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Contested Citizenship and Statelessness in Question: An Analysis of Cases of Overseas Taiwanese People and Tibetan Exiles in Taiwan

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Prologue

In 2020, Taiwan's success in fighting the COVID-19 pandemic was widely covered in global media. These stories revealed that Taiwanese citizens live in a strong economic and democratic entity, enjoying the privilege of traveling around the world with their powerful passports. However, their citizenship status might be ambiguous when it comes to formal recognition of their nationality. When Taiwanese people travel or migrate to other countries, some of those same countries do not accept Taiwanese passports. Some do not categorise them as Taiwanese, as the travellers wish, but as Chinese instead. This specific situation can eventually lead to Taiwanese citizens taking "stateless" status on their legal documents in other countries.

Turning back to Taiwan itself, where Taiwanese citizens do not need to wonder about their citizenship status, Tibetan exiles who live there face a complicated situation regarding their citizenship status. After they flee from Tibet and reside in South Asia, their citizenship status in South Asia hinders travelling. Tibetan exiles' travelling involves numerous applications for visas, requires invitations from the host country, and generates high uncertainty for their freedom of mobility. Nevertheless, many Tibetan exiles in South Asia choose to keep a stateless identity, even though, in some cases, local governments in that area had already offered them chances to obtain new citizenship. Though there are debates within their community, research also shows that many Tibetan exiles consciously hold statelessness as their preference, despite having to face various difficulties in their lives in South Asia as a result.¹ This preference for statelessness has knock-on consequences when members of this group travel to Taiwan, e.g. as marriage migrants or refugees.

¹ Melynn C. Goldstein, "Ethnogenesis and Resource Competition among Tibetan Refugees in South India: A New Face to the Indo-Tibetan Interface," in *Himalayan Anthropology: The Indo-Tibetan Interface*, ed. James F. Fisher, reprint ed. (Berlin, New York: De Gruyter Mouton, 2011), 395–420, <https://doi.org/10.1515/9783110806496.395>; Dorsh Marie de Voe, "Keeping Refugee Status: A Tibetan Perspective," *Center for Migration Studies Special Issues* 5, no. 2 (1987): 54–65, <https://doi.org/10.1111/j.2050-411X.1987.tb00494.x>; Carole McGranahan, "Refusal as Political Practice: Citizenship, Sovereignty, and Tibetan Refugee Status," *American Ethnologist* 45, no. 3 (2018): 367–79, <https://doi.org/10.1111/amet.12671>; Julia Meredith Hess, "Statelessness and the State: Tibetans, Citizenship, and Nationalist Activism in a Transnational World," *International Migration* 44, no. 1 (2006): 79–103, <https://doi.org/10.1111/j.1468-2435.2006.00356.x>; Robert Sloane and Elizabeth Brundige, *Tibet's Stateless Nationals: Tibetan Refugees in Nepal* (Berkeley, CA: Tibet Justice Center, 2002), <http://www.tibetjustice.org/reports/nepal.pdf>.

This research asks why these two groups of people—overseas Taiwanese and Tibetan exiles in Taiwan—might choose to be “stateless,” even if this status might cause problems in their daily lives. Even though these two groups have apparently distinct citizenship statuses, the decision of adopting statelessness shows their similarity: the shared problems of unclear political identity connected to unstable citizenship status. However, under what circumstances do members of these groups take statelessness as their legal identity, or even identify with it? What factors push them to make this decision?

In 2014, when I was working in an NGO in Taiwan, Taiwan Association for Human Rights, stateless cases had been in the working file of my desktop from day one of the job. These cases came to the human rights organisation in order to find a way to get rid of their stateless status, and obtain papers for legal residency. One group of cases consisted of Tibetan exiles in Taiwan. Usually, in Taiwan, stateless cases are people who were asked by the Nationality Act to denaturalise from their original nationality in order to obtain a Taiwanese one, but who failed to obtain the latter in the end. However, the Tibetan cases had—and have—different stories. They entered Taiwan as stateless; and their exiled status was understood as statelessness in the Taiwanese legal system. At that time, I did not question the stateless status of Tibetan exiles. It seemed to me natural that they entered as stateless persons, if they were neither foreigners such as Indians—India being a place where they lived and from which they migrated to Taiwan—nor Chinese, as implied by their being subject to the PRC government controlling Tibet. If neither of these identities was theirs, then they could only be stateless—at least, in the Taiwanese legal system.

At the same time, the Taiwan Association for Human Rights and other human rights groups were arguing for the adoption of the draft of the Refugee Act,² to empower people like Tibetan exiles to obtain better institutional help and to become equipped with basic rights that could serve them for their daily life in Taiwan. However, it is also ambiguous—and arguably uncertain—whether a refugee status issued by the

² There is no refugee law in Taiwan currently. Even though the government drafted the Refugee Act in 2005, as of the completion of this thesis in August 2022, that act has not yet been passed by parliament. See: Kristina Kironka, “Taiwan’s Road to an Asylum Law: Who, When, How, and Why Not Yet?,” *Human Rights Review* 23, no. 2 (2022): 241–64, <https://doi.org/10.1007/s12142-021-00644-y>.

Taiwanese government, which does not participate in the UN, can help Tibetan exiles much more than the stateless status they already hold.

In the Taiwanese legal system, Tibetan exiles obtained different legal statuses connected to their Tibetan identity, (which I explain in detail in Chapters Three and Five). In my work experience I saw layers of status for Tibetan individuals, bestowed by the ROC legal system, confused the Tibetan exiles' identity—as they could be nationals of the ROC, foreigners from other countries, and stateless persons in the international community. When I worked in the NGO I did not dwell on these layers but focused more on whether any of these legal statuses could serve them, even if only partially functional due to their uncertain personal status. I asked whether any layers of the status might work in concert to help them obtain residence right in Taiwan. For the benefits of Tibetan exiles behind the cases in my desktop, what concerned me most were institutional discriminations towards them, and the logistical challenges they faced: how they could argue for themselves and seek aid from a legal perspective. However, by reflecting on these cases—especially when most of them got stuck in an unending cycle of negotiation with the government—structural obstacles for Tibetan exiles became unavoidable and unbearable.

Compared to Tibetan exiles' experience with statelessness above, the idea of choosing to be a stateless person still seems very strange to a Taiwanese person like me, even though I have been working with these cases. Afterwards, Taiwanese cases also came to my attention. Some news reports described people forced to accept “Chinese” as a legal identity by foreign authorities; people who were then struggling to regain their Taiwanese identity—to move from being forced to identify as citizens of the PRC, back to being citizens of the ROC. As a result, they sought ways to escape this Chinese identity, even to the point of taking stateless status. In these cases, it was not the possibility of being stateless that surprised me, but, rather, the determined choice to take stateless status. I found this choice especially gripping, given that stateless cases at the UN and arguments in my files showed that statelessness needed to be eliminated as soon as possible. I also attributed the fight for residence rights of Tibetan exiles in Taiwan to their statelessness—the argument being that the Taiwanese government should not keep them as stateless, as that would keep them

from holding proper citizenship right. Thus, for me, these overseas Taiwanese choosing statelessness seemed risky and abnormal.

Through studying the cases above, I learned that even though taking stateless status might seem abrupt or impractical, under the circumstances in some Taiwanese cases, these same cases demonstrated the conditions that pushed people to make this decision. By which I mean: people who accepted statelessness did not do so out of nowhere. Usually, in these cases of taking statelessness, there might be other options for the individuals concerned to select as their legal identity; nevertheless, they do not want to choose those other options, as they do not identify with them. Statelessness embodies uncertainty: implying a possibility without a definite definition of citizenship status. In these situations, the other citizenship status was undesirable while statelessness was all the more acceptable. But statelessness as a remedy for some people can also lead to other issues, such as obligations at the international law level for host states. As a result, it is not common to see the authorities give statelessness as an option.

The hardship of taking statelessness reveals two things. Firstly, it is an inevitable fact that statelessness is a target in international law—in fact, a target which the UN seeks to eliminate. Secondly, it indicates that persons with stateless status are not safeguarded by an effective authority. Making matters even more complex, different “stateless” cases show there are also different forms of statelessness. For example, Tibetan cases in Taiwan or in India enjoy some rights that are associated with their identity status as foreigners or foreign spouses, or simply as Tibetans. In the coming chapters, I will explain more thoroughly Tibetans’ citizenship situation in Taiwan and the dilemma of their statelessness.

Furthermore, Taiwanese people who take stateless status do not experience most of the inconveniences of statelessness. This is not to say that they do not suffer for their statelessness, but it is different from stateless cases in general. Also, statelessness is not often seen as a remedy for Taiwanese identity as it requires authorities offering statelessness as an option so that people can jump to statelessness. Even though citizenship status might seem fluid, given the shifts between Taiwanese citizenship, Chinese citizenship and statelessness, it is also

difficult for individuals to change their legal identity from the ground up. Finally, the systematisation or computerisation of registration for citizenship and/or identity limits the possibility of flexible management of registration by civil servants, forcing the civil servants to choose a registered identity for the individual concerned, in their system. These questions have inspired me in my search for a more detailed picture of this precarious citizenship status—statelessness—in two related, complex Taiwanese contexts: dilemmas of identity for overseas Taiwanese and for Tibetan exiles in Taiwan. As a result, my research was inspired by not just the legalities of Tibetan and Taiwanese people's plight of citizenship but the stories and struggles, and choices of the people concerned.

Chapter One. Introduction

I. Introduction

This research examines the statelessness of Tibetan exiles in Taiwan and overseas Taiwanese. The former are Tibetans who fled Tibet due to political, religious, or educational reasons; the latter, in this research, are Taiwanese people who reside abroad—from the long term to the short term, even as exchange students. I have selected these two groups as the focus of this research because they share contested citizenship, which stems from the disputed statehood of Tibet and Taiwan, respectively. Furthermore, from the perspective of these groups' agency, they exhibit a tendency to prefer statelessness when advocating for their political identity. Their legal identity has undergone a series of redefinitions under Taiwan's legal structure and citizenship system, complicating their citizenship status as Tibetans or Taiwanese and resulting in repeated denials of their political identity. The denial of political identity is particularly salient for Tibetan immigrants and Taiwanese emigrants; their movement across borders triggers a similar experience of being refused the right to maintain their citizenship status. This choice to embrace statelessness as a legal measure deviates from the norm that people will not maintain such a vulnerable identity, statelessness, as their citizenship status. This has drawn my attention to investigate the scenarios and how they developed the legal discourses.

These two groups of people both experience "statelessness" when they confront their changes of legal identity during the process of settlement. For the Tibetan exiles, when they travel to Taiwan for marriage or work, their refugee status signifies a stateless status. For overseas Taiwanese, their Taiwanese identity may produce dilemmas for them when they leave Taiwan, given the contested nature of that citizenship; however, even with these identity dilemmas, they do not see themselves as stateless. As a result, due to the twists of identity, "stateless" may become a possible identity for Taiwanese people when they walk across different borders or even reside in new states.

My research focuses on these two groups of people—Taiwanese overseas and Tibetan exiles—and examines the legal framework pertaining to citizenship in Taiwan. Although the statelessness of Tibetan refugees is more obvious, both groups share a certain national status in Taiwan as well as contested statelessness. I chose to study these two groups in order to compare various conditions and consequences attached to “being stateless,” and the formation of identity recognition in a Taiwanese legal context.

Having briefly outlined the background of my research topic, this chapter will explain that topic in more detail, provide a literature review, and describe expected research outcomes. This chapter also explains certain terms used to describe the Taiwanese government body, and jargon related to the administration system of Taiwan. Finally, I will conclude with an outline of my thesis.

II. Research Topic

This research is a socio-legal study, based on Tibetan exiles in Taiwan and overseas Taiwanese who face a change of legal identity and, as a result, sometimes choose statelessness as their identity. In order to discuss this topic, I will first briefly explain certain key terms: statelessness, citizenship, and nationality.

I use a broader concept for statelessness in this research than *de jure* statelessness,³ which indicates the legal status of no nationality. I also apply *de facto* statelessness: the status of ambiguous citizenship that has some elements in common with *de jure* statelessness. The concept of statelessness will be discussed more thoroughly in the literature review. However, the “statelessness” in this research does not align fully with the *de jure* /*de facto* statelessness distinction. Rather, it represents a citizenship status substituted for an undesired citizenship—the latter springing from intricate international relations connected to the ambiguous, contested citizenship of overseas Taiwanese and Tibetan exiles. As well as digging further into the concept of

³ In this research, statelessness is used as a notion to describe an uncertain legal status containing one’s political identity but does not fully reflect statelessness in international law. In the literature review of this chapter, I will explain stateless status in legal terms.

statelessness, other essential terms in this research—nationality and citizenship—must be defined.

In the context of international law, “nationality” is most often used to indicate the legal membership of a country,⁴ even though the word can also convey other meanings: such as, for example, a common ground on which people may foster a shared identity within a political community.⁵ However, in this research, nationality is sometimes used in a legal context to denote legal identity, which is part of citizenship. Besides, with the discussion of national identity that assumes a common ground for citizens in a specific political community, nationality suggests an imagined community that shares similar values or political perspectives. This common ground assumption overlooks the differences and needs of different groups of people, by assuming the same value system, and ignores that fact national identity might not accord with multicultural and transnational migration in different contexts.

Citizenship here is used not only to indicate “the membership of a community”⁶ associated with citizens’ civil, political and social rights,⁷ but also to include the capacity to participate in socioeconomic and cultural life.⁸ In short, I adopt a broadened conceptualization of citizenship here, to examine the apparent differences or the nuances of the concept—as people claiming rights and arguing for the content of citizenship accords with their trying to hold the citizenship they desire.

The statelessness of these overseas Taiwanese and Tibetan exiles in Taiwan stems from the legal framework of Taiwan, and its complicated international relationships considering the legacy of its legal status as the Republic of China (ROC). In this case, the formal name for the nation—the ROC—was the former regime of China from the beginning of the 20th century until 1949. After 1949, and the retreat to the island of Taiwan, the ROC represented the whole of China for several decades, while the Chinese Communist Party founded the People’s Republic of China (PRC)

⁴ Jo Shaw, *The People in Question: Citizens and Constitutions in Uncertain Times* (Bristol: Bristol University Press, 2021), 13.

⁵ David Miller, *Citizenship and National Identity* (Cambridge, UK: Polity Press, 2000).

⁶ Thomas Humphrey Marshall, *Citizenship and Social Class*, ed. T. B. Bottomore (London: Pluto Press, 1992).

⁷ Marshall, *Citizenship and Social Class*.

⁸ Engin F. Isin, *Citizenship and Identity*, ed. Patricia K. Wood (London: SAGE Publications Ltd., 1999), 14.

and was refused official recognition by some parts of the international community such as the United States.⁹ However, after international recognition of the PRC shifted, the statehood status of Taiwan became more problematic. The government of the ROC insisted on claiming sovereignty over all China, including the mainland—at least until martial law, imposed in 1949, was lifted with the democratisation of Taiwan in 1987. Until 1987, however, this sovereignty claim compelled the international community to consider the sovereign issue of Taiwan as an argument for legitimate ROC government, and thus resulted in a lack of international recognition of Taiwan's statehood.¹⁰ Meanwhile, the PRC deliberately blocked Taiwan's international participation so as to undermine their international support.¹¹ Nowadays, Taiwan has built up certain informal international relationships, but finds it difficult to maintain international relations with other countries without formal and stable diplomatic relationships.¹²

Such issues do not only occur in Taiwan. The plight of uncertain citizenship is a common problem for citizens of contested countries. Due to contested statehood and/or the lack of de jure recognition of other states, people from these countries can encounter difficulties with their citizenship—though the scope of the difficulty depends

⁹ The history of the representation of China on the international stage involves the Cold War between free-market capitalism and communism, representing by two leading superpowers, the United States and the former Soviet Union, respectively. After the Chinese Civil War, the Chinese Communist Party claimed sovereignty of all China and established the PRC, seen as an ally to the Soviet Union. Therefore, even though the ROC had lost the Chinese Civil War and fled to Taiwan, the ROC in Taiwan was soon seen as a frontline against Communism with the support of the US. Countries including the US recognised the ROC as representing China for decades, until the US established diplomatic relations with the PRC at the beginning of 1970.

¹⁰ James R. Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2006), <https://doi.org/10.1093/acprof:oso/9780199228423.001.0001>; Lung-chu Chen, "The Evolution of Taiwan Statehood," in *The U.S.-Taiwan-China Relationship in International Law and Policy* (New York: Oxford University Press, 2016), 71–94, <https://doi.org/10.1093/acprof:oso/9780190601126.003.0004>; Frank Chiang, *The One-China Policy State, Sovereignty, and Taiwan's International Legal Status* (Amsterdam, Netherlands: Elsevier, 2018); Rowan Nicholson, *Statehood and the State-Like in International Law* (Oxford: Oxford University Press, 2019), <https://doi.org/10.1093/oso/9780198851219.001.0001>

¹¹ Brian C. H. Fong, Jieh-min Wu, and Andrew J. Nathan, eds., *China's Influence and the Center-Periphery Tug of War in Hong Kong, Taiwan and Indo-Pacific* (Abington, Oxon: Taylor & Francis Group, 2020).

¹² Yanxian Zhang and Shihong Chen, *Taiwan Zhu Quan Yu Gong Shi Wai Jiao [Sovereignty of Taiwan and Diplomacy for Identity]*, ed. Yanxian Zhang and Shihong Chen, Chu ban, Lu Se Zhi Zheng Shi Lu ; 4 (Taipei: Cai tuan fa ren Wu Sanlian Taiwan shi liao ji jin hui [Wu Sanlian Taiwan Foundation], 2012); Guo li zheng zhi da xue ren wen zhong xin [Liberal Art Center of National Chengchi University], ed., *Duo yuan shi ye xia de Zhonghua Minguo wai jiao [Diplomacy under diverse perspectives]* (Taipei Shi: National Chengchi University, 2012). Xianghua Zhou, *Taiwan guo ji guan xi shi : li lun yu shi shi de shi jiao (1949-1991) [The history of Taiwan international relations]*, ed. Zhilin Dong and Xinrong Cai, BOD yi ban, Xin, Zuo biao; 23 (Taipei Shi: Xin rui wen chuang, 2017).

on how contested the statehood is.¹³ Therefore, lack of de jure recognition, and the troubles Taiwanese confront, explain the legal framework and international context of the problem for Taiwanese citizens.

Relatedly, Tibetan exiles worldwide, who have experienced colonisation by different regimes and who have struggled with the sovereignty claims of a government in exile,¹⁴ confront identity disputes in person: whether Tibetan identity can be seen as a political status that defines their citizenship. In other words, since the Tibetan government in exile cannot exercise sovereignty over their territories, Tibetans experience further doubts when claiming their Tibetan political status as a valid citizenship. Turning specifically to Tibetan exiles in Taiwan: their political status as Tibetans runs up against the legal framework of the ROC, which constitutionally includes Tibetans as nationals but legally frames them as stateless persons and immigrants. Note that the class of Tibetan exiles considered in this research covers only Tibetans coming indirectly from Tibet, having sought refuge in other countries first—especially in South Asia. It does not cover the case of Tibetan immigrants coming directly from Tibet to Taiwan.

This thesis examines the distinctions between legal statelessness and other informal categories of statelessness and citizenship. It develops these concepts by considering them not just as legal terms but also as practices located within society and community. I explore how people perceive their legal status, as well as how this relates to their citizenship, in cultural, social and political aspects. As concerns statelessness, my research shows not only that it is an identity placed on these groups of people, but also that it can be an identity in which they actively participate, in different contexts. In other words, statelessness may be problematic and negative for most groups of people, but it still might contain a productive quality for some cases. This thesis shows the oppression of contested citizenship through exploration of cases

¹³ Gëzim Krasniqi, “Contested States as Liminal Spaces of Citizenship: Comparing Kosovo and the Turkish Republic of Northern Cyprus,” *Ethnopolitics* 18, no. 3 (2019): 298–314, <https://doi.org/10.1080/17449057.2019.1585092>. Gëzim Krasniqi, “Contested Territories, Liminal Politics, Performative Citizenship: A Comparative Analysis,” *Robert Schuman Centre for Advanced Studies Research Paper no. RSCAS 2018/13* (2018), <https://doi.org/10.2139/ssrn.3157555>.

¹⁴ Fiona McConnell, “Citizens and Refugees: Constructing and Negotiating Tibetan Identities in Exile,” *Annals of the Association of American Geographers* 103, no. 4 (2013): 967–83, <https://doi.org/10.1080/00045608.2011.628245>.

of overseas Taiwanese and Tibetan exiles in Taiwan; furthermore, it illustrates the fluid, ever-changing nature of citizenship: in which people's identities are constructed and through which the cases in this thesis represent their identity in a productive manner.

III. Contribution to the Field

My research can be seen as significant from a number of different angles. Firstly, the research explains the plight of two groups of citizens under the shadow of contested sovereignty by depicting the legal framework within which they exist, as well as their legal mobilisation connected to the legal discourses for citizenship rights. I employ both bottom-up and top-down approaches, to analyse the dynamic relationships of contested sovereignty and citizenship, to investigate how states exercise their authority to designate the legal identities of people with liminal citizenship and to evaluate how people react to having such identities assigned to them. Secondly, placing these practices within a wider geopolitical context gives a productive perspective on the debates about international norms of citizenship. I also pose questions on Taiwan's statehood in terms of international law, resituating the issue as one of contested statehood. I do this instead of using the model of "two competing government disputes" between Taiwan and China, as this model isolates the issue of Taiwan's statehood from debates concerning the contestation of state sovereignty. Thirdly, statelessness used as a strategic identity yields a space for people to cultivate their citizenship during the mobilisation of their citizenship rights in other states. It highlights people's agency and creativity, deployed to obtain their rights, and shows the dynamic interactions between them and the government of their host countries. In addition, my research explores 1) the cases of Tibetans' unique triple identity in Taiwan, 2) statelessness as active citizenship, and 3) the ambiguous status of full citizenship of Taiwanese people within and without Taiwan—all to present the fluid and performative nature of citizenship. However, it is worth noting that my research points out a potential issue for those with contested citizenship and statelessness. Namely: while there are clear similarities between groups sharing uncertain citizenship, the differences in their plights are also apparent. The problem may be more figurative for overseas Taiwanese—concerning, as it does, citizenship's symbolic significance—compared to the problems for Tibetan exiles—increasing the difficulties of their socioeconomic lives due to the lack of legal status and basic rights. Lastly, my

research investigates how representation can be seen in these cases: how social, cultural and political dimensions of citizenship relate to each other in arguments concerning citizenship.

The Taiwanese legal system has made citizenship in Taiwan a unique space: one in which to consider how citizenship status can be interpreted into diverse identities, in different contexts. Taiwanese people may be granted visa-free entry to many states with their passports, but there are also a few states who do not recognise these passports as valid travel documents. This inconsistent situation signifies the unstable legal citizenship status of Taiwanese. Even given these potential difficulties, from the perspective of the Taiwanese people, the citizenship status which signifies their identity in legal, social, and cultural aspects is essential for them as who they are. These three dimensions are intertwined, and influenced by each other; however, the political dimension relates to the actions of authorities, whose decisions may conflict with the political identity a Taiwanese citizen perceives. During changes of legal identity, individual Taiwanese use different strategies to deal with an identity they do not accept. In order to reject that identity and retain their Taiwanese one, their legal mobilisation uses specific actions focused on challenging the bureaucratic system in other states. A stateless status then becomes a way to keep this issue open, thus avoiding the undesirable identity. Turning to Tibetan exiles in Taiwan: their conflict of identity may be traced back to particularities of the ROC legal system. However, with their refugee identity and their exile experiences, statelessness is another identity they accept and with which they identify, as they themselves embody the unresolved sovereign plight of Tibet. In short, statelessness—for these two groups of people—shows that an ambiguous and uncertain status can also become a productive identity to keep open, for the concerned individual, other means to negotiate for the identity they truly desire.

This research, therefore, seeks to fill certain gaps in citizenship research concerning Taiwan, especially from the perspective of citizenship precarity. Moreover, it shows the options that overseas Taiwanese and Tibetan exiles in Taiwan have in today's international law scheme as well as within the Taiwanese legal framework. The options are limited, and usually unsatisfactory in the given circumstances. Nevertheless, with these options, we are able to see how people exercise their agency

using legal discourse, in order to preserve the core of their identity as Taiwanese or Tibetan, and, eventually, to see how citizenship status is formulated dynamically: not only by the legal system or bureaucracy through which state power operates today, but also by the people. Simultaneously, the limitations of their actions stem from their choices, and the legal structures behind the structure of their citizenship are present in their citizenship discourse. My research applies democratic participation to refocus on going past limitations, in order to highlight people's mobilisation for equality in citizenship.

IV. Taiwan's Legal Structure: Historical Context

As my research concerns the precarious citizenship of Taiwan and focuses on two categories of people—overseas Taiwanese people and Tibetan exiles in Taiwan—I will briefly clarify the context of the Taiwanese legal and constitutional systems, to illuminate the specific citizenship status of Taiwanese people. Since Chapter Three specifically addresses the statehood of Taiwan in more detail, at this stage I will only discuss the framework of the legal system: to provide a basic understanding of the context for conflicts of citizenship affecting overseas Taiwanese as well as Tibetan exiles.

Taiwan, with its sovereignty-contested statehood,¹⁵ raises citizenship concerns for both immigrants and Taiwanese alike. In order to understand how ambiguous its statehood is, it is necessary to look at the legal status of Taiwan in international terms, as well as the legal history of Taiwan concerning its sovereignty. From the perspective of international law, the legal status of Taiwan has been debated for decades. Taiwan is not recognised as a state in international law terms by most states internationally; however, its government still participates in the international community as a member, such as in World Trade Organisation, Asia-Pacific Economic Cooperation, Association

¹⁵ A great amount of research exists on the topic of Taiwan's statehood: Mikaela L. Ediger, "International Law and the Use of Force against Contested States: The Case of Taiwan," *New York University Law Review* 93, no. 6 (2018): 1668–1706; Frank Chiang, *The One-China Policy: State, Sovereignty, and Taiwan's International Legal Status* (Amsterdam, Netherlands: Elsevier, 2018); Chen, "The Evolution of Taiwan Statehood"; Nicholson, *Statehood and the State-Like in International Law*; Barry Bartmann, "Between De Jure and De Facto Statehood: Revisiting the Status Issue for Taiwan," *Island Studies Journal* 3, no. 1 (2008): 113–28, <https://doi.org/10.24043/isj.218>; Brad R. Roth, "The Entity That Dare Not Speak Its Name: Unrecognized Taiwan as a Right-Bearer in the International Legal Order," *East Asia Law Review*, 2007, <https://doi.org/10.2139/ssrn.1015120>. The statehood of Taiwan will be further discussed in Chapter Three.

of Asian Election Authorities, etc. However, in the case of Taiwan, participation in the international community does not grant statehood.¹⁶ The issue is that, even without de jure recognition, Taiwan is a self-governing polity, with its election, tax and military system, and therefore performs sovereignty over the geographical space of Taiwan and its peripheral islands. Nevertheless, lack of international recognition shows there are some concerns about its statehood.

Concerns about the statehood of Taiwan relate to Taiwan's historical connection to the Republic of China. Starting from the Treaty of Shimonoseki of 17 April 1895, and until the end of World War II, Taiwan was a Japanese colony. Japan surrendered in 1945 and renounced all rights to its colonised territories; Taiwan's legal status has been an issue ever since. According to the Cairo Declaration of 1 December 1943, the Allies declared that "Manchuria, Formosa and the Pescadores, shall be restored to the Republic of China."¹⁷ (Taiwan was also known as Formosa at that time.) The content of the Cairo Declaration was mentioned in the Potsdam Declaration of 26 July 1945 by the heads of governments of the United States, United Kingdom and China.¹⁸ The declaration was to call for surrender from Japan; it was first ignored by Japan but later accepted. These two declarations implied that the sovereignty of Taiwan should be considered—but when the Treaty of Peace with Japan was signed by Japan and the other parties in 1951, due to the difficulty of two rival entities claiming sovereignty over China, the Chinese government was not invited to be a party to the treaty. Sir Kenneth Younger, the British delegate to the Japanese Peace Conference at which the treaty was signed, explained:

The treaty also provides for Japan to renounce its sovereignty over Formosa and the Pescadores Islands. The treaty itself does not determine the future of these islands. The future of Formosa was referred to in the Cairo Declaration, but that Declaration also contained provisions in respect to Korea, together with the basic principles of non-aggression and no territorial ambitions. Until China shows by her action that she accepts those provisions and principles, it will be difficult to reach a final settlement of the problem of Formosa. In due course, a solution must be found, in accord with the purposes and principles of the Charter of the United Nations. In the meantime, however, it would be wrong to

¹⁶ James R Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2006), <https://doi.org/10.1093/acprof:oso/9780199228423.001.0001>.

¹⁷ 38 AJ Supp 8 (1944).

¹⁸ Potsdam Declaration, "Proclamation Defining Terms for Japanese Surrender Issued," at Potsdam, July 26, 1945, <https://www.ndl.go.jp/constitution/e/etc/c06.html>

postpone making peace with Japan. We, therefore, came to the conclusion that the proper treatment of Formosa in the context of the Japanese peace treaty was for the treaty to provide only for renunciation of Japanese sovereignty.¹⁹

In sum, the treaty purposefully circumvented Chinese involvement because of the argument between the two Chinese governments of the time. In the end, the treaty only contains the following statement: “Japan renounces all right, title and claim to Formosa and the Pescadores.”²⁰ Afterwards, in 1952, the Japanese government and the government of the Republic of China (ROC) concluded a separate treaty. However, the ROC at that time only governed Taiwan and the peripheral islands, while the People’s Republic of China (PRC) had established its government in Beijing and held the territory of China. This is because soon after WWII, the Chinese Civil War took place between the ruling party, the Chinese Nationalist Party (also known as Kuomintang, KMT), and the Chinese Communist Party (CCP). Meanwhile, the ROC released the “Temporary Provision Effective During the Period of National Mobilisation for Suppression of the Communist Rebellion to the Constitution at Civil War”: a provision that granted the president the power to take emergency measures, implement martial law and otherwise supersede the Constitution.²¹ For example, according to Article 39 of the Constitution, “The President may, in accordance with law, declare martial law with the approval of, or subject to confirmation by, the Legislative Yuan.”²² However, Article 1 of the Temporary Provision states that Article 39 of the Constitution does not bind the president during a period of national mobilisation. This violation of the balance of power lasted for decades, as, using it, the KMT imposed martial law soon after they fled to Taiwan in 1949. Afterwards, the KMT, while ruling the ROC, continued to claim its sovereignty over the whole of China as an exiled government.

The sovereignty of Taiwan after WWII was still unsettled within the international community, even after Japan and the ROC made a separate treaty. For example, the

¹⁹ The Conference for the Conclusion and Signature of the Treaty of Peace with Japan, Washington: Department of State Publication, 1951, 93.

²⁰ Article 2 of the Treaty of Peace with Japan, <https://treaties.un.org/doc/publication/unts/volume%20136/volume-136-i-1832-english.pdf>

²¹ Temporary Provision Effective During the Period of National Mobilisation for Suppression of the Communist Rebellion to the Constitution at Civil War, Encyclopaedia of Taiwan, <https://nrch.culture.tw/twpedia.aspx?id=3860>

²² Constitution of the Republic of China (Taiwan), §39 (1947).

British government suggested the resolution should be negotiated at the international level to ensure the safety and benefits of Taiwanese people, and did not agree that the issue of sovereignty of Taiwan should be understood as a unsettled issue of the Chinese Civil War.²³ It also maintained the opinion that the absence of either entity in the Peace Treaty left the de jure sovereignty of Taiwan and the peripheral islands undecided.²⁴ A similar attitude was adopted by the United States. The Chinese government in exile did not seem qualified for exercising sovereignty in Taiwan during that time. However, with the outbreak of the Korean war in 1950, the US dispatched its Seventh Fleet to ward off threats from the PRC towards Taiwan.²⁵ This military arrangement lasted for decades until the US started to build an official diplomatic relationship with the PRC in the 1970s. In other words, as the Korean War led the US to reconsider the status of Taiwan during Cold War in geopolitical terms, the ROC in Taiwan started to obtain military aid from the US. During the Korean War, the US Secretary of State, John Foster Dulles, proposed the Island Chain Strategy to contain the spread of the Soviets and their allies. Taiwan was included in the first island chain; becoming the front line, together with the Kuril Islands, the Japanese Archipelago, the Ryukyu Islands, the northern part of the Philippines Archipelagos, and Borneo.²⁶ After this strategy was adopted, the ROC government obtained the support of the US and was recognised as the legitimate ruler of China, even representing China in the UN until 1971. However, over the years, international recognition shifted from the ROC to PRC: the UK recognizing the latter in 1950, Switzerland in 1950, France in 1964, and Canada in 1970. In 1971, Henry Kissinger visited China in person, representing US President Richard Nixon, in order to negotiate with the PRC government and break the international ice.²⁷ In the same year, the PRC replaced the ROC in the UN, with the support of the majority of the member countries. The United Nations General Assembly Resolution 2758 says:

²³ J. P. Jain, “The Legal Status of Formosa: A Study of British, Chinese and Indian Views,” *The American Journal of International Law* 57, no. 1 (July 10, 1963): 25–45, <https://doi.org/10.2307/2196175>.

²⁴ The Conference for the Conclusion and Signature of the Treaty of Peace with Japan.

²⁵ The Taiwan Straits Crises: 1954–55 and 1958, <https://history.state.gov/milestones/1953-1960/taiwan-strait-crises>

²⁶ “United States Defence Policy in the West Pacific: The ‘Island Defence Chain,’” *World Today* 11, no. 10 (1955): 438–48. China’s Reach Has Grown; So Should the Island Chains, 2018, <https://amti.csis.org/chinas-reach-grown-island-chains/>

²⁷ Geoffrey Warner, “Nixon, Kissinger and the Rapprochement with China, 1969–1972,” *International Affairs* 83, no. 4 (2007): 763–81, <https://doi.org/10.1111/j.1468-2346.2007.00652.x>; “The Kissinger Telephone Conversations: A Verbatim Record of U.S. Diplomacy, 1969–1977,” National Security Archive (U.S.), (Ann Arbor, Mich: ProQuest LLC, 2008).

Recognising that the representatives of the Government of the People's Republic of China are the only lawful representatives of China to the United Nations and that the People's Republic of China is one of the five permanent members of the Security Council.

Decides to restore all its rights to the People's Republic of China and to recognise the representatives of its Government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they unlawfully occupy at the United Nations and in all the organisations related to it.²⁸

During the discussion of the representation of China in the UN, the US and other countries also argued about the status and representation of Taiwan. However, the discussion was inconclusive; in the end, the resolution only talked about the transfer of seats between the PRC and the ROC. Even though the resolution did not address the status of Taiwan, the UN has since demonstrated a continuing unfavourable attitude towards Taiwan and Taiwanese people.²⁹

Countries such as the UK and the US also hold an ambiguous attitude towards the status of Taiwan, seeing it as unsettled. As concerns the recognition of legitimate Chinese government, they shifted their recognition in the 1970s; however, for the status of Taiwan, they merely acknowledge the statement of the PRC insisting that Taiwan is a part of it. According to the United States Congress Research Service Report, the US “has its own position... on Taiwan’s status... not recognising PRC’s claim over China nor Taiwan as a sovereign state.”³⁰ After Taiwan’s expulsion from the UN, its diplomatic relations with many other countries were severed. However, the ROC built up unofficial relationships with these countries and set up representative offices with its own the diplomatic system. Even with these efforts, only fourteen states have a formal diplomatic relationship with the ROC today.

With this isolation, due to the almost complete severance of diplomatic relationships, the ROC had to change its diplomatic strategy from 1972 on. On the one

²⁸ Restoration of the Lawful Rights of the People's Republic of China in the United Nations, <https://digitallibrary.un.org/record/192054>

²⁹ Chapter Three contains the discussion of Taiwan’s participation in the UN.

³⁰ Susan V. Lawrence and Wayne M. Morrison (Congressional Research Service), “Taiwan: Issues for Congress,” 2017, 83, <https://fas.org/sgp/crs/row/R44996.pdf>.

hand, it employed a “flexible diplomacy policy” to emphasise its “substantial” but unofficial engagement with other states, thereby ensuring economic relationships while insisting on being the only legitimate Chinese government.³¹ In addition, the ROC competed with the PRC in the international community through “cheque book diplomacy”—that is, obtaining recognition from foreign countries through financial aid.³² However, in the 1980s, the ROC also faced more and more pressure from within, as the Taiwanese people increasingly rejected the KMT-led authoritarian regime. All sorts of social movements were thriving during that time, including political movements for democracy; likewise, international pressure for democratisation was increasing, especially from the US.³³ In 1987, the KMT government lifted martial law, marking a milestone for the democratisation of the 1980s. Taiwanese politics gradually changed with democratisation, with the legalisation of opposition political parties, the easing of restrictions on press licensing, and many different types of reform within education and political systems.³⁴ Since then, the localisation of politics, the government applied a new policy—“pragmatic diplomacy”—to confront its diplomatic isolation. Pragmatic diplomacy admits the existence of the PRC and does not insist on the ROC being the sole representative of China.³⁵ The policy offers a two-state solution, which responds to the status quo in a subtle way in order to deal with the conflicting sovereignty claims over China. In 1991, the ROC government unilaterally announced that the Chinese Civil War had ended, by terminating the Period of National Mobilization for the Suppression of the Communist Rebellion.³⁶ Economic investment from Taiwan to China began in 1988, and rose rapidly to \$14 billion in total by 2000.³⁷ At the same

³¹ Parris H. Chang and Maysing H. Yang, *Taiwan's Expanding Role in the International Arena*, ed. Parris H. Chang and Maysing H. Yang (London: Routledge, 2015), <https://doi.org/10.4324/9781315700502>.

³² Thomas M. Leonard, “Taiwan, Relations with Latin America,” in *Encyclopedia of U.S.-Latin American Relations* 3, 2014, 854–55, <https://doi.org/10.4135/9781608717613.n797>; Joel Atkinson, “China-Taiwan Diplomatic Competition and the Pacific Islands,” *Pacific Review* 23, no. 4 (2010): 407–27, <https://doi.org/10.1080/09512748.2010.495998>.

³³ Lawrence and Morrison, “Taiwan: Issues for Congress.”

³⁴ J. Bruce Jacobs, “Myth and Reality in Taiwan’s Democratisation,” *Asian Studies Review* 43, no. 1 (2019): 164–77, <https://doi.org/10.1080/10357823.2018.1543253>; Tak-Wing Ngo and Yi-Chi Chen, “The Genesis of Responsible Government under Authoritarian Conditions: Taiwan during Martial Law,” *China Review (Hong Kong, China: 1991)* 8, no. 2 (2008): 15–48; Gary Rawnsley and Dafydd Fell, “Democratization, Liberalization and the Modernization of Election Communication in Taiwan,” (London: SOAS Research Online, University of London, 2005), 1–30; Jaushieh Joseph Wu, *Taiwan's Democratization: Forces Behind the New Momentum* (Oxford: Oxford University Press, 1995).

³⁵ Chang and Yang, *Taiwan's Expanding Role in the International Arena*.

³⁶ Jiunn-rong Yeh, *The Constitution of Taiwan: A Contextual Analysis*, (Oxford: Hart Publishing, 2016).

³⁷ Statistics of Investment to Mainland China, the Investment Commission, Ministry of Economic Affairs of the ROC, https://www.moeaic.gov.tw/business_category.view?seq=3&lang=ch

time, the military threat from the PRC did not end; for example, it launched missiles towards Taiwan when the latter's first presidential election took place in 1996.³⁸ The political tension between the PRC and the ROC escalated as the ROC was reforming towards de jure independence along with democratisation. The pragmatic diplomatic policy was simultaneously an example of recognising the PRC and accepting the de jure recognition of both the PRC and the ROC by other states.

In the 1980s, the political policy of the ROC was to engage in the international community as a benign member. The ROC government also distinguished itself from the PRC by dropping its sovereign claim over all China / the mainland, focusing instead on the sovereignty of Taiwan itself. However, even though the government of the ROC saw the relationship between the PRC and the ROC as state to state in the late 1990s, government attitudes have changed from “two state relations” to “two area relations,” and then back to “two state relations” —all thanks to political changes brought by the elections of 2008 and 2016, making the sovereign claim inconsistent. At the same time, the government of the ROC tries to justify itself as the legitimate government of Taiwan. An example of this is the amendment of Taiwanese constitutional law as concerns the scope of territory. In the amendments, the ROC added the definition of “free area” to Taiwan, in specific contrast to “mainland area”, thus distinguishing “mainlanders” from Taiwanese in order to limit the right to vote to the Taiwanese people alone.³⁹ Nevertheless, it did not change the whole structure of the constitutional law, and left the sovereign claim over China unchanged. This, although the amendment seemed contradictory: negating the original meaning of the constitution by disconnecting the political representation of the “mainland” from Taiwan itself. In short, the pragmatic diplomacy policy is one of the shifts in political agenda that took place during those years. Furthermore, the political sector changed its attitude toward sovereignty, as well as towards people from mainland—the latter of which, by definition of the ROC, included Tibetans. In other words, the shift of the ROC's position on sovereignty changed the status of people formerly seen as nationals by law. Therefore, democratisation restricted people of the mainland, in their ability to adopt the citizenship of the ROC.

³⁸ Allen S. Whiting, “China's Use of Force, 1950-96, and Taiwan,” *International Security* 26, no. 2 (2001): 103–31, <https://doi.org/10.1162/016228801753191150>.

³⁹ Yeh, *The Constitution of Taiwan*.

The previous discussion covers how the Taiwanese government shifted its position during the decades from WWII, through the 1980s, and to the present day: from the ROC government taking itself as the legitimate government of China, to later, gradually, localising itself in Taiwan. From the perspective of Taiwanese people after WWII, though, the ROC government became the head authority after October 1945 due to the surrender of Japan—even though there were debates about the legitimacy of the ROC taking over Taiwan in the first place. The Taiwanese people were relieved by the overthrow of the Japanese colonisers at the end of WWII; however, their feelings soon became more complex due to the ROC government showing even more brutality, corruption, and exploitation. Conflicts soon took place due to arbitrary property seizure, corruption in the bureaucracy, discrimination against Taiwanese people, and forcible extortion of rice, coal and sugar for shipment back to China.⁴⁰ A widespread Taiwanese saying describes this situation: “The dogs leave, and the pigs come.”⁴¹ Simply put: the Japanese, who were the dogs, were noisy and cruel but at least guarded the home, while Chinese, who are pigs, are dirty due to their corruption and only care about eating. Another way of highlighting difference may be seen in Chinese people who came after WWI being called “extraprovincials” (*Waishengren*, meaning “provincials of other provinces), while Taiwanese were called “local provincials” (*Benshengren*).⁴²

⁴⁰ Yanxian Zhang, *Er Er Ba Shi Jian Ze Ren Gui Shu Yan Jiu Bao Gao* [*The Report of the Accountability of the 228 Incident*], ed. Yanxian. Zhang, Di 1 ban. (Taipei: Cai tuan fa ren Er er ba shi jian ji nian ji jin hui [Foundation of 228], 2006); Xueji Xu, *Er er ba shi jian 60 zhou nian ji nian lun wen ji* [*The February 28th incident of 1947, in retrospect on its 60th anniversary*], ed. Xueji Xu (Taipei shi: Taibei shi wen hua ju, 2008); Zhangjian Huang, *Er Er Ba Shi Jian Zhen Xiang Kao Zheng Gao (Zeng Ding Ben)* [*An Analysis of the Reality of 228*], 2nd ed., Yuan Shi Cong Shu (Taipei Shi: Zhong yang yan jiu yuan, 2017).

⁴¹ Marukawa Tetsushi, “Yu Zhi Min Di Ji Yi Wang Hun Zhi Bo Dou Tai Wan de Hou Zhi Min Xin Li Di Tu [Psychological Process of Post-Colonisation in Taiwan],” *Chung Wai Literary Quarterly* 31, no. 10 (2003): 29–42; Nancy Hsu Fleming, *Gou Qu Zhu Lai: Er Er Ba Qian Xi Meiguo Qing Bao Dang an = Americans in Formosa, 1945-1947*, ed. Cai Dinggui Yi (Taipei Shi: Qian wei chu ban she, 2009).

⁴² “Waishengren” is often translated as “mainlander” in historical materials and previous research. It is in contrast to “islander,” the translation of “Benshengren.” However, this translation of “Waishengren” is misleading, as “mainlander” is used in other contexts: it also indicates Chinese people by the law of the ROC, “Daluran.” Indeed, the translation of mainlander is actually closer to the term “Daluren,” literally. Therefore, I use “extraprovincial” here, to indicate “Waishengren.” This usage may be seen in relevant research, such as: Tomonori Sugimoto, “Settler Colonial Incorporation and Inheritance: Historical Sciences, Indigeneity, and Settler Narratives in Post-WWII Taiwan,” *Settler Colonial Studies* 8, no. 3 (2018): 283–97, <https://doi.org/10.1080/2201473X.2017.1303596>.

On 28 February 1947, an agent of the State Monopoly Bureau of Alcohol and Cigarettes unfairly fined and beat a woman selling contraband. The crowd could not tolerate this violence and attacked the agent—who then accidentally shot and killed one bystander. This incident rapidly escalated, as the Taiwanese were angered by an accumulation of conflict; it soon became an uprising.⁴³ Afterwards, the military of the ROC started massacring Taiwanese people, purposefully killing the elite Taiwanese.⁴⁴ This uprising is called the “228 Incident.” During the 228 Incident and the following “White Terror,” the extraprovincials (*Waishengren*) were seen as oppressors and possessors⁴⁵—the tension between extraprovincials (*Waishengren*) and local provincials (*Benshengren*) lasted for decades. Later, in 1949, the KMT-led ROC government lost the Chinese Civil War and fled to Taiwan. That same year, the KMT imposed martial law and the White Terror began.

During the martial law period, the government persecuted and imprisoned dissents to maintain totalitarianism, operating Taiwan as an anti-communist base against the PRC. People’s resistance came to a peak in the 1980s. Protests against dictatorship kept raising awareness of democracy in the general public and eventually obtained international support.⁴⁶ Social movements of all types thrived, including environmental movements, agricultural movements, feminism, etc. Huge pressure from both Taiwanese society and the international community forced the KMT-led government to democratise.⁴⁷ Nevertheless, democratisation also brought the conflicts of different groups of people in Taiwan to the fore. On the one hand, the

⁴³ Zhang, *Er Er Ba Shi Jian Ze Ren Gui Shu Yan Jiu Bao Gao* [The Report of the Accountability of the 228 Incident]; Xu, *Er er ba shi jian 60 zhou nian ji nian lun wen ji* [The February 28th incident of 1947, in retrospect on its 60th anniversary]; Huang, *Er Er Ba Shi Jian Zhen Xiang Kao Zheng Gao (Zeng Ding Ben)* [An Analysis of the Reality of 228].

⁴⁴ Zhang, *Er Er Ba Shi Jian Ze Ren Gui Shu Yan Jiu Bao Gao* [The Report of the Accountability of the 228 Incident]; Xu, *Er er ba shi jian 60 zhou nian ji nian lun wen ji* [The February 28th incident of 1947, in retrospect on its 60th anniversary]; Huang, *Er Er Ba Shi Jian Zhen Xiang Kao Zheng Gao (Zeng Ding Ben)* [An Analysis of the Reality of 228].

⁴⁵ This does not mean the extraprovincials (*Waishengren*) were exempt from oppression. Many of them—scholars, students, and ordinary people—were imprisoned, or otherwise persecuted, during the White Terror.

⁴⁶ Jennifer Lind, “Democratization and Stability in East Asia,” *International Studies Quarterly* 55, no. 2 (2011): 409–36, <https://doi.org/10.1111/j.1468-2478.2011.00652.x>; Shelley Rigger, “Studies on Taiwan’s Democracy and Democratisation,” *International Journal of Taiwan Studies* 1, no. 1 (2018): 141–60, <https://doi.org/10.1163/24688800-00101008>; J. Bruce Jacobs, *The Kaohsiung Incident in Taiwan and Memoirs of a Foreign Big Beard* (Leiden: Brill, 2016), <https://doi.org/10.1163/9789004315921>.

⁴⁷ A similar case elsewhere in Asia can be seen in South Korea, as its government was forced to democratise in the 1980s. Lind, “Democratization and Stability in East Asia”; Erik Mobrand, “More Than Anti-Communism: The Cold War and the Meanings of Democracy in Taiwan,” *Journal of Contemporary Asia* 50, no. 4 (2020): 618–34, <https://doi.org/10.1080/00472336.2020.1716990>.

privileged groups of extraprovincials (*Waishengren*) and their co-operators, mostly local provincials (*Benshengren*), maintained the KMT as a power base and controlled the media. On the other hand, people who were against the KMT formed a new party, called the Democratic Progressive Party (DPP) in 1986. In the coming decades, these two parties became the mainstream political power brokers in Taiwan. As the two parties hold different ideologies concerning the status of Taiwan and its relationship with China, the status of the ROC and the relationship with the PRC are one of their main differences.⁴⁸ The political party preference may also show the different attitudes towards the status of Taiwan in Taiwanese society. Over the years, the identification of Taiwanese shifted between Chinese, both Taiwanese and Chinese, and Taiwanese; an understandable shift, given that self-identification relates to political transitions and cultural renewal.⁴⁹ It makes sense that with democratisation, local people have developed a different understanding of their identity. However, these shifts also point out the fluidity of people's self-perceived identity, as well as that identity's links to changing forms of government.

V. Literature Review

My research examines citizenship conflicts for overseas Taiwanese and Tibetan exiles in Taiwan, and people's legal strategies for maintaining their identity through legal status. The discussion about citizenship concerns the statehoods of Taiwan and Tibet, as regards how Taiwanese or Tibetan people's citizenships are constructed. In this regard, the literature review explores the legal framing of citizenship and the relations between citizenship and statehood. Furthermore, the literature review relates this research to the current discussion of irregular citizenship and the utilisation of statelessness. This offers an essential framing for the arguments in upcoming chapters, regarding the different strategies adopted by various groups in the face of conflicts of identity and uncertain legal status.

My literature review focuses on three main topics: legal consciousness, the debates regarding citizenship types (which include Westphalian nationality), and

⁴⁸ Rigger, "Studies on Taiwan's Democracy and Democratisation."

⁴⁹ Chapter Three contains the discussion of the shift of Taiwanese people's self-identification.

Taiwanese migration research. First, I start with the concept of legal consciousness. This concept was important to my interviews with people who had experienced statelessness: not only to understand their reactions to the legal system and the political aspects of citizenship and its related nationality, but also to conceptualize how people understand their legal identity and react to identity in legal terms. Moreover, this research also examines citizenship in different forms, as well as its relationships to social, economic and political aspects. I discuss statelessness in detail, as it is a key part in my examination of debates concerning Tibetan exiles and Taiwanese citizenship. Finally, the last section provides an overview of the research on migration in Taiwan, along with naturalisation procedures.

A. Legal Consciousness in Social Movements

The idea of “legal consciousness” is used in analyses of the individual's understanding of law in society, and of people's interpretation of the law.⁵⁰ In this sense, consciousness means participation—and legal consciousness means not just thinking societally, but also acting in society. The distinction between individual agency and structure can become blurred, as legal consciousness challenges society while remaining part of it.⁵¹ The dynamic relationship between agency and structure denotes continuing changes and challenges in society; this means that dynamism is also contextual in society and in time. In the process of the movement, people may come to certain understandings and formulate social actions in response to social relationships. The perspective of legal consciousness looks at law in society, and not at the performance of law in legal institutions.⁵² This means that the theory does not limit legal discourse to its use in an official state form. Rather, it defines how people understand laws, and how they apply them in their lives—as well as the framing of the laws themselves and the way they are used in social movements.⁵³ Research on legal consciousness highlights individuals’ social interactions with the law, helping

⁵⁰ Susan S. Ewick and Patricia Silbey, *The Common Place of Law: Stories from Everyday Life*, ed. Susan S. Silbey (Chicago ; University of Chicago Press, 1998), 35.

⁵¹ Patricia Ewick, “Consciousness and Ideology,” in *The Blackwell Companion to Law and Society* (Oxford, UK: Blackwell Publishing Ltd, 2004), 80–94, <https://doi.org/10.1002/9780470693650.ch5>.

⁵² Ewick and Silbey, *The Common Place of Law*.

⁵³ Laura Beth Nielsen, “Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment,” *Law & Society Review* 34, no. 4 (2000): 1055–90, <https://doi.org/10.2307/3115131>.

researchers dig into the legal discourses of everyday life—including the utilization of legal institutions.⁵⁴ This approach also highlights individuals' social interactions with law, helping researchers dig into the legal discourses of everyday life, including peoples' utilisation of legal institutions. However, legal consciousness can be contradictory in different contexts, at different times, due to the complexity of legal orders. Therefore, legal consciousness is flexible due to changing times and various interpretations of the law.⁵⁵

From the work on social movements in the United States, researchers find that there is a tendency for actors to frame their grievances as legal issues.⁵⁶ Moreover, legal structures also frame actors' understanding of their rights and rules; this means that the law is the "dominant symbolic framework."⁵⁷ The mutually dynamic interpretation of law shows that law was challenged by the actors even as it was used to formulate their understanding of their rights. Therefore, actors apply legal framing—that is, employ legal discourse—to situate their demands in the context of social movements. Additionally, actors use legal framing strategically, to constitute their rights discourse.

In addition, starting from legal consciousness, this research also examines legal mobilisation, and, in particular, centres individuals who approach citizenship with institutionalised practices—involving legal and other official institution institutions. Moreover, research shows that during legal mobilisation, actors' legal discourse seeks to reform policy developments and implementation processes in political struggles and social conflicts.⁵⁸ In other words, in social movements, legal mobilisation becomes a strategy to challenge current policy and its practice. For example, in Taiwan, legal mobilisation can be seen in women's movements. In the 1990s, Taiwanese feminists

⁵⁴ Dave Cowan, "Legal Consciousness: Some Observations," *Modern Law Review* 67, no. 6 (2004): 928–58, <https://doi.org/10.1111/j.1468-2230.2004.00518.x>.

⁵⁵ Michael W. McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (Chicago: University of Chicago Press, 1994).

⁵⁶ Kathleen E. Hull, "The Political Limits of the Rights Frame: The Case of Same-Sex Marriage in Hawaii," *Sociological Perspectives* 44, no. 2 (2001): 207–32, <https://doi.org/10.2307/1389611>; McCann, *Rights at Work*.

⁵⁷ Nicholas Pedriana, "From Protective to Equal Treatment: Legal Framing Processes and Transformation of the Women's Movement in the 1960s," *American Journal of Sociology* 111, no. 6 (2006): 1718–61, <https://doi.org/10.1086/499911>.

⁵⁸ McCann, *Rights at Work*.

advocated gender equality via constitutional mobilisation, by constitutional litigation and by advocating constitutional amendments to include a chapter on gender equality. Legal mobilisation can be seen not only as a way to exert direct influence on the formal, legal level, but also as a strategy in movements to raise society's awareness of them.

One of the focuses of this thesis is people's actions regarding their citizenship: how they try to reformulate it during their travel, migration and settlement. For example, before or after arriving in new places, Tibetans and overseas Taiwanese need to take actions to ensure their residence rights and legal status, as they may encounter issues with the same due to their Tibetan or Taiwanese identity. The uncertain nature of their citizenship influences their legal status in foreign states. In order to keep their legal status in alignment with their preferred identity, these groups of people argue for that same identity— even when it is denied. According to my interviews, these actions may take place at an individual or group level. For instance, many Tibetans in Taiwan look for help from their Tibetan fellows, or from other people who have similar experiences, in order to find ways to argue for their right to reside in or enter Taiwan. These social actions aim to change social conditions or power relationships which they can no longer accept; however, many of these conditions or relationships are regulated by law in society. This means that actors also focus on the legal system and react to the law. When people assert their rights in an “active demand based on [a] legal norm”,⁵⁹ they take legal actions, advocate their demands by lobbying parliament or by other means, using legal discourse to change the social conditions connected to their struggles. As a result, legal mobilisation is an essential part of the social movements in which these people participate.

Accordingly, my research adopts a context-specific method in order to understand how individuals shape their legal discourses and strategies in social movements.⁶⁰ Also, this socio-legal study uses a bottom-up approach, as it focuses on how people perceive and react, and not just on how the law regulates. Therefore, this dissertation makes use of interviews to analyse legal consciousness and legal

⁵⁹ Frances Kahn Zemans, “Legal Mobilization: The Neglected Role of the Law in the Political System,” *The American Political Science Review* 77, no. 3 (2018): 690–703, <https://doi.org/10.2307/1957268>.

⁶⁰ Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans* (Chicago: University of Chicago Press, 1990); McCann, *Rights at Work*.

mobilisation, centring people's experiences and their perspectives on the transformation of their citizenship.

B. Citizenship for Stateless Persons?

This socio-legal study aims to understand people's perception of citizenship with their precarious citizenship resulting in statelessness. Therefore, a review of the relevant literature is needed, to identify appropriate approaches to thinking about citizenship in such contexts.

1. Legal Status without Full Citizenship

This research examines contested citizenship, as it relates to two groups of people. This specific section considers different forms of citizenship embedded within this capacious and ambiguous term. Firstly, citizenship debates are diverse on the ambiguous status of citizenship and other forms of legal status. On the one hand, debates concern forms of citizenship and the necessity for full citizenship—e.g. citizenship with all legal political rights, including voting, compared to forms of citizenship which might lack the right to vote. For example, Elizabeth F. Cohen believes that full citizenship not only fails to fulfil the requirements of different groups of people, but also “institutionalise[s] both difference and inequality.”⁶¹ That is, she emphasises that citizenship requires ethical conformity, material participation, and self-representation—and that it can exert unequal demands on different groups of people. Accordingly, she claims that what she terms “semi-citizenship” —a citizenship status not considered full citizenship, as it lacks political rights but one still possessing significant rights, such as rights of residence and basic social right—can present a more diverse nature of citizenship, one potentially more flexible and practical, for people who do not seek the benefits of full citizenship.⁶² Democratic states could find it beneficial as well, since, in immigration cases, some states face problems with what scope of rights to grant to immigrants who do not naturalise. Therefore, a more inclusive semi-citizenship might be the answer to this situation. Earlier, Tomas

⁶¹ Elizabeth F. Cohen, *Semi-Citizenship in Democratic Politics* (Cambridge: Cambridge University Press, 2009), 12.

⁶² Cohen, *Semi-Citizenship in Democratic Politics*.

Hammar introduced the idea of “denizenship” as an alternative status: conveying the status of permanent residency without citizenship for immigrants, one lacking political rights but possessing social rights.⁶³ Both of these constructs argue that a more fluid and flexible identity and citizenship status can be built up with diverse genres of alternative citizenship, in order to to construct new ways of thinking about citizenship. In these cases, states may consider the option of constructing a new concept of citizenship to avoid giving immigrants full citizenship whilst protecting their rights to stay and live—it being understood as an alternative, allowing immigrants to have a portion of full citizenship but not complete political rights unless they naturalise.

Although there are different genres of durable and accessible non-citizenship statuses which can provide social rights to people, the problem of citizenship is not just about rights. Scholars such as Will Kymlicka and Wayne Norman argue that citizenship is not only a status with rights, but also an identity for different cultural groups.⁶⁴ The common norms of citizenship may seem neutral, but they eschew conflicts between the majority and minorities by enshrining the languages, institutional setups and political power of the majority, which in turn minimises the influence of minorities. Therefore, in a multicultural society, how can citizenship account fairly for ethnocultural differences, whilst at the same time maintaining the norms of democratic citizenship? In other words, the framework of citizenship must accommodate diversity for a pluralistic society, and also nourish the virtues, institutions and solidarity of democratic states. Qualities necessary for the democratic society to function, such as institutions, democratic practices, and solidarity of the society, might not be consistent with the claims to rights of the minority. Additionally, balancing democratic values and diversity, for citizenship in multi-ethnic states, also ensures that the minority can be represented in the domain of politics. The extent of political participation of minorities can bring up further discussion, not only about the low representation of minorities in democratic systems, but also about immigrants or people not seen as citizens.⁶⁵

⁶³ Tomas Hammar, “State, Nation, and Dual Citizenship,” in *Immigration and the Politics of Citizenship in Europe and North America*, ed. William Rogers Brubaker (Lanham, MD: University Press of America, 1989), 81-96.

⁶⁴ Will Kymlicka and Wayne Norman, “Return of the Citizen: A Survey of Recent Work on Citizenship Theory,” *Ethics* 104, no. 2 (1994): 352–81, <https://doi.org/10.1086/293605>.

⁶⁵ Kymlicka and Norman, “Return of the Citizen.”

A multi-cultural society must deal with conflicts of diversity on the one hand and ensure the promotion of democratic values on the other. However, the emphasis on democracy points out the importance of political participation, and its influence on other aspects of citizenship. On this subject, Nancy Fraser articulates that to confront all different kinds of citizenship difficulties outlined above, theories focusing on socioeconomic redistribution or cultural recognition are insufficient. Cultural recognition and social equality are both required to achieve justice. By combining political representation in a constitutive perspective—regarding the state’s jurisdiction and its regulations structuring contestations—redistribution, recognition and representation should all be emphasised to identify essential questions of justice in this globalising world.⁶⁶ Moreover, when considering participation in politics, the controversial question can be: how can democracy be incorporated into citizenship when it is also necessary to incorporate political justice into citizenship? That is, citizenship with political justice should also consider democratic participation, to ensure the representation of different groups and their interests. As for rethinking justice on a global scale, both international mobility and present-day geopolitics have shown that political justice is not only a domestic issue. Fraser reminds us that the political dimension of justice can decide the scope of other dimensions, and that the issue of inclusion and exclusion is an example of the political dimension of democratic justice.⁶⁷ In other words, cultural recognition and socioeconomic distribution, both connected to political participation, should support each other. Furthermore, for political participation to include social equality and cultural recognition, democratic systems may contain mechanisms to ensure the cooperation of each domain today. My research applies these theories of combining recognition, redistribution and representation to cultivate a holistic description of citizenship in society and in law.

2. The Uncertainty of Citizenship

In addition to examining different aspects of citizenship, debates on types of citizenship reveal the uncertainty of citizenship itself. Lori uses the notion “precarious citizenship” to describe an increasing trend of permanent citizenship becoming

⁶⁶ Nancy Fraser, “Reframing Justice in a Globalising World,” *New Left Review* 36, November-December 2005, 69-88.

⁶⁷ Fraser, “Reframing Justice,” 80.

inaccessible to different groups of minorities globally.⁶⁸ Immigrants are not the only ones who may experience precarious citizenship; there exist different groups of “internal ‘others’” who are not recognised as having full citizenship by the government in the states of their residence.⁶⁹ Scholars also point out that, in developing countries with weak documentary citizenship, disadvantaged immigrants become invisible to the states.⁷⁰ Furthermore, without valid papers, minorities and immigrants are made irregular immigrants or residents—and then, when these countries deploy their citizenship systems to regulate the mobility of people and the membership of the state, people without papers will face issues of statelessness. Therefore, if the state develops a sufficiently robust citizenship infrastructure, the space of ambiguous status for one's citizenship may vanish.⁷¹ This means that, even though the citizenship question might seem harmless to people with irregular citizenship statuses (including statelessness) in the past, with certain changes embodied in a citizenship infrastructure system— a system that bureaucracy builds up for registration and data utilisation connected to citizenship, usually computerised these days—individuals' lack of a permanent legal status would not fit into that same system. These people will then confront difficulties in their life while the bureaucratic, automated, and/or computerised system renews citizenship registration and increases the importance of citizenship registration for activities of daily life. For example, stateless cases in the Dominican Republic reflect how the management of citizenship made certain residents perceived as foreigners, not belonging to the dominant ethnic group.⁷² In addition, from the perspective of documentary citizenship, the citizenship document is not just a tool to identify the legal status of individuals, but also a means to regulate one's legitimate movement, via the monopolised control of the state.⁷³ On top of this, exclusion from citizenship may happen during changes of political regimes; such as in Slovenia and

⁶⁸ Noora A. Lori, “Statelessness, ‘In-Between’ Statuses, and Precarious Citizenship,” *The Oxford Handbook of Citizenship*, March (2017): 742–66, <https://doi.org/10.1093/oxfordhb/9780198805854.013.32>.

⁶⁹ Lori, “Statelessness, ‘In-Between’ Statuses, and Precarious Citizenship.”

⁷⁰ Kamal Sadiq, *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries* (New York: Oxford University Press, 2011), <https://doi.org/10.1093/acprof:oso/9780195371222.001.0001>.

⁷¹ Lori, “Statelessness, ‘In-Between’ Statuses, and Precarious Citizenship.”

⁷² Eve Hayes de Kalaf, *Legal Identity, Race and Belonging in the Dominican Republic* (London, UK: Anthem Press, 2021), <https://doi.org/10.2307/j.ctv22pzz22>.

⁷³ John Torpey, “Coming and Going: On the State Monopolization of the Legitimate ‘Means of Movement,’” *Sociological Theory* 16, no. 3 (1998): 239–59, <https://doi.org/10.1111/0735-2751.00055>.

Croatia.⁷⁴ Combining with the case of Estonia, it shows that constitutional transformation may leave minorities in a vulnerable situation. Changes to, or the stability of, one sovereignty can result in different frameworks for citizens. Therefore, these exclusions may yield de facto stateless persons who cannot enjoy the assistance and protection of the state where they reside, even though they still hold citizenship of that country on paper.⁷⁵

States performing sovereignty—granting some people citizenship and depriving others of it—is another cause of statelessness. States may denaturalise or denationalise people after power transitions and/or civil war conflicts. For example, Ethiopia denationalised ethnic Eritreans in 1998, due to its conflict with Eritrea.⁷⁶ A similar case happened in Estonia after the fall of Soviet Union; the Estonian government demanded that residents prove familial Estonian nationality going back to World War II. (Estonia amended its Citizenship Law in 2015, and the number of stateless persons has decreased since then.⁷⁷) The relationship between sovereignty and citizenship can take other forms. Friedman takes the example of the mobility of Chinese immigrants to Taiwan as a performance of a sovereign act, through the process of issuing and examining travel documents by the Taiwanese authorities.⁷⁸ That is, even though there exist sovereignty arguments between the ROC and the PRC, the ROC takes control of its border and grants entry permits to Chinese immigrants. As a result, this is an example of how Taiwanese government performs its sovereignty.

The different terms above conceptualise the lack of full citizenship for people and present the possibility of citizenship as more flexible. But they also bring up the

⁷⁴ Ljubica Spaskovska, “The Fractured ‘We’ and the Ethno-National ‘I’: The Macedonian Citizenship Framework,” *Citizenship Studies* 16, no. 3–4 (2012): 383–96, <https://doi.org/10.1080/13621025.2012.683249>; Jo Shaw and Igor Štiks, eds., *Citizenship after Yugoslavia* (London: Routledge, 2013).

⁷⁵ Lori, “Statelessness, ‘In-Between’ Statuses, and Precarious Citizenship”; Oxana Shevel, *Migration, Refugee Policy, and State Building in Postcommunist Europe* (Cambridge, UK: Cambridge University Press, 2011).

⁷⁶ Katherine Southwick, “Ethiopia-Eritrea: Statelessness and State Succession,” *Forced Migration Review*, no. 32 (2000): 15–17.

⁷⁷ UNHCR Regional Representation and Northern Europe Stockholm, “Mapping Statelessness in Estonia Mapping,” 2016.

⁷⁸ Sara L. Friedman, “Marital Immigration and Graduated Citizenship: Post-Naturalization Restrictions on Mainland Chinese Spouses in Taiwan,” *Pacific Affairs* 83, no. 1 (2010): 73–93, <https://doi.org/10.5509/201083173>.

concern of uncertainty relating to the citizenship status of people who do not possess full citizenship. Citizenship uncertainty may not influence people's livelihood immediately, but it leaves people in a vulnerable situation.⁷⁹ Moreover, in these arguments, statelessness is not just the derivative of precarious citizenship. Rather, by excluding certain groups of people from full citizenship—purposefully and arbitrarily—the government may produce statelessness. Scholars such as Hammar emphasise the lack of political participation of people in society due to their immigrant identity, and suggest that political rights should tie to the place where one resides.⁸⁰ However, political rights are a core issue for full citizenship, even though granting voting rights to people without full citizenship is possible in some places today, such as in European countries like Belgium. Obviously, political participation is not just about voting, but also about how people's opinions are represented. Even though political participation requires more than voting, the right to vote still signifies a formal meaning for people obtaining political rights. The difficulty of granting political rights to non-citizens is a reason to consider other forms apart from full citizenship. It also points out shortcomings in discussions of the political rights associated with semi-citizenship, e.g., voting may not be discussed at all, given that semi-citizenship does not empower political participation. However, various forms of citizenship remind us of the importance of acknowledging “noncitizenship”—a term that Bloom uses to articulate that, even though noncitizenship has its vulnerabilities and not usually recognised as a relationship with the states in legal terms, people may still obtain this status for economic reasons such as job opportunities.⁸¹ Therefore, people with noncitizenship may participate in movements for migrants' right or use other non-institutional measures to express their political opinions as well.⁸²

Relatedly, as this research concerns two groups of people—overseas Taiwanese and Tibetan exiles in Taiwan—even though the ROC's legal framework introduces a confusing legal structure for Tibetan's legal status as nationals at the constitutional level, Tibetan exiles are treated as immigrants or stateless persons with

⁷⁹ Lori, “Statelessness, ‘In-Between’ Statuses, and Precarious Citizenship.”

⁸⁰ Tomas Hammar, *Democracy and the Nation State* (Florence: Routledge, 1990), <https://doi.org/10.4324/9781315258218>.

⁸¹ Tendayi Bloom, *Noncitizenship: Recognising Noncitizen Capabilities in a World of Citizens* (Abington, Oxon: Taylor & Francis Group, 2017), <https://doi.org/10.4324/9781315169736>.

⁸² Bloom, *Noncitizenship*.

special status in Taiwan. As a result, the connection between Tibetan exiles in Taiwan and the ROC might seem akin to the relationship between noncitizen and state.

3. *Citizenship in Contested States*

Other than types of citizenship, the citizenship issue in states with contested sovereignty is another crucial topic in this research considering the statehood of Taiwan. In the sovereignty-contested states, the status of citizenship becomes uncertain; in extremes, people may even be considered de facto stateless. Compared to de jure stateless persons who are under international frameworks, including UN conventions on statelessness,⁸³ de facto statelessness signifies people who cannot obtain state protection and assistance in different contexts.⁸⁴ Krasniqi points out that the internal and external contested sovereignty of a state influences citizenship rights; citizenship in contested states such as Kosovo and the Turkish Republic of Northern Cyprus (TRNC) is, therefore, as ambiguous and liminal as the statehood of these entities.⁸⁵ As the recognition of citizenship and the recognition of the statehood is somewhat mutual, the difference of citizenship between different contested states signifies the varying scopes of limited citizenship in context.⁸⁶ However, Krasniqi also articulates the dynamic process of sovereignty performance by contested states such as Kosovo and the TRNC:

The analysis of Kosovo and the TRNC demonstrates the ways in which the negative impact of state contestation is mitigated by the contested states' use of various novel and creative, formal or non-formal performative practices, such as closer engagement without recognition, as well as digital and public diplomacy campaigns aimed at increasing external presence and document recognition.⁸⁷

⁸³ These conventions are the 1954 Convention Relating to the Status of Stateless People, and the 1961 Convention on the Reduction of Statelessness. See: <https://www.unhcr.org/uk/protection/statelessness/3bbb25729/convention-relating-status-stateless-persons.html> ; <https://www.unhcr.org/uk/protection/statelessness/3bbb286d8/convention-reduction-statelessness.html>.

⁸⁴ Hugh Massey, "UNHCR and De Facto Statelessness," *Legal and Protection Policies Research Series*, no. April (2010): 66, <http://www.unhcr.org/4bc2ddeb9.html>.

⁸⁵ Krasniqi, "Contested States as Liminal Spaces of Citizenship."

⁸⁶ Krasniqi, "Contested States as Liminal Spaces of Citizenship."

⁸⁷ Krasniqi, "Contested States as Liminal Spaces of Citizenship," 299.

These states' practices, demonstrating sovereignty performance, not only include diplomatic actions concerning formal recognitions, but also involve other measures—informal engagement with other countries and document recognition across different governments. That is: recognition relations between states can also be informal, e.g. such as recognising passports from foreign countries.

According to the history of the development of citizenship in sovereignty-contested states, the political aspect of citizenship can be extremely significant for individual rights. Yen-Fen Tseng and Jieh-min Wu articulate the importance of the political dimension of citizenship; they analyse the immigration policies for Taiwanese migrants in China (meaning the PRC) and conclude that their movement, as well as their settlement in China, critically challenges the framework of citizenship in both states.⁸⁸ In other words, given the complexities of the cross-strait relationship, neither the PRC nor the ROC makes a clear claim to full recognition from the other country. Instead, the practice of immigration policies and citizenship-related affairs reveals that the two sides practice their sovereignty in ways that are not subordinate to each other. Tseng and Wu also argue that there is a tendency to stress economic participation and social and cultural conflicts, but that the political aspect of citizenship had been a neglected part of citizenship studies before in Taiwanese immigration studies until recent years. With the efforts of contemporary scholars, the importance of this dimension has been raised again.⁸⁹

The foregoing studies present conceptual dimensions of citizenship and terms of the debates concerning modern citizenship. My research applies these theories with reference to the uncertain status of Taiwanese citizens and Tibetan exiles in Taiwan, examining the role statelessness plays in accommodating different groups with different citizenship status. In other words, as a fluid citizenship status, statelessness may be used not only to convey the lack of full citizenship, but also to convey lack of full citizenship as an expression of people's demand for different identities. Some previous research argues for granting flexible noncitizenship and for the importance

⁸⁸ Yen-Fen Tseng and Jieh-min Wu, "Zhong Xin si Kao gong min shen fen de zheng Zhi mian Xiang: I ju Zhong guo zhi Tai wan ren gong min shen fen zheng ce Wei li [Bringing Politics Back In: Regulating Dual Citizenship of Taiwanese Migrants in China]," *Zheng zhi yu she hui zhu Xue ping lun [Societas: A Journal for Philosophical Study of Public Affairs]* 32 (March 2010): 93-143.

⁸⁹ Tseng and Wu, "Zhong Xin si Kao gong min shen fen de zheng Zhi mian Xiang."

of acknowledging noncitizens' existence and participation in society.⁹⁰ However, in addition to social rights, citizenship also includes personal identity—something which can be essential to each cultural group of people that embody its ethnic and political meaning. Even though noncitizens can still participate in politics of the country in which they live, a lack of voting rights shows the deficiency of the political right in formal democratic systems for those with liminal citizenship status. Furthermore, given the special inter-state relationship between China and Taiwan, people who travel across the strait embody critical controversies about citizenship between the states, in political terms. Citizenship in a contested-sovereignty state may become ambiguous for people using travel documents issued by the government of the contested state. From this perspective, statelessness can be a possible identity: although this group of people has citizenship to a certain degree, it can be liminal and conditional.

C. Statelessness and Identity

According to the 1954 UN Convention, a stateless person is someone “not recognised as a national by any state under the operation of its law.”⁹¹ The 1954 Convention and the 1961 Convention aim to ensure the basic rights of stateless persons, and also require that the member states of the UN avoid producing stateless persons. However, in the current day, statelessness still occurs, albeit for many different reasons: discrimination based on gender, religion or ethnicity; gaps in nationality laws; and more. Besides the stateless persons defined in the UN Convention—which can be understood as *de jure* statelessness—people who have a nationality but stay outside of the country and cannot obtain diplomatic protection from the original state may be seen as *de facto* stateless persons.⁹² *De facto* statelessness may be generated by different situations in a particular context,⁹³ it indicates that *de facto* stateless persons possess ineffective nationality, which may include the lack of full citizenship.

⁹⁰ Bloom, *Noncitizenism*.

⁹¹ The 1954 Convention Relating to the Status of Stateless People, §1(1), <https://www.unhcr.org/uk/protection/statelessness/3bbb25729/convention-relating-status-stateless-persons.html>

⁹² Massey, “UNHCR and De Facto Statelessness.”

⁹³ For example, the UNHCR expanded the definition of *de facto* statelessness in the 1990s to include more unexpected situations happening after the fall of Soviet Union. The concept of *de facto* statelessness is as follows: Persons who do not enjoy the rights attached to their nationality; Persons who are unable to establish their nationality, or who are of undetermined nationality; Persons who, in the context of State succession, are attributed the nationality of a State other than the state of their habitual residence. See: UNHCR, “Stateless Person Definition,” <https://emergency.unhcr.org/entry/52865/stateless-person-definition>.

As de facto statelessness is not clearly defined in a legal framework, it is under debate in statelessness studies. De facto stateless cases are mostly regarded as potential refugees from the perspective of international law.⁹⁴ The overlapping territory of refugee and stateless also includes de jure statelessness in this regard, when refugees are deprived of their nationality.⁹⁵ Additionally, Van Waas argues that there is only a limited grey area in which de facto stateless cases may be treated under the 1954 UN Convention; these cases are persons denied nationality “under the operation of any state’s law.” She then excludes cases of people who cannot exercise rights of citizens, deeming them a violation of human rights, but cases which cannot be justified as statelessness.⁹⁶ On the other hand, Tucker articulates that ineffective citizenship does not mean statelessness, as the existence of citizenship secures legal status and the relationship of the persons and their state. Even though people labelled as de facto stateless may find it difficult to argue for effective protection attached to their nationality, they still hold that nationality in legal terms. In short, the lack of effectiveness of citizenship should not be justified as de facto statelessness; instead, ineffective citizenship still maintains a legal bond to a state—and it should be the lack of a legal bond to a state that leads to statelessness. Tucker argues that those who claims to be de facto stateless should use other means, domestically and internationally, to tackle the ineffectiveness of citizenship and enjoy the rights equal to those of other citizens. Including ineffective citizenship would dilute the potency of international protocols for statelessness.⁹⁷

D. Migration Studies in Taiwan

Turning the focus back to Taiwan, relevant studies on immigration laws and immigrant issues need to be reviewed with particular attention to the legal grounds of nationality. Looking at the research on problems connected to Taiwan’s Immigration Act, or

⁹⁴ Laura Van Waas, “The UN Statelessness Conventions,” in Alice Edwards and Laura van Waas, *Nationality and Statelessness under International Law*, ed. Alice Edwards and Laura van Waas (Cambridge: Cambridge University Press, 2014).

⁹⁵ Van Waas, “The UN Statelessness Conventions”; UN, *A Study of Statelessness*, E/1112, New York: August 1949, <https://www.refworld.org/pdfid/3ae68c2d0.pdf>.

⁹⁶ Van Waas, “The UN Statelessness Conventions,” 78.

⁹⁷ Jason Tucker, “Questioning de Facto Statelessness by Looking at de Facto Citizenship,” *Tilburg Law Review* 19, no. 1–2 (2014): 276–84, <https://doi.org/10.1163/22112596-01902026>.

Nationality Act, previous work has focused mostly on migrant workers and marriage immigrants. Especially for Chinese marriage immigrants, the longer and harsher regulations for naturalisation compared to that for marriage immigrants of other national origins has been analysed.⁹⁸ On the one hand, a number of papers analyse the subjective elements of immigrant identity, and demonstrate that Taiwan's immigration policies are designed to exclude marriage immigrants because most of these are said to come from underdeveloped countries and to be economically disadvantaged.⁹⁹ Scholars also have compared Taiwanese-Chinese marriages with those involving other nationalities.¹⁰⁰ The longer process of naturalisation and additional requirements placed exclusively on women from China represents an unfair burden, they conclude. Studies on the pre-2008 cross-strait marriage question reveal obvious differential treatment accorded to immigrants from China compared to those from other countries, and point to nationalism as the most important cause of this phenomenon.¹⁰¹ National identity figures more prominently in studies on cross-strait marriages because of common fears that Chinese-born spouses do not fully identify with Taiwan as an autonomous nation. Furthermore, Friedman argues that via examining and issuing identity documents to Chinese immigrants, the Taiwanese government not only claims the national sovereignty of Taiwan but also blurs the sovereign standing with those documents' ambiguous features. This also extends the problem of cross-strait relationship, which means that this ambiguous and unclear notable inter-state relationship influences the issue of documents to Chinese

⁹⁸ Hsiao-Chuan Hsia, "Imaged and Imagined Threat to the Nation: The Media Construction of the 'Foreign Brides' Phenomenon' as Social Problems in Taiwan," *Inter-Asia Cultural Studies* 8, no. 1 (2007): 55–85, <https://doi.org/10.1080/14649370601119006>; Shan Jan Sarah Liu, "Chinese Migrant Wives in Taiwan: Claiming Entitlements, Resisting Inequality, and Rejecting Citizenship," *International Feminist Journal of Politics* 21, no. 4 (2019): 617–38, <https://doi.org/10.1080/14616742.2018.1522964>; Friedman, "Marital Immigration and Graduated Citizenship."

⁹⁹ Hsiao-Chuan Hsia, "Foreign Brides, Multiple Citizenship and the Immigrant Movement in Taiwan," *Asian and Pacific Migration Journal* 18, no. 1 (2009): 17–46, <https://doi.org/10.1177/011719680901800102>.

¹⁰⁰ Antonia Chao, "Xian dai xing Xiang Xiang yu Guo ji guan li de Chong to : yi Zhong Guo hun yin Yi min nu xing Wei yan jiu an li [Imagined Modernities, Transnational Migration, and Border Control: A case study of Taiwan's 'Mainland Brides]," *Tai wan she hui Xue kan [Taiwanese Journal of Sociology]* 32 (2004): 59-102; Hsia, "Foreign Brides, Multiple Citizenship and the Immigrant Movement in Taiwan."

¹⁰¹ Yuan-Hau Liao, "Quan Qiu Hua Qu shi Zhong hun yin Yi min Zhi ren Quan bao zhang : quan Qiu Hua , tai wan xin Guo zhu zhu Yi 、 ren Quan lun shu de guanxi [Marriage Immigrants' Human Rights in the Trend of Globalization, Neo-Taiwanese Nationalism and the Discourse over Human Rights]," *Si yu yan [Thoughts and Words]* 44, no. 3 (2006): 81-129, <https://doi.org/10.6431/TWJHSS.200609.0081>.

immigrants.¹⁰² Research shows that this unstable international relationship and anxiety towards China undermines migrant advocacy for Chinese marriage immigrants; those immigrants also being seen as threats to Taiwanese identity and integrity.¹⁰³ Additionally, Yen-Fen Tseng argues that Taiwan's policies on migrant workers reflects this international relationship, since migrant worker policy is introduced at the governmental level and negotiated between states exporting labour forces and the states introducing the migrant workers.¹⁰⁴ For a country such as Taiwan, implementation places issues of its sovereignty front and centre during the negotiation process between it and the countries sending over people to become guest workers.¹⁰⁵ Additionally, the introduction of "guest workers" does not include Chinese people for political reasons, given the disputes over the definition of Taiwanese citizenship and its scope as concerning the "mainlanders" in the 1990s in the Legislative Yuan. The discussion extended to the core of nationalism at that time, as well as to the definition of Taiwanese identity.¹⁰⁶

In another examination of the immigration policy relating to the cross-strait relationship, Chung adds the concept of "civic legacy" to the three dominant variables in current European and North American immigration and citizenship studies: culture, domestic political elites and international norms, as she finds "civic legacy" in civil society another significant variable from the cases of East Asia.¹⁰⁷ In her comparisons of immigration and citizenship policies in Korea, Japan and Taiwan, she points out that after democratisation in Taiwan, the resistance against Sinicisation from the KMT led to indigenisation/localisation. During this period, Taiwanese people discarded the ideology of Greater China, which had been imposed by the authoritarian KMT government. This detachment resulted in the indigenisation/localisation of ideology,

¹⁰² Sara L. Friedman, "Reproducing Uncertainty: Documenting Contested Sovereignty and Citizenship Across the Taiwan Strait," in *Citizenship in Question: Evidentiary Birthright and Statelessness*, ed. Benjamin N. Lawrence & Jacqueline Stevens (Duke University Press, 2017), 81-99.

¹⁰³ Rou-Lan Chen, "Beyond National Identity in Taiwan: A Multidimensional and Evolutionary Conceptualization," *Asian Survey* 52, no. 5 (2012): 845-71, <https://doi.org/10.1525/as.2012.52.5.845>.

¹⁰⁴ Yen-Fen Tseng, "Yin Jinwai Ji Lao Gongdeguo Zuzheng Zhi: Expressing Nationalist Politics in Guestworker Program: Taiwan's Recruitment of Foreign Labor," *Taiwanese Journal of Sociology* 32, no. 32 (January 1, 2004): 1-58, <https://doi.org/10.6786/TJS.200406.0001>.

¹⁰⁵ Tseng, "Yin Jinwai Ji Lao Gongdeguo Zuzheng Zhi".

¹⁰⁶ Tseng, "Yin Jinwai Ji Lao Gongdeguo Zuzheng Zhi".

¹⁰⁷ Erin Aeran Chung, *Immigrant Incorporation in East Asian Democracies* (Cambridge, UK: Cambridge University Press, 2020).

including cultural, economic, and political affairs. However, migrant advocacy does not conform to this political atmosphere, especially given complications from cross-strait politics.¹⁰⁸ As well, relevant research on immigrants' citizenship in Taiwan illustrates negotiations between states in which the government of Taiwan ignored both current stateless issues and the rights of immigrants, and immigrants' children, to nationality.¹⁰⁹

Previous studies on immigration in Taiwan have addressed both political issues and ideological problems. Much of this research depicts how the Taiwanese government exercises its sovereignty through border control, and how it differentiates Chinese immigrants from Taiwanese. However, although researchers such as Friedman point out the uncertainty of specific personal statuses as constructed by the legal framework of Taiwan, most studies lack any particular reflection on stateless persons. This lack is all the more important, as stateless persons specifically embody instability and tensions connected to Taiwan's international standing, political controversies and domestic conflicts. My research fills this critical gap, voicing, as well, concrete, true-to-life experiences of actual stateless persons.

My literature review explores forms of citizenship and defines the contested citizenship that Taiwanese people and Tibetan exiles have experienced in different contexts. The research in this dissertation applies theories of contested citizenship, performative citizenship, and legal consciousness, as well as Nancy Fraser's justice theory to examine the organic relations between citizenship and people. As for the utilisation of statelessness by these two groups of people under consideration here, my work does not argue that the Taiwanese people should be qualified as *de jure* stateless persons, as this approach cannot fully reflect the contested sovereignty of Taiwan and these individuals' precarious legal status. However, statelessness, as seen in this research, is an approach that serve as a productive way to respond to a denial of identity, even as it becomes the legal status which contains a contested identity, whether Tibetan or Taiwanese. Finally, Taiwanese immigrant research

¹⁰⁸ Chung, *Immigrant Incorporation in East Asian Democracies*.

¹⁰⁹ Susan York Kneebone, "Nationality and Identity in Regulation of International Marriage Migration in Southeast and East Asia: Children As Pawns of the State?", *University of Melbourne Legal Studies Research Paper*, no. 734 (2016), <https://doi.org/10.2139/ssrn.2816750>.

anticipates a complex immigration environment relating to the history and geopolitics under a conservative immigration policy.

VI. Research Questions

Concerning the sovereignty status of Taiwan, the citizenship issue in Taiwan can be confusing for both Taiwanese and non-Taiwanese. Namely, the ambiguous status which emerges from both international tension and the legal framework of Taiwan results in an unstable status for Taiwanese citizens. Although Taiwanese citizens hold a comparatively powerful passport, which allows them to cross different borders in the world, the majority of states do not de jure recognise Taiwan as a state. Therefore, holding this ambiguous status may cause identity problems, connected to Chinese and Taiwanese identity debates in different contexts. Tibetan exiles confront a similar problem within the regime of Taiwan, in which they are considered nationals of the ROC. In this understanding, though, their status as exiles is not recognised; and their identity is diminished to a mere assortment of cultural traits. Accordingly, I pose the following questions:

- How does the Taiwanese legal framework, intertwined with geopolitics, produce the precarious citizenship that results in a stateless status for Tibetan people in Taiwan, as well as statelessness for citizens of Taiwan when abroad?
- Secondly, how do these two groups perceive different aspects of their citizenship as being Taiwanese and Tibetan? How do they understand the difficulties concerning their citizenship in political terms, and how do they choose strategies to negotiate and relate to the citizenship with which they identify? Is there national identity for these two groups to be found, given these complex identity debates? How do they choose another vulnerable form of citizenship, such as statelessness, to perform who they are? And if they so choose: why?
- Lastly, how does statelessness reflect people's citizenship in social, legal, and cultural terms? How do they practice these three aspects of citizenship?

VII. Glossary of Terms and Definitions

This section explains the terms used in this thesis. As this is research involving the Taiwanese legal system, certain context-specific terms should be clarified. These terms primarily relate to the government bodies and specialised aspects of the citizenship system. Note that, throughout, the word “Yuan” represents the highest level of government.

Control Yuan

The ROC/Taiwan Constitution outlines five branches of government. They are the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Examination Yuan,¹¹⁰ and the Control Yuan. The Control Yuan is designed to supervise the administrative bodies. It is composed of members appointed by the president of the ROC and confirmed by the Legislative Yuan. They exercise the powers of impeachment, censure and audit.¹¹¹

Executive Yuan

According to the Constitution of the Republic of China (Taiwan), the Executive Yuan is the highest administrative body of the state.¹¹²

Legislative Yuan

According to the Constitution of the Republic of China (Taiwan), the Legislative Yuan is the highest legislative body of the state. Members of the Legislative Yuan are elected by the citizens of Taiwan every four years.¹¹³

¹¹⁰ According to Article 83 of the Constitution of the Republic of China, “the Examination Yuan shall be the highest examination organ of the State and shall have charge of matters relating to examination, employment, registration, service rating, the scale of salaries, promotion and transfer, the security of tenure, commendation, pecuniary aid in case of death, retirement and old age pension.” The Constitution of the Republic of China, §83, (1947).

¹¹¹ The Additional Articles of the Constitution of the Republic of China, §7, (2000).

¹¹² The Constitution of the Republic of China, §53, (1947).

¹¹³ The Additional Articles of the Constitution of the Republic of China, §4, (2000).

Hukou/Huko

Hukou/Huko(戶口) is a household registration system, used to identify an individual or individuals within the household. Similar systems can be seen in the whole area of East Asia: the Hukou/Huko system in China, the Koseki system in Japan, the Hộ Khẩu system in Vietnam, and the former Hoju system in South Korea.¹¹⁴ The Taiwanese Hukou/Huko system served as a community security system in different ways over the course of the 20th century: from an apartheid system instituted during Japanese colonisation and used to distinguish Taiwanese and Japanese, to a system segregating local provincials (*Benshengren*) and extraprovincials (*Waishengren*), to a system separating the military population and the general population before the democratisation.¹¹⁵ The Hukou/Huko system was reformed in 1992 with the amendment of the Household Registration Act. For example, the system now does not register people's occupation or their “original province,” which, in former times, was used to distinguish Taiwanese from Chinese/mainlander immigrants. The system now serves as a local population registration mechanism, at the household level. Within it, individuals are identified as voters in elections, given National Health Insurance coverage, and made eligible for social welfare, etc.

The Hukou/Huko system serves social and political functions. By identifying individuals in the household, it not only works as the registration system of citizens in each household, but also functions as the last step in naturalisation. At the end of the naturalisation process, immigrants need to present themselves at the local Household Registration Office, where, if all goes well, they meet all requirements for naturalisation and register in the Hukou/Huko system. The Household Registration Office of their place of residence then issues them National Identity Cards. In effect, obtaining a National Identity Card represents the final step of the naturalisation in Taiwan.

¹¹⁴ The Hoju/Houju system was abolished in South Korea in 2008. Hyunah Yang, “Colonialism and Patriarchy: Where the Korean Family-Head (Hoju) System Had Been Located,” in *Law and Society in Korea* (Edward Elgar Publishing, 2013), 45–64, <https://doi.org/10.4337/9781781953631.00010>.

¹¹⁵ A discussion of democratisation in Taiwan can be found in the previous section of this chapter; changing the Hukou/Huko system was one of the reforms of democratisation.

The household registration system is more flexible in the modern day than in the past. For instance, without any registration in this Hukou/Huko system, someone living in Taiwan can still become insured in the National Health Insurance through their workplace. However, the welfare system relies on the Hukou/Huko system heavily. The same is true of the voting system. In this way, an unregistered individual may still obtain ballots with specific applications for voting in the presidential election but not in other elections. In short, the Hukou/Huko system in Taiwan today still plays an important role in the administration system and serves as an example of the utility of citizenship documents in daily life.¹¹⁶

Household Registration Administration

This governmental body refers to the administration of the Hukou/Huko system. The household registration system provides services through each local Household Registration Office. Services include registration for: birth, adoption, marriage, divorce, guardianship, death, and more. Some juristic acts—for example, marriage—may only take effect when registration takes place in the Household Registration Administration.

VIII. Thesis Outline

This research examines how people identify themselves with the status of statelessness and/or other forms of citizenship, against the backdrop of a detailed presentation of these complex issues. It discusses the precarious citizenship that overseas Taiwanese face, as well as the non-citizenship of Tibetan exiles in Taiwan itself—and how the two groups confront the denial of their citizenship in social, cultural and political terms. Citizenship contains cultural recognition and socioeconomic redistribution and the political representation. Even though this research does not address the question of redistribution directly, discussions of the daily lives of people, and their roles as active agents in social movements, still relate to the socioeconomic aspect of their citizenship. During the denial of the political aspect of citizenship,

¹¹⁶ Erin Aeran Chung, Darcie Draudt, and Yunchen Tian, “Regulating Membership and Movement at the Meso-Level: Citizen-Making and the Household Registration System in East Asia,” *Citizenship Studies* 24, no. 1 (2020): 76–92, <https://doi.org/10.1080/13621025.2019.1700914>.

economic distribution can be affected—because the denial of citizenship also influences the practices of citizenship in daily life.

The second chapter focuses on methodology and the process of data collection. This socio-legal study illustrates how people perceive their citizenship when they face denial of personal identity, as well as citizenship, in legal terms. Therefore, I collected official documents to analyse policies and regulations pertaining to Taiwanese citizenship, and conducted semi-structured interviews with Tibetan exiles in Taiwan, as well as overseas Taiwanese, who have relevant experiences of the denial of citizenship. The chapter first explains the setting of interviews and fieldwork. It then discusses obstructions in the research process— especially during data collection— and reveals transparency issues in relation to government documents, and how Taiwanese bureaucracy reacts to requests for access to documents.

The third chapter explains the legal context of Taiwanese people as regards questions of citizenship. The chapter starts with the statehood of Taiwan, as it has been a matter of controversy for decades. First, the constitution of Taiwan is based on the ROC legal system, even though some amendments were made during the 1990s. However, Taiwan's statehood has been challenged by the lack of *de jure* recognition in the international community, meaning that the international legal personality of Taiwan is in question. The cross-strait relationship between China and Taiwan has featured conflict and military tension. These factors make the sovereignty of Taiwan contested. In addition, Taiwan's contested statehood influences Taiwanese citizenship, making it liminal and unstable. Namely, the ambiguous status stemming from international tensions and the legal framework of Taiwan results in an unstable status not only for Taiwanese citizens when they are abroad but also for immigrants to Taiwan.

The fourth chapter explores the case of overseas Taiwanese, and the stateless identity they obtain in places where the authorities cast doubt on their Taiwanese identity. Previous research has shown that the internal and external contested sovereignty of a state influences citizenship rights.¹¹⁷ As the recognition of citizenship

¹¹⁷ Krasniqi, "Contested Territories, Liminal Polities, Performative Citizenship."

and the recognition of statehood is somewhat mutual, differences of citizenship between contested states signifies various scopes of limited citizenship—all relevant to their specific contexts. Although Taiwanese citizens hold a comparatively useful and powerful passport, especially when compared to many other contested or non-contested countries' passports, they still encounter issues given their unstable citizenship status due to the ambiguous statehood of Taiwan. Taiwanese people who reside or seek to settle in other countries can face denial of their Taiwanese citizenship, whether those countries accept Taiwanese passports or not; the authorities concerned could instead label them Chinese. Therefore, holding this ambiguous state status may cause identity problems for Taiwanese people, directly connected to Chinese and Taiwanese identity debates. Taiwanese who do not identify as Chinese use different framings for their nationality in order to maintain their Taiwanese identity: even to the point of applying a stateless status to themselves, to eschew any Chinese identity. This demonstrates that statelessness can become a strategy to ensure that, for these Taiwanese, their citizenship status remains unresolved in states where Taiwanese are categorised as Chinese in domestic legal systems.

Chapter Five discusses the struggles of Tibetan exiles to obtain citizenship in Taiwan, by addressing the multiple layers of identity that they possess. Tibetan exiles have kept their stateless status for decades in South Asia, as it has been normal for them to keep their citizenship uncertain in order to make the contested sovereignty of Tibet visible in the international community. However, the Taiwanese legal system for citizenship specifically distinguishes Chinese people—people from the PRC—from other groups of immigrants. Tibetans are seen as Chinese under this ROC legal framework. Therefore, Tibetans are seen by the Taiwanese state as both nationals and outsiders. When an exiled status is brought into such a legal structure, the consideration of Tibetan exiles' citizenship status becomes even more complex. As a result, Tibetan exiles in Taiwan hold a triple identity, encompassing immigrant, national, and stateless. This chapter explains the processes Tibetans go through when migrating to Taiwan with their triple identity. Moreover, compared to Tibetan exiles who are married to Taiwanese people, Tibetan exiles who are undocumented immigrants tend to have a more resigned attitude about the difficulties concerning their legal identity. This difference can also be seen in social movements for Tibetan identity, as Tibetan exiles who are marriage immigrants are more outspoken than the other

group, with a clear strategy to deal with the government to ensure their right to family reunion in Taiwan. This chapter examines another practical aspect of citizenship pertaining to a contested state: taking Taiwanese citizenship helps Tibetan exiles to go to Tibet with legitimate travel papers. In this chapter, citizenship not only displays various facets but also plays different roles for Tibetan exiles in day-to-day life in Taiwan.

Having examined these two groups, Chapter Six compares their experiences, referencing the contexts of their statelessness, their conflicts of identity and the strategies which they apply as a group or as individuals. The previous chapters examined the legal structures and geopolitics that causes difficulties connected to Taiwanese citizenship, as well as how people from Taiwan practice their Taiwanese citizenship and how Tibetan exiles in Taiwan consider both foreign citizenship and their need for Taiwanese citizenship. However, the case of Taiwan also shows that no matter how culturally or economically strong a de facto state may be, a lack of de jure recognition leaves citizenship on unstable ground. This chapter reviews the theories applied to the subjects of this research and how citizenship of Taiwanese overseas and Tibetan exiles have shaped citizenship for their identity, through the aspects of recognition, redistribution and representation. This research draws attention to the recognition of cultural identity, and its connection to political recognition, and how the former can connote the latter. The experiences of citizenship can be complicated, given conflicts between group identity and individual identity that can lead to debates about each group's national identity and the formation of their citizenship. Previous research has looked into the tangled connections between precarious citizenship and statelessness; this chapter adds to that picture the cases of people who lack effective political participation and meaningful political representation. Both situations reproduce the difficulties over identity and citizenship experienced by people marginalized either as minorities in a society or as non-members of a society, such as expats or immigrants without full citizenship.

Finally, the concluding chapter opens with a discussion of the cases in the previous chapter, of precarious citizenship connected to the stateless status of overseas Taiwanese and Tibetan exiles in Taiwan. From these cases, we can see the unstable nature of citizenship—especially precarious citizenship. In addition,

citizenship status influences not only the legal status of one person; it also relates to people's cultural identity or relates to the resources they can access in society. The tangled aspects of citizenship show that none of the aspects can be neglected, even though some might be emphasized more than others in different phases of the migration process. On the other hand, the cases in this research show that different approaches can be taken towards the practice of citizenship. The choice to cope with the conflicts of citizenship also relies on the resources people can access, and on how familiar they are with the legal tools available to them. For some undocumented Tibetan exiles, worries about residency rights become the main focus of their decision-making.

This research sheds light on the geopolitics of Taiwan from the perspective of the precarious citizenship it bestows, using people's stories to enrich the understanding of contested statehood and citizenship. Again, it shows the importance of the combination of cultural, economic, and political citizenship to ensure people's requirements for citizenship can be seen and achieved. My study also contributes to precarious citizenship and stateless studies by emphasising the productive aspect of the application of statelessness in various circumstances. Statelessness can be used to argue people's right of identity through their citizenship, as upholding a citizenship that closely relates to one's political identity can result in a challenge to their core beliefs, if people are requested to take an citizenship with which they do not identify. Within legal discourses and social movements, statelessness makes space for individuals to create another legal status for themselves, in order to continue the struggle for their own identity when their citizenship is not stable. Statelessness is a limitation to their own citizenship, but, at the same time, an opportunity for their struggle towards an identity of their own.

Chapter Two. Methodology

I. Introduction

This chapter focuses on the methodology of this thesis and the process of data collection. The empirical portion of this socio-legal research is based on interviews with Tibetan exiles in Taiwan, Taiwanese spouses of Tibetans and overseas Taiwanese people, supplemented by official documents which I collected during fieldwork in 2018.

First, I will discuss the in-depth interviews with overseas Taiwanese and Tibetan exiles in Taiwan. These semi-structured interviews were conducted to understand how these two groups of people perceive their identity and changes to their legal identity, whether through application for citizenship and/or other documentation. Using interviews as methodology includes unexpected challenges, at different points in the process. The most challenging part for me was to design an interview structure that could encourage interviewees to express themselves freely, while ensuring that the interviews remained focused on the main topics of discussion. My questions focused on how people experienced changes to their legal identities, how they understood their identity in their community and how people identify their personal status now and in the past. Moreover, recruiting interviewees was not easy, especially as regards the Tibetan exiles in Taiwan, as they were more reticent about sharing their personal information. However, eventually I reached gatekeepers in the community and used snowball sampling to contact as many as I could.

The second part of this chapter outlines the process of data collection and describes certain problems involved in applying for access to official documents in Taiwan. This part primarily stems from my experience with the bureaucratic system in Taiwan, based on Taiwan's Freedom of Government Information Law and Archive Act. The process of collecting official data shows difficulties deeply rooted in the bureaucratic system due to its hierarchical culture. Apart from the official archive in general, some of the documents were defined as sensitive or even confidential. Accessing these sensitive documents not only involved the aforementioned problems,

but also led to some covering up of the past. This brought into question the transparency of this process. Furthermore, by the Taiwanese government's definition of certain documents as more sensitive than others—Tibetan cases being an example—reveals the complexity of the relationships between the Taiwanese government, the Tibetan government in exile and the Tibetan exiles themselves.

II. Semi-structured Interviews with Tibetan Refugees and Overseas Taiwanese

In this research, interviews provide people's perspectives in their lives, on the construction of legal discourses and on strategies they use in advocacy.¹¹⁸ McCann cited the term "bottom-up jurisprudence"¹¹⁹ to explain using the analysis of interviews "to reflect a genuine interest in, and support for, a variety of particular struggles against hierarchy and domination,"¹²⁰ and "[to] advance an analysis about the complex manifestation of law in political struggle."¹²¹ With these narrative, dialogic and detailed conversations, interviewees can express more systematically and thoroughly their understanding and interpretation of the law and legal system; an understanding that is difficult to capture through more structured interviews.¹²² As the goal of this research is to dig into people's real-life experiences, and to explore a reflective understanding of the same, semi-structured interviews provide a way to achieve an extensive understanding of people's personal experiences, values, and even ideologies. They can also unveil complex concepts active in people's ordinary lives and challenge the usual assumptions that many others practice in their lives.¹²³ I chose semi-structured interviews so that I could explore the stories of people along with them; with narrative interviews, I used open-ended questions to open up people's stories. These questions are not just about the stories the people interviewed have experienced in their lives—

¹¹⁸ Ewick and Silbey, *The Common Place of Law*; McCann, *Rights at Work*; Hull, "The Political Limits of the Rights Frame."

¹¹⁹ According to McCann, "bottom-up jurisprudence" has been used in other literature, such as in Kimberlé Williams Crenshaw, "Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law," *Harvard Law Review* 101, no. 7 (1988): 1331–87, <https://doi.org/10.2307/1341398>. Mari J. Matsuda, "Looking to the Bottom: Critical Legal Studies and Reparations," *Harvard Civil Rights-Civil Liberties Law Review* 22, no. 2 (1987): 323; John Brigham, "Bad Attitudes: The Consequences of Survey Research for Constitutional Practice," *The Review of Politics* 52, no. 4 (1990): 582–602, <https://doi.org/10.1017/S0034670500048968>.

¹²⁰ McCann, *Rights at Work*, 22.

¹²¹ McCann, *Rights at Work*, 22.

¹²² Ewick and Silbey, *The Common Place of Law*; McCann, *Rights at Work*.

¹²³ John M. Johnson and Carol A. B. Warren, "Handbook of Interview Research" (SAGE Publications, 2001), <https://doi.org/10.4135/9781412973588>.

they also help reveal how people see procedures, laws and the government behind both. In short, these interviews aim to discover not only people's experiences with the legal structures framing their citizenship, but also their perceptions of their experiences and the same legal framework. Therefore, open-ended questions can help the interviewees express themselves more fully than close-ended questions.

These interviews were crucial in seeing how people understand their identities during their movements to other states and in understanding how they see the process of navigating the legal system. My research also focuses on how people use legal discourses and strategies when they migrate to, and settle in, new countries. Furthermore, identities such as statelessness play an important part for many of these interviewees, for keeping their identity active and open for other possibilities. Statelessness becomes a buffer zone—a temporary substitute—for some people who do not want to take the legal identity authorities wish to assign them. However, this is not widely accepted, as the nature of statelessness yields varied possibilities for people handling their citizenship and brings uncertainty to the state and international law system. In general, statelessness means lack of all rights. Most governments and people do not see this in a positive light—but some of my interviewees have different opinions. These interviews show how case study subjects find the voice to advocate for their citizenship and for its meaning to them. I supplement these findings with legal perspectives, through which I explain how legal norms structure citizenship while leaving spaces for people to remodel a form of citizenship that facilitates their identity. I also use methodologies and theories of sociology to examine how legal frameworks are understood and challenged by people. In sum, my interviews in this research construct a bottom-up approach for researching citizenship and statelessness in socio-legal terms.

A. Ethical Review

I started the ethical review process in January 2018. The interviews include real life experiences related to Tibetan exiles and overseas Taiwanese people. To comply with the research ethics requirements of the University of Edinburgh, I needed to undertake a “level two” ethical review for my fieldwork. This means that I needed to have a full assessment of my plan, as there were potential risks from an ethical perspective. In

order to gain ethical approval, I provided assurances such as obtaining individual informed consent on each interview and securing privacy and confidentiality such as safe storage of recordings. Given the sensitivity of ethical problems that could occur in the research, I obtained ethical approval with the measures that I explain below.

Conducting interviews involves ethical concerns, as interviews relate to interviewees' lives and their society. However, there are different aspects to considering ethical issues before conducting an interview. The interview's purpose, its process, time, environment, and influence on interviewees—as well as protections like proper data storage and information security—all need to be taken into consideration.¹²⁴ In other words, serious ethical concerns are connected to the interviews, as I interact with people directly and as these interviews include a number of sensitive issues such as personal identities and life experiences. The interviews may also involve personal information not just relating to interviewees themselves but also to their ethnic group. This is especially important considering that I interviewed Tibetan exiles in Taiwan. Doing so could involve serious ethical issues: interviewees revealing the identities of undocumented immigrants within the Tibetan exile community, and interviewees having relatives back in Tibet under the surveillance from the Chinese government. Reasons such as these can be stressful for interviewees.

To tackle these issues, I narrowed down my interviewee groups to those who have acquired legal identity documentation, as mindset changes accompanying legal identity changes are also a focus of the research. With this approach, undocumented Tibetans in Taiwan are excluded from interview. This approach was logical, furthermore, as Tibetan exiles with undocumented issues did not make a practice of accepting any kind of interview—from academia to media—according to many of my contacts in 2018. (These contacts included NGOs who had initiated Tibetan human rights protection in Taiwan, as well as Tibetans themselves.) Even though I did not reach out to the undocumented exiles, their protective attitude drew attention from everyone, and warned me off this approach. As for worries about surveillance of

¹²⁴ Jennifer Mason, *Qualitative Researching*, 3rd edition (London: SAGE Publications, 2017); Karen O'Reilly, "An Interview Topic Guide for Interviews of Migrants," in *Ethnographic Methods*, 2nd ed. (London: Routledge, 2011), <https://doi.org/10.4324/9780203864722>.

interviewees' family members and relatives: I have used pseudonyms in these interviews and, where necessary, have changed key details so as not to make the interviewees identifiable.

Some Tibetans did not consider the protection of personal information as a problem and clearly said so, in the interview. This could be because they are activists for Tibetan independent movements. This is also the case with certain Taiwanese interviewees, some of whom were even active on social media. However, as the Tibetan community is small in Taiwan, I edited contextual information such as location to conceal people's identity, so as not to expose people who do have concerns about information exposure. Also, I made sure to obtain informed consent from the interviewees. I provided the consent sheet with clear acknowledgment of the right to withdraw, and I also emphasised the right to withdraw again before the interview started. I made sure to communicate that the right to withdraw can be exercised at any point of time, even after the interview was completed.

Considering the wellbeing of the interviewees, the ethical review committee raised the issue of mental health concerns caused by the interview questions. To avoid this situation, interviews were started with questions relating to interviewees' current lives—but not with the tougher questions, relating to the resistance connected to their citizenship or, in Tibetan cases, to their lives and travels in exile. I made sure that the interviewees understood their right to skip questions, working to build a safe environment in which they could speak. Lastly, ethical issues also included post-interview procedures connected to information security. To ensure security, I stored data such as transcripts and recordings in an encrypted hard drive and a password-protected cloud drive backup.

B. Interview Objectives and the Nature of Questions

In the interviews, I focus on two groups of people. The first group consists of Tibetan exiles, and their Taiwanese spouses if they are also marriage immigrants; the second group consists of overseas Taiwanese people. The interviews reveal people's experiences, offering them the space to present the narratives that articulate their legal consciousness: their understanding of how legal discourses apply to their lives. As

these two groups have utterly different routes for their citizenship within the legal system, the core questions I asked were different for these two groups of people. In addition, there is extensive research on the struggles of Taiwanese overseas with their Taiwanese identity. Therefore, I used relevant research, books, and other materials on migration trajectories and Taiwanese identity development¹²⁵ to build up a broader understanding of the ways Taiwanese people activate their Taiwanese identity in foreign countries. In contrast, I conducted more interviews with the Tibetan exiles, and others with knowledge of their experiences, in Taiwan itself. These interviews included open-ended questions, such as how they have experienced the bureaucratic system of the host states, or why they chose to come to Taiwan or to other countries as their destination. I asked questions which offered flexibility to fit the specific situations of the interviewees. However, my questions differed due to not only their life experiences but also their level of access to the legal system given their current legal identity. In terms of how “identity” is conceptualized, it is important to distinguish between legal identity associated with the Westphalian citizenship system—a formal, political and legal identity—and ethno-political identity, which may be more situational, performative and flexible.¹²⁶ This research does not distinguish between these two types of political identity; however, this choice is not due to the categories’ insignificance. Rather, this choice stems from the fact that interviewees tended to conflate the two types. For the interviewees, this distinction was often confusing. On many occasions, they could not decouple political identity from legal identity; the additional level of distinction between political identity and ethno-political identity was even harder to perceive in their responses. The research aims to reflect this tendency,

¹²⁵ Yen-Fen Tseng, “From ‘Us’ to ‘Them’: Diasporic Linkages and Identity Politics,” *Identities (Yverdon, Switzerland)* 9, no. 3 (2002): 383–404, <https://doi.org/10.1080/10702890213970>; Pei-te Lien, “Homeland Origins and Political Identities among Chinese in Southern California,” *Ethnic and Racial Studies* 31, no. 8 (2008): 1381–1403, <https://doi.org/10.1080/01419870701682253>; Carolyn Chen, *Getting Saved in America: Taiwanese Immigration and Religious Experience / Carolyn Chen*. (Princeton: Princeton University Press, 2014); Hsin-I Cheng, “Relational Citizenship: Examining Taiwanese Membership Development through Immigrant Framing in Public Discourses,” *Journal of International and Intercultural Communication* 11, no. 2 (2018): 154–72, <https://doi.org/10.1080/17513057.2018.1426778>; Yao-Tai Li, “‘I Was Discriminated against Because I Was Seen as PRC-Chinese’: The Negotiation between Ethnicity and Nationalism among Taiwanese Migrants in Australia,” *The British Journal of Sociology* 71, no. 5 (2020): 1016–30, <https://doi.org/10.1111/1468-4446.12786>; Ming-sho Ho and Yao-Tai Li, “‘I Became a Taiwanese after I Left Taiwan’: Identity Shift among Young Immigrants in the United States,” *Identities (Yverdon, Switzerland)* ahead-of-p, no. ahead-of-print (2022): 1–20, <https://doi.org/10.1080/1070289X.2022.2109859>.

¹²⁶ Stuart Hall, *Cultural Identity and Diaspora / Stuart Hall.*, 2005; Ien Ang, *On Not Speaking Chinese: Living between Asia and the West / Ien Ang*. (London: Routledge, 2001); Pnina Werbner, “Everyday Multiculturalism: Theorising the Difference between ‘intersectionality’ and ‘Multiple Identities,’” *Ethnicities* 13, no. 4 (2013): 401–19, <https://doi.org/10.1177/1468796813483728>.

even if, or when, it seems incoherent. Apart from clearly dividing the term "identity" into distinct social aspects, such as the political identity mentioned above, interviewees also constantly used "identity" to refer to multiple social aspects—including, but not limited to, cultural, economic and political identity—without clearly distinguishing each category. These aspects can be intertwined in their lives; therefore, the term "identity" has multiple layers of meaning that interviewees sometimes found difficult to define precisely.

To begin, overseas Taiwanese people face a core identity issue when their Taiwanese identity is denied in other countries. I looked for Taiwanese people who had experienced these processes overseas and who took actions connected to their legal identity; the group includes people who were abroad and back to Taiwan and in abroad. The group had variety, extending not just to people in different countries and under regimes, but also to the different strategies and legal mobilisation they used. As for the interviews themselves, I look for dialogic conversations with the interviewees for deeper understanding of their point of view.

My questions to members of this group were more about how they see their Taiwanese identity before and after they experienced the denial of that identity when they travelled/migrated overseas. First, the questions concerned how they use their Taiwanese passport for travelling, what kind of difficulties they have confronted while doing so, and their understanding of the problem of the Taiwanese passport as relates to the statehood and citizenship issue. Following that, questions asked how these people handled the documents when their Taiwanese identities are denied, and/or when the authorities in the states they resided in issued them documents assigning them an identity with which they do not identify. Moreover, I dug into people's perceptions on these legal processes: how they see these statehood debates and how they feel about taking an alternative legal identity that is not Taiwanese. These questions examined how these overseas Taiwanese people reacted to the identity issue, what kind of legal discourse they use for it and how they understand their own Taiwanese identity. The interviews interrogated the situations of people and the tools they have at that moment, what kind of identity they would find more acceptable when the Taiwanese identity cannot work in certain situations, and what this difficulty means to them.

Research on Taiwanese identity shows that for Taiwanese people it has become the major identity over the last two decades,¹²⁷ as debates around political identity have transformed them first from Chinese citizens to citizens of the ROC as well as Taiwanese, and eventually to 'Taiwanese' after democratisation. As I discuss in Chapter Four, these interviews show that how interviewees confronted problems with their identity when they changed it and found their identity denied by foreign governments. With these questions, I aimed to examine the fluid nature of Taiwanese identity, by seeing how these overseas Taiwanese people changed or otherwise adapted their identity to comply with the local authorities. Some literature also suggests that Taiwanese people restructured their identity when they stay abroad and took their Taiwanese identity from other aspects of being Taiwanese, instead.¹²⁸ Therefore, questions here look at how Taiwanese conceptualize their identity from different angles when they face challenges to it.

For the interviews with Tibetan exiles, questions started with the life experiences of their diaspora in India, and their exile from Tibet to India. To be specific, I selected the Tibetan exiled community for my research and excluded Tibetan immigrants directly from Tibet. These two groups of the Tibetan community take different routes to reside in Taiwan, and therefore their settlement should be examined differently. As a result, cases of Tibetan immigrants from China moving directly to Taiwan do not belong to the Tibetan cases I interviewed or discuss in this research.

In these questions, I not only look at how they travel to different places, but also at how they understand the reasons for their exile lives. I thus asked open-ended questions to know Tibetans' points of view on their exile experiences. Additionally, I continued the questions concerning their lives in exiles and the journeys to Taiwan that followed, such as how their Tibetan identity was used in official documents and how they travelled with the documents issued by the government of hosting countries

¹²⁷ Lowell Dittmer, "Taiwan and the Issue of National Identity," *Asian Survey* 44, no. 4 (2004): 475–83, <https://doi.org/10.1525/as.2004.44.4.475>.

¹²⁸ Jia-Hong Chen, "Hai wai tai du yun dong shi: Meiguo 'Taidy' tuan ti zhi fa zhan yu tiao zhan, wushi nian dai zhong zhi jiu shi nian dai zhong [The History of Overseas Taiwan Independence Movement: the Development and Challenges of 'Taiwan Independence' Groups in the United States from mid-50's to mid-90's]," (Taipei: Qianwei: Avantguard Publishing, 2006).

when they lived in India or Nepal. The procedure of obtaining different documents is a key point here, as, in modern society, identity documents are necessary for people to settle and travel. Moreover, these documents contain identities which authorities issue to them—which may be different from those they identify themselves with. Questions of identity are therefore embodied in people’s documents and how they see those documents. Especially when moving to Taiwan, Tibetans might encounter different kinds of identities: being seen as nationals, marriage immigrants, and/or stateless persons by different government bodies. This triple identity has complicated Tibetan exiles’ understanding of their legal identity in Taiwan. Therefore, one of the main topics of this section concerned the types of influences seen in the intertwined identities of Tibetans and how they perceive this triple identity, and those changes in relation to residence rights, along with this legal identity.

Research on Tibetan exiles shows that Tibetan exiles have strong political affiliation with the entirety of Tibetan society and solidarity for the whole group of Tibetans.¹²⁹ Therefore, I prepared questions on this subject, as well as questions relating to their Tibetan fellows in South Asia and Tibet itself. These questions are not only about how they see themselves, but also about how they situate themselves in the Tibetan community, as the latter is a crucial factor when it comes to research on Tibetans who give up individual basic rights in order to support group interests, and thus become stateless. From these questions, I also wanted to know more about how Tibetans see their identity changes alongside their political agenda for their individual legal identity, e.g., obtaining full citizenship in other countries such as in Taiwan. Moreover, these questions also incorporate into my research to previous examinations of Tibetan exiles in western countries compared to those who stay in South Asia. According to research on Tibetan exiles in Taiwan, different groups of Tibetans live there—and some of them have conflicts connected to their political agendas. That is, not all Tibetan exiles in Taiwan agree on the terms of Tibetan independence or the Tibetan autonomy under the Chinese Communist Party; they also have different ideas for the role of Tibet under the conflicts of the PRC and the ROC.¹³⁰ This relates to the

¹²⁹ McGranahan, “Refusal as Political Practice.”

¹³⁰ Mei-Lin Pan, “Neither Compatriots nor Refugees: Status Discrimination of Exiled Tibetans and the Contradictory Faces of the Republic of China (Taiwan),” *International Journal of Asia Pacific Studies* 11, no. 2

historical conflicts of Tibetans and ROC; some of the Tibetan exiles built up alliance with the government of the ROC (the government of Taiwan) when that same government still claimed sovereignty over China and looked for support from Tibetans in South Asia.¹³¹ As a result, questions about the diverse political opinions of Tibetans and points of views on living in Taiwan relates to Tibetans' identity politics in Taiwan as well.

Marriage immigrants made up a major proportion of Tibetan exiles in Taiwan. Their Taiwanese spouses also played an important role in the immigration process, to the point of sometimes being the main actors in campaigns for the residence rights of Tibetan marriage immigrants. Firstly, the Taiwanese spouses are more aware of Taiwanese legal structures; they have become “experts” for their cases after spending time on their spouses' right of residence. Thus, I interviewed both the Taiwanese spouses and the Tibetan exiles separately and sometimes together if they insisted. To begin with, questions started with marriage procedure in their country of origin. These questions examined how Taiwanese spouses and Tibetan exiles experienced these legal procedures in either India or Nepal, before they migrated to Taiwan, as well as in Taiwan during migration and settlement. I also posed questions about the procedures for establishing residency in Taiwan and how they understood the special triple Tibetan status within the Taiwanese legal system. Lastly, I turned to questions about how they initiated residence rights for Tibetan exiles under Taiwanese law, whether in terms of individual Tibetans or Tibetans as a group. This last part of each interview also helped me to understand how the Taiwanese spouses take resilient actions to ensure the survival of the family unit, as well as their rights to marry foreign spouses such as Tibetan exiles. These questions also encompassed the current daily lives of the Tibetans, to see how migration to Taiwan changed economic expectations for them and whether these economic changes met their exceptions. I also asked whether the Tibetan exiles obtained support from the Taiwanese government and the

(2015): 48; Kensaku Okawa, “Lessons from Tibetans in Taiwan,” *The Memoirs of Institute for Advanced Studies on Asia* 152, no. 52 (2007): 581–608, <https://repository.dl.itc.u-tokyo.ac.jp/record/26971/files/ioc152014.pdf>; Pei-Chi Wu, *Liu Wang Cang Ren Zai Tai Wan: Tibetan Exiles in Taiwan* (Master's thesis, National Taiwan University, 2000); Namgyal Choedup, “From Tibetan Refugees to Transmigrants: Negotiating Cultural Continuity and Economic Mobility through Migration,” *Dissertation Abstracts International Section A: Humanities and Social Sciences*, 2016, 317, https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1642&context=art_sci_etds.

¹³¹ Pan, “Neither Compatriots nor Refugees,” 41-59.

Taiwanese community, e.g. whether if the welfare system and the other social systems made them “feel” supported or how the government can improve support for them. These kinds of questions helped me to determine the degree of satisfaction felt by Tibetan families in Taiwan, and the economic and social aspects of their life.

C. Interviewee Selection

The procedure of selecting interviewees began with setting the target interviewee group. Firstly, for the overseas Taiwanese, I started with cases in states which do not recognise Taiwan as a state, where they face thus faced the issue of denial of their Taiwanese identity in general. Secondly, I turned to public and social media, to find people who moved to states that accept Taiwanese passports but deny the nationality as a ‘formal nationality’. As for the Tibetan exiles, I started with contacting organisations that cooperate with the Tibetan community, such as the Taiwan Association for Human Rights, the Taiwan Tibetan Welfare Association, etc. From these organisations, I obtained some contacts for Tibetan exiles or Tibetan families. Since Tibetans in Taiwan have built up community networks, I found some Tibetan exile interviewees through other Tibetans I previously met.

During the process of locating the interviewees, I found that social media played an important role in connecting people. In modern society, social media helps people express their political opinions.¹³² Research has also found that users having political arguments and conversations on social media have strong political engagement¹³³ and that activity online can lead to political participation offline.¹³⁴ In short, the use of social media for political discourse can be an important aspect for the political advocate.

¹³² Homero Gil de Zúñiga, Logan Molyneux, and Pei Zheng, “Social Media, Political Expression, and Political Participation: Panel Analysis of Lagged and Concurrent Relationships,” *Journal of Communication* 64, no. 4 (2014): 612–34, <https://doi.org/10.1111/jcom.12103>.

¹³³ Cristian Vaccari, Andrew Chadwick, and Ben O’Loughlin, “Dual Screening the Political: Media Events, Social Media, and Citizen Engagement,” *Journal of Communication* 65, no. 6 (2015): 1041–61, <https://doi.org/10.1111/jcom.12187>.

¹³⁴ Leticia Bode, “Gateway Political Behaviors: The Frequency and Consequences of Low-Cost Political Engagement on Social Media,” *Social Media + Society* 3, no. 4 (2017): 205630511774334, <https://doi.org/10.1177/2056305117743349>; Elizabeth Housholder and Heather L. LaMarre, “Political Social Media Engagement: Comparing Campaign Goals with Voter Behavior,” *Public Relations Review* 41, no. 1 (2015): 138–40, <https://doi.org/10.1016/j.pubrev.2014.10.007>.

This phenomenon can be discovered in these overseas Taiwanese cases. First of all, I noticed there were Taiwanese stateless cases on social media and traditional media simultaneously, in 2016. A Taiwanese student openly shared her story on Facebook, to raise awareness of the “statelessness of Taiwanese.” Following this, another movement for Taiwanese identity captured my attention on Facebook. It was a Facebook Fan Page—designed for business use compared to Facebook pages for personal use—with “fans” following it in order to obtain information or participate in the events. On this Fan Page, several Taiwanese people in Norway asked for their identity to be recognised as Taiwanese by the Norwegian authorities. Furthermore, there were some Facebook groups for the overseas Taiwanese community in different countries or cities, including postings with similar cases about identity being denied or changed to Chinese without consent. To sum up, there are several cases on open platforms such as mass media and social media—especially Facebook. These stories aim for attention from the general public or from group members, in order to raise awareness of the topic and to find solutions for the unresolved denial of their identities. However, due to the risk of online harassment in the modern day, as well as privacy concerns, many social media users do not use their real names on social media. Campaigners concerned with being targeted by Chinese authorities did not reveal real names—and, logically, when they presented their cases on social media, they did not reveal their full names either. Even with these precautions, I still could reach them by making contact through their Facebook accounts, as Facebook is one of the most popular social media platforms in Taiwan. I searched for these stories on both social and mass media, to trace the cases, and contacted them for formal interviews. An important clarification is that I did not use social media information as the sole source for recounting an event or for illustrating a data trend. Rather, I used it as a tool to connect with people who have shared their stories publicly, and to investigate their experience further, along with reviewing any official documents they provide.

As concerns the Tibetans, their community in Taiwan did not share their personal stories on social media as openly as the Taiwanese (including the Taiwanese group, of which I am a member,). Tibetan exiles have a very different perspectives on the difficulties that can be attached to citizenship compared to Taiwanese people, whose initially firm trust on the effectiveness of citizenship can be overturned by the

denial of their legal identity by foreign authorities, and who thus may have the urge to express the situation to others through the media. Tibetan exiles faced this problem long before they came to Taiwan; it is a circumstance which has been haunting them for decades. Although there were some Tibetan exile cases reported in the mass media from time to time, many Tibetans feared being targeted by the Chinese authorities—especially since they have family members or relatives still living in Tibet. For this reason and others, they do not share political opinions, or their experiences with their difficult identity, as easily as the Taiwanese people do. Obviously, it is harder to find individual Tibetans when only using public information, as many of them tend to hide their real identity from tracking—to the point of using pseudonyms and wearing face masks if they are interviewed by media to avoid recognition. Additionally, the number of the Tibetans in Taiwan, including the Tibetan immigrants not Tibetan exiles, is only 635, according to the household registration of the Taiwanese government. Not only is this number relatively small, but also: many members of the Tibetan community did not interact much with the other community groups.

Accordingly, I soon realised that I needed to reach gatekeepers to help me find interviewees for the Tibetan cases. Gatekeepers are people who connect the interviewees and the interviewers; they are usually members of the interviewee community.¹³⁵ These gatekeepers were crucial to my access to Tibetan exiles. Also, there were some key informants who are not Tibetan exiles but who provided important information about Tibetan exiles' experience in Taiwan and their own experiences working with undocumented members of this group. I used snowball sampling to enlarge my interviewee group. Snowball sampling means that one person of a certain concealed group may identify other members to help the researcher connect potential interviewees.¹³⁶ The drawback of snowball sampling is that I might get a group of

¹³⁵ Patricia Leavy, ed., *The Oxford Handbook of Qualitative Research*, 1st ed. (Oxford: Oxford University Press, 2014); Johnson and Warren, "Handbook of Interview Research"; Carol A. B. Warren, "Qualitative Interviewing," in *Handbook of Interview Research*, ed. J. F. Gubrium & J. A. Holstein (Thousand Oaks, CA: SAGE Publications, Inc., 2001), 83-102, <https://dx.doi.org/10.4135/9781412973588.n7>; John M. Johnson, "In-depth Interviewing," in *Handbook of Interview Research*, ed. J. F. Gubrium & J. A. Holstein (Thousand Oaks, CA: SAGE Publications, Inc., 2001), 103-119, <https://dx.doi.org/10.4135/9781412973588.n8>; Hilary Arksey and Peter T. Knight, *Interviewing for Social Scientists: An Introductory Resource with Examples* (Thousand Oaks, CA: SAGE Publications, Inc., 1999); Jaber F. Gubrium and James A. Holstein, eds., *Handbook of Interview Research: Context & Method* (Thousand Oaks, CA: SAGE Publications, 2002).

¹³⁶ Leavy, *Oxford Handbook of Qualitative Research*, 542; Johnson and Warren, "Handbook of Interview Research." Arksey and Knight, *Interviewing for Social Scientists*.

interviewees with lots of similarity. To address this concern, I expanded the scope of interviewees by meeting people from NGOs, the Taiwan Tibetan Welfare Association and the representative Office of the Tibetan government in exile in Taiwan—not only to have a more comprehensive idea about Tibetan society in Taiwan but also to ask them to introduce me to Tibetan groups that I might have neglected. In the end, there are mainly three types of interviewees in this group: staff in organisations for Tibetan rights, Tibetan exiles who are marriage immigrants (along with their Taiwanese spouses, included for reasons stated previously), and Tibetan exiles who are not marriage immigrants and were previously undocumented.

To begin with the Tibetan cases: since I worked in Taiwan Association for Human Rights with Tibetan cases years ago, I started with this NGO and made some Tibetan contacts from it. Afterwards, gatekeepers showed me the close connections between members of Tibetan community. There are different groups of Tibetan community, but they can also be members different groups have in common, who therefore share information with each other. This means that sometimes I could obtain information of undocumented migrants from the marriage immigrants. As for Tibetan exile marriage immigrants and their Taiwanese spouses, the local NGOs, Tibetan groups, and Tibetan family connections were my main contacts to these Tibetan families. With the Tibetan families, in most cases I obtained their Taiwanese spouses' contacts first—the spouses were more willing to start the conversations with me than the Tibetan exiles themselves. Interestingly but not surprisingly, the Taiwanese spouses had a clearer understanding of immigration procedure and how they got through the bureaucratic system. This may be because there can be some language barriers for the Tibetans, in understanding the procedure; it also may reflect the spouses' greater familiarity with being in the migration and settling procedure. Even though the spouses were not the immigrants who needed to migrate and faced the challenge of legal identity, they were much exposed to the media and the government during the process; on top of this, they were in Taiwan when the applications for their spouses' visa and residency rights were being processed, while their Tibetan spouses were not. Their contribution to family reunification gave another version of the story of international migration: this one from an internal national of Taiwan as well as a partner of the migrant. In short, alongside their Tibetan spouses, they were also principal actors during the whole process. Another point about the Tibetan exiles is that, once I

had the right person to contact and s/he became my gatekeeper, the door opened—and there came immediately a couple of interviewees relating to the gatekeeper. For example, one Taiwanese spouse helped me to contact another five Tibetan families, even though not all of them agreed to do the interview in the end. As Tibetan families in Taiwan usually live with their Taiwanese families in different places, and not in Tibetan communities, it is not as easy to locate each of them without help from Tibetan networks.

D. Table: Overseas Taiwanese Interviewees

	Name (pseudonym)	Profession	Host country/Recognition of Taiwanese passport	Residency status
1	Chu-Chi	Tourist guide	Morocco/ No	Work visa to Spouse Visa
2	Wen-Ting	Housewife	Brazil/ No	Spouse Visa
3	Shing-Ling	Student	Iceland/ Yes	Student Visa
4	Joseph	Student	Norway/ Yes	Student Visa

In this category, I also conducted some informal conversations: conversations that took places in unofficial situations—without conducting formal consent sheets and other significant procedures for the formal interviews—with people experiencing denial of Taiwanese identity. Some faced this scenario in schools: universities in Germany, Sweden or the UK. Some were questioned when they needed to renew their visa and had to go through the local bureaucratic system. I used these conversations only for background information.

E. Table: Tibetan Interviewees and Relevant Personnel

	Name (pseudonym)	Profession	Residency in Taiwan	Note
1	Fan-Yu	NGO worker	Taiwanese	
2	Kan-chi	Legislator's assistant	Taiwanese	

3	Dawa Tsering	Chair of the Tibet Religious Foundation of His Holiness the Dalai Lama	Business visa (Not applying for Taiwanese citizenship)	
4	Ya-chin	Small business owner	Taiwanese	Taiwanese spouse of Tibetan exile
5	Rei-chun	Civil servant	Taiwanese	Taiwanese spouse of Tibetan exile
6	Yin-Ching	White collar worker	Taiwanese	Taiwanese spouse of Tibetan exile [Tenzin]
7	Tenzin	Translator	Long-term Resident	Tibetan marriage immigrant [Yin-Ching's spouse]
8	Lin	White collar worker	Taiwanese	Taiwanese spouse of Tibetan exile
9	Pei-Yin	White collar worker	Taiwanese	Taiwanese spouse of Tibetan exile [Samten]
10	Samten	Small business owner	Long-term Residence	Tibetan marriage immigrant [Pei-Yin's spouse]
11	Tashi	Small business owner	Long-term Residence	Tibetan marriage immigrant [Tien-Ying's spouse]
12	Tien-Ying	Small business owner	Taiwanese	Taiwanese spouse of Tibetan exile [Tashi]
13	Shuan	Small business owner	Taiwanese	Taiwanese spouse of Tibetan exile [Delek]
14	Delek	Small business owner	Acquired Taiwanese citizenship	Tibetan marriage immigrant [Shuan's spouse]
15	Ya-Ting	Small business owner	Taiwanese	Ya-Ting's Tibetan spouse is from Nepal

16	Rinchen	Translator	Acquired Taiwanese citizenship	Divorced after obtaining citizenship
18	Namgyal	Tibetan movement activist	Acquired Taiwanese Citizenship	Undocumented before 2001
19	Nyima	Blue collar worker	Acquired Taiwanese citizenship	Undocumented before 2008
20	Luchun	Blue collar worker, retired	Acquired Taiwanese citizenship	Undocumented before 2001

In this category, I conducted informal conversations with a Taiwanese spouse, another legislative's assistant and the diplomats who had influenced the internal attitude towards the Tibetan cases in the Foreign Affairs Ministry. I used these conversations only for background information.

Conducting these semi-structured interviews helped me to investigate these two groups of people. In total, I conducted twenty-two interviews. The number of interviewees is small, but they do not aim to be representative for the whole population of these two groups of people.

F. Interview Procedure

The interviews were designed as 90-120-minute sessions. Since the topic is comparatively narrow, these interviews usually could be completed within two hours. Only one interview took more than three hours, since the interviewee really wanted to share his/her life experience with me. As for locations, the most important requirement for me was that I can make a safe environment for interviewees to help them to express themselves as much as possible. Interviews with Tibetan exiles and their spouses usually took place in cafes or their houses. Sometimes interviewees also asked to have interviews in the organisations or in their own shops, as many of the interviewees are running businesses. I also conducted one interview in a Tibetan

family's home as they had a child to take care of. The interviews with overseas Taiwanese people were mostly not face to face interviews, since they live everywhere in the world. I used Skype and other online media to conduct interviews with them. During the process, I recorded all the interviews and then transcribed them for subsequent analysis.

G. Interview Analysis

After conducting interviews and finishing transcripts, I approached the mass of data by sorting it, identifying specific information, and writing up stories with descriptive data that could provide background and relevant information to the readers.¹³⁷ The interviewees provide various stories depicting the exile history of Tibetans as marriage immigrants and undocumented immigrants, and describing the conflicts of Taiwanese people with the foreign authorities. I use the narratives to connect personal experiences to the topics of contested citizenship and the utilisation of statelessness. The stories also provide contexts to these two ethnic groups, to the socio-legal structure of social actions and to legal frameworks constructed by both people and the government. The interviews gathered narratives of the interviewees' understanding of their migration and how they saw the changes of their identity. Regarding the interviews with NGO worker and other people relating to Tibetan exiles, they provided other perspectives to look at Tibetans' journeys across borders to Taiwan and Tibetans' life in Taiwan.

In analysing the interviews, I built up narrative findings through people's stories and through their understandings of their identity conflicts and geopolitics intertwined with those conflicts. The interview analysis followed people travelling across borders—leaving Taiwan as Taiwanese or going to Taiwan as Tibetans—to understand the logistics of their journey and how they interpreted it, especially with regard to their legal identity using travel documents. This part illustrated the mobility conditions of people and depicted the background and legal contexts of identity for both groups in this thesis.

¹³⁷ O'Reilly, *Ethnographic Methods*.

I then turn to interviews again, in order to distinguish different concepts people apply to their debates concerning citizenship from which they develop new concepts used to advocate; I try to dismantle the complicated layers of narratives and to examine the actions in stories along with the wider contexts of legal and social structure.¹³⁸ The interviews also point out that the fluidity of citizenship is used to argue for identity rights by marginalised groups, such as Tibetans in Taiwan and overseas Taiwanese. Throughout the process, statelessness is interpreted not only to reverse the ineffectiveness of this legal identity but also to establish a sometimes-productive legal identity. This double function of statelessness is a key concept in this research.

For better understanding of the materials, I examined the relevant literature and apply the literature and theories on the interviews.¹³⁹ I examined how the experiences and understanding gathered from these data resonated with the literature on these two groups' mobility. From their citizenship acts in their daily practice and movement, I applied theories of contested citizenship, performative citizenship on the interviewees' narratives of citizenship and Nancy Fraser's theory of justice to further discuss the possible solutions that empower people to argue for their citizenship rights. In addition, I used grounded theory during analysis; with the grounded theory, researchers develop hypotheses and theories while gathering data and analysing it. I aim to construct theories in dialogue with other theories and the empirical data, and to develop further application of the literature and theories on other geopolitical cases. This research reflects on the contested citizenship and extends the understanding of diverse forms of citizenship and statelessness: from both systematic barriers that contain the vulnerability of the unstable legal status with citizenship contestation to bottom-up agency that highlights people's resistance against their geopolitical settings and norms of international law.

III. Acquiring Official Documents Related to Tibetan Affairs in Taiwan

Another methodology I use in my research is analysis of the official archive of Tibetan affairs, in order to construct the background to how Tibetan cases in Taiwan were

¹³⁸ O'Reilly, *Ethnographic Methods*.

¹³⁹ Gubrium and Holstein, *Handbook of Interview Research*; Leavy, *Oxford Handbook of Qualitative Research*; O'Reilly, *Ethnographic Methods*.

handled. The utilisation of this methodology provides various fragments of Tibetan affairs in the government and helps me to obtain a clear picture of these Tibetan affairs in Taiwan. This section is about the experience of looking for the official archive, and includes reflections on the data collection. On the one hand, I have obtained a variety of materials from the search of archive; on the other hand, that does not mean the story can be made “complete” by using the archive alone. The archive provides insight on the government’s perspective: from what the government actually did to what the government desired to show to the public.

A. Official Archival Access: The Application Process

According to the Archive Act and the Freedom of Government Information Law in Taiwan, the government has the obligation to publish the government information and thereby enable people to access and obtain it.¹⁴⁰ Therefore, the government set up the National Archives Administration to manage documents. Each body of government has archive agencies to implement the law. Indeed, the first step of using the online search system of the catalogue of official documents allows convenient and instant access to the government archive. However, the following process of applying for official archival access requires layers of approvals within the bureaucratic system. It does not guarantee the acquisition of documents or the time it may take for each request to be considered.

Accessing official documents in Taiwan is not a new concept for the government administration system; the promotion of the archive has been a goal for the National Archives Administration for years.¹⁴¹ The National Archives Administration—a government agency that manages official documents as well as the openness, transparency, and the access to the government documents—only stores a limited number of these documents in its database. As such, most official documents are in the hands of each unit of government; these units store the documents until the date of destruction. According to the Article 4 of the Archive Act, each agency must

¹⁴⁰ Archive Act, § 1(2008).

¹⁴¹ Chiao-min Lin, “Dang an shi yong diao cha yu an li fen xi [Analysis of the Use of Archive and Case Study],” (Taipei: Wunan Publications, 2016).

set up a division, or personnel, to manage their archive.¹⁴² Therefore, civil servants of the division must handle applications for use of official documents. In other words, when people apply for the documents, the agency they contact may differ in their treatment of such applications—from case to case. For example, I applied for access to Tibetan affairs documents from twenty-one different units of the government. These government bodies—from local administrations to the highest central organisations— included local police stations, the National Immigration Agency, the Administration Yuan, etc. However, some of them may not have been familiar with the application for the governmental documents. As a result, they may not have been aware of their obligation to provide the documents. This was especially the case with local police officers, as they tended to use the protection of personal data to refuse my applications, even though I argued that there are many methods to anonymise the personal data from their side—methods which I experienced in other government bodies.

Moreover, even starting an application for official documents can also be frustrating for applicants. These days, the process usually begins with an online search in the catalogue of the official documents; this system is managed by the National Archives Administration. After searching for keywords in the catalogue, the results may include tracking references of documents, locations of the document, and general titles such as 'Meeting Minutes of the 10th September 2008,' 'Tibetan Issues,' etc. With these results, an applicant cannot see the contents of the documents—only that a result shows that there is something relevant to the keywords in the content. In order to read the content, the applicant must make an application with the tracking number, and submit a signed hard copy of the application to the government body which stores the document.

The application does not there. Each government body is supposed to contact the applicant within one month, according to the Archive Act.¹⁴³ However, some government bodies have their own application formats—meaning that the paperwork

¹⁴² Archive Act 2008, §4(2008): The government agency shall create a division or appoint personnel for the purpose of archives management. The government agency shall also prepare an annual archives management plan and budget.

¹⁴³ Archive Act, §19(2008).

must be processed again, using their forms, after they receive the application using the National Archives Administration's form.

Government bodies such as the Ministry of Education are accustomed to receiving applications for their documents; they maintained a friendly attitude about providing the government documents and showed a more cooperative attitude compared to others. However, a complication emerged when I learned that, within the Ministry of Education, there is another search system of documents which is open to the general public. When I applied for the documents in the Ministry of Education in April 2018, civil servants working there asked me to use their search system in the office of the ministry—in person—after I had already applied using the online system of National Archives Administration. In other words, applicants must be in the agency in person, even at the very beginning of the application process in this case. There can be additional bureaucratic barriers in some cases. For instance, after an application, civil servants may contact applicants multiple times by telephone, for additional personal information or for the purpose of the application. To sum up, administrative procedures went back and forth between applicants and the government bodies at the early stage.

Even if the department accepts the application, the final decision of whether the applicant can access documents still requires different level of approval within the government body. In the case of the Mongolian and Tibetan Cultural Centre, it took more than three months for me to access the documents I applied for: meeting minutes on Tibetan affairs of a former government body, the Mongolian and Tibetan Affairs Committee (dissolved in 2017).¹⁴⁴ There are several levels of bureaucratic systems involved in the decision-making process concerning the application. Also, in my experience, the results might differ due to individual bureaucratic procedures; that is, within the current mechanism of the archive application exists a space for the civil servant in charge of the archive to manipulate the case application. Most of the cases

¹⁴⁴ The existence of the commission has been a matter of debate for the ROC government; for instance, the legislator Freddy Lim argued that the if the commission must exist, it should be supervised by the Foreign Affairs and National Defense Committee. See: Philipp Charlier, "Mongolian and Tibetan Affairs Commission to be Dissolved: Lim Applauds," Taiwan English News, 14 Aug 2017, <https://taiwanenglishnews.com/mongolian-and-tibetan-affairs-commission-to-be-dissolved/>, and Keoni Everington, "Mongolian and Tibetan Affairs Commission to be Dissolved by End of Aug," *Taiwan News*, 15 Aug 2017.

need to go through different levels of government units, or even across different departments; the civil servant in question is needed to mediate between the applicants and the different divisions of the government. However, there were cases in which I did not obtain access in the end: the civil servant told me the case involved their supervising agency and so they decided not to show it to—indeed, they stopped the processing of my request by not passing it to the supervising agency. The civil servant in charge of individual cases is usually a staff member in a lower position in the archive division; this fact also shows risks in terms of the bureaucratic approval necessary for applications to proceed. In cases involving the Ministry of Justice, the staff showed a high interest in processing my application; we even discussed a date to read the documents in the ministry at a very early stage. However, the process did not go smoothly, and I received several phone calls from other staff in higher positions or in different offices of the Ministry of Justice. They questioned the purpose of my application and refused to process my request. The reason they gave was that the Ministry of the Justice was only the recipient of the document in question and the issuing party was the Administration Yuan—the top supervising authority in the government. Therefore, they did not think they had the authority to decide and did not want to send the case further along to the Administration Yuan. Nevertheless, as I continually applied to read documents, this analogous situation—denial because the recipients were of a lower government position than the issuing authorities—did not happen in other government bodies.

In sum, my application to read government documents highlighted a time-consuming and highly uncertain government archive access process in Taiwan. The acceptance of any of my applications was only the first step in the process; often, numerous other steps were required to obtain access to these documents. Also, as it involved different units in one government body or even different government bodies, the power relationships between the National Archives Administration and other government bodies—or between the archive division and the other departments within one unit—could greatly affect the process. The bureaucratically hierarchical decision-making process makes accessing documents complicated in the first place—and in

the end, applicants obtain inconsistent results.¹⁴⁵ Consequently, the applicant may need to apply for documents from different government bodies to make comparisons between these results, or run the risk of missing some important information.

In research on the legitimacy of bureaucracy in Taiwan, Bernstein argues that this bureaucracy sees cooperation with the public as a way to constitute its legitimacy.¹⁴⁶ The application process for document access also reflects this point of view. Public access to the national archive became a new task for the government after the democratisation. The National Archives Administration Agency was founded in 2001 after the Archive Act was implemented; afterwards, relevant measures for opening the official document were introduced. For individuals applying for the documents, the bureaucracy can cooperate with these individuals closely, as suggested by my experiences. However, the decision-making of various government bodies or unit divisions involved again reminds us of the power relation between citizens and bureaucracy—finally confirming the power and the legitimacy of the bureaucracy. Throughout the process of my application, civil servants of archive agencies or other offices constantly provided help and information; however, I did not obtain access to many useful documents, as they did not provide many documents in the end. The inconsistent results demonstrated that the government had different approaches regarding the provision of official documents. I sometimes attributed these different attitudes to the unfamiliarity of the public use of government documents, since occasionally civil servants would mention that the general public rarely applied for documents from their departments. However, from another perspective, it also showed that the hierarchy of bureaucratic system wielded significant influence over the providing of documents. As such, the National Archives Administration actually occupied a lower rank position in the government; as a result, it can hardly demand that the other government bodies show the documents. Also, even within the same government body, since the document division is at the bottom position, the decision-

¹⁴⁵ From my own experience: the final version of the documents people obtain can be in digital form or in hard copy. Each of them requires a basic fee of 50 pence. As for the hard copy, they can be the original documents or a copy of them. If one does not need the whole document, one can only use their pen and paper to take notes; otherwise the copy of the documents can be taken away with extra fees. The agency also provides mailing services if the applicant needs them; it costs the basic mailing fees from the post office. The application requires some administrative fees, but overall the fee is reasonable regarding the living costs in Taiwan.

¹⁴⁶ Anya Bernstein, "Porous Bureaucracy: Legitimizing the Administrative State in Taiwan," *Law and Social Inquiry* 45, no. 1 (2020): 28–51, <https://doi.org/10.1017/lsi.2019.29>.

making procedure often depends on other offices with higher position. In the end, hierarchical culture did create barriers in terms of applications for official documents. This bureaucratic culture influences many of the results of the applications, even though the civil servants understand their obligation to facilitate access to government documents as stated in the law.

During the procedure of collecting official documents, I concluded that gathering official documents about the Tibetan affairs in Taiwan highlights an inconsistent attitude in different official departments. Firstly, the bureaucratic system may provide official documents to the general public, including researchers, but the decision-making for each case involves different sectors of the bureaucratic system, sometimes across administration bodies. This makes the process time-consuming and highly uncertain. Secondly, cases involving Tibet and Tibetans are politically sensitive to the ROC government, as they involve diplomacy and the cross-strait relationship with China. Some of the government bodies avoid taking responsibility for providing these documents to the public, especially when the documents are originally issued by their superior authorities.

B. Sensitive Documents

Regardless of this convoluted process, the Tibetan case documents I applied for also involved “sensitive” political issues. Firstly, these documents involve the relationship between Taiwan and Tibet; this issue is highly sensitive as it relates to the relationship with Chinese government. It also means these documents are relevant to Central Tibetan Administration (CTA), as known as Tibetan government in exile, and its representative office in Taiwan, the Tibetan Religious Foundation of His Holiness the Dalai Lama. As a result, some of the documents were confidential cases when they were first issued.

As concerns applications relating to the Tibetan Religious Foundation of His Holiness the Dalai Lama, there are several kinds of results for these documents: totally disclosed, partly disclosed with some concealed parts, or totally withheld. For example, in the Office of the President, I obtained all the documents out of my three applications—two of them involved the Foundation. However, this is the only

government body that held a comparatively open attitude to cases referring to the foundation. This fact also reflected the hierarchical culture, as the Office of the President is in the top position among all administrative bodies. In other government bodies, the existence of the Tibetan Religious Foundation often leads to concealing parts of documents or entirely concealing documents.¹⁴⁷

On the other hand, the confidentiality creates more problem in applying to access official documents. Confidentiality cannot be permanent; data should be disclosed after a set year, which should not exceed thirty years unless the Legislative Yuan agree, according to Article 22 of the Archive Act. For example, one of the documents I read in the Office of President was confidential for five years. By the time I read it, it has been more than fifteen years after the document was issued as a confidential. Nevertheless, other cases showed that sometimes even though the document is not confidential in legal terms anymore, the civil servant did not agree to present it to the public.

The sensitive documents I applied for mainly related to Tibetan affairs, especially those based on the international relationship between Taiwan and the Central Tibetan Administration (CTA). These Tibetan affairs contained all kinds of administrative detail. They not only detailed diplomatic policies towards Tibet, but also included the citizenship issue of Tibetan staff of the Tibetan Religious Foundation of His Holiness the Dalai Lama. The later related to citizenship of Tibetan personals in Taiwan directly, however. One point worth mentioning is that in the Tibetan exiled community, obtaining foreign citizenship is a tough topic. Tibetans exiled in South Asia are expected to maintain stateless status; therefore, there are also ethical debates about whether the diplomats of the CTA can obtain citizenship of the hosting countries, as the CTA has asked civilians of the CTA to remain stateless.¹⁴⁸ Therefore, this confidentiality actually conceals whether these Tibetan diplomats in Taiwan obtained citizenship of the Republic of China/Taiwan or not. Another sensitive matter is: according to the information displayed on official documents, citizenship is not easy to

¹⁴⁷ The civil servants in charge of my requests provided the reason for concealment; it usually involved information connected to or referencing the Tibetan Religious Foundation of His Holiness the Dalai Lama, a semi-official diplomatic organisation of the Tibetan government in exile.

¹⁴⁸ McConnell, "Citizens and Refugees."

obtain in Taiwan for Tibetan exiles; however, various Taiwanese government bodies specifically arranged for Tibetan diplomats to obtain citizenship. These cases occurred when the Foundation was set up and when the new diplomats took office. These conflicts on citizenship of Tibetan exiles will be discussed in detail in Chapter Five. As for the document itself, these documents were firstly defined sensitive based on the unusual diplomat relationship between Taiwan and Tibet; furthermore, the citizenship issue for Tibetans also made these Tibetan documents sensitive too.

IV. Conclusion

The interviews and data collection provided empirical materials for the context of citizenship for Tibetan exiles and for overseas Taiwanese in the coming chapters. First, the interviews delivered people's perception on their citizenship and insight into their choices for their future identity in legal, social, and cultural perspectives. Interviews with overseas Taiwanese involved their journeys to foreign countries and their understanding of the denial of their Taiwanese identity at the governmental level. This content will be examined in Chapter Four, to describe how Taiwanese cases argued for the correction of their legal identity strategically, and how they used legal discourses to articulate their rights when confronting foreign authorities and advocating to the public for the recognition of their identity. As for the interviews with Tibetan exiles in Taiwan, the information gathered illustrated Tibetan exiles' ideas about their statelessness and their experiences during their applications for visas to Taiwan and for residence rights. Also included were Taiwanese spouses of the Tibetan exiles, providing their perspectives on the process of migration and settlement, and some Taiwanese individuals who have cooperated with the Tibetan exiles. These interviews gave some insight to the experiences of undocumented Tibetan exiles and of the advocates, in Taiwan, for greater rights for both marriage immigrants and the undocumented.

I approached the interviews by sorting data from different perspectives, collecting stories from each ethnic background, identifying key concepts of the interviews—such as the utilisation of statelessness— utilising citizenship and justice theories to locate the discussions in existing literature, and applying grounded theory to develop extensive theories alongside the analysis. Interviews of overseas

Taiwanese cases provided different contexts of people's life under democratic or non-democratic regimes and the stories of identity conflicts while the authorities do not accept their Taiwanese citizenship. Their stories revealed the geopolitics setting Taiwanese people face while they argue for the Taiwanese identity to be recognised. These materials present various aspects of contested citizenship act in the social struggle. In another aspect of my research, my collection of official documents also concerned the Tibetan exiles in society, and the materials I obtained from archives provided contexts and governmental attitudes towards the Tibetan exiles and the CTA. Therefore, my interviews with Tibetan exiles gave a picture of their legal consciousness and that of their Taiwanese spouses, especially concerning Tibetan identity in political, social, and cultural aspects, while the official documents delivered contextual observations of Tibetans in government bodies. Both parts will be further discussed in Chapter Five.

After discussing the methodology of the thesis, I turn to the Taiwanese legal framework in the next chapter to introduce the legal context of Taiwanese citizenship, and its structural deficiency in terms of both international and domestic law. Chapter Three also relates to the Tibetans' citizenship plight in Taiwan, since it involves the explanation of the sovereignty issue of the ROC/Taiwan—and since similar sovereignty debates have extended to the territory of Tibet. The sovereignty of Taiwan is crucial to the framework of Taiwanese citizenship, as unstable statehood can lead to a contested Taiwanese citizenship. As such, in the coming chapter, I will explore the legal framework of Taiwanese citizenship and Taiwanese statehood.

Chapter Three. Taiwan's Statehood and Citizenship

I. Introduction

This chapter explains the contested statehood of Taiwan and its influence on Taiwanese citizenship. The statehood of Taiwan is a continuing issue because of a lack of de jure recognition and an ambiguous sovereignty claim. Taiwan is now a democratic and self-ruled polity that uses the legal framework of the ROC. However, the ROC framework provides a complicated and contradictory ground for sovereignty—especially since its constitutional framework still contains a sovereignty claim over China, including Tibet, although the government of Taiwan renounced its claim to represent the whole of China in the 1990s. Discussions about the constitutional framework of Taiwan point out that threats from the PRC put the Taiwanese under the pressure of military attack—and that this has a continuing impact on debates regarding the possibility of leaving behind the legacy of the ROC in Taiwan. Geopolitical conflicts aside, international recognition of Taiwan is more than just de facto recognition, allowing Taiwan to enjoy many rights and obligations that ordinarily require statehood. Still, without de jure recognition, Taiwan cannot enjoy full rights and obligation in the international community, and nor can the Taiwanese people hold a full citizenship.

Moreover, the contested statehood of Taiwan not only influences its international relations but also affects the legal status of its citizens and immigrants in Taiwan. For the citizens, Taiwan's legal framework labels them as nationals of the ROC: a legal identity representing citizenship of a regime that formerly laid claim to governing China. Furthermore, the legal structure classifies people of the PRC as nationals but treats them as immigrants. It shifts Chinese immigrants into a category that treats them differently from other groups of immigrants, in the migration process. Another class of immigrants—Tibetan exiles from South Asia—face a set of different legal identities, as they are seen as nationals without citizenship, but also as people from PRC, immigrants from South Asia, and stateless persons on paper.

II. The Statehood of Taiwan and Concerns about Taiwanese Citizenship

For years, the statehood of Taiwan has been a contested issue.¹⁴⁹ A major part of the legacy of the Taiwanese government is its former claim to be the legitimate ruler of China after the Chinese Civil War. The Chinese Communist Party won the Civil War and established the People's Republic of China (PRC), while the Chinese Nationalist Party (also known as Kuomintang or KMT) fled to Taiwan; both see each other as the renegade party after 1949. In other words, in addition to the PRC—which represents China today—another government exists in Taiwan, using the formal name of the Republic of China (ROC) and claiming sovereignty over the entirety of China. However, the democratisation of Taiwan changed the ROC's political sovereignty claim, though the main body of the constitution remained unchanged.

Although the island has its own democratic system and has been self-governing for decades, it has the legacy of being the former Chinese government. This legacy is embodied in its official name, the Republic of China (ROC), as well as in its constitutional law. In its constitution, the sovereign claim is made over the whole of China. This did not change even after the democratization of Taiwan from the late 1980s. However, the government of the ROC stopped actively claiming sovereignty over the territory of China in the 1990s, although its political standing with PRC stayed ambiguous. This complicated position regarding sovereignty lasted for several decades, during which the international community showed different attitudes towards the ROC. As the Cold War began, countries against communist ideologies, such as the US, recognised the government of Taiwan as the legitimate Chinese government. The ROC government even represented China in the UN until 1971.¹⁵⁰ Over those years, certain countries changed their attitude and built up a formal diplomatic relationship with the PRC. The US, for example, shifted its recognition for the legitimate Chinese government on 1 January 1979. From that time on, the ROC only obtained limited formal diplomatic recognition. Therefore, the statehood of Taiwan can be challenged due to the ROC legal structure embodying an ambiguous attitude

¹⁴⁹ Crawford, *The Creation of States in International Law*; Roth, "The Entity That Dare Not Speak Its Name"; Timothy S. Rich, "Status for Sale: Taiwan and the Competition for Diplomatic Recognition," *Issues and Studies - Institute of International Relations* 45, no. 4 (2009): 159–88, [https://doi.org/10.7033/ISE.200912_45\(4\).0005](https://doi.org/10.7033/ISE.200912_45(4).0005). Juan J. Linz, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*, ed. Alfred C. Stepan (Baltimore: Johns Hopkins University Press, 1996); Bartmann, "Between De Jure and De Facto Statehood."

¹⁵⁰ Petrus W. Liebenberg, "Isolated States: A Comparative Analysis," *Orbis* 15, 37, no. 3 (1993): 467, [https://doi.org/10.1016/0030-4387\(93\)90162-6](https://doi.org/10.1016/0030-4387(93)90162-6).

towards China and Taiwan's lack of international recognition. However, in the present day, after the localisation of the politics in Taiwan, the debate over the statehood of Taiwan brings up this complicated geopolitical situation: in which Taiwan has been independent and self-ruled for decades, but, due to its ambiguous international status, is still seen as having unsettled sovereignty—resulting in continuing difficulties, for Taiwanese people, in obtaining statehood. Consequently, the statehood of Taiwan and its legal structure has built up a contested citizenship status for Taiwanese people, which labels them as citizens of the ROC. A question this chapter asks is: how is Taiwanese citizenship formulated, and how does statehood influence Taiwanese people's citizenship status in legal terms?

A. The Statehood of Taiwan

Many debates have been had on the statehood of Taiwan. From the perspective of international law, leading scholar of international law James Crawford argues that Taiwan is part of China, given the equivocal political claims for the relations between Taiwan and China and the sovereignty claim over the territory of China in the ROC Constitution after it was amended in the early 1990s.¹⁵¹ On the other hand, Brad Roth articulates the independent status of Taiwan, as well as its indeterminate legal status, by identifying the establishment of external relations with other states, which often go beyond de facto recognition of Taiwan. He also points out Taiwan's non-subjection to the PRC's claim of sovereign prerogative.¹⁵² Lung-Chu Chen believes that the statehood of Taiwan has "evolved," and that it presently fulfils the requirements of statehood with its democratic elections for presidents and legislators as "effective self-determination."¹⁵³ He stresses that international conditions have changed over the decades. At first, the sovereignty handover from Japan to the ROC might have been uncertain due to the lack of an international treaty addressing the status of Taiwan, to say nothing of the absence of the ROC in the Treaty of Francisco, also known as Treaty of Peace with Japan.¹⁵⁴ However, Chen continues the argument that statehood should be based on a territory's inhabitants' will, and that people in Taiwan have

¹⁵¹ Crawford, *The Creation of States in International Law*.

¹⁵² Roth, "The Entity That Dare Not Speak Its Name"

¹⁵³ Chen, "The Evolution of Taiwan Statehood."

¹⁵⁴ Chen, "The Evolution of Taiwan Statehood."

expressed themselves with their participation in political transformation—democratisation—and with their redefining their political status through decades’ worth of engagements in their distinctive political, economic, and cultural systems.¹⁵⁵ In short, the ongoing process of Taiwanese inhabitants’ collective efforts for self-determination and democracy have formulated statehood.¹⁵⁶ Chen’s “evolutionary theory” challenges the “declaratory theory” put forward by legal scholar Frank Chiang, who argues that a formal declaration of statehood is required for Taiwan to achieve it fully.¹⁵⁷

Apparently, for Taiwan, both the interpretation of the ROC’s legal framework and recognition—or lack thereof—by other states formulates its statehood problem. However, whether the recognition of other states should constitute a criterion of statehood—and if so, how—is under debate.¹⁵⁸ Research points out that the links between statehood and recognition are inevitable, as recognition signifies the agreement, by other states, of a newly recognized state’s entering international community and becoming both subject to, and protected by, international law.¹⁵⁹ However, this does not mean that recognition serves constitutively for the new state. On the contrary, many international law scholars, such as James Crawford, enforce declaratory theory, arguing that recognition serves only to confirm or acknowledge the existence of a state and does not have a constitutive effect for statehood.¹⁶⁰ For example, international law scholar Stefan Talmon argues that the non-recognition should be seen as a “sanction,” due to its creation or existence resulting from an “international wrongful act,” but that it cannot destroy the status of the state.¹⁶¹

¹⁵⁵ Chen, “The Evolution of Taiwan Statehood.”

¹⁵⁶ Chen, “The Evolution of Taiwan Statehood.”

¹⁵⁷ Chiang, *The One-China Policy State, Sovereignty, and Taiwan’s International Legal Status*.

¹⁵⁸ Crawford, *The Creation of States in International Law*; Malcolm N. Shaw, *International Law*, 9th ed. (Cambridge, UK: Cambridge University Press, 2021); Hersch Lauterpacht, *Recognition in International Law*, 1st paperback ed. (Cambridge, UK: Cambridge University Press, 2013); Stefan Talmon, “The Constitutive Versus the Declaratory Theory of Recognition: Tertium Non Datur?,” *British Yearbook of International Law* 75, no. 1 (2005): 101–81, <https://doi.org/10.1093/bybil/75.1.101>; John Dugard, *Recognition and the United Nations*, (Cambridge, UK: Grotius Publications, 1987); J. E. S. Fawcett, *The Law of Nations*, 2nd ed. (Harmondsworth: Penguin Books, 1971); Thomas D. Grant, *The Recognition of States: Law and Practice in Debate and Evolution* (Westport, CT; Praeger, 1999); Ingrid Delupis, *International Law and the Independent State*, 2nd ed. (Aldershot: Gower, 1987).

¹⁵⁹ Crawford, *The Creation of States in International Law*, 13–14.

¹⁶⁰ See, e.g. Ian Brownlie, *International Law and the Use of Force by States* (Oxford: Clarendon, 1981); Antonio Cassese, *International Law*, 2nd ed. (Oxford: Oxford University Press, 2005); Crawford, *The Creation of States in International Law*; Talmon, “British Year Book of International Law.”

¹⁶¹ Talmon, “British Year Book of International Law.”

Nevertheless, the issue of recognition has both political and legal effects, and can bring resolution or regulation to certain situations; therefore, it may be constitutive in this regard.¹⁶²

In short, recognition does not necessarily affect the statehood of a state; however, as a political action, recognition produces legal effects: not only influencing an entity's international relations with other states but also possibly affecting the application of international laws to the specific entity. If one follows the declaratory theory—which is also supported in practice such as in the Opinions of the Arbitration Commission of the Conference on Yugoslavia in 1991¹⁶³—the recognition issue concerning Taiwan does not seem as important to its status. However, this problem is regularly debated by legal scholars. Crawford takes the declaratory standing and believes that recognition does not have a definitive legal effect on the creation of a state. But then he argues that Taiwan does not justify its statehood, using reasons that include the recognition issue.¹⁶⁴ Crawford concludes that “Taiwan is not a state because it still has not unequivocally asserted its separation from China and is not recognised as a State distinct from China.”¹⁶⁵ Indeed, the first part of his conclusion concerns Taiwan's making a formal declaration of independence, but the second part sees recognition as a reason that Taiwan is not separate from China. In this way, recognition constitutes a principal part of the conclusion regarding Taiwan's statehood.

That recognition should not serve as a constitutive factor in the case of Taiwan has another supporting example. The French Court de Cassation, the supreme court of civil and criminal cases in France, had a civil case in 2014 involving a Singaporean company, Strategic technologies, claiming a payment against the Ministry of National Defence of the ROC-Taiwan, on the basis of a Singaporean judgement of 10 December 2002.¹⁶⁶ The court rejected the claim of enforcement of the judgement because the French government delivered the summons via the French Institute of

¹⁶² Crawford, *The Creation of States in International Law*.

¹⁶³ According to Opinion No 1: “the existence or disappearance of the state is a question of fact; the effects of recognition by other states are purely declaratory.” Alain Pellet, “The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples,” *European Journal of International Law* 3, no. 1 (1992): 178–85, <https://doi.org/10.1093/oxfordjournals.ejil.a035802>.

¹⁶⁴ Crawford, *The Creation of States in International Law*.

¹⁶⁵ Crawford, *The Creation of States in International Law*, 220.

¹⁶⁶ N. de pourvoi : 11-20.312

Taipei, and not through diplomatic channels (*par voie diplomatique*). Delivering through diplomatic channels is required, to follow stipulations governing interactions between the French government and the foreign governments according to Article 684, Paragraph 2, of the French Code of Civil Procedure (*Le Code de Procédure Civile Français*).¹⁶⁷ In its judgment, the court emphasised: “[T]he Republic of China, not recognized by the French Republic, constitutes in fact an independent sovereign State in which international courtesy should not be undermined ... [T]he absence of recognition by France of the Taiwanese State did not prevent the notification of the document to the Ministry of Foreign Affairs of Taiwan”¹⁶⁸ The court confirmed Taiwan’s independence and statehood although without the *de jure* recognition of the French government.

Apart from the unresolved recognition issue, examining the statehood of an entity also involves the other principal elements of statehood. According to Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States, there are four elements for statehood: (1) a permanent population, (2) a defined territory; (3) a government, and (4) the capacity to enter into relations with other states.¹⁶⁹ The Montevideo Convention is seen as international customary law today; these four requirements are mentioned widely and seen as essential for statehood. Examining statehood with these four requirements, it seems Taiwan has at least fulfilled the first three requirements: population, territory and government. Even as regards the last, Taiwan has become a member of international organisations in past decades; e.g. the World Trade Organization, using the name of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu. Furthermore, although the government of the ROC has formal diplomatic relations with only fourteen states, Taiwan has a tacit diplomatic relationship with many other states such as the US and the UK. The situation with the US can be considered as even more complex, as Taiwan is seen as

¹⁶⁷ N. de pourvoi : 11-20.312

¹⁶⁸ « (L)a République de Chine, non reconnue par la République française, constitue en fait un État souverain et indépendant auquel la courtoisie internationale impose qu'il ne soit pas porté atteinte... l'absence de reconnaissance par la France de l'État Taïwanais n'empêchait pas d'opérer la signification de l'acte auprès du Ministère des affaires étrangères de TAIWAN, État souverain et indépendant...» See: N. de pourvoi : 11-20.312.

¹⁶⁹ Convention on Rights and Duties of States, 26 Dec 1933.

a protectorate of the US, especially after the Korean War.¹⁷⁰ These tacit diplomatic relationships serve a practical function for commercial or cultural and consular affairs. The reasons these states do not recognise the ROC may vary in different contexts but can mainly be attributed to the ROC's former claim to be the sole representative of the entirety of China, before democratisation, as well as the one-China policy of the PRC. Nevertheless, taking for example consular affairs, a passport issued by the ROC government functions for entry to 131 countries or territories in the world. As the fourth requirement of statehood is the capacity to build up relations with other states, since its fulfilment does not seem to be limited to formal diplomatic relationships, Taiwan may meet this requirement. Furthermore, Roth points out that Taiwan possesses the rights, power, obligations and immunities attendant to statehood, and proves that the recognition is beyond that which many may consider as de facto recognition.¹⁷¹ Still, Taiwan cannot participate in the international community as a state, but, rather, as an economic entity for WTO, or other kind of entity. Without formal recognition, due to difficult external relations with other states and with the PRC, the international personality of Taiwan cannot be fully established.

B. Taiwan as a Contested Sovereignty within the UN

The lack of conclusion on Taiwan's international status and self-determination are still problematic in terms of international laws. First, the sovereignty issue of Taiwan is usually seen as embedded within the ROC legal structure. The ROC is a legacy of the Chinese Civil War, as the Chinese Nationalist Party fled to Taiwan in 1949 and promptly caused severe friction between the Taiwanese population and dictatorial authorities. The Chinese Communist Party and the Chinese Nationalist Party did not agree to a cease-fire until the Korean War began in 1950. On 27 June 1950, the President of the United States, Harry S Truman, made a statement on Taiwanese affairs. Truman called for Taiwan to remain neutral, and for the Taiwan strait to be considered neutral waters by means of three procedures. These consisted of: 1) ordering the US 7th Fleet to the Taiwan Strait to maintain peace in the area, 2) asking the ROC government to cease fire and not to antagonise the PRC, and 3) leaving the

¹⁷⁰ Perry Anderson depicts the tension of cross-strait relations and the relevant effects. See: Anderson Perry, "Stand-off in Taiwan," *London Review of Books*, 3 June 2004.

¹⁷¹ Roth, "The Entity That Dare Not Speak Its Name"

future of Taiwan open until further discussion connected to the peace settlement with Japan or through the UN.¹⁷² These measures were taken, and the ROC government has had the backing of the US since then. However, as mentioned above, the peace settlement with Japan did not resolve the issue of the international status of Taiwan; besides this, the UN did not weigh in on the issue of the international status of Taiwan until the modern day.¹⁷³ Instead, as China became more powerful in the UN, it became more difficult for Taiwan to obtain UN access.

Given that the UN did not make a resolution for the statehood of Taiwan, as well as the ROC's loss of its UN seat in 1971, Taiwan's participation in international community has become difficult over the years. Participating in inter-governmental organisations (IGO) thus has both functional and political meaning for Taiwan.¹⁷⁴ This participation could certainly reinforce international influence, amend weak diplomatic relations, obtain international support and strengthen the legal status from an international perspective.¹⁷⁵ Participation in the World Health Organisation (WHO), for instance, is a measure to ensure public health and enhance international participation—and has been an expectation in Taiwan since 2002. Participating in the WHO is the end point of long journey that has not yet succeeded, the main reason being the opposition of China, especially the PRC has strengthened its international participation in the UN system since its reforms and opening in the late 1970s. Until today, the WHO still refuses to accept Taiwan as a member, leaving Taiwan to deal with the severe acute respiratory syndrome (SARS) epidemic in 2003 and the COVID-19 pandemic by itself.¹⁷⁶ During the first outbreak of COVID-19, WHO official refused

¹⁷² “Accordingly, I have ordered the 7th Fleet to prevent any attack on Formosa. As a corollary of this action, I am calling upon the Chinese Government on Formosa to cease all air and sea operations against the mainland. The 7th Fleet will see that this is done. The determination of the future status of Formosa must await the restoration of security in the Pacific, a peace settlement with Japan, or consideration by the United Nations.” “Statement by the President, Truman on Korea,” June 27, 1950, History and Public Policy Program Digital Archive, Public Papers of the Presidents, Harry S. Truman, 1945-1953. <http://digitalarchive.wilsoncenter.org/document/116192>.

¹⁷³ As late as 1971, when the PRC took over the Chinese seat at the UN, the issue of the international status of Taiwan had not yet been discussed.

¹⁷⁴ Chien-pin Li, “Taiwan’s Participation in Inter-Governmental Organizations: An Overview of Its Initiatives,” *Asian Survey* 46, no. 4 (2006): 597–614, <https://doi.org/10.1525/as.2006.46.4.597> - see especially p. 613; Björn Alexander Lindemann, *Cross-Strait Relations and International Organizations: Taiwan’s Participation in IGOs in the Context of Its Relationship with China* (Wiesbaden: Springer VS, 2014).

¹⁷⁵ There are other reasons for the international participation such as for political purpose in domestic terms.

¹⁷⁶ Jaw-ling Joanne Chang, “Taiwan’s Participation in the World Health Organization: The U.S. ‘Facilitator’ Role,” *American Foreign Policy Interests* 32, no. 3 (2010): 131–46, <https://doi.org/10.1080/10803920.2010.487381>.

to address Taiwan and the exclusion of its 23 million people.¹⁷⁷ It also signifies the longstanding position towards Taiwan in the UN.

In September 1999, a major earthquake struck central Taiwan, paralysing people's lives for weeks. Kofi Annan, the Secretary-General of the UN at that time, delayed sending the UN's disaster assessment team while waiting for China's permission, and addressed the island as "the Taiwan Province of China" in his statement.¹⁷⁸ In 2003, due to continuing pressure from China, Annan for the first time used "the organisation's one China policy" to bar a ROC official from entering the headquarters of the UN, even with the invitation of the UN Correspondents Association (UNCA) to talk about the situation of SARS in Taiwan and Taiwan's campaign to join the World Health Assembly.¹⁷⁹ In 2007, the General-Secretary of the UN, Ban Ki-moon, misinterpreted Resolution 2758 to argue that Taiwan is a part of China, and rejected the government of the ROC's application to enter the UN using the name Taiwan.¹⁸⁰ (For context, Resolution 2758 recognised the PRC as the lawful representatives of China and expelled the representatives of Chiang Kai-shek, the authoritarian leader of the ROC).¹⁸¹ The resolution did not mention Taiwan or the people of Taiwan, as it did not aim to resolve this matter.¹⁸² Ban Ki-moon's interpretation of Resolution 2758

¹⁷⁷ Helen Davidson, "Hong Kong Official Reprimands TV Station over WHO Interview that Mentioned Taiwan," *The Guardian*, 3 April 2020. <https://www.theguardian.com/world/2020/apr/03/hong-kong-official-reprimands-tv-station-over-who-interview-that-mentioned-taiwan> The relevant discussion can also refer to: Yu-Jie Chen and Jerome A. Cohen, "Why Does the WHO Exclude Taiwan?" Council on Foreign Relations, 9 April 2020. <https://www.cfr.org/in-brief/why-does-who-exclude-taiwan>

¹⁷⁸ Antonio Chiang, "Taipei Crisis, Beijing Opportunity," *The New York Times*, 27 September 1999. <https://www.nytimes.com/1999/09/27/opinion/IHT-taipei-crisis-beijing-opportunity.html>

¹⁷⁹ William M. Reilly, "UN Bars Taiwan Envoy from Reporter Club," United Press International, 23 May 2003. <https://www.upi.com/Defense-News/2003/05/23/UN-bars-Taiwan-envoy-from-reporter-club/67761053715112/?u3L=1>

¹⁸⁰ Chiang, *The One-China Policy*; Patrick Worsnip, "Ban says Taiwan's UN bid legally impossible," *Reuters*, 18 September 2007. <https://www.reuters.com/article/us-taiwan-un-idUSN1843007620070918>

¹⁸¹ The United Nations General Assembly Resolution 2758:

Recognising that the representatives of the Government of the People's Republic of China are the only lawful representatives of China to the United Nations and that the People's Republic of China is one of the five permanent members of the Security Council,

Decides to restore all its rights to the People's Republic of China and to recognise the representatives of its Government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they unlawfully occupy at the United Nations and in all the organisations related to it.

For additional discussion of this point, please see Chapter One, section IV, pages 10-11.

¹⁸² The relevant discussion can be found in Chapter One, section IV, pages 10-11.

did not reflect its original meaning, but it resonated with the longstanding interpretation of the resolution 2758 by the PRC. However, not all the member countries agreed with the interpretation; indeed, at that time, the US issued a non-paper statement to the UN secretary to ask the UN not to take sides in this sensitive issue.¹⁸³

The lack of participation in the UN not only reflects the government level disputes for Taiwan, but also influences individuals' right. Taiwanese people are asked to describe themselves as having Chinese nationality or that of "Taiwan, province of China," in their applications to work in the UN. Since 2015, the UN has blocked Taiwanese visitors from entering its headquarters in New York or its offices in Geneva.¹⁸⁴ The UN does not allow the use of Taiwanese passports; instead, sometimes people are asked to show identity documents such as a driving licence issued by the Taiwanese authorities,¹⁸⁵ sometimes people are asked to show forms such as the "Mainland travel permit for Taiwan residents," a travelling document issued by the Chinese authorities for Taiwanese who need to travel to China,¹⁸⁶ and sometimes they were refused entry, even with all documents at hand.¹⁸⁷ Many Taiwanese complained about the confusing and ever-changing requirements for their documents; some of them even applied for the "Mainland travel permit for Taiwan residents," just for entering the UN, as they did not have any need to go to China. But plans to enter the UN can succeed or fail arbitrarily; people sometimes can just be allowed entrance on the indulgence of gatekeepers and security guards. (The author once visited UN headquarters in New York, in 2016, by showing the Taiwanese passport.) Denial of Taiwanese citizenship starts at the point of passport denial. Since travel documents embody the sovereign practice of border control, denying identity documents such as ID cards, driving licences—documents showing the authority of

¹⁸³ Chiang, *The One-China Policy*; John J. Tkacik, Jr., "Taiwan's Status Remains 'Unsettled,'" *The Heritage Foundation*, 1 October 2007. <https://www.heritage.org/defense/commentary/taiwans-status-remains-unsettled>

¹⁸⁴ Matthew Strong, "Taiwan Thanks U.S. Congress Members for Support over Taiwanese Visitors to UN," *Taiwan News*, 23 December 2017, <https://www.taiwannews.com.tw/en/news/3326913>; Klaus Bardenhagen, "Interview with U.N.: Taiwanese Passports Unacceptable – but Not These Other Official Documents," *In Taiwan*, 21 September 2015, <https://intaiwan.net/2015/09/21/un-geneva-taiwan-passport-not-recognized>; William Lowther, "Taiwanese Turned Away from UN Building in NY," *Taipei Times*, 17 June 2016; Elson Tong, "Not Just Officials: Taiwan Students Blocked from Visiting UN Public Gallery in Geneva," *Hong Kong Free Press*, 15 June 2017, <https://hongkongfp.com/2017/06/15/not-just-officials-taiwan-students-blocked-visiting-un-public-gallery-geneva/>.

¹⁸⁵ Bardenhagen, "Interview with U.N."

¹⁸⁶ Tong, "Not Just Officials."

¹⁸⁷ Ryan Ho Kilpatrick, "Taiwanese Visitor to UN in Geneva Told to 'Come Back with Your Chinese Passport,'" *Hong Kong Free Press*, 17 September 2015.

the Taiwanese government—is to deny all entry of Taiwanese visitors. The Taiwanese people are undocumented and invisible in the UN, while the UN ignores the fact of governance by Taiwanese authorities—and therefore, ignores the existence of Taiwanese people even when they are in front of the gate.

C. Cross-Strait Policy Changes during Democratisation

Although participation in IGOs has been extremely difficult for Taiwan over the past few decades, its people and the ROC government went through political reforms and achieved several major changes following the democratisation of Taiwan from the late 1980s onward. In 1990, President Lee Teng-Hui announced the termination of the National Mobilisation for Suppression of the Communist Rebellion, which substantially started democratic reform and brought about the complete re-election of the national legislature. Afterwards, the ROC government aimed to participate in the international community more actively, to begin establishing Taiwan's international personality, as mentioned above. This included applying for a UN seat in the early 1990s. The government at that time applied for a UN seat claiming that the PRC and ROC should have separate seats in the UN in order to represent “the residents of the territory under its de facto control” in 1993.¹⁸⁸ Since then, however, the ROC government has changed its standing of representing the whole of China. In an interview on Deutsche Welle (DW), a German radio station, President Lee Teng-hui stated:

In the 1991 constitutional amendment, Article 10 of the Additional Articles (now Article 11) limits the area covered by the Constitution to that of the Taiwan area and recognises the legitimacy of the rule of the People's Republic of China on the Chinese mainland...The 1991 constitutional amendments have designated cross-strait relations as a state-to-state relationship or at least a special state-to-state relationship, rather than an internal relationship between a legitimate government and a renegade group, or between a central government and a local government.¹⁸⁹

At about the same time, the government started to articulate the cross-strait relationship using different frames. These frames included: a special state-to-state

¹⁸⁸ Yu-Shan Wu, “Taiwan in 1993: Attempting a Diplomatic Breakthrough,” *Asian Survey* 34, no. 1 (1994): 46–54, <https://doi.org/10.1525/as.1994.34.1.00p03482>.

¹⁸⁹ Interview of Taiwan President Lee Teng-hui, Deutsche Welle Radio, 9 July 1999, <http://www.taiwandc.org/nws-9926.htm>.

relationship, described in 1999 by President Lee Teng-hui; one country on each side [of the Taiwan Strait], the policy articulated in 2002 by President Chen Shui-bian and one China with different respective interpretations, the claim held by the Ma Ying-jeou administration until 2016. This last claim means that “one China” can be either the PRC or the ROC, depending on the side. It emerged as early as a semi-official meeting between the ROC and the PRC in 1992, in Hong Kong, though this meeting did not result in any consensus. This was due to significant disagreement between the two parties, as the PRC argued for only one China, represented by the PRC, whereas the ROC agreed there is only one China, but insisted that each of them could have their own interpretation of China.¹⁹⁰ However, the KMT uses the meeting to claim there exists the 1992 consensus on the statement of the ROC, that is, one China with respective interpretations. The KMT argued for the legitimacy of the ROC by interpreting the content of one China should be the ROC, whereas the PRC insists on a monolithic “one China.”

After 2008, the administration of President Ma Ying-jeou used this manipulated term 1992 consensus, without properly mentioning the contradiction of the content, as its baseline for the cross-strait relationship successfully supported by the PRC; later, however, the PRC argued that the 1992 consensus meant the acceptance of one China, with the final aim being (re)unification under the “one country, two systems.”¹⁹¹ After 2016, the ROC’s stance changed again as the new president, Tsai Ing-wen, claimed that neither the ROC or the PRC is subordinate to the other. This was seen as the revival of the special state-to-state relationship by the PRC.¹⁹² These statements seem inconsistent, for the Ma Ying-jeou administration took the “one China with different respective interpretations” line, which denoted the acceptance of one China. However, even with the Ma administration’s definition, it still connoted that the

¹⁹⁰ The title “1992 consensus” constructs a false image: namely, that there actually existed a consensus during that meeting. However, the arguments of each party, in 1992, denoted two different claims concerning the status of the ROC. Therefore, Wu and Liao articulate that it was used “*ex post facto*... to pin down Taiwan’s international status.” See Wu Jieh-min and Liao Mei, “China’s Influence on Taiwan’s Elections: The Impact of the ‘1992 Consensus’ on Presidential Elections,” in *China’s Influence and the Center-Periphery Tug of War*, ed. Fong, Wu, and Nathan, 2020.

¹⁹¹ For example, according to the speech of the leader of the PRC, Xi Jinping, on 2 January 2019, he connected the 1992 consensus with one country two system to against the independence of Taiwan. Speech at the Meeting Marking the 40th Anniversary of the Issuance of the Message to Compatriots in Taiwan, accessed 10 March 2022, http://www.gwytb.gov.cn/wyly/201904/t20190412_12155687.htm

¹⁹² J. Michael Cole, *Cross-Strait Relations Since 2016* (Abingdon, Oxon; New York, NY: Routledge, 2020), <https://doi.org/10.4324/9780367855536>.

PRC and the ROC are separate from each other that China is different from both sides. Furthermore, these statements stopped arguing about the representative of sovereign China, except to the extent that the Ma administration's "one China with different respective interpretations" created an ambiguous claim for the sovereign area of the ROC.¹⁹³ However, the biggest difference between the Ma administration and others is that the other Taiwanese administrations aim to internationalise cross-strait relations using sovereign claims. For instance, "special state-to-state" or "one side one country" each claim the two states or two countries status, implying that China and Taiwan are separate in international terms. In contrast, the Ma administration's use of "one China with different respective interpretations" to explain the relations between the PRC and the ROC, may include some ambiguous space for the representation as what constitutes the "one China," but does not claim "two Chinas" through which the PRC and the ROC should each have their own sovereignty. The manipulation of the definition of "one China" by the Ma administration smoothed out the cross-strait relationship but the PRC did not compromise on sovereignty; for PRC, one China means the PRC.¹⁹⁴ In this perspective, the Ma administration's claim is a setback for the ROC's independent sovereignty claim, and reversed the cross-strait problems into an internal argument of representation of China.

Another major change during the late 1980s-1990s was the amendment to the Constitution that changed the structure of the legal framework of the ROC. One of the most important parts of the amendment is the redefinition of the territory and voting people to shift the sovereign people from Chinese to Taiwanese people.

D. Constitutional Reforms for Territory and People

The ROC's constitutional reforms began in the late 1980s, representing a new start from the authoritarian past while also serving the democratic transition.¹⁹⁵ These

¹⁹³ The 1992 consensus is understood differently by Taiwanese people—a third of them even perceive the 1992 consensus as a country-to-country agreement. See Austin Horng-En Wang et al., "The Non-consensus 1992 Consensus," *Asian Politics & Policy* 13, no. 2 (2021): 212–27, <https://doi.org/10.1111/aspp.12576>.

¹⁹⁴ Yasuhiro Matsuda, "Cross-Strait Relations under the Ma Ying-Jeou Administration: From Economic to Political Dependence?," *Journal of Contemporary East Asia Studies* 4, no. 2 (2015): 3–35, <https://doi.org/10.1080/24761028.2015.11869083>.

¹⁹⁵ Yeh, *The Constitution of Taiwan*, 36.

reforms included the indigenisation/localisation of the constitution of the ROC and transformed its sovereign people from Chinese people to Taiwanese people.¹⁹⁶ The amendment specifies geography—a free area and a mainland area—and limits the rights of citizens to the residents of free area, namely, the Taiwanese people. The amendment not only points out the de facto control of the ROC but also makes it a constitutional discourse of the division between the ROC and the PRC. Although in the main text of the Constitution, the area of territory did not change—still containing areas such as Tibet and Mongolia—the amendment shows a different approach to the issue of representation and the ROC’s de facto territory.

From developments concerning domestic and international aspects of sovereignty over the years, it can be seen that the Taiwanese government addressed the sovereignty issue openly, and that the amendments of constitutional law are seen to have made distinctions between Taiwan and China, even though they did not make definite changes. Arguing for this point, Crawford used the intergovernmental relationship of the British Dominions and the UK to show that the special intergovernmental relationship does not mean these two belong to two states.¹⁹⁷ However, in the case of Taiwan, the constitutional amendments and the statements from the president—a person who is democratically elected—together represent the executive power of government, one reconstructing the constitutional and political discourse of sovereignty from time to time. Furthermore, the PRC and the ROC never achieved an agreement on the sovereignty issue; therefore, it does not seem comparable to the case of British Dominions and the UK.

On the other hand, the uneasy reality of international politics also made the government of the ROC look for a practical way to participate in the international community without raising the complex sovereignty issue. Given this circumspection, the recognition that the ROC government sought is recognition for representing, in practice, the residents of Taiwan and the islands of Penghu, Kinmen, and Matzu.

¹⁹⁶ Yeh, *The Constitution of Taiwan*, 4.

¹⁹⁷ Crawford, *The Creation of States in International Law*, 127.

E. The Dissolution of the Mongolian and Tibetan Affairs Commission, and Its Influence on Tibetans

Democratisation not only challenged the political policy and the fundamental legal structure of the ROC government, but also affected the government's administrative body. With the shifts connected to the sovereignty claim and the understanding of a sovereign people, the original design of the government's structure and its legislative power had to change to fit the new scenario. The Wild Lily student movement in 1990 triggered a popular election for representatives in legislative institutions, the National Assembly and Legislative Yuan, and the coming direct presidential election.¹⁹⁸ This election changed the constitution as regards the election of members of Legislative Yuan and National Assembly, a legislation for constitution amendment and a group of electors for presidential election, from using provincial proportions based on a context involving the mainland—i.e. including Mongolia and Tibet—to county proportions based on areas of Taiwan, Penghu, Kinmen, and Matzu.

The changes connected to sovereignty also influenced the instillation of the Mongolian and Tibetan Affairs Commission—an institution for governing Mongolia and Tibet in the ROC government—because the commission's function did not align with the government's new political agenda. The Mongolian and Tibetan Affairs Commission was established in 1928 when the ROC was the legitimate regime of China and it aimed at governing Tibet and Mongolia, both of whom were initiating their own countries' independence. After the KMT lost the Chinese Civil War and fled to Taiwan, the commission could not continue its work in Mongolia and Tibet. However, it complied with the political sovereignty claim aligned with the definition of territory in the constitution, serving its “unification” function during the period of martial law by introducing Tibetan exiles to Taiwan as students and workers—all for “future governing” in Tibet when the ROC would “retake [the] mainland.”¹⁹⁹ Because of democratisation, the commission's political agenda as attached to the sovereignty claim was forced to change, shifting to “intercultural communication” with Mongolians and the Tibetan community in Mongolia, and with Tibet and the Tibetan community in

¹⁹⁸ Yun Fan, *Social Movements in Taiwan's Democratic Transition: Linking Activists to the Changing Political Environment* (Abingdon, Oxon; New York, NY: Routledge, 2019).

¹⁹⁹ Hsiao-ting Lin, *Tibet and Nationalist China's Frontier: Intrigues and Ethnopolitics, 1928-49* (Vancouver: University of British Columbia Press, 2006); Okawa, “Lessons from Tibetans in Taiwan.”

general, as well as to the introduction of Mongolian and Tibetan culture to Taiwanese society. However, its organisational position was still not clearly established with a specific commission from the branch of the ROC government in charge of Mongolian and Tibetan Affairs, as there also existed a Ministry of Foreign Affairs for Mongolia and a Mainland Affairs Council for Tibet and Inner Mongolia. From the 1990s onward, the ROC government and the Tibetan government in exile worked to establish diplomatic relations and invited the Dalai Lama to visit Taiwan.²⁰⁰ In 2002, the ROC and Mongolian government established informal diplomatic relations and excluded Mongolia from the mainland area in the Enforcement Rules for the Act Governing Relations Between the People of the Taiwan Area and the Mainland Area.²⁰¹ The amendment of the constitution, the changes connected to political sovereignty, and the establishment of diplomatic relationships with the Tibetan government in exile and Mongolia reflect the localisation/indigenisation of the ROC government and the flourishing of the Greater China ideology.

During democratisation, the function of the Mongolian and Tibetan Affairs Commission was restricted to nominal cultural affairs and some administrative tasks, such as household registration concerning the Tibetans and Mongolians living in Taiwan. However, there also existed the Ministry of Culture and the Ministry of Interior Affairs, to take responsibility for these matters. The necessity of an independent organisation for Mongolia and Tibet was doubted for decades, but it still maintained its nominal function, as the ROC still provided a governmental agency for to Tibetans and Mongolians. This, even though the political significance of the Commission had been attenuated by both the lack of sovereignty claim over these two places and the changes of organisational positioning to culture. In 2017, however, the Mongolian and Tibetan Affairs Commission was dissolved, and most of the original sector was absorbed to Ministry of Culture.²⁰² The dissolution of this governmental body that embodies sovereignty over Tibet and Mongolia also means that the current government does not have a body representing the Tibetans and Mongolians specifically. Even though the Commission had less significance in politics and only

²⁰⁰ “Taiwan Hails Dalai Lama’s Support,” *BBC*, 5 April 2001, <http://news.bbc.co.uk/1/hi/world/asia-pacific/1261328.stm>.

²⁰¹ “Taiwan-Mongolia Ties Move On,” *Taipei Times*, 10 September 2002, <http://www.taipeitimes.com/News/taiwan/archives/2002/09/10/167505>.

²⁰² Everington, “Mongolian and Tibetan Affairs Commission to Be Dissolved.”

played a cultural and administrative role (especially concerning household registration) in the government, its dissolution put an end to Tibetans and Mongolians seeking assistance from the government via a body specifically dedicated to their affairs.

Tibetans in Taiwan used to seek assistance from official organisations such as the Mongolian and Tibetan Affairs Commission, from non-official NGOs such as the Taiwan Tibetan Welfare Association and the Taiwan Association for Human Rights, and from semi-official organisations such as the Tibetan government in exile's representative office in Taiwan, the Tibet Religious Foundation of His Holiness the Dalai Lama. Tibetans in exile have different ideologies concerning the issue of Tibet's sovereignty—some hold a more tolerable attitude towards the Great China ideology (in which China may include Tibet), while others do not. With this difference in mind, Tibetans who cannot accept the idea of Greater China may have seen the Mongolian and Tibetan Affairs Commission as an unbearable or misguided organisation. The detailed history of the Tibetan exiled community and the commission is explained in the Chapter Five. In brief, for Tibetans who used to cooperate with the Commission, its dissolution may signify an exclusive attitude towards Tibetan community from the government. Political decisions and the shift of sovereignty affects Tibetans' position and citizenship directly through the government of the ROC; this points out the vulnerability of Tibetan exiles who were seen as useful groups when the ROC sought to "retake [the] mainland," but who then were seen as aliens when the ROC changed its sovereignty claim. The arbitrary decision of the Taiwanese government shows that certain people most heavily influenced are objects being moved about alongside shifts of a political agenda.

There are several other key organisations concerned with matters of Tibetan citizenship. The Taiwan Tibetan Welfare Association is an organisation made up of the Tibetans in Taiwan; they are key activists for Tibetan cultural activities and Tibetan's quality of life in Taiwan. The association also connects individual Tibetans to The Tibet Religious Foundation of His Holiness the Dalai Lama and to the Taiwan Association for Human Right, especially as concerns citizenship issues. That is, the welfare association not only serves as a key activist for Tibetans' rights, but also works as a mediator between different organisations for elevating freedom of movement to a greater degree—in particular, for undocumented Tibetans. As for The Tibet

Religious Foundation of His Holiness the Dalai Lama—it is a representative office of the Tibetan government in exile and therefore provides certain “consular” services to Tibetans in Taiwan and promotes Tibetan culture to the Taiwanese society. The Foundation also issues Tibetan identity documents—green books—to Tibetans and verifies Tibetans’ identity via their administrative system. Another association for Tibetans’ human rights and citizenship is the Taiwan Association for Human Rights: a human rights NGO since 1984 which has handled Tibetan cases in recent years. The Association takes Tibetan cases as one of their legislative lobbying focuses and has long worked on the recognition of undocumented Tibetans’ citizenship rights. Today the Taiwan Association for Human Rights, the Taiwan Tibetan Welfare Association, and other Taiwan-based NGOs with have interests in Tibetan issues, work together in the Human Rights Network for Tibet and Taiwan (est. 2016).

F. The Difficulty of a Formal Declaration of Independence for Taiwan, Today

Turning back to the shift of sovereignty, the ROC has localised its legal structure and governing in Taiwan, to fit the current scenario of Taiwan as a country. However, the unresolved sovereignty of Taiwan still conflicts with a formal declaration of independence. The research previously discussed does not only give different conclusions about statehood—from its absence to its being fully developed—but also, researchers have made various conclusions on elements of statehood in the case of Taiwan. Crawford stresses that the lack of statehood of Taiwan is due to the equivocal political impetus for independence of Taiwan, and for the constitutional sovereign claim over China. He questions the ambiguous attitude of the Taiwanese government, as well as the constitutional structure of the ROC—which does not fit into the statehood of an independent Taiwan.²⁰³ Scholar Frank Chiang argues that the ROC government did not obtain the sovereignty of Taiwan due to its absence from any international treaty. Over all these years, the ROC government has not declared statehood in Taiwan, as a new state, and does not participate in the international community as a state.²⁰⁴ However, Chiang differentiates the ROC government from Taiwan—he argues that even though the ROC government is the governing authority,

²⁰³ Crawford, *The Creation of States in International Law*.

²⁰⁴ Chiang, *The One-China Policy*.

it is not seen as a government. He applies declaratory theory to the establishment of statehood and articulates that the lack of declaration is the main reason for Taiwan's contested status.²⁰⁵ As for this lack of declaration: Roth sees ambiguity as an expedient strategy for both the Taiwanese government and the international community. While the Taiwanese people need to secure themselves from any military threat from the PRC, and from other states' opposition to de jure independence, foreign states still eschew the sovereign claim of the PRC and engage in international relations with Taiwan. States such as the US and Japan also officially affirm commitments to Taiwan's national security and ensure Taiwan can self-defend.²⁰⁶ This observation describes the complex geopolitics surrounding the diplomatic situation of Taiwan. For example, the US has long applied a strategic ambiguity to Taiwan, including matters of national defence, to the point that it never has made a clear statement as to whether the US will come to defend Taiwan if the PRC uses force against it. As for the international community in general, Ja Ian Chong, professor of political science at the National University of Singapore, has collected different versions of one the China Policy among 181 countries. Doing so, he discovered that fifty-one of them fully align with the PRC's position, and that the remaining 130 have different interpretations of Taiwan's international status.²⁰⁷

However, in 2020, the PRC started a series of aggressive moves by sending military jets into the air defence identification zone of Taiwan; by 19 December 2021, there had been 934 military plane incursions into the defence zone, given the number of flights over 230 days within 2021.²⁰⁸ This number surpassed the historical record, and this continuing threat of potential war impelled the international community to respond.²⁰⁹ The US increased arm sales to Taiwan to strengthen its national force and

²⁰⁵ Chiang, *The One-China Policy*.

²⁰⁶ Chiang, *The One-China Policy State*, 113.

²⁰⁷ Ja Ian Chong, "The Many "One Chinas" Multiple Approaches to Taiwan and China," *Carnegie Empowerment for International Peace*, 9 February 2023, <https://carnegietsinghua.org/2023/02/09/many-one-chinas-multiple-approaches-to-taiwan-and-china-pub-89003>

²⁰⁸ This record is from the Defence Ministry of the ROC. Air activity in the southwestern ADIZ of R.O.C., Access 10 March 2022,

<https://www.mnd.gov.tw/English/PublishTable.aspx?types=Military%20News%20Update&Title=News%20Channel>

²⁰⁹ Helen Davidson, "China Sends Largest Incursion of Warplanes into Taiwan Defence Zone since October," *The Guardian*, 24 January 2022, <https://www.theguardian.com/world/2022/jan/24/china-sends-largest-incursion-of-warplanes-into-taiwan-defence-zone-since-october>

led its allies to cooperate on Taiwan strait tension. The US and Japan firstly announced a joint statement regarding “the importance of peace and stability” in the Taiwan strait on 16 April 2021.²¹⁰ Following this, the US, the UK, and Australia launched a new security pact, AUKUS, on 15 September 2021. Even though its main goal concerns the security and stability of the Indo-Pacific, this new security pact has been seen to target China’s growing military power—and thus, has riled up China.²¹¹

In 2021, the US, the UK, Canada, Australia and France sent navy warships or intelligence vessels to cruise the Taiwan Strait in-between Southeast China and Taiwan. For the UK, it was the first time since 2008 that it openly made any incursion.²¹² The French defence minister mentioned the cruise of its naval vessel to the Taiwan Strait as a gesture of international support for freedom of navigation, as China had increasingly violated Taiwan’s defence zone.²¹³ In the Group of Seven summit of 2021, the post-summit statement included Taiwan in a reference to the situation in the Taiwan Strait. These gestures show the stance of the international community, even as the PRC tries to use force to threaten or even invade Taiwan. It does not describe its stance as a national defence of Taiwan, but rather as “regional peace,” and “stability,” etc. It is clear that, even though for years the international community has been vague on making a clear statement regarding the status of Taiwan, it is not acceptable for Taiwan to be invaded by military force from China.

However, “stability” can also constrain Taiwan from taking other radical actions towards legitimate independence in international law, as the international community might not endure any factor changing the status quo from Taiwan’s side. For example, in 2007, the Taiwanese government once more applied to become a member of the

²¹⁰ Ralph Jennings, “US-Japan statement raises issue of Taiwan defense against China,” *Voice of America*, 24 April 2021, <https://www.voanews.com/a/east-asia-pacific-us-japan-statement-raises-issue-taiwan-defense-against-china/6204998.html>

²¹¹ “AUKUS: UK, US and Australia Launch Pact to Counter China,” *British Broadcasting Corporation*, 16 September 2021. <https://www.bbc.co.uk/news/world-58564837>

²¹² “China Condemns U.S., Canada for Sending Warships through Taiwan Strait,” *Reuters*, 17 October 2021. <https://www.reuters.com/world/asia-pacific/us-canadian-warships-sailed-through-taiwan-strait-last-week-2021-10-17/> “UK Warship Makes Rare Transit through Taiwan Strait,” *Agence France-Presse*, 27 September 2021. <https://www.france24.com/en/live-news/20210927-uk-warship-makes-rare-transit-through-taiwan-strait>

²¹³ “France confirms naval presence in Taiwan Strait,” *Focus Taiwan CAN English News*, 31 Oct 2021. <https://focustaiwan.tw/politics/202110130019>; Matthew Strong, “France Acknowledges it Sent Navy Ship to Taiwan Strait, Taiwan News,” 13 October 2021. <https://www.taiwannews.com.tw/en/news/4314084>

UN under the name of Taiwan—but it was not supported by the majority of countries. The limitation on international participation does not keep the Taiwanese government from building up its statement of statehood. The stance of the current Taiwanese government is that Taiwan is an independent country from two aspects. First, the use of ROC structure brings complexity concerning the sovereign issue but avoids the potential conflicts of establishing a new state, given the current international geopolitical environment. Secondly, the government argues that the ROC has been reformed—from the ROC that came to Taiwan in 1949—through economic reform, democratisation and diversity of society, and thus, the sovereignty of 23 million people should not be violated. In the national speech of the president Tsai Ing-Wen, she used the Republic of China (Taiwan) to replace Republic of China.²¹⁴ Similarly, Lung-Chu Chen’s point of view reflects the Taiwanese government’s interpretation of the statehood of Taiwan. In this way, he argues that the statehood of Taiwan has evolved through the collective efforts of the Taiwanese people through democratisation and that the sovereignty of Taiwan has its source in the people of Taiwan.²¹⁵ This perspective emphasises the fact that the ROC and the PRC are not subordinate to each other and that the independence of Taiwan should not be overlooked—if only due to the fact that a democratic country as such should be respected in terms of the sovereignty of the people.

Indeed, apart from the international pressure to maintain the stability of the region, the governance of the ROC in Taiwan confirms its sovereignty from the domestic perspective. The state power of the ROC functions properly as a sovereign state within Taiwan, while its statehood as an independent state is questionable from the perspective of international law.²¹⁶ The independence of Taiwan shows the effects of successful democratic practice and a vibrant civil society, including social movements from environmental protection to human rights. (Recently, one of Taiwan’s most momentous achievements was the legalisation of same sex marriage in 2019.²¹⁷)

²¹⁴ Office of the President, Republic of China, “President Tsai delivers 2021 National Day Address,” <https://english.president.gov.tw/News/6175>.

²¹⁵ Chen, “The Evolution of Taiwan Statehood.”

²¹⁶ Tseng and Wu, “Zhong Xin si Kao gong min shen fen de zheng Zhi mian Xiang”; Jieh-min Wu, *Di san zhong zhong guo xiang xiang* [Reimagining China] (New Taipei City: Rive Gauche Publications, 2012).

²¹⁷ Fan, *Social Movements in Taiwan’s Democratic Transition*; Minwoo Jung, “Imagining Sovereign Futures: The Marriage Equality Movement in Taiwan,” *Social Movement Studies* (December 2021): 1–17,

The independence and sovereignty of Taiwan forms the basis that Taiwanese citizens can make their own decisions without the interference of the PRC. As for the governance in Taiwan, the democratic transition of Taiwan not only abandoned the authoritarian rule, but the government also turned its focus to Taiwan with the localisation of parliament,²¹⁸ securing election rights to Taiwanese people.

Even though the contestation of their sovereignty is a concern, Taiwanese people have access to citizenship rights, as aforementioned, under their liberal democratic regime.²¹⁹ Their life in Taiwan has shown a possibility of a country with contested sovereignty still able to equip its people with liberal rights, allowing them to pursue their life goals and to achieve economic and social stability. Democratisation has ensured people's political right to participate in politics and to express their political opinions. It is fair to say that, within Taiwan, the Taiwanese people can exercise all basic rights and enjoy full citizenship.²²⁰

<https://doi.org/10.1080/14742837.2021.2010528>; Frédéric Krumbein, "Rainbow Island: Taiwan's Struggle for Marriage Equality," *Journal of Human Rights* 19, no. 4 (2020): 484–500,
<https://doi.org/10.1080/14754835.2020.1803055>; Ming Sho Ho, "Taiwan's Road to Marriage Equality: Politics of Legalizing Same-Sex Marriage," *China Quarterly* (Cambridge, UK: Cambridge University Press, 2019),
<https://doi.org/10.1017/S0305741018001765>.

²¹⁸ The Legislative Yuan, the national law-making body of the ROC, had its first full election in 1992, long after the ROC government retreated to Taiwan in 1949. That is, the election of the legislators were supplemental elections after its first election in 1947, until democratisation. During democratisation, the reform of the constitution shifted the sovereign people from Chinese to Taiwanese in 1991; therefore, a complete re-election took place in Taiwan in 1992. Dafydd Fell, *Party Politics in Taiwan: Party Change and the Democratic Evolution of Taiwan, 1991-2004* (Abingdon, Oxon; New York, NY: Routledge, 2005),
<https://doi.org/10.4324/9780203007662>; Shelley Rigger, *Politics in Taiwan: Voting for Democracy* (Abingdon, Oxon; New York, NY: Routledge, 1999).

²¹⁹ Vanessa A. Boerse et al., "Autocratization Changing Nature? - Democracy Report 2022," 2022, 1–58,
https://v-dem.net/media/publications/dr_2022.pdf.

²²⁰ This is especially remarkable when compared to the case of Hong Kong, currently under the governance of "one country, two systems"—originally designed for Taiwan but first put into practice in Hong Kong when the UK conceded its sovereignty to the PRC in 1997. According to the previous paramount leader of the PRC, Deng Xiaoping, Hong Kong's experience in "one country, two systems" would be the model for Taiwan's. In the 1970s-1980s, while experiencing frustration with the Taiwan issue, the PRC argued that Hong Kong could adapt to "one country, two systems" more easily. This was because Hong Kong was more reliant on China and because some Hong Kong people had cooperated with the PRC since then. Deng viewed that the practice of "one country, two systems" in Hong Kong would eventually encourage Taiwanese people to accept this proposed framework. Ezra F. Vogel, "One Country, Two Systems," in *Deng Xiaoping and the Transformation of China* (Cambridge: Harvard University Press, 2011), 593-690; Albert H. Y. Chen, "The Hong Kong Basic Law and the Limits of Democratization under 'One Country Two Systems,'" *International Lawyer* (Chicago: American Bar Association's Section of International Law (ABA/SIL), 2017).

The practice of "one country, two systems" in Hong Kong was believed to be a measure that would persuade Taiwanese people to accept the "unification" of China. However, the demonstration of this model did not facilitate the purpose of making the possibility of practicing "one country, two systems" in Taiwan more appealing to the Taiwanese people. On the contrary, mainstream Taiwanese society still rejects this model,

G. Taiwan's Sovereignty and Democracy

According to the annual report of Freedom House in 2021, “Taiwan’s vibrant and competitive democratic system has allowed three peaceful transfers of power between rival parties since 2000, and protections for civil liberties are generally robust. Ongoing concerns include foreign migrant workers’ vulnerability to exploitation and the Chinese government’s efforts to influence policymaking, the media, and democratic infrastructure in Taiwan.” Freedom House gave Taiwan one of the highest scores in Asia for political rights and civil liberties.²²¹ Democratic consolidation in Taiwan overcame domestic and international challenges and established a relatively healthy democratic system compared to other Third Wave democracies.²²²

As for sovereignty from a domestic perspective, legal status experienced at the domestic level has shown quite strongly people’s influence on the government in Taiwan. Certainly, the lack of sovereignty can hardly lead to democracy, when such a lack means that other authorities can use state power to overthrow people’s decisions, (e.g. Hong Kong under the Chinese authoritarian regime).²²³ The existence of Taiwan’s democracy and diversity depends on its independence. From the perspective of sovereignty, the assumption of taking Taiwan as part of China does not reflect current facts, as it is mostly based on the nominal claim from the PRC in the international community; from the perspective of citizenship, and that the current

according to recent polls. “89% of Taiwanese Oppose China’s ‘One Country, Two Systems’: Poll,” *Taiwan News*, 7 August 2020. <https://www.taiwannews.com.tw/en/news/3982562>

On top of the sovereignty dispute, the practice of Taiwanese citizenship stands in sharp contrast to authoritarian values; e.g. the democratic movements in Taiwan and the ongoing movements for liberal rights such as equality for LGBTQ+ groups, discussed in the previous section. The values embodied by Taiwanese citizenship have shaped Taiwan into society with democracy—and therefore makes the discussions of the application of “one country, two systems” not only a matter of different nationalistic values between China and Taiwan, or between the PRC and the ROC, but also a matter of the value conflicts between living in liberal democracy and living under authoritarian rule.

²²¹ The score is 94 while the top one in Asia is Japan with 96. Freedom in the World 2021, <https://freedomhouse.org/country/taiwan/freedom-world/2021>, accessed 12 March 2022

²²² Rigger, “Studies on Taiwan’s Democracy and Democratisation”; Ian McAllister, “Democratic Consolidation in Taiwan in Comparative Perspective,” *Asian Journal of Comparative Politics* 1, no. 1 (2016): 44–61, <https://doi.org/10.1177/2057891115620683>; Mikael Mattlin, “Depoliticizing a Structurally Politicized Society,” in *Taiwan Studies Revisited*, 1st ed. (Abingdon, Oxon; New York, NY: Routledge, 2020), 215–33, <https://doi.org/10.4324/9780429259937-13>.

²²³ Linz, *Problems of Democratic Transition and Consolidation*.

liberal rights attached to Taiwanese citizenship will fall apart with the fall of the democratic regime.

H. China's Influence on Taiwan

However, even though Taiwan has its own democratic system and is not subordinate to the PRC, China's influence on Taiwan is visible in every aspect today. As China has become more powerful through its economic growth, after its economic reforms and its "opening-up," it has not become more liberal or even democratic, as many European countries or the US had expected.²²⁴ In contrast, with its "authoritarian capitalism,"²²⁵ the PRC maintains its authoritarian system and has even enforced more limitations on its people, especially after Xi Jinping took power in 2013. Furthermore, human rights in Tibet and Xinjiang have become a huge concern as the PRC has put Tibetans, as well as Uyghurs and other Turkic Muslims, under harsh repression.²²⁶ China also makes a practice of extending its power into other countries, as it strengthens economically and politically on the international stage.²²⁷ This growing influence can be seen globally, especially in the Indo-Pacific area including Australia.²²⁸ As for Taiwan, with thousands of its missiles pointing towards the island and its constant military aircraft harassment of the Taiwanese defence zone, the PRC has shown its military power to threaten Taiwanese. However, this measure only pushes away Taiwanese people and triggers Taiwanese people's anger towards the PRC, enforcing people's pursuit of democracy—according to the experience in the first popular election for president in Taiwan.²²⁹ Since the 1990s, China continues to

²²⁴ Brian C. H. Fong, "Re-Thinking China's Influence across Surrounding Jurisdictions: A Concentric Center-Periphery Framework," in *China's Influence and the Center-Periphery Tug of War*, ed. Fong, Wu, and Nathan, 2020, 3–23.

²²⁵ Peter Bloom, *Authoritarian Capitalism in the Age of Globalization* (Northampton, MA Edward Elgar Pub., 2016), <https://doi.org/10.4337/9781784713157>.

²²⁶ David Tobin, "Genocidal Processes: Social Death in Xinjiang," *Ethnic and Racial Studies* 45, no. 16 (2022): 93–121, <https://doi.org/10.1080/01419870.2021.2001556>; Joanne Smith Finley, "Why Scholars and Activists Increasingly Fear a Uyghur Genocide in Xinjiang," *Journal of Genocide Research* 23, no. 3 (2021): 348–70, <https://doi.org/10.1080/14623528.2020.1848109>; "Uyghur Tribunal," December (2021): 1–64; Ben Hillman and Gray Tuttle, eds., *Ethnic Conflict and Protest in Tibet and Xinjiang: Unrest in China's West*, eds. (New York, NY: Columbia University Press, 2016).

²²⁷ Brian C. H. Fong, Jieh-min Wu, and Andrew J. Nathan, eds., *China's Influence and the Center-Periphery Tug of War in Hong Kong, Taiwan and Indo-Pacific* (Abington, Oxon: Taylor & Francis Group, 2020).

²²⁸ Fong, Wu, and Nathan, *China's Influence and the Center-Periphery Tug of War*.

²²⁹ Wu and Liao, "China's Influence on Taiwan's Elections"; Rawnsley and Fell, "Democratization, Liberalization and the Modernization of Election Communication in Taiwan."

interfere in elections in Taiwan. After failing to intimidate the Taiwanese by launching missiles in 1996, economic leverage followed. Taiwanese investment in China made up a significant amount of income; likewise, the trade dependence on China has risen from 8% in 1992 to 32.3% in 2020,²³⁰ whereas China's dependence on Taiwan dropped.²³¹

Combining politics and business, China and its local collaborator, the KMT, linked economic dependence and pro-China policy, such as supporting the aforementioned 1992 consensus. This discourse is commonly used in elections to convince voters that supporting the pro-China campaign is the only way to ensure peace and a prosperous economy.²³² This trend was reversed by the Sunflower Occupy Movement in 2013, as hundreds of thousands of people protested against the further trade agreements that embody Taiwan's economic engagement with China.²³³ The following elections, such as the presidential election in 2016, showed that the pro-China discourse connected to economic incentives was seen with more caution, as civil society in Taiwan had successfully raised awareness of it among the Taiwanese people in the 2013 civil movement.²³⁴ Rather than military threats and economic incentives, in recent years PRC propaganda through mass media and disinformation spread on social media have become a significant concern in Taiwan, especially during election years.²³⁵

In addition to influence on economics and politics—the latter especially by military and verbal intimidation and collaboration with local political power—the Chinese influence on Taiwan involves pressuring other countries to change their

²³⁰ The trade independent ratio is based on the trade to GDP Ratio. The author calculated the figure for 2020 based on the trade statistic of the Bureau of Foreign Trade, ROC.

<https://www.trade.gov.tw/Pages/List.aspx?nodeID=1375>, accessed 10 February 2022. In addition, the figure of 1992 came from Wu and Liao, "China's Influence on Taiwan's Elections" 175.

²³¹ Wu and Liao, "China's Influence on Taiwan's Elections."

²³² Wu and Liao, "China's Influence on Taiwan's Elections."

²³³ Mingxiu He, *Challenging Beijing's Mandate of Heaven: Taiwan's Sunflower Movement and Hong Kong's Umbrella Movement* (Philadelphia: Temple University Press, 2019).

²³⁴ Wu and Liao, "China's Influence on Taiwan's Elections"; John Fuh-sheng Hsieh, "Taiwan in 2014," *Asian Survey* 55, no. 1 (2015): 142–47, <https://doi.org/10.1525/as.2015.55.1.142>; Bhim B. Subba, "Taiwan's 2016 Elections," *China Report (New Delhi)* 52, no. 3 (2016): 211–23, <https://doi.org/10.1177/0009445516646243>.

²³⁵ Jaw-Nian Huang, "China's Influence on Taiwan's Media: A Model of Transnational Diffusion of Chinese Censorship," in *China's Influence and the Center-Periphery Tug of War in Hong Kong, Taiwan and Indo-Pacific*, ed. Fong, Wu, and Nathan, 2020, 205–23; Chien-Jung Hsu, "China's Influence on Taiwan's Media," *Asian Survey* 54, no. 3 (2014): 515–39, <https://doi.org/10.1525/as.2014.54.3.515>.

relations with Taiwan. China uses the diplomatic leverage in international relations and organisation to influence Taiwan's status. For example, since President Tsai Ing-wen took power in 2016 and refused to accept the 1992 consensus, China has escalated its actions and picked off allies of Taiwan who de jure recognise the ROC— from twenty-one to fourteen by the end of 2021. Recently, when Lithuania opened a Taiwanese Representative Office—a de facto embassy for Taiwan—the Chinese government immediately downgraded its diplomatic relations with Lithuania and implemented economic sanctions against it.²³⁶ China has tested many strategies to degrade Taiwan's status, including stressing to the international companies that they should label Taiwan as part of China, or exclude Taiwan on websites—otherwise these companies will lose their market in China.²³⁷ For example, the international apparel company, Zara, was forced to apologise to China for listing Taiwan as a country on its website at the beginning of 2018; ever since, Zara has labelled Taiwan as “Taiwan, China.” This has also happened to other major international companies, such as Marriott, Medtronic, and even flight companies such as Delta Airlines.²³⁸ Through this strategy and more, PRC's “one China” policy is enforced in the private sector, to achieve the degradation of Taiwanese statehood internationally.

The degradation of the statehood of Taiwan from China has become a regular experience for Taiwanese people. It also shows that the statehood of Taiwan is fragile in terms of international support, as it can be “cancelled” easily due to China's current power on the international stage. China's sovereignty claim to Taiwan is nominal, compared to the case of its claim to Hong Kong, in which it has control over the territory.

²³⁶ “China Downgrades Diplomatic Relations with Lithuania over Taiwan Row,” *Agence France-Presse in The Guardian*, 21 November 2021, <https://www.theguardian.com/world/2021/nov/21/china-downgrades-diplomatic-relations-with-lithuania-over-taiwan-row>; “Taiwan Calls on World to back Lithuania after latest Beijing Sanctions,” *Focus Taiwan CAN English News*, 10 February 2022, <https://focustaiwan.tw/politics/202202100012>

²³⁷ This series of incidents has been reported in the media:

“Gap apologizes to China after printing T-shirts with a map of the country that omitted Taiwan and South Tibet,” *Daily Mail*, 15 May 2018, <https://www.dailymail.co.uk/news/article-5729169/Gap-apologizes-T-shirts-printed-map-China-map-omits-Taiwan.html>; “Dior Apologises for Using China Map without Taiwan,” *BBC News*, 17 October 2019, <https://www.bbc.co.uk/news/business-50078886>; Tara Francis Chan, “Economic Blackmail: Zara, Qantas, Marriott and Delta Air Lines Reverse Position on Taiwan for Fear of Angering China,” *Insider*, 17 January 2018, <https://www.businessinsider.com/zara-marriott-qantas-apologized-to-china-listing-taiwan-as-country-2018-1?r=US&IR=T>

²³⁸ Benjamin Haas, “Marriott Apologises to China over Tibet and Taiwan Error,” *The Guardian*, 12 January 2018, <https://www.theguardian.com/world/2018/jan/12/marriott-apologises-to-china-over-tibet-and-taiwan-error>; Brenda Goh and John Ruwitch, “China Cracks Down on Foreign Companies Calling Taiwan, Other Regions, Countries,” 12 January 2018, <https://www.reuters.com/article/us-china-delta-idUSKBN1F10RC>

For years, the international community has established substantial relations with Taiwan without any nominal recognition of it, to eschew potential conflicts concerning the reactions of China and concerning the unclear statehood status of Taiwan. However, China has pushed this nominal sovereign claim to every area, in order to isolate Taiwan and to change the terms for international understanding of its name—to the point of labelling Taiwan as part of China. This is all to foster an even harsher international environment for Taiwan, so that its attempts to establish its own de jure statehood in international community will not succeed.

The degradation of statehood affects Taiwanese people's citizenship. The Chinese identity imposed by the PRC does not encourage Taiwanese people to accept it, but, rather, forces them to reflect on their citizenship and political identity. Taiwanese people confront changes of identity on websites of the international companies and through constant threats—military and political—from the PRC, with the ambiguous attitude towards their Taiwanese identity displayed in the international community. Their life experience is tangled with debates concerning their political identity and with the complexities of sovereignty conflicts. Both the denials of political identity and the denials of sovereignty, internationally, result in the denial of full citizenship in international community. This denial also forces people to reflect on their citizenship status in relation to the statehood status of Taiwan.

I. China's Citizenship Regulations for Taiwanese People and Tibetans

The legal identity issue of the Taiwanese people is also a tricky question for the PRC. Although the PRC claims sovereignty over Taiwan, Taiwanese people have to apply for specific travel documents from the PRC to cross its borders—a “Taiwan compatriot permit (*Taibaozheng*)”—and they cannot apply for a PRC passport or enjoy the same civic rights as Chinese nationals. In this way, Taiwanese people are treated neither as foreigners nor as PRC citizens, including people of Hong Kong and Macau, under the special administration of China. Over the years, the PRC government has changed its policy towards Taiwanese people, such as easing the requirements for Taiwanese people to reside within its borders—all efforts to win over Taiwanese people.²³⁹ As for

²³⁹ Tseng and Wu, “Bringing Politics Back In : Regulating Dual Citizenship of Taiwanese Migrants in China.”

the acquisition of the PRC identity, PRC regulates Taiwanese people in a way similar to the way it regulates people of Hong Kong and Macau, overseas Chinese, and naturalising foreigners. Namely, according to the Law of the People's Republic of China on the Identity Card of Residents, Taiwanese people have to reside in China must already hold permanent residency, and must be registered in the Household registration system.

However, the Taiwanese government does not accept Taiwanese citizens taking the legal identity of the PRC while maintaining ROC house registration and retaining relevant ROC rights, such as voting. As such, household registration in Taiwan and status as legally being Taiwanese is revoked if Taiwanese citizens add the PRC identity to their legal identity, according to the Act Governing Relations between the People of the Taiwan Area and the Mainland Area. Nevertheless, cases show that enforcement of this regulation is sometimes difficult, as the government can only access registration of individuals from the Taiwanese side. The revocation of legal status and relevant rights usually takes place when the particular person makes the application public on mass media, or when they cross the Taiwanese border with Chinese documents.²⁴⁰ The number of revocations was 26 in 2006, and increased to 770 in 2019 according to the Ministry of the Interior.²⁴¹ Being removed from the household registration rolls does not automatically entail the revocation of nationality, though. Furthermore, the Taiwanese government also confirms that citizens can restore their Taiwanese household registration if they give up their household registration in the PRC.

III. Statehood for Taiwanese People

The statehood of Taiwan is complicated. Within Taiwan, its self-ruled status shows that its governance is independent from other states, whereas outside of Taiwan, its

²⁴⁰ Mainland Affairs Council, Republic of China(Taiwan), "Tai Wan Di Quren Minling Youda Lushen Fen Zhenghuochi Yongzhong Gonghu Zhao [Taiwanese people registering into Mainland household or holding PRC passport may be deprived of household registration in Taiwan]," 17 March 2006, https://www.mac.gov.tw/News_Content.aspx?n=B383123AEADAE52&sms=2B7F1AE4AC63A181&s=D4E611D434CCF110; Shuan-Zeh Yeh, "She Jizhong Guosang Shitaiwanhu Jidaren [The number of registrations in the Chinese household system leading to the loss of Taiwanese registration increases to 770]," Newtalk, 9 April 2019, <https://newtalk.tw/news/view/2019-04-09/230991>.

²⁴¹ Mainland Affairs Council, Republic of China (Taiwan), "Tai Wan Di Quren Minling Youda Lushen Fen Zhenghuochi Yongzhong Gonghu Zhao," Shuan-Zeh Yeh, "She Jizhong Guosang Shitaiwanhu Jidaren."

legal status is indeterminate in international law. The contested status of its statehood involves Taiwanese people and their citizenship. This section articulates the influence of democratisation on statehood in relation to the Taiwanese people.

In the 1990s, the amendment of the Taiwanese Constitution also reflected the uncertain situation between the ROC and the PRC. The Constitution was mostly amended by the democratically elected delegates to the National Assembly; these amendments did not challenge the sovereignty claim directly, but amendments 11 and 12 distinguished the people of the free area from the people of the mainland area.²⁴² The amendment process was necessary for shifting from an authoritarian regime to a democratic system, and it asserted that democratic people could reform as a sovereign people. As mentioned in the last section, this also shifted the identity of this sovereign people from Chinese to Taiwanese²⁴³—reconstructing sovereignty by referring to citizenship. At the same time, the democratisation of Taiwan from the 1980s onward was accompanied by social and political reforms; elections and other forms of political participation show a dynamic and vibrant democracy.²⁴⁴

With its democratic system, Taiwanese people have protested, lobbied, and voted to reform society with new values, and in the last three decades, have built up a national health insurance, gender equality in education, and a welfare system.²⁴⁵ For example, in recent years, Taiwan became the first country to legalise same-sex marriage in Asia. This legalisation took many years of debate and included protests from different groups of people, mainly religious groups against LGBTQ+ and feminist groups. On 24 May 2017, the Constitutional Court ruled that the law defining marriage between man and woman discriminated against same-sex couples. However, religious groups initiated a referendum and won on 24 November 2018, leading to the existing law not being amended. The following year, the legislators completed the process by providing a new act, to legalise same-sex marriage in May.²⁴⁶ The process

²⁴² Amendment of the Constitution of the Republic of China, § 11(2000), § 12(2005).

²⁴³ Yeh, *The Constitution of Taiwan*.

²⁴⁴ John J. Metzler, *Taiwan's Transformation: 1895 to the Present*, (New York, NY: Palgrave Macmillan, 2017), <https://doi.org/10.1057/978-1-137-56442-9>; Joseph Wong, "Dynamic Democratization in Taiwan," *Journal of Contemporary China* 10, no. 27 (2001): 339–62, <https://doi.org/10.1080/10670560120045823>.

²⁴⁵ Metzler, *Taiwan's Transformation*, 59-78.

²⁴⁶ Austin Ramzy, "Taiwan Legislature Approves Asia's First Same-Sex Marriage Law," *The New York Times*, 17 May 2019, <https://www.nytimes.com/2019/05/17/world/asia/taiwan-gay-marriage.html>

shows conflicts between different interest groups and how they frame and advocate their arguments—but all within the confines of the democratic system, showing the vibrancy of political citizenship in Taiwan.

Democratisation has also inspired the general public of Taiwan to rethink statehood, as democracy and the liberation of civil rights both flourish in Taiwan. This point of view on statehood reflects a different understanding on the sovereignty of Taiwan. From the perspective of identification, Taiwanese people already faced an authoritarian government that erased their cultures—in ways such as forbidding the use of mother tongues in schools and forcing them to learn Mandarin as their first language.²⁴⁷ During the martial law period, being Chinese was the only proper identity, and everything serves to advance Greater China politics, which included the Legislative Yuan having to represent all Chinese provinces with its members. The false and pretentious version being represented, of China in Taiwan could not tolerate the local identity and cultures; thus, nativist literatures presenting subjectivity and social reality were repressed politically and culturally while the literature emphasising the memory of China and anti-communism was highlighted,²⁴⁸ folk culture representing the local provincial groups was seen as inferior while the culture of Greater China and the ruling-class extraprovincials (*Waishengren*) was propagandised as superior, etc.²⁴⁹ The longstanding “Chinese ideology,” begun by the KMT after WWII and considered the only orthodox ideology until democratisation, loses its supremacy and the identity of the Taiwanese people become varied and complex—as there are different group ideologies between different ethnic groups or between generations. These include indigenous people in different tribes, Hakka people, Hoklo people and other Han Chinese who came to Taiwan after 1945.²⁵⁰

²⁴⁷ Hak Khiam Tiun, “Mother Tongues First: Planning Taiwanese Native Languages Education Policy for Language Revitalization,” *Journal of Research in Education Sciences* 65, no. 1 (2020): 175–200, [https://doi.org/10.6209/JORIES.202003_65\(1\).0007](https://doi.org/10.6209/JORIES.202003_65(1).0007).

²⁴⁸ Yu-Lin. Lee, *Writing Taiwan: A Study of Taiwan's Nativist Literature*, (Saarbrücken: VDM, Müller, 2008).

²⁴⁹ Masahiro Wakabayashi, *The “Republic of China” and the Politics of Taiwanization: The Changing Identity of Taiwan in Postwar East Asia [Zhanhou Taiwanzheng Zhi Shizhong Hua Min Guotai Wanhuadi Licheng]* (Taipei: National Taiwan University Press, 2014).

²⁵⁰ Fu-Chang Wang, “Studies on Taiwan’s Ethnic Relations,” *International Journal of Taiwan Studies* 1, no. 1 (2018): 64–89, <https://doi.org/10.1163/24688800-00101005>; Stephane Corcuff, “Taiwan’s ‘Mainlanders,’ New Taiwanese?” in *Memories of the Future: National Identity Issues and the Search for a New Taiwan*, ed. Stephane Corcuff (Abingdon, Oxon; New York, NY: Routledge, 2015), <https://doi.org/10.4324/9781315291338>.

Due to various ideologies, there are different debates in society about the form of statehood of Taiwan.²⁵¹ For example, the independence of Taiwan may refer to independence as a status quo with the ROC framework, or to independence as a new Taiwanese legal framework that does not relate to the ROC.²⁵² Even with the establishment of a new legal framework, there exist different perspectives on the status quo with the ROC framework—with some claiming that the ROC government is the agent of the UN or the US. That is, after WWII, the ROC government did not obtain the sovereignty of Taiwan and is only an agent of the allies—namely, the UK, the US, the Soviet Union and China. In this understanding, the ROC government is the temporary ruler of Taiwan and the sovereignty of Taiwan should be resolved by the Allies and the relevant treaties. If none of the treaties made this issue clear, then the sovereignty of Taiwan has been undecided since WWII.²⁵³ On the other hand, even for people who aim at Sinicisation/(re)unification, some picture the ROC as the future China and refuse the Chinese communist party.²⁵⁴ These different ideas on the statehood and the future of Taiwan can be attributed to individuals being in different ethnic groups, social classes or even careers.²⁵⁵ These debates not only show varied opinions of the political identity of the Taiwanese but also present how flexibly the structure can be experienced and explained.

In addition, Taiwan's relationship with China draws considerable international attention, as, ever since martial law was lifted, the cross-strait relationship regularly disrupts Taiwanese politics. As a result, the discussion of statehood is influenced by the general public's view on Taiwan's relationship with the PRC—especially when the PRC government also tries to oppress and manipulate Taiwan in international

²⁵¹ Dittmer, "Taiwan and the Issue of National Identity."

²⁵² Chen, "The Evolution of Taiwan Statehood."

²⁵³ Meng-Tao Peng, "Zhanhou Taimeiguan Xiyutai Wandu Weiwei Dinglun: International Relation between Taiwan and the US after WWII and Taiwan's Unsettled Statehood Status" (Master's thesis, National Chengchi University, 2013); Tian-zhao Dai, "Taiwan fa lü di wei di li shi kao cha [Historical Analysis of the Taiwanese legal structure,]" (Taipei: Avant-Garde Publishing, 2010); Ching-Hsiung Hsu, "Zhong hua min guo ru he cheng wei guo jia [How the ROC becomes a state]" (Taipei: Avant-Garde Publishing, 2004); Chen, "The Evolution of Taiwan Statehood."

²⁵⁴ Especially before democratisation, ROC propaganda emphasised "Retaking the Mainland."

²⁵⁵ Nai-teh Wu, "Sheng ji yi shi zheng zhi zhi chi he guo jia ren tong tai wan zu qun zheng [Provincial Consciousness, Political Support and National Identity-A Preliminary Study of Theory on Taiwan Ethnic Politics,]" in *Zu qun guan xi he guo jia ren tong [Ethnic Relations and National Identity]*, ed. Mau-kuei Chang. (Taipei: Yeh Chiang, 1993), 27-51.

communities,²⁵⁶ Taiwanese ideology against the PRC or China may easily be roused. However, propaganda warfare has developed a number of discourses on topics such as the “1992 consensus” in order to affect voters.²⁵⁷ At some times, the outcome might take place as the PRC asserts, but other times, the opposite is the case, given the democratic system in Taiwan. That is, the democratic system encourages people to consider cross-strait relations and vote for a favourable result. The daily practices of democracy, including the civil movements and participation in elections, foster political opinions in society and mould the ideology for the statehood of Taiwan.

In sum, the constrained international status that makes it difficult for Taiwan to establish formal international relations, as well as the history of the ROC government, challenge the ROC identity for the Taiwanese people and distinguishes the Taiwanese identity from the Chinese identity—even as the constitution constructs a different sovereignty by reference to citizenship. During democratisation, participation in politics in different forms encouraged people to react to challenges from China’s intimidation in terms of economics or military force. Therefore, even though the ideology of statehood and nationalism might mean different things to different groups of people, the rise of the Taiwanese identity can be clearly seen after democratisation.²⁵⁸ However, nationalism contains varied group identity and the differentiated understanding for the statehood of the ROC and status-quo.

A. Platforms for Taiwanese People: Communicating in Diaspora

Previous debates on the statehood of Taiwan have illustrated the geopolitical conflict and the legal contexts that Taiwan embodies. For Taiwanese people, this contested statehood casts a shadow on their citizenship, as they cannot enjoy full citizenship,

²⁵⁶ J. Michael Cole, *Convergence or Conflict in the Taiwan Strait: The Illusion of Peace?* (Abingdon, Oxon; New York, NY: Routledge, 2017); Yen-Fen Tseng and Jieh-Min Wu, “Reconfiguring Citizenship and Nationality: Dual Citizenship of Taiwanese Migrants in China,” *Citizenship Studies* 15, no. 2 (2011): 265–82, <https://doi.org/10.1080/13621025.2011.549728>.

²⁵⁷ Wu and Liao, “China’s Influence on Taiwan’s Elections.”

²⁵⁸ Dittmer, “Taiwan and the Issue of National Identity”; Dominic Meng-Hsuan Yang, *The Great Exodus from China: Trauma, Memory, and Identity in Modern Taiwan* (Cambridge: Cambridge University Press, 2021); Yitan Li and Enyu Zhang, “Changing Taiwanese Identity and Cross-Strait Relations: A Post 2016 Taiwan Presidential Election Analysis,” *Chinese Journal of Political Science* 22, no. 1 (2016): 17–35, <https://doi.org/10.1007/s11366-016-9452-9>; Shelley Rigger, “Competing Conceptions of Taiwan’s Identity: The Irresolvable Conflict in Cross-Strait Relations,” *The Journal of Contemporary China* 6, no. 15 (1997): 307–17, <https://doi.org/10.1080/10670569708724280>.

especially in foreign countries. When they confront difficulties with their citizenship, what kind of platforms do they use to advocate for their rights?

The Taiwanese people use social media and mass media to tell their stories. According to the 2020 Taiwan Network Service Application Report, 94.2% of interviewees uses Facebook and 88% of Taiwanese people use social media—the highest rate in Asia.²⁵⁹ Therefore, the majority of Taiwanese people tend to use social media, especially Facebook; many Taiwanese uses Facebook to the point of setting up fan pages for themselves, even though they are not internet celebrities. Although there are some concerns about the scrutiny mechanism of Facebook and privacy protection,²⁶⁰ Facebook is still the most popular social media platform in Taiwan. For this reason, I also used Facebook to dig into people’s diaspora communication and found that people share these stories in groups: overseas Taiwanese stories, Taiwanese in Berlin, etc. Some people use their personal Facebook page to talk about their stories; some people use their fans page to talk about their lives and share their experiences connected to Taiwanese citizenship. In addition, whenever Taiwanese people want to promote their movement, Facebook is their top choice, as it is more likely to attract more Taiwanese people to the topic than any other social media platform. As a result, Facebook is certainly the main online platform for people—and as 88% of Taiwanese use social media, Facebook may be the most influential social media platform for Taiwanese society.

Using Facebook, many journalists have contacted Taiwanese people who have struggled with the citizenship issue and published their stories on mass media. Therefore, many stories can be found in mass media but with pre-existing similar stories on Facebook. However, as social media is designed for social events and may not be appropriate for delivering statements, activists may also use shared spaces such as Google Drive to communicate with other netizens: to deliver statements or documents that contains details of their cases. There are also people who do not trust Facebook and prefer to use other social media platforms such as Twitter, especially

²⁵⁹ Taiwan Network Information Center, Network Service Application Report 2020, (last accessed: 31 July 2022) https://report.twnic.tw/2020/en/TrendAnalysis_globalCompetitiveness.html

²⁶⁰ David Shepardson, “Facebook Confirms Data Sharing with Chinese Companies,” *Reuters*, 5 June 2018, <https://www.reuters.com/article/us-facebook-privacy-congress-idUSKCN1J11TY>.

when the target audience is not Taiwanese but foreigners. Some people may also use multiple social media platforms to spread their stories; if so, one of them will usually be Facebook.

B. Who Can Hold Taiwanese Citizenship?

As there are debates about the effectiveness of citizenship, an understanding of the basic framework of citizenship is still required. This section talks about how the citizenship of the ROC works. It also asks: who are the people holding Taiwanese citizenship?

Qualification for ROC citizenship was not unique to people in Taiwan before democratisation, as the legal framework of the ROC purported to represent the sovereignty of the whole of China. Nevertheless, before democratisation, ROC citizenship could not easily be given to residents from a mainland area.²⁶¹ However, some fundamental changes came when the Amendments of the Constitution and the Immigration Act were enacted in the 1990s. According to Article 3 of the Constitution, "persons possessing the nationality of the Republic of China shall be citizens of the Republic of China." However, according to the legal history of the ROC discussed above, the ROC is the formal regime of China, and its nationals originally were the Chinese people. The amendment of the Constitution has shifted the sovereign people's identity to Taiwanese, by assigning the right to vote to people in the free area only (that is Taiwan), in contrast to the denial of this right to "people of the mainland area." In addition, in Section 1 of Article 3 of the Immigration Act, "Nationals" are defined as: "[Those] who reside in the Taiwan Area, have their permanent residence registered at a household registry and have the nationality of the Republic of China (hereafter to be called the State), or nationals who reside in the Taiwan Area and have no nationality of the State."

²⁶¹ For example, when the ROC fled to Taiwan in 1949, Chinese civilians would come to the the government obtain their official Hukou/Huko—household—registration. However, in 1951, some people expressed that they only obtained a "refugee certificate" after coming to Taiwan in 1950; they then complained about the uncertainty attached to refugee status, even as other "waishengren/extraprovincials" who came earlier obtained the Hukou/Huko without a problem. Ren-jian Guan, "Wai sheng xin tou ke: Waishengren / Foreign Provincials' New Brain," (Taipei: Arc Plan, 2016).

Therefore, citizens of the ROC are nationals in Taiwan whether they are registered through a household registry system or not. People who do not register in the household system do not lose citizenship or rights. Household registration does not play a substantial role for people to obtain citizenship; rather, the system lists national numbers and personal information such as marriage records. Nationals without household registration are people who live abroad and do not stay in Taiwan for more than six months. For example, these people do not need to fulfil their mandatory military service. but they also cannot vote. However, they can easily apply to vote once they register in the household registry system or apply for voting in the specific election with their passport. People who are nationals without household registration are nationals with legitimate ROC nationality; in other words, whether they were born with the ROC nationality assigned to either of the parents who have the nationality or who have naturalised before.²⁶²

Turning to the nationals in general, from the amendment of the constitution, it constructs the sovereign people based on the Taiwanese people as mentioned in previous parts of this thesis.²⁶³ Secondly, in the Immigration Act, it denotes nationals as nationals living in Taiwan. As in the Constitution, it is not clear how people who live in the “mainland area” are to be defined after the shift of sovereignty; the definition in the immigration law clears these doubts at the level of law. Another example is the “Act Governing Relations between the People of the Taiwan Area and the Mainland Area”—an act to comply with the amendments to the Constitution in terms of cross-strait relations. The first article says, “This Act is specially enacted for the purposes of ensuring the security and public welfare in the Taiwan Area, regulating dealings between the peoples of the Taiwan Area and the Mainland Area, and handling legal matters arising therefrom before national unification.”²⁶⁴ In this act, the people of the “Taiwan Area” and those of the “Mainland Area” seem parallel to each other—indeed, the first article mentions “before national unification” as to accord with the Constitution.

²⁶² Shih-Jiunn Shi, “The Changing Credibility of Institutions: How Household Registration Systems (Hukou) in Mainland China and Taiwan Define Immigrants’ Social Benefits,” *Journal of Chinese Governance* 6, no. 2 (2021): 307–26, <https://doi.org/10.1080/23812346.2021.1896206>; Chung, Draudt, and Tian, “Regulating Membership and Movement at the Meso-Level.”

²⁶³ Yeh, *The Constitution of Taiwan*; Chen, “The Evolution of Taiwan Statehood.”

²⁶⁴ This is the official translation of the regulation. See: Act Governing Relations between the People of the Taiwan Area and the Mainland Area, §1(1992).

Nevertheless, the language of this act did not use “nationals” or “citizens” to describe the people under discussion. In addition, the essence of the act governing the people of the mainland area is to show another way to govern immigrants from China. Even nationals without household registrations do not include people of the mainland area or residents of Hong Kong and Macau. However, people of the mainland area and residents of Hong Kong and Macau are not listed in the category of “foreigners” in the Immigration Act either. Section 12 of Article 11 of the Immigration Act regulates reasons to deny entry for nationals without any household registration; reasons which must be applied *mutatis mutandis* to the people of the mainland area or to residents of Hong Kong or Macau. Therefore, even though the citizenship of the ROC now is bound to the Taiwanese people, and the term nationals is not for people living outside of the Taiwan area, the citizenship status of Chinese people—including people of Hong Kong and Macau—is ambiguous with regard to the law.

Furthermore, overseas Chinese cannot obtain ROC citizenship in the present day, whereas during the Cold War, when the ROC claimed itself as the legitimate Chinese government, overseas Chinese could choose to apply for that citizenship. People of Hong Kong and Macau could apply for “overseas national” status before the PRC’s takeover of the sovereignty of each, in 1997 and 1999, respectively. After these takeovers, neither Hong Kong nor Macau belonged to the category of overseas nationals anymore. In short, ROC citizenship in principle is limited to people who live in Taiwan, but the overseas Taiwanese may also apply for it. The concept of overseas ROC nationals was more fluid before, but after democratisation it was also limited to overseas Taiwanese or to holders of the ROC nationality.

C. Defining Taiwanese and New Taiwanese

As the Taiwanese went through the hardships of living under a dictatorship, their pursuit of democracy included redefining themselves as Taiwanese, while the notion of being Chinese and its attached concept of Sinicisation/(re)unification became detached, for them, from any Taiwanese identity.²⁶⁵ The process of defining who is

²⁶⁵ Rigger, “Competing Conceptions of Taiwan’s Identity”; Yang Zhong, “Explaining National Identity Shift in Taiwan,” *The Journal of Contemporary China* 25, no. 99 (2016): 336–52, <https://doi.org/10.1080/10670564.2015.1104866>.

Taiwanese starts with Taiwan citizens, that is, to question people's identity—such as the extraprovincials (*waishengren*) (“people from the external provinces”), as mentioned in Chapter One. Conflicts between extraprovincials (*Waishengren*) and local provincials (*Benshengren*) were severe over several decades; extraprovincials (*Waishengren*) were considered a colonial ruling class, with vested interests.²⁶⁶ This tension lasted until democratisation. In 1998, the term “new Taiwanese” was introduced by President Lee Tung-hui to soothe the tension between local provincials (*Benshengren*) and extraprovincials (*Waishengren*) that was felt at that time; the inclusion of the immigrants of 1949 with the Taiwanese, to form a group called “New Taiwanese,” was to rebuild the identity of immigrants of 1949 as part of a Taiwanese people rather than as extraprovincials (*Waishengren*) who were former Chinese.²⁶⁷ This indigenisation/localisation brought a New Taiwanese identity to the 1949 immigrants specifically; therefore, it did not address other groups of immigrants after democratisation. With other groups of immigrants, the definition of their status and residence rights depicts a general attitude towards immigrants in Taiwan in recent years.

After democratisation, migrant workers and marriage migrants were the main groups of immigrants in Taiwan. However, migrant workers are excluded from naturalisation; indeed, researchers have pointed out the severe exploitation of and discriminations against them.²⁶⁸ Nationalist politics influenced the migrant workers' policy, as the government introduced low-cost labourers to lure Taiwanese industry to stay in Taiwan from 1990s onward—to help form an economic nationalism in Taiwan.²⁶⁹ Compared to migrant workers, marriage migrants have rights to naturalise; however, the government may still make obstacles to marriage migrants, such as asking for financial statements for naturalisation and for renunciation of the nationality of their home country before the application for naturalisation (both of these before

²⁶⁶ Rwei-Ren Wu, “Toward a Pragmatic Nationalism: Democratization and Taiwan's Passive Revolution,” in *Memories of the Future: National Identity Issues and the Search for a New Taiwan*, ed. Stephane Corcuff (Abingdon, Oxon; New York, NY: Routledge, 2002), 222–44, <https://doi.org/10.4324/9781315291338-20>.

²⁶⁷ Corcuff, “Taiwan's 'Mainlanders,' New Taiwanese?”

²⁶⁸ Tseng, “Yin Jinwai Ji Lao Gongdeguo Zuzheng Zhi”; Mei-Chun Liu, “Lian Jia Wai Lao Lun Shu de Zheng Zhi Jing Ji Xue Pi Pan [A Critique from Marxist Political Economy on the ‘Cheap Foreign Labor’ Discourse],” *Taiwanese Journal of Sociology*, no. 38 (2000): 59–90, <https://doi.org/10.29816/TARQSS.200006.0002>.

²⁶⁹ Tseng, “Yin Jinwai Ji Lao Gongdeguo Zuzheng Zhi.”

2016.)²⁷⁰ On top of that, marriage migrants from China face stricter regulations compared to marriage migrants from other countries, due to the unresolved ambiguity of the citizenship status of the PRC citizens and the difficult dispute concerning their influence on the Taiwanese democracy.²⁷¹ Discrimination against marriage migrants rose since the first wave of marriage migrants took place in Taiwan from the beginning of 1990s;²⁷² their marriages were seen as commodity of matrimonial agency and the migrants themselves as a threat to “population quality.” In other words, the general public and the government use these assumptions to depict marriage immigrants as the source of social problems.²⁷³ Also, the marriage immigrants were often called “foreign brides” to emphasise their matrimonial status and the related commercial relationship involved; this was soon considered discrimination against marriage migrants.²⁷⁴ To tackle these racist and misogynist terms, marriage immigrants, civil society and government now apply “New Taiwanese Residents,” “New Taiwan immigrants,” and “New Taiwanese female immigrants” as labels for the group of marriage immigrants.²⁷⁵

D. The Right to Dual Nationality and the Inequality of the Nationality Act

²⁷⁰ On 9 December 2016, the Legislative Yuan amended the Nationality Act. After the amendment, marriage immigrants no longer needed to prepare financial statements for the naturalisation but still had to renounce the nationality of their home country, within one year from naturalisation approval. The latter is to prevent potential risks for producing stateless persons. However, naturalisation contains risks of depriving the Taiwanese nationality such as colluding fraudulent marriage. Statelessness under the situation attributing to the immigrants’ performance against the requirements of naturalisation is not addressed. That is, the deprivation of nationality under the circumstance of renouncing nationality of a home country is still placed as the punishment for the immigrants’ behaviours.

²⁷¹ Hsiao-Chuan Hsia, “Wai Jixin Niang Xian Xiang Zhi Mei Ti Jian Gou: The Media Construction of the ‘Foreign Brides’ Phenomenon,” *Taiwan: A Radical Quarterly in Social Studies*, no. 43 (2001): 153–96; Hsiao-Chuan Hsia, “Imaged and Imagined Threat to the Nation: The Media Construction of the ‘foreign Brides’ Phenomenon’ as Social Problems in Taiwan,” *Inter-Asia Cultural Studies* 8, no. 1 (2007): 55–85, <https://doi.org/10.1080/14649370601119006>.

²⁷² Hsia, “Wai Jixin Niang Xian Xiang Zhi Mei Ti Jian Gou.”

²⁷³ Hsia, “Imaged and Imagined Threat to the Nation”; Hsia, “Wai Jixin Niang Xian Xiang Zhi Mei Ti Jian Gou.”

²⁷⁴ Hsiao-Chuan Hsia, ed., *Bu Yaojiaowowai Jixin Niang: Do Not Call Me “Foreign Brides”* (New Taipei City: Rive Gauche, 2005).

²⁷⁵ Wai ji xin nian gyan li de yi guo hun yin [Transnational marriages in the eye of the “Foreign Brides,” Digital Archive Taiwan], <https://digitalarchives.tw/Exhibition/4564/4.html>, accessed 15 Feb 2022; Hsiao-Chuan Hsia, “Cong wai ji xin niang dao xin zhu min zou liao duo yuan [How far is the distance between ‘Foreign Brides’ to ‘New Residents’?]” *Independent Opinion*, 31 January 2018, <https://opinion.cw.com.tw/blog/profile/65/article/6576>.

Taiwan has double standards when it comes to dual nationality for birthright citizens vs. naturalised citizens; the former have the right to hold dual nationality, except for civil servants holding national security or state secret positions,²⁷⁶ but the latter are required to renounce their original nationality during any application for naturalisation, with few exceptions.²⁷⁷ The difference between the two groups is one of the inequality in the citizenship system of the ROC. Before 2000, the old Nationality Act—used between 1945 and 2000—restricted the citizenship right of female citizens of the ROC in several ways: 1) female citizens marrying foreigners could not transmit their citizenship to the children; 2) if a child was not born in wedlock, females could not pass on their nationality unless the father refused the responsibility of fatherhood or was unknown or stateless; and 3) male citizens' female spouses could be granted nationality automatically but female citizens' male spouses had to apply for naturalisation containing strict requirements.²⁷⁸ The new Nationality Act abolished the gender difference in the old Act, but the requirement of renunciation of nationality for naturalisation makes female marriage immigrants choose between Taiwanese nationality—and the attached Taiwanese citizenship rights—and their original nationality, which they might wish to pass on to their children.²⁷⁹ For institutional reasons, female marriage immigrants can be forced to choose to give up their nationality for naturalisation. In other words, the current restriction requires naturalised marriage immigrants, who are mostly females, to deliver children of the ROC nationality but not of the immigrants' original nationality.²⁸⁰

Strict requirements for naturalisation—especially the renouncement of original nationality—create an unfriendly environment for immigrants in Taiwan. In 2017, the Legislative Yuan amended the Nationality Act to allow foreigners who make special contributions and who are highly skilled in certain domains—and who pass a review by the Ministry of the Interior—to obtain ROC nationality without giving up their original nationality.²⁸¹ This new amendment may seem to ease restrictions on the renunciation

²⁷⁶ Civil Servant Appointment Act, §28(2022).

²⁷⁷ Nationality Act, §9(2021).

²⁷⁸ Chao-ju Chen, "Gendered Borders: The Historical Formation of Women's Nationality under Law in Taiwan," *Positions: East Asia Cultures Critique* 17, no. 2 (2009): 289–314, <https://doi.org/10.1215/10679847-2009-003>.

²⁷⁹ Chen, "Gendered Borders."

²⁸⁰ Chen, "Gendered Borders."

²⁸¹ Nationality Act, §6, §9 (2021).

of the nationality, but it is limited to a small number of immigrants. Furthermore, it once again formulates unequal requirements for nationality: by deciding who can make the best contributions to Taiwan, and by ignoring the needs of large numbers of blue collar migrant workers who cannot naturalise and of marriage immigrants who face strict regulations for giving up their own nationality. In short, the Taiwanese dual citizenship regime imposes “selective, exclusive, and restrictive” rules on immigrants.²⁸²

E. Statehood and Its Influence on Chinese Immigrants

The Constitution of the ROC and its sovereignty claim have been the focus when considering the statehood of Taiwan. However, the structure of the Constitution also confuses the citizenship status of the ROC, implying that residents in China are not nationals but not foreigners either.

To be specific: Chinese immigrants are regulated by the Act Governing Regulations between People of the Taiwan Area and the Mainland Area. The “mainland area” also includes Tibet and Mongolia.²⁸³ In the Constitution of the ROC, Tibet is mentioned several times, to assure its number of the representatives, i.e. legislators, in political participation and to safeguard its self-governance.²⁸⁴ On the other hand, the content of the Constitution was amended between 1991 and 2005: not changing the previous sections but instead adding new sections to comply with reality. Doyle mentions that these amendments play a crucial role in the legal system of the current Taiwanese government, compared to the conventional Constitution.²⁸⁵ Furthermore, the sovereignty issue was subtly reformed with these amendments: by the distinction of the Taiwan area from the mainland area and by giving only Taiwanese people the right to vote; even though the issue of the territory was seen as a political one and left out of the Amendment’s specific text. In short, after the democratisation of Taiwan, the Constitution of ROC eliminated the political

²⁸² Choo Chin Low, “Report on Citizenship Law: China and Taiwan,” 2016, <https://doi.org/10.13140/RG.2.1.1908.2647>.

²⁸³ The ROC government gradually regularised relations with Mongolia and recognised Mongolia in 2002.

²⁸⁴ Constitution of the Republic of China, §26(1947); Constitution of the Republic of China, §64(1947); Constitution of the Republic of China, §91(1947); Constitution of the Republic of China, §120(1947).

²⁸⁵ Oran Doyle, “Populist Constitutionalism and Constituent Power,” *German Law Journal* 20, no. 2 (2019): 161–80, <https://doi.org/10.1017/glj.2019.11>.

participation of the people in “mainland area” signifying that these people are not considered citizens under the legal framework. But the sovereignty claim over China in the Constitution remains at this stage. As a result, Tibet still exists as part of the national territory in the constitutional context of ROC, though belonging to the “mainland area.”

To be more precise, people from the “mainland area” are called nationals in the ROC Constitution; however, that is not reflected in the laws or in practice. The constitutional structure does not fully exclude Chinese from the people of the “Taiwan Area” by distinguishing them in the amendments. The Act Governing Regulations between People of the Taiwan Area and the Mainland Area seems parallel to the Immigration Act, as the regulation of the movement of people of the mainland area in the former is similar to the regulations about the other immigrants in the latter. Immigrants from the mainland area must also go through the whole immigration process. However, as mentioned before, people of the mainland area are defined by their household registration, not their PRC nationality. When marriage immigrants from China want to naturalise, they do not give up the nationality of the PRC as the other groups of immigrants have to do. Instead, they give up their household registration in the PRC and register in the household registry in Taiwan. Household registration functions as a principal gateway for Chinese; without it, but the Chinese people are not categorised as PRC nationals. (Note that the relevant regulations for marriage immigrants from China to obtain household registration are similar to those asked during naturalisation.) Furthermore, during the process, Chinese marriage immigrants must wait for six years to accomplish the whole process of naturalisation, while other groups of immigrants only have to spend four years doing the same. Researchers point out there is discrimination against the Chinese immigrants, though the legislators and the government emphasise the national security priorities embedded in the immigration policy towards China.²⁸⁶ That is, there is still a worry that Chinese people might be spies in Taiwanese society and the bureaucratic system. Overall, from these regulations, it can be seen that the people of the mainland area are treated as

²⁸⁶ Yuan-Hau Liao, “Quan Qiu Hua Qu Shi Zhong Hun Yin Yi Min Zhi Ren Quan Bao Zhang [Marriage Immigrants’ Human Rights in the Trend of Globalization: Globalization, Neo-Taiwanese Nationalism, and the Discourse over Human Rights],” *Thoughts and Words* 44, no. 3 (n.d.): 81–129, <https://doi.org/10.6431/TWJHSS.200609.0081>; Antonia Chao, “Qin Mi Guan Xi Zuo Wei Fan Si Guo Zu Zhu Yi de Chan Gyu,” *Taiwan She Hui Xue: Taiwanese Sociology*, no. 16 (2008): 97–148.

immigrants in the legal system and in practice, although they hold a national identity according to the ROC Constitution. However, the different way of identifying them with the household registration and the different length of naturalisation time shows that they do not belong to the general body of immigrants. The difference between immigrant regulations towards Chinese immigrants and towards the other immigrant groups represents the special relationship between Taiwan and China and is rooted in concern over “security” and “public welfare”—as addressed at the beginning of the Act Governing Regulations between People of the Taiwan Area and the Mainland Area.

Turning the focus to Tibetans, as Tibetans also may fall into the ambiguous status considering the mainland area also includes Tibet, regulation for immigrants from mainland area also regulates them, especially Tibetans arriving directly from Tibet. However, for Tibetan exiles from places outside of Tibet, such as India, the situation is more complicated. From the perspective of Tibetans, the intense and complicated relationship between the Tibetan people and the Chinese government created their diaspora for decades. The statehood of Tibet is a contested issue as well. At the beginning of the 20th century, Tibet’s political and religious leader, the 13th Dalai Lama, argued for independence over the complicated Tibetan and Chinese relationship—even though Tibet had been under the military protection and political governance of the Qing Dynasty since the 18th century.²⁸⁷ In 1913, the 13th Dalai Lama announced the Proclamation of Independence of Tibet and clearly addressed Tibet’s standing on the issue of statehood. At that time, the Republic of China was just being established; this new government refused to accept this proclamation. Furthermore, the successful military of the People’s Republic of China occupied Tibet in 1951. Eventually, an armed conflict began on 10 March 1959. Afterwards, many Tibetans fled to India and built up a government in exile. In short, the official relationship between Tibet and Taiwan involves a deep-rooted geopolitical issue intertwined between China/the PRC and the ROC.²⁸⁸ The complicated sovereignty

²⁸⁷ More discussions on this point may be found in Chapter Five.

²⁸⁸ Hsuan-Yao Liu, ed., *Meng Zang Wei Yuan Hui Jian Shi Xu Pian [A Short History of the Mongolian and Tibetan Affairs Commission]* (Taipei: Meng Zang Wei Yuan Hui [The Mongolian and Tibetan Affairs Commission], 1996); Mei-Lin Pan, “Neither Compatriots nor Refugees: Status Discrimination of Exiled Tibetans and the Contradictory Faces of the Republic of China (Taiwan),” *International Journal of Asia-Pacific Studies* 11, no. 2 (2015): 41–59.

claim over Tibet in the Constitution of the Republic of China and its legal framework may confuse the legal identity of Tibetans in Taiwan.

As seen in the previous explanation, Tibetan people should fall into the category of nationals of the “mainland area”—according to the Constitution of the ROC. However, in other parts of the law, they are not seen as nationals. In addition, the citizenship issue for Tibetan exiles from India is more complex, as they did not travel to Taiwan from China but from India or other states. This means that their personal status is different from Tibetans from the PRC. In addition, Section 3, Article 16 of the Immigration Act regulates Tibetan exiles from South Asia as stateless persons.²⁸⁹

However, the definition of statelessness does not release the Tibetan exiles from other identities, namely, questionable nationals at the constitution level and immigrants in practice. As there is no Refugee Act in Taiwan, Tibetan exiles cannot be identified as refugees there. Thus, legal identity for Tibetan exiles in Taiwan exists as a complex of three different identities—nationals in question, immigrants in practice, and stateless persons in law—but these three identities work separately and make navigating the immigration process full of procedural confusion.

IV. Conclusion

The statehood of Taiwan is an indeterminate status full of complexities. On the one hand, Taiwan has shown its independent status with its own territory and its prosperous democracy. Amendments to the Constitution of the ROC have also built up sovereignty by referring to citizenship while effecting the shift of the sovereign people in question from Chinese people to Taiwanese people. The amendment of the Constitution and developments in various political agendas also changed the landscape of Tibetans’ position in the Taiwanese citizenship system. The dissolution of the Mongolian and Tibetan Affairs Commission signifies these changes and highlights the importance of other key institutions for advocating Tibetans’ citizenship

²⁸⁹ The Immigration Act, §16(5)(2016): Stateless people from India or Nepal who have entered the Taiwan Area before 29th June 2016 and cannot be repatriated may be allowed to reside in the Taiwan Area by the National Immigration Agency if their status has been identified by the review meeting which convened by the central authorities in charge of the Mongolian and Tibetan Affairs.

right in Taiwan. On the other hand, the lack of a formal declaration of independence is a main concern for the unfinished process of Taiwan's achieving full statehood. On top of this, the international community has established substantial connections with Taiwan but does not support de jure independence of Taiwan in different contexts. The tension between the ROC and the PRC, due to the constant military intimidation, also explains the expedient maintenance of status-quo.

The case of Hong Kong shows the danger of Taiwan losing sovereignty to China. Firstly, Hong Kong has demonstrated "one country, two systems" will not be the solution to coexistence of authoritarianism and democracy. Secondly, it shows that, given both Taiwan and Hong Kong possess—or possessed—a vibrant civil society and strong social movements, the fundamental difference of sovereignty between Taiwan, with its contested statehood, and Hong Kong, under the sovereignty of the PRC, leads to different results concerning liberal rights and democracy. This difference may also confirm sovereignty is required for a stable democracy for long term.²⁹⁰ As for Taiwanese people, the sovereignty debate with China and the pursuit of full Taiwanese citizenship are never just an ideological dispute between the nationalist ROC and communist PRC, or a sovereignty claim dispute between the CCP and the KMT. Rather, it is the question of "Greater China" versus Taiwan, and a consideration of authoritarian life versus liberal democratic values.

Democratisation encouraged—and encourages—Taiwanese people to reflect on their Taiwanese identity and on Taiwan's statehood. There are various identities connected to and understandings of statehood among different ethnic groups, classes, and professionals in Taiwan. At the same time, China interferes in Taiwan's practice of democracy by using military threats, economic pressure, and propaganda and disinformation. In addition, the contested statehood of Taiwan has a complicated system for its citizenship, meaning that Taiwanese people may confront denial of their Taiwanese identity abroad. In such circumstances, Taiwanese people mostly use Facebook as their communication tool and to further spread their stories to mass media. Even though the Constitution of the ROC has shifted the identity of its

²⁹⁰ Jieh-min Wu, "Chinese Influence and Taiwanese Democracy," *Reflexion*, no. 11 (2009): 141–57; Linz, *Problems of Democratic Transition and Consolidation*.

sovereign people to the Taiwanese people, it does not fully exclude Chinese people from the category of nationals by defining them as foreigners. The Immigration Act and the Act Governing Regulations between People of the Taiwan Area and the Mainland Area only categorise Taiwanese people as nationals; the Chinese people are neither foreigners nor nationals at the level of law. Moreover, Tibetan exiles have faced a more perplexed situation even while possessing the same national status as the Chinese people: a unique triple identity of nationals in question, immigrants in practice, and stateless persons in law.

In my next chapter, I will examine the cases of specific Taiwanese individuals who were denied Taiwanese citizenship while overseas. Chapter Four opens with information about Taiwanese identity and how people in Taiwan consider Taiwan's statehood. These cases of overseas Taiwanese demonstrate various measures that individuals use to cope with the denial of Taiwanese citizenship, as this thesis will proceed to relate.

Chapter Four. Overseas Taiwanese People and their Citizenship

I. Introduction

In this chapter, I examine citizenship problems experienced by overseas Taiwanese, in terms of the denial of recognition of Taiwanese citizenship. For years, Taiwan has performed its statehood functions within its borders, by establishing a democratic government, military and taxation system. However, external recognition is widely withheld by the international community, for geopolitical reasons. Despite Taiwan's adherence to many of the classic features of statehood, its lack of de jure recognition under international law not only affects the international participation of the Taiwanese government but also influences individuals. Citizens of those countries which have been denied recognition have faced different types of identity problems, especially when they cross the borders to other countries; Taiwan is no exception.²⁹¹ As regards matters internal to Taiwan, its legal structure and its political body are based on the legal framework of the Republic of China, rendering attainment of statehood more complex especially when combined with the history of pursuing the representation of all China. Nevertheless, since Taiwanese people can travel to most countries—often visa-free—with their passports, the issue of uncertain statehood does not seem to create urgent problems for their everyday life. This means that the international recognition Taiwan has obtained is strong enough for this official document to be effective, even though that recognition does not reach the de jure level. However, there are cases of Taiwanese people traveling to foreign countries and having their identity denied there. Some of them might even eventually hold stateless papers in the host countries. Their situation reflects the plight of citizens in cases of contested sovereignty. This chapter, based on interviews with Taiwanese people living overseas, highlights the contested citizenship and the complex geopolitical relationship between Taiwan and China (the People's Republic of China). It shows how, in certain contexts, Taiwanese overseas may use a paradoxical citizenship status such as statelessness as a legal identity: an active one, which they use to reflect their identity in the foreign legal system and in their lives.

²⁹¹ This is a common issue for the contested sovereign entities such as Kosovo, as stated in the literature review (Chapter One). See Krasniqi, “Contested States as Liminal Spaces of Citizenship”; Krasniqi, “Contested Territories, Liminal Polities, Performative Citizenship.”

II. The Genuine Link Theory, Predominant Nationality, and Taiwanese Citizenship

In international law, when a state is asked to recognise a person's nationality, genuine links between the individual and the nationality of the conferring state are often required. In the 1955 *Nottebohm* case (*Liechtenstein v. Guatemala*), the International Court of Justice decided that states have no obligation to recognise a nationality conferred by another state, when the individual does not have a real and effective tie to that conferring state.²⁹² The case has been seen as providing characteristics similar to the definitions of stateless *in situ*, with the requirements of social connection between individuals and the state, but still resolves the matter of statelessness by granting nationality to people who have genuine links to a state as per domestic law.²⁹³ On the other hand, the genuine links theory is criticised for its contemporary use in international law. Van den Brink argues that the application of the theory on recognition may yield “unacceptable uncertainty” for today's mobile citizens in the case of European Union citizenship.²⁹⁴ This critique desires to limit the application of the genuine links theory so that people who may not maintain strong real and effective ties with the states granted them nationality can still hold nationality stably while they reside in other states. In terms of practice in the International Court of Justice, the binding force of *Nottebohm* case has long been questioned. For example, the Italy-United States Claims Commission limited the application of genuine connection to the dual nationality cases aiming for diplomatic protection soon after the *Nottebohm* case.²⁹⁵ In 2006, the International Law Commission rejected such a requirement for natural persons in the draft articles on diplomatic protection: by arguing that the court did not aim at inventing a general rule for other cases and by detailing the difficulty of

²⁹² “*Nottebohm Case (Liechtenstein v. Guatemala)*. (Second Phase.),” Judgement, *International Law Reports* 22 (1958): 349–89, <https://doi.org/10.1017/CBO9781316151495.109>.

²⁹³ Caia Vliet, “Contexts of Statelessness,” in *Understanding Statelessness*, 1st ed., vol. 1 (Abingdon, Oxon; New York, NY: Routledge, 2017), 35–52, <https://doi.org/10.4324/9781315200460-4>; Kim Rubenstein and Niamh Lenagh-Maguire, “More or Less Secure? Nationality Questions, Deportation and Dual Nationality,” in *Nationality and Statelessness Under International Law*, ed. Alice Edwards and Laura van Waas (Cambridge: Cambridge University Press, 2014), 264–91, <https://doi.org/10.1017/CBO9781139506007.012>.

²⁹⁴ Martijn Van Den Brink, “Revising Citizenship within the European Union: Is a Genuine Link Requirement the Way Forward?,” *German Law Journal* 23, no. 1 (2022): 79–96, <https://doi.org/10.1017/glj.2022.4>.

²⁹⁵ “*Flegenheimer case—Decision No. 182 of 20 September 1958*,” in *Reports of International Arbitral Awards: The Italian-United States Conciliation Commission established under Article 83 of the Treaty of Peace with Italy (Italy, United States)*, p 376, https://legal.un.org/riaa/cases/vol_XIV/67-446.pdf.

following such a rule in today's globalised world, where people emigrate and immigrate on a great scale.²⁹⁶ The genuine link requirement may not be applicable as a general rule in relation to holding nationality, but relevant discussions of the connection between individual and states extend to the concept of multiple nationality. Article 7 of the draft Article of Diplomatic Protection includes the test of "predominant nationality" to examine an individual's multiple nationalities and decide which one is predominant and more effective when pursuing the diplomatic protection for such person. The test includes factors such as habitual residence, the amount of time spent in each country of nationality, family ties, employment, etc.²⁹⁷ From "genuine link" to "predominant nationality," the real and effective connection between people and state is stressed in relation to nationality. Along with the development of international law, the loosening of the requirement of a genuine link to a state to hold a particular nationality does not preclude the examination of a person's nationality: evaluating where people establish their "real life" with material evidence including time and family ties, in order to judge the primary bond between people and the specific state. As such examination seeks the real links between people and states when there is doubt with multiple nationalities; it therefore sheds light on the case of the Taiwanese people's ROC nationality and the PRC nationality conferred on them en masse without their consent.

However, the problem of the recognition of nationality for individual overseas Taiwanese is not that the other states do not acknowledge that the Taiwanese people have genuine links with the conferring state. Rather, these states ascribe the links Taiwanese have to Taiwan to China instead. The problem here it is not an issue of contested statehood linked to contested citizenship, but, rather, the shifting of the genuine links of the contested states' members to that contested state, Taiwan, to another state, China. That is, after immigrants' genuine connection with the conferring state are demonstrated, can the government of the destination country refuse to recognise the immigrants' nationality on the ground of their home country's disputed authority? As Taiwan's sovereignty is not widely recognised by most countries around the world, is it acceptable—in view of international law both in theory and practice—

²⁹⁶ International Law Commission, "Draft Articles on Diplomatic Protection," (2006), https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_8_2006.pdf

²⁹⁷ International Law Commission, "Draft Articles on Diplomatic Protection with commentaries," (2006), <https://www.refworld.org/pdfid/525e7929d.pdf>

for countries without a formal diplomatic relationship with Taiwan to see Taiwanese people as Chinese citizens, while the real and effective links actually exist between the Taiwanese people and the government of Taiwan, instead of the government of China? The lack of recognition of statehood has effects on their citizenship as confirmed by other contested sovereignty cases.²⁹⁸ From the perspective of the conferred PRC nationality advanced by the PRC, with nominal claims, perhaps, but without substantial link to the Taiwanese, the example of Russia aiming at mass naturalising Ukrainians²⁹⁹ may be illuminating. Russia is using mass naturalisation to further escalate the complex conflicts between states. Indeed, this is one of its ways it justified its invasion—using as cover the need to “protect its nationals.”³⁰⁰ Such involuntary change of nationality should constitute injustice in international law.³⁰¹ Therefore, the unique situation here of the shift of genuine links, certainly contradicts the aim of the examination of connections between nationals and states: namely, to ensure the real and effective ties between people and the conferring state. Instead, in this situation, a false link between people and another country is created: one that reflects neither the facts nor the principles of the international law.

III. Taiwanese Identity and Overseas Taiwanese

The statehood status of Taiwan has confused its people, and others, by being de facto. The self-governing status makes Taiwanese people see their government as an effective political regime in Taiwan and see Taiwan as independent from other states. However, its legal structure and authoritarian history, as well as geopolitics, all influence how these people see themselves as Taiwanese. Furthermore, the Taiwanese identity is seen as contested due to the conflicts of Taiwan and China from both sovereign and cultural perspectives.³⁰² As for legal and cultural identity, the

²⁹⁸ Gëzim Krasniqi, “Citizenship as a Tool of State-Building in Kosovo: Status, Rights, and Identity in the New State,” *SSRN Electronic Journal*, 2012, <https://doi.org/10.2139/ssrn.1914402>.

²⁹⁹ “Putin decree gives all Ukrainians path to Russian citizenship,” *Reuters*, 11 July 2022, <https://www.reuters.com/world/europe/putin-decree-gives-all-ukrainians-path-russian-citizenship-2022-07-11/>

³⁰⁰ These include people in Crimea, Abkhazia, and South Ossetia, See Yulia Gorbunova, “Crimea: ‘Not Our Home Anymore,’” *Human Rights Watch*, 3 May 2017, <https://www.hrw.org/news/2017/05/03/crimea-not-our-home-anymore>; Stefan Wolff, “Gorgia Abkhazia and South Ossetia,” *Encyclopedia Princetoniensis*, <https://pesd.princeton.edu/node/706>

³⁰¹ John Dugard, Special Rapporteur, “First Report on Diplomatic Protection,” UN Doc A/CN.4, (20 April 2000), https://legal.un.org/ilc/documentation/english/a_cn4_506.pdf.

³⁰² Merle Goldman and Elizabeth J. Perry, *Changing Meanings of Citizenship in Modern China*, ed. Merle Goldman and Elizabeth J. Perry (Cambridge, MA: Harvard University Press, 2002).

Taiwanese identity has faced conflicts due to legal and cultural impacts of the Republic of China, especially during the period of martial law (1949-1987). Related to this point, Ching argues that during the period of Japanese colonisation, Taiwanese people tried to find an identity between Chinese and Japanese, and to look for emancipation, as Chinese nationalism could not be a "viable alternative" for Taiwanese during World War II. During that period, Taiwanese people were seen neither as Japanese by Japan nor as Chinese by China.³⁰³ Ching uses the novel "The Orphan of Asia" to illustrate the struggle of Taiwanese people and their disillusion with Chinese nationalism, which saw them as second-class citizens in Japan and Japanese spies in China. Even so, the Taiwanese people were forged into Chinese after World War II by the government of the Republic of China and the Taiwanese identity was restricted for decades under martial law.³⁰⁴ Therefore, Dittmer claims that "Taiwanese" being a national identity is a recent phenomenon.³⁰⁵

The national identity of Taiwanese is not a simple question, as it involves how Taiwanese people identify themselves politically and how they understand the sovereignty issue for Taiwan. The two can be subtly different, as the Taiwanese people have built up their social and political bonds in their lives under the government of the Republic of China and practice their political rights within its legal framework. However, the existence of Taiwan as a country also has been constantly questioned by the international community and challenged by the Chinese government as well as the Chinese people. Within the country, for decades, the issue of the statehood of Taiwan was understood as a preference of the future state; that is, as something the Taiwanese people might not consider so pressing as to make a stand, but which they understand is still important in determining a direction for Taiwan.³⁰⁶ In other words, Taiwanese people feel there is no tangible need to deal with the statehood issue now but also understand there are problems with it. Since 1992, the Election Study Centre of National Chengchi University in Taiwan has conducted an annual survey on Taiwanese people's identity; the survey also polls people's attitude on the statehood

³⁰³ Leo T. S. Ching, *Becoming "Japanese": Colonial Taiwan and the Politics of Identity Formation* (Berkeley, CA; London: University of California Press, 2001).

³⁰⁴ Ching, *Becoming "Japanese."*

³⁰⁵ Lowell Dittmer, "Taiwanese Identity," in *The SAGE Handbook of Contemporary China* (London: SAGE Publications Ltd, 2018), 657-75; Dittmer, "Taiwan and the Issue of National Identity."

³⁰⁶ Election Study Center of National Chengchi University, "Trend of Core Political Attitudes," accessed 20 February 2022, <https://esc.nccu.edu.tw/eng/PageDoc?fid=7215>.

status.³⁰⁷ This poll of the "preference of future state" shows how people in Taiwan may choose their blueprint for the nation, but it may not reflect fully how they identify themselves currently as it distances the statehood issue from the current status of Taiwan. Therefore, the ambiguous attitude can be seen here, with Taiwanese people being asked about statehood even as they are depoliticising the issue of statehood in their daily life.

The discourse of de-politicisation is widely used in Taiwan. In the 1970s, the KMT government used two de-politicised discourses—"social stability and prosperity" and "democracy, rule of law, and anti-violence"—to justify its political regime and demobilise dissenting voices.³⁰⁸ This has had a far-reaching effect on the political discourse in Taiwan. During the democratisation, dramatic elections proliferated along with conflicts between the ethnic groups of extraprovincials (*Waishengren*) and local provincials (*Benshengren*) and trend of localisation/indigenisation, these conflicts resulted in fatigues against the issues underneath the conflicts and brought another de-politicised discourse for denial of ethnic problems and depreciation on the electoral politics.³⁰⁹ These discourses lasted for decades; the "economy first" and "defying the transitional justice" became mainstream de-politicalised discourses after the 2000s.³¹⁰ These de-politicalised discourses may ease the tension of people at the political scene, but they are used in the political domain to obscure political stances and actions of the past by downplaying important political issues.³¹¹ For example, "economy first" can make economic coercion from China more appealing to the Taiwanese people, as through that discourse they prioritise economic incentives. Moreover, the use of "de-politicised" strategies in the Taiwanese citizenship curriculum, supported by students and parents, translates into staying silent as regards national identity; this policy serves an inclusive approach with maximum acceptance, given the conflicts between the Chinese identity and the Taiwanese identity.³¹² De-politicalised discourses are

³⁰⁷ Election Study Center of National Chengchi University, "Trend of Core Political Attitudes."

³⁰⁸ Yu-Chun Chen, *Qu zheng zhi hua de zheng zhi tai wan zheng zhi shi jian de xu shi she hui xue* [The Politics of Depoliticization: A Narrative Sociological Analysis of Political Events in Taiwan] (Master's thesis, National Taiwan University, 2010).

³⁰⁹ Chen, *Qu zheng zhi hua de zheng zhi*.

³¹⁰ Chen, *Qu zheng zhi hua de zheng zhi*.

³¹¹ Chen, *Qu zheng zhi hua de zheng zhi*.

³¹² Cheng-Yu Hung, "Ambiguity as Deliberate Strategy: The 'de-Politicized' Discourse of National Identity in the Taiwanese Citizenship Curriculum," *Critical Studies in Education* 57, no. 3 (2016): 394–410, <https://doi.org/10.1080/17508487.2015.1105837>.

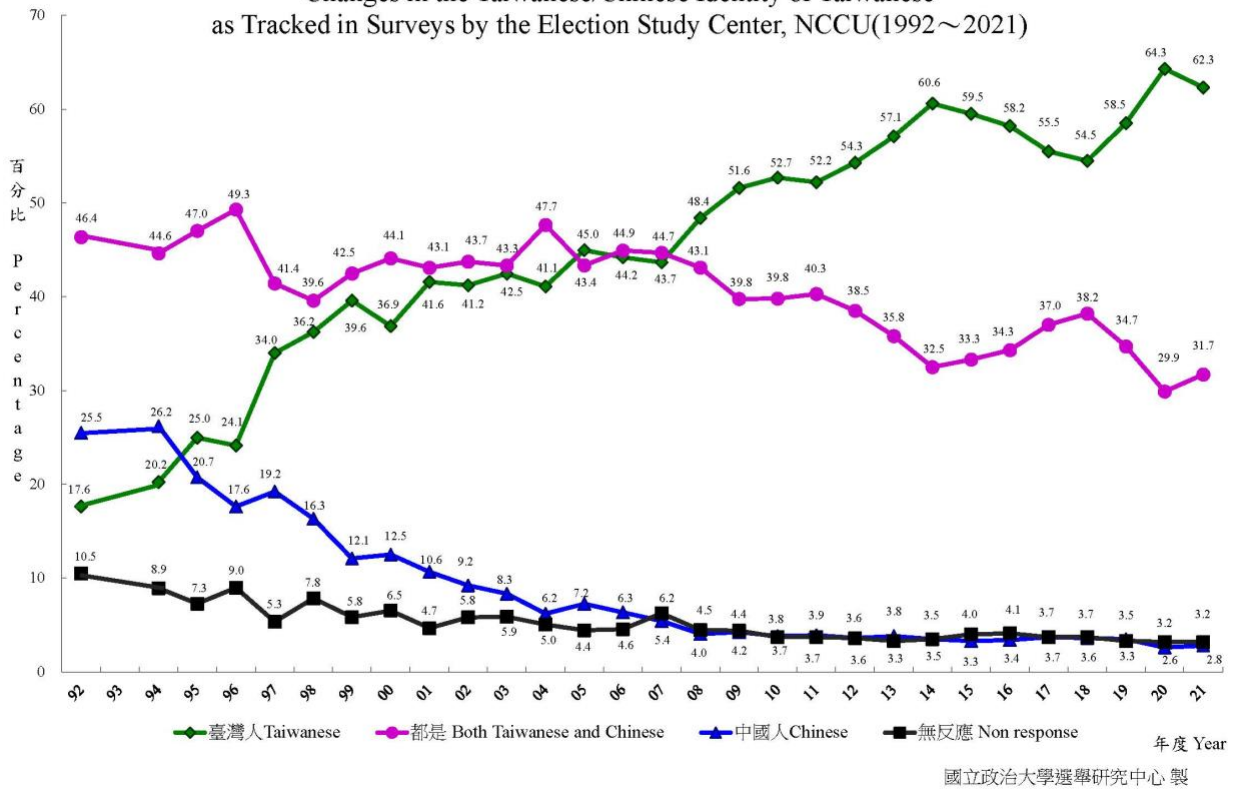
used to justify and eschew political conflicts before or after democratisation. However, these discourses also serve as flexible measures to avoid taking a stance on national identity, supported—ironically—nation-wide.

According to the Election Study Centre of National Chengchi University, the number of Taiwanese who identify themselves as Taiwanese has increased steadily since 1992, while the number of Taiwanese who identify themselves as Chinese has dropped significantly between 1992 and 2008. However, the figure of the preference of future state does not seem to reflect this trend of identity, as it implies a preference for maintaining the status quo. That is, even though the number of those asserting a Taiwanese identity increased sharply, especially after 1996,³¹³ (alongside the growth of democracy and amidst continuing threats from China,³¹⁴) the support for independence does not reflect this escalation, as two options of maintaining the status quo take the leading position most of the years. (See figures from the tables below.)

³¹³ As mentioned in previous chapter, in 1996, Taiwan has its first presidential election and the PRC launched missiles to threaten Taiwanese authority and people.

³¹⁴ Zhong, “Explaining National Identity Shift in Taiwan”; Wu, “Toward a Pragmatic Nationalism”; Dittmer, “Taiwan and the Issue of National Identity.”

臺灣民眾臺灣人／中國人認同趨勢分佈（1992~2021）
 Changes in the Taiwanese/Chinese Identity of Taiwanese
 as Tracked in Surveys by the Election Study Center, NCCU(1992~2021)

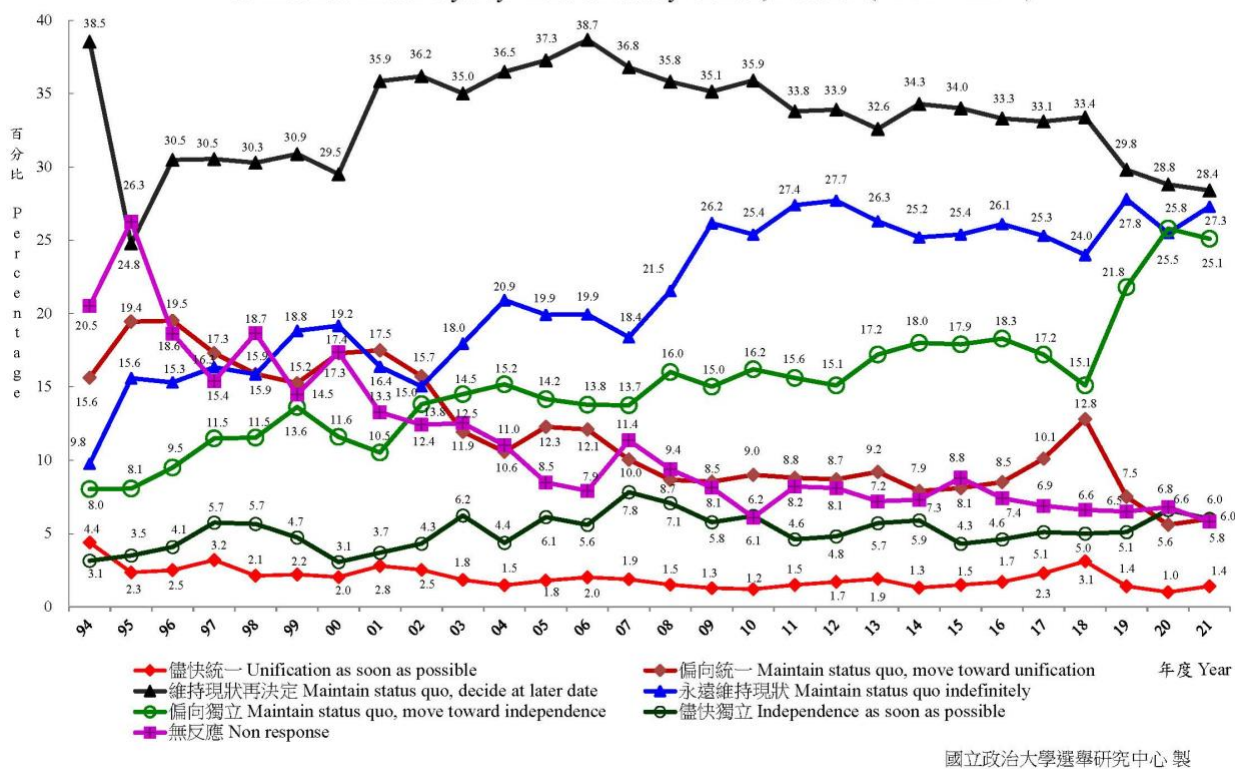


Changes in the Taiwanese / Chinese Identity of Taiwanese (1992~2021)³¹⁵

³¹⁵ Election Study Center of National Chengchi University, "Taiwanese / Chinese Identity (1992/06~2021/12)," accessed 19 Jan 2022, <https://esc.nccu.edu.tw/PageDoc/Detail?fid=7800&id=6961>.

臺灣民眾統獨立場趨勢分佈 (1994~2021)

Changes in the Unification - Independence Stances of Taiwanese as Tracked in Surveys by Election Study Center, NCCU (1994~2021)



國立政治大學選舉研究中心 製

Changes in Unification-Independence Stances of Taiwanese³¹⁶

A similar result can be seen in the Taiwan Social Change Survey, conducted by the Institute of Sociology, Academia Sinica in Taiwan between 1995 and 2021. In this survey, the number of those identifying as Taiwanese increased from 32.2 to 74.2%.³¹⁷ Turning back to the surveys conducted by Election Study Center: although the trend in perceptions of identity does not reflect the preference of future state, Dittmer argues that the ongoing threat from the Chinese government and national security issues may generate the gap here, as political identity is comparatively safe to determine compared to changing the status quo and facing the possibility of war.³¹⁸ He also suggests five hypotheses for the rise of Taiwanese identity. First, it is a pragmatic response, as the PRC has successfully monopolised China or Chinese identity. Second, the PRC constantly threatens the Taiwanese people with the use of force to

³¹⁶ Election Study Center of National Chengchi University.

³¹⁷ This number excludes the option of dual identity—both Chinese and Taiwanese or vice versa. See the Survey Research Data Archive, accessed on 20 January 2023,

https://srda.sinica.edu.tw/browsingbydatatype_result.php?category=surveymethod&type=1&csid=2

³¹⁸ Dittmer, “Taiwanese Identity”; Dittmer, “Taiwan and the Issue of National Identity.”

(re)unify. Third, economic incentives from China to Taiwan are not as strong as they were in the 1990s when the PRC's economy was growing fast. Fourth, the economic asymmetry between Taiwan and the PRC—as Taiwan is less economically powerful—shows the unequal economic powers between the two entities; therefore, (re)unification/re-sinicisation for Taiwan cannot be based on an equal power relationship. Fifth, the general public may find economic incentives from China attractive, but the idea of (re)unification/re-sinicisation not.³¹⁹ Here, (re)unification/re-sinicisation means the process of reshaping the Taiwanese as Chinese, especially from the political aspect.

Other recent studies also confirm this growing identity shift over the decades, especially in the younger generations, whether within Taiwan³²⁰ or outside of Taiwan.³²¹ The emphasis of the Taiwanese identity may be associated with a differentiation from the Chinese identity, in a specifically Taiwanese context. For example, the Sunflower Movement, a civil movement in Taiwan, included all generations but was primarily led by young students along with NGO workers mostly under the age of 40. Scholars find that the movement also represented a national attachment to being “proud Taiwanese” combined with “anti-China feelings.”³²² This again reflects the strengthening of Taiwanese identity—a process of indigenisation/localisation for the Taiwanese's reformation of their identity—and contradicts the maintenance of Chinese identity. (An identity once imposed on Taiwanese people by the authoritarian government loses its charm with indigenisation/localisation, with increased emotion against the PRC, and with the additional reasons suggested by Dittmer.³²³ In addition, the ROC identity may conflict with the Taiwanese identity. This is because, though an ROC identity implies a

³¹⁹ Dittmer, “Taiwanese Identity.”

³²⁰ Shelley Rigger, “The China Impact on Taiwan's Generational Politics,” in *Taiwan and the “China Impact”: Challenges and Opportunities*, ed. Gunter Schubert (Routledge, 2016), 70–90; Chung-li Wu and Alex Min-Wei Lin, “Do Cohorts Matter? Cohort Analysis and Value-Difference Impressions of a Rising China,” *Political Studies Review* 17, no. 4 (2019): 391–415, <https://doi.org/10.1177/1478929919864781>.

³²¹ Ho and Li, “‘I Became a Taiwanese after I Left Taiwan’: Identity Shift among Young Immigrants in the United States.”

³²² Fang-Yu Chen and Wei-Ting Yen, “Who Supports the Sunflower Movement? An Examination of Nationalist Sentiments,” *Journal of Asian and African Studies (Leiden)* 52, no. 8 (2017): 1193–1212, <https://doi.org/10.1177/0021909616645372>.

³²³ Dittmer, “Taiwanese Identity.”

Chinese identity, as the PRC more strongly positions itself as “China” domestically and internationally the orthodoxy of the Chinese identity within the ROC has weakened. When these factors join with the ambiguous attitude of the ROC government towards sovereignty over China, Taiwanese people may in response decouple Chinese identity from ROC citizenship while the Taiwanese identity advances in strength and popularity. The inner tension between extraprovincials (*Waishengren*) and local provincials (*Benshengren*) seems attenuated by the generational shifts to indicate a more inclusive Taiwanese identity.³²⁴ Scholars stress that as Taiwanese identity is established as a national identity, alongside increased nationalism in general, it may become a determining factor to the relevant movements against China.³²⁵

The struggle of the national identity of being Taiwanese can also be a process of people defining themselves, especially for people who first discovered this challenge for their identity overseas. During this process, the meaning of being a national of the Republic of China can be ambiguous, given the arguments around the sovereignty issue. For example, Shing-Ling,³²⁶ an exchange student in Iceland, mentioned that she was not a “Taiwanese nationalist” at first; on the contrary, she was proud of being a national of the ROC. However, as she travelled outside of Taiwan from her adolescence and confronted misunderstandings with her passport and doubts concerning her ROC citizenship from foreign authorities—due to the name of the Republic of China—she started reflecting on her own identity as a Taiwanese with the citizenship of the Republic of China before she did her exchange in Iceland. The experience of Shing-Ling is not unique. For people who lived in Taiwan during martial law and knew little about the complexities of the citizenship and sovereignty issue of Taiwan, being an expatriate overturned their opinions on Chinese nationalism and Taiwanese identity.³²⁷ This means that, while the government of the ROC inculcated Chinese identity and nationalism in the Taiwanese people, later the same people found the history and facts of modern China and Taiwan inconsistent with what they

³²⁴ Tanguy Le Pesant, “Generational Change and Ethnicity among 1980s-Born Taiwanese,” *Journal of Current Chinese Affairs* 40, no. 1 (2011): 133–57, <https://doi.org/10.1177/186810261104000105>.

³²⁵ Chen and Yen, “Who Supports the Sunflower Movement?”

³²⁶ Shing-Ling is a pseudonym. For additional detail about Shing-Ling, please consult the table of interviewees in Chapter Two.

³²⁷ Yan-Hsian Chang, Chiu-mei Tseng, and Chao-hai Chen, eds., *Zi Jue Yu Ren Ton 1950-1990 Ghai Wai Tai Wan Ren Yun Dong Zhuan Ji* [*Awareness and Identification 1950-1990 Overseas Taiwanese Peoples' Civil Movement*] (Taipei: Wu San-lin Foundation for Taiwan Historical Materials, 2005).

have learned in Taiwan and abroad. Furthermore, they questioned their Chinese identity and built up their Taiwanese identity.³²⁸ Therefore, leaving Taiwan makes the Taiwanese people reflect on the existence of Taiwan, and on the change of legal identity related to the statehood of Taiwan.

IV. Taiwanese Citizenship in International Law

The international law debate regarding the statehood of Taiwan and Taiwanese citizenship was discussed in Chapter Two. However, the statehood of an individual state can influence the citizenship of its citizens in different ways, especially at the international level. Therefore, as Taiwanese people travel or migrate to other places, the uncertain statehood of Taiwan can influence their citizenship status. Some states do not recognise the Taiwanese passport as a valid travel document; as a result, Taiwanese people cannot go to these states using those passports. However, the situation for Taiwanese is still ambiguous—even in places where the government accepts Taiwanese passports for entry but subsequently classifies Taiwanese people as 'Chinese', which in turn causes identity problems for Taiwanese people.

On the other hand, debates concerning the statehood of Taiwan also concern the legal framework of the Republic of China. As outlined in the previous chapters, although the government of Taiwan does not now claim to represent the whole of China in political terms, its constitutional framework takes an ambiguous stance by shifting the identity of its sovereign people to the Taiwanese people while keeping the territory unchangeable. Therefore, as the legal system forms the fundamental legal source of citizenship, the citizenship of the Republic of China can be confusing even for citizens.

The international relationship of Taiwan influences Taiwanese people's status in foreign countries. Only fourteen states have recognised Taiwan as a state as of 2021.³²⁹ Furthermore, the citizenship issue for Taiwanese can even be more complicated, as people from Taiwan are not categorised as Chinese in most states in

³²⁸ Chang, Tseng, and Chen, *Zi Jue Yu Ren Ton 1950-1990*.

³²⁹ Information from the Ministry of Foreign Affairs, Republic of China (Taiwan), accessed 25 Feb 2022, <https://www.mofa.gov.tw/AlliesIndex.aspx?n=0757912EB2F1C601&sms=26470E539B6FA395>.

practice. In other words, these governments at least understand that Taiwanese are not under the governance of the Chinese government. However, partial recognition by a certain government involves acceptance of Taiwanese passports but not formally recognising Taiwan as a state; it means that the citizenship status of Taiwanese in these states is ambiguous in terms of legal and political status. The limitation for the case of Taiwan—having established substantial relations but without de jure recognition—applies to the personal status of the Taiwanese people in these states when Taiwanese was not formally taken as nationality. For example, the British government does not recognise Taiwan as a state and therefore they do not apply visas to Taiwanese passports but rather, on another kind of travel paper, the EU Uniform Format Form (EU UFF), according to Entry Clearance Basics.³³⁰ Note that ordinary Taiwanese passports are excluded from this regulation and allowed to have visas attached, but diplomatic or official Taiwanese passports still require the EU UFF. Another example is the US, which holds Taiwan to be one of the countries in its Visa Waiver Program. (To do so, the US cited the Taiwan Relations Act to explain the application of “country” in relation to Taiwan and given its informal relations with Taiwan.³³¹) Indeed, these states permit Taiwanese people’s entrance with their passports but do not officially recognise those same passports as issued by another recognised state. Instead, Taiwan is an exception from the rules governing other unrecognised states, in terms of passports, from the perspective of the governments of the states admitting Taiwanese passports.

In terms of citizenship in international law, discussions about nationality have been the focus for decades. According to Article 15 of the Universal Declaration of

³³⁰Although the UK is not a member of the EU as of 31 January 2020, the replacement of this EU UFF has not been issued on the official website of the UK until July 2022. See: UK Visas and Immigration, “ECB08: What Are Acceptable Travel Documents for Entry Clearance?” accessed 25 Feb 2022,

<https://www.gov.uk/government/publications/what-are-acceptable-travel-documents-for-entry-clearance-ecb08/ecb08-what-are-acceptable-travel-documents-for-entry-clearance>

³³¹ According to the Visa Waiver Program of the US government on the website of bureau of consular affairs: “With respect to all references to “country” or “countries” on this page, it should be noted that the Taiwan Relations Act of 1979, Pub. L. No. 96-8, Section 4(b)(1), provides that “[w]henver the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.” 22 U.S.C. § 3303(b)(1). Accordingly, all references to “country” or “countries” in the Visa Waiver Program authorizing legislation, Section 217 of the Immigration and Nationality Act, 8 U.S.C. 1187, are read to include Taiwan. This is consistent with the United States’ one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.” <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html#reference>

Human Rights (1948),³³² everyone has the right to a nationality. Soon after, the UN issued the 1954 Statelessness Convention to ensure people can obtain nationality and to protect those without a nationality—namely, stateless persons. Until today, eliminating statelessness is still a UN goal and, as discussed in previous chapters, research about diverse forms of statelessness remains important. As nationality makes up the basis for individuals' rights at the international level, the legal personality of a state is crucial to giving those individuals effective diplomatic protection. As a result, states with contested sovereignty may generate citizenship issues for nationals. In other words, citizens of these states cannot enjoy full citizenship as the others do. Taking Taiwanese people as an example: they do not confront citizenship issues within Taiwan, but they have to deal with both legal and identity problems when they travel abroad, including when booking and taking flights or registering with local authorities.

As the nationality of the ROC is not widely de jure recognised, this identity with the name of ROC and Taiwan faces problems not only at the governmental level but in every aspect of the lives of overseas Taiwanese. For instance, Taiwanese people cannot apply for jobs as general professional staff in the UN system without identifying themselves as Chinese within the category of Taiwan, Province of China.³³³ These days, even in conferences which are UN-related, Taiwanese people can be rejected due to their Taiwanese nationality. Recently, a young scholar applying for the winter school on Quantitative System Biology at the International Centre for Theoretical Physics (ICTP), since ICTP is under UNESCO, he was rejected—with the ICTP replying, “We are not able to invite Taiwanese nationals according to UN rules.”³³⁴ In this instance, the US Representative Eliot L. Engel, Chairman of the House Committee on Foreign Affairs, released a concerned statement; he called for UNESCO to retract

³³² “Universal Declaration of Human Rights (1948),” <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

³³³ “Engel Statement on UNESCO’s Exclusion of Taiwanese from International Science Gathering,” 9 Dec. 2020, <https://foreignaffairs.house.gov/2020/12/engel-statement-on-unesco-s-exclusion-of-taiwanese-from-international-science-gathering>

³³⁴ Chih-Fu Yeh, a PhD student at Stanford shared his story on Facebook in 2020. He was told he was rejected because of his Taiwanese nationality. Afterwards, he asked the organisers for further information and they told him that due to the new rule in 2019, no Taiwanese is allowed to participate any UNESCO events. See: Chih-Fu Yeh, “Statement on Exclusion from UNESCO Event because of Taiwanese Nationality,” accessed 5 Jan 2022, https://docs.google.com/document/d/1Jn9XI4-UYjxzH7czHlhxhHyPuFuyBvHEVYtHap4pBJQ/edit?fbclid=IwAR3-RQEbihYnb5PxhbgSFTC_jQPBUv_Wk-aw6k3Kwk5RD5iNmaEJPFj16Rk

this policy and warned of more and more international institutions giving way to Beijing's policies that discriminate against Taiwan. He also stressed that the PRC has become more powerful in the UN system.³³⁵ In short, just as the Taiwanese government has been denied entry to UN related organisations such as the WHO, so individual Taiwanese citizens may confront the same situation, due to China enforcing its censorship on topics relating to Taiwan in the international community.

As mentioned in the previous chapter, the PRC extends its political agenda to the private sectors, forcing individual companies to comply with its strategy to isolate Taiwan and downgrade Taiwan's statehood. The unstable nature of Taiwanese identity along with China's oppression has made the Taiwanese people face the denial of this identity in every aspect of their life. It has become more severe in recent years, even though some diplomatic support has emerged, from informal allies such as the US, against the policies by the UN or affiliated institutions. As for private companies, it is even harder for them to support Taiwan when the PRC uses its economic power to force the same companies to comply with their policies; especially while these companies want to continue their business in China under authoritarian capitalism.³³⁶

The contested citizenship Taiwanese people hold is especially problematic abroad and with the international companies. Even though the term "Taiwan" may be used across different countries in the domain of nationality, country of origin, birthplace, or other categories in paper, this term is nominal on paper since most countries do not de jure recognise Taiwan. Besides, for the international community, it is not practical to handle Taiwanese people using the same regulations applied to Chinese people, since there is a distinction between Taiwan and China concerning international relations and consular affairs such as visas. The Taiwanese citizenship abroad contains obvious political and legal deficiencies. Taiwanese citizenship aligns, here, with denizenship; that is, people can hold extensive rights, including social rights, even without de jure citizenship. (Such is the case for immigrants in general.³³⁷) However, the difficulty the Taiwanese general public faces is not the lack of full political rights; rather, the problem attached to their citizenship, for Taiwanese people, is related to

³³⁵ Yeh, "Statement on Exclusion from UNESCO Event."

³³⁶ The discussions about the PRC's authoritarian capitalism can be seen in Chapter Three.

³³⁷ Hammar, *Democracy and the Nation State*.

the political aspects of identity, as the problem may look nominal to them and not substantially block them from obtaining the right to reside or the right to vote in places. Moreover, the inability to have their identity described correctly in legal papers has more than nominal implications for people—as a correct description of identity conveys an essential part of their political identity. Certainly, the practice of Taiwanese citizenship abroad shows that the same citizenship is partially ineffective for the Taiwanese people, in terms of obtaining full de jure recognition. The degree of influence of this partial citizenship needs more investigation, via specific cases.

V. Building Taiwanese Identity Overseas

As for specific identity, there is a tendency for Taiwanese both inside and outside of Taiwan to choose not to identify themselves as Chinese in political terms. Nevertheless, they are more likely to accept the mainstream Han Chinese label when it turns to cultural identity.³³⁸ Also, it is also common to see one Taiwanese accept their ethnic identity as Chinese—which in Chinese mandarin is a different word, *Huá rén* (華人) when Romanised, whereas the Chinese term which inclines more towards a terms is *Zhōng guó rén* (中國人) when Romanised. That means that it is also likely that Taiwanese people will reject the *Zhōng guó rén* label but accept being *Huá rén*. This situation gives an example of different layers of Taiwanese identity and shows the ambiguous boundaries between the different aspects of citizenship. However, the choice also depends on life experiences, as some people do not accept either term. Overall, the cultural identity can be a mixture of both Taiwanese and Chinese (*Huárén*) in respect of Taiwanese context. The Taiwanese American Citizens League (TACL) ran a campaign addressing Taiwanese identity in the general census in the US for some years, as the Taiwanese identity has been undercounted.³³⁹ In 2020, the census here meant the resident registration that took place every ten years; it would influence the allocation of the federal funding at more than 800 billion US dollars and the number of seats in the House of Representatives and its election area. It is worth noting that the TACL aimed to add Taiwanese as a selection for race, a "self-identification" in the

³³⁸ Zhong, "Explaining National Identity Shift in Taiwan."

³³⁹ "Census Campaign 2020," accessed 29 August 2020, <https://tacl.org/census-2020/>; Jeffrey S. Passel, Neil G. Ruiz and Abby Budiman, "How Many Taiwanese Live in the U.S.? It's Not an Easy Question to Answer," accessed 20 July 2021, <https://medium.com/pew-research-center-decoded/how-many-taiwanese-live-in-the-u-s-its-not-an-easy-question-to-answer-315c042839dc>

explanation of the census, which can be based on “racial and national origin or sociocultural groups.” As such, the word “race” here is based on a broader social definition.³⁴⁰

In the campaign, TACL focused on adding Taiwanese under “race,” and encouraged Taiwanese to check “other Asian” and to write or enter “Taiwanese” in the following column. In their campaign video, they presented themselves as Taiwanese culturally and mentioned they did not want to be put under a Chinese identity. The representation of Taiwanese identity, they argued, would help them stand out. Most of all, they asked for representation as Taiwanese in the government system. Clearly, they wanted to differentiate themselves from Chinese and looked for “legitimising” their Taiwanese identity. This campaign was also supported by other Taiwanese American associations. such as the Formosa Association for Public Affairs (FAPA), the Taiwanese Association for America (TAA), the North America Taiwanese Women's Association (NATWA), and more. Members of these associations were often to be seen on blacklists during the martial law period before the end of the 1980s.³⁴¹ Their political standings are pro-independence compared to other associations associated with “Chinese overseas.” These associations have participated in politics in Taiwan from the US for years; for example, associations such as NATWA have events for fundraising for elections to support pro-independent parties for decades.³⁴²

Taiwanese-American groups have a strong political agenda in the campaign for Taiwanese identity and they act actively in politics, both in the US and Taiwan. Also, they participate in lobbying members of Congress and advocate for the Taiwan’s diplomatic status in the US. Overseas Taiwanese have a history of facing denial of their Taiwanese identity, both culturally and politically. The contested statehood of Taiwan and their contested citizenship has been a concern for them for decades. In the TACL’s announcement concerning the census, the organization argued for the need to stand out from the Chinese community: an important cultural and political distinction. The pursuit for recognition of their identity, drawing off these important

³⁴⁰ United States Census Bureau, “About the Topic of Race,” accessed August 2020, <https://www.census.gov/topics/population/race/about.html>

³⁴¹ Chang, Tseng, and Chen, *Zi Jue Yu Ren Ton 1950-1990*.

³⁴² Elena Ling, “Our Story–NATWA’s History,” accessed 15 March 2021, <http://www.natwa.com/link/NATWASStoryE.pdf>.

cultural and political factors, echoes Fraser's justice theory: that misrecognition which contributes to the denial of cultural standing at an institutional level is an injustice preventing people from fully participating in society.³⁴³ It is also clear to see that members of this community desire to be recognised as Taiwanese at a government level. The lack of recognition is a problem the overseas Taiwanese want to address. This is because recognition leads to political representation, as the U.S. census is implemented by the federal government and thus its results can influence the distribution of resources and future political decisions.

It can be seen that, like the examples in Chapter Four, overseas Taiwanese individuals who have faced denial of their Taiwanese citizenship by foreign governments need to use government institutions to complain and respond. Hence, Taiwanese Americans take a more active approach. Their action is not only about the response to denied citizenship, but also about the creation of another category that suits their identity and legal status. However, it should be noted that this is a scenario that might not happen in other contexts, such as those which allow people to register their own identity in the system. In most scenarios, actions taken in government institutions are the first step for arguing for citizenship; however, for legal mobilisation that requires groups of people to participate or costly lawsuits, not everyone can afford time or money for long-term effortful mobilisations.

VI. The Citizenship Issue for Overseas Taiwanese

Although the statehood of Taiwan is questioned and its citizenship is contested, the Taiwanese passport is still a valid travel document in most states and territories. Nevertheless, there are states which do not recognise this passport, such as Morocco, Georgia, Moldova, etc. In Morocco, Taiwanese people need to hold other travel documents issued by the states they are visiting. Furthermore, if Taiwanese need to reside there, they confront problems connected to their identity—which is not recognised during the process of residence or even naturalisation. This section discusses different contexts of the citizenship issue Taiwanese people confront. It starts with people who travel to states which do not recognise Taiwanese passports

³⁴³ Fraser, "Reframing Justice in a Globalising World," 74.

and then discusses people who face identity challenges in states that do accept Taiwanese passports.

A. Crossing Borders as Stateless Visitors

The experience of using passports is not the same for everyone, as some passports are more powerful than the others. The Henley Passport Index, developed by a company, Henley & Partners,³⁴⁴ which advises on residence and citizenship for wealthy people, provides a global ranking of passports according to the visa-free destinations of the passport holders based on the database of the International Air Transport Association.³⁴⁵ According to this ranking, the passport of Taiwan ranked 32nd in the world in 2020, meaning that its holders can go to 146 countries and territories without visas. (This number includes visa on arrival and electronic visa authority.) This rank shows that a Taiwanese passport can be used in most countries and is powerful in terms of citizens having 146 visa-free destinations. However, not every state accepts the Taiwanese passport—and some states actually deny its validity. In states such as Morocco and Brazil, authorities do not accept any kind of official connections with the Republic of China, Taiwan; as a result; they do not accept passports issued by the ROC government as valid travel documents.

Taiwanese people who want to visit or migrate to states that do not recognise their Taiwanese passports as valid travel documents may find their citizenship status invalid in these countries with their initially official documents. First, Taiwanese people who plan to visit these places cannot obtain a visitor's visa with their passport. For example, as regards the application process for visit visas for Brazil, Taiwanese needed to use their passports to prove their identity when they applied for visas before 14 May 2014. There would not be a visa or relevant paper attached to their passport; instead, the Brazilian government would issue a *laissez-passer* to applicants, which is a temporary travel document specifically for entering Brazil. When Taiwanese people

³⁴⁴ Other systems of passport ranking exist today, such as the Passport Index by Arton, another company that advises on citizenship. The evaluation of the passport may differ in each of them, but the ROC passports obtained high scores overall for the convenience of travelling in general.

³⁴⁵ The International Air Transport Association, IATA, is an organisation serving as the trade association for the world's airline companies; this association plays an important role for formulating industry policy and standards to support airlines. IATA, accessed 16 Feb 2022, <https://www.iata.org/en/>.

travelled to Brazil, they needed to present these *laissez-passers* to cross the border into Brazil. Wen-Ting, a Taiwanese who migrated to Brazil for marriage, discusses this situation:

I met my husband when I studied in New Zealand ... When I visited Brazil for the first time in 2010, it was the first time I could not use my Taiwanese passport ... I knew that the Brazilian government does not recognise Taiwan from the very beginning; the Brazilian government shows clearly on the consulate's website about how Taiwanese people should apply for the *laissez-passer*. The thing is, it is clearly stated, and the consulate in New Zealand also told me this is the only way for Taiwanese people to visit Brazil. My husband needed to prepare an invitation for me to apply for a *laissez-passer*... However, when I passed the customs [i.e. the immigration official], they [the immigration officers] did not know what the document was. In the end, it took me a long time to get through.³⁴⁶

Wen-Ting's experience shows that the government of Brazil requires a temporary travel document not often used in Brazil. Therefore, the immigration officials in the airport could not identify the document immediately. This situation lasted until 2014. On 14 May 2014, the Brazilian Congress agreed to issue visas to passports in accord with the standards of the International Civil Aviation Organization (ICAO); therefore, Taiwanese passports are accepted while other citizens of contested states, such as citizens of Kosovo still need to apply for *laissez-passers*.³⁴⁷ Even with the *laissez-passer*, Wen-Ting and many other Taiwanese could successfully enter Brazil, the situation in other states may not be as simple.

The experience in other states which do not recognise the government in Taiwan as a legitimate ruler of Taiwan and deny any official documents from the government can be more frustrating than the experience of entering Brazil. As in Brazil, in order to visit Morocco, Taiwanese people cannot obtain a visa for their passport. In general, Taiwanese people must send their passports to the Embassy of the Kingdom of Morocco in Japan to apply for a visa. When they successfully obtain a permit to enter Morocco, it does not exist as a visa. Instead, it is only a *Lettre de confirmation* from the embassy in the form of an e-mail. Visitors must print these letters in hard copy

³⁴⁶ Wen-Ting is a pseudonym. For additional detail about Wen-Ting, please consult the table of interviewees in Chapter Two.

³⁴⁷ “Escritório Comercial do Brasil em Taipé,” accessed 5 Jan 2022, <http://taipe.itamaraty.gov.br/en-us/visa.xml>

and bring them to Morocco. When they arrive, they must present the letter to immigration officers and officers who will decide whether to stamp the letter to validate this permission to enter; after the stamp has been affixed, the letter can be seen as a valid visa.

Unlike the situation for Taiwanese holding a Brazilian *laissez-passer*, who usually do not have difficulties crossing the border, it can take hours in the airport for Taiwanese to cross the border into Morocco. According to Chu-Chi, a Taiwanese marriage immigrant in Morocco, the situation can be arbitrary, as concerns the immigration official.

There is no reason for waiting. As many citizens from some African countries or East European countries also have to hold the same travel documents, the officials should not have difficulties to identify these documents. But they just keep people waiting at the airport. If one is lucky, it only takes one to two hours; otherwise, sometimes it can take up to eight to nine hours.³⁴⁸

Furthermore, when Taiwanese people leave Morocco, the *lettre de confirmation* will be taken away by immigration officers. In comparison, Taiwanese people can retain their *laissez-passer* from the Brazilian government. However, in both cases, there are no official records left on the Taiwanese passports in the end. It is as if this trip has never happened, from the perspective of the passport's record.

In short, Taiwanese people face situations in which their official documents may not be accepted in certain states. Although it does not deeply affect their mobility as visitors, this uncertainty can influence their trips from the stage of applying for visas to entering these specific states. The fact that foreign states would rather produce specific travel documents for Taiwanese people than accept their passports not only emphasises the denial of statehood but also erases the existence of official footprints on these people's Taiwanese documents. That is, while many of the other states do not de jure recognise Taiwan either, they still accept Taiwanese passports. In addition, it is not true to say that states like Brazil did not recognise Taiwan at all, de facto recognition still existed even before its congress agreed to recognise Taiwanese

³⁴⁸ Chu-Chi is a pseudonym. For additional detail about Chu-Chi, please consult the table of interviewees in Chapter Two.

passports. (For example, the ROC government has a representative office in Brazil and there were investments and emigration waves traced back to the 1960s from Taiwan to Brazil³⁴⁹.) The relation between Brazil and Taiwan shows that the recognition of states in international relations can hardly be simplified as de facto recognition while the substantial relations have been established over the years. Geopolitics exerts far-reaching influence on the citizenship status of Taiwanese people with unsettled statehood. Foreign states might find ways to eschew the de jure recognition of the ROC government or the statehood in question and to accept its passports. Indeed, the Taiwanese nationality or identity is not self-evident. Brazil's Congress amended its law to allow the use of the ROC passports in Brazil, but even so, the nationality "Taiwanese" is still labelled "Chinese" there, even after the acceptance of passports.

In these cases, Taiwanese people are required to obtain certain travel documents issued by foreign authorities, but the fees for these procedures are not different from those for obtaining a visa. However, the issue of these travel documents is still based on the passports Taiwanese obtain from the Taiwanese government. What this means is that these states initially take the ROC passports as a valid way to identify the citizenship status of Taiwanese; then, they refuse to progress to the second step and issue visas attached to passports. Apparently, these states understand the contested sovereignty issue of Taiwan and that the identity of Taiwanese can only be verified from the government in Taiwan; nevertheless, these foreign governments do not accept Taiwanese passports as valid and legitimate travel documents to their states. Eventually, they produce separate travel documents or visas for the Taiwanese people and leave the passports without official records to trace back to the trip to these states. Even if the authorities grant the Taiwanese people entrance, the mobility is invisible on paper. The officials do not stamp on the passports and leave the paper trail as it will validate the utilisation of passport and the identity contained in the passport.

³⁴⁹ Shi-Yeoung Tang, "Ba Xi Zhao Lai Tai Wan Ren Yi Min Yi Jiu Liu Ling Nian Dai Wo Guo Zheng Fu de Tai Du He Ren Min de Fan Ying [Migration from Taiwan to Brazil: Attitude of Taiwan's Government and Reactions of Its People]," in *Ren Kou Xue Kan: Journal of Population Studies*, no. 46 (2013): 87–119, <https://doi.org/10.6191/jps.2013.3>.

1. Living in States Without Recognition of Taiwanese Identity

The situation for visiting states which do not accept Taiwanese passports can be tricky. Furthermore, people who need to apply for residency in these states face problems related to their Taiwanese identity during the whole process.

(a) Applying for New Identities with New Origins

Taiwanese people must apply for other forms of travel documents from the authority of these states. However, if Taiwanese people need to reside in these states, the problems concerning their Taiwanese identity appear again. The most basic one is the country of origin of these Taiwanese people.

During the residency application process, immigrants are usually required to submit certain documents from their states of origin, such as police/criminal record certificate or single status certificate for marriage migrants. Those documents are issued by the government of the states of origin; for example, the Taiwanese people can only obtain these documents from the Taiwanese government. In other words, these foreign governments must consider these documents from a government they do not recognise as a legitimate government. In most cases, the foreign governments accept these documents from the Taiwanese government, even though they refuse to recognise Taiwanese passports as valid travel documents. However, in Morocco, Taiwanese marriage immigrants are asked to provide two certificates attesting their status as unmarried; one from the Taiwanese government and the other from the Chinese embassy in Morocco. For the government of Morocco, the certificate from Taiwan is insufficient to prove one's status for marriage; instead, it must be combined with the certificate from the Chinese embassy. As a result, Taiwanese immigrants need to visit the Chinese embassy to ask for another single status certificate. They usually can obtain this document without difficulty though the embassy has no record of Taiwanese people in their system. In short, the Chinese embassy checks the Taiwanese documents to issue this extra document to Taiwanese people, although they cannot really verify anything within their databases. The request shows that the Morocco government imposes a hierarchy of authority onto the Chinese government and the Taiwanese government, placing Taiwanese identity under Chinese

supervision. This also means Chinese authorities in Morocco can easily collect the information of Taiwanese who are marriage immigrants there. On the other hand, as Chu-Chi said, since there is no way to get married in Morocco other than admitting herself to be Chinese in the Chinese embassy and thus getting this document, she did not have any choice but to do so.

I do not like the fact of being treated as Chinese, but what can I do? It is Morocco we are talking about; it is a totalitarian country ... Here there is no space to argue about the nationality of Taiwan ... and the Morocco economy relies on China more and more with tourism, they have a tight relationship with each other. And I think their international relationship becomes better and better... As a Taiwanese, this is the only way to live here, and I have to follow it.

Chu-Chi's words demonstrate that in Morocco, she does not believe she can argue for her nationality, due to the political atmosphere both within the state—the “authoritarian” system—and internationally—the tight relationship between Morocco and China. She also shows an active attitude towards her identity issue, constantly mentioning herself as Taiwanese in her remarks. She often uses these social media accounts for her tourist business in Morocco; on these accounts, she posts notes openly supporting Taiwanese politicians who are pro-independence. Therefore, Chu-Chi accepts her official identity as Chinese, in Morocco, reluctantly, while emphasising her Taiwanese identity in her own life.

The identity issue not only affects how the Taiwanese people identify themselves officially when they apply for residency in another state. It can also influence the applicants' results. When Taiwanese people receive their residency card or any other forms of residency certificate in these states, the nationality on these papers may annoy them, as the nationality does not fit their identity. In these states, Taiwanese people are labelled as Chinese on official papers. The Taiwanese identity does not exist in these states—can exist only within the narrative that Taiwan is part of China and under Chinese authority. People in these states cannot find a way to argue for their Taiwanese identity as it is denied from the very beginning. However, even in states which accept Taiwanese passports, the Taiwanese identity can also be challenged.

2. *Identity Struggles in States Accepting Taiwanese Passports*

(a) Denial of Taiwanese Identity in States Accepting Taiwanese Passports

The denial of Taiwanese identity does not only happen to Taiwanese people who migrate to states where Taiwanese authority—even de facto authority—is not recognised; it also happens in some other states where the Taiwanese passports are valid or even powerful enough to be used without visas when crossing borders, such as in Norway and Iceland. Individual examples have shown that Taiwanese people might find themselves classified as Chinese when they receive their residence papers. In contrast to cases in which a Taiwanese passport is deemed invalid from the very beginning, during the application for residency in Norway or Iceland, Taiwanese people may use their ROC passports without difficulties—and these passports act as effective citizenship certificates for Norwegian or Icelandic authorities. However, they may still receive residence papers with the Chinese nationality on them—and this result, on the residence certificate issued by host countries, can be unexpected and unwelcome for the Taiwanese people. As a result, the situation that Taiwanese people are forced to accept being categorised as Chinese legally, which they do not identify with, can happen in countries that approve Taiwanese passports.

(b) Strategies for Denial of Taiwanese Citizenship

Overseas Taiwanese people who confront the situations of denying their Taiwanese identity may have three different ways to deal with the identity issue. Firstly, in most cases, overseas Taiwanese people may accept what the authority requests and then does, especially in authoritarian states. Secondly, overseas Taiwanese people may accept the imposed identity temporarily but seek a remedy, such as an administrative appeal, to regain their ROC status or Taiwanese identity. Thirdly, some of the overseas Taiwanese may ask for other possible choices for their identity. For example, they might take a stateless identity as a substitute. The different measures Taiwanese people adopt in different contexts worldwide show an inconsistent attitude concerning solutions; my interviewees also present complex emotions and attitudes towards the situation of their original identity being denied and the imposition of new Chinese identity. This complexity stems from many factors. First, immigrants need to be

accepted in the host country as documented people to reside in the new places; this makes them feel they do not have much room to argue for their Taiwanese identity. Secondly, in states such as in Brazil or in Morocco, the result can be predicted when they apply for residence. Therefore, the acceptance of the Chinese identity could be seen as nominal and part of necessary process while people might not identify themselves with this identity. On the other hand, these choices show different institutional remedies in different contexts and the tools people can use in their fight for identity.

(c) Legal Mobilisation in Norway

Although different approaches exist in situations in which Taiwanese identity is denied, some instances show how certain Taiwanese people in Europe take action to deal with conflicts concerning their nationality and the identity underlying it. In most European countries, overseas Taiwanese who are international students, or who have other long-term rights of residence, are issued a residence card with their nationality on it. In states such as the UK, the card clearly states Taiwan in the place of nationality,³⁵⁰ even though the government of the UK does not de jure recognise Taiwan as a nationality as mentioned above. However, not every European country holds the same attitude. In Iceland and Norway, for example, Taiwanese people receive a residence permit labelling their nationality as *Kina* (which is China in Icelandic and Norwegian). In 2016, an exchange student in Iceland was given an identity certificate marking her as from China. Afterwards, she went to the Directorate of Immigration (UTL) several times to argue for this to be corrected. Even though she did not obtain a certificate with the nationality of Taiwan on it in the end, she received a card labelling her as stateless. In addition, she actively brought her plight and ensuing actions to social media and to the press in Taiwan.³⁵¹

³⁵⁰ For instance, as a Taiwanese national living in the UK, the author obtained the Biometric Residence Permit from the UK government, labelling my nationality as Taiwan. This permit is in the form of card and represents as a resident card in the UK.

³⁵¹ Abraham Gerber, "Student Rails against 'Stateless' ID," *Taipei Times*, 20 November 2016, <https://www.taipeitimes.com/News/front/archives/2016/11/20/2003659621>; Keoni Everington, "Taiwanese Woman Opts for 'Stateless' over Being Branded 'Chinese' on Iceland ID," *Taiwan News*, 23 November 2016, <https://www.taiwannews.com.tw/en/news/3036042>.

Taiwanese people in Norway also face the same situation; their residence permit shows China as their nationality. In 2015, an international student in law, Joseph, discovered this issue on his arrival in Norway;³⁵² as a result, he founded a group which aimed to address this nationality issue. At the very beginning, their goal was to bring a lawsuit against the Norwegian government to regain their Taiwanese identity on the card. They believed the imposition of Chinese nationality on Taiwanese people, through their residence card, violated individual human rights, especially their personal choice for identity. In an interview, Joseph also emphasised that using the residence permit might cause difficulty in situations such as showing the card to immigration officers or police when crossing borders in Europe, as the residence permit also serves as a travel document for foreigners. Taiwanese with long-term residence are asked to show this permit and taken as Chinese people—even though a key difference exists between Chinese and Taiwanese travellers in terms of visa waivers: Taiwanese people can visit European countries without visiting visas for ninety days. As a result, the inconsistency of the nationality labels on the passport and on the residency permit can be confusing to immigration officers at the border and can cause problems in emergencies, although no actual cases have thus far been documented.

The campaign in which Joseph is involved is called "My Name, My Right"³⁵³ to highlight the human right to personal identity. In 2017, campaign participants lodged an appeal against the Norwegian Directorate of Immigration (UDI) for registering their nationality as Chinese.³⁵⁴ According to Joseph, the appeal was put off repeatedly. In the end, the case was dismissed; following that, the Norwegian Immigration Appeal Board (UNE) upheld their original decision in March 2018, declaring that the Norwegian government has an obligation to follow the One-China policy of the EU and that the imposition would not impair Taiwanese people's rights or obligations. However,

³⁵² Joseph [pseud.], "Taiwan: My Name, My Right'—Crowdfunding Officially Launched," accessed 30 November 2020. <https://drive.google.com/file/d/1PNdMui1OpdGpAq4LCh8OCvk-VnFOyr4F/view> Pei-ju Teng, "Norway's Immigration Agency Bows to China, Changes Reference to Taiwan on Website," *Taiwan News*, 9 November 2018, <https://www.taiwannews.com.tw/en/news/3571467>.

³⁵³ Joseph, "Taiwan: My Name, My Right"; Sophia Yang, "Taiwanese Students in Norway Raise Funds for Name Change from China to Taiwan on Residence Permit," *Taiwan News*, 4 September 2018, <https://www.taiwannews.com.tw/en/news/3521898>.

³⁵⁴ Joseph, "Taiwan: My Name, My Right"; admin HRWF, "NORWAY/TAIWAN: Taiwanese Registered as Chinese Citizens in Norway," *Human Rights Without Frontiers*, August 16, 2021, <https://hrwf.eu/norway-taiwan-the-european-court-of-human-rights-ruled-the-application-of-taiwanese-in-norway-inadmissible/>.

though this declaration stated that the imposition of a Chinese identity on the Taiwanese people is due to an obligation the One-China policy causes, for the EU, the obligation is clearly not felt by other European countries—since Germany, Spain, France and others do not make this kind of imposition in general. There are single incidents in which the same imposition is made, but it is rare to see it happening as a national policy like in Norway.³⁵⁵

Regarding this unusual attitude, in Norway, towards the Taiwanese people and their nationality, Joseph revealed that since the Nobel Peace Prize was awarded to the Chinese human rights activist Liu Xiaobo in 2010, Norway has faced a boycott from China politically and economically.³⁵⁶ The Norwegian government changed its approach to the nationality of Taiwan from that time onward.³⁵⁷ For Taiwanese people, the Norwegian government uses them as bargaining chips in order to mend Norway's diplomatic relationship with China. Ironically, the damage to the relationship originated in an award to a human rights activist and has ended with the result of depriving Taiwanese of their identity. After the dismissal of their case, "My Name, My Right" launched a crowdfunding appeal in 2018 on a Taiwanese website³⁵⁸ for two months, obtaining £47,778 to continue their lawsuits in Norway and for an appeal to European Court of Human Rights. The amount fundraised not only made the lawsuit possible but also showed substantial support from the Taiwanese general public for this issue.

On 29 August 2019, another lawsuit was formally filed in the Oslo District Court against the Norwegian Directorate of Immigration (UDI), the Norwegian Immigration Appeal Board (UNE), and the Oslo Police District.³⁵⁹ The three plaintiffs are Joseph, a Taiwanese marriage immigrant and a Taiwanese researcher. They argue that putting China as the nationality on their residence permits is against the privacy rights of

³⁵⁵ For example, the German case in Chapter One showed a local civil servants' attitude and the unfamiliarity of Taiwan in countryside. The same case happened in Spain and France from time to time too.

³⁵⁶ Zack Cooper, "Between Beijing and a Hard Place: Responding to China's Economic Coercion," *American Enterprise Institute Research Papers*, 2021.

<https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/CECC%20Hearing%20Testimony%20-%20Zack%20Cooper.pdf>

³⁵⁷ Teng, "Norway's Immigration Agency Bows to China."

³⁵⁸ Joseph, "Taiwan: My Name, My Right," accessed 20 July 2022.

<https://www.zeczec.com/projects/TaiwanMyNameMyRight>

³⁵⁹ Case 19-127274TVI-OTIR / 01, Case 19-127320TVI-OTIR / 01, Case 19-127372TVI-OTIR / 03.

Taiwanese, according to Article 92³⁶⁰ and Article 102³⁶¹ of the Constitution of the Kingdom of Norway, Article 8 of the European Convention on Human Rights,³⁶² and Article 17 of the International Covenant on Civil and Political Rights.³⁶³ In their filing, they mentioned a number of key cases of the European Court of Human Rights, such as *Dadouch v. Malta*, in which the European Court of Human Rights held that, “An individual's ethnic identity must be regarded as another such element. Article 8 protects in addition a right to personal development, and the right to establish and develop relationships with other human beings and the outside world.”³⁶⁴ Also, in the case of *Ciubotaru v. Moldova*, the Court asserted that “an individual’s ethnic identity constitutes an essential aspect of his or her private life and identity.” From these cases, it can be seen that ethnic identity is protected by Article 8 of the European Convention on Human Rights in view of the individual’s interest in private life. In the application, the Taiwanese people also argue that the Norwegian Directorate of Immigration (UDI) asserts that registering people from Taiwan as being from China is to comply with the EU’s One-China Policy and keep diplomatic policy in order; however, there is no evidence showing that this registration policy has an influence or impact on the foreign affairs of Norway. The plaintiffs argue further that, according to the principle of proportionality, and in a democratic society such as Norway, the state should not interfere in plaintiffs’ privacy rights without proper reason. Privacy rights with respect to ethnic identity should be prioritised over the national interests of Norway.³⁶⁵

³⁶⁰ Constitution of the Kingdom of Norway, §92:

The authorities of the state shall respect and ensure human rights as they are expressed in this Constitution and in the treaties concerning human rights that are binding for Norway.

³⁶¹ Constitution of the Kingdom of Norway, §102:

Everyone has the right to the respect of their privacy and family life, their home and their communication. The search of private homes shall not be made except in criminal cases.

The authorities of the state shall ensure the protection of personal integrity.

³⁶² European Convention on Human Rights, § 8, Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

³⁶³ International Covenant on Civil and Political Rights, §17:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

³⁶⁴ Cases of *Dadouch v. Malta* (2010), under §44 (2) of the Convention, The European Court of Human Rights (Fourth Section). <https://hudoc.echr.coe.int/eng?i=001-99883>.

³⁶⁵ Joseph, “Taiwan: My Name, My Right.”

The movement started with a clear agenda that a lawsuit would be part of their strategy to raise awareness of Taiwanese identity for both Taiwanese people and the international community. Joseph, who is a lawyer in Taiwan, founded the group and developed arguments based on legal materials to frame their advocacy for a Taiwanese identity. Unlike the other individual Taiwanese fighting for their Taiwanese identity, Joseph and his team choose to go to court to protect theirs. Raising awareness of the difficulty with Taiwanese identity is part of their agenda—and filing the case emphasises this and makes people consider the same. The legal framework they use is that of ethnic identity, which has been seen in previous cases in European courts. The lawsuit is also a way to continue their movement, as the Norwegian authorities did not provide a positive response to the Taiwanese. Finally, it brings the identity issue back to Taiwan, using press coverage and crowdfunding to encourage people in Taiwan to reflect on the arguments that surround their identity.

On 11 September 2020, the Norwegian Court of Appeal dismissed the appeal in summary judgement. The case was then brought to the Supreme Court. However, in November the Supreme Court dismissed this appeal. Joseph said they would appeal to the European Court of Human Rights, as Norway has ratified the European Convention on Human Rights. At the same time, the Ministry of Foreign Affairs of Taiwan declared their support for the students' decision, saying that they would assist. The minister was interviewed by Norwegian media, *Aftenposten*, on 19 November 2020, and claimed that the Taiwanese government asked the Norwegian government to correct their error.³⁶⁶ He quoted Article 15 of the Universal Declaration of Human Rights to argue that Norwegian government had impaired the rights of Taiwanese people. He also quoted Article 6 of the European Convention on Human Rights to argue for the right to a fair trial on the Taiwanese students' part, as the courts only used a summary procedure and did not allow any oral arguments. The Taiwan government had not showed their support on this case officially, before, even though the students had approached them; the Ministry of Foreign Affairs claimed that without

³⁶⁶ Kristoffer Rønneberg, "Da den norske helsetoppen hørte T-ordet, satte han foten ned. Nå har Taiwans utenriksminister to grunner til å være rasende på Norge." *Aftenposten*, 22 November 2020. <https://www.aftenposten.no/verden/i/EplqPa/da-den-norske-helsetoppen-hoerte-t-ordet-satte-han-foten-ned-naa-har-t>

an official diplomatic relationship, they could barely do anything on this matter. However, the appeals brought the case to the public again and again.

Furthermore, another factor caught the eye of the Ministry of Foreign Affairs, leading them to make an official statement. In 2020, as Covid-19 drastically changed people's lives, participation in the World Health Organization (WHO) became a core issue for the Taiwanese government again. Even though many countries supported Taiwan's participation in the World Health Assembly (WHA) under the WHO, considering the current situation, the WHO avoided discussion about Taiwan and insisted that Taiwanese people could obtain help or information from the Chinese government. The issue arose again on 10 November 2020 when the WHA was held. As the Kingdom of Eswatini expressed support for Taiwan, the Norwegian chairperson, Bjørn-Inge Larsen, interrupted and demanded no further discussion on this matter. Following this, the Taiwanese Minister of Foreign Affairs complained about this incident. The Norwegian Minister of Health and Care Services replied to these issues, claiming that they supported Taiwan joining the WHA as an observer but believed that Bjørn-Inge Larsen just tried to steer discussion back to the agenda of the meeting. Relatedly, the Ministry of Foreign Affairs of Norway insisted that they have kept an eye on the lawsuit of the nationality of Taiwanese and concluded that the judges did not see the label of Chinese as violation of privacy.³⁶⁷ These incidents clearly demonstrate, however, that issues of Taiwanese identity have become fully entwined with question of international relations and diplomacy.

The case proceeded to the European Court of Human Rights (ECHR) in July 2021, but the judge soon ruled the case inadmissible and declared it manifestly ill-founded.³⁶⁸ Schona Jolly QC, the lawyer for the plaintiffs and chair of the Bar Human Rights Committee of England and Wales, along with the campaign organisers, challenged the finding of the court on the grounds that no substantive reasons existed for the inadmissibility, and suggested that the might have been politically motivated.³⁶⁹

³⁶⁷ Rønneberg, "Da den norske helsetoppen hørte T-ordet, satte han foten ned."

³⁶⁸ Case of Liu and Others v. Norway. (No. 24859/21)

³⁶⁹ "NORWAY/TAIWAN: Taiwanese registered as Chinese citizens in Norway," Human Rights Without Frontiers, 16 August 2021. <https://hrwf.eu/norway-taiwan-the-european-court-of-human-rights-ruled-the-application-of-taiwanese-in-norway-inadmissible/>, Yaoyu Chiang, "Tai wan ren zhuang gao nuo wei zheng fuou

After this frustrating result, the campaigners decided not to take their case to the United Nations Human Rights Committee (UNHRC). A legal detail also informed their decision, namely: Norway has a reservation on Article 5, Paragraph 2 of the Optional Protocol to the International Covenant on Civil and Political Rights upon the ratification of the protocol.³⁷⁰ This reservation keep the UNHRC from considering case that has been examined substantively by other international institutions. According to precedent, cases being ruled as manifestly ill-founded by the ECHR are seen as having been through substantive review. As such, the campaigners and the lawyer believed it highly likely that the UNHRC would not consider the case.³⁷¹

The arguments used by "My Name, My Right" show that their strategy is one of emphasising the human right for ethnic identity, while avoiding the political discourse concerning Taiwan as an independent country, although the latter claim appears in their crowdfunding appeal. This de-politicised strategy aimed at making the subject more closely focused on the legal points that the Taiwanese campaigners made. However, as the correction of nationality not only concerns the ethnic identity of the Taiwanese people but also relates to the recognition of a specific nationality, it is difficult to avoid the political reasons behind the recognition of nationality. Certainly, from the examples of other countries using Taiwan in the space for nationality on the residence cards, the recognition of nationality is not an essential prior condition for taking this approach. However, the decision was seen to be made under pressure from China, using economic sanctions to punish Norway for its choosing Liu Xiaobo to be awarded the Nobel Peace Prize; these sanctions coincided with Norway choosing to put China as a nationality on Taiwanese people's resident card. This matter also demonstrates that China influences foreign authorities to degrade Taiwanese citizenship. As for Taiwanese in Norway: they did not ask for the political recognition of their Taiwanese identity as they knew this involved international politics.

zhou ren quan fa yuan bu shou li [Taiwanese filed a complaint to the European Court of Human Rights, the court ruled the application of Taiwanese in Norway inadmissible], Deutsche Welle, 4 August 2021.
<https://p.dw.com/p/3yS6l?maca=zh-EMail-sharing>

³⁷⁰ Norway: Subject to the following reservation to Article 5, Paragraph 2: "The Committee shall not have competence to consider a communication from an individual if the same matter has already been examined under other procedures of international investigation or settlement." Accessed 15 November 2021.

https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-5&chapter=4&clang=en#EndDec

³⁷¹ The relevant discussions and statements about this decision can be found on the Facebook fan page "Taiwan, My Name, My Right," Facebook, accessed 5 January 2022.

<https://www.facebook.com/TaiwanMyNameMyRight/posts/929490500999816>

As the Taiwanese diplomats struggled to get the Norwegian government to change its decision, the campaigners did not want to extend the political debates in the lawsuit. Therefore, the pursuit of recognition of their ethnic identity is a measure to avoid difficult Taiwanese diplomatic relations and the unsolved de jure recognition of statehood.

On the other hand, the goal of the lawsuit includes strengthening the international presence of Taiwan and raising awareness of Taiwanese identity within Taiwan and outside of Taiwan. These agendas highlight the existing lack of international understanding for Taiwanese identity and the ambivalence of the identity. With crowdfunding, the movement also obtained much attention and support from Taiwanese society, as the identity issue has developed into an overwhelming issue for Taiwanese people. However, even though the movement has garnered support from various groups—including the Taiwanese government in more recent times—its legal mobilisation has confronted several frustrations as they lost their lawsuit at every level of the court system in Norway and in the ECHR. As a result, the Norwegian government continued to claim that they did not impair Taiwanese’s people’s rights by labelling them as Chinese people. In addition, the different tones of Norwegian government also point out that, even though Norwegian government changed their political attitude towards Taiwan’s participation in the WHA due to the Covid-19, they did not change the decision concerning Taiwanese identity. The judgments seem to reinforce this decision when seen from the perspective of the judiciary.

B. Choosing to Be Stateless

Challenges relating to Taiwanese citizenship can be seen in the previous sections; however, other than the previous section which used the example of a lawsuit to argue for Taiwanese identity, choosing to be stateless can also be an option. This section illustrates how overseas Taiwanese may choose to be stateless and how they construct their identity.

1. *Being Stateless for Being Taiwanese*

I was there arguing with the officers in the immigration agency in Reykjavik for a long time. The office was open only two to three hours a day, and I had to cycle a long way there many times for this issue. The immigration office did not want to give me any kind of document in hard copy; therefore, I always had to be there to argue with them... I remembered the officer was pretty frustrated too and s/he said the nationality of Taiwanese people was labelled as Taiwan before. But there were some changes in the administrative system in Iceland in recent years... Everyone knows after the bankruptcy in 2008, Icelandic government built up closer relations with China to obtain economic profits... I guess it's related... Therefore, they cannot issue the residence card labelling Taiwan as a nationality anymore... In the end, s/he asked me if I would rather accept a card labelling me as stateless. And I immediately said yes.³⁷²

Shing-Ling³⁷³ describes how she obtained a residence card that labelled her as stateless instead of Chinese in Iceland in 2016. She was an exchange student there and only stayed for half a year. When she received a residence card with China as her nationality, she immediately decided to ask the immigration agency in Iceland to correct her nationality. Icelandic authorities gave her the stateless identity card after she tried several times. Compared to her active attitude, those authorities at first did not want to give her any form of paper document for her to bring up any kind of administrative appeal or even a judicial one. Shing-Ling mentions that she discovered the authority wanted to avoid this argument. She thought that the government only wanted to let the time pass so that she would leave as she was there only for a semester. However, as Shing-Ling was very persistent and insisted on arguing for her Taiwanese identity, the officer finally gave her a substitute that she could accept. This dilemma in Iceland sparked public arguments on the internet and media³⁷⁴ when Shing-Ling revealed it on Facebook. Shing-Ling has mixed feelings towards the stateless status she had in Iceland, as she felt angry for the denial of her Taiwanese identity yet at the same time felt “innovative” about the stateless status for her being a Taiwanese person. Accordingly, she understands the controversy of the international

³⁷² The interview was conducted by the author. For more details about the interviewee, please consult the table in Chapter Two.

³⁷³ Shing-Ling is a pseudonym. For additional detail about Shing-Ling, please consult the table of interviewees in Chapter Two.

³⁷⁴ This incident could be found in major newspapers and on important news channels in 2016 in Taiwan. Here are some examples. Abraham Gerber, “Student rails against ‘stateless’ ID,” *Taipei Times*, 20 November 2016. <https://www.taipeitimes.com/News/front/archives/2016/11/20/2003659621>; Keoni Everington, “Taiwanese woman opts for 'Stateless' over being branded 'Chinese' on Iceland ID,” *Taiwan News* 23 November 2016. <https://www.taiwannews.com.tw/en/news/3036042>

status of Taiwan and believes that the statehood of Taiwan made the stateless situation possible.

A similar story also happened in Brazil. Wen-Ting says when she checked her personal data to confirm the final version at the last stage of her application for residence, her nationality had been changed to China. She immediately asked the officer to change it to Taiwan. However, when she obtained the residence card, her nationality was labelled as stateless, and her birthplace was written as China (Taiwan). Similar to Shing-Ling, Wen-Ting also thinks the statelessness is more acceptable compared to a Chinese nationality. She has the same complicated feeling towards her nationality issue. as she strongly identifies herself as Taiwanese, but the statehood of Taiwan makes her worry about the future of Taiwan becoming a *de jure* state.

From these two examples, the stateless status on the cards in question diverges from the UN definition of statelessness. Firstly, statelessness in the Taiwanese cases is nominal, since the Taiwanese people hold ROC citizenship and have rights attached to this citizenship. Taiwanese citizenship does not establish a secure legal status for the Taiwanese people abroad, though, and become less effective especially in political terms. However, the choice Shing-Ling made did not influence her right to reside or even look for jobs. On the other hand, after giving her a residence card with a stateless status on it, the Icelandic government did not continue with the proper procedure of reporting stateless status and detailing support for stateless person. Instead, these foreign governments had difficulties in defining these Taiwanese people's nationality especially when the same people complained to them directly. The government did not categorise the Taiwanese people as stateless persons, but for single cases, they issued a "nominal stateless status" to these Taiwanese people to pacify them.

The foreign governments have several options. Taiwanese people might be taken as Chinese nationals—including the PRC nationals or the ROC nationals—even though these governments do not recognise the ROC anymore. The Taiwanese could have the Taiwanese identity given as a national identity, though as a nationality lacking *de jure* recognition, just like the statehood linked to it. Finally, Taiwanese could be identified as a subordinate status under the power of the PRC, such as is the case in

Brazil now. The ambiguity of Taiwanese identity also creates space for foreign authorities to manipulate the Taiwanese people's legal status using policy. Moreover, along with potential pressure from the PRC, the Taiwanese people overseas have found their Taiwanese legal statuses being challenged due to the increase in the PRC's power.

These examples of overseas Taiwanese show the individual choice of accepting a new origin imposed by host countries or taking the description of "stateless" as a way of producing another identity to replace the one the foreign authorities force on them. Shing-Ling refusing a Chinese identity and took a stateless identity instead—a different choice when compared to Joseph—shows another way to avoid an identity people do not accept. Furthermore, statelessness is used as an open status, for overseas Taiwanese to keep their Taiwanese identity and not receive the Chinese identity, which they cannot accept. Indeed, the utilisation of statelessness here is productive for being a substitute for and buffer to the undesired identity. However, while research about "productive" statelessness emphasises more the protection of human rights for stateless persons, and even how to relate the protection for de-jure stateless persons to de-facto stateless persons,³⁷⁵ the "productivity" of statelessness means other things for Taiwanese cases. Earlier scholarship has shown that choosing statelessness can be a statement against unfair treatment regarding citizenship.³⁷⁶ In the case of Estonia, the changes of citizenship regulations after gaining independence from the Soviet Union in the 1990s limited Estonian citizenship to those who had been citizens of Estonians before the Soviet era and their descendants. Therefore, Estonians who immigrated afterwards were deprived of their citizenship and became stateless persons. The unfairness and the following difficulties relating to obtaining Estonian citizenship stopped a number of stateless Estonians from acquiring Estonian citizenship.³⁷⁷ On the other hand, research also suggests that taking statelessness can be a measure to secure the possibility for further discussions about people's national identity.³⁷⁸ With this approach, Tibetan exiles take the stateless status to create space

³⁷⁵ Agnieszka Kubal, "Can Statelessness Be Legally Productive? The Struggle for the Rights of Noncitizens in Russia," article, *Citizenship Studies* 24, no. 2 (2020): 193–208, <https://doi.org/10.1080/13621025.2020.1720606>.

³⁷⁶ Raivo Vetik, "The Statelessness Issue in Estonia," in *Statelessness in the European Union* (Cambridge, UK: Cambridge University Press, 2011), 230–52, <https://doi.org/10.1017/CBO9780511921438.009>.

³⁷⁷ Vetik, "The Statelessness Issue in Estonia."

³⁷⁸ McGranahan, "Refusal as Political Practice."

for the sovereign issue of Tibet.³⁷⁹ Choosing statelessness is a statement of preserving their identity in legal terms. From the situations of Taiwanese stateless individuals explored in this chapter: even though they did not actively apply to be stateless as regards their identity, they chose the same status to get rid of the Chinese nationality on their residence records and to demonstrate their standing with the Taiwanese political identity. The performative character of their action extends citizenship acts to choosing statelessness, along with other acts making claims against the foreign authorities.

VII. Conflicts Between Taiwanese People and Foreign Authorities

The Taiwanese cases in the chapter highlight the instability of Taiwanese citizenship in foreign states, as well as conflicts between the Taiwanese and the foreign authorities in question. In recent years, an increasing number of people identifying themselves as Taiwanese has become the mainstream in Taiwan.³⁸⁰ The process of democratisation in Taiwan has promoted the formation of a national identity, moving from a Chinese identity —part of greater China—to the localised Taiwanese identity, especially in political aspects.³⁸¹ While the Taiwanese people construct Taiwanese citizenship through the process of constant dialectics of social and economic problems, in politics and in laws built upon the ROC structure, the fulfilment of social and economic goals has accompanied democratic practices throughout these years. Since de-politicised discourses and pressure from China have attenuated Taiwanese people's determination to pursue democracy and liberal rights, Taiwanese people tend to prioritise solving economic and social problems. However, through tackling these same problems, Taiwanese people participate in movements and elections, thereby completing democratisation.³⁸² That is, political participation plays a crucial role in democratisation and the ensuing nation building, which itself includes economic redistribution, cultural recognition such as the indigenous rights, and the formation of

³⁷⁹ McGranahan, "Refusal as Political Practice."

³⁸⁰ Election Study Center of National Chengchi University, "Trend of Core Political Attitudes."

³⁸¹ Zhong, "Explaining National Identity Shift in Taiwan"; Dittmer, "Taiwanese Identity"; Rigger, "Competing Conceptions of Taiwan's Identity."

³⁸² Rigger, "Studies on Taiwan's Democracy and Democratisation"; McAllister, "Democratic Consolidation in Taiwan in Comparative Perspective."

a national identity. Therefore, while foreign authorities challenge the Taiwanese identity, their doing so can arouse reflex reactions from Taiwanese in the present day.

Doubts and challenges relating to the Taiwanese identity for nationality from foreign governments provoke the Taiwanese people to reflect on their political identity and the legal status. For example, the movement of the Taiwanese people in Norway not only focuses on their pursuit of Taiwan being recognised as political identity in the space of nationality on residence papers, but also aims to raise awareness of the plights of those with Taiwanese status in political and legal terms. The Taiwanese cases explored in this chapter did not just passively take the Chinese identity they were assigned, but instead, transformed the narratives of Taiwanese as Chinese imposed by the public authority and created new narratives in these societies. Performative citizenship has shown that people perform citizenship for their rights in different scenarios;³⁸³ just so, these people performed different measures to approach the Taiwanese identity they struggle to maintain, with discourses on cultural and political recognition relating to political representation, and on ethnic identity. Their struggle in such pursuits demonstrates the lack of any mechanism for people to fully pursue who they are in today's society, resulting in the type of injustice that Fraser identifies: injustice stemming from misrecognition.³⁸⁴ Besides this, the threats of depriving individuals of their Taiwanese identity strengthened the connection of the Taiwanese people to the Taiwanese identity politically—making it increasingly seen as a national identity— and brought the issue to the attention of publics in other countries.

VIII. Conclusion

This chapter has examined both the uncertainty of Taiwanese citizenship and the reactions of Taiwanese people to this aspect of their identity. Firstly, looking back at Taiwanese identity in Taiwan, the choice of political identity shows stronger inclination towards a Taiwanese identity in recent years, but, even though that identity can be seen as more radical in terms of nationality, that strengthening inclination does not

³⁸³ Engin Isin, "Performative Citizenship," *The Oxford Handbook of Citizenship*, no. March (2017): 499–523, <https://doi.org/10.1093/oxfordhb/9780198805854.013.22>.

³⁸⁴ Fraser, "Reframing Justice in a Globalising World," 74.

directly correlate with support for independence in the survey. Threats from the PRC are seen as the main reason for this result. However, the experience of overseas Taiwanese also shows that the building of national identity for Taiwanese might be neglected by Taiwanese inside Taiwan, and that the expatriation may generate reflections on the Taiwanese identity and result in campaigns supporting the Taiwanese identity from overseas. The status of Taiwanese citizenship is unsteady due to the contested statehood of Taiwan; in states which do not accept official papers from Taiwan, Taiwan does not exist from the outset, when Taiwanese first cross the border. In other states, although Taiwan can be listed on an identity certificate, it can be easily withdrawn due to any policy change, without reasons being given. The legal mobilisation in Norway shows how Taiwanese people gathered to campaign around the identity issue and used legal discourses for a lawsuit and appeals. During the mobilisation, the Taiwanese identity is asserted by people who argue for it being their own regardless of form, e.g., stateless status or ethnic identity. Furthermore, statelessness can play an important role in this advocacy, as overseas Taiwanese's strategic identity choices demonstrate—especially in its relationship to other identities used during the mobilisation for the rights of Taiwanese in other states, and in the dynamic interaction between the government of the host countries and the overseas Taiwanese people. In addition, statelessness also shows how overseas Taiwanese people apply the legal discourses of international human rights to their cases in different contexts. Along with democratisation in Taiwan, the Taiwanese people construct their Taiwanese citizenship even while stressing economic and social issues through political participation. Outside Taiwan, political participation in the construction of citizenship may be seen in the performance of identity discourses, to maintain a political identity in foreign countries and to reinforce the national identity of Taiwan.

In the next chapter, I will examine another case of fluid identity: that of Tibetan exiles in Taiwan. The context of this group certainly differs considerably from that of the Taiwanese overseas, but it also reflects the flaws of the citizenship system of the current Taiwanese legal framework. As Tibetan exiles enter Taiwan, how do they see themselves as 'nationals' of the ROC, given that the constitution actually includes them? What kind of dilemmas do they encounter on the way to Taiwan when and if they apply for a new citizenship? The next chapter explores these and additional issues relating to Tibetan exiles in Taiwan.

Chapter Five. Nationals or Foreigners? Tibetan Exiles in Taiwan

I. Introduction

This chapter focuses on Tibetan exiles in Taiwan and the identity conflicts they experience during the migration process. These Tibetan exiles are Tibetans who left their homeland for political, religious, cultural or educational reasons.³⁸⁵ In Taiwan, the Tibetan population is limited, numbering only 635 in total.³⁸⁶ This population includes Tibetans who come directly from Tibet, and what I call ‘Tibetan exiles’ who have come from Tibet via other countries. The Tibetan exiles face difficulties regarding both their moving to Taiwan and the transition of identities while acquiring new citizenship. The ROC’s legal structure, as well as its confusing sovereign status, has made the Tibetan exiles’ legal status complicated.³⁸⁷ Before coming to Taiwan, these exiles have already experienced identity conflicts regarding the maintenance of their stateless status in South Asia and the challenge of acquiring a functional citizenship for their daily lives.³⁸⁸ Therefore, leaving South Asia for another destination can be a solution to avoid two obligations: maintaining a connection via the personal status of statelessness and dealing with the unresolved sovereign issue of Tibet.³⁸⁹ However, it is relevant to note that when applying for citizenship, Tibetans who have moved to Taiwan confront institutional barriers to their immigrating to and settling in the country. The chapter illustrates how Tibetan exiles confront these problems, concerning both their family reunion and their right to reside in Taiwan. Meanwhile, the legal structure of ROC makes ethnic Tibetan ‘nationals’ at the constitutional level, but ‘immigrants’ and ‘stateless’ persons in legislation.³⁹⁰ Given these circumstances, how do Tibetan exiles construct their Tibetan identity under the ROC legal framework?

³⁸⁵ Goldstein, “Ethnogenesis and Resource Competition among Tibetan Refugees in South India: A New Face to the Indo-Tibetan Interface”; Marie de Voe, “Keeping Refugee Status”; Hess, “Statelessness and the State”; Greg C. Bruno, *Blessings from Beijing: Inside China’s Soft-Power War on Tibet* (Lebanon, NH: University Press of New England, 2018), <https://doi.org/10.2307/j.ctv1xx9h4b>.

³⁸⁶ This is the number of Tibetans in Taiwan as per the statistics of the household registry system—and as of August 2020. This information is provided by the Department of Household Registration of the ROC.

³⁸⁷ The relevant discussions may be found in Chapter Three, section III. E, pages 110-14.

³⁸⁸ McGranahan, “Refusal as Political Practice.”

³⁸⁹ Carole McGranahan, “Refusal and the Gift of Citizenship,” in *Cultural Anthropology* 31, no. 3 (2016): 334-41.

³⁹⁰ The relevant discussions may be found in Chapter Three, section III. E, pages 110-14.

This chapter is divided into the following parts: Tibetan exiled life before migration to Taiwan, the history of Tibetans in Taiwan, Tibetans' migration experience to Taiwan under the ROC legal framework, Tibetans' legal mobilisation and reformulation of their citizenship, and analysis of the cultural, socioeconomic, and political aspects of Tibetan exiles' citizenship. The chapter begins by detailing background information of Tibetan exiles in South Asia, to explain their various contexts before they migrate to Taiwan. The second section introduces history, illustrating the political agenda behind the ROC government supporting Tibetans before the democratisation of Taiwan. This section also details the legal background of Tibetans' identity issue in Taiwan, to explain how political changes within Taiwan influence Tibetans' legal identity. The chapter then moves to difficulties experienced by members of this group, in entering Taiwan and obtaining Taiwanese citizenship—based on interviews with individual Tibetan exiles in Taiwan. These individuals vary, of course; this research categorises them into two groups and depicts them in terms of the legal structures of their identities. The two groups are: Tibetan marriage immigrants and formerly undocumented immigrants. Tibetan marriage immigrants, along with their Taiwanese spouses, launched a campaign for Tibetan families' right for family reunion, and formed the Taiwanese-Tibetan Family Alliance in 2012. As for undocumented Tibetan exiles, their voices have mostly been conveyed by the Taiwan Tibetan Welfare Association and NGOs such as the Taiwan Association for Human Rights; especially when, after 2017, several undocumented Tibetans faced deportation and appealed to stay. The interviews in this chapter focus on how Tibetan exiles perceive the process of applying for residence rights and citizenship as well as settling in Taiwan. The last part of the chapter analyses the Taiwanese government's sovereignty shift weaving into border control and immigration policy and how Tibetan exiles practice their social, socioeconomic and political aspects of citizenship to reformulate that same citizenship as both Tibetan and Taiwanese.

II. The Statehood of Tibet and the Statelessness of Tibetans in Exile

To understand the legal status of Tibetan exiles in Taiwan, it is necessary to trace that status back to South Asia, as it has far-reaching influence not only on their ethnic identity, but also on their understanding of legal status. Since the Tibetan Uprising in 1959, more than 8,000 Tibetans—along with their political and spiritual leader, the

14th Dalai Lama—fled from their homeland and moved to South Asian countries, principally Bhutan, Nepal and India. By 2009, the number of Tibetans in exile had increased to approximately 128,000 world-wide, with more than 100,000 Tibetans inhabiting South Asian countries.³⁹¹ Most of the Tibetan exiles reside in India; according to Tibet’s Stateless Nationals III (statistics compiled by the Tibet Justice Center in 2016). According to the Indian High Commission in Ottawa, as ruled on 20 July 1992, they are considered refugees by the Indian government.³⁹² The UNHCR had assisted Tibetan exiles in the 1960s in India; however, India is not a signatory to the 1951 Refugee Convention and has no legislation specifically on refugees. Therefore, Tibetan exiles are classified as foreigners by its Foreigners Act of 1946 and the Registration of Foreigners Rules 1992.³⁹³ For decades, Tibetan exiles have kept their stateless status in South Asia in order to keep alive the statehood issue of Tibet. Therefore, the majority of Tibetans exiles living in South Asia India maintain their stateless status, even across generations. In truth, the Central Tibetan Administration (CTA)—the Tibetan government in exile—encourages Tibetans in exile *not* to apply for citizenship in host countries, in order to maintain their de facto refugee status while refusing the Chinese nationality. Furthermore, they hold a form of citizenship of Tibet by paying tax to the CTA and by practicing democratic elections, through holding a *rangzen lagteb*—a Tibetan Identity booklet, also known as green book issued by the CTA.³⁹⁴ In short, these Tibetans do not seek or hold citizenship of their host states in South Asia. On the other hand, Tibetan refugees who migrate to western countries may make different decisions, and eventually decide to apply for citizenship in these countries. Moreover, these migrants are depicted by the Tibetan community as activists for the Tibetan rights and as democratic practitioners in western countries.³⁹⁵ In the following section, I will address the statelessness of Tibetans to clarify the context of citizenship status of Tibetans in exile.

³⁹¹ Planning Commission of Central Tibetan Administration, “Demographic Survey of Tibetans in Exile 2009,” (2010), accessed 1 December 2018, <https://tibet.net/about-cta/tibet-in-exile/>.

³⁹² Tibet Justice Center, with Boston University School of Law, “Tibet’s Stateless Nationals III: The Status of Tibetan Refugees in India” (Oakland, CA: Tibet Justice Center, 2016), <http://www.tibetjustice.org/wp-content/uploads/2016/09/TJCIndiaReport2016.pdf>; Immigration and Refugee Board of Canada, *India: 1) Legal status of Tibetan refugees; 2) Rights of Tibetans to Indian nationality*, 1 July 1992, IND11239, <https://www.refworld.org/docid/3ae6aab124.html>

³⁹³ Tibet Justice Center, “Tibet’s Stateless Nationals III.”

³⁹⁴ McConnell, “Citizens and Refugees.”

³⁹⁵ Julia Meredith Hess, *Immigrant Ambassadors: Citizenship and Belonging in the Tibetan Diaspora* (Stanford, CA: Stanford University Press, 2009), <https://doi.org/10.11126/stanford/9780804760171.001.0001>.

A. The Tibetan Diaspora

The statehood issue of Tibet begins with its relationship with the Chinese government. The tense relationship between the Tibetan people and the Chinese government has pushed Tibetans into exile for decades. At the beginning of the 20th century, Tibet's political and spiritual leader, the 13th Dalai Lama, declared the independence of Tibet from China—a necessity, since Tibet had been under the military protection and political governance of the Qing Dynasty since the 18th century. In 1913, the 13th Dalai Lama announced the Proclamation of Independence of Tibet, concerning Tibet's standing on the issue of statehood.³⁹⁶ At that time, the ROC had just been established—and that fledgling government refused to accept this proclamation.³⁹⁷ The regime of China changed after the Chinese Civil War in 1949. Nevertheless, as mentioned above, the armed conflict in 1959 between the Chinese Communist Party (CCP) and Tibetans eventually led to the Tibetan Uprising and the first wave of exile of Tibetans. Regarding Tibetans' human rights, the United Nation General Assembly passed Resolutions No. 1353 (1959), 1723 (1961), and 2017 (1965), arguing that human rights violations and the suppression of cultural and religious rights on the part of the PRC authorities—which had already made Tibetans flee Tibet and become refugees—should cease. However, the situation did not improve. The Tibetan refugees thus established a government in exile, the Central Tibetan Administration, beginning in 1963 and located in Dharamshala, northern India. The Central Tibetan Administration (CTA) did not accept the Chinese sovereignty claim over Tibet and therefore did not accept any official diplomatic relationship with the Republic of China until the democratisation of Taiwan. That is, for Tibetan exiles, the ROC represented another China, which aimed at controlling Tibet after taking over the sovereign territory of the mainland—until, that is, the ROC changed its political sovereignty claim in the 1990s.³⁹⁸ In other words, Tibetans saw Taiwan as a threat to Tibet's sovereignty until Taiwan's government changed its political sovereignty claim concerning Tibet.

³⁹⁶ Melvyn C Goldstein, *A History of Modern Tibet, 1913-1951: The Demise of the Lamaist State*, ed. Gelek Rimpoche (Berkeley, CA: University of California Press, 1989); Hsiao-ting Lin, *Modern China's Ethnic Frontiers: A Journey to the West* (London: Routledge, 2011), 4, <https://doi.org/10.4324/9780203844977>.

³⁹⁷ Goldstein, *History of Modern Tibet*; Lin, *Modern China's Ethnic Frontiers*.

³⁹⁸ Okawa, "Lessons from Tibetans in Taiwan."

As for Tibetans' citizenship from the PRC perspective: even though Tibetans have made other pronouncements on their sovereignty issue, the Chinese government has controlled Tibet since 1950s and has seen Tibetans, whether in exile or in Tibet, as their nationals.³⁹⁹ Still to this day, Tibetans in China face critical systematic discrimination against them. For example, their basic rights, such as the right to practice their religion(s) and to maintain a Tibetan cultural identity, are restricted. Children are kept from learning the Tibetan language or other Tibetan cultural practices by the state, through the enforcement of the use of Mandarin in educational institutions, closing local schools, and mandating that Tibetan children leave home for boarding schools.⁴⁰⁰ Tibetans also confront stricter regulations compared to the Han ethnic groups in China in applying for or even holding passports, as they are often required to relinquish their passports to the authorities. According to a report by Human Rights' Watch, Tibetans face a "near-total ban on foreign travel," since the authorities attach complicated and time-consuming bureaucratic procedures to the passport application process, and keep passport issuance under strict control.⁴⁰¹ As such, even though the PRC government has long claimed equal rights for their minorities such as Tibetans, serious human rights violation indicate the inequality of their legal status, and the continuing erosion of Tibetans' culture and Tibetan identity.

B. Tibetan Exiles Acquiring Host Country Citizenship

Whether or not to apply for citizenship in a host country can be a sensitive question for Tibetan exiles. For decades, the mainstream attitude of the Tibetan communities in South Asia has been that Tibetans should not adopt citizenship in the host countries where they reside. This attitude is encouraged by the CTA and Tibetan communities, as research has noted.⁴⁰² A stateless status is seen as a national identity for Tibetan

³⁹⁹ The Canadian government has counselled the Chinese government on this issue. See Canada Research Directorate, Immigration and Refugee Board, "Canada: Immigration and Refugee Board of Canada, China (PRC): Information on Whether Tibetans Born in Tibet Prior to 1959 Who Have Fled Tibet since 1959 and Who Have Not Returned Are Considered to Be PRC Citizens/Nationals or Are Entitled to PRC Citizenship," 1995, CHN22386.E. <https://www.refworld.org/docid/3ae6ac2f34.html> [accessed 21 Feb 2023]

⁴⁰⁰ Tibet Action Institute, "From Their Families, Hidden from the World: China's Vast System of Colonial Boarding Schools Inside Tibet," 2021.

⁴⁰¹ Human Rights Watch, *One Passport, Two Systems China's Restrictions on Foreign Travel by Tibetans and Others*, 2015, https://www.hrw.org/sites/default/files/report_pdf/tibet0715_4up_0.pdf.

⁴⁰² Marie de Voe, "Keeping Refugee Status"; Yeshi Choedon, "The Unintended Consequences of India's Policy on Citizenship for Tibetan Refugees," 23 February 2018, <https://idsa.in/policybrief/unintended-consequences->

exiles, and also a proof of their history of suffering under oppression and their allegiance to a future free Tibet.⁴⁰³ The action of accepting statelessness symbolises the integrity of faith in religious, cultural and political meaning, and embodies their decades-long exile experience.⁴⁰⁴ The refusal to apply for citizenship in South Asian countries maintains this Tibetan statelessness which in turn pertains to the personal status of Tibetan refugees and the political claim of Tibetan state sovereignty.⁴⁰⁵ However, this attitude can be flexible when Tibetans migrate to other states, especially to western ones. For example, the CTA encourages Tibetan refugees who migrate to Europe or North America to become ambassadors of Tibet. McGranahan articulates that the flexible practice of citizenship shows that Tibetans use refusal to claim a citizenship beyond the international norms. In other words, they seek a status by which they will not be defined as refugees, under the UN's 1951 Refugee Convention, by authorities in South Asia—so as to maintain their statelessness and not enter the refugee scheme. In this way, Tibetans in South Asia may claim themselves as citizens of Tibet with their de facto stateless status.⁴⁰⁶ Moreover, Hess points out that while some do become citizens of the US, Tibetan immigrants still conceive themselves as holding multiple identities as well as maintaining multiple loyalties. This is not a unique case in the context of the US as there are other groups of immigrants in the same situation, such as the Taiwanese immigrants described in Chapter Four as campaigning for their Taiwanese identity.⁴⁰⁷ Furthermore, she argues that being a citizen in the US allows Tibetan immigrants to participate in a state's democratic systems, and to raise their concerns about human rights for Tibetans. In the process of being citizens of the US, Tibetans empower themselves and become political agents for Tibet.⁴⁰⁸

C. Debates on the Adoption of Citizenship

[of-india-policy-on-citizenship-for-tibetan-refugees-ychoedon-230218](#); McGranahan, "Refusal as Political Practice."

⁴⁰³ Hess, "Statelessness and the State."

⁴⁰⁴ Marie de Voe, "Keeping Refugee Status."

⁴⁰⁵ McGranahan, "Refusal as Political Practice."

⁴⁰⁶ McGranahan, "Refusal as Political Practice."

⁴⁰⁷ The relevant discussions may be found in Chapter Four, section V. Pages 130-132.

⁴⁰⁸ Hess, "Statelessness and the State," 9.

Within the Tibetan community, debates continue on whether Tibetans should take citizenship in South Asian countries. As shown above, the attitudes towards adopting citizenship in host countries are not consistent; indeed, it has led to controversy. As regards Tibetan exiles in India, the government of India has provided substantial aid to the Tibetan community for settlement in India ever since the diaspora began. Tibetans have been obtaining refugee settlements from the government of India and Bhutan since 1959. Also, according to a judgment of the Delhi High Court, Tibetans born in India between January 1950 and July 1987 are citizens by birth under Section 3(1) (a) of the Citizenship Act, 1955.⁴⁰⁹ However, bureaucratic delays, political hurdles, expensive lawyer fees, and social pressure resulting from the Tibetan community itself and from the conflicts between Tibetans and other groups of refugees, can all work prevent Tibetans from obtaining Indian citizenship.⁴¹⁰ However, South Asian authorities also face criticisms with their abstention from the 1951 UN Convention relating to the status of Refugees, as well as from UN 1967 Protocol—as this abstention excludes Tibetans from having the status of refugees defined under the UN Convention. In other words, Tibetans are not seen as Convention refugees who can access institutional needs and rights in host states under international law; thus, in India, the Indian government may change the policies as host country depending on their political circumstances, without having to worry about being bound to UN conventions. According to the aforementioned laws in India, Tibetans are defined as “foreigners”; should all go well, an individual Tibetan will end up holding foreigner’s “Registration Certificate,” as well as the travel document called an “Identity Certificate” issued by the Indian authorities. However, Tibetans face difficulties when they travel to other states with these travel documents. These uncertainties and difficulties also influence their opportunity to migrate, as these documents are not seen as legitimate passports in the same way that standard Indian passports would be.

In addition, without Indian citizenship, most Tibetan refugees have problems gaining any livelihood as a stateless status can be an obstacle for finding jobs or to establishing their own businesses outside of the Tibetan community. Acquiring

⁴⁰⁹ Namgyal Dolkar vs. Government of India, Ministry of External Affairs, in the High Court of Delhi at New Delhi, W.P.(C) 12179/2009.

⁴¹⁰ Shuvro Prosun Sarker, “Tibetans in India and Citizenship Rights: The Legal Battle,” *Refugee Watch*, no. 42 (2013), <https://ssrn.com/abstract=2961119>; Abhinav Seetharaman, “Tibetan Refugees in India: The Challenges of Applying for Indian Citizenship,” *Revue d’Etudes Tibétaines*, no. 54 (2020): 95–113.

citizenship in India grants Tibetans the right to own property, as well as other forms of civil rights.⁴¹¹ For instance, Tibetan exiles are prohibited from buying land in India; this makes living in India unstable. In the modern day, Tibetan exiles in India have faced lawsuits against their real estate for houses and shops—as they have used dummy accounts (usually a local Indian’s account which has a legitimate interest in the matter)—to buy the real estate.⁴¹² Eventually, Tibetans saved their own houses or shops because the Indian central government stepped in; the state government might, on the other hand, confiscate the Tibetans’ land and lease it to the CTA.⁴¹³ Therefore, for Tibetans in India, life can be uncertain without Indian citizenship even though the Indian government offers specific help to Tibetan exiles for their settlements in India.⁴¹⁴ In addition, research has pointed out that the CTA shows a specific attitude towards the acquisition of citizenship, especially in South Asia; the CTA has declared, from 2012 onward, that applying for citizenship is a personal choice and has said that “the Tibetan administration has no right nor does it intend to interfere in a person’s fundamental rights.”⁴¹⁵ Nevertheless, research also shows that the CTA does not apply this open attitude as universally as it once claimed, and that it still pressures the local officials of India not to support Tibetans in their applications for citizenship in India.⁴¹⁶ Moreover, the community also takes the attitude that in South Asia Tibetans who are stateless are “good Tibetans.”⁴¹⁷ Accepting a new citizenship is seen as giving up the possibility of a Free Tibet in the future.

On the other hand, Tibetans who belong to the community in South Asia might spark controversies connected to citizenship by obtaining citizenship or long term

⁴¹¹ McGranahan, “Refusal and the Gift of Citizenship.”

⁴¹² The use of a dummy account is called “benami transactions” in India. According to the Tibet Justice Center, a US-based legal organisation tracing the legal issues that Tibetans confront, this kind of informal mode of transaction is common and practical for Tibetan exiles in India. See: Tibet Justice Center, “Tibet’s Stateless Nationals II: Tibetan Refugees in India-2014 Update,” (Oakland, CA: Tibet Justice Center, 2015), <http://www.tibetjustice.org/?p=724>.

⁴¹³ Tibet Justice Center, Tibet’s Stateless Nationals II.

⁴¹⁴ Choedon, “The Unintended Consequences of India’s Policy on Citizenship for Tibetan Refugees.”

⁴¹⁵ Central Tibetan Administration, “CTA President Iterates Kashag’s Position on Tibetans Applying for Indian Citizenship,” 29 September 2017, <https://tibet.net/cta-president-iterates-kashags-position-on-tibetans-applying-for-indian-citizenship/>

⁴¹⁶ Fiona McConnell, “A State within a State? Exploring Relations between the Indian State and the Tibetan Community and Government-in-Exile,” *Contemporary South Asia* 19, no. 3 (2011): 297–313, <https://doi.org/10.1080/09584935.2011.594160>; McGranahan, “Refusal as Political Practice.”

⁴¹⁷ Hess, “Statelessness and the State.”

residence rights that include the chances to be diplomats in other states,⁴¹⁸ which is also addressed in the documents of the ROC.⁴¹⁹ For example, a religious Tibetan leader, Karmapa, also acquired citizenship from the Commonwealth of Dominica, in order to travel with that country's citizenship, by using an investment scheme. This first points out differences of recourse, as Karmapa can easily buy a new citizenship for his use and many other Tibetan exiles cannot. The inequality in relation to the acquisition of citizenship also highlights that diplomats of the CTA and/or prestigious religious leaders like Karmapa can access citizenship at their discretion— but that getting citizenship is essentially difficult for many other Tibetan exiles. However, it also reflects that the need for citizenship can be overwhelming for individual Tibetans, no matter how rich or respected they are in the Tibetan exile community. Nevertheless, due to the citizenship status of Tibetans as a political community and the sovereign claim of Tibet, being stateless is one of the core concepts of the Tibetans in the present day. Therefore, the adoption of the citizenship in South Asia is neither endorsed by the CTA nor encouraged in the Tibetan exile community.

III. Tibetans in Taiwan: A Historical Introduction

In Taiwan's legal system, Tibetans possess a complicated legal status: between nationals, immigrants and stateless persons. (This status was described briefly in Chapter Three.) This means that the citizenship issue of Tibetans in Taiwan has several layers of legal issues given Tibetans' personal status—since, other than their de facto refugee status in South Asia, Tibetan exiles obtain a specific complex citizenship status in Taiwan. However, the situation has been changing since the Tibetan diaspora began to accelerate after 1959. In other words, the legal status of Tibetans in Taiwan is influenced by Taiwan's legal and political changes. The following section will introduce the history of Tibetans' migration to Taiwan and the changes to their citizenship status over the years.

⁴¹⁸ Choedon, "The Unintended Consequences of India's Policy on Citizenship for Tibetan Refugees"; McGranahan, "Refusal as Political Practice"; Central Tibetan Administration, "CTA President Iterates Kashag's Position on Tibetans Applying for Indian Citizenship."

⁴¹⁹ The document showed that in early 2000s, the CTA diplomats obtained ROC citizenship when they resided in Taiwan as expatriates. HUA ZONG ZHI ZI No. 091001729, (2002).

A. Tibetan Immigrants in Taiwan after WWII

For years, the number of Tibetan immigrants in Taiwan has been limited; however, it has continued for many different reasons. It began in 1959, when, after the failure of years of negotiations concerning the independence and autonomy of Tibet, the CCP military occupied Tibet. Soon after, Tibetans rose up against the Chinese government—and have suffered repression ever since. The government of the ROC, the former Chinese government that fled to Taiwan in 1949, nominally supported the Tibetans' uprising by simply making an anti-communist statement.⁴²⁰ Whereas the stance of the government looked supportive to Tibet and Tibetan exiles, the Taiwanese government did not provide further proactive assistance to the Tibetan people. In the legal context of the ROC at that time, Tibetan exiles were categorised as Chinese people from mainland China. The government of the ROC still claims itself as the legitimate government of the entire China according to its constitution; however, the lack of the substantial sovereignty over China, including Tibet, rendered the constitutional claim invalid. Until today, the symbolic claim of the constitution—that the ROC still has not abandoned—influences the personal status of Tibetans. Furthermore, the establishment and continued existence of the Mongolian and Tibetan Affairs Commission until 2017, which was put in place to perform duties related to the Tibetan affairs, also officially considered Mongolians and Tibetans as belonging to constituents of the ROC. During the Cold War, which nearly overlapped Taiwan's martial law period from 1949 to 1987, the ROC government claimed sovereignty over Tibet and the whole of China whenever there was the opportunity to show their political standing.

During the Cold War, around one hundred Tibetans migrated to Taiwan and settled there.⁴²¹ Early Tibetan immigrants were recruited as troops against the PRC,⁴²² and later became secret agents for the ROC government.⁴²³ Besides, during the 1960s

⁴²⁰ Kai-shek Chiang, *The Thoughts and Speeches of President Chiang Kai-shek*, compiled by the Editing Committee of President Chiang Kai-shek's Thoughts and Speeches (Taipei, Taiwan: Central Archives Press, 1966), 33: 222-23.

⁴²¹ Pei-Chi Wu, "Liu Wang Cang Ren Zai Tai Wan: Tibetan Exiles in Taiwan" (Master's thesis, National Taiwan University, 2000).

⁴²² Chao-chen Lin, *La Ma Sha Ren Xi Cang Kang Bao Si Shi Nian [The Lama Killing]* (Taipei: Lian hwen xue [UNITAS Publishing], 1999).

⁴²³ Wu, "Liu Wang Cang Ren Zai Tai Wan."

to the early 70s, two important Tibetan politicians of the Tibetan government in exile—Surkhang Wangchen Gelek and Yuthok Tashi Dhundup—migrated to Taiwan to work with the ROC for Tibet’s independence.⁴²⁴ However, their migration to Taiwan was not accepted as a pro-Tibetan action in the community of exiled Tibetans. On the other hand, because of the fast economic development in Taiwan, in the 1980s there existed a severe labour shortage there. Thus, the Mongolian & Tibetan Affairs Commission provided an occupational training programme for Tibetans from India and Nepal, though the number of the trainees was limited. For example, merely 179 persons were trained by this program from 1990 to 1993.⁴²⁵ The programme ended when the Employment Service Act was amended in 1993. However, Tibetans benefiting from this programme were not categorised as legal workers in Taiwan. Meanwhile, the government established a “Tibetan children’s home” for Tibetan children aged from the ages of six to fourteen, to migrate from Nepal and India to Taiwan for education in the 1980s. Accordingly, 107 Tibetan children migrated to Taiwan in 1992, through the Mainland China Relief Association, an organisation with the goal of enabling the ROC to obtain authority in China again. Similarly, the receiving of the Tibetan children is so that one day these Tibetans can govern the Tibetan area when the ROC “returns” to China. However, even if that purpose was not ultimately realised, the children adapted to life in Taiwan and made up one of the main Tibetan groups there.⁴²⁶

However, all the arrangements above endorsed the political agenda behind the sovereignty claim over Tibet, a claim that many Tibetan exiles could not, and cannot, agree with;⁴²⁷ therefore, relevant arrangements did not seem attractive to Tibetan exiles as they could not accept the assumption of being taken as nationals of China. Also, the Mongolian and Tibetan Affairs Commission committed to sovereignty agenda openly. The Tibetan issue was treated as a sovereignty issue for the ROC as it saw Tibet as part of the territory—which in turn aligned with the political needs of the Republic of China but not with the needs for Tibetan subjectivity. As an example of the conflict between these two ways of thinking: the Mongolian and Tibetan Affairs

⁴²⁴ Okawa, “Lessons from Tibetans in Taiwan.”

⁴²⁵ Liu, ed., *Meng Zang Wei Yuan Hui Jian Shi Xu Pian*.

⁴²⁶ Pan, “Neither Compatriots nor Refugees.”

⁴²⁷ There were some Tibetan exiles willing to cooperate with the ROC who received support at that time. However, they were seen as betrayers of the Tibetan exiled community.

Commission once sponsored thirteen members of the exiled Tibetan community in order to move their support from the CTA to the ROC according to the CTA. The CTA claimed these community members did not comply with the CTA and the Dalai Lama, because the CTA and the Dalai Lama promoted democracy in the Tibetan community and those who were Tibetan political and religious leaders did not welcome this change, as they preferred to maintain their privileged status in the Tibetan society.⁴²⁸ For the Tibetan community in exile, these Tibetans were seen as betrayers surrendered to another China, meaning the ROC. However, the Mongolian and Tibetan Affairs Commission's infiltration of the Tibetan exiled community lasted for decades, until the democratisation of Taiwan. Apparently, the tension between the Tibetan community and the ROC government was understood by Tibetan exiles as the government of ROC trying to manipulate the Tibetan community for decades. Therefore, the CTA created regulations against connections with the ROC government before 1994; afterwards, the restrictions eased but the CTA still forbade any connection with the Mongolian and Tibetan Affairs Commission. This mindset may be seen in the interviews for this study, as Tibetan exile interviewees mention that the ROC government tried to influence political opinions in Tibetan communities, by means of financial contributions to specific Tibetan communities in India.⁴²⁹

Likewise, the Tibetan interviewees usually mention this ROC government body meant to represent Tibet—the Mongolian and Tibetan Affairs Commission—with reservation. In other words, they reveal a questioning attitude towards the Tibetan affairs in Taiwan, due to the sovereignty claim as well as the past behaviours of the government. A Tibetan exile expresses that, because of past manipulation by the ROC, he feels that the ROC government holds a superior attitude towards Tibetans like him, that the Commission was in charge of the counter to the Tibetan government in exile and that people in the Commission were those who “betrayed” the Tibetan community in exile. Therefore, he did not feel comfortable interacting with them. This also signifies that, although there were precedents for accepting Tibetans as migrant students or

⁴²⁸ This may be found in a discussion of the Mongolian and Tibetan Affairs Commission's influence on the Tibetan exiled community, in an interview of the representative of the Tibet Religious Foundation of His Holiness the Dalai Lama, Dawa Tsering. “Da Wa Cai Ren Tan Cang Ren She Hu Nei De Tong Zhan Fen Hua Huo Dong: Dawa Tsering Talks about the Conflicts within the Tibetan Community,” 7 October 2010, http://www.taiwantt.org.tw/tw/index.php?option=com_content&task=view&id=2685

⁴²⁹ Wu, “Liu Wang Cang Ren Zai Tai Wan.”

migrant workers, Taiwan was not a popular migration destination for Tibetans from a geopolitical perspective, as that migration would put pressure on their choice of political identity as Tibetan and not Chinese. Furthermore, his attitude reflects the importance of political identity for individual Tibetans and the Tibetan community, as well as their general attitude towards Taiwan—that is, before the Taiwanese government stopped interfering with the Tibetan exiled community and changed its attitude toward the Tibetan exiled government during democratisation.

B. Tibetan Immigrants after Taiwan's Democratisation

As explained in the previous section, Tibetans were seen as political symbols of sovereignty over China and, as such, symbols for the ROC's political use—as it actively claimed sovereignty over territory which it had not controlled since 1949. Therefore, Tibetans also saw the government of the ROC as a threat to their political sense of identity. Meanwhile, Taiwan was cast under the shadow of martial law for 38 years, from 1949 to 1987. However, the illusion of this sovereignty claim was not maintained after 1987. The democratisation of Taiwan made great political and legal changes, including individual's citizenship status. Considering the political relationship between Tibet and Taiwan, several major changes took place during the 1990s too. First, the Taiwanese government and the Tibetan government in exile established a more formal diplomatic relationship with each other. Secondly, the political and spiritual leader of Tibet, the Dalai Lama, was invited to visit Taiwan by the Taiwanese government.

After martial law was lifted, the society and politics of Taiwan have changed with democratic movements, and the ideology of arguing that the ROC is the legitimate ruler of China has been questioned by the politicians and the people as the assumption does not match the lives of the general public in Taiwan.⁴³⁰ Therefore, as the consciousness of localisation/indigenisation became stronger, the assumption seemed surreal and unrealistic. Accordingly, the Taiwanese localisation/indigenisation movement—which emphasises the Taiwanese identity rather than the Chinese influence from the ROC system—became prominent in the 1990s, and the sovereignty

⁴³⁰ Further discussion of this topic may be found in Chapter Three.

claim over China became weaker with the shift of sovereign people to Taiwanese as addressed in Chapter Three. As a result, previous operations meant to influence Tibetans via official channels, such as recruiting them from South Asia as well as claiming sovereignty over Tibet, stopped after the mid-1990s. That is, no more official immigration programs were initiated, and Tibetans were not invited by the government to Taiwan on the basis of the sovereignty claim. Since then, the sovereignty claim over Tibet was not considered a constructive element for the operation of the ROC government.

In an unprecedented move, in 1997 the Office of the President of the ROC invited the Dalai Lama to Taiwan to promote Buddhism and peace on the basis of the Dalai Lama's Nobel Peace Prize. Also, during that trip the Dalai Lama publicly met the president of Taiwan, Lee Teng-hui.⁴³¹ Although the ostensible reason for inviting the Dalai Lama concerned human rights and religion, the political aspect in the relationship between Taiwan and Tibet was apparent too. This visit could not have happened productively before democratisation, as, since the Dalai Lama was also the political leader of Tibetan exiles, his political standing could have challenged the ROC's territory claim. Thus, this is a concrete example that the political attitudes of the Taiwanese government towards Tibet and Tibetans were different from early days. During this democratisation, Tibetans' citizenship status in Taiwan was reconfirmed through legislation: the Immigration Act and the Act Governing Relations between the People of the Taiwan Area and the Mainland Area. These acts regulate Tibetans as immigrants with special status, such as mainland people and stateless persons. On the other hand, Tibetan exiles, especially marriage immigrants, have not stopped migrating to Taiwan although the situation in Taiwan has become unclear for them. Nowadays, Tibetan exiles mainly migrate to Taiwan for family reunification.

Tibetan immigrants have not built up many Tibetan communities in Taiwan, instead, the only Tibetan community is in Taoyuan city. Tibetan marriage immigrants do not live there, however, as they usually live with their Taiwanese family. For example,

⁴³¹ During the meeting of the Dalai Lama and the Taiwanese president Lee Teng-Hui, the Dalai Lama was called "Peace Maker" and President Lee "Mr. Democracy" by the propaganda of the Chinese Nationalist Party (which was the ruling party at the time.) See Mei-Fen Kou, "San Ci Fang Tai Da Lai Dai Yu Da Bu Tong [Different Treatments for the Dalai Lama]," *New Talk*, 31 August 2009, <http://newtalk.tw/news/view/2009-08-31/17>

during my trip for interviews, I travelled to five different cities in Taiwan to meet the twenty Tibetan exiles and their spouses. Only two Tibetan exiles who were previously undocumented live in the Tibetan community in Taoyuan City; one of them is single, the other one has a Tibetan spouse. Therefore, Tibetans are more scattered in Taiwan than one might expect, given their commitment to their nation in exile.

IV. Tibetans in Taiwan: Citizenship Issues and Legal Frameworks

A. Citizenship Identity for Tibetan Exiles in Taiwan

As discussed in Chapter Three, Tibetan people belong to the category of nationals in the “mainland area,” according to the Constitution of the ROC, but to the category of non-nationals at the level of law. Tibetan immigrants coming directly from Tibet belong to the category of “mainland people” in the Act Governing Regulations between People of the Taiwan Area and the Mainland Area. However, Tibetan exiles do not come from the “mainland area,” and thus, the citizenship issue for Tibetan exiles from South Asia is more complex, as they do not travel as nationals of India or other states. In addition, according to the Immigration Act, Tibetan exiles from India or other states are stateless persons.⁴³² The stateless status is not clearly defined in the law. It should be in line with the 1951 Convention, though Taiwan did not sign that Convention or apply it in domestic laws. However, the definition of statelessness does not preclude the Tibetan exiles from taking other identities. As such, Tibetan refugees obtain triple identities: national in question, immigrant in practice and stateless in respect to their papers.

Within the administrative bodies in the government of the ROC, there also exist debates on Tibetan exiles’ legal status. In 2003, in a meeting about the legal identity of the Tibetan exiles holding Identity Certificates issued by the Indian government, the focus was whether Tibetan exiles are the people of mainland area under the Act Governing Regulations between People of the Taiwan Area and the Mainland Area. Each department had different perspectives on the legal status of Tibetan exiles. First, as the responsible authority for cross-strait affairs, the Mainland Affairs Council expressed that it was questionable to categorise the Tibetan exiles as people of the

⁴³² Immigration Act, §16 (5) (2016).

mainland area, since they have left the mainland and held a refugee status from India; additionally, the Tibetan exiles, who were born outside of Tibet and cannot be claimed as nationals by the PRC, are not people of mainland area.⁴³³ The Mongolian and Tibetan Affairs Commission first framed Tibetan exiles as overseas Tibetans, and expressed that these overseas Tibetans may hold the legal status of 1) people of the mainland area, 2) foreign citizens, 3) both people of the mainland area and foreign citizens, or 4) neither of the aforementioned statuses. However, the Commission stressed that any decision made about the legal status of these Tibetans should take into consideration the Tibetans' statements, the facts of their legal status and international customs.⁴³⁴ Turning to another front-line department dealing with the Tibetan exiles, the National Police Agency argued that Tibetan exiles are not people of mainland area, as far as household registration was concerned, as noted in the Act Governing Regulations between People of the Taiwan Area and the Mainland Area.⁴³⁵ In contrast, the department in charge of executing border control, the Entry and Exit Bureau under the National Police Agency,⁴³⁶ registered Tibetan exiles as Tibetans and saw them as people of the mainland area.⁴³⁷ In the end, the meeting did not reach a final conclusion but provided three possible solutions for the legal status: considering these Tibetan exiles as 1) people of mainland area, 2) stateless persons to whom the regulations for foreigners should apply, or 3) refugees that should use the Refugee Act.⁴³⁸ Alongside the administrative debates, the legislators also argued about the legal status of Tibetan exiles. For example, in 2006, the legislator Hsiao Bi-khim, again raised the legal status of Tibetan exiles and asked the administrative departments to follow international custom and treat Tibetan exiles as foreigners.⁴³⁹

These debates on the legal status of Tibetan exiles show the inconsistent attitudes about their legal status and demonstrate how the opinions of one department can be contradictory to opinions of others. Indeed, the legal status for the government

⁴³³ BU SHOU LING ER ZI No 09269022700 (2003). LU FA ZI No 9009791 (2001). LU FA ZI No 0920019261 (2003).

⁴³⁴ HUI CANG ZI No 0920001708 (2003).

⁴³⁵ NEI JING JING No 119231 (2001).

⁴³⁶ The bureau was reconstructed in 2007 and became The Entry and Exit, and Immigration Agency, Ministry of the Interior.

⁴³⁷ JING REN XIANG No 0920103736 (2003).

⁴³⁸ Taiwan does not have a Refugee Act, but a draft of the Refugee Act can be traced back to the early 2000s.

BU SHOU LING ER ZI No 09269022700 (2003).

⁴³⁹ LU FA ZI No 0950007869 (2006).

of the ROC is difficult even for the government, as it is tangled up with different issues: relations with the PRC, legal status conflicts within the legal framework, humanitarian concerns, etc. Geopolitics also influence the position of the government. In a far-reaching governmental strategy for the legal status of Tibetan exiles in 2007, the Ministry of Foreign Affairs mentioned that since the Dalai Lama had initiated the “middle way” approach—a strategy for the high-level autonomy in Tibet—and seemed eager to cooperate with Chinese government, then opening the border of Taiwan to Tibetan exiles could not be considered beneficial politically for Taiwan. That is, the renunciation of the pursuit of Tibet’s independence was a factor influencing the Taiwanese government to restrain its policy towards the Tibetan exiles.⁴⁴⁰

1. Tibetan Marriage Immigrants

After the change of sovereign policy and the termination of accepting Tibetan exiles at the end of 1990s, there currently exist two main groups of Tibetan exiles in Taiwan: undocumented immigrants and marriage immigrants. Undocumented exiles have come to Taiwan by various means. Some of them came with a student visa, and when the visa expired, they chose to stay without effective documents. Others came with the false documents and visitor visas and refused to leave. Marriage immigrants form another group; they usually apply for their entry via the correct legal process. However, this group of Tibetan exiles found that they could not migrate to Taiwan in the same way as other groups of marriage immigrants, due to the previously identified triple identity conundrum. Many of them experienced long-term separation from their families in Taiwan and found great difficulty in applying for visas there.

Since the shift in the nature of the sovereignty claim and the process of localisation/indigenisation within Taiwan, the ROC government has considered the Tibetans as a negative legacy, indelibly linked to the history of the sovereignty claim over mainland China.⁴⁴¹ Therefore, the government of ROC does not demonstrate a particularly welcoming attitude towards Tibetan exiles, and has often made things difficult for their applying for visas. Several interviewees described the hostility of the diplomats in the Ministry of Foreign Affairs, the government body verifying their status

⁴⁴⁰ YUAN TAI WAI ZI No 0960081269 (2007).

⁴⁴¹ Okawa, “Lessons from Tibetans in Taiwan.”

and issuing visas; these Tibetan exiles mentioned that they were taken to be spies in the official meetings, especially those Tibetan exiles who could speak fluent Mandarin.⁴⁴² Their marriages were often considered shams, concluded merely to obtain a better life, and the Ministry of Foreign Affairs stressed that these Tibetans are economic immigrants and that the government did not need to apply humanitarian considerations with them.⁴⁴³

For example, Tibetan exiles who are marriage immigrants found it hard to obtain their residence visas without a struggle. To begin, these Tibetan exiles, like the other marriage immigrants, must go through the procedures for marriage immigrants written in the Immigration Act. According to Article 9 of the Immigration Act, foreign spouses can apply for a residence visa to live in Taiwan. However, for foreign spouses from specific states, their marriage status should be authenticated by the Taipei Economic and Cultural Centre in these foreign states; namely, by the actual embassy of the ROC government. After obtaining a certificate of their marriage to prove it legitimate, the married couples or the foreign spouse of the Taiwanese citizen herself/himself can travel to Taiwan to apply for a residence visa on the basis of the legitimate marriage. Tibetan exiles are asked to follow this procedure for the marriage immigrants but they find it hard to obtain the residence visa as the others do. In reality, Tibetan exiles found that their refugee identity—based on travel documents issued by the government of India, for example—was not accepted, as these documents were not seen as effective travel documents by the government of the ROC. Therefore, the Ministry of Foreign Affairs of the ROC seldom issued visas to Tibetan residents in India, unless the Tibetan exiles apply for visas for teaching Buddhism or for family reunification. However, they generally only obtained visitor visas for two months, which meant that the Tibetan exiles did not obtain residence visas. Clearly, the Tibetan exile identity was not seen as a favoured one, for purposes of issuing a visa.

Under Taiwanese law, the Tibetan exiles have another legal identity: “stateless persons.” This legal status of Tibetan refugees may be seen in Section 5, Article 16 of

⁴⁴² This attitude was confirmed by the Foreign Affairs Ministry. The author met a diplomat in charge of the relevant regulations before in an informal meeting during her fieldwork. The diplomat expressed concerns over Tibetan exiles and the possible danger of allowing them entry into Taiwan. This can also be seen in YUAN TAI WAI ZI No 0960081269 (2007).

⁴⁴³ YUAN TAI WAI ZI No 0960081269 (2007).

the Immigration Act: stateless people from India or Nepal who entered the Taiwan Area before 29 June 2016 and cannot be repatriated may be allowed to reside in the Taiwan Area by the NIA (National Immigration Agency) if their status has been verified by a review meeting convened by the central authorities in charge of the Mongolian and Tibetan Affairs Commission.⁴⁴⁴ Article 16 is in the chapter on nationals without household registration, which details that Tibetan stateless people are presumed to be in that category. Unlike regulations for the people of the mainland area and Hong Kong or Macau, regulations for the nationals without household registration are applied *mutatis mutandis*. (In this comparison, the use of *mutatis mutandis* has a more indirect meaning with nationals without household registration; that is, people of the mainland and Hong Kong or Macau are mainly regulated by the Act Governing Regulations between People of the Taiwan Area and the Mainland Area and the Laws Regulations Regarding Hong Kong and Macao Affairs.) The identity of the Tibetan exiles is different from the people of the mainland area in law; in addition, Article 16 is limited to the Tibetan exiles and does not extend to all ethnic Tibetans. That is, even though the definition of the constitutional sovereign people has shifted to Taiwanese, and the design of the relevant laws avoids using nationals, citizens, and other terms that denote a sovereign people to label Chinese people (people of the mainland area in laws), the Immigration Act includes Tibetan exiles in the category of potential nationals: specifically, nationals without household registration. At this point, it seems Tibetan exiles should have a privileged position compared to foreigners and people from the PRC. However, the situation is not as positive as the Immigration Act may cause it to appear.

Turning back to the regulation concerning the Tibetan exiles, Section 5, Article 16 indicates that Tibetan exiles from India or Nepal can reside in Taiwan with the verification of the Mongolian and Tibetan Affairs Commission. Since this Article also includes all Tibetan stateless persons in Taiwan, it seems that this same regulation should apply to marriage immigrants. However, although some of them obtained their residency in 2000 and 2008 when the section was first legislated and amended, marriage immigrants did not consider it as a solution for Tibetan exiles' citizenship issue, as it is an article with a sunset clause—and thus does not include people who

⁴⁴⁴ Immigration Act, §16 (5) (2016).

enter after the time in the clause has expired. On the other hand, Tibetan exiles who are marriage immigrants argue that it is unfair that the regulations for other marriage immigrants cannot be applied to them. The Tibetan exile marriage immigrants were at first asked to wait for the renewal of the Immigration Act even if they had proved legally married by the previous procedure in the office of the Taipei Economic and Culture Centre. Similarly, another solution from the government was to ask them to wait for an amendment of the Immigration Act—an uncertain solution, since that amending is not regular or scheduled. Because of this, Tibetan marriage immigrants had to wait for arbitrary decisions by either—or both—legislators and administrative departments of the government. Before this amendment, the Tibetan marriage immigrants were forced to travel constantly between India or other Southeast Asian countries and Taiwan to apply for new visitor visas.

Other than regular traveling between their residing country and Taiwan, two Tibetan interviewees and their spouses revealed that they even journeyed between different states—such as from India to Thailand—in the hope of obtaining an effective visa to Taiwan when the Taiwanese government did not give them visas. This diaspora for the sake of a visa shows the plight of their migration to Taiwan, given the complication of their triple identities. Nevertheless, through this process, Tibetan exiles and their spouses reform and reframe their Tibetan identity by questioning the legal system of Taiwan and taking a proactive approach towards their own Tibetan identity's definition.

(a) The Legal Framing of the Social Movement

Turning to the movements that Tibetan exiles created in order to campaign for their residence rights, one can see that these same movements reflect the legal framing of their Tibetan identity and their relevant legal status in the law of Taiwan. As mentioned in Chapter One, certain research on social movements shows that actors within such movements may frame their problems as legal issues⁴⁴⁵ and that relevant legal structure also frames actors' cognition of their rights.⁴⁴⁶ The process is a dynamic

⁴⁴⁵ McCann, *Rights at Work*; Hull, "The Political Limits of the Rights Frame."

⁴⁴⁶ Pedriana, "From Protective to Equal Treatment."

interpretation in which law is redefined and the actors also reconstruct their points of view on rights. In addition, actors use legal framing as their strategy to build up legal discourse to initiate their rights. Moreover, legal framing also shapes how social movements are mobilised.

Related to this topic, the idea of legal consciousness⁴⁴⁷ defines how people understand laws and how they apply laws in their lives—in performing their legal framing.⁴⁴⁸ Therefore, along with the social movements, individuals frame laws in their lives. Legal consciousness explains the apprehension of law by people and interactions between people and society. As such, research on legal consciousness examines both the formal regulations and social relations with people.⁴⁴⁹ From the perspective of these discussions, I examine the social movements of Tibetan marriage immigrants to understand their legal framing of their arguments for residence rights and the response of the ROC government. In addition, my research also considers how Tibetan exiles use legal discourses to articulate their legal status and how the legal structure frame their problems with that same status.

2. *The Legal Framing for Tibetan Refugees and their Taiwanese Spouses*

I went to Tibet in 2006; at that time, the train to Lhasa had just been built, and the Chinese authorities did not have clear regulations on Taiwanese people's visits to Tibet ... In Tibet, I learnt that their religious leader, the Dalai Lama, was abroad. This information made me curious about the exiled Tibetans and their culture. Most of all, Tibetan Buddhism really fascinated me! I started visiting Dharamshala at the beginning of 2009 ...

I have been to Dharamshala five times, and every time I spent four to five months there until my visa [student visa] was about to expire. The Taipei Representative Office in India once asked me: why are you so interested in India? ... In 2011, my husband and I started considering getting married and moved to Taiwan, he asked the other people how to get married, and it seemed alright... we did not expect it would take years for him to reside in Taiwan ...

Ya-chin, Taiwanese spouse of Tibetan exile⁴⁵⁰

⁴⁴⁷ “Legal consciousness” is used in analysis of the individual’s understanding of law in the society and of people’s interpretation of law. In this process, people can produce their understandings and formulate social actions in response to social relationships. See Ewick and Silbey, *The Common Place of Law*.

⁴⁴⁸ Nielsen, “Situating Legal Consciousness.”

⁴⁴⁹ Cowan, “Legal Consciousness: Some Observations.”

⁴⁵⁰ Ya-chin is a pseudonym. For additional detail about Ya-chin, please consult the table of interviewees in Chapter Two.

In 2007, I went to India to visit my classmates in Mumbai, and by coincidence, I visited Dharamshala. From the first moment, I had a very good first impression of Tibetan exiles ... and food is very similar to Taiwanese food! I soon made some friends and was moved by Tibetan exiles' stories. Therefore, I came back to Dharamshala again three months after I went back to Taiwan. This time I met my husband from other Tibetan friends ... we fell in love and believed it was our destiny to meet ... we got married in 2009 ... At first, I did not want to come back to Taiwan because Dharamshala made me feel at home and I thought I was happier there than in Taiwan. However, we had a child soon ... and the discrimination against Tibetan exiles from Indian authorities and society made us reconsider the decision ... [In the end,] we moved to Taiwan in 2011... Maybe it is because we had a child already; it was not as troublesome as the other Taiwanese-Tibetan couples.

Rei-chun, Taiwanese spouse of Tibetan exile⁴⁵¹

Three years ago (2015), I joined a tourist group for Tibetan Buddhism pilgrims ... my husband was the translator on the tourist bus. It was October, and the following year in January and February, I revisited India and applied for a student visa to learn yoga in India. We had a long-distance relationship for a while and then decided to get married ... [we got married in India at the end of 2016]. Still, my husband's application for a visa to Taiwan was painful ... the Taipei Representative Office refused to issue a visa several times and claimed our marriage was sham marriage ... I was very depressed and had diarrhoea all the time ...

Lin, Taiwanese spouse of Tibetan exile⁴⁵²

(a) The Taiwanese-Tibetan Family Alliance

Over the years, Taiwanese people have travelled to Dharamshala for tourism, for Tibetan cultures, or for religious reasons. Some of them meet their Tibetan spouses in the trip and get married at the end. However, they soon realise the marriage with Tibetan exiles is a tangled affair, with complex laws and regulations in the ROC legal system. In 2012, about ten to twelve Tibetan-Taiwanese families gathered together to launch a campaign for Tibetan marriage immigrants' rights. In this group, the Tibetan exiles sometimes could not express themselves in Mandarin to the general public or to the government, and they did not constantly live in Taiwan. As a result, their spouses generally played more important roles in the campaign. This group is called the Taiwanese-Tibetan Family Alliance. It works in two areas: namely, advocating for

⁴⁵¹ Rei-chun is a pseudonym. For additional detail about Rei-chun, please consult the table of interviewees in Chapter Two.

⁴⁵² Lin is a pseudonym. For additional detail about Lin, please consult the table of interviewees in Chapter Two.

Tibetan rights vis-à-vis the general public and participating in administrative meetings with the government for Tibetan spouses' residence rights.

The Alliance also collects stories from each family, focusing on two main issues. First, they perceive that the process of verifying a Taiwanese-Tibetan marriage is highly discriminatory towards the Tibetan spouses, imposing burdens upon them not experienced by other marriage migrants. According to my interviews with Taiwanese partners in Taiwanese-Tibetan marriages, their Tibetan spouses were asked if they were spies in Tibetan disguise from China, as mentioned above, and their marriages were often seen as fraudulent because authorities assumed that Tibetan exiles only wanted to gain access to Taiwan to work there. Secondly, the regulation of Article 16 of the Immigration Act made Tibetan exiles a unique case, separate from the other marriage immigrants. The Alliance lobbied in the Legislative Yuan to obtain more political support from legislators, in order to normalise the immigrant status of Tibetan exiles with marriage immigrant instead of treating them differently because of the political meaning of their Tibetan status. The legal mobilisation of the Alliance was most active during 2012 to 2013. They clearly stated the right of family reunification as their primary demand when they spoke publicly and attended the meetings with authorities. Nevertheless, the Alliance did not ask for the amendment of Article 16 of the Immigration Act. Rather, these Taiwanese spouses asked for the extension of the general rights of the marriage immigrants to their Tibetan spouses.

(b) The Legal Framing of Tibetan Marriage Immigrants' Rights and Identity

On the one hand, the Tibetan exiles and their spouses highly value the Tibetan identity. From the interviews, every Tibetan person emphasised his/her Tibetan identity; e.g. saying s/he is Tibetan by blood and that that fact would never change. Some of them showed passionate emotion for Tibet and detailed their efforts for promoting Tibet and its independence. Furthermore, in these cases, the Taiwanese spouses also chimed in to talk about how much they knew about Tibet. The common opinions show that Tibetan identity is fundamental for Tibetans, in cultural, social and even political terms. However, they eschewed the definition of Tibetan stateless persons in Article 16 of the Immigration Act and were clearly in favour of taking the identity of marriage immigrants.

The reason for the Tibetan exiles and their spouses' choices did not lie in the stateless status in Article 16 either. According to the interviews I conducted with one of the Taiwanese spouses, Ya-chin, she pointed out that the stateless identity of her husband was absolutely creating obstacles to their family's reunification; nevertheless, she also had to make sure that his statelessness was clearly noted during the application process for residency, as she believed this is important in both legal and social perspectives. She agreed that her spouse was stateless, and that the stateless identity reflected the fact that her spouse is a person without any homeland, given that Tibet is not recognised as a state. This is not a unique case. Among the eight Tibetan refugee interviewees, six of them agreed with this identity, and even with the statement related to their "state". As for those who did not identify themselves with stateless persons, one of the Tibetan marriage immigrants I interviewed has Nepalese citizenship, which means he did not hold a stateless identity from the beginning of the process. The other one was an undocumented immigrant who came from a community less supportive of the CTA.⁴⁵³ Therefore, in these cases, statelessness as a legal status was not seen as an issue.

However, the Tibetan identity and the claim to statehood on the part of Tibet can be an influential aspect of Tibetans' personal status. This also indicates that Tibetan cases here would not easily accept the sovereignty claim over Tibet from the ROC. As Article 16 of the Immigration Act is regulated under Chapter Three of that same Act, implications exist for Tibetan exiles' potential national status. In contrast, the Tibetan marriage immigrants and their spouses in this research always emphasised that they are immigrants who should only have to comply with requirements for foreigners. Furthermore, they did not want to be seen as Chinese nationals, as implied by the ROC's former sovereignty claim; instead, they identified themselves as foreigners migrating from foreign states. Moreover, in actual practice, Article 16 of the Immigration Act places extra burdens on them for residency in Taiwan. Their social and cultural Tibetan identity alongside their political will affected their legal consciousness of their legal status as Tibetans in Taiwan. The refusal of the identity of a Chinese national and the assurance of the immigrant identity positioned themselves

⁴⁵³ This interviewee did not directly disapprove of the stateless identity, but he has an unclear attitude about his citizenship identity; that is, he held an ambiguous attitude about his Tibetan identity and on the other hand clearly identified himself as a Taiwanese too.

under the legal context of the immigration but not the nationals. In short, in the process of their movements, legal consciousness also formulated the legal framing of their agenda. The strategy of stressing the sole legal identity of being marriage immigrants not only simplified these Tibetan exiles' identities but also clearly proposed an interpretation of Tibetan identity in the Taiwanese legal system from Tibetans themselves.

After years of activism by Tibetan-Taiwanese families, at the end of 2016 the Executive Yuan in Taiwan—the highest body of government administration—agreed that the immigration laws of foreign spouses should be applied to Tibetan refugees who are marriage immigrants. In the end, although the Tibetan people still belong in the category of potential nationals in Taiwan, Tibetan exiles with marriage immigrant status can go through a legal process with the identity they accept and agree with.

3. Undocumented Tibetan Immigrants and their Citizenship Struggles

(a) Undocumented Tibetan Immigrants: Coming to Taiwan

Compared to marriage immigrants, cases of undocumented Tibetan immigrants are less visible in Taiwan. However, as concerns Tibetan identity in Taiwan, these groups of people have had a different destiny across the past two decades. According to Article 16 of the Immigration Act, undocumented Tibetan immigrants should wait for the amendment of the law to obtain citizenship in Taiwan. However, this section did not exist until 2009. Additionally, there is no legislation on refugees in place in Taiwan now, which makes it harder for this group of Tibetan exiles to argue for their right to reside in Taiwan. The fear of repatriation makes them isolate themselves from the Taiwanese community. According to one of my interviewees, Luchun⁴⁵⁴—an undocumented immigrant for six years—the lack of a legitimate identity made it difficult for him to find a job. Also, he had to avoid encountering the police in any circumstances. However, he also found out that police cannot deal with their cases.

⁴⁵⁴ Luchun is a pseudonym. For additional detail about Luchun, please consult the table of interviewees in Chapter Two.

Sometimes we were found without a driving licence on our scooters, and the police brought us back to the police station. When they found out that we are Tibetans, they usually did nothing with us, not even wrote down any records. They would let us leave the police station eventually because they could not do anything with us ...

Luchun did not appear to have negative emotions when he mentioned his past experience with being undocumented. For him, life at that time was hard due to a lack of legitimate working identity; the economic hardship of the life meant more to him. Luchun was born and grew up in Tibet. When he was a child, the Tibetan language and its culture were banned by the PRC, therefore, he could not speak in Tibetan. This perhaps explains why his Mandarin was more fluent than the other Tibetans I met. In his early twenties, he climbed across the Himalayas to meet the Dalai Lama. After several years' stay in southern India with his relatives, Luchun decided to go to Taiwan to earn a better life. Though the Tibetan communities in general had some doubts about the ROC government, Luchun's relatives live in a community which favoured it. As such, in this village, migrating to Taiwan for working or studying is more common than in other Tibetan exile communities. Luchun used a fake Nepalese identity and flew to Hong Kong for a visa. After that, he started his life as an undocumented immigrant in Taiwan.

Luchun arrived in Taiwan in 1995. Initially, he worked as a blue-collar labourer. After five to six years, together with some other Tibetans he approached a legislator for help with his citizenship issue. At that time, he cooperated with both that legislator and the Mongolian and Tibetan Affairs Commission. Afterwards, Luchun first obtained a residence card for Nationals without Registered Permanent Residence and then obtained citizenship after holding the residence card for three years. According to his words, he maintained a good relationship with staff in the Commission and even worked for them sometimes.

Luchun's story is different from that of other Tibetan exiles in general. First, he came from a community which had a closer relationship with the ROC government; also, he has no problem cooperating with the Mongolian and Tibetan Affairs Commission for his legal status—even to the point of working for them. This difference reflects the fact that there were varying voices outside of mainstream Tibetan exile

community, and that some Tibetans interested themselves in the ROC without resisting the greater China political ideology. Also, according to an official document from the Office of the President and the Executive Yuan, the citizenship issue of the undocumented Tibetans was a focus in 2000 and 2001 when the Office of the President planned to invite the Dalai Lama to Taiwan the second time.⁴⁵⁵ By that time, the administrative system of the ROC government agreed that citizenship would be granted as a gift to the Dalai Lama to show the government's friendly attitude towards Tibetans. However, this aspect was missing in Luchun's own words. He only emphasised the function of the Mongolian and Tibetan Affairs Commission and the legislator in resolving his citizenship issue. Besides, the government of the ROC at the time of the gift to the Dalai Lama was led by the pro-independence party, the Democratic Progressive Party—considered the opposite of the previous pro-China leading party, the KMT. The pro-ROC Tibetan communities were used to cooperating with the KMT-led ROC and accustomed to the ideology of the KMT. As such, Luchun's attitude may reflect some of the pro-ROC Tibetans' attitude towards a pro-independence government of Taiwan, such as the government in 2000. In other words, being in favour of the independence of Taiwan was not a position he felt comfortable supporting. In contrast, the Mongolian and Tibetan Affairs Commission preserved the spirit of the ROC ruling the whole of China, and the legislator who helped Luchun, in addition to belonging to the KMT, has a long-term relation with that same Commission.

Luchun's political opinions reflected his travel history and the background of the Tibetan community to which he belonged. He was also more comfortable talking about the economic growth of Tibet these days and the economic benefits the CCP brought to Tibet. He passionately described economic progress nowadays in Tibet and the wealthy life of his sister and brother. Compared to his own life of still being a blue-collar labourer in his late 60s, life in Tibet now seems better economically. Luchun has been back to Tibet many times since obtaining Taiwanese citizenship and has even invested in businesses there. He has a Tibetan partner in Taiwan and they have a child now working in China. Furthermore, he showed me a picture of family members with some prominent officers from the Communist Party to emphasise the "good life" of his family and their family's close relationship with the Communist Party now. Apparently,

⁴⁵⁵ HUA ZONG ZHI ZI No. 091001729 (2002). YUAN TAI JIANG ZI No. 0910079680 (2002).

Luchun wanted to let me know that the relationship between the Chinese government and the Tibetans has improved over the years. Moreover, he showed great concern about self-immolation in Tibet—a form of protest against PRC rule⁴⁵⁶—but stressed that the Tibetan exiled community was the bad influence on the Tibetans in Tibet via radio, making Tibetans choose this extreme gesture. The Chinese government blames the Dalai Lama and outsiders for encouraging self-immolation in Tibet.⁴⁵⁷ Luchun's opinions only partially accord with that blame, as he condemns the CTA but does not agree with condemning the Dalai Lama. This may also resonate with his cooperation with ROC ideology. In short, Luchun's story not only reflects the gap between different Tibetan groups, but also points out that, as a Tibetan migrant worker who lives in a Tibetan community, the information he obtained is limited and the role he could play in advocating for his citizenship could have been more restricted due to his early undocumented status.

Turning to other Tibetans who also were once undocumented migrants: they might have a very different political approach to the question of Tibet compared to Luchun, but they also do not have much say in the process of their application for residence rights or citizenship. Nyima⁴⁵⁸ is an active member of the Tibetan Youth Congress, the organisation aiming at advocating for Tibetan Independence. He came to Taiwan in 2001 on a tourist visa, which means he missed the amendment in 2001 of Article 16 in Immigration Act to obtain citizenship. Afterwards, he stayed in the same city as Luchun since there had been a Tibetan community there for years. He lived and worked with other undocumented Tibetan immigrants. After three to four years, this undocumented group went to the Tibetan Religious Foundation of His Holiness the Dalai Lama, the representative organisation of the CTA in Taiwan, and asked for help. The Foundation issued the members of the group certificates proving that they were Tibetans. With this certificate, the police can trace their identity to the Foundation and make sure it is truly Tibetan. Nyima used this identity for four to five years.

⁴⁵⁶ Robert Barnett, "Political Self-Immolation in Tibet: Causes and Influences," *Revue d'Etudes Tibétaines* 25, no. 2 (2012): 41–64; Margaret Gouin, "Self-Immolation and Martyrdom in Tibet," *Mortality* 19, no. 2 (2014): 176–83, <https://doi.org/10.1080/13576275.2014.894011>; Alana Vehaba, "Buddhism, Death, And Resistance: What Self-Immolation In Tibet Has Borne," *Politics, Religion & Ideology* 20, no. 2 (2019): 215–43, <https://doi.org/10.1080/21567689.2019.1617133>.

⁴⁵⁷ Barnett, "Political Self-Immolation in Tibet."

⁴⁵⁸ Nyima is a pseudonym. For additional detail about Nyima, please consult the table of interviewees in Chapter Two.

However, without a legal identity in Taiwan, he could only work as a contractor. During this period, he asked for help from the Taiwan Tibetan Welfare Association. This association was founded by Tibetans in Taiwan in 2004 and has been close to the Tibet Religious Foundation of His Holiness the Dalai Lama. The association focuses on Tibetan culture and identity and has strong connections with Tibetan exiles who have come to Taiwan after the 1990s.⁴⁵⁹ Many of the Tibetan interviewees for this research, including the Tibetan exiles and their spouses, expressed that they preferred to reach out to the Taiwan Tibetan Welfare Association for their problems in Taiwan. In interviews, they brought up the Association to make a comparison with the Mongolian and Tibetan Affairs Commission as these two organisations both provide service to Tibetan exiles.⁴⁶⁰ However, the different ideology behind the organisations can lead to different groups of Tibetans preferring one or the other, once again pointing out how political ideology plays crucial role in Tibetan exiles' lives. Eventually, the Association arranged a meeting for Nyima with legislators; but Nyima believed that because of his lack of legal status, the legislators did not or could not help him.

After the January 2009 amendment of Article 16 of the Immigration Act, along with other Tibetan stateless persons who arrived before 2009, Nyima finally started the process of applying for a legitimate residence status. After interviewing with the Mongolian and Tibetan Affairs Commission and the National Immigration Agency, Nyima received a temporary residence card. Later, he received the Alien Residence Certificate. With this residence certificate, he had to wait for another five years to apply for full citizenship—but during this period he could still travel to other states with the Identity Certificate issued by India. Therefore, in this process, Nyima received two residence certificates. On the first one, he was labelled stateless. As for the second one, on it, his place of birth was listed as 'Tibet Province'.

Nyima's and Luchun's cases show two types of residence rights. In short, the residence status that Nyima obtained was different from the one Luchun received. In Luchun's case, his residence certificate was one designed for nationals without

⁴⁵⁹ Zhi-qiang Yang, "Wei Shi Me Lai, Wang Na Li Qu -Lai Tai Cang Ren de Li San Zu Ji Yu Xuan Ze [From Where and to Where? Tibetans' Diaspora and Choices in Taiwan]," *The Reporter*, 20 May 2021, <https://www.twreporter.org/a/exiled-tibetan-in-taiwan>.

⁴⁶⁰ This observation can also be seen in the same news report: Yang, "Wei Shi Me Lai."

household registration in Taiwan. Therefore, Luchun only waited for three years before he started the naturalisation process. On the other hand, Nyima's residence status signified that he was a stateless person—and thus it eventually took him more than six years to obtain full citizenship. This difference is another example of inconsistency present in considerations of, and administrative actions connected to, Tibetans' citizenship statuses. Even Article 16 of the Immigration Act—though it is to be found in Chapter Three, the chapter for nationals—contains content showing stricter requirements for Tibetans than for other nationals without household registration.

(b) Undocumented Tibetan Immigrants: Struggles of Identity and Regularisation Efforts

Nyima did not show many negative emotions towards his place of birth being labelled 'Tibet Province'—a term signifying that Tibet as a province of the ROC. He did not take it as a serious issue, saying “[I am] a Tibetan with my whole heart, the paper does not mean everything.” In the process of changing his status, Nyima looked for help from different organisations, but he considered the Mongolian and Tibetan Commission to be an untrustworthy partner for Tibetan exiles, as he believed the commission did not verify undocumented Tibetans' identity fairly, due to its ignorance of the diversity of Tibetan groups. In the present day, there are still some Tibetans with undocumented status as they arrived after the amendment date in 2008 or they did not pass their interview with the Mongolian and Tibetan Affairs Commission in 2009. These people also contacted the Taiwan Tibetan Welfare Association, consulted with NGOs working on stateless issues and met legislators to work on their residence rights for several years.

However, there periodic regularisation efforts have been made concerning Tibetan exiles in Taiwan. In particular, undocumented immigrants were given a specific opportunity to regularise their status by going through the verification of the Mongolian and Tibetan Affairs Commission. At the end of 2016, another amendment to Article 16 was made, targeting Tibetans who had come to Taiwan before June 2016 and granting them residence rights. This group of Tibetans is still in the process of obtaining citizenship. However, they hold a discreet attitude towards the media and people

outside of the Tibetan community. The group is more complicated as well, since it includes people who did not pass the interview last time.

Some of the interviewees, including Tibetans, NGO workers, and a research fellow in the legislators' office, have connections with this group of undocumented immigrants. However, the NGO workers and the research fellow revealed that even they have difficulty contacting these people, and that most of the time they need to contact them via Tibetan associations or other Tibetans. These undocumented immigrants do not want to talk to the media or to any kind of interviewers. From the remarks of the other Tibetan interviewees, this group fears that Taiwanese government will refuse to issue them residence certificates in the end—and thus, they only want to stay low-key and not get into any trouble. As such, the possibility of being not recognised as Tibetans silences their voices. Though they hold an isolated attitude towards almost every community except the Tibetan community, that attitude was also resigned: they cooperated as much as they could with the process. Some of them, who had been previously refused, had made accusations of the process being unjust in the interview. Examples they made, of injustice, included the authorities assuming a Tibetan who was raised in Nepal should know everything of Tibetan culture, and failing to understand that the environment in Nepal was not as sound and complete compared to India. But in general, they place no doubts on the recognition process but try to act with an uncertain attitude towards the body verifying their Tibetan identity, in order to protect their right to stay. The decision shows high level of bureaucratic discretion regarding the Tibetan identity.

(c) Undocumented Immigrants and Marriage Immigrants Compared

Similar to Luchun and Nyima, undocumented Tibetan immigrants accepted the status the government applied to them, whether it was national or stateless, or Tibetan. Unlike their fellow Tibetans who happen to be marriage immigrants, they demonstrated in these interviews a more submissive attitude towards their identity on paper. That does not mean this group of Tibetans lack the will to define their identity. To be more precise, they had a more difficult standing than the marriage immigrants. Marriage immigrants knew they had the right to reside in Taiwan from the fundamental right of family reunion expressed in exact articles of the Immigration Act. Also,

marriage immigrants and their own spouses usually obtained clearer guidance on the citizenship issue from the other Tibetan marriage immigrants and these immigrants' spouses at the beginning of the process. The interviewees often shared their experiences with other Tibetan marriage immigrants and how much they learnt from each other. However, it could be a very different story for undocumented immigrants who had limited information about how to deal with their citizenship by themselves. Both Luchun and Nyima's cases show that the network of Tibetans in Taiwan provided substantial help, from living requirements to navigating the application process—especially in Nyima's case which involved more organisations and some Taiwanese NGOs. But at the very first stage of the process, they were more perplexed compared to the marriage immigrants. These differences formulate varying attitudes towards citizenship issues during the process. In other words, undocumented immigrants do not have certain resources, such as Taiwanese spouses and connections, that marriage immigrants have. Also, it is harder for them to argue for their residence rights with their undocumented status. As a result, Tibetan refugees who are marriage immigrants showed a more proactive attitude towards their identity issue. However, it can also be seen that, when there are options to choose from, Tibetan people in Taiwan will make the choice which can reflect themselves better especially when it comes to citizenship or identity.

V. Tibetans in Taiwan: The Application Process for Taiwanese Citizenship

A. Applying for Citizenship in Taiwan

As discussed in the previous section, the experiences of Tibetans in South Asia and western countries reveal the conflicts of applying for citizenship in different contexts. These conflicts can be seen through Tibetans in Taiwan, during the process of their application for citizenship. However, these Tibetan individuals—including those activists for Tibetan independence in this research—are mainly willing to obtain citizenship. In this section, I will depict reasons for this trend and how Tibetans in Taiwan identify themselves.

My interviewees among the Tibetans in Taiwan mostly applied for citizenship if they were eligible. In the interviews, some of them hesitated a bit when I asked

relevant questions about applying for Taiwanese citizenship or tried to defend their choice by giving evidence of how devoted they are to Tibetan movements in places like Japan after receiving citizenship and passports. But only one Tibetan in these eight people was not certain whether he would apply for citizenship. The two Tibetan groups must apply under different legal regulations for naturalisation too. The Tibetan exiles who are marriage immigrants must follow immigration laws for marriage immigrants though, before 2017, there existed additional regulations for Tibetans exiles as marriage immigrants, which added an extra burden on their application for citizenship. In contrast, undocumented Tibetan immigrants must apply under regulations in the Immigration Act specific for Tibetan stateless persons. The process of and the requirements for the acquisition of citizenship are different for these two groups of Tibetan refugees.

The Tibetan identity brings up high-level political conflicts in Taiwan—and Tibetan exiles are trapped within them. Administrative departments of the government have controversial opinions on policies for Tibetan exiles' immigration and their legal status. As such, if a civil servant were to apply administrative discretion towards the Tibetan exiles, it could result in chaos, as the government has an ambiguous stance concerning the legal status of Tibetan exiles and their immigration to Taiwan. From the perspective of intelligible principle, the confusion of the Tibetan exiles regarding their citizenship and the endless delays in the application for the right of residence imply a lack of clarity in the procedure. For example, the standard of discretion for residence rights of Tibetan exiles with transnational marriages is not clear. From the interviewees with Tibetans and the informal conversations with diplomats, both parts continually mentioned that bureaucratic system emphasised that they exercised discretion in order to identify sham marriages and national security issues arising in respect to Tibetan exiles; however, marriage immigrants were often denied during the procedure itself. In some instances, civil servants kept requesting new documents, meaning that Tibetan exiles had to travel days back to their former places of residence, such as Dharamsala, for the same documents. Even though they have the right to appeal afterwards, the burden of proof is another difficulty for the Tibetans.

In addition, Tibetan exiles who need to apply under Article 16 of the Immigration Act must be verified by the government as possessing a Tibetan identity. This process

also presents excessive discretion without a clear standard. As such, the Tibetans complained that the practice of verifying the Tibetan identity is without statutory reservation—a principle widely used in jurisdiction and law in Taiwan.⁴⁶¹ In short, statutory reservation means that a government decision is not made without clear legal regulations or without legal certainty. Therefore, the questions in the interviews ascertaining identity can vary, without clear regulations, and the decisions can thus be arbitrary. This explains the existence of Tibetan immigrants who did not pass verification in 2001 but passed the next time—after eight years. During the waiting period for verification, Tibetan exiles cannot have basic rights such as the right to use Taiwan’s public health care system. The *ad personam* decision making shows the incompetence and unfairness of the verification process.

Although there are different legal processes for these two groups of people, for both groups of Tibetan exiles several potential reasons can force them to acquire citizenship in Taiwan. First, Tibetan exiles cannot stay in Taiwan if they do not obtain valid visas. This is not the situation in India or Nepal, where Tibetan refugees can register as foreigners in the system and even obtain travel documents from the authorities.⁴⁶² In South Asia, the CTA can play an important role for negotiating the status of Tibetan exiles and their living conditions.⁴⁶³ However, Tibetan exiles in Taiwan do not enjoy the same political conditions that they do in India. Furthermore, the lingering attitude towards their legal status from the Taiwanese government has

⁴⁶¹ See the Central Regulation Standard Act, an act regulating the promulgation, enforcement, application, and amendment of law and regulations, as well as the Interpretation No 443 of Taiwan's Constitutional Court. Article 5 of the Central Regulation Standard Act reads: “The following objects shall be stipulated by a statute: 1. It is required to stipulate by a statute as the Constitution or a statute expressly stipulated. 2. Stipulation concerns the rights or obligations of the people. 3. Stipulation concerns the organization of a government agency at national level. 4. Other objects with substantial importance shall be stipulated by a statute.” Article 6 of Central Regulation Standard Act reads: “The objects which shall be stipulated by a statute are not allowed to regulate under an ordinance.” The reasoning of the Interpretation No 443 states: “The determination of which freedom or right shall be regulated by law or by rules authorized by the law shall depend on regulated intensity. Reasonable deviation is allowed considering the party to be regulated, the content of the regulation, or the limitations to be made on the interests or freedom. For instance, depriving people’s lives or limiting their physical freedom shall be in compliance with the principle of definitiveness of crime and punishment and stipulated by law; limitations concerning people’s other freedoms shall also be stipulated by law, in the case where there is authorization by the law to the administrative institutions to make supplemental rules, the authorization shall be specific and precise.” See also: Tzong-Li Hsu, “Lunfa Lüming Quexingzhishen Chaongsi Fa Yuanda Fa Guanxiang Guan [Legal Certainty and Judicial Review: Beginning with Analyzing Relevant Interpretations of Justices of Judicial Yuan],” *National Taiwan University Law Journal* 41, no. 4 (2012): 1685–1742, <https://doi.org/10.6199/NTULJ.2012.41.04.02>.

⁴⁶² McGranahan, “Refusal as Political Practice.”

⁴⁶³ Choedon, “The Unintended Consequences of India’s Policy on Citizenship for Tibetan Refugees.”

created extra burdens for the Tibetan exiles trying to obtain citizenship or residence rights. In addition, as Taiwan is not a member of the UN, Tibetan exiles cannot obtain help, or certificates of refugee status, from the UN in Taiwan either.

After the amendment of Article 16 in 2016, the Tibetan exiles who were undocumented immigrants applied for the right of residence. On 29 March 2019, the Immigration Agency held a meeting across governmental departments for nineteen Tibetan cases.⁴⁶⁴ However, although these Tibetans' Tibetan identity was verified, six of them were found having Nepalese or Indian citizenship.⁴⁶⁵ Therefore, the Immigration Agency decided they could not be defined as "stateless" according to Article 16 of the Immigration Act. Afterwards, six of them filed a lawsuit in the Administrative Court with the help of the Taiwan Tibetan Welfare Association and the Legal Aid Foundation of Taiwan. The individual with an Indian passport and other three Nepalese cases filed different lawsuits. The Nepalese case received a verdict from the Taipei High Administrative Court in 2021 and is currently in the process of appeal in Supreme Administrative Court, while the Indian case was delayed and only in the preparation process in court, as of July 2022.⁴⁶⁶ The plaintiffs argued that their Indian or Nepalese passports were bought from human smuggling syndicates when they first flew to Taiwan. In addition, as Tibetan exiles, it is extremely difficult for them to acquire Nepalese citizenship. This information has been confirmed by the Ministry of Foreign Affairs of the ROC.⁴⁶⁷ For example, according to a statement made by the Australian Government Refugee Review Tribunal, "under Nepal's interim constitution of 2007 and Nepal's citizenship act of 2006, a person born in Nepal to Tibetan parents would not gain citizenship of Nepal by birth, unless the person was born in Nepal before the mid-April 1990 and had been living permanently in Nepal and made application for citizenship by birth in the two year period between 26 November 2006

⁴⁶⁴ Yu-de Wen, "Liu Wang Cang Ren Xiang Liu Tai Wan: Tibetan Exiles Want to Stay in Taiwan," *Liberty Times Net*, 29 July 2021, <https://news.ltn.com.tw/news/society/breakingnews/3620566>.

⁴⁶⁵ "Zhi Tai Cang Ren Xing Song Pan Liu Tai Wan Bai Su Fa Yuan : Fei Wu Guo Ji Zhe [Three Tibetans in Taiwan Lose the Lawsuit. The Court: They Are Not Stateless]," *Central News Agency in New Talk*, 19 August 2021, <https://newtalk.tw/news/view/2021-08-19/623385>.

⁴⁶⁶ According to the Taiwan Association of Human Rights, the case involving Tibetan exiles holding Indian passports is much delayed due to lack of cooperation from the Indian government and the Indian representative office in Taiwan. The Indian representative office refuses to explain why the Indian authorities issued temporary passports to these Tibetans.

⁴⁶⁷ IN DU ZI No 1091300343 (2020).

and 26 November 2008.”⁴⁶⁸ The Tibetan Justice Centre also confirmed that the Tibetans in Nepal do not have citizenship or access to it.⁴⁶⁹ As such, these people do not in fact have Nepalese citizenship and should not be deported to these places. In addition, the Nepalese government has been oppressing the Tibetans politically and religiously, in the present day, due to growing pressure from China.⁴⁷⁰ As a result, the Tibetans should not be sent to Nepal, because of risks to their safety. Moreover, they hold the green book issued by the CTA, which has their real names and is their true citizenship paper. Finally, they argued that the government should halt the deportation during the lawsuit.

In 2020, the Supreme Administrative Court issued a ruling allowing five undocumented Tibetan refugees to stay in Taiwan before the court makes a final decision on their nationality.⁴⁷¹ The Supreme Court argued the legislative history of the Immigration Act shows protection for Tibetans; additionally, the court also mentioned the non-refoulement principle for Tibetans’ safety to comply with Article 7 of the International Covenant on Civil and Political Rights (ICCPR).⁴⁷² That is, Taiwan should not transfer people to countries if that transfer might result in inhumanitarian treatment there. Yet in 2021, the Taipei High Administrative Court ruled that these Tibetans are not stateless but, rather, Nepalese nationals, and therefore cannot apply under Article 16 of the Immigration Act in order to stay in Taiwan as stateless Tibetans.⁴⁷³ The Court cited Article 1 and 2 of the Convention on Certain Questions Relating to the Conflict of Nationality Law to argue that states decide who their nationals are to exercise their sovereignty, and that other states should not deny the nationality of the deciding states in order to avoid conflicts of sovereignty. That is, the decision of Tibetans’ statelessness relies on Nepal’s verification of these people’s

⁴⁶⁸ This information can be found in the following ruling: Immigration and Refugee Board of Canada, *Nepal: Whether an individual born in Nepal to Tibetan parents would be eligible for Nepali citizenship, including requirements and procedures; if citizenship by birth is not applicable to said individual, other options available to that person for acquiring citizenship (2012-August 2013)*, 20 August 2013, NPL104549.E, available at: <https://irb.gc.ca/en/country-information/rir/Pages/index.aspx?doc=454759&pls=1&wbdisable=false>

⁴⁶⁹ Immigration and Refugee Board of Canada, *Nepal. Whether an individual born in Nepal to Tibetan parents would be eligible for Nepali citizenship*.

⁴⁷⁰ Human Rights Watch, *Under China's Shadow: Mistreatment of Tibetans in Nepal*, 1 April 2014, <https://www.refworld.org/docid/533e8e654.html>.

⁴⁷¹ Supreme Administrative Court Ruling 784, (2020).

⁴⁷² Article 7 of the ICCPR reads: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

⁴⁷³ Supreme Administrative Court Ruling 784, (2020).

Nepalese passports and whether that citizenship exists. The Immigration Agency and the Ministry of Foreign Affairs contacted the Nepalese government, which confirmed their citizenship. The plaintiffs claimed their names on the passports were not real names, but, from the Tibetan perspective, the difference is minor—e.g., a Tibetan could add the Tibetan religious title “Lama” to the original name Pema Dolma and make it Pema Dolma Lama. Lacking formal diplomatic relations with Nepal, the Ministry of Foreign Affairs asked the Taipei Economic and Cultural Centre in India to contact the Embassy of Nepal in India to verify the passports; the staff there confirmed the passports were not false. Also, the Ministry of Foreign Affairs hired a trusted third company, Dolma Consultant, to investigate the plaintiffs’ Nepalese citizenship—and the company confirmed it. Finally, even though it is difficult to obtain citizenship for Tibetans in Nepal, cases show that the Nepalese government approved the naturalisation of Tibetan exiles if the father is Nepalese,⁴⁷⁴ if they were born before April 1990 and applied between 26 November 2006 and 2008, or if they acquired citizenship in the 1970s because of the enactment of a temporary constitution and naturalisation plan in the late 1970s.⁴⁷⁵ As such, the court ruled that these three Tibetans were Nepalese nationals and rejected their claim.⁴⁷⁶ These Tibetan exiles have now appealed to the Supreme Administrative Court and will not get the result until July 2022. Beside these three Tibetans with Nepalese passports and the three Tibetans with Indian passports in the court, there are two additional undocumented Tibetans who reached out after the other undocumented Tibetans obtain the right to reside; however, according to the Taiwan Association for Human Rights, these two Tibetan exiles have less proficiency in Tibetan languages and other issues and did not continue the process of the application for the residence right. The Taiwan Tibetan Welfare Association confirms these eight Tibetan exiles still live in Taiwan; at least, until July 2022.

⁴⁷⁴ Nepalese citizenship law is discriminatory towards women; if one of the parents is foreigner, only the Nepalese father can pass on the nationality by birth to children. The mother cannot do so. According to the 2015 constitution, children of Nepalese mothers and foreign fathers are only eligible for naturalised citizenship. See Barbara Grossman-Thompson and Dannah Dennis, “Citizenship in the Name of the Mother: Nationalism, Social Exclusion, and Gender in Contemporary Nepal,” *Positions: East Asia Cultures Critique* 25, no. 4 (2017): 795–820, <https://doi.org/10.1215/10679847-4188422>.

⁴⁷⁵ Immigration and Refugee Board of Canada, *Nepal: Whether an individual born in Nepal to Tibetan parents would be eligible for Nepali citizenship*.

⁴⁷⁶ The Taipei High Administrative Court Verdict No 87, (2021).

These cases draw another picture of Tibetan exiles' legal status issue in Taiwan after 2016. In these cases, the government or the court does not argue for the Tibetan identity of the undocumented Tibetans; rather, their statelessness became the focus for their residence right in Taiwan. The Tibetan exiles need passports to enter Taiwan in the first place, but these passports may then become barriers to their obtaining residence rights. The case concerning Tibetans with Nepalese passports was also affected by the fact that the bureaucratic system of Nepal is not as efficient as many other countries; for example, the Nepalese passport system was handwritten until 2001.⁴⁷⁷ To add to that, since the confirmation of citizenship relies on a third party, the Nepalese government did not reply to the request of the ROC to check the plaintiffs' citizenship status.⁴⁷⁸ Also, it is worth noting that the Nepalese government's attitude towards Tibetans is not as friendly as before; Nepal tends to adopt the PRC's framework for the Tibet issue and has currently views it as a matter of "Chinese territorial integrity."⁴⁷⁹ This may be seen in how the Nepalese government has cooperated with the PRC in the past decade: adopting a Mutual Legal Assistance Treaty and the Mutual Legal Assistance Act in 2014, as well as its Border Management System in 2019, to deny Tibetans entry to Nepal and to deport Tibetans who flee to Nepal.⁴⁸⁰ Therefore, sending Tibetan exiles to Nepal is risky for Tibetans without any legal documents. On the other hand, the green book issued by the CTA is not seen as formal proof for Tibetans' legal status by the Supreme Administrative Court. The stateless status of Tibetan exiles in Taiwan is embedded into the citizenship system of Taiwan itself but not their Tibetan identity. The ROC allows its born nationals to have dual nationality; that is, it does not allow immigrants to have dual nationality when naturalising but nationals who were born with one of their parents holding ROC citizenship can hold dual nationality.⁴⁸¹ In these cases, Tibetan exiles proven to have Tibetan identity apply for the ROC citizenship, but cannot obtain it if they have another nationality; that is, they are not naturally nationals in the ROC system but outsiders

⁴⁷⁷ The Taipei High Administrative Court Verdict No 87, (2021).

⁴⁷⁸ The Nepalese government generally does not reply to requests from the ROC; the fact that the staff of the Embassy of Nepal responded to the cases highlighted in this thesis is an exception. See: *The Legislative Yuan Gazette* 105, no. 77 (n.d.): 66–73.

⁴⁷⁹ Human Rights Watch, *Under China's Shadow*.

⁴⁸⁰ "Nepal Border Agreement With China Sparks Fears Among Tibetans," *Radio Free Asia*, 14 February 2020, <https://www.rfa.org/english/news/tibet/border-02142020150551.html>

⁴⁸¹ The relevant discussions may be found in Chapter Three, section III. D, Pages 108-9.

that will take up limited economic and social resources in Taiwan.⁴⁸² Tibetan exiles are ROC legacies without proper legal status that the ROC is bound to take care of, as well as refugees that require a balance between humanitarian considerations and redistribution of social and economic resources.

This series of lawsuits points out the practice of sovereignty by the ROC government to enhance its migration management, by its changing immigration policy and sections of the Immigration Act which results in normalisation of undocumented Tibetans. This normalisation may relieve some Tibetan exiles of their undocumented status but it may also rule out certain “unqualified” undocumented immigrants when the authorities register these undocumented Tibetans. For the latter, before normalisation they might live in an uncertain status with their undocumented status, but the change of law and policy can lead to their deportation by the ROC government, forcing them to take further actions to stay in Taiwan for more uncertain years ahead.

B. Obtaining New Citizenship – To Go Home Again

Tibetan refugees usually come to Taiwan to build up a new life as spouses or migrant workers; as a result, living as legitimate spouses or workers is essential for them to acquire rights, such as the right to work and the right to access public medical insurance. As such, because of these instrumental purposes, getting citizenship or at least a residency permit in Taiwan is crucial for Tibetan refugees. The mobility right is another main reason; especially since it is easier for Tibetan exiles to travel to Tibet with Taiwanese citizenship (added to a continuing Tibetan identity) than it is to travel there with a stateless status from South Asia. This reason can be extremely important, especially for first-generation Tibetan exiles whose parents, siblings or close friends and relatives still live in Tibet.

For example, many of the Tibetan interviewees in this research want to go “back” to Tibet to visit their family and friends. In my interviews with Tibetan refugees in Taiwan, the refugees usually talked about how much they want to go to the “homeland” (meaning Tibet) to visit their family. In the interviews, Tibetan exiles and their spouses

⁴⁸² *The Legislative Yuan Gazette* 105, no. 77 (n.d.): 66–73 (2006).

usually revealed the Tibetan exiles' strong desire to go home—and took it as a primary reason for the application for citizenship in Taiwan. As for the Tibetan exiles in question, seeing their family members in Tibet can be extremely difficult. According to three of the Tibetan interviewees, as a Tibetan refugee in India, applying for traveling approval from the embassy of China there is not an easy task. Accordingly, one of them chose to go to a third country to meet their family. In addition, travel approval from Chinese embassy can only be used once, and the application for the travel documents from the Chinese embassy requires time; one of the interviewees mentioned that it took him more than a year to get the necessary document. Moreover, not every Tibetan can obtain travel documents, even after such a long wait. According to a Taiwanese spouse, Ya-chin, Tibetans originally from different regions may get different results; for people from places such as Lhasa, it can be extremely difficult to get travel documents to go back. Therefore, acquiring another useful travel document can play an important role for Tibetan exiles who want to go home.

However, there also exist some concerns about going to Tibet for Tibetans who are more active in politics. Interviewees who are closer to NGOs and who have publicly participated in movements for the independence of Tibet multiple times in Taiwan and in other states show high levels of anxiety about visiting Tibet. Personal safety could be the primary concern for these activists. For example, one of the most active advocates amongst my interviewees has never visited Tibet. He was born and raised in India. In the interview about visiting Tibet, he said, “I do not want to risk myself by going to Tibet though I wish to do it ... it is too dangerous, and I have the responsibility for the independence movement for Tibet ... I hope one day Tibet can be liberated so that I can visit Tibet without worries.” However, some of the interviewees showed ambiguous attitudes towards this concern. On the one hand, they understand the risk of participating in the movements for Tibetan independence but still take part in them; on the other hand, they believe that they are nobody to the state apparatus of China. With this ambiguous and conflicted mindset, they still try to visit Tibet whenever there is a chance to do so. Therefore, although the worry of being arrested or detained by the Chinese government haunts the Tibetan community, Tibetan refugees who are active in political movements still visit Tibet, using all possible means to do so. In short, “going home” becomes a primary need for Tibetan exiles.

When I interviewed certain Taiwanese spouses, they also mentioned that marriage can be a solution, helping Tibetan exiles to go back home. They discussed it openly before the marriage. After they obtained citizenship, the Tibetan exiles may go home as often as they can. One of the Tibetan spouses was not in Taiwan when I interviewed his Taiwanese spouse; he actually stays in Tibet several months a year because he has a small business there. Once they have Taiwanese citizenship, Tibetans can apply for the Mainland Travel Permit for Taiwan Residents from the Chinese government. This travel permit can be used multiple times within a period of five years. Also, it is much easier to obtain when compared to applying for the entry permit with their Identity Certificate in India. Interviewees with Tibetan names all obtained travel permits and travel with the document without problems. The interviews show that international mobility played an important reason for Tibetans to apply for Taiwanese citizenship and for couples to get married.

Tibetan exiles who migrate to Taiwan and apply for the citizenship there also articulate how they feel about it. As mentioned above, there are instrumental reasons for Tibetans to apply for Taiwanese citizenship. However, as Hess⁴⁸³ and McGranahan⁴⁸⁴ have mentioned, that does not mean Tibetans do not have loyalty to the new identity. Luchun, an approximately sixty-year-old Tibetan who has been in Taiwan for two decades, said that he will be furious if someone doubts that he is a Taiwanese because of his Tibetan identity, but that he will be always Tibetan by his blood. The other younger Tibetan migrants did not express affection to Taiwan so vigorously; however, they participate in democratic elections in Taiwan, and express their worries about Taiwan's future, especially considering present-day pressure from China. Some of them get involved in social movements in Taiwan. These actions show that these Tibetan exiles actively live in Taiwanese society and practice their rights as Taiwanese citizens.

While Tibetans become part of the Taiwanese community, they also preserve their Tibetan identity: an identity including political, cultural, and legal aspects. For them, being Tibetan is not just a label; rather, they practice it in their daily life with their

⁴⁸³ Hess, "Immigrant Ambassadors."

⁴⁸⁴ McGranahan, "Refusal and the Gift of Citizenship."

religion, their lifestyle, and also their way of raising children. India's Tibetan exiled community is particularly close, working hard to preserve their culture—especially when compared to children of Tibetan parents in other countries' communities, who often cannot speak Tibetan.⁴⁸⁵ As a result, the Tibetan couples I interviewed all said to me that they would prefer to send their children to India or Tibet for a time to learn Tibetan languages. Some of them have plans to move back to Dharamshala for some years for children's education in being Tibetans; others will try to build up a Tibetan self-learning camp for their children if they cannot have a long-term overseas plan. A Tibetan exile, Samten,⁴⁸⁶ with his Taiwanese spouse told me that "My child should at least be half Taiwanese and half Tibetan." There are three Tibetan families with children among the interviewees; they were all concerned about the education of their children in Tibetan culture and worried that their children cannot speak Tibetan. Therefore, passing on Tibetan culture and identity to their children is one of the essential cores of the family life—to the extent that some interviewed couples have even made plans to move internationally for the sake of their children's education.

Although being both Tibetan and Taiwanese is not totally contradictory for the Tibetan exiles in Taiwan, it does not mean the attitude of Tibetan community in South Asia does not influence them. Some interviewees showed a hesitant attitude about applying for citizenship, especially those who are more active in the Tibetan Independence Movement or who have worked for the CTA before. Some of them are still in the waiting period before the application for citizenship, so they now have long-term residence permits—but they hesitated to say they will apply for the citizenship. As for those who are active in the movement or who work for the CTA and have already obtained citizenship: they showed the attitude that they can be ambassadors for Tibet in Taiwan, and they made many efforts to promote Tibet and Tibetan issues to the general public in Taiwan.

To sum up, Tibetan exiles in Taiwan acquire citizenship for various reasons, that include improvements to their livelihood and the desire of going home. However, the struggle to be a "good Tibetan" in the understanding of the Tibetan exile community

⁴⁸⁵ Okawa, "Lessons from Tibetans in Taiwan."

⁴⁸⁶ Samten is a pseudonym. For additional detail about Samten, please consult the table of interviewees in Chapter Two.

is still part of the ethos of the Tibetan exiles. Their need for going home shows that Tibetans do not only perceive citizenship as a means of participating in political life or meeting the needs of daily life; it is also a way home. If the refusal of new citizenship in South Asia reflects the nationalist need of Tibet and the political agenda of Tibetans as a group, the desire of going home cannot be fulfilled in that context. However, acquiring another citizenship outside of South Asia will not break the norm of the Tibetan community—and can also be the means of traveling to Tibet. Finally, as for the Taiwanese identity which comes with Taiwanese citizenship: the Tibetans interviewed in this research show mixed but attached feelings towards it.

VI. Tibetans' Identity and Belonging: Recognition, Redistribution and Representation⁴⁸⁷

As seen in the previous sections, Tibetan exiles in Taiwan have faced difficulties based on their citizenship status and the ROC legal structure. Nevertheless, for Tibetans, becoming citizens of Taiwan can be complicated. As Tibetan exiles make a political statement with their personal status while migrating to other states, the acceptance of a new citizenship also means a new identity for them. To stress the political justice for the Tibetan exiles in Taiwan, this section examines the socioeconomic redistribution, cultural recognition and political representation through jurisdiction and government administration.⁴⁸⁸ How do they deal with these two identities and what do these actions mean to them? How do their identities relate to the recognition, redistribution and representation of citizenship?

A. Settling Down or Moving On? Tibetan Exiles' Dilemma in Taiwan

To begin with, Nancy Fraser articulates that justice is to ensure people's participation in different dimensions of lives; a class structure for the economic dimension and a status order for the cultural dimension may result in maldistribution and misrecognition if people are not allowed to fully participate in both dimensions.⁴⁸⁹ Therefore, to ensure

⁴⁸⁷ The framework of the recognition, redistribution, and representation can be found in Chapter One, in the literature review section on Nancy Fraser. See Chapter One, Section V.B, page 23.

⁴⁸⁸ Fraser, "Reframing Justice in a Globalising World."

⁴⁸⁹ Fraser, "Reframing Justice in a Globalising World," 173-74.

people can fully participate in social interactions, it is important to examine whether people face difficulties in obtaining participatory parity in the dual frameworks of economic structure and status order, relating to status equality and cultural recognition.⁴⁹⁰ According to the Mongolian and Tibetan Affairs Commission, the number of Tibetan exiles qualified for the stateless status of the Article 16 in the Immigration Act was 229, before 2016.⁴⁹¹ Afterwards, in 2016, the Ministry of Foreign Affairs revealed that nearly thirty Tibetans used Taiwanese passports to fly to Canada and sought asylum with their Tibetan identity, which made the Canadian government ask the Taipei Economic and Culture Office in Canada to help with their deportation.⁴⁹² The Taiwanese authority found it unacceptable that the Tibetan exiles were using a Taiwanese passport for their next destination. They argued that the Tibetan exiles only wanted to use Taiwanese citizenship as their stepping stone to other countries. The situation was confirmed by Dawa Tsering, the representative of the Tibetan Religious Foundation of His Holiness the Dalai Lama, in an interview with me. The chairperson articulated why many Tibetans tend to move to the European countries or the North America as their final destination:

The Taiwanese authorities complained that Tibetans only want to obtain a functional passport for their destinations. Taiwan is not the place they want to settle and the Taiwanese passport is only the tool to them... True that some Tibetans find it hard to blend in the society and find a proper job in Taiwan as they do not speak Mandarin...

These remarks touch on two things need to be explored: the final destination of Tibetan exiles and the settling issue of Tibetans in Taiwan. First, Tibetans move out of Taiwan after they receive Taiwanese citizenship and a passport. Onward migration, in which refugees or immigrants continue their migration after resettlements or acquisition of citizenship for economic reasons, social connections such as co-ethnic communities or a sense of belonging,⁴⁹³ is not just commonly seen for Tibetans in South Asian, but

⁴⁹⁰ Fraser, "Reframing Justice in a Globalising World," 134.

⁴⁹¹ 140 Tibetan exiles were registered for long term residence in the 2001, and 89 in 2009. *The Legislative Yuan Gazette* 105, no. 77 (n.d.): 66–73 (2016).

⁴⁹² *The Legislative Yuan Gazette* 105, no. 77 (n.d.): 66–73(2016).

⁴⁹³ Marnie Shaffer and Emma Stewart, "Refugees on the Move: Resettlement and Onward Migration in 'Final' Destination Countries," *Handbook of Culture and Migration* 9781789903, no. March (2021): 341–50, <https://doi.org/10.4337/9781789903461.00037>; Rosa Mas Giralt, "Onward Migration as a Coping Strategy? Latin Americans Moving from Spain to the UK Post-2008," *Population, Space and Place* 23, no. 3 (2017), <https://doi.org/10.1002/psp.2017>.

also for Tibetans in Taiwan.⁴⁹⁴ Hess mentions that when the Indian government changed the policy of issuing travel documents—the Identity Certificate—to Tibetans in 2000, choosing to no longer ask for a visa or an invitation letter from people or institution(s) sponsoring their travel, Tibetans rushed to apply for it, with the hope of going to the US or Canada. Hess uses “occidental longing” to describe Tibetans’ desire to move to the “West”.⁴⁹⁵ However, Hess also points out that moving outside of India raised the culture issue in the Tibetan society there as they worry that in the US or other states it will be more difficult to keep their culture alive. In India, the Tibetan community is strongly bonded with Tibetan identity.⁴⁹⁶ Therefore, although the trend of onward migration exists among Tibetans, there are doubts about identity and culture issues connected to it. Furthermore, sometimes onward migration can be bifurcated or delayed; for example, some Tibetan exiles in Taiwan stay in Taiwan to earn a living and save money while their children and other family members have already moved on to the US—and their final goal is to migrate to the US for family reunion.⁴⁹⁷ This can happen for practical reasons as well; those who came to Taiwan in the 1990s found that the Tibetan products such as Dzi beads were popular in Taiwan and they accumulated capital with these products and moved to the US or Canada when they saved enough money.⁴⁹⁸ Onward migration can be complex in terms of economic and social support. While the Tibetan exiles might find Taiwan more prosperous than India and easier to save money even as blue-collar labourers, nonetheless the Tibetan community in Taiwan is much smaller than other countries for the community support with only few hundred registered in the bureaucratic system.⁴⁹⁹ The reason to leave India might be different than the reason to leave Taiwan in economic perspective but taking the US or Canada as their final destination can be a conclusion that the two migrations share.

Secondly, Tibetan exiles face different kinds of difficulties concerning settling in Taiwan due to their backgrounds, such as their having been born in Tibet or in India.

⁴⁹⁴ Hess, “Immigrant Ambassadors.”

⁴⁹⁵ Hess, “Immigrant Ambassadors,” 133.

⁴⁹⁶ Hess, “Immigrant Ambassadors,” 156.

⁴⁹⁷ Yang, “Wei Shi Me Lai.”

⁴⁹⁸ Yang, “Wei Shi Me Lai.”

⁴⁹⁹ There are 635 Tibetans in Taiwan as per the statistics of the household registry system—and as of August 2020. This information is provided by the Department of Household Registration of the ROC.

Tibetan exiles who were born in India have a major issue connected to living in Taiwan; that is, language. Learning Mandarin is the main issue for Tibetans born or raised in India. Also, the cultural difference between India and Taiwan, the latter of which is deeply influenced by the Han Chinese culture, is larger than the cultural difference that Tibetans born in Tibet experience in Taiwan, as they have encountered Han Chinese culture in Tibet. However, even for Tibetans who have learned Chinese before, as most of them are born in Tibet, the job opportunities they have are still limited. The education they had in Tibetan schools in the Tibetan exile community may not be useful for them to find a job in Taiwan. The difficulty of finding the proper job is another reason why Tibetan exiles often have their own businesses or do the jobs they did not want at the beginning. Tibetans exiles also face the same situation, as Hess points out that Tibetans who move to countries such as the US are forced to work in jobs they would not consider in India, such as server or caterer.⁵⁰⁰

One of the Tibetan interviewees, Tashi, left Tibet for India in 2005, when he was a high school student.⁵⁰¹ The CTA had schools for the newcomers from Tibet, but if they could not pass the exams for transferring into the local high school after a certain amount time, the CTA would arrange them to learn to skills for work. (For example, the boys were usually asked to paint thangka, a Tibetan Buddhist painting.) Tashi got the opportunity to learn to fix cars for one to two years and an internship for one year. In 2012, his uncle in the Netherlands advised him to learn Chinese and migrate to the Netherlands. However, he did not go to the Netherlands and found the economic life in India is devastating. Afterwards, he met his Taiwanese spouse, Chia-Hui, who had travelled to India to learn about Tibetan Buddhism. In 2014, they got married and Tashi migrated to Taiwan eventually. After moving to Taiwan, they established a business importing Indian and Tibetan goods and introducing Tibetan food to Taiwanese people.

Tashi's story is not unique in Taiwan, as many Tibetan marriage immigrants launched their own businesses in Taiwan eventually. It is common to see members of the Tibetan community participating in mercantile activities such as selling Dzi beans

⁵⁰⁰ Hess, "Statelessness and the State."

⁵⁰¹ Tashi is a pseudonym. For additional detail about Tashi, please consult the table of interviewees in Chapter Two.

in Taiwan⁵⁰² or starting shops in Nepal or India.⁵⁰³ Their business can include tourism, catering, retail shops with Indian or Tibetan products. In addition, their Taiwanese spouses also play important roles in their business. According to the Taiwanese spouse Tien-Ying,⁵⁰⁴ many Taiwanese spouses started retail businesses when their Tibetan spouses could only stay with a visiting visa. With a business, they used trips back to India to import commercial products. Afterwards, when the Tibetan spouses become able to stay through long-term residency, they continue this career as they have become used to this lifestyle.

However, Tibetan exiles who look for positions in private companies other than their own businesses face language barriers if they are not fluent in Mandarin. In addition, immigration policy in Taiwan does not provide many services to help immigrants to settle in society. One of the Tibetan marriage immigrants, Samten, describes his experience with trying to settle in Taiwan:

I remembered those days when I went to class for learning Chinese, the teacher ... arranged ... some teachers from elementary school. Therefore, s/he taught children in the day and taught us in the evening. The textbook was designed for children. How ridiculous ... I also have difficulties to blend in the class as the other marriage immigrants are female. They can easily bind together but not me ... After some time, I just gave up and never returned ...

Samten was well educated in India and used to work for the Tibetan government in exile. He did not want to do blue collar work. However, without fluency in Chinese, his job options were limited in the city in which he currently lives. He met his Taiwanese spouse Pei-Yin in 2008, when Pei-Yin visit Dharamshala as a tourist. They had a child in 2011, got married in 2014 and decided to move to Taiwan from India. Compared to other Tibetan transnational marriages, they did not experience much difficulty regarding the visa and long-term residence application process because of the child. Samten obtained a one-year visa for his first visit whereas the other Tibetan exiled immigrants got half a year at the same time of application. As for work, he once got a job in an international company, and as this company had plans to expand their

⁵⁰² Yang, “Wei Shi Me Lai.”

⁵⁰³ Barbara Demick, *Eat the Buddha: Life, Death and Conflict in a Tibetan Town* (New York, NY: Random House, 2020); Bruno, *Blessings from Beijing*.

⁵⁰⁴ Tien-Ying is a pseudonym. For additional detail about Tien-Ying, please consult the table of interviewees in Chapter Two.

business to India, his Indian experience became an advantage. Nevertheless, the company asked him to complete employee orientation in the company branch in China. He tried to enter China via Hong Kong using the Identity Certificate but was deported back to Taiwan in 2015. Eventually, he gave up this job because he could not complete proper orientation. Today, he works at a small business he started, in the city in which he lives with the family.

The lack of Tibetan community is also another concern for Tibetans in Taiwan. The close relationship between individual Tibetans and the community gives Tibetan exiles fundamental support while life as stateless individuals also makes Tibetans dependant on the Tibetan community.⁵⁰⁵ However, in the interviews, Taiwanese spouses also mentioned that in Taiwan the Tibetan community is not as strong as it is in other states. Even though they have constant social events at which they gather, such as traditional holidays, demonstrations or protests, or the celebration of the Dalai Lama's birthday, the daily life of the community, for the individual Tibetan, is not as close to other Tibetans. Since the Tibetan identity is a core value for many Tibetans—to the point of their maintaining a stateless status⁵⁰⁶—the isolated society is not the best condition for them to preserve their culture and raise children with a Tibetan identity.

The settlement of Tibetans has highlighted issues attributed to economic problems and the sense of belonging; the acquisition of residence rights or citizenship do not guarantee recognition of their cultural citizenship in society or economic redistribution for them. Tibetans who want to maintain Tibetan bonding within their community cannot ignore the lack of Tibetan connections in their local Taiwanese community. Cultural recognition is the gateway to citizenship, but it does not transfer into support or resources from the government or the society. Ameliorating their economic conditions has been the reason for Tibetans to migrate and settle in Taiwan, but the limited job choices for people who are not familiar with the local languages

⁵⁰⁵ Bruno, *Blessings from Beijing*.

⁵⁰⁶ Melvyn C. Goldstein, "Ethnogenesis and Resource Competition Among Tibetan Refugees in South India," in *Ethnicity and Resource Competition in Plural Societies*, (Berlin, New York: De Gruyter Mouton, 1975), 159–86, <https://doi.org/10.1515/9783110898170.159>; Goldstein, "Ethnogenesis and Resource Competition among Tibetan Refugees in South India: A New Face to the Indo-Tibetan Interface"; McGranahan, "Refusal as Political Practice."

push them to reconsider their migration choice. Onward migration in the Tibetan exiled community in Taiwan also reflects these problems: their migration to Taiwan makes Tibetan exiles face new challenges connected to cultural recognition and economic redistribution—both of which challenges might push them to leave. This echoes Fraser’s theory of justice: naming the obstacles to full participation to society, due to cultural misrecognition and economic misdistribution, as creating injustice.⁵⁰⁷ However, the Tibetan interviewees in this research describe taking another path: staying in Taiwan for family or for work, and acknowledging the pursuit of cultural recognition and socioeconomic redistribution is an ongoing process combined with their new gained citizenship.

B. Taiwanese Identity for Tibetans

Starting with the Tibetan recognition of the economic redistribution, Tibetan exiles’ life in Taiwan binds with their Tibetan identity, but their political representation does not seem stable before or even after they obtain Taiwanese citizenship. Their missing political representation may be attributed to the shift of the sovereignty claim of the ROC due to democratisation, Tibetans’ onetime quasi-citizenship position was replaced by political conflicts over the citizenship status of PRC citizens, Tibetans, and Tibetan exiles in Taiwan. At the same time, while Taiwan pursues its sovereignty, reinforcing its border control and maintaining a strict immigration policy have become the norm, for them to conform with the international standard—with what many other sovereign states do in the present day.⁵⁰⁸ That is, border control is not just a process of examining visitors’ papers. Not only may it involve selecting immigrants and controlling migration flow,⁵⁰⁹ but it is also a mechanism to assert a state’s sovereignty by enhancing strict regulations and hard border control in a globalised world.⁵¹⁰ Tibetans face the new scenario of a government that does not treat them as potential citizens anymore, but, rather, as threats to the status quo and to population management, and as recipients of a discriminatory immigration policy that does not

⁵⁰⁷ Fraser, “Reframing Justice in a Globalising World.”

⁵⁰⁸ Sara L. Friedman, *Exceptional States: Chinese Immigrants and Taiwanese Sovereignty* (Oakland, CA: University of California Press, 2015).

⁵⁰⁹ Sarah Collinson, “Visa Requirements, Carrier Sanctions, ‘Safe Third Countries’ and ‘Readmission’: The Development of an Asylum ‘Buffer Zone’ in Europe,” *Transactions - Institute of British Geographers* 21, no. 1 (1996): 76–90, <https://doi.org/10.2307/622926>.

⁵¹⁰ Wendy Brown, *Walled States, Waning Sovereignty* (New York, NY: Zone Books, 2010).

include blue-collar labours.⁵¹¹ The acquisition of Taiwanese citizenship or residence rights for Tibetan marriage immigrants and undocumented Tibetans begins with non-functional political representation by the Mongolian and Tibetan Affairs Commission, other organisations such as Tibetan representative office, the Tibet Religious Foundation of His Holiness the Dalai Lama, and non-governmental organisations. The Human Rights Network from Tibet to Taiwan, the Taiwan Association for Human Rights, and the Taiwanese-Tibetan Family Rights Association, may support Tibetans and convey their voices to the government administration or the Legislative Yuan, but these organisations participating from outside the government—another form of political representation—also experience many difficulties to achieve their goals for Tibetans to live in Taiwan.

Applying for the Taiwanese citizenship and settling in Taiwan brings the Taiwanese identity issue to the Tibetans. As mentioned above, just as other immigrants do, Tibetans confront conflicts between Tibetan identity and Taiwanese identity, and might foster multiple loyalties to the Taiwanese society and Tibetan identity as a result.⁵¹² Becoming Taiwanese people may even spark resistance against the PRC in a different way.

Unlike the overseas Taiwanese people interviewed in this research, the Tibetan exiles do not care much about their Tibetan status on paper. Their paperwork may present them as born in Tibet as a province of China, born in India, or just born in Tibet. They obtain these documents by arbitrary behaviours of bureaucratic systems, as those systems have the discretion to decide these details for them. Many of Tibetan exiles do not have a specific attitude towards these papers; sometimes their Taiwanese spouses pay more attention to these details and some of them went to correct their spouses' status to ensure nothing goes wrong in the future during their application for citizenship. However, for undocumented Tibetans, the acquisition of long-term residence or citizenship means more substantially to them than a nominal birthplace on paper. Therefore, these interviewees do not reveal any uncomfortable attitude towards the inconsistent Tibetan stance on paperwork.

⁵¹¹ Chung, *Immigrant Incorporation in East Asian Democracies*; Tseng, “Yin Jinwai Ji Lao Gongdeguo Zuzheng Zhi.”

⁵¹² McGranahan, “Refusal and the Gift of Citizenship.”

On the other hand, some Tibetan subjects are active in their social life but avoid political involvements with Tibetan affairs, as that involvement might create troubles for their family in Tibet or their own trips to Tibet. They worry about censorship by the PRC, given collaborators of the PRC active in Taiwan.⁵¹³ As a result, for some Tibetan immigrants, having a secure private life is of primary importance for them, in order to protect their families in Tibet and to ensure the safety of their future trips there. That does not mean they do not care about the politics or future of Tibet; they still strongly identify themselves as Tibetans and have constant and close connections with friends and family members in Tibet or India. To balance these competing pressures, these Tibetans may not be active in public demonstrations for Tibetan human rights or for Tibet's sovereignty—such as openly attending the memorial events for Tibetan uprising on 10 March—but they still express their support the Tibet Independence movement and concerns for Tibet's future under China's authoritarian regime. However, the reality of the growing power and public influence of the PRC makes Tibetan exiles and the international community hold a passive and pessimistic attitude towards Tibet's political future. As for the politics in Taiwan, the Tibetan interviewees demonstrated worry that Taiwan might be the next Tibet and be taken over by the PRC. For them, the independent status of Taiwan makes a shelter and the Taiwanese identity offers them secured access to Tibet. In short, Taiwanese citizenship serves as a practical haven for the Tibetan exiles, whereas these interviewees identify themselves personally as Tibetans more than as Taiwanese. However, as ordinary Tibetans, many of these subjects do not participate in the Tibetan movement to a great extent.

Turning to the cases of activists in the Tibetan movement in Taiwan, Nyima and Namgyal, who were once undocumented, have strong Tibetan identification.⁵¹⁴ Both have shown deep appreciation for their Taiwanese citizenship; however, they do not see themselves as Taiwanese. Like many others, they enjoy exercising their rights with Taiwanese citizenship and fulfil their obligations as citizens. Nevertheless, also

⁵¹³ As mentioned in Chapter Three, the PRC has used economic incentives and political influence to build up connections with parties or business in Taiwan and worldwide.

⁵¹⁴ Nyima and Namgyal are both pseudonyms. For additional detail about Nyima and Namgyal, please consult the table of interviewees in Chapter Two.

like many Tibetans in the US or other countries,⁵¹⁵ they take this citizenship as a way to accomplish their goals and promote Tibetan rights in Tibetan and Taiwanese societies. Namgyal is active in both Taiwanese and Tibetan communities—he tries to bring the two societies together with events for Tibetan rights, lobbying actions in the Legislative Yuan, and support for Taiwanese human rights issues by joining different kind of social movements, from anti-death penalty movements to demonstrations against China’s aggressive actions towards Taiwan. For Nyima and Namgyal, Taiwan is their comfort zone now. They both see Taiwan as a second home in which they can live and thrive, and they do not want to migrate to other states.

These cases of undocumented immigrants show that even though Tibetans might not identify themselves as Taiwanese, they demonstrate their connections with Taiwan via residing there and participating in Taiwanese society. This sense of belonging can be discovered with both their identification and their movements. Some Tibetans constantly visited Tibet after getting Taiwanese citizenship. However, among these cases, some also have strong Taiwanese identification. Nevertheless, the interviewees in this research who were born in India have never been to Tibet, even after obtaining travel assurances through Taiwanese citizenship. Therefore, getting citizenship in Taiwan was a tool to help them to live in Taiwan and to achieve their goal in Tibetan movements.

Holding another citizenship for Tibetans can be a hard decision, given their collective political agenda. However, the decisions of these specific Tibetans reflect the institutional needs of Tibetan individuals. These needs include improving their socioeconomic conditions. Tibetan exiles’ performative acts concerning their identity and citizenship have long been complicated and collective, but migration to the third country such as Taiwan grants some flexibility for them. The Tibetan exiles there still show strong resilience regarding their rights to stay in Taiwan. Also, to advocate for better economic opportunities, they decide whether to confront legal authorities in courts or in government organs—or, indeed, to protest through their performative acts in their daily life. These performative acts echo the performative citizenship theory that

⁵¹⁵ Hess, “Immigrant Ambassadors.”

emphasises people's acts on pursuing their rights to construct their citizenship.⁵¹⁶ In general, Tibetans may face settling issues when they migrate to Taiwan, especially connected to job opportunities and language learning. These difficulties also connect to identity in different ways. That is the socioeconomic, cultural, and political issues of identity have transformed into something new. During this transformation, Tibetan exiles depict their Taiwan identity in their own distinctive way especially in terms of political identity. (In addition to the political aspect of their new identity, the practice of Taiwanese identity brought up new patterns to Tibetan exiles in Taiwan: connected to social and economic factors such as public medical insurance and new career environments.) The collective Tibetan identity is the drive for many Tibetans to pursue their exiled lives, but some Tibetan interviewees I spoke to restrain their political support because of fear and the uncertainty of Tibet's future— whereas some of them still continue their activism against China. Tibetans perform their Tibetan identity in every aspect, but the political aspect includes complicated conflicts concerning Tibet's future. The Tibetan exiled community has thrived in past decades, promoting democracy and the stateless status among Tibetan exiles; however, the self-censorship of Tibetans concerning their political actions and the ever-growing influence of the PRC, both on Tibetans and in the international community, attenuate international support to the Tibetan exiled community and affects resistance against China's autocratic governance. Political citizenship takes part in the daily practice via voting and participating in the civil society. The changing politics of Taiwan itself have changed the political participation of Tibetans, however, given that the political representation of Tibetans in Taiwan was in the Mongolian and Tibetan Affairs Commission, and given Taiwan's informal diplomatic relations with the CTA in its governmental system—where they were seen as the past of ROC, and not as future citizens for the ROC, independent from China. The Tibetan exiles in Taiwan who were seen as political agents were seen outside of the system, such as in civil movements for long-term residence—the stay that the undocumented undertake with the hope of being regularised. However, when Tibetans were absorbed into the citizenship system, they became marriage immigrants or stateless persons who are qualified to obtain citizenship. Their Tibetan identity as a political identity became invisible.

⁵¹⁶ Engin F. Isin and Greg M. Nielsen, *Acts of Citizenship*, ed. Engin F. Isin and Greg M. Nielsen (London: Zed, 2008).

The political participation of Tibetan exiles shows the lack of efficient political representation for immigrants like them. As Fraser has pointed out, political representation holds a decisive character which influences both cultural recognition and socioeconomic redistribution⁵¹⁷—so much so, that the lack of effective political representation casts a shadow on all cultural and socioeconomic aspects of life. The Tibetan exiled community shows a high degree of solidarity between fellow Tibetans even though they might have different ideology. However, this comradeship does not translate into political pressure that can be exerted to change the government's insufficient and arbitrary immigration policy. Taiwan's democratisation has been criticised for being localisation/indigenisation, in which the welfare of the immigrants has been ignored.⁵¹⁸ To create a politically just citizenship, democratic participation should be incorporated to reflect group interests through representation.⁵¹⁹ However, immigrants such as Tibetan exiles have joined the democratic system for political representation in Taiwan, but their limited number—only 635 in the household registry⁵²⁰—marginalises them in the voting system. In addition, Tibetan exiles' history of diaspora and special citizenship status has differentiated them from other immigrants in Taiwan, mostly female marriage immigrants; that is, the political representation of marriage immigrants from other immigrant groups can hardly represent Tibetan exiles.⁵²¹ Without political representatives speaking up for the benefit of Tibetan exiles, Tibetans' rights are often overlooked and neglected as a political subject in the political domain. The conflict between representative democracy and the fulfilment of political representation for full citizenship results in Tibetan exiles' repeatedly obstructed immigration process to Taiwan.

VII. Conclusion

⁵¹⁷ Fraser, "Reframing Justice in a Globalising World."

⁵¹⁸ Chung, *Immigrant Incorporation in East Asian Democracies*.

⁵¹⁹ Fraser, "Reframing Justice in a Globalising World."

⁵²⁰ This is the number of Tibetans in Taiwan as per the statistics of the household registry system—and as of August 2020. This information is provided by the Department of Household Registration of the ROC.

⁵²¹ In recent years, there have been marriage immigrant members of the Legislative Yuan from each of the two main parties: the Kuomintang and the Democratic Progressive Party. From 2016 to 2020, Lin Li-chan (林麗珍) was the first Cambodian marriage immigrant to be a member of the Legislative Yuan. Another is Malaysian marriage immigrant, Loh Meei-Ling; she became a member of the Legislative Yuan in 2020.

Defining the legal status of Tibetan exiles in Taiwan is a dialectical process, involving the history of the ROC, Tibet, the current geopolitics, the bureaucratic system of Taiwan, and the political standing of Taiwan as well as the legal framework of the ROC. The pursuit of the independence of Tibet resonated with the recognition of the independent status of the ROC; the ROC government reached out to the CTA for an informal diplomatic relationship while stopping its infiltration of the Tibetan exiled community in the early 1990s. However, when the ROC went through democratisation, the legal status of Tibetan exiles became more ambiguous. Though Tibetans are nationals in the ROC constitution, their legal status of being nationals was diluted through constitutional amendments, along with the legal status of the “people of the mainland area.” After the amendments, both groups now hold a status aligning with immigrants. As a result, Tibetan exiles are treated as immigrants without recognisable travel papers, as the Taiwanese government does not see the Identity Certificate from India as a legitimate travel document. In addition, Tibetan exiles are also recognised as stateless persons in the Immigration Act. Before 2016, Tibetan exiles who were marriage immigrants faced the complex problem of having of a triple identity; one that delayed their residence rights and their family reunion. The lingering attitude of the government towards their legal status has created extra burdens for the Tibetan exiles. In addition, the procedure of deciding Tibetan exiles’ Tibetan identity contains a high level of administrative discretion. This frustrating process did not keep Tibetans and their Taiwanese spouses from fighting for their rights. Their strategy was---and is---to be treated as marriage immigrants. This reflects the Tibetan exiles’ preferred identity as not being nationals of the ROC, and also represents how Tibetan exiles modify their legal status using legal framing in the Taiwanese framework. In this research, three formerly undocumented Tibetans emphasise not just their Tibetan status, but also their stateless status. A Tibetan identity did not naturally constitute Tibetan exiles’ legal status but, instead, formed only one of the requirements in the legal system for obtaining the long-term citizenship. In a lawsuit filed by the undocumented Tibetans, this restrained policy reflects the state’s arbitrary management of Tibetans’ legal status. This arbitrary management is due to the political sovereignty change and constitutional amendments, both of which resulted not just in the crisis of citizenship but also in the physical deportation of vulnerable undocumented immigrants who had been living in Taiwan for years. During the process of arguing for citizenship, the dynamic interactions between the ROC government and the Tibetan people reflected the

changes of citizenship of Tibetan exiles in Taiwan, which stemmed from the changes of Taiwan's sovereign people—from Chinese to Taiwanese—after democratisation.

Tibetan exiles in Taiwan share conflicts of identity with other Tibetan exiles worldwide. Taiwanese citizenship satisfies their institutional needs and serves as the key to travel back to Tibet or to other destination countries. But as seen in socioeconomic redistribution and cultural recognition aspects of their Taiwanese lives, the Tibetans there lack support for finding suitable jobs, for promoting or maintaining Tibetan culture and for obtaining a sense of belonging. Another worry from the political aspect consists of Tibetans facing multiple conflicts: difficulties with a stateless status as well as an unforeseen future for an independent or highly autonomous Tibet under the Chinese government. Tibetan exiles fear surveillance by the agents of the PRC in Taiwan, which restrains them from participating in the Tibetan movements. This imbalance of the fulfilment of political citizenship shows structural faults of the Taiwanese legal system. and requires individuals to ameliorate their situations by attending civil movements or challenging governmental arrangements with the legislators. Nevertheless, civil movements for Tibetans' promotion for a free Tibet are sometimes restricted by Tibetans themselves—e.g. through Tibetans' self-censorship when attending events deemed as against the PRC due to the PRC's exerting political pressure. As such, the practice in Taiwan of Tibetan exiles' political citizenship, reflects both the complexity of the Tibetan issue and Tibetans' fear of the PRC. Furthermore, Tibetans find it difficult to achieve political representation when they perform their political rights in the democratic system of Taiwan. Taiwan's current democracy may not provide substantial representation in its government system for marginal groups with limited number of people even if Tibetans are active in civil movements and work to raise awareness of their rights in Taiwan

Chapter Six. Overseas Taiwanese People and Tibetan Exiles in Taiwan: A Comparative Analysis

I. Introduction

This chapter compares the fluid citizenship of the Tibetan exiles and overseas Taiwanese people interviewed in this research and discusses how people construct their legal framing to confront conflicts of legal status. Tibetan exiles face the confusion of being both recognised and denied as nationals, immigrants, and stateless persons—sometimes consecutively, sometimes concurrently, and sometimes in the same place. Overseas Taiwanese confront different interpretations attached to their Taiwanese citizenship by other countries; in doing so, they run the risk of being deprived of their Taiwanese identity legally. In some cases, overseas Taiwanese and Tibetan exiles in Taiwan hold or claim statelessness as a legal status which stems from their unstable citizenship status, even though statelessness affects these groups differently—e.g., Tibetan statelessness substantially influences their rights in daily life. The previous chapters illustrate how people perform citizenship outside international norms and challenge those norms using citizenship discourse in courts, in society, and in the international realm. This chapter’s comparison begins with an overview of the similarities and differences of these two groups’ legal status. Based on the performative citizenship theory of Engin Isin,⁵²² this research examines how the groups perform their identity given various situational factors. It then turns to analysis of how people perform their contested citizenship, their legal mobilisation and different aspects of citizenship in their lives connected to socioeconomic, cultural and political dimensions. Nancy Fraser’s social justice theory,⁵²³ in which reflects on previous social justice theories which focus on maldistribution and misrecognition, emphasises the significance of political representation to achieve democratic justice in the globalisation world.⁵²⁴ Throughout this chapter, I examine the performative acts of people using the approach applied in this thesis, e.g. considering connections

⁵²² Isin and Nielsen, *Acts of Citizenship*.

⁵²³ Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (Cambridge: Polity Press, 2008).

⁵²⁴ Fraser, “Reframing Justice in a Globalising World.”

between contested sovereignty and citizenship, legal consciousness and legal mobilisation. I then apply Fraser's justice theory to examine three aspects of citizenship: recognition, redistribution and representation—and thus analyse how people exercise their rights construct their citizenship. By doing so, I also return to my research question: digging into how statelessness interacts with these three aspects and also seeing how my two groups of research subjects practice these three aspects of citizenship.

II. Liminal Citizenship Compared: Overseas Taiwanese and Tibetan Exiles

Contested citizenship can be attributed to the contested status of state sovereignty, but the degree of the contestation also differs from case to case. Gëzim Krasniqi uses Kosovo and the Turkish Republic of Northern Cyprus as examples to illustrate how states with different degrees of international recognition and state-building influence their liminal citizenship.⁵²⁵ The same principles can be applied to Taiwan and Tibet. For Taiwanese citizens and the Tibetan exiled community, both face increasing threats from the Chinese government with China claiming sovereignty over Tibet and Taiwan. The international participation of Taiwan and Tibet as quasi-states has become more difficult as China itself has become more influential in the international community. From the perspective of international law, Taiwan's statehood is flawed, given its ambiguous stance on China along—especially since ROC constitutional law implies a territory claim on China—as well as its lack of international recognition.⁵²⁶ However, while Taiwan has a fully developed democracy and a sovereign people within its territory, Tibetan exiles do not enjoy the establishment of such a state—since Tibet as a territory has long been governed by China. From an international perspective, both the Taiwanese government and the Tibetan government in exile have engaged in non-formal diplomatic relations with other states. Although these two governments enjoy some forms of informal international recognition, Taiwan has established more extensive international relations compared to the Tibetan government in exile. For example, the Taiwanese government successfully ensures that its identity documents such as passports are recognized in many countries. With different degrees of

⁵²⁵ Krasniqi, "Contested States as Liminal Spaces of Citizenship."

⁵²⁶ Crawford, *The Creation of States in International Law*.

sovereignty contestation in play, the relevant liminal citizenship demonstrates variations.

The contested status also makes the government manipulate individual identities. Taiwanese people can face an identity crisis: whether within countries that accept their passports but whose bureaucracy may still randomly change a Taiwanese identity to a Chinese one, or within countries whose authorities arbitrarily and systematically switch their identity. For the case in Norway, the Norwegian government marked a Taiwanese identity as a Chinese one in response to economic coercion by the Chinese government, itself stemming from a diplomatic conflict centred on Liu Xiaobo's Nobel Prize.⁵²⁷ Like these overseas Taiwanese, Tibetan exiles in Taiwan face arbitrary treatment by the government, in which the government can change the exiles' sovereignty claim and shift that sovereignty to Taiwan. States, whether having contested sovereignty or not, practice their sovereignty as a major top-down process of unilaterally deciding people's citizenship status, to meet international or domestic needs. People who hold vulnerable citizenship status are easy targets for these governments to remould citizenship to fit their political agenda. To reverse the imposition of an unwanted citizenship status, overseas Taiwanese and Tibetan exiles in Taiwan apply different strategies involving their identity discourse.

Like statehood, contested citizenship yields an unstable legal status both in domestic and international terms. For the Tibetan exiles, their citizenship issued by the Tibetan government in exile not only grants them the right to participate in the Tibetan exiled community, such as through voting,⁵²⁸ but also links to their right to live in South Asia, such as in Indian refugee settlements intended specifically for them.⁵²⁹ However, though this citizenship may connect Tibetans from one Tibetan community to another, it does not serve as a functional citizenship outside of the Tibetan

⁵²⁷ Ivar Kolstad, "Too Big to Fault? Effects of the 2010 Nobel Peace Prize on Norwegian Exports to China and Foreign Policy," *Political Science Review* 41, no. 2 (2020): 207–23, <https://doi.org/10.1177/0192512118808610>.

⁵²⁸ Sandeep Sharma and Pradeep Nair, "Democracy for a Territoryless and Stateless Polity: The Elections of Tibetans-in-Exile," *SSRN Electronic Journal* 9, no. 2 (2017): 77–84, <https://doi.org/10.2139/ssrn.2806926>.

⁵²⁹ Fiona McConnell, "Governmentality to Practise the State? Constructing a Tibetan Population in Exile," *Environment and Planning D: Society and Space* 30, no. 1 (2012): 78–95, <https://doi.org/10.1068/d0711>; Stephanie Roemer, *The Tibetan Government-in-Exile: Politics at Large* (London: Routledge, 2008), <https://doi.org/10.4324/9780203928141>; Tibet Justice Center, "Tibet's Stateless Nationals III."

community. Tibetan exiles cannot travel and settle easily across provinces in India or buy real estate for their shops and homes.⁵³⁰ Tibetan exiles confront more problems if they need to travel outside of their host countries since they cannot obtain typical travel documents from the host countries with their Tibetan exiled citizenship. As a result, they must apply for travel documents intended for stateless persons in India. Unlike Tibetan exiles, Taiwanese people do not have problems accessing rights associated with citizenship within Taiwan and while traveling across borders. Outside of Taiwan, however, problems with Taiwanese citizenship became more apparent—such as when recognition of Taiwanese passports does not guarantee the recognition of ROC nationality and Taiwanese identity. Overseas Taiwanese can experience foreign authorities labelling them as Chinese in countries that do not accept Taiwanese passports, such as Morocco, and in countries that do, such as Iceland or Norway.

Despite these different scenarios involving contested citizenship, Tibetan exiles and Taiwanese overseas both experience the degradation of their citizenship at different levels. For Tibetans, their exiled status cannot be legally functional unless it has been recognized as a refugee status, whether in international norms or according to the domestic norms of receiving countries. The Tibetan exiled community does not accept refugee status as a replacement for their contested citizenship; instead, they claim that they are stateless due to the loss of Tibetan statehood, and thus revert to the discourse of contestation. On the other hand, overseas Taiwanese people may experience the denial of their Taiwanese identity when they travel to other countries. One difference between the two groups is that, unlike the Tibetans, many Taiwanese people are unfamiliar with the degrade of their citizenship—until, that is they see their Taiwanese citizenship not being treated as a legitimate identity but as a lower-tier identity under the umbrella of Chinese citizenship. Taiwanese overseas do not have a uniform interpretation of Chinese identity or a consistent attitude to these incidents. Nevertheless, as Taiwanese identification becomes stronger within Taiwan, there is a growing tendency for some overseas Taiwanese to insist on their Taiwanese identity: to continue the debates of Taiwanese citizenship in court and in foreign bureaucratic systems, using the legal discourses of political identity or ethnic identity without attaching the argument of sovereignty and citizenship.

⁵³⁰ Tibet Justice Center, “Tibet’s Stateless Nationals III.”

A. Performing Rights with Statelessness

The performance of contested citizenship also reveals how people view sovereignty. Since the main reason for the existence of liminal citizenship is contested sovereignty, Taiwanese and Tibetan exiles are required to take stances on the sovereignty with their citizenship while their identity is in question. Assuming—and arguing for—the correlation of citizenship and sovereignty, Tibetans take the statelessness and utilize its discourse, even though difficult life conditions attached to statelessness and the problems of long-term exile have inspired debates about that status for decades. As for overseas Taiwanese, international recognition of their citizenship is stronger than that of the citizenship of Tibetan exiles, but the occasional denial of a Taiwanese identity forces Taiwanese to reflect on sovereignty discourse. However, the Taiwanese interviewees in this research describing their experiences in Iceland and Brazil also put forward the possibility of Taiwanese taking statelessness as their legal identity. The approach may seem similar to that of Tibetan exiles, in terms of keeping the citizenship discussion open, but the difference is that these two interviewees—along with other informal Taiwanese informants taking statelessness—did not claim statelessness through their own initiative but, rather, took this option when foreign authorities offered it as a substitute for Chinese citizenship. That is, compared to Tibetans' discourse on their statelessness—both political as concerns the sovereignty claim and connected to group identity, for the self-identification of being Tibetan exiles, overseas Taiwanese claiming statelessness may not be as consistent as a choice. However, the latter demonstrates the frustration of facing a confusing sovereignty and the arbitrary administrative behaviours of foreign authorities. Overseas Taiwanese people are far from being seen as stateless persons according to the international law even though their nationality status is ambiguous;⁵³¹ still, statelessness serves as productive in meaning for them as it does for the Tibetan exiles—a way of pushing political messages about their citizenship.

⁵³¹ Taiwanese people are not treated as citizens of the PRC in practice in international communities, but they can be assigned a nominal Chinese identity by foreign governments to deliberately erase the Taiwanese identity. Such is the case in Morocco, where authorities register Taiwanese as Chinese people, but do not treat Taiwanese people as Chinese while examining official paperwork (passports or other identity documents), or when requesting a visa for entrance to Taiwanese people (while Chinese are visa-free in Morocco for ninety days.)

Statelessness has become a means of highlighting not only the difficulty of contested citizenship but also the complexity of extrication from this liminal citizenship. Taking a stateless status does not resolve the problems that Tibetan exiles or Taiwanese overseas people's experiences with their vulnerable citizenship status; rather, it reflects the problems with contested citizenship while people perform their citizenship. Engin Isin uses the expression "citizenship acts" to describe how people perform citizenship, and engage themselves in using their legal, social, and economic rights.⁵³² The adoption of statelessness is a measure of refusal of the current citizenship system for both Tibetan exiles⁵³³ and overseas Taiwanese interviewees, but they do not let statelessness stop them from acquire rights related to citizenship. Therefore, they continue to perform their rights with a stateless status while presenting their Tibetan or Taiwanese identity.

Taking statelessness is also a way of performing citizenship. Evaluating people's experiences in this research leads to the observation that even though statelessness may mean non-citizenship, it does not mean that people do not exercise their citizenship after taking a stateless status. Rather, it signifies one of the variety of ways people perform citizenship, even when it is non-citizenship. Also, the interviews for this research show that individual overseas Taiwanese and Tibetan exiles do not take stateless status in order to abandon certain rights or to restrict themselves in the citizenship domain. Instead, they take statelessness to highlight their identity and to argue for recognition of that identity as a legal one. A stateless status can be productive: both as resistance against an unwanted legal status and as a means to bring people together in advocacy. What these individuals advocate for, through statelessness, is for their ethnic identity to be recognised—to be part of a legal status containing it.

However, the stateless status can still be seen, here, as a forced identity. When foreign authorities do not recognise their citizenship, these groups feel they may not have other options to avoid the Chinese identity attached to the legal status with which

⁵³² Engin F. Isin and Greg M. Nielsen, eds., *Acts of Citizenship* (London: Zed, 2008); Engin Isin, "Performative Citizenship," *The Oxford Handbook of Citizenship*, no. March (2017): 499–523, <https://doi.org/10.1093/oxfordhb/9780198805854.013.22>.

⁵³³ McGranahan, "Refusal as Political Practice."

they do not identify. Whether the stateless status is an option offered by these foreign authorities or not, taking it—even with the purpose of maintaining a Taiwanese or Tibetan identity—isolates people according to the norms of international law or domestic law. Refusing the existing citizenship system also means there is no citizenship fit for their specific situation. Therefore, statelessness, a citizenship status outside of citizenship, become one of their few options. For people who hold liminal citizenship: if their acquisition of the citizenship they desire is blocked, they might be forced to revert to statelessness.

The performative acts of these two groups show that under restricted conditions, such as those of contested citizenship and the actions of an arbitrary political agenda taken against such pursuit of vulnerable citizenship, individuals can exercise their citizenship—not only to change citizenship’s content but also to build up discourses for such performances. Their performative acts extend from their legal citizenship status to other domains that could be decided by this status—especially in the scenarios with Tibetan exiles. Different forms of citizenships may seem inconsistent to others, especially people outside of these ethnic groups, but just as the practice of statelessness does not mean to be seen as a resolution for the groups, so too these performances aim to show possible and imaginary ways to interrogate citizenship. Here, in this thesis, contested citizenship is the subject in question.

III. Contested Citizenship beyond Statelessness: the Significance of Social and Cultural Dimensions of Citizenship Intertwined with Social Participation

Apart from exercising citizenship rights with statelessness as performative citizenship, cases in the previous chapters also illustrate different characteristics of citizenship, made apparent while people pursue it. Through Nancy Fraser’s justice theories, this section explores the citizenship of minorities, such as overseas Taiwanese and Tibetan exiles in Taiwan, reviewing the citizenship discourse of these two groups to examine the cultural and economic aspects of citizenship in a multicultural environment.

Fraser's justice theory provides a lens through which to consider the democratic justice of citizenship. As she articulates justice is to ensure individuals to participate equally in society:

(T)he most general meaning of justice is parity of participation... Overcoming injustice means dismantling institutionalized obstacles that prevent some people from participating on a par with others, as full partners in social interaction. Previously, I have analysed two distinct kinds of obstacles to participatory parity, which correspond to two distinct species of injustice. On the one hand, people can be impeded from full participation by economic structures that deny them the resources they need in order to interact with others as peers; in that case they suffer from distributive injustice or maldistribution. On the other hand, people can also be prevented from interacting on terms of parity by institutionalized hierarchies of cultural value that deny them the requisite standing; in that case they suffer from status inequality or misrecognition.⁵³⁴

Fraser identifies economic distribution and cultural recognition as means of examining people's participation in society, which Fraser believe is the basis of justice. She continues to stress that both categories interact with each other but cannot be undermined as secondary to one another.⁵³⁵ She also points out the political nature of these two dimensions of justice "in the sense of being contested and power-laden; ... they have usually been seen as requiring adjudication by the state."⁵³⁶ The contested citizenship practice involving the socioeconomic and cultural domains by the Taiwanese overseas and Tibetan exiles in Taiwan may raise problems for them due to their lack of full participation in these two domains. Furthermore, the examination of these two domains reveals the political nature of them while people look for full participation of socioeconomic and cultural life in society.⁵³⁷

First, the ethnic identity that Taiwanese interviewees in Norway argue for, in their legal claims, in administrative appeals and in the original lawsuit to correct their identity in the administrative system, signifies a pursuit of cultural recognition. In their statement, they eschew Taiwanese statehood problems as a strategy, since the sensitive question of sovereignty is avoided by the foreign authorities; instead, they work to establish a Taiwanese identity by referring to ethnicity and by creating

⁵³⁴ Fraser, "Reframing Justice in a Globalising World," 74.

⁵³⁵ Fraser, "Reframing Justice in a Globalising World."

⁵³⁶ Fraser, "Reframing Justice in a Globalising World," 74.

⁵³⁷ Fraser, "Reframing Justice in a Globalising World."

substantial facts of the identity shown as their legal identity. This attitude can also be attributed to the Taiwanese government's current diplomatic path. For example, in recent years, the promotion of Taiwan's attendance at official meetings of the WHO emphasises the health rights of the Taiwanese people and Taiwan's contribution to the international health system—but does not emphasise Taiwan's sovereign status.⁵³⁸ This does not mean the political aspect is missing in this approach; instead, both the promotion of Taiwan's involvement in the WHO and the campaigns in Norway convey the importance of maintaining a Taiwanese political identity for Taiwan people, and the significance of its being recognised officially by foreign authorities as a formal or even legal identity rather than being submerged into Chinese citizenship. While the sensitivity of Taiwan's sovereignty may prevent other authorities from processing the participation of Taiwan or Taiwanese people, the authorities and people of Taiwan interpret these difficulties from cultural or human rights perspectives—depoliticising the argument in order to interact with other international partners and deliver their opinions. However, the recognition of ethnicity and the interaction with other countries are political even though it is not a directly political participation. That is, the political meaning of this approach is conveyed through its behaviours to bring the arguments of Taiwanese citizenship to the government and courts along with the argument of ethnicity, enriching the content of the ethnic citizenship argument by including the political connotations behind it. Moreover, even if they shifted their focus to ethnic identity, the Taiwanese people still found it challenging to be recognised because of the lack of mechanism of their participation in the Norwegian society, with which their right to argue for cultural recognition was restricted. These performances echo Fraser's point about the importance of the political dimension of justice, even when that aspect is not directly mentioned. The strategy of diversion involves addressing this importance via other relevant and influential dimensions—all to highlight the unspoken but decisive political sovereignty issue in relation to justice in citizenship.

As for Tibetans who do not maintain a stateless status, certain Tibetan exiles in Taiwan interviewed for this research express their reasons for adopting Taiwanese citizenship. These Tibetans have struggled with difficult livelihoods in South Asia for

⁵³⁸ Sảng Huỳnh Tâm, "Taiwan's Quest for World Health Assembly Participation," *Strategic Analysis*, 25 March 2022, 1–20, <https://doi.org/10.1080/09700161.2022.2039583>.

decades; avoiding the scenario of statelessness allows them to take a new citizenship to relieve their socioeconomic burden. Tibetan exiles immigrating to Taiwan and advocating for Tibetans' right for Taiwanese citizenship—whether as marriage immigrants or undocumented immigrants—does not mean lessening or sacrificing their Tibetan identity. While Tibetan exiles stress their efforts in relation to Tibetan culture and the Tibetan bonds they share with their fellows back in South Asia or Tibet itself, Tibetan identity is still performed in their daily life: with their religion, their culture, their businesses (e.g. Dzi beads),⁵³⁹ their children's education, and their continual participation in the exiled community and government in exile. Their citizenship acts still abound with their Tibetan identity—culturally, politically, and economically—although their sovereignty claim is not attached to their citizenship status. However, their stories about the difficulties of finding jobs in Taiwan also show the obstacles for them to pursue full participation in society economically without institutional support.

Taking statelessness may make a significant political claim connected to citizenship and sovereignty. However, choosing not to attach the sovereignty issue to the citizenship claim, as mentioned in the section examining overseas Taiwanese, does not mean that citizenship acts must exclude political aspects of citizenship. That is, similar to what is found in socioeconomic and cultural life, political discourse contains political influences and interactions.⁵⁴⁰ In these struggles, people challenge their citizenship status by applying other principles as their resistance in order to transform the citizenship itself.⁵⁴¹ Just as in the interviews with overseas Taiwanese people and Tibetan exiles, their acts reform or aim at reforming the citizenship status they hold—while they refuse the legal identity and further claim statelessness, bring the issue into campaigns, or even in their daily resistance without a formal charge against the decisions of authorities. While examining the performance of citizenship, political, cultural and economic dimensions interrelate with each other—and all influence an individual's fulfilment of rights. Also, it is not because the political aspect is overlooked that they do not include political citizenship; rather, because the political dimension involves sensitive questions sovereignty and delicate international relations, individuals may find it even more difficult to argue for a citizenship involving

⁵³⁹ The relevant discussions may be found in Chapter Five, section VI. A., page 196.

⁵⁴⁰ Fraser, *Scales of Justice*.

⁵⁴¹ Isin, "Performative Citizenship."

sovereignty issues that require government-level resolutions. This attitude, stemming from the inability of governments and administrations to resolve the sovereignty problem, instead brings to bear arguments emphasising cultural, socioeconomic or ethnic aspects of identity, in order to ask foreign authorities to confront contested citizenship—a contestation that should not be solved merely by denying the identity in question. That is, unresolved sovereignty disputes—which are highly intertwined with geopolitics—should not justify foreign authorities’ denial of the identity rights of people with contested citizenship; rather, by shifting the focus from political sovereignty disputes to ethnic identity, and cultural and socioeconomic aspects of identity, people with contested citizenship participate in local institutions to advocate for their citizenship rights. However, the strategy of refocusing on the socioeconomic and cultural aspect of citizenship also shows the lack of a mechanism for overseas Taiwanese and Tibetan exiles to fully participate in society for their cultural recognition and for socioeconomic redistribution. Reflecting on the redirection of cultural and socioeconomic citizenship, Fraser’s justice theory points out not only the core issue of the political aspect’s decisive and inevitable character, but also the need for a more inclusive approach to establishing democratic participation. The scenario above describes how tackling problems of citizenship rights without relating to the political aspect will eventually prove deficient—that such an approach will encounter problems posed by important political issues and will be hindered by a lack of institutional democratic participation. That is, individuals might look for other means to perform their citizenship, in order to eschew political difficulties, but then find the cultural and economic aspects of citizenship bound to political mechanisms for participation culturally and economically.

The stories of overseas Taiwanese and Tibetan exiles in Taiwan illustrate cross-state experiences, showing that, in a globalised world, the establishment of identity is an experience of cross-cultures and cross-ethnic groups—requiring understanding of one’s own national identity building and the understanding of foreign countries’ stance on one’s citizenship. That is, rather than seeing the experiences of these two groups as an example of challenging the state-territorial principle, as Fraser

might suggest,⁵⁴² this thesis interprets them as being more about the application of citizenship in different territorial states, while those same states assert their sovereignty for border control or immigration management. The parity of participation for Taiwanese overseas and Tibetan exiles in Taiwan is a cross-state citizenship practice, compared to the application of their citizenship in foreign states, where democratic participation is, in most cases, mainly for insiders of the society. Given these factors, the individuals in this research might focus on cultural and socioeconomic participation—to bypass the political meanings of these aspects—as political participation requires membership in the system. The research discusses current political participation from different domains, but the missing part of democratic participation in institutions aligns with Fraser's requirement for democratic participation in her justice theory. However, this research also provides different forms of participation within the legal system and bureaucratic system. Could these types of participation—involving legal mobilisation—perhaps fill gaps left by a lack of institutional participation?

IV. Legal Mobilisation Applied in Civil Movements

Using evidence from the overseas Taiwanese and Tibetans exiles in this research, it becomes clear that there are diverse ways in which people challenge policies with their legal discourse. They use legal tools such as protests, lawsuits, administrative appeals, official or non-official administrative complaints, and meetings with government bodies, to request that their right to citizenship be recognised. By engaging with government, courts and society—in all of these forms of legal mobilisation—individuals or groups challenge administrative decisions and legal norms.⁵⁴³ The legal mobilisation here aims at changing the law or regulations as well as policy.⁵⁴⁴ With contested citizenship, the interviewees in this research applied the measures above to seek redress of their legal identity. Relatedly, this approach also

⁵⁴² Fraser, "Reframing Justice in a Globalising World," 80-81.

⁵⁴³ McCann, *Rights at Work*; Anne N. Costain, "Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization," by Michael W. McCann. Chicago: University of Chicago Press, 1994. 372p. \$65.00 Cloth, \$18.95 Paper," *American Political Science Review* 89, no. 1 (March 2, 1995): 211–12, <https://doi.org/10.2307/2083111>.

⁵⁴⁴ McCann, *Rights at Work*.

provides another angle to examine political participation, drawing off discussions of the political dimension of justice—in other words, that which relates to “who is included in, and who excluded from, the circle of those entitled to a just distribution and reciprocal recognition.”⁵⁴⁵

The legal framework of society and the interaction between the actors and society are both crucial for achieving goals. During legal mobilisation, resistance may include legal actions of individuals and social movements of groups. Both approaches have shown state-specific contexts, which create varying grounds for conflict resolution. One example of such a state is Morocco, a country which has much improved its political regime and human rights in the last decade, but which is still classified as a closed autocracy by the V-Dem Institute.⁵⁴⁶ Chu-Chi,⁵⁴⁷ the interviewee who recounted the denial of her Taiwanese identity in Morocco, revealed that it is difficult to exert any resistance in this type of political climate, even for foreigners like her. Daily resistance can be applied, such as reminding other Moroccans about her Taiwanese identity, but any escalation is avoided. It is not only the official attitude towards Taiwan or Tibetan exiles that creates huge differences; the political regime of the host country in question is also a concern for people considering legal mobilisation. As the recognition of citizenship relates to official attitudes of the government, it is important that the government system or the judiciary system have mechanisms for people to argue for their rights. Even though it does not mean that resistance is impossible in these non-democratic regimes—as Engin Isin has pointed out, performative acts cross prior assumptions such as polities⁵⁴⁸—whether to claim these rights or not involves the higher risks in autocracies than in democratic polities—meaning that people must consider if the consequences are bearable. According to Chu-Chi, the unfriendly bureaucracy and police in Morocco make her fear causing any trouble; she worries that an uncooperative attitude may result in deportation and force her to leave her husband.

⁵⁴⁵ Fraser, “Reframing Justice in a Globalising World,” 75.

⁵⁴⁶ Vanessa A. Boerse et al., “Autocratization Changing Nature?”

⁵⁴⁷ Chu-Chi is a pseudonym. For additional detail about Chu-Chi, please consult the table of interviewees in Chapter Two, and her recounted experiences in Chapter Four, section VI.A, page 135 and 138.

⁵⁴⁸ Isin, “Performative Citizenship.”

Besides the legal system, raising awareness among the public is often seen, whether through individual actors or groups, via public and social media. These actions have two dimensions: to make identity conflicts known in the society of the host countries, or to make the plight of contested citizenship known within ethnic groups. Furthermore, participation in society and ethical groups not only raises awareness of liminal citizenship, but also gathers peoples' voices for further rights claims. For the former dimension, to have a movement is to gather support within host countries and to increase pressure on the government for legal reform—especially in democratic countries. For the latter, support from people in the same ethnic group expands the movement from involving only people in the host country to including people from other places. Also, the use of social media breaks the boundaries of geographic space, connecting like-minded people to advocate for the movement and to provide material support through fundraising. In short, these legal mobilisations are not only a movement for, or stemming from, specific groups of people or individuals living in a specific place; rather, with these movements, people of the same ethnic groups, people living in the host country and people caring about Taiwanese citizenship or Tibetan exiles are associated—and thus work together to push the movement forward. In this way, mobilisation becomes transnational and international, involving discourses of rights alongside disputes concerning contested citizenship.

Different legal mobilisations exist relating to different stages of settlement procedures. During applications for residency rights and for citizenship, as well as during the process of settlement, overseas Taiwanese and Tibetan exiles deliver arguments and initiate campaigns about their citizenship. For Tibetan exiles in Taiwan, the procedure starts before their arrival in Taiwan and lasts through their acquisition of Taiwanese citizenship. Some undocumented Tibetan immigrants have endured uncertainty for years. Even given several amendments of the Immigration Act—in 2000, 2008, and 2016—to regularise their residency rights, not all Tibetans have met the requirements. As of July 2022, when the thesis was finished, eight of the undocumented Tibetan immigrants still have not obtained citizenship and thus face the risk of deportation. Also, for Tibetan exiles in Tibet and for overseas Taiwanese, recognition of ethnic identity lasts for decades—and the maintenance of the awareness of their identity difficulties also requires long-term efforts from them. As

legal mobilisation may last for years and different stages, it is irrevocably entangled with people's daily lives.

Discussions of legal mobilisation in this research have demonstrated the strong agency of Tibetan exiles in Taiwan and overseas Taiwanese people. Unlike unilateral research on legal frameworks, legal mobilisation in this research provides a bottom-up approach to examine people's legal framing and the content of contested citizenship. Whether the actors are individuals or part of a group or groups, in the short term or the long term they cultivate their contested citizenship in order to declare their own identity—one not decided by other authorities. In addition, the actors concerned may involve not only groups or individuals who confront crises of identity, but also their community. Many Tibetan exiles in Taiwan may not belong to a homogeneous campaign, because of their ideological diversity and the differences in their conditions of immigration, but a commitment to Tibetan identity unites the Tibetan community in support of Tibetan exiles' life in Taiwan: especially in the campaign for undocumented immigrants' residency rights and citizenship. Collective efforts in the movement can be seen in the legal mobilisation of overseas Taiwanese people, including their fundraising lawsuit against the Norwegian government, the Taiwanese American Citizens League's campaign concerning the 2020 general census in the US,⁵⁴⁹ or simply support from social media or forms of offline media. Through these movements and support systems during legal mobilisation, conundrums related to citizenship become more visible to people within or without the ethnic group and community, contributing to the identity-building process.

The aforementioned discussions of legal mobilisation also detail the pursuit of political representation in government systems—which individuals undertake in order to be seen as a member in local society and thus entitled to recognition and redistribution.⁵⁵⁰ In political struggles, not all overseas Taiwanese people find fellow advocates committed to initiating campaigns for obtaining political representation. This is because, for overseas Taiwanese worldwide—for example, Joseph,⁵⁵¹ the

⁵⁴⁹ The relevant discussions may be found in Chapter Four, section V, pages 130-32.

⁵⁵⁰ Fraser, "Reframing Justice in a Globalising World."

⁵⁵¹ Joseph is a pseudonym. For additional detail about Joseph, please consult the table of interviewees in Chapter Two, and his recounted experiences in Chapter Four, section VI.A, 141-47.

Taiwanese interviewee in Norway—participation in society requires a long-term effort to make connections in local society, as well as an understanding of larger frameworks such as laws and conventions that not every individual has the ability to access. Applying legal discourses in spaces such as courts of law, administration systems, or real life, legal mobilisation intended to practice political participation in the government’s judiciary and administrative bodies is not just meant to change or challenge current political discourses of legal identity—but also meant to be a reformulation of legal identity, through the participation of people. However, legal mobilisation cases also illustrate that such reform cannot be sustained by the advocacy of an individual person and their ethnic group alone. Rather, they reveal that organising and sustaining civil movements to advocate for their identity requires solidarity from the ethnic groups in question, as well as and support from local society, to achieve substantial political participation and the further realisation of political representation. With political participation requiring further reform, reviewing relevant cases also illuminates the relationship between cultural and ethnic identity and political identity. The next section focuses on this, and notes that while the political aspect may seem to have a decisive influence on citizenship, the recognition of cultural and ethnic identity can also sometimes serve as a bridge to fuller political participation. Defining this identity enriches the discourse on political identity and assists the pursuit of full socioeconomic life.

V. From Recognition Onward: Citizenship Acts Defining Identity for Other Rights

The process of building identity affects the formulation of citizenship. Even though Fraser may see the political dimension as the master frame—the frame deciding who can make claims for redistribution and recognition⁵⁵²—for certain groups of people to challenge current legal recognition is possible not only in the traditionally-defined political realm, but also outside institutions. That is, though actions such as are found in legal mobilisation and campaigns for identity recognition may lack a formal political representation, they are still accountable for political participation in society. This section takes one step back and digs into the issue of recognition to examine its political dimension and how it relates to other rights.

⁵⁵² Fraser, "Reframing Justice in a Globalising World."

Considering the stories in previous chapters, we may see how the struggle for citizenship involves the self-identity of two groups of people. For Tibetan exiles, conflicts in the exiled community concerning statelessness and Tibetan identity have been shown by debates about the acquisition of new citizenship. However, the strong self-identification of “being Tibetan” still can be seen in the group, albeit alongside different political orientations. Migration to Taiwan may not greatly affect the Tibetan exile community’s dilemma with the acquisition of citizenship, but it can neutralize the political discourse of staying stateless in order to maintain Tibet’s group identity. Under Taiwanese legal context, statelessness is not chosen to make a political statement but, rather, becomes a necessary condition for people who are undocumented immigrants. The new Taiwanese citizenship comes with institutional opportunities for Tibetan exiles, with which they can exercise their rights to work, live, and travel, ensuring economic growth in their lives too. Their political participation is practiced along two axes: Tibetan movements and Taiwanese local political events. This double practice of citizenship does not create conflicts for immigrants who strongly identify with their original citizenship;⁵⁵³ indeed, since the democratic environment of Taiwan provides Tibetans the freedom to hold protests, as well as events promoting Tibetan culture, they see the practice of these civil rights as an opportunity to highlight Tibetan culture and Tibetan rights in Taiwanese society. The double allegiance to Taiwan and Tibet does not keep them from pursuing their agenda to uphold their Tibetan identity and to promote Tibet. The acquisition of Taiwanese citizenship merges with the process of reaffirming their Tibetan identity in Taiwan.

Unlike Tibetan exiles in Taiwan, overseas Taiwanese people have mostly avoided their identity crises, until they face the denial of Taiwanese citizenship; afterwards, they perceive the question of Taiwanese citizenship as a contested citizenship. Over the decades, as Taiwanese identity has grown within Taiwan, the Chinese identity in Taiwan has been weakened, including in the cultural domain, by highlighting cultural influences from other countries in the area and from the island’s indigenous peoples. Democratisation therefore has diminished the Chinese identity

⁵⁵³ McGranahan, “Refusal as Political Practice.”

and boosted the Taiwanese identity among the Taiwanese people.⁵⁵⁴ In short, compared to Tibetans, the Taiwanese identity was consolidated and promulgated after the 1990s in the public sphere—and its connotation is still a matter of debate between different ethnic groups in Taiwan.⁵⁵⁵ The Taiwanese identity is fluid in and of itself, and ambiguous in legal status with the citizenship of the ROC. The cases in this research show that Taiwanese identity is associated with “Taiwanese citizenship” under the framework of the ROC. Interviewees have argued for their Taiwanese citizenship to be recognised as their nationality, but not as the ROC nationality. This deviation in the definition of citizenship is another example of how the rise of the Taiwanese identity has reformulated the citizenship of Taiwanese people—especially in how they prefer to refer to Taiwanese citizenship rather than that of the ROC, as the latter implies a nominal Chinese identity.

Within the campaign to secure identity recognition, acts of advocacy also connect to the legal recognition of such an identity, which involves sequences of reactions to international relations, domestic law systems’ rulings on specific identity, and settling necessity such as accommodations, jobs or other socioeconomic resources. Cultural recognition may not directly give grounds for political identity, nor directly facilitate legal recognition, but the struggle with identity involves discourses of cultural recognition that relate to the legal recognition that maintains such an identity in society and in the legal system. That is, though cultural discourses constitute a great part of the recognition of citizenship, this recognition does not stay at the cultural level but also extends to the political sphere. Recognition contains political meaning, that results in spill-over effects to influence an identity’s definition, whether people claim the identity as a political one or not.

On the other hand, this pursuit of recognition also aims at one’s ability to exercise other rights. It is clear that improving their socioeconomic conditions is one

⁵⁵⁴ For more on this point, consult Chapter Four, section III, pages 118-26. Also see the following poll concerning changes in the Taiwanese identity vs. the Chinese identity of Taiwanese: <https://esc.nccu.edu.tw/PageDoc/Detail?fid=7804&id=6960>

⁵⁵⁵ These ethnic groups consist of the foreign provincials (*Waishengren*), local provincials (*Benshengren*), and indigenous people. The largest population is the local provincials (*Benshengren*), who are mainly the Hoklo and the Haka people—the Hoklo people make up 66.4% of the whole Taiwanese population. “The 2013 Estimated Haka population and Hakka Identity: 103 Nian du tai min di qu ke jia ren kou tui gu ji ke jia ren tong wei tuo yan jiu cheng guo,” accessed 14 Feb 2022, <https://www.hakka.gov.tw/file/Attach/1990/1/491012343871.pdf>

of the main incentives behind Tibetan exiles' leaving South Asia;⁵⁵⁶ stories told in this research have revealed Tibetan exiles' working lives in Taiwan and how their lives influence their attitudes towards the acquisition of citizenship. As the right to work is associated with a legitimate legal identity, having the right of residence is necessary for Tibetans to work in Taiwan—otherwise, they must bear working conditions without institutional protections. During the application of the right of residence, the cultural recognition of Tibetans is strongly approved by the government of Taiwan, with its understanding of Tibetan cultures and arguments of sovereignty. However, due to the lack of refugee schemes for Tibetans, the doubt centred on motivations for migration, and the changes to Taiwan's political climate after democratisation, cultural recognition does not translate to a recognition of political identity, and, thus, to the acquisition of other basic rights. In other words, cultural recognition cannot secure Tibetan exiles' right to work; instead, recognition must operate at the political and legal level, in order that these Tibetan exiles to be seen as legitimate immigrants or citizens, so that they can work. This does not mean that the importance of cultural recognition is overvalued. Indeed, cases of overseas Taiwanese included in this research may tell another side of the story. Unlike to Tibetans, struggles centred on cultural recognition have seen the rise of differentiating Taiwanese from Chinese, alongside the rise of a specific Taiwanese identity. Cultural recognition acknowledges a variety of people and affirms the existence of a specific ethnic group although it does not necessary result in legal recognition of the political identity.

Defining one's identity through cultural recognition is seen through the daily performance of citizenship. Cultural recognition is one of the decisive ways for people to define themselves, but the close connections between cultural aspects of citizenship and other aspects constitute the complexity of citizenship. In the case of Tibetans, the pursuit of full citizenship of the host countries may seem contradictory to their pursuit of cultural and political identity as Tibetans. Acquiring new citizenship while carrying the Tibetan identity is one of several possibilities to make Tibetans more visible in other cultures and countries outside of South Asia. Cultural recognition still forms an important part of their lives with advocacy efforts and daily practices of Tibetan traditions—at least for the first generation. For Tibetan exiles, migrating to

⁵⁵⁶ Choedup, "From Tibetan Refugees to Transmigrants," 317.

Taiwan and being both Tibetan and Taiwanese cannot be simplified as being culturally Tibetan and politically Taiwanese, or some other similar combination; it is both culturally and politically Tibetan and even economically Tibetan—e.g. with Tibetan shops and restaurants—and it is both politically and economically Taiwanese, given the immersion in Taiwanese culture day by day.

VI. Political Representation: Reason or Result?

The previous discussion inclines towards cultural recognition and its influence. It again reminds us that the emphasis of recognition can be deficient when it comes to the justice of citizenship.⁵⁵⁷ To examine the justice of citizenship—and according to Fraser’s three-dimensional theory of justice⁵⁵⁸—participation in the political realm is impossible to ignore. In this research, the stories of overseas Taiwanese and Tibetan exiles in Taiwan reveal how people approach political representation for their identity to be seen at the government level.

Tibetan exiles in Taiwan who hold prominent cultural recognition usually face difficulty in turning that recognition into citizenship rights; thus, they mobilise to be accepted in the citizenship system. From the marriage immigrants’ movement along with the movement of undocumented immigrants—with the assistance of NGOs—their mobilisation sought to make them visible as political subjects with the right to citizenship. These movements involving legal discourse aim to have Tibetans representing themselves or being represented by deputies; their lack of institutional political representation does not preclude Tibetans expressing themselves in courts or in other official systems. That is, before entering the citizenship system and being granted the right to democratic participation, immigrants are required to have political representation so as to access the right to citizenship. The requirement of political representation is constant across time—e.g. before or after the acquisition of citizenship. In a multicultural society, citizenship should ensure ethnocultural diversity and representative of minorities.⁵⁵⁹ However, with the limited number of Tibetans in Taiwan, their representation there is rather through non-governmental groups such as

⁵⁵⁷ Fraser, “Reframing Justice in a Globalising World.”

⁵⁵⁸ Fraser, “Reframing Justice in a Globalising World.”

⁵⁵⁹ Kymlicka and Norman, “Return of the Citizen.”

the Tibetan welfare associations and other human rights organisations, as the low representation in political participation requires additional non-official representation from outside of the government.

Similar to those of the Tibetans, the stories of overseas Taiwanese show how they argue for their Taiwanese identity to foreign governments or in courts—and that to be recognised as Taiwanese in governmental systems requires the means of delivering their legal discourse in the state apparatus. Overseas Taiwanese interviewees in democratic countries used the judicial system or argued within the bureaucratic system for their identity to be registered as a nationality legally. They also use social and public media to gather support and to fundraise for their lawsuits and advocacy movements. These acts in the system and in society not only raise public awareness but also convey people's opinions in the system (often accompanied by pressure from society.) To achieve political reforms connected to identity, the lack of formal diplomatic resources—i.e. formal political representatives in foreign countries—also compel people to seek bottom-up measures to present their legal discourse on identity.

As for the question of citizenship, political representation is the key for people to participate in the system. As seen in this research, immigrant groups, especially those from contested sovereignty, face difficulties at the outset, in trying to be heard in the government system without representatives. Alternative platforms provide people lack full civic rights the ability to represent themselves inside administrative systems and outside of them; reforms may engage local people, including immigrants' spouses and members of the local community. Stories of overseas Taiwanese and Tibetan exiles in Taiwan show that political representation is necessary not only for citizens to engage with the political system, but also for immigrants or expats to practice their citizenship in their daily practices with alternative forms. On the one hand, political representation represents a citizenship right, which is one of the characteristics of full citizenship; on the other, the political representation plays a crucial role to connect the different aspects of citizenship, culturally and socioeconomically, to state. Political representation constitutes the pursuit of citizenship through substantive actions; it is also part of citizenship. Political representation is the reason people can express their complex discourse on

citizenship—yet, moving from the other direction, the implementation of political representation can be the result of performing citizenship acts.

A. Political Representation and its Influence on Other Aspects of Citizenship

With discussions of political representation, changing their status from contested citizenship to full citizenship allows people a certain degree of political participation to argue for their citizenship status. However, the lack of reliable political representation not only influences the expression of the political opinions but also affects people's voices in other domains. Nancy Fraser emphasises that political representation plays a constitutive role in states' jurisdiction systems and can decide other aspects of citizenship—that is, socioeconomic distribution and cultural recognition.⁵⁶⁰ For instance, Tibetan exiles' commitment to their culture is not just about this aspect of Tibetan identity, but also relevant to government policy and the distribution of resources. In addition, one of the major obstacles facing Tibetan exiles in Taiwan is the opportunity to obtain work, especially for those who are not familiar with Mandarin. But the job market requiring that immigrants learn this language is frustrating for Tibetans, and thus strongly affects their qualification for work in Taiwan. Since government policy serves key functions in immigrants' registering and for settling, Tibetans' political representation should have provided input to the government system in order to adjust policy. However, the low political presentation of Tibetans limits their influence—that is, without any balance meant to highlight minority rights. As such, even though the Tibetan identity is recognised by Taiwanese authorities for the residence rights and as concerns Tibetan culture identity, their insufficient political participation, resulting in a shortage of resources for preserving their culture, limits the development of that culture and unsettles what might otherwise be stable lives. In the interviews for this research, details of Tibetan exiles' lives describe the interactive relations between political representation, and cultural recognition and socioeconomic distribution—as the first one holding a decisive position relative to the others. In the government under the current system of the Taiwanese regime, Tibetan exiles' joining in as citizens does not enhance the citizenship discourse as concerns their cultural recognition and socioeconomic redistribution. Even though there exist some

⁵⁶⁰ Fraser, "Reframing Justice in a Globalising World."

pronounced difficulties with Tibetans' status, the significant movement for citizenship does not continue; indeed, most of the stories in this research show that they turn these difficulties into personal challenges facing new immigrants. The absorption of Tibetan exiles into the Taiwanese citizenship system normalises the existence of individual Tibetans in society but may obscure the uniqueness of Tibetan exiles and flatten both the discourse of their cultural identity and their desire for improving their economic life. This can be a common situation for immigrants in places where systematic support may not contribute substantially to their citizenship—and where the idea of being ideal new immigrants stops them from continuing their request for proper distribution, as should be their right.

Turning to overseas Taiwanese people: for them, cultural recognition might show that Taiwanese culture exists as a complex mixture of diverse cultures and identities—and also, might distinguish itself from the political statement of being Taiwanese.⁵⁶¹ The question remains, however, as to whether this attitude to exclude the political part of citizenship works for Taiwanese identity. Can the recognition issue stand as an issue without politics behind it? That is, the political aspect of the citizenship proved to be an essential part, as it influences the cultural and socioeconomic aspects; in addition, the contested citizenship of the Taiwanese citizenship has been attributed to the political and legal disputes of the statehood.⁵⁶² Therefore, the recognition of Taiwanese identity relates to the political status of Taiwanese citizenship. Nevertheless, the discourses focusing on human rights, humanitarian values and substantial participation have increased international support for these overseas Taiwanese people, as they do not involve the sensitive sovereign status of Taiwan.⁵⁶³ On the other hand, even though the three aspects connect to each other, the political aspect holds a definitive place over the other aspects in today's

⁵⁶¹ Rwei-Ren Wu, "Toward a Pragmatic Nationalism: Democratization and Taiwan's Passive Revolution," in *Memories of the Future: National Identity Issues and the Search for a New Taiwan*, ed. Stephane Corcuff (Routledge, 2002), 222–44, <https://doi.org/10.4324/9781315291338-20>; Yang Zhong, "Explaining National Identity Shift in Taiwan," *The Journal of Contemporary China* 25, no. 99 (2016): 336–52, <https://doi.org/10.1080/10670564.2015.1104866>.

⁵⁶² Timothy S. Rich and Andi Dahmer, "Taiwan," in *Routledge Handbook of State Recognition*, ed. Gëzim Visoka, John Doyle, and Edward Newman (London ; Routledge, 2020); Jo Shaw, *The People in Question : Citizens and Constitutions in Uncertain Times*, (Bristol: Bristol University Press, 2021); Chiang, *The One-China Policy*.

⁵⁶³ This part can be found in the previous chapters from the support of the international community with the incursion of the Chinese air force. Also see: Tãm, "Taiwan's Quest for World Health Assembly Participation."

Westphalian sovereign state structure. Taiwanese people foster their identity, associated with diverse cultures and political tensions from both society and the international community, along with contested citizenship.⁵⁶⁴ One of the crucial questions for the overseas Taiwanese is: can recognition be decided by the Taiwanese people themselves, when they are not considered members of the foreign countries? The discussions above have provided examples of using judicial and administrative systems for delivering political discourses on Taiwanese identity. However, even in a strong democratic country such as Norway, overseas Taiwanese have no say as concerns their identity, as Norwegian authorities made their decision without the approval of the Taiwanese people. To achieve social justice with a framework in the international community requires political decisions made by that international community: that political representation of people should be enlarged compared to its present degree.

The issue of socioeconomic redistribution and cultural recognition of Tibetans in Taiwan highlights the complicated status for Tibetans: both are also mingled with political decisions, laws and legal structures. To ensure the parity of participation in society is to ensure social justice, so that political participation can dismantle these structural problems. Cultural recognition and socioeconomic redistribution also ensure the practice of democracy, as these three dimensions are dynamic and essential elements for people to live in the same society.⁵⁶⁵ The difficulty Tibetan exiles in Taiwan face not only embodies the consequences of personal choice—stemming from the choice of resettling in a new country—but also denotes the lack of inclusion of Tibetans' citizenship in Taiwan—as inclusion requires the cooperation of these three dimensions of citizenship. Fraser points out that democratic justice should ensure social arrangements to “permit all the relevant social actors to participate as peers in social life” and to assure that democratic procedure “can command the assent of all concerned in fair and open processes of deliberation, in which all can participate as peers.”⁵⁶⁶ Turning back to the empirical findings of this research: examining the cross-state experiences that entangle various state power into a complex, there are two directions for further manifesting democratic justice—first, the substantial equal

⁵⁶⁴ Wu, “Toward a Pragmatic Nationalism”; Dittmer, “Taiwanese Identity.”

⁵⁶⁵ Fraser, “Reframing Justice in a Globalising World.”

⁵⁶⁶ Fraser, “Reframing Justice in a Globalising World,” 87.

participation of different parties, in that immigrants and people with contested citizenship are not excluded from the system, and second, the invention of democratic procedure for people without full citizenship, in order to rebuild an inclusive system at the government level for people to formulate their citizenship politically.

VII. Conclusion

This chapter has examined the contested citizenship of both groups analysed in this research—overseas Taiwanese people and Tibetan exiles in Taiwan—performing the fluid nature of citizenship and the complexity of extrication from liminal citizenship. The theoretical framework of this chapter primarily encompasses Fraser's justice theory and the performative citizenship theory. By combining other theories applied in my research, I first revisited the contested citizenship of overseas Taiwanese people and Tibetan exiles in Taiwan. This brought up the controversies of the liminal citizenship these two groups hold. I further analysed the citizenship performance as both the reformation of their citizenship within legal discourse and their resistance to the international norm. This analysis highlighted the problem of contested citizenship relating to sovereignty. In addition, Fraser's theory emphasizes the importance of the political aspect of social practice. This aligns with results from my research: namely, the confusion in, and occasional contradiction of, research subjects' strategies, focusing on ethnic identity discourse or on the cultural and socioeconomic aspects of social acts relating to citizenship, only then to encounter political problems. Along with Fraser's theory, this research further discusses issues stemming from current political participation not resulting in substantial inclusion in institutions.

This chapter began with people arguing for their citizenship status by using legal mobilisation to request their desired citizenship and, when their identity is not recognised, deploying other citizenship acts to isolate themselves from the norms of citizenship in international or domestic law. For both groups, the stateless status may preserve a flexible interpretation permitting them to claim the identity they identify with. These groups' behaviours occur under different legal structures that diversify the notion of statelessness, empowering the agency of people in taking actions for their citizenship. In the case of Tibetan exiles in Taiwan who are undocumented immigrants, their legal status as stateless persons become the mediator in their acquiring

Taiwanese citizenship. However, inner controversy concerning the stateless status in the Tibetan community has reshaped the need for a functional citizenship for Tibetan exiles, resulting in migrant waves and rejection of statelessness. In the stories of Tibetan exiles and overseas Taiwanese from this research, we see that even without attaching a sovereignty claim to citizenship, its political aspects are not overlooked—although the difficulty of raising the political aspects of citizenship may dilute the visibility of political reasoning for it. In addition, insisting on the representation of Taiwanese or Tibetan identity in official government systems provides Taiwanese and Tibetans' perspectives of complexity of citizenship by addressing the argument in the citizenship system, in order to resist arbitrary political decisions made by the government.

Both groups show a certain degree of uncertainty regarding the citizenship issue. Whether between the dilemma of individual identity or group identity, between the shift towards Sinicisation or localisation/indigenisation, between the debate of depoliticisation versus political representation—cultural, socioeconomic and political dimensions of citizenship intertwine with government policy and the practice of citizenship by individuals or groups. This is not to say that one consideration for citizenship is more significant than others, but rather to point out the diversity of concerns in play. Thus, one of the necessities for a further discussion is depolarisation, and to look at the complexity of the nature of contested citizenship in these cases.

Fraser's three-dimensional justice theory enables us to examine the socioeconomic, cultural and political aspects of citizenship that are entangled together, along with the conflicts of each. These three dimensions of citizenship also serves a significance function during every step of pursuing the citizenship right, though the political presentation performs a decisive function for the other aspects in today's legal structure. The two groups examined in this research show the dynamic relationship of the different aspects of citizenship from Fraser's model:⁵⁶⁷ Tibetan exiles in Taiwan, concerned with socioeconomic redistribution and cultural recognition while being affected by political representation, and oversees Taiwanese people, recognizing the conflicts and commensal relations between cultural recognition and political

⁵⁶⁷ Fraser, "Reframing Justice in a Globalising World."

representation. Moreover, taking the Tibetan exiles' examples: after becoming a member of society, legal mobilisation regarding their inclusion may decrease in intensity. While the stories of the Tibetan interviewees in this thesis present conflicts between the democratic values and the diversity of citizenship—and therefore embody an unfinished task concerning the inclusion of minorities in Taiwanese society—the stories of overseas Taiwanese point out the difficulty in including noncitizens in citizenship recognition through political representation. In the individual cases of overseas Taiwanese, the question of recognition on an international level, and of how to include people in affairs that are directly tangible to them, may be tasks for truly democratic justice. In order to approach and construct democratic justice, it is crucial to ensure substantial equal participation for immigrants or for people who hold contested citizenship, and to aspire to a democratic procedural standard through which people can fully express themselves and participate in the formation of citizenship.

Chapter Seven. Conclusion

I. Research Contribution

The significance of this research is apparent in several areas. First, this thesis dissects the geopolitical power structures that exist between Taiwan, China, the Tibetan community in exile and other international communities, by the citizenship status of overseas Taiwanese and Tibetan exiles in Taiwan—providing a new perspective on cross-strait relations research and a citizenship studies’ perspective on Taiwan research. This research also extends discussions of contested citizenship to ethnic groups without sovereignty to the Tibetan exile community, and to the case of overseas Taiwanese (analysing in particular their predicaments when Taiwanese identity is denied). The discussion of contested citizenship in this research shows that citizenship fluidity exists not only within citizenship norms but also outside the citizenship system, emphasising the examples of taking statelessness as an alternative citizenship status as well as the loss of citizenship of an ethnic group. This research also applies theories of contested citizenship, performative citizenship and Nancy Fraser’s theory of justice to discuss the potential ability of marginalised groups⁵⁶⁸—such as limited-number immigrants, Tibetan exiles in Taiwan and overseas Taiwanese—to achieve democratic justice by ensuring substantial equal participation in society through democratic procedures.

Turning to people’s acts of citizenship, the empirical evidence shows the complexity inherent in citizenship, with how the Tibetans and Taiwanese people define their citizenship and refuse undesired legal identities. Their performance of citizenship in their legal mobilisation is practiced both in movements for citizenship and in their daily lives—from migration to settlement. This bottom-up approach explains the dynamic process of individuals reforming their citizenship: exploring how they challenge government decisions pertaining to it and address their own desires concerning it in administrative bodies, courts of law and public demonstrations. From this perspective, one original aspect of my research is the hybrid method I use to investigate contested citizenship—employing both from top-down and bottom-up

⁵⁶⁸ Fraser, *Scales of Justice*.

approaches to the topic. I observe that even while states, beginning from different positions (given their political interests and reasons such as bureaucratic neglect), choose to assign legal identity to different groups to meet their political needs—and, in many scenarios, to complicate liminal citizenship and reproduce situations of struggle for people—those same people and groups may use legal discourse to counter the state’s contestation of their own origin states (stemming from the fact that state governments purposefully avoid the topic or lack power or influence in the international community), and to confront the limitations of current means for redress concerning their contested citizenship.

Current research on statelessness lacks reflections on Taiwan’s contemporary conflicts due to geopolitical power struggles and issues of self-identification and the following real-life experiences of the Taiwanese people and Tibetan exiles in Taiwan. My research fills this gap by analysing the complexities of citizenship and the sometimes-productive character of statelessness for people who choose it as a way to establish legal identity with the desired citizenship. I apply Nancy Fraser’s theory of justice to examine cultural, socioeconomic and political aspects of citizenship,⁵⁶⁹ and I draw on the political meaning of cultural recognition and the decisive character of political representation. The analysis in this thesis shows that the performance of citizenship diversifies its content, especially the three aspects, in social movements and daily practices. However, the absorption of people into the citizenship system may not increase their agency—citizenship may be meant to be inclusive yet may thereby flatten difference. As such, without a mechanism to maintain the differences of each group of people, inclusion is missing in the government decision-making process while people pursue the justice of full citizenship. Even though inclusion cannot be fully realised, this research posits that the formulation of citizenship is constructed dynamically by state power via a top-down approach and by the people through a bottom-up resistance—the latter, using tools of liberal democracy in order to redefine peoples’ identity, life, and right to other rights.

⁵⁶⁹ Fraser, “Reframing Justice in a Globalising World.”

A. Overseas Taiwanese and Tibetan Exiles: the Legal Framework of Contested Citizenship

This socio-legal research explores the precarious citizenship in individual cases of overseas Taiwanese and Tibetan exiles. Firstly, the contested citizenship of Taiwan stems from its contested sovereignty. Taiwan's geopolitical history informs both the legal structure of the ROC and its international relationships with China and other countries. The uncertainty of the sovereignty status of Taiwan built up a contested statehood over decades; the ambiguous status of this statehood, in turn, has made its citizenship contested to its people. And the Tibetan exiles migrating to Taiwan confront the Taiwanese citizenship system, which accepts them with a complex triple identity: nationals, stateless persons, and foreigners.

The sovereignty of Taiwan is one of the core problems of Taiwanese citizenship and for Tibetan exiles in Taiwan. This research approaches the sovereign issue from the perspectives of international law and sociology, as well as from how these two groups of people understand their citizenship status. From the perspective of international law, this research challenges the mainstream international law assumptions about the statehood of Taiwan, and the obsolete framework of the “two government” dispute on the relation of Taiwan and China. Rather, my research repositions the statehood of Taiwan to that of contested sovereignty, with its inner controversies and international predicament existing mainly in relation to *de jure* recognition. I argue that the false assumption stems from the false sovereignty claim made by the PRC, and from the inconsistent political standing of the ROC government. Both outright ignore the will of people and the constant government-level argument for full international recognition of Taiwan—a recognition long and purposefully denied by the international community, including the UN with its complicity with the PRC concerning the sovereignty debate on Taiwan. Further, the status of Taiwan's sovereignty forms a complex narrative for establishing statehood and citizenship; for example, in the legal framework of the Republic of China, the shift of the identity of the sovereign people after democratisation reformulated Taiwanese politics and society, with legal and political changes reshaping reshape citizenship and shifting peoples' legal identity. As may be seen in the discussion of the sovereignty of Taiwan in

Chapter Three,⁵⁷⁰ for a civil society pursuing democracy, the practice of democracy requires sovereignty— especially to ensure that democratic decision-making is not overthrown by an authoritarian regime.⁵⁷¹ That is, sovereignty is a crucial component for securing democracy in the long term.⁵⁷² As such, an effective democratic society also means that a political entity is self-ruled and affirms its sovereignty: the power to govern its territory and people. Therefore, even though Taiwan is seen a contested sovereignty in international law, its democratic practices enact its sovereignty from an internal perspective. Although Taiwanese citizenship has revived with the flourishing of democratic activities over recent decades, international recognition of its citizenship has not improved much. Instead, some cases even show backlash against recognition in democratic countries such as Norway and Iceland, as the China becomes ever more influential in international community in political and economic terms. China's economic and diplomatic coercion has suppressed the international community's engagement not only with Taiwan but also with the Tibetan exiled community. International cooperation has been hindered, and countries across the globe have been pressured to self-censor on relevant affairs, limiting the international participation of Taiwanese people and Tibetan exiles. The limitation leads to the Taiwanese identity outside of Taiwan being subject to arbitrary and inconsistent decision-making, as well as to the obstruction of the Tibetan movement for authority or independence.

Another similarity of the Tibetan cases and the Taiwanese cases in this research is the ever-growing influence of China that oppresses both the Taiwanese and the Tibetan identity. From a geopolitical perspective, the Tibetan exile community and overseas Taiwanese people have faced greater challenges to their identity from China, especially in recent years. Chapter Three explains the continuing Chinese

⁵⁷⁰ The relevant discussions may be found in Chapter Three, section II. G and II. H, pages 92-96.

⁵⁷¹ Wai Kwok Benson Wong, "The Ties That Bind: Mutuality of Political Destiny between Hong Kong and Taiwan," *Asian Education and Development Studies* 8, no. 2 (2019): 137–48, <https://doi.org/10.1108/AEDS-07-2018-0117>; Brad R. Roth, "Democratic Political Obligation with Chinese Characteristics: Civic Defiance in Taiwan and Hong Kong," in *Law and Politics of the Taiwan Sunflower and Hong Kong Umbrella Movements*, 2017, 191–204, <https://doi.org/10.4324/9781315575063>. Some discussions of democracy and sovereignty may be found in: Juan J. Linz, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*, ed. Alfred C. Stepan (Baltimore, MD: Johns Hopkins University Press, 1996).

⁵⁷² Linz, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*.

influence on Taiwan, through media, political agents and economic pressure.⁵⁷³ This influence also extends to authorities of other states, international organisations and private companies, all to deny the statehood of Taiwan and Taiwanese identity at the governmental and non-governmental levels. Likewise, Tibetans' long-term exiled life in South Asia has not achieved any resolution for an independent Tibet or high-degree autonomy of Tibet. The Chinese government has instead restricted the governance of Tibet for decades, using diplomatic power to hinder Tibetan exiles' ability to travel to other countries through Nepal.⁵⁷⁴ The backlash against Tibetan human rights and the exile community anticipates a difficult future for Tibetan exiles' pursuit for a democratic regime in Tibet.

China's influence over Tibetans and Taiwanese people provokes resistance from each of these groups, against the oppression of their group identity as Tibetans and Taiwanese. The resilience of these two groups makes them to take various approaches to circumventing this oppression, such as maintaining stateless status. The legal framing for keeping an identity through a legal status differs somewhat between the two: Tibetans choose to combine the exiled history of their community with their citizenship status, whereas the Taiwanese people struggle to attach a Taiwanese identity to the legal status, given their ROC citizenship. The political status is more essential at the point of arrival in a foreign country, as it defines one person's legal status abroad. However, as seen in the cases of Tibetan individuals examined in this research, the debates between legal recognition relating to legal status and cultural recognition denote that cultural recognition may have substantial meaning when it comes to identifying certain ethnic individuals, when regulations of the right to residency relate to the ethnic group. Therefore, differentiating one group from others and identifying the differences between ethnic groups at the governmental level not only has a cultural meaning but also identifies the ethnic group politically. Therefore, the dynamic relations between cultural and political aspects of citizenship show the consolidation of each aspect in practice.

⁵⁷³ Jaw-Nian Huang, "China's Influence on Taiwan's Media: A Model of Transnational Diffusion of Chinese Censorship," in *China's Influence and the Center-Periphery Tug of War*, ed. Fong, Wu, and Nathan, 2020, 205–23; Wu and Liao, "China's Influence on Taiwan's Elections"; J. Michael Cole, *Convergence or Conflict in the Taiwan Strait: The Illusion of Peace?* (Abingdon, Oxon ; New York, NY: Routledge, 2017).

⁵⁷⁴ Human Rights Watch, "Under China's Shadow"; Bruno, *Blessings from Beijing*.

In my research, I dug into Taiwanese citizenship: its legal framework and actual situations caused by it that Taiwanese people may confront—for even though the Taiwanese identity is recognised as a legal identity representing Taiwanese people in some foreign countries, it is not taken as a formal “nationality” by foreign authorities. Whether Taiwanese is understood as a potentially Chinese identity—under the ROC before and the PRC now—or as a legal identity that cannot fully be recognised as a nationality—but *not* a Chinese identity, either—the ambiguity of this status affects Taiwanese people’s legal identity. This is particularly relevant when foreign authorities change their attitudes towards Taiwanese ethnic people, to establish, maintain or improve relations with China. The ambiguous status is the reason Taiwanese interviewees are required to argue for their citizenship status as Taiwanese. The lack of *de jure* recognition has impeded recognition for both statehood and citizenship, resulting in a debatable and ambiguous identity for Taiwanese people.

The unresolved sovereignty of Taiwan also leads to citizenship confusion for Tibetan exiles given a complex triple identity. The ROC legal framework included Tibet in its territory when the constitution was written in 1946, even though at the time Tibet and the ROC had not settled the question of Tibet’s sovereignty.⁵⁷⁵ However, since the ROC has governed only Taiwan from 1949, its sovereignty claim over Tibet is merely nominal. Moreover, after the shift of the identification of its sovereign people in a constitutional amendment, and the dropping of any claim to political sovereignty over mainland China as well as Tibet, Tibetans became less important to the ROC government. Likewise, their status became ambiguous due to changing governmental attitudes and the defamiliarisation of the Tibetan status in the legal system. Tibetan exiles embody both the definition of national and the denial of being national in Taiwan, are considered stateless in the Immigration Act, and viewed as foreigners during the immigration process. This triple identity only complicates their process of immigration and sometimes become the reason they are denied their right to enter Taiwan.

B. Fluid Citizenship Outside the Norm: Statelessness

⁵⁷⁵ Lin, *Tibet and Nationalist China’s Frontier*.

This research stems from the denial of legal status to overseas Taiwanese and Tibetan exiles in Taiwan. After discussing these contested citizenship structures, I turn to people's agency to see how individuals react to an ineffective citizenship. My research emphasises the empirical narratives of Tibetan exiles and overseas Taiwanese and finds varying ideologies of legal identity, in both group and individuals. Likewise, I find variety in approaches to citizenship or legal identity among Tibetans and Taiwanese interviewees. The stories of these individuals describe their changes of citizenship during immigration processes and/or experiences abroad—recounting how they confronted citizenship changes imposed by authorities of host countries. Some of them take statelessness for their citizenship status: as a group identity, such as for Tibetan exiles in South Asia, or as an individual identity, such as for the Taiwanese interviewees in Brazil and Iceland.

Another finding in my research concerns the difference in diaspora experiences stemming from the claim of statelessness. The Taiwanese overseas do not suffer much from a material perspective; their diaspora struggles are more about their symbolic goal of being seen as Taiwanese. The Tibetans experience greater material difficulties, and are forced to consider factors such as their legal status and rights associated with it. Indeed, the latter group experiences more impactful consequences connected to their citizenship status. In comparison, Taiwanese citizens may seem privileged, with their right to travel and stable living conditions. However, the difficulties they may encounter in resolving their plight should not be underestimated. Additionally, even though overseas Taiwanese and Tibetan exiles may sometimes share the stateless label, the reasons underlying their acceptance of statelessness are different. The Taiwanese citizens hold an unstable citizenship that cannot be fully functional but that still works for their rights of mobility and residency in a substantial number of foreign countries,⁵⁷⁶ while Tibetan exiles in South Asia have complex and less functional legal status in their citizenship—a more vulnerable status than the Taiwanese one. There are differences in the formation of Taiwanese and Tibetan exiles' citizenship due to the different degrees of contested sovereignty for Taiwan and Tibet. Although they may both see themselves as stateless in some contexts, the

⁵⁷⁶ Timothy S. Rich and Andi Dahmer, "Taiwanese Public Perceptions of Diplomatic Recognition: An Experimental Analysis," *International Journal of Taiwan Studies* 3, no. 2 (2020): 247–67, <https://doi.org/10.1163/24688800-00302004>.

concept of statelessness that they use in this research is different for these two ethnic groups. For Tibetan exiles, their legal status is not solid—and thus they can be seen as refugees, foreigners, or Tibetan citizens of the government in exile in South Asia. Tibetan exiles attach their citizenship issue to the sovereignty of Tibet and face livelihood difficulties due to their stateless status.⁵⁷⁷ On the other hand, the statelessness that Taiwanese people hold does not serve as more than a nominal connotation of statelessness as concerns consequences for daily life, since Taiwanese people do not experience a lack of other rights.

Overseas Taiwanese people indeed face a very different challenge with statelessness compared to the Tibetan cases, since Taiwanese peoples' situation is not as vulnerable as that of people who are *de jure* stateless. However, this research points out that the uncertainty of their citizenship sometimes ends up leading to stateless registration at the government level after their contested Taiwanese citizenship is denied and they are labelled as Chinese. Statelessness was first a legal status that the authorities affixed as an expedient identity to these Taiwanese interviewees, but then was seen as a chance get rid of the identity with which they do not identify. The interviewees understand the unusual nature of statelessness and take it as proof of their vulnerable citizenship: the Taiwanese citizenship that does not always fit into the legal system in international communities, and that may sometimes back for Taiwanese people into a corner—choosing to take statelessness or an unwanted Chinese identity.

These changes of legal status present the fluid nature of citizenship. That is, citizenship has been changing the entire time for overseas Taiwanese and Tibetan exiles in Taiwan. The Taiwanese people's Taiwanese legal status is not recognised as a legitimate nationality in the international community⁵⁷⁸ and the unstable context for Taiwanese citizenship therefore renders a different legal status when traveling or residing in other countries—one of the most unusual of those statuses being

⁵⁷⁷ McGranahan, "Refusal as Political Practice"; Marie de Voe, "Keeping Refugee Status"; Hess, "Immigrant Ambassadors."

⁵⁷⁸ As discussed in previous chapters, even though most countries accept ROC passports as legitimate travel documents, they do not necessarily recognise the nationality on the passport. Indeed, this example of Taiwan's substantial participation in the international community also shows that diplomatic cooperation takes place even as Taiwanese sovereignty and nationality is still questioned. See: Roth, "The Entity That Dare Not Speak Its Name."

statelessness. In addition, statelessness—an exception to the norm of the legal status for extreme situations such as for individuals deprived of nationality—becomes a productive legal status that people use to argue for issues relating to their contested citizenship—whether that issue is the sovereignty claim for Tibet or the recognition of Taiwanese identity. Statelessness is productive for the purpose of claiming an identity and legal status that is not accepted by the authority, but the destructive nature of stateless status also detaches people who accept it from governmental and political systems. As such, for the current legal system to reconsider the content of citizenship, as agitated for by these groups, requires political representation—namely, the participation of people who have not taken a legal status from the authorities and who thus are not seen as members of society.

C. Empirical Data and the Performance of Citizenship

This research is based on the empirical data: evidence of Tibetan exiles' citizenship system in Taiwan, interviews of overseas Taiwanese experiences with contested citizenship, and analysis of citizenship acts containing legal consciousness and legal mobilisation. First, official documents depict the details of Tibetan exiles' life in Taiwan. Furthermore, interviewees' stories illustrate different strategies and understandings: Taiwanese people's strategies for arguing for their desired identity, such as filing a lawsuit in Norway or accepting statelessness in Brazil and Iceland, and Tibetan exiles in Taiwan's understanding of their stateless status, while dealing with new citizenship including a triple identity complex. The interviews provide evidence for the bottom-up approach of legal discourse and legal consciousness on the formation of citizenship that serves people's identification.

This empirical research provides grounded information to avoid othering the subjects of the research: describing people's perspectives on their citizenship, their concerns of contested status and statelessness, and their agency in reformulating their identity. The establishment of people's citizenship acts looks at people's differences and the ideologies behind their decisions, and at their challenges to norms of citizenship and citizenship decisions by the authorities—which ignore these two groups' identity complexes and the serious meaning of citizenship for them. This dynamic process promotes a complex understanding of citizenship from individuals

performing citizenship: connecting their cultural, socioeconomic, and political lives. The interviews further describe cultural recognition stemming from ethnic identity—complete with its political connotations—economic distribution, with details of the economic life of Tibetan exiles in Taiwan, and political representation, with political and legal discourses in movements with actions inside and outside government bodies and courts, and with the ongoing struggles for inclusion.

1. New Citizenship or No Citizenship

Turning to legal consciousness: in this thesis, the interviewees recount their personal experiences with precarious citizenship—through this, it may be seen how people apply legal discourse to support their claims for a citizenship they identify with. However, it should also be noticed that citizenship in this thesis is an amalgamation of cultural, social and political identity—which also inclines towards nationality in Westphalia sense. This definition reflects the utilisation of "citizenship" among people. Sometimes, interviewees may blur the boundaries between legal status and identity to serve their legal discourse of citizenship.

As for Tibetan exiles in Taiwan, their special triple citizenship status may produce unfavourable situations for them. Tibetans are categorised as People of the Mainland Area in the law of the ROC; this framing affects Tibetan exiles and their application for residence right, with these individuals feeling discriminated against in some cases. Some Tibetan interviewees—and, indeed, data from reports concerning marriage migrants—reveal that they face more obstacles than other marriage immigrants do in applying for a visa to enter Taiwan, as the Ministry of Foreign Affairs staff treated them as spies of the PRC. As for their movement with family reunion in mind, they emphasised their Tibetan identity by sharing their exile stories and their culture with the general public to raise awareness for Taiwan's Tibetan rights: protesting in the streets and participating in government meetings. Their discourse focused on the right to family reunion and on equal treatment when compared to other marriage migrants. As for undocumented Tibetans, they conceal themselves from the public and ask for help from Tibetan welfare associations in Taiwan in order to deal with the Taiwanese authorities. The main goal of Tibetan exiles who are not marriage immigrants is to be recognised as Tibetan and stateless, so that they may be granted

residence rights. In short, marriage migrants and their spouses made the issue public and asked for support from the general public, whereas undocumented migrants preferred to keep it in the Tibetan community.

Additionally, in speaking of their citizenship status as Tibetans in Taiwan, Tibetan individuals interviewed for this research consider themselves stateless—as Tibet is not presently a sovereign state. This also aligned with the narratives of the mainstream Tibetan society in exile. Living with a stateless status has brought up many livelihood difficulties for these Tibetans, whether as individual people or as a group. The desire to have functional citizenship exists in some cases, especially for those whose desire to return to Tibet to visit has led them to migrate outside of South Asia, where the principal pressure of maintaining statelessness exists. Being recognised as stateless and Tibetan becomes the key for undocumented Tibetan exiles access the citizenship system—and thus, eventually to obtain a valid legal status. Those who failed to prove their statelessness started a lawsuit to prove their statelessness, as well as their vulnerability of being Tibetans in South Asia, in order to stay in Taiwan. Arguments concerning statelessness made by groups of Tibetans show that the different legal approaches for entering the citizenship system and the different meanings of being stateless. For Tibetan marriage immigrants in Taiwan, statelessness is their vulnerable past in social terms and their political identity for being Tibetans—but not an essential part of their argument to obtain a visa to enter Taiwan. For undocumented Tibetans, statelessness is one of the main components of their right to citizenship in Taiwan: something they must cling to, and the essential part of their legal discourses in government and in court.

2. Recognition of Citizenship in Political Terms

This empirical research reveals the individual interviewees' legal consciousness and legal mobilisation for citizenship. When it turns to three different aspects of citizenship—cultural, social, and political—the political aspect is highlighted, as the other two aspects are embedded in the ways these individuals face their political issues.⁵⁷⁹ Besides, during the process of obtaining citizenship, the Tibetan identity is

⁵⁷⁹ Fraser, “Reframing Justice in a Globalising World.”

seen as a cultural trait in Taiwan. The political and social aspects of Tibetan identity are often neglected, while tests of culture played an important role for Tibetans in Taiwan. However, not all Tibetans were raised in an environment containing Tibetan culture; for that matter, there are different Tibetan cultures in different Tibetan areas.⁵⁸⁰ Complicating this further, their social relationships with Tibetans in Taiwan and the Tibetan community—or other kinds of evidence proving their Tibetan identity—were ignored by authorities.⁵⁸¹ Though there existed—and still exist—a high degree of misunderstanding about Tibetan culture, achieving cultural recognition has become essential for Tibetan exiles in Taiwan to acquire residency rights. However, political representation might be a key component to ensure these individuals can keep their Taiwanese or Tibetan identity. Some of them may even accept stateless status as an official citizenship status as they feel it resonates with their experiences.

Community pressure and political culture both influence individuals' attitude towards citizenship as well. For example, with contested citizenship, Taiwanese people see their citizenship with a complicated understanding that it may lack legal recognition from the international communities—a reflection of Taiwan's contested statehood. In these cases, they may not argue for their legal recognition for the sake of participation in international communities but instead eschew their citizenship's political issue. In this way, an overseas Taiwanese person denied their citizenship by Norway strengthened their legal discourse on citizenship, tried to de-politicise the process and used ethnic identity to argue for legal recognition of their citizenship. De-politicisation is in fact much used in human rights discourse, as these Taiwanese cases involving arguments of ethnic identity demonstrate; however, as Fraser has pointed out, recognition has its political side.⁵⁸² The Taiwanese cases examined in this research show this trend; going even further, the Tibetan cases in this research show the connection between cultural and legal recognition of citizenship. And the element

⁵⁸⁰ “Tibet and Tibetans”, accessed 20 March 2022, <https://iaunrc.indiana.edu/documents/tibetans-and-tibet.pdf>. Katia Buffetrille and Hildegard Diemberger, *Proceedings of the Ninth Seminar of the IATS, 2000. Volume 9: Territory and Identity in Tibet and the Himalayas* (Leiden: Brill, 2000); <https://doi.org/https://doi.org/10.1163/9789004483101>; Jigme Yeshe Lama, “Greater Tibet and Cultural Nationalism” (New Delhi: Institute of Peace and Conflict Studies, 2012), <http://www.jstor.org/stable/resrep09277> .

⁵⁸¹ Certainly, it is tricky to define who is Tibetan if only judging by comprehension of Tibetan culture and not taking the Tibetan network as an evidence. The commission displayed their ignorance of the former. Further discussions of this point can be found in Chapter Five.

⁵⁸² Fraser, “Reframing Justice in a Globalising World.”

in common in these cases is that the political or legal aspect of citizenship plays a leading role in arguments for recognition and representation with the authorities or in court. At first, the political decisions of the governments dominate people's citizenship status. Whether it is Taiwanese overseas' legal identity or the Tibetan exiles' residence rights, people are forced to face the consequences of these top-down decisions and seek solutions to maintain their legal status as being Taiwanese for overseas Taiwanese or as being/staying in Taiwan for Tibetan exiles. Afterwards, even when people do not use political arguments to frame their legal discourse, the connotations of this recognition has shown its political aspects—especially for the government and court to consider its legal recognition of certain groups of people.

D. Complexity of Citizenship for Democratic Justice

Judging from acts of citizenship described in this research, the three aspects of citizenship—cultural, socioeconomic and political—diversify its connotations. I argue that the interviewees' performance of citizenship presents its complexity: showing how every aspect of it should be practiced, especially involving people's ability to speak up for themselves. Performing citizenship can be inconsistent for ethnic groups or for individuals, for socioeconomic, family-related, or politically-oriented reasons. It is not just in movements but also in daily life that people argue for their legal identity and practice other aspects of citizenship. Inconsistencies of course exist, attributable to the institutional needs of people, the political agenda of group interests, or the desire for economic growth; each of these attributes plays a crucial role in today's Westphalian and capitalist state, and makes decisions for citizenship able to denote more than one aspects, more than one cultural identity, and/or more than one political connotation within a person or a group. Taiwanese people made an example of crossing different cultural identities, due to the ambiguity of the ROC and Taiwanese identity; but the interviews in this research and current studies of national identity also point out identity shifts due to the constant contestation of citizenship in fact reforms Taiwanese citizenship, alongside democratisation and the realisation of a localisation/indigenisation of Taiwan. Tibetan exiles in Taiwan show their complexity by adopting Taiwanese citizenship and maintaining their Tibetan identity at the same time. The controversy of being stateless and being Tibetan attenuates with migration

out of South Asia, but the consistent practice of being Tibetan remains a task for Tibetans outside of South Asia.

However, even as they become Taiwanese and remain Tibetan, Tibetans in Taiwan lack the substantial political representation that would bring them into the Taiwanese political domain. A Tibetan identity does not accompany the new citizen, politically, when becoming Taiwanese, —only the cultural and social aspects are given attention. Even in a liberal democratic regime, the low representation of minorities such as Tibetan immigrants in Taiwan may result in the isolation of immigrant groups—as, without proper political representation, the minority can hardly be seen or heard in the political sphere. Like these Tibetan immigrants, the overseas Taiwanese people who argue for the recognition of their Taiwanese identity in cross-state experiences can hardly demand that their voices be heard—as relevant to their identity as the authorities' decisions may be. This lack of inclusion results from the lack of representation and demonstrates the importance of the complexity of citizenship being practiced in such cross-state situations. The complexity of citizenship emphasises the diversity of citizenship acts and the constant dialectical relationships between individuals and ethnic groups concerning citizenship. With citizenship's complexity, there is no straightforward answer to certain questions of citizenship without the input of people who are involved. It is also by understanding the complexity of citizenship, that the dynamic picture of citizenship may act for political representation and clarify inclusion in the struggle for full participation in terms of cultural recognition and socioeconomic redistribution in daily life. For substantial inclusion in the political dimension, democratic justice⁵⁸³ should be introduced—for people to examine and construct citizenship even in a cross-state setting. Democratic participation enables us to reflect on the problems of contested citizenship across states and to demand the possibility of further facilitating democratic procedure, in the process of reformulating citizenship with the substantially equal participation of minorities.

II. Future Research

⁵⁸³ Fraser, “Reframing Justice in a Globalising World.”

In this research, I use the justice theory of Nancy Fraser to articulate conflicts of the cultural recognition, socioeconomic redistribution and political representation. However, my thesis centres the political aspect of citizenship and its influence on the other aspects, since the discussions in it focus on the sovereignty of Taiwan, geopolitics and the political statements of peoples' identity and personal legal statuses—attributed to these two groups of people's contested citizenship. Especially in discussions of overseas Taiwanese citizenship, the socioeconomic and cultural aspects are less addressed in arguments for Taiwanese identity connected with legal status. Future research can elaborate on these socioeconomic and cultural aspects for further discussions of the dynamic relations between these three aspects. For example, this research has discovered different layers of recognition between the recognition of citizenship and the recognition of identity and reflected on how the political aspect of citizenship influences the complex of recognition. However, it does not explore further, in order to depict a holistic picture of cultural recognition.

Another topic worth mentioning is the sex difference of the cases. This research did not aim to include a representative number of interviewees for each group of people. However, during the research process, it was intriguing to see that three out of four overseas Taiwanese I interviewed were female and all the Tibetan exiles I interviewed were male. While these interviews provide female Taiwanese stories concerning the challenge of their collective identity, the voices of female Tibetan exiles in Taiwan are missing. There could be many reasons for this. The number of female Tibetan exiles could be less than the number of male exiles; however, since that statistics of Tibetan immigrants in Taiwan do not supply information about gender, this was not verified. Or Tibetan males might be more active in public than females in Taiwan, although there are also many Tibetan female leaders in public opinion in the world. Finally, this could be attributed to the attitude of the ROC government. Compared to male marriage immigrants, female Tibetan exiles might be seen as less suspicious to the national security system of Taiwan and might therefore experience less hardship from civil servants concerning visiting visas and residence rights. Of course, the final reason for this discrepancy can include all of the hypotheses above.

Particularly, the last hypothesis might denote different approaches towards Tibetan exiles in terms of sex by the Taiwanese government—perhaps operating

under the premise that the true marriage immigrants are females, and the males are economic immigrants who are not sincere about their marriages. The government of the ROC has viewed female marriage immigrants as “mothers” of future potential ROC nationals, but has not likewise viewed male marriage immigrants as “fathers” of Taiwanese people;⁵⁸⁴ therefore, the discriminatory approach may objectify the female marriage immigrants as needed “human resources” to the ROC—but not the male ones. The sex difference as affecting immigration and a gender-based strategy on the part of the government are worth exploring in future research; likewise, further work can include examinations of the assumptions of marriage immigrants and difficulties experienced by different groups in general.

As seen in this thesis, my research examines the productivity of denizenship/statelessness/noncitizenship, by exploring cases of overseas Taiwanese people and Tibetan exiles in Taiwan and argues for its future application in the work of other groups of people holding contested citizenship. Statelessness has long been considered something to eliminate, because with statelessness people experience difficulties in accessing basic rights. However, with the stories of Tibetans using statelessness to represent themselves as advocates for the sovereignty of Tibet—and to bring that issue to the public eye—the sacrifice of Tibetans maintaining statelessness without proper rights has given the term another productive meaning. Like the stories of these Tibetans, the overseas Taiwanese stories show what happens when an identity powerful in economic terms interacts with a lack of de jure recognition paid to the state and citizenship in question—and how that interaction may result in individuals choosing statelessness in order to eschew an undesired identity assigned to them by a host state. Therefore, the productivity of maintaining a certain identity by taking statelessness might be discovered in the experiences of other ethnic groups. In addition, it is worth noting that the productive character of non-citizenship might be uncovered in other contexts—when people use it as a means to gain other rights. The productive fluidity of contested citizenship may shed light on the experiences of other people from countries with contested sovereignty.

⁵⁸⁴ Chen, “Gendered Borders.”

Political Inclusion is another domain worth mining for additional research possibilities, such as examining the future experiences of different ethnic groups. This research examines Tibetan exiles in Taiwan from the lens of ethnic groups stuck as being both insider and outsider in a legal system, with limited representation in the government's decision-making process. Likewise, this research considers overseas Taiwanese who are only considered "foreigners" in the legal system of local authorities, and thus denied their preferred identity. Objectifying and othering people, by including or excluding their name in legal systems and government decision-making mechanisms is not new. It should be ameliorated by sharing peoples' experiences in this domain, and through the approach of introducing socio-legal research concerning the domain of political inclusion—for people noted in law or not. The scope of full citizenship has been seen as an answer to the problem of political participation; however, existing research on denizenship and the research in this thesis both point out the existence of political movements from people without full citizenship—and the importance of acknowledging it. Future research can further investigate not only the patterns of peoples' political participation, but also other measures achieved—or demanded, or planned, or hoped for—to include people without full citizenship in today's liberal democratic systems.

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