historical factors of inequality have increased Indigenous people's susceptibility to disaster risks and impacts. When disasters strike, Indigenous people usually suffer great loss due to long-term marginalization, socioeconomic vulnerability, unsafe housing on dangerous sites, and high dependence on natural resources. Disaster laws must be attentive to these conditions and provide adequate and appropriate assistance to affected communities.

On the other hand, Indigenous people are not helpless victims. Although the affected communities were often excluded from the government's planning and decision-making, they endeavored to adapt to disaster impacts and reconstruction laws. The Indigenous people have strived to defend their interests in legislation, land assessment, land zoning, and relocation policies. Even though resistance to government powers does not always succeed, the actions pursue a certain degree of self-determination and can lead to a form of empowerment of Indigenous peoples. Furthermore, Indigenous adaptive strategies can provide useful information and valuable insight into disaster management laws.

#### B. *Respecting Indigenous Rights and Incorporating Traditional Knowledge*

After Typhoon Morakot, the Taiwanese government and the Indigenous peoples have taken different approaches to cope with new and changing conditions. A single reconstruction policy could not solve the needs and concerns of affected people in specific surroundings. In contrast, Indigenous communities have adopted multiple ways to adjust to the environment. Indigenous communities might resettle, rebuild at the original site, or return to their ancestral land to recover from disaster impacts and reduce disaster risks. When facing pressures from state authorities and a changed environment, Indigenous people have a keen awareness of nature and implement diverse adaptive strategies according to environmental, social, historical, and cultural contexts.

The question is often asked when discussing issues of disaster management: should disaster laws choose either human safety or community determination? Yet, the rights of life, health, and culture can

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<sup>352</sup> See *Tai-De Bao et al. v. Council of Agriculture*, Executive Yuan (Taipei High Admin. Ct. June 28, 2012), <https://judgment.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPBA,99%2c%e8%a8%b4%2c1677%2c20120628%2c2>.

coexist and reconcile to a certain extent. Taiwanese Indigenous peoples did not unreasonably reject suggestions of post-disaster recovery, which could be relocation and other options. After Typhoon Morakot, some Indigenous communities adopted migration from risky land to a safer site as one of the methods to reduce disaster risks and damage.<sup>353</sup> For example, the Karamemedesane community was seriously damaged in the Typhoon disaster.<sup>354</sup> Community members of Karamemedesane knew that it had become too dangerous to live on the affected land, so they immediately planned for relocation. Such a decision was made even before the Reconstruction Act was passed.<sup>355</sup> Later, the villagers of Nangnisalu, Kucapungane, and Kaaluwan also wanted to move from the affected areas to safer sites away from the disaster that had destroyed their homes.<sup>356</sup>

Some Indigenous communities quickly agreed to their lands being designated as Special Zones because they desperately needed assistance to start new lives in safer places. For instance, the Kalapi community was relocated by the Japanese and ROC governments to a valley where a river went through the village.<sup>357</sup> In Typhoon Morakot, the village was struck by floods and mudslides.<sup>358</sup> To avoid future disasters, the Kalapi people were eager to relocate and soon reached an agreement with the government on land zoning.<sup>359</sup> On December 25, 2009, Kalapi and two other Indigenous villages became the first group of areas designed as Special Zones.<sup>360</sup>

All of these cases indicate that Taiwanese Indigenous people were open to options beneficial and necessary for disaster adaptation. The key was that Indigenous people must have control over their lives and resources. Some communities might not agree with the zoning policy, but they chose to relocate. Many Indigenous communities in Hazardous Zones resettled from the affected areas.<sup>361</sup> They rejected a formal designation of Special Zones but accepted relocation, which had the same outcome as zoning.<sup>362</sup> In this sense, the Indigenous people did not refuse relocation as one of the

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<sup>353</sup> See ACHIEVEMENTS, *supra* note 153, at 210.

<sup>354</sup> Liu, *supra* note 277.

<sup>355</sup> See *id.*

<sup>356</sup> See *id.* at 268, 272-74, 284-85.

<sup>357</sup> INDEPENDENT NEWSNET OF MORAKOT, *supra* note 3, at 300.

<sup>358</sup> *Id.* at 300-01.

<sup>359</sup> *Id.* at 301; *Designation of the First "Special Zone": Kalapi Community*, 88NEWS.ORG (Nov. 22, 2009), <https://www.88news.org/posts/1233>.

<sup>360</sup> See 15 EXECUTIVE YUAN, EXECUTIVE YUAN GAZETTE 253, at 37270-76 (2009).

<sup>361</sup> *Where Are the 160 Sites of Special Zones and Hazardous Zones?*, 921 RELIEF FOUND., <http://www.taiwan921.lib.ntu.edu.tw/88pdf/A8801DB4.html> (last visited Aug. 12, 2022).

<sup>362</sup> See *id.*

adaptive strategies to disaster impacts. What the Indigenous people resisted was dominance by the state power.

Incorporating Indigenous knowledge into laws can improve both the rights of vulnerable groups and disaster management for all people. Indigenous peoples have an intimate relationship with nature and a keen awareness of the local environment. Therefore, they are likely to develop strategies that best mitigate disaster effects and adapt to environmental changes in the area. The Indigenous experience may contribute to better management of disaster risks and impacts. Current studies on traditional ecological knowledge demonstrate that, aside from Western scientific knowledge, Indigenous peoples have accumulated insightful understandings of their local environment and natural resources.<sup>363</sup> Consulting Indigenous people can benefit both Indigenous communities and others who have been affected or may be threatened by disasters.

To address the issues of involuntary government decisions on disaster recovery, disaster laws and practices should increase local capacity, engagement, and partnership through continual communication, mutual support, and shared awareness about disaster risks and situations among all local actors. The locals directly face disaster effects and are the ones who best realize the strengths, weaknesses, needs, and possible solutions in their actual surroundings. In addition, increased engagement and resilience are especially important for Taiwanese Indigenous peoples because they have unique cultures and require distinct strategies of disaster management. After centuries of aggression and oppression, Indigenous peoples should be granted rights of protection and self-determination over how to prepare for, respond to, and recover from disasters.

The example of the post-Typhoon Morakot reconstruction shows that Taiwanese Indigenous peoples have adopted various strategies to meet their actual needs and surroundings. Although each adaptive strategy has its positive and adverse effects, the complexity of the situation proves that disaster mitigation and adaptation must consider specific contexts. The traditional, yet dynamic, knowledge of Indigenous peoples suggests diverse ways to handle drastic environmental changes. Their opinions should be well consulted and included in disaster law and policy to protect land rights and prevent involuntary displacement.

Any adaptive strategies, including relocation, should not be implemented too quickly after a disaster has occurred. In a disaster situation, the government usually pursues visible recovery achievement, limiting options and pressuring affected people to accept the speediest option available. However, the meaning of a successful disaster recovery may be different for the government and the impacted communities with various considerations. Disaster recovery includes not only physical structure but

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<sup>363</sup> See generally FIKRET BERKES, SACRED ECOLOGY (2008).

also other aspects of life. It is necessary to consider such complicated conditions before making laws and policies on disaster recovery.

To prevent reckless recovery laws and policies, governments need to implement proactive strategies for disaster mitigation and adaptation before a disaster occurs. In times of calm, governments can investigate land conditions, assess disaster risks, and adopt different management measures according to the specific context of each case. If an area is subject to low disaster risks, local infrastructure may require only regular inspection and maintenance. If an area of land is subject to high disaster risks, the government should work with local people to find alternatives; including, but not limited to relocation. During this process, Indigenous communities and other affected people should have sufficient information about, involvement in, and determination over decisions about their lives and resources.

## VI. CONCLUSION

Since the seventeenth century, outside powers have influenced Indigenous capacity to deal with disaster risks and impacts. The Indigenous people have been socially and economically disadvantaged and especially vulnerable due to long-term land exploitation and involuntary migration by settlers and state authorities, as well as discrimination on broad aspects of Indigenous people. Under such circumstances, many Indigenous communities were struck by Typhoon Morakot in 2009, which caused serious floods and mudslides in Taiwan.<sup>364</sup> After the disaster, the Reconstruction Act was soon passed to implement land zoning and permanent relocation policies.<sup>365</sup> The official recovery policies failed to solve the needs and concerns of typhoon victims because the government did not adequately consult with nor provide sufficient information to the affected people. In contrast, the Indigenous peoples employed multiple tactics to resist the involuntary decisions over their lives and resources, and they adopted various strategies to adapt to the changed environment. Each adaptive method, with its pros and cons, was suitable for specific situations.

This study of the reconstruction laws and legal practices in Taiwan after Typhoon Morakot does not intend to suggest one best strategy for all cases, but rather present experiences as lessons and precautions for improving disaster legal management before the next disaster strikes. Post-Typhoon Morakot reconstruction proves that recovery is a multifaceted process in which, not only the government, but also all stakeholders are essential to engage and build resilience in various disaster settings. To accommodate the complexity, legal frameworks should have space and safeguards for affected people, especially Indigenous communities, to apply their adaptive strategy according to legal, social, economic, cultural, and

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<sup>364</sup> 2009 Typhoon Morakot, *supra* note 1.

<sup>365</sup> ACHIEVEMENTS, *supra* note 153, at 117.

environmental contexts. In this way, laws can better protect the rights of Indigenous communities and all people affected by disasters.

The necessity for effective disaster law is ever increasing with climate change causing serious threats and impacts around the world. When this article was written, flooding had devastated the Appalachia region of eastern Kentucky in the United States, the worst disaster in decades. The flooding caused great life and property loss and continues to affect areas of widespread poverty. To address the urgent needs, a major disaster declaration was approved to initiate federal aid to support the state, tribal and local government's rescue, and recovery efforts.<sup>366</sup> Meanwhile, Mexico is experiencing an extreme drought, and water shortage has been a common problem across the country.<sup>367</sup> An emergency was declared to initiate special measures for ensuring water supply in hard-hit areas.<sup>368</sup> These examples show climate change triggers an increasing number of extraordinary weather events that require more attention to laws necessary for disaster risk reduction, preparedness, response, and recovery.

With the increasing risk of disaster, it is especially important to include and protect those who are the most vulnerable. This article has illustrated how Taiwanese Indigenous peoples are affected by state laws and natural disasters from the past to the present. In addition to ethnicity, other social determinants of vulnerability—such as race, gender, and age—also influence a person's status and cause issues of injustice. This study recommends future research on people affected by disasters with varying legal systems, social factors, and environmental conditions. Ultimately, the accumulation of knowledge will lead to a holistic view of vulnerability and resilience for developing effective and equitable disaster law.

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<sup>366</sup> See *President Joseph R. Biden, Jr. Approves Major Disaster Declaration for Kentucky*, FED. EMERGENCY MGMT. AGENCY (July 29, 2022), <https://www.fema.gov/press-release/20220729/president-joseph-r-biden-jr-approves-major-disaster-declaration-kentucky>; *Kentucky: At Least 25 Dead in Worst Appalachia Floods for Years*, BBC NEWS (July 30, 2022), <https://www.bbc.com/news/world-us-canada-62351166>.

<sup>367</sup> See *Mexico Declares Drought Emergency*, FR. 24 (July 13, 2022), <https://www.france24.com/en/live-news/20220713-mexico-declares-drought-emergency>; *Mexico's Cruel Drought: "Here You Have to Chase the Water"*, N.Y. TIMES (Aug. 3, 2022), <https://www.nytimes.com/2022/08/03/world/americas/mexico-drought-monterrey-water.html>.

<sup>368</sup> See *id.*