



# 居住權

## 城市邊緣的原住民族

六〇年代起，都市人力需求大增，大批原住民從故鄉遷至都會區，成為台灣基層勞動力的大宗。他們多半從事礦工、板模工、漁工、林班工、臨時工等所謂低層勞動工作，以阿美族佔多數。

無論是懷抱衣錦還鄉的夢想，或是期待扎根都會，這些原住民勞工都在為生存奮力一搏。不少人為此變賣家鄉土地，只為籌措北上謀生所需的費用。然而，都會生活大不易，基層工作微薄收入，加上屢見不鮮的勞資糾紛與歧視，使這群台灣奇蹟的共創者，要面對居住、社會關係、個人及族群發展等適應問題。於是，都會中的原住民聚落普遍存在「自我隔離」的現象。

這些聚落多半坐落在河畔或城市邊陲地帶，至今已生根至第三、四代，發展出一套有別於原鄉部落的社會制度、互助網絡與文化。



From the 1970's, due to a lack of work in villages and increased demand for labor in cities, a large number of indigenous people have moved to urban areas. They have become a major constituent of the secondary labor force. They mostly work in mines, on construction sites, in fisheries or forestry, doing basic temporary jobs, with Amis people as the majority of participants.

Either dreaming of striking it rich or simply seeking lives in metropolises, these indigenous workers strived for a living. Quite a number of them sold off land from their hometown for living expenses in cities. However, life in cities was not easy. Low wages from low-skill work in addition to commonly-seen employer-employee disputes and discrimination left these contributors of the Taiwan Economic Miracle with problems related to habitation, interpersonal relations, individual and development. Hence, urban indigenous communities tended to self-segregate from the public.

Most of these communities were situated at riverbanks or urban peripheries. To date, they have been living there for three or four generations, developing social systems and cultures different from their original communities.

# Right of Habitation

## Indigenous people on the outskirts of the city



# 快樂山 要快樂

文／Suliyape Taljimaraw

沿著北海岸往福隆的路上，山海輝映，美得令人驚嘆。陣陣清爽海風拍打著雀躍的心情，一不留神，就會錯過這個小小的海濱路三巷「快樂山部落」。

走進部落，映入眼簾的是沿著馬路錯落的鐵皮屋，和時常聽聞的都市河岸部落一樣，一磚一木都是族人心血的結晶，卻有種說不出的差異，或許是這兒依山傍海、不見高樓大廈的遼闊，也或許是路邊曬乾的路蕎和野菜，混著柏油的氣味，瞬間勾起腦海中阿美族原鄉的記憶。

「喔咿——這裡喔！」頭目 Kulas 潘進發向我揮揮手，「你們要不要上來我的車，上面路不好喔，我載你們一起。」

於是，一行人驅車前往理事長的家，短短五分鐘的路程，便感受到石頭路的厲害。石頭路還不打緊，35度的小陡坡遇上石頭路，才是真正的刺激，頭目太太商姐笑說，她的孫子最喜歡這條路，只是為了方便就業、就學，孫子跟孩子都搬離這裡了。



## Cheerful Hill wants to be cheerful

Along the northern coast on the way to Fulong, the reflection of mountains on the sea was a breathtaking view. The refreshing breeze could make one's heart bounce with joy. Immersed in the beautiful view, one could easily miss the "Cheerful Hill" village on Lane 3 of Haibin road.

Upon entering the village, in sight were numerous corrugated iron sheet houses, just like urban riverbank villages people often described. Every brick and timber plank was hard work from the villagers. Yet, there were still indescribable differences. Maybe it was the proximity to the mountain and sea, the open view without high-rise buildings, or maybe the dried garlic and wild vegetables mixed with the smell of bitumen that evoked the memory of the original Amis community.

"Oi—Here!" Chief Kulas waved at me, "Do you want a car ride with me? It is difficult to walk up there."

We got in the car and headed to the chairman's house. In the short five-minute ride, we felt the severe jitters of the rocky road. The rocky road was not that bad, but the 35-degree climb on it was thrilling. The chief's wife Mrs. Sung told us with a smile



「講居民年紀會傷感情，快樂山只剩下 40 吋的腰啦！」

「哪裡只有 40（吋），是腰跑到脖子那裡了啦！」

“

趁著太陽還溫柔的時候，頭目 Kulas 潘進發細數在快樂山的苦與樂。

頭目搶著太太的話補充，大夥兒笑成一片，阿美族的「美」式幽默果然厲害。不知不覺就抵達理事長徐錦熙的家。

一下車便見到站穩的「五百萬」遮陽傘、幾張塑膠椅，當然還有無敵海景，「根本就是部落的規格啊！」我心想。拿出準備好的發酵小麥汁、部落特調飲品和檳榔，趁著太陽還溫柔的時候，和 faki（阿美族語，叔舅輩分或年長男性的統稱）、fayi（阿美族語，姑姨輩份或年長女性的統稱）吹著風聊天，才知道原來快樂山這片土地早在 50 年前就有族人的蹤影。



that the road was her grandchildren's favorite. Their children and grandchildren all moved to cities for work and education.

"It is sensitive to talk about villagers' ages. Cheerful Hill only has people with a 40-inch waist now!"

"Come on! It's more than 40 inches. Or maybe you're talking about measurement of neck?"

The chief completed his wife's sentence. The Amis-style humor made everyone drown in laughter. Not for a while, we arrived at the chairman Xu Jin-xi's home.

Upon getting out of the car, there was a giant beach sunshade, a few plastic chairs, and of course the unbeatable ocean view. "It is totally the genuine local community experience," I thought. They then brought out "fermented wheat juice", local special-made drink and beetle nuts that they had prepared for us. While the sun was not burning yet, we chatted in the breeze with faki (elders or uncle in Amis), and fayi (aunty in Amis). They told us that community members had been here 50 years ago.



## 渴望安定，尋找家的感覺

第一任頭目張子元自東部北上，到瑞芳擔任礦工，因為思念家鄉的環境和生活方式，閒暇時便沿著北海岸找尋「家」的感覺，才覓得現在的快樂山。開始只是搭工寮、種種菜怡情，漸漸身邊的友人也知道有個與家鄉相仿的樂園，於是愈來愈多族人來此生活、相伴，至今已逾 50 戶。

「這裡以前就是荒地啦，只有那條柏油路，是政府很久以前挖石頭填海開的，是個沒有名字的地方。有一天大家聊天的時候想說，雖然大家都從不一樣的地方來，可是在這邊都很好、很快樂，所以乾脆給這邊取叫快樂山。」大家一邊回憶、一邊微笑著。從此，這裡有了名字，地如其名，乘載著大家的快樂。

### [ 阿美族 ]

為台灣原住民十六族中人口數最多的一族，大多分布於台灣東部地區，以花蓮到台東一帶的縱谷平原與海岸山脈外側之平地為主，也有部分族人居住於屏東恆春地區。



## 律師見解

邱榮英

法律扶助基金會北部專職律師中心專職律師

2017年2月，我接到「快樂山」阿美族原住民被訴竊佔等案件的第一審辯護工作，這是我第一次聽到快樂山，也是第一次與阿美族原民面對面接觸。

研讀資料後方知，快樂山部落原民共有52人被移送地檢署偵辦，其中43人遭起訴，在地方法院分成10個案號，由8個股別法官分別承辦。

在與被告的原民逐一面談時，發現每位族人都很憨厚、老實、木訥、寡言。問及案情時，通常都只回以單純的憨笑，不知如何回答；請被告於委任狀簽名時，也顯得手足無措、為難。事後得知，他們的教育程度不高，很多國小都沒畢業，識字不多，即便是簽自己的名字也有些艱難。言談後得知，他們全然不知占有的土地是國有地，也不知如何向政府承租，只是單純地認為政府（新北市政府）有幫忙設立門牌、建置水溝，補助豐年祭，應該就是同意他們使用這塊土地的意思了。他們根本不了解為何突然有人到山上拍照、測量，也不清楚為何到警察局做完筆錄後就被起訴了。

快樂山部落在2001年或2003年時形成，2002年間，第一代頭目張子元想要承租現有的土地，但因租用流程不明而無法承租。之後新北市政府為了給族人基本生活，於2014、2015年編定門牌，協助族人合法使用土地。既然如此，為何族人還會被告、被起訴呢？原來，快樂山的土地由農委會林務局變更為國有財產署管理，有人向國有財產署檢舉，國有財產署不得不處理（提告）。

事實上，國有財產署並沒有要使用這塊土地，也希望族人能在此安居樂業，且非常樂意協助族人合法使用。但案件已經起訴，法院受理了就要判決，竊佔、違反水土保持法的構成要件很明確，至於有無故意之犯意就非常抽象，

Lung-Ying, Chiu

Staff Attorney, Northern Legal Aid Staff Attorneys Center, Legal Aid Foundation

In February 2017, I received a case to defend the indigenous Amis people living in the Kuai-Le Shan (Cheerful Hill) area against the prosecution in the first instance proceeding for their alleged offence of occupying real property. This was the first time that I heard about Kuai-Le Shan, which led to my first acquaintance with the Amis people. After doing some research, I learnt that 52 indigenous people of the Kuai-Le Shan community were under investigation by the District Prosecutors Office, among them 43 were prosecuted. The matter was divided into 10 cases by the District Court, which were in turn examined by judges from 8 units.

While interviewing the indigenous defendants, I discovered that every indigenous individual possesses a simple, honest, silent, and slow-witted character. When questioned about the case, they usually replied with a simple smile, indicating their difficulties in answering the questions. They were also challenged when asked to sign the letter of attorney. It was only afterwards that I understood that they were not much educated. Many among them had never graduated from an elementary school, thereby nearly illiterate. They even had difficulties in signing their names. After talking to them, I discovered that they had no knowledge that the land they possessed was state-owned; and did not have the faintest idea of how to rent the land from the government. They simply thought that since the government (New Taipei City Government) helped them by establishing the doorplates, constructing the ditches, and subsidizing the Harvest Festival, the government has given its consent to their usage of the land. They did not understand anything about why some people came to their hills to take photographs and survey; and why they were prosecuted after their statements were taken by the police.

The settlement in Kuai-Le Shan took form between 2001 and 2003. In 2002, the indigenous leader of the first generation, Dzi-Yuan Chang, intended to rent the land currently in use (the land in question), but his attempt was unsuccessful because of unclear regulations concerning the rental process. Afterwards, in 2014 and 2015, the New Taipei City Government, with the intention of providing the basic living standard to the community members, started to organize house numbers, so as to alleviate the legality problem in the indigenous use of the land. Such being the case, why were the community members accused of and prosecuted for illegal occupation of the land concerned? The reason was that the authority of regulation of the land at Kuai-Le Shan was shifted from the New Taipei City Government Forestry Bureau to the National Property Administration, Ministry of Finance. When the Administration received an anonymous report alleging the illegal occupation, the Administration

雖然族人一再表示真的不清楚、不知道占有國有地，但不得因不知法律而主張免除刑責，客觀外在的要件具備時，被起訴的族人就很難脫免刑責。

感謝台灣基隆地方法院多位法官，在詳查案情後，對被起訴的阿美族人從輕量刑，並就沒有前科的族人給予緩刑宣告，且援用過苛條款不沒收地上工作物。雖有地檢署檢察官就一審判決未宣告沒收部分，提起上訴，幸有台灣高等法院的數位法官果敢維持地院判決，讓族人能在快樂山安享晚年。

看著上了年紀、行動不便或重聽的快樂山族人，風塵僕僕地從基隆山上趕到台北博愛路開庭的模樣，心中總有萬般不忍。居住在此的阿美族人，大多是上了年紀的老人家，下一代已先後搬離，剩下幾乎是六、七十歲的長者，或無處可去，或無能力搬遷他處。新北市府與國有財產署已約明，快樂山上既有的門牌不得轉移，也不得再增加。倘政府有關單位不繼續扶助族人合法承租目前使用的土地，或許再過十數年，快樂山將會被人所遺忘，成為歷史名詞。



had no choice but to initiate the investigation and prosecution on this issue.

In fact, the National Property Administration had no intention to use the land concerned by itself, nor had any objection to the living of the tribe's people in harmony there. Actually the Administration was keen on addressing the legality issue in the use of the land concerned. Nevertheless, once the case was filed, the court is legally required to pass its judgment. The elements of the offence of occupying real property and violating the Soil and Water Conservation Act are clear. However, whether the element of intention was there is less clear. Therefore, although the tribe's people repeatedly stated that they had no knowledge of the land concerned being the public land, nor about the illegality of occupying the land, their responsibility couldn't be exempted for their ignorance of the law. As long as the objective elements of the offence were found, it was difficult for the prosecuted community members not to be found criminally responsible.

I thank the judges in the Taiwan Keelung District Court, who, after thoroughly investigating the cases, imposed lenient sentences for the Amis people, and passed suspended sentences for those without previous convictions. In addition, the Court, in application of the clause prohibiting the imposition of excessive burden on the community members, ruled that the yields of the land under superficies are not to be confiscated. Against that part of the judgment, the prosecutors in the District Prosecutors Office appealed on the ground that the court of first instance did not rule on the confiscation of the yields of the land under superficies. Nevertheless, the Taiwan High Court was resolute in upholding the original ruling of the District Court, thereby allowing the community members to enjoy their twilight years.

Witnessing the old, disabled, or hearing-impaired people of the Kuai-Le Shan community hurrying from the mountains in Keelung to Bo'ai Road of Taipei City to attend court sessions was unbearable. Most Amis people residing at the Kuai-Le Shan are at an old age: the younger generations have moved out, leaving behind elders in their 60s or 70s with nowhere to go or without the capability to relocate. The New Taipei City Government has agreed with the National Property Administration that the existing doorplates of the Kuai-Le Shan shall not be transferred or added. If the relevant authorities do not assist the people in arranging the legal means of renting the land currently in use, the Kuai-Le Shan community may be forgotten by the people and become a historical term after several decades.