Indigenous Rights and Wildlife Conservation: The Vernacularization of International Law on Taiwan

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Abstract

Indigenous rights and wildlife conservation laws have become two important arenas for legal pluralism in Taiwan. In a process of vernacularization, Taiwan has adopted international legal norms in indigenous rights and wildlife conservation. Local actors from legislators to conservation officers and indigenous hunters refer not only to international and state law but also to indigenous customary law and other cultural norms in their interactions. In Seediq and Truku communities, the customary law of Gaya continues to inform the ways in which local hunters and trappers manage natural resources according to their own legal norms. There are, however, different individual interpretations of Gaya, and, in the absence of adequate legal protection, many hunting activities are clandestine and difficult to regulate. Fuller political autonomy, as envisioned in both the 2007 United Nations Declaration on the Rights of Indigenous Peoples and Taiwan's 2005 Basic Law on Indigenous Peoples, is needed in order that indigenous peoples can construct and manage their own institutions for common resource management. This

approach bodes best for both the realization of indigenous rights and effective wildlife conservation.

Keywords

indigenous rights, wildlife conservation, legal pluralism, hunting, Seediq, Truku, Taiwan

The Republic of China (ROC), which lost the right to represent China in the United Nations (UN) in 1971, has systematically tried to keep up with UN norms and adopt key elements of evolving international law in its sole remaining jurisdiction on Taiwan, despite the lack of enforcement mechanisms and higher transaction costs to share relevant information and best practices. Countries, already joined with others through a variety of transnational connections, comply with international law for a number of reasons including strategies to increase status in the international community, pressure from other countries, the desire to appear "civilized," and internal pressure (Merry, 2006: 100). A study of the ROC's reception of international law is fascinating because of Taiwan's anomalous place in the international system. The ROC must interact visibly with the international legal system in order to justify its very existence as a sovereign state that maintains substantive, albeit not formal, diplomatic relations with most of the other countries of the world. Compliance with international law, especially if it can create an image of itself as a model of human rights in contrast to the People's Republic of China, is thus an important means to affirm itself on the world stage.

The processes through which international law meets the local, including the global circulation of ideas and institutions, the articulation of international law, national law and local practices, and the nitty-gritty of the small sites of international law from courthouses and legislatures to NGO offices and police stations, are well studied by the methods and theories of social anthropology, and not just because anthropologists spend so much time with people in such places. The study of such processes is also a fertile interdisciplinary encounter between anthropology and legal studies. This article, based on over a decade of research with the Seediq and Truku peoples of Taiwan, looks at the articulation of two major fields of international law – indigenous rights and

environmental issues – at the local level as Taiwan attempts to meet evolving international standards on both human rights and wildlife conservation.

Indigeneity is one area in which the Taiwan has successfully gained traction in the international arena. Taiwan's state organs and civil society NGOs have been represented at UN instances dealing with indigenous affairs since 1991 (Allio, 1998: 58-60; Awi, 2008; Palemeq, 2012; Rudolph, 2003: 144), in spite of punctual Chinese protests and a politics of non-recognition that sometimes places Taiwan's indigenous groups at a disadvantage (Miller, 2003: 193). Nonetheless, Taiwan has signed Memoranda of Understanding (MOU's) on cooperation in indigenous affairs with both Canada and New Zealand. The ROC's articulation with international wildlife law is also important, with the Council of Agriculture (COA) responsible for most implementation of the Convention on Biodiversity (CBD), not to mention the prominent displays in airports reminding travelers that Taiwan complies with the Convention on International Trade in Endangered Species (CITES). Two concepts from legal anthropology are especially useful in studying the articulation between international law, national law, and local practices.

The first is legal pluralism, defined by Sally Engle Merry in her now classic article as "a situation in which two or more legal systems coexist in the same social field" (Merry, 1988: 870). This concept, made visible through field work in concrete social situations, makes it possible to understand how people draw upon multiple sources of law in real life. This is of particular interest in studying how indigenous peoples negotiate between state law and their own customary laws, as the validity of their customary laws is increasingly recognized by the international system and by states as formal legal pluralism. The second concept is vernacularization, in its original formulation by Merry, "in which the global becomes localized, no longer simply a global imposition but something which is infused with the meanings, signs, and practices of local places" (Merry, 1996: 80). Legal pluralism is thus how local people live a multiplicity of legal norms and practices in concrete situations of everyday life. Vernacularization is the process by which international law becomes interpreted in different national frameworks by legislators, judges, and other social actors.

Taiwan's Atayalic peoples (including the Seediq and Truku) add an interesting element to legal pluralism in Taiwan, because they have a fierce

pride in their own legal traditions.[1] Atayalic people translate the words *Gaga* in Atayal or *Gaya* in two Seediq dialects, as "law" (*fa*, 法) when speaking Chinese, insisting that this sacred law passed down from their ancestors deserves recognition on a level of ontological parity with state law. This is not just a discourse of the indigenous rights movement, as ordinary people refer to Gaya in their daily life, primarily in regard to marriage, sexual morality, trapping and hunting, and in daily interactions such as sharing meat and alcohol. Customary law is a part of daily life, leading to situations of legal pluralism in which individuals understand their rights and responsibilities to others in terms of both Gaya and state law.

Indigenous leaders have not hesitated to use the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and its national avatar in Taiwan's 2005 Basic Law on Indigenous Peoples (passed two years *before* UNDRIP!) to seek recognition of Gaya in such areas as family law, property rights, and practices related to wildlife. In 2007, the Executive Yuan Indigenous Peoples Council commissioned an anthropological study of the Atayalic groups in one of the first attempts to understand indigenous customary law (Hsieh, 2007). Moving forward, formal legal pluralism in indigenous communities is likely to gain traction in Taiwan, especially with the establishment of indigenous courts in January 1st, 2013. Indigenous hunting thus provides food for thought as well as food for the table. Which local actors negotiate national law and *Gaya*? How do they mobilize international legal norms of indigenous rights and wildlife conservation? How can legal pluralism contribute to the expansion of human rights, especially in regard to indigenous rights and in regard to the right to biological diversity?

In anthropological fashion, we begin with an anecdote to which we can refer to illustrate certain points throughout the discussion. For ethical reasons, especially because we are describing activities considered illegal in ROC law, the following anecdote is a compilation of events and conversations over the past decade rather than a faithful rendering of one incident. Place names and personal names are pseudonyms. But, the types of activities and the content of the conversations all reflect what may happen, and does happen, in Atayalic mountain communities across northern Taiwan.

1 Formerly classified as part of the Atayal, the Truku gained state recognition as an independent tribe in 2004 and the Seediq in 2008. The Truku, concentrated in Hualien, and the Seediq, mostly in Nantou, both include speakers of Truku, Tkedaya and Teuda dialects within their respective populations.

1. Where is Gaya? Unpacking the Law in Local Circumstances

One foggy morning in the mountain hamlet of *Alang Rulung*, the elderly Gasil, proud of his past as a sailor on deep-sea fishing ships, but now better known in his own village for his love of cheap cooking wine, picks up his woven basket and sickle, and calls to his young neighbour Lowking. Together, the two men walk along the mountain path that Gasil had cleared just a few days previously on land registered in his name with township authorities. The path is steep in places, and occasionally passes by treacherous ravines, but they are accustomed to the path, as they have walked it for years. Gasil gathers some ferns and places them in his basket. In some places, vines have grown back and obstructed the trail, so Gasil cuts them prudently and throws them aside.

After about a 90 minute walk, Gasil slides through the bamboo grove, where he finds a dead muntjac *(Muntiacus reevesi)*[2] caught by its hind leg in one of the rusty saw-toothed jaw-traps that he had purchased decades ago when trapping was still legal in Taiwan. He releases the animal's leg from the trap, placing both the muntjac and the trap in his basket. Weary from the trek, he gives the 15-kilogram burden to Lowking to carry on his back. Returning to the village, Gasil exchanges the muntjac with Huwat, a clandestine bushmeat trader, for three bottles of rice wine, and shares one bottle with Lowking. Discovering that the female muntjac was pregnant, Huwat returns the embryo to them and keeps the rest.

Lowking's mother Yuma returns to find them both drunk. Furious, she accuses Huwat of exploiting the two alcoholic men by giving them cheap wine rather than a fair price for the animal, effectively paying them NT$150 for a catch he subsequently sells for NT$2000. She blames Gasil of violating the ancestral code of Gaya because he did not equally share the meat with her son who carried the load. She refuses to eat the embryo stew that Gasil cooks, saying that it is disgusting, as well as a violation of the Gaya against hunting pregnant animals.

Who has violated the law in this short anecdote? And what law has been broken? If we were to consult forest patrollers, who are said to rarely venture near Alang Rulung for fear of encountering drunken men with rifles, they

2 The Reeve's muntjac is considered to be of least concern by the International Union for the Conservation of Nature.

might inform us that Gasil has violated wildlife laws against trapping. In some places, they might be able to charge him in violation of laws against hunting in national parks. If we were to consult indigenous rights activists, they might argue that hunting by indigenous people is now legal in Taiwan for cultural and subsistence purposes, according to the 2005 *Basic Law on Indigenous Peoples*, but they would have to concede that this same law makes it illegal to sell the meat. They might also argue that, according to the United Nations Declaration on the Rights of Indigenous Peoples and the Basic Law, indigenous peoples have an inherent right to self-government, meaning that they *should* be able to make their own laws about trapping. Due to the presence of legal pluralism, these various actors can frame the problem in different ways, referring to different legal norms, and propose different solutions.

But, state law is only the beginning. Some elders, like Huang Chang-hsing, who wrote a book about Truku hunting for Academia Sinica, might argue like Yuma that the important violation was eating an embryo; in fact, he argued that hunting is taboo in the spring as this is the time when animals are more likely to be pregnant or carrying for young offspring (Huang, 2000: 29).[3] Yuma, of course, is concerned that her son was treated unfairly; and can refer to the norms of sharing implied in Gaya. Gasil might say that he has a right to trap on his own private property, and along paths that he has cleared himself – just like his father and grandfather did before him. Some animal rights advocates might point out that the use of a saw-toothed jaw-trap is illegal in most jurisdictions, and that more "humane" traps should be made available to reduce animal suffering. Some Buddhists, whose ideas infuse the animal rights movement in Taiwan, might oppose hunting and trapping entirely, arguing that the taking of *any* life is a violation of Buddhist *dharma* (law). If the muntjac had any say in the affair, she might agree that taking a muntjac life by any means is a violation of her unrecognized, yet inherent, cervine rights. These various actors, among others, refer to various laws including evolving international customary law, national laws, Seediq/Truku Gaya, and Buddhist dharma; as they defend their actions and assert their agendas in a legal arena increasingly recognized in terms of legal pluralism. Studying the

3 The fact that this event happened in the fall suggests that they did not violate the Gaya about hunting seasons. The fact that the muntjac was pregnant at this time, however, casts some doubt on the "traditional" wisdom that the animals are pregnant in the spring.

vernacularization of international law in this case means beginning with the evolving international customary law around indigenous rights (Anaya, 2004; Niezen, 2003) and wildlife conservation.

2. Indigenous Hunting in International and National Law

In what Jane Cowan calls the "supervised state," international legal instruments are increasingly binding on states, especially in areas of minority rights (Cowan, 2007). The first international legal instruments to specifically address the rights of indigenous and tribal peoples to hunting were the 1957 International Labour Organisation Convention No. 107 (ILO, 107) concerning the "Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries," and its subsequent replacement by the more pro-indigenous ILO 169. Taiwan, effectively a member of the United Nations until 1972 under its official name of the Republic of China, was one of 28 signatory countries to ILO 107 (Iwan, 2005: 33); but lacked the ability in 1989 to sign ILO 169, as it had already been excluded from UN institutions. The fact that the ROC signed ILO 107, however, gives social activists a moral argument that Taiwan should also accept the norms of ILO 169, even as Taiwan is excluded from all reporting and enforcement mechanisms.

ILO 169, drafted conjointly by state and indigenous union representatives, is based on the principle that indigenous peoples have the inherent right to preserve their own cultures and identities, determining the pace and direction of development on their territories. Article 23 of ILO 169 clearly recognizes indigenous hunting rights, and the responsibility of states to promote traditional hunting, fishing, trapping and gathering practices:

> *Article 23*
>
> 1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as *hunting, fishing, trapping and gathering, shall be recognized as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these peoples and whenever appropriate, ensure that these activities are strengthened and promoted.*

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development (ILO, 1989).

On September 13, 2007, the UN Declaration on Rights of Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly with 143 votes in favour, four against, and 11 abstentions. The People's Republic of China voted in favour, whereas Canada voted against adoption of the document. The ROC (Taiwan), excluded from the UN, had no vote. Article 20 protects the right of indigenous peoples to enjoy their own means of subsistence and engage freely in traditional economic activities:

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress (United Nations, 2007).

There are important differences between these two documents. Drafted by the ILO, and with the participation of labour activists, ILO 169 considers hunting, fishing, trapping, and gathering in the context of work and specifies these work activities by name. UNDRIP, under the larger rubric of "economic and social systems or institutions" implicitly includes hunting and trapping as "means of subsistence." UNDRIP contains weaker provisions for hunting and trapping rights than ILO169, as it does not recognize that hunting, fishing, trapping, and gathering activities are important for cultural maintenance. UNDRIP makes no demands on states to strengthen and promote hunting and trapping, but does require "just and fair redress" for indigenous groups who have lost their hunting, fishing, trapping and gathering territories.

Canada's Indigenous Bar Association includes hunting in the category of economic and social rights, but includes them as *treaty rights* (Indigenous Bar Association, 2011: 25), suggesting that hunting may not necessarily be

an inherent right for indigenous peoples without a similar treaty history. The ROC, however, has been under strong pressure from a domestic social movement and by indigenous legislators with strong links to the international indigenous movement. Legislators have thus attempted to draft indigenous law as if similar treaties had been in place.

The Republic of China on Taiwan incorporated ideas of indigenous rights into ROC national law in the *Basic Law on Indigenous Peoples* (*yuanzhuminzu jibenfa*, 原住民族基本法) passed by the Legislative Yuan on January 21, 2005. As a *Basic law*, it required all relevant laws and regulations to be redrafted and implemented, offering hope to indigenous people that the state would grant them their long-desired rights to hunt. Article 19 stipulated that:

> Indigenous persons may undertake the following non-profit seeking activities in indigenous peoples' regions: 1) Hunting wild animals; 2) Collecting wild plants and fungus; 3) Collecting minerals, rocks and soils; 4) Utilizing water resources. The above activities can only be conducted for traditional culture, ritual or self-consumption (Republic of China, 2005).

There has thus been a progressive narrowing of subsistence rights as hunting, fishing, trapping and gathering activities shift in meaning from 1) ILO 169, where they are defined as cultural rights that should be promoted by states; to 2) UNDRIP, where they are defined as means of subsistence that require redress if not permitted; finally to 3) Taiwan's basic law where they are legal *only* as non-profit activities for culture or subsistence. Taiwan's Basic Law, however, also contains the concept of indigenous "traditional territory," with provisions for a government-established land investigation and management committee. Article 13 also promises that the state shall protect indigenous peoples' knowledge of biological diversity and promote its "development": "The government shall protect indigenous peoples' traditional biological diversity knowledge and intellectual creations, and promote the development thereof. The related issues shall be provided for by the laws" (Republic of China, 2005). Hunting and collecting are clearly the activities that enable traditional knowledge of biodiversity. The immediate challenge for indigenous legislators is thus to revise environmentalist and firearms legislation to permit indigenous exceptions to existing laws, so that new institutions can be created for hunters and trappers with the goal of protecting and promoting the development of their knowledge.

Early evaluations of Taiwan's indigenous human rights situation saw the criminalization of hunting as a reason for concern about indigenous rights, noting that indigenous men see hunting and trapping as fundamental to their culture and enjoy participating in such activities, even if only as a leisure activity for urban-based workers returning home on weekends (Zhongguo renquan xiehui, 1987: 313). In 1972, however, hunting was banned in national parks. The *Wildlife Conservation Act* (1989) further restricted hunting, making most hunting and all trapping practices illegal. After the constitutional amendments affirming cultural pluralism in 1997, wildlife law was revised to permit some indigenous hunting for ritual and subsistence, but firearms restrictions still made it difficult for hunters to legally acquire and use rifles, ammunition, and gunpowder.

In 2001 (4 years before the passage of the Basic Law), article 20 of the Statute For Controlling Firearms, Ammunition, And Weapons was revised to decriminalize indigenous possession and use of hunting gun. Furthermore, in recognition of indigenous traditional rituals, Article 21-1 of the Wildlife Act was amended to allow indigenous cultural needs for hunting wild game through a process of application and review by county officials. However, these regulations imposed certain requirements upon indigenous people to exercise these rights. For example, indigenous hunters – for whom the act of hunting is intrinsically a personal ritual linking them to nature, the ancestors, and Gaya (see below) – were required to apply to county officials to hunt a limited number of only certain animals in order to hunt legally as part of a collective ritual invented for that purpose. These early legal revisions, although framed in terms of indigenous rights and multiculturalism, still conflicted with actual hunting practice. In actual practice, hunting "rituals," in the few villages that have tried to implement this law, were often tourist spectacles; whereas men hunting and trapping for individual purposes, even though part of local cultures, were still arrested and prosecuted.

In spite of the gradual decriminalization of hunting, therefore, indigenous men perceived hunting and trapping to be illegal and thus highly risky activities. In a review of indigenous lawsuits beginning in 1999, Tay-Sheng Wang found that a large number of litigation between state administrative organs and indigenous people was about the criminalization of indigenous customary use of nature resources, including violations of the *Statute For Controlling Firearms, Ammunition, And Weapons* (槍砲彈藥刀械管制條

例), the *Fisheries Act* (漁 業 法), and the *Wildlife Conservation Act* (野生動物保育法) (Wang 2003). On December 17, 2013, the Supreme Court ruled that indigenous men may legally possess home-made hunting rifles and ammunition.

This court's ruling is significant not only because it was delivered by the highest court, but also because it reflects the following aspects. First, Additional Article 10 (paragraph 11) of the Constitution and the Article 30 of the Basic Law demonstrate beyond doubt that the range of protections afforded to indigenous rights of great importance in the ROC legal system are at a constitutional level. Secondly, the court confirms that indigenous hunting rights continue as a prominent aspect of 'customary law' claims in Taiwan. The distinction between State law and customary law remains, but judges are increasingly willing to consider customary law as part of their deliberations. Thirdly, hunting as indigenous right is inextricably interconnected with international instruments. The international norms that recognize indigenous hunting and resource use are increasingly incorporated and reflected in the domestic legal practice. Finally, this ruling attests the special importance of the cultures and spiritual values of indigenous peoples, especially how a collective relationship with their lands influences traditional knowledge and resource use. In the context of legal pluralism, basic contours of indigenous rights were determined by the historical practices, customs, and traditions integral to the culture of each particular indigenous group. The claim by indigenous peoples for hunting is a reference to the idea of indigenous nation-building and the right to determine their future, their own form of laws, as well as some extent of self-government.

Nevertheless, shortly after the court handed down its decision, a group of Bunun hunters were arrested for the criminal violation on Wildlife Conservation Act. Another case related to the possession of indigenous hunting gun, an Atayal hunter was arrested for the violation of Statute For Controlling Firearms, Ammunition, And Weapons. The police departments built their arguments on two grounds. For one, there is no judicial precedent which accords the doctrine of *stare decisis* on these matters. For another, even a very general legislative enactment such as the Wildlife Conservation Act has been held to supersede indigenous rights and a great variety of overlapping natural resources management laws make the assertion of an indigenous claim nearly futile.

It thus remains to be seen how recent rulings will be interpreted and implemented in concrete situations in which police and conservation officers encounter hunters. This is where Article 13 of the Basic Law, calling for protection of indigenous knowledge of biodiversity, as well as the international legal framework on wildlife, become important. The most important issue is not whether individuals can legally hunt or not; but whether or not indigenous nations can be empowered to manage their own collective hunting regimes through self-government or, at the very least, through co-management mechanisms (Simon, 2013). This general principle has already been well accepted in international indigenous law, but has yet to be even seriously considered in Taiwan. The current situation of mutual distrust between hunters and conservation officers or police is neither conducive to indigenous rights nor to effective conservation.

3. Convention on Biological Diversity

International environmental law gives indigenous peoples a key role in the creation of new institutions. In fact, international environmental conventions are often based on the assumption that indigenous peoples, due to their traditional knowledge of local natural environments, can play an important role in conservation and sustainability. This presupposition comes from a long-held belief that "Occidental culture" is leading to the destruction of our planet; and that the incorporation of indigenous cultural values is thus needed to prevent ultimate catastrophe (Bateson, 1972: 490-493). This belief is given institutional form in Principle 22 of Agenda 21, written in Rio de Janeiro at the 1992 Earth Summit (the UN Conference on Environment and Development):

> Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development (United Nations, 1992a).

The immediate result of this meeting was the Convention of Biological Diversity, which now has 188 signatories, including Canada and China. The preamble of this Convention explicitly states that indigenous lifestyles and traditional knowledge are relevant to "the conservation of biological diversity

and the sustainable use of its components" (United Nations, 1992b). Article 8 (j) establishes a working group with the goal of involving indigenous peoples in the implementation of this goal. It has ambitious goals for contracting states, stipulating that:

> Each contracting Party shall, as far as possible and as appropriate:
>
> Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices (United Nations, 1992b).

This principle of incorporating indigenous traditional knowledge has subsequently been extended to various other development and conservation initiatives including development projects of the World Bank (Sobrevila, 2008) or the Asian Development Bank which have even brought the concept of indigeneity to projects in China (Hathaway, 2010). Another example is the 1999 decision by the contracting parties to the Ramsar Convention on Wetlands to involve "local and indigenous people in the management of Ramsar wetlands" (Ramsar, 1996). In Taiwan, the most relevant legislation in this direction is Article 13 of the Basic Law on Indigenous Peoples, cited above. Strangely, however, the environmental implications of this article seem to have taken a backseat to other considerations. In 2012, we attended several workshops and a conference on indigenous intellectual property rights, all of which evoked Article 13 in reference to copyrights for weaving patterns, songs, dance steps, etc., but said nothing about biological diversity.

Taiwan has an immense potential to contribute to global biodiversity conservation. Although Taiwan is only 36,193 km^2 and is one of the most densely populated countries in the world, it is home to some 2.5% of the world's species. More than 58% of the island is forest, ranging from tropical coastal forest to alpine shrubs above 3500 meters. The Forestry Bureau (under the auspices of the Council of Agriculture) manages 78% of the total forest area, 73% of which is considered to be "undeveloped" (Shang, 2013). Nearly 20% of Taiwan's total land area is set aside in a multi-tiered system of protected regions that include seven national parks, 19 nature reserves,

six forest reserves, 17 wildlife refuges and 32 major wildlife habitats. Much of this runs across the central mountains that are the traditional territory of indigenous peoples.[4] In 2001, the Executive Yuan formulated an action plan, revised in 2004, that is based on the CBD and calls for preservation of traditional knowledge through involvement of indigenous groups (ROC Council for Economic Planning and Development, 2004; ROC Ministry of Foreign Affairs, 2009).

Local vernacularization of the CBD and Article 8 (j) on traditional ecological knowledge and indigenous participation in conservation was very apparent in the 2000s. COA studies of the meaning of the CBD for Taiwan include discussions of Article 8 (j) and the necessity to include indigenous people as partners (Fang, 2006).[5] In conferences and publications, Taiwanese scholars reflected on the meaning of the CBD as part of indigenous cultural rights (Shih, 2008), with special concern about intellectual property rights in regard to healing techniques, medicinal plants and seeds (Cai, 2000; Guo, 2000). Chen Shi-zhang, general secretary of the Taiwan Indigenous Peoples Sustainable Development Association (台灣原住民族永續發展協會), surely represented the hopes of many indigenous people when he argued that the inherent rights of indigenous peoples, due to their prior inhabitation on Taiwan before the arrival of the state, include hunting. Local implementation of the CBD should thus include institution-building that includes Han Taiwanese and indigenous people, the government and environmental groups (Chen, no date).

Taiwan's indigenous activists similarly argue that international law protects the right of indigenous hunters to pursue their traditional means of subsistence, including hunting and trapping. Hunters argue that their practices are sustainable, the proof being that they have hunted on Taiwan for millennia and the animals are still there. The burden thus lies on the state to incorporate these ideals into national legislation and into the practices of institutions designed to implement them. The above story of the pregnant muntjac,

4 See the figure produced by the Council of Agriculture, "Corridor Conservation Areas in the Central Mountains," available at http://www.taiwanhrj.org/news/151.

5 The use of the wording ("indigenous people") instead of ("indigenous peoples") in this document is telling. The author is thus proposing that the government respect the knowledge of indigenous and other local people and invite their participation in new CBD institutions as individuals, rather than as peoples with their own representative bodies.

however, suggests that simply naming groups as "indigenous" and assuming that they will protect wildlife are insufficient means to guarantee either indigenous rights or conservation. It is important to understand Gaya and its relationship to hunting and trapping practices.

4. The Gaya of Hunting and Trapping

Traditional Seediq/Truku Gaya, just like state law, is comprehensive. People translate the word into Chinese as law (*fa*, 法), or even culture (*wenhua*, 文化). As Roman Catholic priest and author of a Taroko-French dictionary Ferdinando Peroraro wrote, Gaya is "at the center of the life of the Taroko, the source, criteria and the judge of their entire personal or social life from birth to death – and after! GAYA is certainly the most sacred reality for the Taroko" (Pecoraro, 1977: 70).[6] People refer to Gaya most commonly in regard to questions of property rights, sharing, and sexuality. A cultural notion, Gaya is said to regulate relations between the living and the dead, especially when pigs are sacrificed at marriages and other life transitions.[7]

Claims that hunting is a cultural right are based on ritual practices of hunting and trapping that are based entirely on Gaya.[8] When more traditionally-minded hunters prepare for the hunt, they stop to offer rice wine, cigarettes and/or betel nuts to the ancestors, praying for success and safety. They intentionally avoid certain areas of the mountains, especially former burial sites, and in the past had taboo sacred spaces. They recall former customs about the oracle bird *sisil*, who communicated messages from the ancestors about the success or failure of the hunt. Hunters and trappers alike report that their dreams, sometimes given to them by male ancestors, tell them if they will make a successful catch. Some hunters carry with them a small bag containing animal parts as good luck charms. Hunters are always aware of Gaya, because they believe that violation of Gaya can be punished by hunting failure, falls, injury, or even death. Successful hunting is thus an outward manifestation of moral righteousness (Huang, 2000).

Hunters refer to Gaya as the determinant of meat sharing. They are proud

6 This is a free translation from the original French. Taroko is an alternative spelling of Truku.

7 A comprehensive analysis of Truku Gaya can be found in the Ph.D. dissertation by Lin. (2010)

8 It should be noted that some churches have labeled these ritual practices as "superstition." As a result, there is great diversity in local hunting practices, and in some cases traditional practices and traditional knowledge have been stigmatized, leading to cultural loss.

of their generosity which they say is required by Gaya, and perceive game as the most valuable gift they can offer. Although there seem to be no explicit formal rules for meat sharing, it is important in social relations and must be reciprocated. To a certain extent, meat sharing defines social relations, as people share meat with kin and close friends. Giving meat to prospective parents-in-law was thus an important part of courtship in the past. As the anecdote above shows, it is especially important to share with helpers in the hunt, which hunters say includes sharing meat and also the glory of the catch. They are supposed to never boast, "I shot a deer," but rather say "we caught a deer."

Trapping, still illegal in Taiwan, is central to the Gaya of hunting. Across Taiwan, trappers have staked out trapping lines throughout the mountain forests, in a dangerous process of cutting vines and clearing paths on very treacherous terrain. According to Gaya, this labour makes the land theirs, although the property rights gained in this manner are non-exclusive, non-alienable, and entirely unrecognized by state law. In each village, the trappers are very clear about which territory is claimed by which trapper, regardless if state law represents the given territories as the private property of the trappers (as in the case of Gasil, who had originally claimed it in the 1960s as agricultural land in the spirit of land-to-the-tiller reforms), as private property of others (e.g. mining companies), as a National Park (which often include land titled to indigenous people), or as the Forestry Division of the COA.

Hunters do seek the permission of trappers before entering their territory, and often share some of the meat with the recognized trap line owners. People state that, in the event that a trapped animal escapes with a trap on its foot to another trapper's territory, the animal and the trap must be returned to the person who set the trap. In practice, hunters and trappers do expulse intruders from their territories, as when Han Taiwanese attempt to hunt or fish there without seeking permission. They say that indigenous people from other areas would not dare to enter the territory of another village without permission, as they wish to avoid conflict, and also understand the risks entailed of walking at night on unfamiliar territory. Although there is certainly diversity across Taiwan, these testimonies of hunters and trappers show that Gaya already includes ways to delineate and enforce property rights to trap lines and hunting territories. The general principle is that trappers stake individual claims across hunting territories perceived to belong to clans, clearing paths

in the process that make it possible for hunters to access game animals.

There are other limits to hunting. Huang Chang-Hsing, in his article on Truku hunting, notes that Gaya also regulated such things as hunting seasons (Huang, 2000). The choice of animals, although not explicitly defined as Gaya, is also important. Nobody has ever said that Gaya forbids hunting certain animals, but there are clear preferences. The Seediq and Truku show a strong preference for the Formosan Wild Boar (*Sus scrofa taiwanus*), followed by the Formosan Reeve's Muntjac (*Muntiacus reevesi micrurus*), the Formosan Serow (*Capricornis swinhoei*), and, the Formosan Sambar (*Cervus unicolor swinhoei*). Hunting of flying squirrels by night is a favoured sport for young men, and there is some bird hunting, but these activities are not considered to be "real hunting" and are not regulated in terms of hunting seasons or territories. Some people say that it is a serious violation of Gaya to intentionally hunt and eat the Black Bear, and that to do so would bring death to the family, whereas others argue that this belief is nothing but superstition – they proved by eating it and had no misfortune afterwards. Sometimes macaques, badger ferrets, or other animals are also trapped by accident, in which case they are usually eaten. Overall, however, the most favored species tend to have the highest reproduction rates. Conservationists have thus argued that the boar and the muntjac can be hunted sustainably, and that the sambar is not in danger (Hsu and Agoramoorthy, 1997: 835).

As recognized in international indigenous law, hunting is important for cultural survival. There are linguistic elements as well, as collective hunting between generations is one of the few social areas in which boys and men speak in Seediq or Truku. They refer to hunting and trapping discussions as "men's talk." Through sharing as well as through ritual sacrifice, hunting mediates relations between the members of the community as well as between the living and the dead. Without hunting, all indigenous cultures on Taiwan would be radically transformed. This is why hunting is an intrinsic right for indigenous peoples, as a part of their basic human rights to preserve their cultural heritage. When, in spite of all the legal barriers, hunters enter the forest in search of game, they prioritize their ancestral law over the imposition of state law. The issue becomes more complicated, however, when hunters sell their meat on the underground market in bushmeat. This is a violation of the Basic Law, which only protects hunting for "non-profit" motives. Too much participation in the bushmeat market, as we saw in the above anecdote, also

leads to accusations that certain hunters and middlemen violate Gaya.

5. The Bushmeat Market and Legal Pluralism

The most sensitive subject among hunters is the illegal market in wild meat. In virtually every mountain community, there is a limited amount of hunting for this market. In some communities, well-known men take the role of middlemen, collecting animals from hunters and transferring them to the Taiwanese meat traders. In other communities, the hunters work directly for the Taiwanese traders, in exchange for either cash or a daily wage. There is definitely sympathy in the villages for the hunters, most of whom are middle-aged to elderly men with little education who would otherwise have trouble finding employment. If they can sell five to ten muntjacs a month at around NT$2,000 each, for example, they can earn NT$10,000 to NT$20,000. If they are lucky enough to catch a boar, or if they sell a few flying squirrels, they might earn up to NT$30,000 a month. If they hunt with others, they are expected to share either the meat or the cash earnings equally with their hunting partners.

Conflict arises if there are perceptions that they do not share equitably. Generally, however, the middlemen are the ones who expose themselves to accusations of violating Gaya, if they do not adequately compensate the hunters. As we saw in Gasil's case, some people in the communities have a reputation for taking advantage of alcoholic hunters by trading small amounts of alcohol for meat rather than giving them a "fair price." Gaya, however, now has few enforcement mechanisms beyond the spreading of rumours and the easily ignored risks of supernatural retribution.

The criminalization of the bushmeat market has not succeeded in ending it, but may have certain unintended consequences, suggesting that the legislation may need to be redrafted. Wildlife biologist Kurtis Pei argues that a limited game market, if limited to certain kinds of animals, can be managed sustainably (Pei, 1999: 3). As long as trapping is illegal, however, trappers can get no access to better traps that can reduce the accidental catch of unintended species; and there can be no incentives for trappers to report accidental catches to the relevant wildlife authorities for statistical purposes. And, as long as the game market is clandestine, there can be no way to regulate it, neither to protect the rights of hunters and trappers nor to monitor meat quality for consumer safety. But indigenous social activists have been

trying to change the legal framework.

6. Indigenous Activists and the Hunt

Hunters resist state law simply by living according to their own Gaya. Social activists, however, hope to rely on international legal instruments and a discourse of human rights to legalize hunting. They place their hope on the eventual establishment of indigenous autonomous zones and co-management regimes as means of managing hunting and trapping on their own. In 2007, for example, the Truku held a pro-hunting protest at the Taroko National Park in Hualien, after the police had chased two hunters in the park, leading to one elderly man falling from a cliff to his death. Truku legislator Kung Wen-chi, and a united front composed of the Presbyterian churches and several Truku NGOs,[9] issued the "Taroko Nation Statement to Oppose the Violation of Human Rights." A month later, the same statement was also presented at the UN Permanent Forum on Indigenous Issues in New York the following month. The statement read:

> The traditional Taroko value about man and nature is, "the land is our blood. The mountain forest is our home. Only with hunters do we have land. Only with hunters do we have wild animals." Hunters protect land and wild animals. The Taroko have lived in the upper, middle and lower areas of the Liwu River for more than four hundred years. Before foreign political powers entered Taiwan, our people had long enjoyed autonomy according to our own cultural model on our traditional territory…The Ministry of the Interior National Park police have flagrantly violated the Indigenous Peoples Basic Law. On our traditional territory, they violated our sovereignty by using police cars and bright spotlights on the mountain slopes at night to flush out our hunters, shout orders at them, and search them.

The Truku protestors made three demands: 1) that the park police issue a public apology; 2) that, in the event that police officers again "have any behaviour that violates human rights," the captain and all officers involved

9 The petition sponsors were the Committee for the Promotion of Taroko National Autonomy, Kung Wen-chi, the Presbyterian Church of Taiwan Taroko Synod Church and Social Unit, the Presbyterian Church of Taiwan Taroko Synod Ciwang Church, the Taiwan Indigenous Taroko Student Association, the Hualien County Taroko Construction Association, the Hualien County Taroko Cultural Development Association, and the Presbyterian Church of Taiwan Chongde Church.

should be removed from "the territory of the Taroko Nation"; and 3) the government should implement the Article 19 Indigenous Peoples Basic Law in regard to hunting, by immediately revising or abolishing laws that criminalize hunting and trapping. The head of the park police station made an oral public apology at the conclusion of the hearing that followed the protest.

A reading of this event shows that the political activists mobilize concepts of "human rights" and the concept of inherent rights from international customary law to argue that indigenous people have an inherent right to hunt due to their colonial situation, and that the state on Taiwan has failed to recognize this right. They explicitly refer to provisions in the Basic Law that permit hunting. Yet, they further argue that the right to hunt can only be fully implemented if the state permits indigenous peoples to create autonomous zones that can manage hunting and other practices independent of the state. This is actually somewhat different from the hunters' perspective which privileges informal private recognition of Gaya over the creation of new political institutions. Yet the hunters are not the only actors who refer to non-state law.

7. Police Perspectives

Violations of wildlife law can be enforced by conservation patrollers under the authority of the COA and its Forestry Division, National Park police forces, and regular police patrols. As Jeffrey Martins has demonstrated through his ethnography in Taipei, police officers in Taiwan do not refer mechanically to the law, but balance the duty to implement state law with Chinese moral norms of *qing* (情, which he translates as "sentiment"), mediated by reason (*li*, 理) (Martin 2007: 684). In the case of the Taroko National Park police officers, the captain referred to this during the hearing, saying, "We do not want to arrest everyone, but if a tourist has seen a hunter and called the police, we have to act." He thus referred to the fact that they do let some hunters free, but that there are circumstances in which it is impossible, as sentiment does not always prevail. When police officers face competing demands, as when a Han Taiwanese tourist with a Buddhist ethic against killing sentient creatures demands that a hunter be arrested, yet the police officer knows the elderly hunter is merely trying to add protein to his supper, the rather abstract concept of "indigenous rights" is not invoked at all. Instead, officers must negotiate between values of public service, compassion,

and pity. Police officers also need to please their immediate superiors. Some hunters say that the police officers also arrest more people at the end of the Chinese calendar year, when they have more pressure to achieve quotas of arrests. From their point of view, the uneven enforcement of the law seems quite unreasonable and difficult to predict.

In another context, a forestry patroller (of Seediq identity) explained his actual practices of enforcing the law. He said that, regardless of whether the person in question is aboriginal or not, he takes individual circumstances into consideration. If the person has a small catch of, for example, one muntjac or a few flying squirrels, he knows that it is for personal consumption and lets the person go. If, on the other hand, the person has ten to twelve muntjacs, he knows that the person plans to sell the meat. In this case, he will arrest the person and press charges. In these cases, the policemen refer not to international norms regarding indigenous rights nor to state law, but rather to Chinese moral concepts. From his perspective, the Chinese moral compass of qing should prevail, and the occasional pressure to enforce the law more rigorously is problematic. These tensions suggest that neither hunters nor police officers – those at the frontline of enforcement of wildlife laws – are content with the current regime.

8. Conclusion

In conclusion, indigenous and wildlife laws are arenas in which different systems of legal norms become terms of reference to various political actors. Evolving international customary law, embodied in the UN Declaration on the Rights of Indigenous Peoples, recognizes the rights of indigenous peoples to traditional subsistence activities, i.e. hunting and fishing. In many jurisdictions, including Taiwan, this normative ideal conflicts with existing wildlife laws, raising questions about the compatibility of indigenous rights and conservation legislation. Yet, Article 8(j) of the CBD encourages states to "respect, preserve and maintain" indigenous knowledge and practices, which would include hunting and trapping by definition. New initiatives and institutions for the conservation and sustainable use of biological diversity should include involvement of the knowledge holders and have mechanisms for benefit sharing.

The international legal framework thus suggests that the criminalization of indigenous hunting and trapping practices is a human rights issue. Because

these practices are the sources of indigenous knowledge of biodiversity, moreover, criminalization makes it difficult to obtain the goals set out in the CBD. The fact that indigenous men feel the need to hunt and trap clandestinely causes problems. Some men, for example, have been seriously injured while hunting, and were afraid to seek medical care for fear of being arrested. This fear is the result of a legal system that still does not adequately protect the indigenous rights promised in both international and national law. The criminalization of hunting and the sudden legalization of hunting, moreover, both pose a risk to biological diversity, as they do not provide incentives for new institution building. Indigenous lobbyists often claim that indigenous hunters follow their own customary laws, which the Truku people call Gaya, and that this can conserve wildlife for future hunters. The story of the muntjac gives some support to this, as hunters and their families refer constantly to Gaya. We must thus explore carefully what Gaya means to both indigenous rights and conservation.

The goal is not to make policy suggestions, as it has been argued elsewhere that Taiwan needs to legalize trapping and involve both hunters and trappers in the co-management regimes called for in Article 22 of the Basic Law on Indigenous Peoples. Even in Canada, where hunters and trappers are partners on wildlife co-management boards, the record is mixed. The James Bay Cree of Québec seem to have gained control of wildlife management with their hunter and trapper income security program (Scott and Feit, 1992; Scott, 2005). Yet, in the Yukon, there is concern that wildlife management boards reinforce the ideological hegemony of Western biologists and marginalize indigenous knowledge that would be more effective in sustainable wildlife use (Nadasdy, 2003). Instead, the goal is to reflect upon Taiwan for better understanding of vernacularism and legal pluralism.

In discussions of international law and its vernacularization, especially in discussions of human rights, the concern has long been raised, especially by anthropologists, that the international legal framework may impose foreign norms on non-western cultures. As Merry states, however, this argument is no longer valid, as “there are no longer pristine cultures for whom the legal regimes of the West are irrelevant and totally alien” (Merry, 1996: 67). Taiwan has, since the 1930s when it was under Japanese rule but at an accelerated rate since the 1980s, adopted a legal framework adapted from western models in the creation of national parks and nature preserves. The island’s

indigenous peoples, especially since the rise of autonomous social movements in the 1980s at the same time as an emerging new international framework of indigeneity, are simply trying to stake out their own place in law as these institutions are created on their territory. They are comfortable with law, whether that be Gaya, state law, or international law.

This is where legal pluralism comes in to play. In Taiwan, indigenous rights lobbyists, speaking in the name of hunters, refer to international customary law and to national law on indigenous rights, as they campaign for expanded indigenous rights and the creation of indigenous self-government. They encounter other laws that limit hunting – laws that become points of reference to Taiwan's vocal animal rights advocates, who, in yet a further deepening of the legal pluralism approach, often also refer to Buddhist *dharma* as they try to prevent the killing of all species. The hunters and their families refer to Truku Gaya; whereas the police officers, often reluctant to arrest impoverished elderly hunters, also refer to Chinese moral codes based on human sentiment.

Amidst all of the apparent confusion, it is important to refer back to the story about Gasil. In his village, as in others across Taiwan, the grizzled old hunters have clearly marked off trap lines, and other community members respect these local rules about where to hunt and trap. Since the trap lines are within walking distance of the villages and on places where humans dare to tread, the rest of the forest remains a de facto nature preserve, with or without state institutions, as long as the forests thrive and grow. Nobody wants to return to the institutions of the past, when in fact the exclusion of others from a community's hunting territory, was done through head-hunting (Simon, 2012), but a study of legal pluralism in practices shows that hunters and trappers are capable of making their own arrangements for marking off territory. Fikret Berkes has clearly demonstrated that traditional knowledge does not automatically lead to conservation. It requires the development of institutions that guide practice by setting property rights and resource use rules, excluding outsiders from resources, and enforcing rules among authorized users themselves (Berkes, 2008: 206). Truku and Seediq hunters already do so to a certain extent, but they could be more efficient if they were in charge of legally-mandated institutions with the force of law.

The belief that indigenous peoples possess ecological knowledge necessary for the sustainability of our planet is part of the ontological base of the CBD.

It is one of the presuppositions of environmental anthropology since the 1970s, and this idea is rapidly travelling around the world. This belief meshes well with the Atayalic notions of Gaya, and the ideas of hunters that their practices have sustained wildlife on Taiwan for millennia. But beliefs, and especially inherently political ideas such as this one, do not simply travel on their own. Dan Sperber, expert on the transmission of ideas, argues that the institutional environment plays a more important role in the transition of political beliefs than any cognitive factors (Sperber, 1996: 96). Formal legal pluralism, putting the beliefs of the CBD and Truku hunters into practice, will require incorporating Gaya and state law into co-management institutions.

The Forestry Division of the COA has a well-established community forestry program. Although this would seem like a logical place to start discussions about wildlife co-management, most indigenous communities have been reluctant to even participate in this program, saying that there is too deep mistrust toward the Forestry Division after decades of criminalization of hunting and enforcement by COA patrollers. Yet, the ROC plans to create a new Ministry of the Environment and Resources. If this includes the Forestry Division and the national park system, this may offer a chance for a new beginning.

The ideas that indigenous hunters and trappers have inherent rights to their traditional practices; and that there ecological knowledge is valuable for sustainability are already circulating in Taiwan. These ideas come from international law, and have been incorporated into ROC national law. It is the institutionalization of these ideas, however, that will reveal the contours of vernacularization of international law on Taiwan, as Taiwan either continues to treat indigenous people as part of the biodiversity to be managed; or as equal partners in sustainable development. The ideas and practices of legal pluralism, which effectively blend state law with spiritually-based systems such as Gaya, reveal the possibility of a re-enchanted world as "institutions of global governance can act as guardians of sacred knowledge" (Niezen, 2010: 222). Legal pluralism, if it gains acceptance of indigenous Gaya at ontological parity with state law, will contribute to this project.

References

Allio, Fiorella. 1998. "La construction d'un espace politique austronésien." *Perspectives Chinoises* (47, mai-juin) : 54-62.

Anaya, S. James. 2004. *Indigenous Peoples in International Law*. Oxford: Oxford University Press.

Bateson, Gregory. 1972. *Steps to An Ecology of Mind*. New York: Ballantine Books.

Berkes, Fikret. 2008. *Sacred Ecology,* 2nd edition. London: Routledge Press.

Cowan, Jane K. 2007. "The Supervised State." *Identities* 14 (5): 545-578.

Hathaway, Michael. 2010. "The Emergence of Indigeneity: Public Intellectuals and an Indigenous Space in Southwest China." *Cultural Anthropology* 25 (2): 301-333.

Hsu, Minna J. and Govindasamy Agoramoorthy. 1997. "Wildlife Conservation in Taiwan." *Conservation Biology* 11 (4): 834-838.

Indigenous Bar Association. 2011. *Understanding and Implementing the UN Declaration on the Rights of Indigenous Peoples: A Handbook*. Winnipeg: Indigenous Bar Association and the University of Manitoba. http://www.indigenousbar.ca/pdf/undrip_handbook.pdf. Last accessed January 1, 2014.

International Labour Organisation. 1989. *C169: Indigenous and Tribal Peoples Convention*. Geneva: ILO. http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169. Last accessed January 16, 2014.

IUCN 2013. *The IUCN Red List of Threatened Species. Version 2013.2.* http://www.iucnredlist.org. Last Accessed January 2, 2014.

Lin, Ching-hsiu. 2010. "Women and Land: Privatization, Gender Relations and Social Change in Truku Society, Taiwan." Ph.D. Dissertation, University of Edinburgh.

Martin, Jeffrey. 2007. "A Reasonable Balance of Law and Sentiment: Social Order in Democratic Taiwan from the Policeman's Point of View." *Law & Society Review* 41 (3): 665-698.

Merry, Sally Engle. 1988. "Legal Pluralism." *Law & Society Review* 22 (5): 869-896.

_____. 1996. "Legal Vernacularization and Ka Ho'okolokolonui Kanaka Maoli, The People's International Tribunal, Hawai'i 1993." *PoLAR: Political and Legal Anthropology Review* 19 (1): 67-82.

_____. 2006. "Anthropology and International Law." *Annual Review of Anthropology* 35: 99-116.

Miller, Bruce. 2003. *Invisible Indigenes: The Politics of Nonrecognition.* Lincoln, NE: University of Nebraska Press.

Nadasdy, Paul. 2003. *Hunters and Bureaucrats: Power, Knowledge and Aboriginal-State Relations in the Southwest Yukon.* Vancouver: UBC Press.

Niezen, Ronald. 2003. *The Origins of Indigenism: Human Rights and the Politics of Identity.* Berkeley: University of California Press.

Pei, Kurtis. 1999. "Hunting system of the Rukai Tribe in Taiwan, Republic of China." *Proceedings of the International Union of Game Biologists XXIV Congress, Thessaloniki, Greece.* http://

tk.agron.ntu.edu.tw/ethnozoo/Rukai-hunting%20systsm.pdf. Last accessed February 22, 2013.

Palemeq, Yedda. 2012. "No People are an Island: on Taiwanese Indigenous Peoples in the Permanent Forum and the Austronesian Forum." In *Die indigenen Völker Taiwans: Vorträge zur Geschichte und Gesellschaft Taiwans.* edited by Songa Peschek, 123-142. Frankfurt am Main: Peter Lang.

Peroraro, Ferdinando. 1977. *Essai de dictionnaire Taroko-Français*. Paris: S.E.C.M.I.

Ramsar Secretariat. 1996. "Recommendation 6.3: Involving Local and Indigenous People in the Management of Ramsar Wetlands." Paper presented at the 6th meeting of the conference of the Contracting Parties, Brisbane, Australia, 19-27 March 1996. http://www.ramsar.org/cda/en/ramsar-documents-texts-recommendation-6-3/main/ramsar/1-31-38%5E23452_4000_0. Last accessed January 16, 2014.

Republic of China. 2005. *Basis Law on Indigenous Peoples*. Taipei: Legislative Yuan. http://www.apc.gov.tw/portal/docDetail.html?CID=74DD1F415708044A&DID=3E651750B4006467D4B40DD3AC1D7378. Last accessed January 16, 2014.

ROC Council for Economic Planning and Development. 2004. *Taiwan Agenda 21: Vision and Strategies for National Sustainable Development*. Taipei: Council for Economic Planning and Development, Executive Yuan. http://nsdn.epa.gov.tw/en/agenda/Taiwan_Agenda_21.pdf. Last accessed January 16, 2014.

ROC Ministry of Foreign Affairs. 2009. "Nature Conservation." Republic of China (Taiwan) Government Entry Point. http://www.taiwan.gov.tw/ct.asp?xItem=17449&ctNode=1927&mp=1001. Last accessed 2 January 2014.

Rudolph, Michael. 2003. *Taiwans multi-ethnische Gesellschaft und die Bewegung der Ureinwohner: Assimilation oder kulturelle Revitalisierung*? Hamburg: LIT Verlag.

Scott, Colin. 2005. "Co-Management and the Politics of Aboriginal Consent to Resource Development: The Agreement Concerning a New Relationship between Le Gouvernement du Québec and the Crees of Québec." In *Canada, the State of the Federation 2003: Reconfiguring Aboriginal-State Relations*, edited by Michael Murphy, 133-163. Montréal: McGill-Queen's University Press.

Scott, Colin H. and Harvey A. Feit. 1992. *Income Security for Cree Hunters: Ecological, Social and Economic Effects.* Montréal: McGill Programme in the Anthropology of Development.

Shang, Hwa-Guang. 2013. "Taiwan Taiwan Seeks a Balance between Forest Conservation, Forest Carbon Sinks, and Wood Production." Silviculture Magazine (Spring): 6-7. http://www.silviculturemagazine.com/articles/spring-2013/taiwan-seeks-balance-between-forest-conservation-forest-carbon-sinks-and-wood-p. Last accessed January 2, 2014.

Simon, Scott. 2009. "Indigenous Peoples and Hunting Rights." In *Confronting Discrimination and Inequality in China: Chinese and Canadian Perspectives*, edited by Errol P. Mendes and

Sakunthala Srighanthan, 405-421. Ottawa: University of Ottawa Press.

_____. 2012. “Politics and Headhunting among the Formosan Sejiq: Ethnohistorical Perpectives.” *Oceania* 82 (2): 164-185.

_____. 2013. “Of Boars and Men: Indigenous Knowledge and Co-Management in Taiwan.” *Human Organization* 72 (3): 220-229.

Sobrevila, Claudia. 2008. *The Role of Indigenous Peoples in Biodiversity Conservation: The Natural but Often Forgotten Partners*. Washington, DC: World Bank, http://siteresources.worldbank.org/INTBIODIVERSITY/Resources/RoleofIndigenousPeoplesinBiodiversityConservation.pdf. Last accessed January 2, 2014.

Sperber, Dan. 1996. *Explaining Culture: a Naturalistic Approach*. Oxford: Blackwell Publishers.

United Nations. 1992a. Report on the UN Conference on Environment and Development A/CONF.151/26 (Vol. 1). New York: United Nations General Assembly. http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm. Last accessed January 1, 2014.

_____. 1992b. *Convention on Biological Diversity*. New York: United Nations. http://www.cbd.int/doc/legal/cbd-en.pdf. Last accessed January 16, 2014.

_____. 2007. *United Nations Declaration on the Rights of Indigenous Peoples*. New York: UN General Assembly. http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf. Last accessed January 16, 2014.

Von Benda-Beckmann, Franz. 1988. “Comment on Merry.“ *Law & Society Review* 22 (5): 897-902.

中國人權協會編。1987。《臺灣土著的傳統社會文化與人權現況》。台北：大佳出版社。

方國運。2006。〈第八屆生物多樣性公約締約方大會之重要議題及對策〉。《農政與農情》169。http://www.coa.gov.tw/view.php?catid=11399。2014/01/03。

王泰升。2003。《原住民保留地土地專屬法庭設置研究》。台北：行政院原族民族委員會。

施正鋒。2008。〈原住民族的文化權〉。《台灣原住民研究論叢》3：1-30。

郭華仁。2000。〈原住民的植物遺傳資源權與傳統知識權〉。蔡中涵編《生物多樣性與台灣原住民族發展》：165-185。台北：台灣原住民文教基金會。

陳士章。無日期。〈要談狩獵"否" ? "請"先尊重原住民族〉。《環境資訊中心》。 http://eco.e-info.org.tw/hunt/2005/ht05012102.htm。2014/01/03。

黃長興。1996。《東賽德克群的狩獵文化》。收於《民族學研究所資料彙編15》。台北：中研院民族所。

黃鈴華（Iwan Nawi）。2005。《台灣原住民族運動的國會路線》。台北：國家展望文教基金會。

蔡中涵（Safulo K.Raranges）。2007。〈原住民傳統知識保護〉。《台灣原住民研究論叢》2：1-26。

蔡中涵編。2000。《生物多樣性與台灣原住民族發展》。台北：台灣原住民文教基金會。

蔡志偉（Awi Mona）。2008。〈聯合國中的原住民族國際人權〉。《台灣國際研究季刊》4，2：81-108。

謝世忠等。2007。〈原住民族傳統習慣之調查、整理及評估納入現行法制第二期委託研究：泰雅族，太魯閣族〉。台北：原住民族委員會。

原住民族權利與野生動物保育：國際法在臺灣的本土化實踐

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摘要

原住民族權利與野生動物保育法規是臺灣法律多元主義發展的兩個重要領域，特別是在國內法與國際法接軌的過程中，臺灣採納了許多關注原住民族權利與野生動物保育的國際法律規範。地方的行動者，包括立法委員、保育官員與原住民族獵人，對於社群與自然生態的互動，不僅強調國際法與國家法，同時也主張原住民族習慣法與其他文化規範的介入與形塑。對於賽德克族語太魯閣族社群而言，Gaya 習慣法持續呈現獵人依據本有的法律規範進行自然資源的利用與管理。然而，Gaya 習慣法的闡釋仍存有各別的差異，且在缺乏適切的法律保障的情形下，許多狩獵活動轉以暗中從事的方式，且難以規制。因此，即如 2007 年聯合國原住民族權利宣言以及 2005 年原住民族基本法所展望，為了能夠促使原住民族構建本有對於公共資源治理的規範制度，完備的政治自治即係必要。亦即，本文所揭示的前開策略，對於原住民族權利的實踐與野生動物保育的效益，確係最好的發展。

關鍵字

原住民（族）權利、野生動物保育、法律多元主義、狩獵、賽德克族、太魯閣族、臺灣