

# **Reasoning on the Constitutional Protection of Indigenous Hunting Cultural Rights: Study on the Judicial Review of Tama Talum's Case**

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## **Abstract**

“Tama Talum’s hunting case” was decided on October 15, 2014 by Taiwan Taitung District Court. But, the court’s decision was at odds with recent judicial opinions. Indigenous and human rights organizations severely criticized court’s cultural bias and discrimination against indigenous peoples. In addition, Tama Talum was hunting for his mother and was reported by the media as a “filial hunter”, which made this usual hunting case had become a major indigenous human rights incident.

After more than 6 years, the Taiwan Constitutional Court (TCC) was finally formed to hear the constitutional interpretation request. TCC held an oral argument with live streaming to the public in real time on March 9, 2021, and after about two months’ deliberation the TCC released its decision as Interpretation No. 803 on May 7, 2021. Interpretation No. 803 was concluded that Articles 20, paragraph 1 of the Controlling Guns, Ammunition and Knives Act; Article 21-1, paragraph 2 of the Wildlife Conservation Act are consistent with the constitutional requirements stipulating indigenous hunting cultural rights. Nevertheless, the implementing laws of the aforementioned Acts, i.e. Regulations Governing Permission and Management of Guns, Ammunition, Knives and Weapons; Regulations Governing Management of Indigenous Cultural and Ritual Hunting, Butchering and Utilizing Wildlife, are inconsistent with constitutional protections of indigenous hunting cultural rights.

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Although Interpretation No. 803 is not satisfactory with indigenous expectation, there are two significant constitutional affirmations of indigenous rights. One is the constitutional recognition of indigenous hunting cultures. Another is the affirmation of indigenous rights to life style, customs, social and economic institutions, resource utilization and land tenure systems are consistent with constitutional values. Further, we can still see a glimmer of light that minority views show the possibility of indigenous rights development.

In view of the fact that Indigenous Peoples Basic Law, the Wildlife Conservation Act, and the Forestry Act have recognized a new “traditional” indigenous people’s right, i.e. Indigenous traditional territorial right. However, there is always a situation of antagonism between indigenous laws and aforementioned Acts on the concurrent applications of indigenous hunting and gathering cultural practices. This is also the core issue of the “Tama Talum’s Constitutional Interpretation Case”. This paper argues indigenous sui generis right is based upon cultural difference, self-determination and self-government, which is embedded within the R.O.C. (Taiwan) constitutional regime and further entrenched the Indigenous Peoples Basic Law.

**Keywords: Tama Talum, Indigenous rights, Sui generis, Collective right, Multiculturalism, Legal Pluralism, Customary laws, Indigenous Historical Justice and Transitional Justice**