

Act on Promoting Transitional Justice

Article 1

This Act is enacted to promote transitional justice and implement a liberal democratic constitutional order.

The handling of transitional justice matters, where they pertain to illegal acts and the resulting harm that occurred during the period of authoritarian rule in violation of the liberal democratic constitutional order, shall be planned and implemented in accordance with the provisions of this Act. Matters not provided for in this Act shall be governed by other applicable laws.

Article 2

The competent authority under this Act is the Transitional Justice Commission (hereinafter referred to as the TJC), which shall not be subject to the restrictions set forth in Article 5, paragraph 3, Article 32, or Article 36 of the Basic Code Governing Central Administrative Agencies Organizations, or in Article 9 of the Organizational Act of the Executive Yuan.

The TJC, under the authority of the Executive Yuan, is an independent administrative institution equivalent to a second-level agency of the central government, and—except as otherwise provided in the Act Governing the Settlement of Ill-gotten Properties by Political Parties and Their Affiliate Organizations—shall observe the provisions of Article 4 to Article 7 of this Act in planning and implementing the following matters:

1. Providing for public access to political archival records.
2. Removing authoritarian symbols and preserving sites where injustices were committed.
3. Redressing judicial wrongs, restoring historical truth, and promoting social reconciliation.
4. Settling and utilizing ill-gotten party assets.
5. Handling other matters pertaining to transitional justice.

Article 3

Terms used in this Act are defined as follows:

1. "Period of authoritarian rule" means the period from 15 August 1945 to 6 November 1992.
2. "Political archival records" means archival records or other records and documents from the period of authoritarian rule that are related to the February 28 Incident, mechanisms of mobilization for suppression of the communist rebellion, and martial law

mechanisms, and are maintained in custody by government agencies (institutions), political parties, affiliated organizations, and party-owned entities; this also applies to archival records from agencies (institutions) that have been dissolved.

3. "Political party" means the type of entity referred to in Article 4, subparagraph 1 of the Act Governing the Settlement of Ill-gotten Properties by Political Parties and Their Affiliate Organizations.

4. "Affiliated organization" means the type of entity referred to in Article 4, subparagraph 2 of the Act Governing the Settlement of Ill-gotten Properties by Political Parties and Their Affiliate Organizations.

5. "Party-owned entity" means a juristic person, group, or institution that exists independently but whose personnel, financial, or operational matters are currently under the substantive control of a political party.

6. "Government agency (institution)" means an agency or administrative institution at the central or any local level, and any individual, juristic person, or group that the government has entrusted to exercise public authority, and any experimental (testing), research, cultural and educational, or medical institution, foundation, or state-owned enterprise established by an agency at any level.

Article 4

Materials related to political archival records collected, produced, or established as the result of violations of the liberal democratic constitutional order during the period of authoritarian rule shall be acquired, assembled, preserved, and—with balanced consideration for the privacy rights of the parties to the subject matter of archival records as well as the need for freedom of information, transitional justice research, democracy, rule of law, and human rights education—shall be categorized and made available for public access. In order to comprehensively reconstruct the true historical facts of the period of authoritarian rule and promote social reconciliation, the TJC shall take the initiative to investigate the truth and, on the basis of the archival materials acquired in accordance with the provisions of this article, shall invite concerned parties to express their views, so as to uncover the facts surrounding human rights abuses and to ascertain the responsibility of perpetrators and participants in mechanisms of oppression.

The TJC, acting on the basis of related statements, investigative findings, and archival materials, shall write investigative reports, plan measures for vetting and removing abusive public employees, and draw up related remedy procedures.

Procedures and steps for carrying out fact-finding investigations shall be separately prescribed by the TJC through regulations.

Article 5

In order to establish a liberal democratic constitutional order, deny the legitimacy of authoritarian rule, and learn the historical lessons of human rights abuses, symbols appearing in public buildings or places that commemorate or express nostalgia for authoritarian rulers shall be removed, renamed, or dealt with in some other way.

Places where the rulers engaged in large-scale human rights abuses during the period of authoritarian rule shall be preserved or rebuilt, and plans shall be made for their designation as historic sites.

Article 6

Criminal prosecutions carried out or sentences imposed during the period of authoritarian rule that violated the liberal democratic constitutional order and the principle of fair trial shall be re-investigated without regard to the provisions of Article 9 of the National Security Act in order to redress judicial wrongs, highlight judicial fairness, rectify education on the rule of law and human rights, and promote social reconciliation.

The process of redressing judicial wrongs as provided for in the preceding paragraph may involve identifying perpetrators and holding them accountable, restoring and paying compensation for the damaged reputations and rights of victims or their families, and restoring the historical truth of judicial wrongs as well as making them public.

Where a person matching either of the following descriptions has been convicted on the basis of the same reasons and facts, the conviction and any punishment, rehabilitative measure, or confiscation rendered against that person shall be deemed void from the date on which this Act enters into force, and the voidance shall be publicly announced:

1. a victim who has received reparations, compensation, or restoration of damaged rights pursuant to the February 28 Incident Disposition and Compensation Act, the Compensation Act for Wrongful Trials on Charges of Sedition and Espionage during the Martial Law Period, or the Act Governing the Recovery of Damage of Individual Rights during the Period of Martial Law; or
2. a person not meeting the description in the preceding subparagraph who has nevertheless received a criminal

conviction that the TJC, acting ex officio or upon application by a concerned party, has determined to be a judicial wrong that must be redressed.

A conviction voided pursuant to the provisions of the preceding paragraph shall be expunged from the record. Where an application as contemplated in paragraph 3, subparagraph 2 is rejected by the TJC, the applicant may—acting within 10 days of its receipt of notice of rejection, and on the basis of the matters set forth in paragraph 1—file an appeal against the conviction in a specialized court established by the Taiwan High Court or any of its branches.

Where the accused is deceased, or where the trial cannot proceed because the accused has failed to appear in court on the trial date (as contemplated in the Code of Criminal Procedure), or where the provisions of Article 303, subparagraph 5 of the Code of Criminal Procedure apply, the provisions of the preceding paragraph shall not apply.

Where the type of case contemplated in paragraph 5 is to be tried by a specialized court established by the Taiwan High Court or any of its branches, the structure and procedural rules of that court shall be prescribed by the Judicial Yuan.

Article 7

In order to promote a liberal democratic constitutional order and foster fair competition among political parties, ill-gotten party assets obtained on or after 15 August 1945 shall, unless it is possible to confirm the original owner or the heir(s) thereof, be transferred to state ownership and used by a special fund established by the central government to promote transitional justice, human rights education, long-term care, social welfare policies, and transitional-justice-related cultural matters.

Any investigation, restitution, confiscation, restoration of rights, or other matter related to ill-gotten assets shall be handled by the Ill-Gotten Party Assets Settlement Committee in accordance with the Act Governing the Settlement of Ill-gotten Properties by Political Parties and Their Affiliate Organizations.

Article 8

The TJC shall have nine commissioners, who shall be nominated by the Head of the Executive Yuan (Premier) and appointed with the consent of the Legislative Yuan. When making the nominations, the Premier shall designate one person as the chairperson and one

person as the vice chairperson. The chairperson, vice chairperson, and three other commissioners shall serve in full-time positions, while the remaining four commissioners shall serve in part-time positions; provided, however, that among all the commissioners, members of a single political party shall not exceed three in number, and members of either gender shall not be fewer than three in number.

Members of the Legislative Yuan and members of the Control Yuan shall not serve concurrently as members of the TJC. The chairperson of the TJC shall be a special appointee, and shall represent the Commission on external affairs. The vice chairperson shall be a political appointee who is equivalent to a 14th-grade senior-level civil servant. The other commissioners shall be political appointees who are equivalent to 13th-grade senior-level civil servants.

The terms of the commissioners shall last until the TJC is dissolved pursuant to Article 11, paragraph 2; provided, however, that where the Premier extends the mission of the TJC in accordance with Article 11, paragraph 1, the chairperson, vice chairperson, and any full-time or part-time commissioner may be replaced following the procedure set forth in paragraph 1.

Where any one of the following situations occurs with respect to a commissioner, the Premier may relieve or dismiss that person from his or her duties:

1. A Commissioner is unable to perform duties due to death or illness.
 2. A Commissioner has resigned.
 3. A Commissioner has been placed under a declaration of guardianship or assistance, and the declaration has not been voided.
 4. A Commissioner has engaged in an illegal act, has acted in disregard of duty, or has otherwise acted in breach of duty;
 5. A Commissioner has been detained or indicted for a crime.
- When a vacancy arises on the Commission for any reason, the vacancy shall be filled following the procedures set forth in paragraph 1.

Article 9

The TJC shall have four departments, each of which shall be responsible for researching, planning, and implementing the tasks set forth in one of the five subparagraphs under Article 2, paragraph 2. The vice chairperson and the three other full-time commissioners shall chair one department each. Each of the four part-time commissioners shall join one of the departments to assist with the handling of related matters.

Each of the departments of the preceding paragraph may separately engage two or three non-salaried advisors on an annual basis.

Article 10

The TJC may use assigned, seconded, or contracted personnel to serve concurrently as research or administrative personnel. Where the TJC requests the seconding of personnel as contemplated in the preceding paragraph, a government agency shall not refuse the request.

The funding needs of the TJC shall be met from the budget of the Executive Yuan.

Article 11

Within two years, the TJC shall submit a hardcopy mission conclusion report to the Premier regarding the tasks set forth under Article 2, paragraph 2. The report shall include a complete investigation report, a planning proposal, and concrete implementation measures. If there is a need to enact or amend any law or regulation, the Commission shall also submit a proposed draft at that same time. If the Commission is unable to complete its work within two years, it may report to the Premier and request an extension; each extension shall be no longer than one year. After completing the mission set forth in the preceding paragraph, the TJC shall be dissolved, and the Premier shall publicly release the mission conclusion report.

During the period set forth in paragraph 1, the TJC shall submit a hardcopy mission progress report to the Premier. Where the plan for implementing any of the tasks set forth under Article 2, paragraph 2 can be feasibly carried out, the Commission may at any time submit a written request for the Premier to convene a meeting of the proper agencies (institutions) to carry out the plan.

Article 12

The TJC shall exercise its authorities of office independently in accordance with the law.

The members of the TJC shall exercise their authorities of office in an independent and non-partisan manner, and shall not take part in the activities of any political party during their terms.

Article 13

A resolution of the TJC requires the approval of a majority of the commissioners present at a meeting attended by not less than one-half the number of commissioners.

The approval of a majority of all commissioners is required for finalization of the hardcopy reports that the TJC submits to the Premier in accordance with the provisions of Article 11, paragraphs 1 and 3.

Any member of the TJC may express a dissenting opinion or a concurring opinion on the report of the preceding paragraph.

Article 14

In order to complete the tasks set forth in Article 11, paragraphs 1 and 3, the TJC may take any of the following actions to investigate related matters:

1. Notify an agency (institution), organization, enterprise, or individual to appear before the Commission to state the facts or express their views.
2. Ask the concerned agency (institution), organization, enterprise, or individual to furnish record books, documents, and other necessary information or evidence; provided, however, that any request to retrieve materials connected with a case currently being tried must be approved by the court seised.
3. Dispatch personnel to the workplace, office, place of business, or other location of the concerned agency (institution), organization, enterprise, or individual to carry out any necessary investigation or on-site inspection.
4. Commission an analysis or a research project.
5. Commission another agency (institution) to handle a specified case or matter.
6. Take other necessary investigative action.

After an agency accepts the commission contemplated in subparagraph 5 of the preceding paragraph, it shall proceed forthwith to carry out the requested matter, and shall report back in writing on the results of its handling of the matter.

When a TJC investigative officer duly performs his or her duties, he or she is required to display proof of identity. If he or she fails to do so, the investigated party may refuse to cooperate.

Other matters relating to the investigations provided in this Act shall be separately prescribed by the TJC through regulations governing investigative procedures.

Article 15

Transitional Justice Commission investigative officers may as necessary place relevant materials or evidence under temporary seal, or take custody of or impound all or part of it.

Where materials or evidence in the possession of a central or local agency (institution) are to be placed under seal, taken into custody, or impounded, the permission of the head of the agency (institution) shall be required; provided, however, that the head of the agency (institution) shall not deny permission unless it has been proven that such action would harm an important national interest, and a provisional injunction consenting to said action has been obtained from an administrative court within seven days.

When materials or evidence are taken into custody, the agency (institution) originally possessing them shall affix its official seal, and the investigative officer shall issue a receipt.

Article 16

An agency (institution), organization, enterprise, or individual that is investigated in accordance with the provisions of this Act shall not evade, refuse, or impede such investigation without legitimate reason.

An individual connected with an investigation conducted in accordance with the provisions of this Act shall provide information that is true and complete to the best of his or her knowledge, without any concealment or misrepresentation, unless he or she is allowed under Article 181 of the Code of Criminal Procedure to refuse testimony.

Where the TJC deems it necessary to provide protection and immunity to an individual connected with an investigation conducted in accordance with the provisions of this Act, protection and immunity provisions in the Witness Protection Act shall be applicable *mutatis mutandis*. Where the individual is a civil servant, the Commission may decide by resolution to provide immunity from related administrative liability.

Where an individual connected with an investigation conducted in accordance with the provisions of this Act provides the TJC with information related to a political party, affiliated organization, or party-owned entity to which he or she has become privy in the performance of his/her job duties, that individual shall not be bound by any non-disclosure obligations otherwise owed to the political party, affiliated organization, or party-owned entity, and shall be immune from any legal liability for having provided the information. Where an investigation carried out by the TJC in accordance with this Act involves the use of personal information as defined in the Personal Information Protection Act, such use shall be deemed

necessary for promotion of public interests as set forth by that Act in Article 16, subparagraph 2 and Article 20, paragraph 1, subparagraph 2.

Any party which violates the provisions set forth in the first paragraph of this Article shall be subject to an administrative fine between NT\$100,000 and NT\$500,000, and consecutive fines may be imposed for each successive violation.

Article 17

TJC investigative officers may as necessary request aid from local governments or other related agencies (institutions).

Article 18

A political party, affiliated organization, or party-owned entity that possesses political archival records shall file a report with the TJC. Once the Commission has completed review and approval, it shall order that the records be transferred to the national archives. The report of the preceding paragraph may be presented to the TJC either in writing or orally. Where a report is presented orally, the TJC shall make a record thereof. The TJC may initiate an ex-officio investigation into the holding of political archival records by a political party, affiliated organization, or party-owned entity, and shall order that the Records be transferred to the national archives following review and approval. The political archival records transferred by a political party, affiliated organization, or party-owned entity shall in principle be originals.

After political archival records have been reviewed and approved by the TJC, a political party, affiliated organization, or party-owned entity that refuses to transfer them to the national archives shall be subject to an administrative fine between NT\$1 million and NT\$5 million, and consecutive fines may be imposed for continued refusal. With respect to political archival records, the handling of all matters pertaining to acquisition, assembly, preservation, public access, research, and education shall, except as provided in this Act, be separately prescribed by law.

Article 19

Where records in the custody of a government agency (institution), political party, affiliated organization, or party-owned entity are destroyed, damaged, concealed, or rendered useless despite clear knowledge that they are political archival records, a sentence of up to five years imprisonment shall be imposed. An attempt to commit an offense set forth in the preceding paragraph is punishable.

Article 20

A party that objects to an administrative disposition rendered by the TJC may, within 30 days of the date of receipt of the disposition, apply with the Transitional Justice Commission for a second review. A party that objects to the decision following the second review may, within two months of receipt of the decision, file for administrative litigation.

Article 21

This Act shall enter into force from the date of promulgation.