

# **Taiwan Legislative Election 2004**

**Report  
of International  
Observation Mission  
December 2004**



**Asian Network for Free Elections (ANFREL)**

**Published by**



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***ISBN : 974-94904-8-7***

***Printed in Bangkok, Thailand***

September 2006

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## Acknowledgements

ANFREL would like to record its appreciation to the many individuals and organisations, without which ANFREL's programs that encouraged efforts for democratisation in Asia, including (this time around) Taiwan, would not have been achieved. To all, sung and unsung heroes, with or without names printed in this acknowledgement, you know who you are and how much your contribution has effected the daily lives of people in Asia.

Firstly, to all the hardworking friends of ANFREL in Taiwan, who had succeeded in organising the first International Election Observation Mission to Taiwan. Furthermore, the hospitality and friendship they have offered to ANFREL's team while we were in Taiwan was admirable.

Secondly, to the Taiwan Foundation for Democracy (TFD) for allotting its financial support to enable both the International Observation Mission and the production of this report possible. Also, to all other NGOs in Taiwan who have supported ANFREL in many priceless ways.

Thirdly, to the Central Election Commission, local election commissions, and all the other government agencies in Taiwan, who were very helpful in talking to ANFREL's team throughout the mission, constantly explaining the political situation of the country and its electoral elements and procedures. This information was vital in educating ANFREL's team on various issues related to the elections in Taiwan.



Last but not least, to all ANFREL network members around Asia who have supported this mission in Taiwan: we have proven, again and again, the value of ANFREL's solidarity.

To those who we (ANFREL) could not recall:

It is all of you that made the picture perfect.

ANFREL Secretariat, Bangkok

## Preface by the author

As Taiwan has a very interesting and complex political background, attempting to write anything on the subject is a daunting assignment. I am often trapped in trying to find the best word to describe Taiwan, on whether it is a nation-state or a province. However, it is important to state here that this report is prepared with the basic understanding of Taiwan as a state, which definition I take the privilege to assert by looking at its capacity of self-governance in political, economic and social matters.

Asian Network for Free Elections (ANFREL) first established relations with Taiwanese civil society in 2002, when ANFREL invited two civil society workers from Taiwan to join its International Observation Mission for the Cambodian Commune Election that year. As part of ANFREL's ongoing promotion of greater participation by Asian nationals in democratic progress in the region, this formal participation by Taiwanese civil society workers was another meaningful achievement in ANFREL's short history.

Since then, with the support of these and other Taiwanese civil society workers, ANFREL has been able to promote its programs in Taiwan effectively. After two other participations of Taiwanese civil society workers in ANFREL's International Observation Missions (namely Cambodia 2003 and Indonesia 2003-2004), the group was already discussing to form a Taiwanese election monitoring organisation, which came to be known as the Taiwan Network for Free Elections (TANFREL). This group, although still informal, was fundamental to the preparations for the International Election Observation Mission for the Taiwan Legislative Election in 2004. This report marks the first

official participation between ANFREL and one of its youngest affiliates, TANFREL.

This book is a product of the International Election Observation Mission to Taiwan that observed the process of Taiwan's Legislative Yuan Election in 2004. Essentially, this book is the Observation Mission Report. This report is meant to inform the general public of ANFREL's findings and recommendations for Taiwan's electoral system based on one observation mission. It is important to understand that the electoral process in any country is ever-evolving; therefore some of the recommendations made here might not be applicable in years to come due to changes of circumstances, such as changes in socio-political conditions in the country. Nevertheless, it is essential to record these findings.

On behalf of ANFREL, I would like to congratulate the people of Taiwan who have participated in the electoral process, performing one of their important roles in a democratic society. To those unsung heroes, locals and internationals, who have brought and continue to improve justice and democracy to this land, I accord you my highest respect.

Finally, I am also grateful to have a friend and colleague, Mr. Bo Tedards, for providing many background materials and reviewing and editing this report.

Herizal Hazri

## Map of Taiwan



## **List of Abbreviations**

ANFREL – Asian Network for Free Elections

CEC – Central Election Commission

DPP – Democratic Progressive Party

KMT – Kuomintang (Chinese Nationalist Party)

MOI – Ministry of Interior

MOJ -- Ministry of Justice

NP – New Party

NPSU – Non-Partisan Solidarity Union

PFP – People First Party

POERL -- Public Officials Election and Recall Law

PRC – People's Republic of China

ROC – Republic of China

TANFREL – Taiwan Network for Free and Fair Elections

TFD – Taiwan Foundation for Democracy

TSU – Taiwan Solidarity Union

UN – United Nations

US – United States of America

WHO – World Health Organisation

WTO – World Trade Organisation

## I. Introduction

### **Asian Network for Free Elections (ANFREL)**

The Asian Network for Free Elections (ANFREL) was established in 1997 as Asia's first regional network of civil society organizations to promote and support democratisation at national and regional levels in Asia. Since it was founded, ANFREL has served towards strengthening the democratisation of countries such as Sri Lanka, Nepal, Thailand, Malaysia, Cambodia, Pakistan, Bangladesh, Japan, East Timor, Indonesia, Myanmar, Afghanistan and now Taiwan.

Considering that elections observation contributes a great deal of significance in greater democratization efforts, ANFREL was formed in 1997. ANFREL also is supported by a number of national organizations from Bangladesh, Cambodia, India, Indonesia, Japan, Nepal, Pakistan, Philippines, South Korea, Sri Lanka and Thailand.

From 1997 until today, ANFREL has also been active in capacity-building of member and non-member organizations on issues related to election observation, voter/civic education, electoral reform and public awareness for good democratic governance. Research activities on electoral reform, democracy and good governance have also been conducted jointly with civil society organizations in several countries.

ANFREL has also been active in organizing training and comparative study seminars of election laws in Asia. In November 1998 for instance, a seminar-workshop on the election laws in Indonesia was held, participated by election experts from selected Asian countries. The critique and the recommendations of the seminar-workshop were submitted to the Indonesian authorities for consideration in finalizing the election law. A statement was also sent to the authorities to

pressure them to adopt reforms in the election law<sup>1</sup>. Meetings with the Indonesian embassy in Bangkok were initiated by ANFREL leaders to convey the Asian people's concern for meaningful reforms as a prerequisite for a free and fair election in Indonesia.

Recognizing the role of the media during elections, another seminar-workshop was held for journalists entitled "The Role of Journalists on Elections." The event provided a venue for journalists in the region to share their experiences with their Indonesian counterparts to help them improve their role during the election. It also served as an opportunity to organize their ranks and to plan ways on how they could support each other and work together on a regional level. Two separate reports on these activities have been produced and are available on ANFREL's series of publications.

Apart from direct election observation programs, in all of ANFREL's election observation missions to date training (directly or indirectly to local organizations) has always been a primary objective. ANFREL believes that capacity building is one of the most important elements in democratization efforts. In line with this philosophy, ANFREL was proud to be the first election observation organization to include Afghan nationals, two of whom were invited and trained to be election observers in the 2004 Indonesian Legislative Elections.

In August 2004, ANFREL again reaffirmed its objective to promote democracy throughout Asia when it confirms its participation to observe the Presidential Election in Afghanistan. ANFREL was the first to take the challenge to support the Afghanistan people in

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<sup>1</sup> Balais-Serrano, Evelyn and Ito, Takeshi, Democratization in Indonesia; ANFREL and Forum-Asia, Thailand 1999

organizing and supporting their first direct elections ever. ANFREL then became the biggest international observation mission to Afghanistan when it deployed a total of 44 observers in Afghanistan, as well as in Pakistan and Iran (for out of country voting). ANFREL covered 6 regions in Afghanistan, two regions in Pakistan and two regions in Iran during the whole duration of the project. ANFREL's presence to support the election in Afghanistan was applauded by both the local and international community.

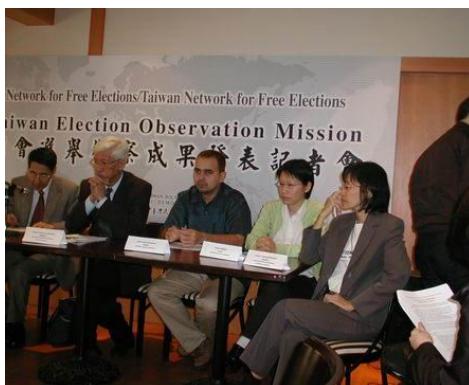
This year, 2005, ANFREL has participated in the electoral processes in Thailand, Afghanistan again, and Sri Lanka, all for their respective parliamentary elections. ANFREL is looking forward to be present in Sri Lanka by the end of 2005, which will mark ANFREL's participation in Sri Lanka with a full circle of the Sri Lankan government since ANFREL last visited the country.

### **ANFREL - TANFREL International Election Observation Mission for the 6<sup>th</sup> Legislative Yuan Election 2004**

#### **Background**

ANFREL believes that the Election of the Legislative Yuan in Taiwan is the key element in upholding the legitimacy of the government in the eyes of its citizens. Acting within its mandate, ANFREL is ready to play its due role in Taiwan to promote the people's involvement to uphold the pillar of democracy – a free and fair election. It is ANFREL's strong conviction that a free and fair election is the cornerstone for a long lasting democratic system of a country; thus, ANFREL's primary objective in observing the election in Taiwan is to promote its freeness and fairness.

ANFREL was invited by the Taiwan Network for Free Elections (TANFREL), with financial support from the Taiwan Foundation for Democracy (TFD), to conduct the first-ever systematic and professional nationwide election observation mission in Taiwan for the 2004 Legislative Yuan elections.



*Observation mission press conference,  
held on 13 December in Taipei*

The mission consisted of 12 teams, each led by a highly experienced international observer from 8 countries, paired with 1-2 Taiwanese assistant observers. The teams were deployed to Taipei City (2nd District), Taipei County (3rd District), Taoyuan County, Taichung County, Taichung City, Nantou County, Yunlin County, Chaiyi County,

Tainan County, Kaohsiung City (1st District), Kaohsiung County, and Hualien County. Each team was deployed in their respective constituency continuously from 5-12 Dec. On polling day, the teams visited a total of 187 polling stations, 23 counting stations, as well as tabulation at several townships and districts.

At the end of the mission, ANFREL produced a joint statement with TANFREL which was made public and submitted to relevant authorities (see Appendix). ANFREL-TANFREL also organized a press conference where local and international media were present.

## Objectives of the Election Observation Program

The electoral process is one of the basic needs for citizens of a country to enjoy their freedom to exercise political rights in choosing representatives to organize and manage the country's democratic political system. Because the relations between politics, economics and social justice are tight, elections thus play a major role in determining the future direction of a country. ANFREL believes that the electoral systems of all countries must be well designed and monitored carefully to assure the sovereignty of the processes, leading to reliable results.

The Universal Declaration of Human Rights (Article 21) states that:

“The will of the people shall be the basis of the authority of government. This will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

Considering the complexity of politics and society in Taiwan, ANFREL believes that Taiwan's electoral experience can be a promising and fertile ground to enhance regional political study. Nevertheless, this mission was by no means long enough for such a thorough study of the evolution, cause and effect of Taiwanese political changes. Therefore, ANFREL limited its mission in Taiwan to focus on certain areas which will undoubtedly produce valuable experience to open doors for further studies and even democratization efforts in the future. The objectives that ANFREL has set for the observation mission for the Taiwan Legislative Yuan Election 2004 are summarized below:

1. To ensure the integrity of electoral process as well as to minimize election irregularities and election-related human rights violations.
2. To provide accurate and impartial information and analysis on issues related to the Legislative Yuan Election in particular and prospects for democratic development in general.
3. To enhance and sustain the capacity of civil society organizations to ensure an environment conducive for the conduct of free elections as well as for the realization of people's aspiration for democracy.
4. To strengthen the civil society of participating nations, through training and promotion of democratization values among members of the observation mission.
5. To support and strengthen local networks of elections observation bodies in organizing, information gathering and data exchanging activities during the mission, which will enhance the results of the mission for both local and international participants of election observation missions.
6. Help strengthen understanding of democratic practices specifically during elections as well as in governance. By consolidating the people's democratic practices, in the long run, these will serve as a catalyst fostering spill-over effects on other countries where direct and credible popular elections are still problematic.

## **Methodologies and Strategies**

### **Methodologies**

ANFREL's election observation program is rooted in the "Framework for Future Efforts at Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections" adopted by the United Nations

Commission on Human Rights in 1989. This principle provides for universal and equal suffrage, as well as setting up an impartial administration to ensure the reliability of the electoral process. Apart from independent administration and supervision of electoral process by related agencies, there have to be appropriate voter registration methods, reliable balloting procedures and effective measures for preventing frauds and resolving disputes.

Election observers play an important role in the pursuit of democratic elections, which should have the following minimal conditions:

- franchise is genuinely universal;
- political parties and individual candidates are able to enjoy their legitimate rights to take part in the election;
- there is freedom of expression allowing possible criticism of the incumbent government;
- there is the right to free movement and assembly;
- all contesting parties and candidates have reasonable access to the media;
- voters have freedom of choice when casting ballots.

As a rule, ANFREL observation missions never operate against the will of the host country. For every mission undertaken since its formation in 1997, the respective governments, civil society organisations and the public have welcomed ANFREL. It must, nevertheless, be noted that the mandate of ANFREL observation missions rules out any kind of interference.<sup>2</sup> An ANFREL mission has

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<sup>2</sup> There is a clear distinction in the mandate of a supervisory mission, a monitoring mission and an observation mission. A supervisory mission is in control of electoral process and has administrative and executive power, while monitoring gives a mission the mandate to interfere in case electoral process derails. In contrast, the mandate of an observation mission rules out any kind of interference.

no authority to change, improve or correct any shortcomings during the election process by any means, although it may submit recommendations to the proper authorities. ANFREL only has the mandate to collect, verify and analyse information concerning election-related issues. After the conclusion of observation activities, preliminary and final reports will be produced and disseminated. These reports will include an assessment of electoral process based on international standards for free and fair democratic elections as well as recommendations.

Election observers observe the entire electoral process as it takes place, in order to make an informed and accurate assessment on both the conduct of elections and the surrounding environment. ANFREL believes that the use of election observers can provide an effective means of verifying the integrity and fairness of electoral process and its outcomes. In addition, the presence of observers will create an atmosphere that decreases the likelihood of intimidation, violence or fraud. Well-planned observation missions can significantly instil confidence in voters and increase not only their willingness to seriously participate in electoral process but also their ability to freely express their political will at the polls without fear of reprisal.

It is therefore essential that election observers come from non-partisan organizations with proven records and reputations for professional and ethical qualifications in areas related to the technicality of electoral process and the promotion of democracy.

Balloting and vote counting processes usually form the focal point of election observation activities of ANFREL. Apart from that, election observers are also active in examining other aspects of electoral process such as:

- the appointment of electoral officers,
- the registration of political parties and voters,
- the verification and designation of candidates,
- the demarcation of constituencies,
- the enforcement of election campaign regulations,
- And the conduct of voting and vote counting as well as the review of complaints and the installation of election winners.

The authorities and the media deserve special scrutiny given their potential for improperly using their status to manipulate electoral process and influence election outcomes. At the end of the polls and after preliminary results are released, election observers examine the way in which complaints about cheating and irregularities are handled by related agencies.

Each team of observers submits their observations and comments to the mission's leaders, who then distil them into public statements and recommendations. The mission's reports will also be available to all ANFREL members in the region and for public consumption. In this case this report is being produced in both English and Chinese editions, so as to provide an understanding of the election and the politics of Taiwanese elections both in Taiwan and abroad.

## **Strategies**

ANFREL's primary function is essentially building the capacity of its members. In Taiwan, ANFREL worked in cooperation with its local member organization (informal) called TANFREL. This organization initiated not only election observation program for ANFREL but also laid out the grounds for the people of Taiwan to participate effectively in ensuring a free and fair elections in the nation.

ANFREL also applied its experience from previous missions in the region to benefit the democratisation efforts in Taiwan. Through this, it has attracted young active Taiwanese to participate as local election monitors, resource persons and interpreters to its International Observers. Accordingly, with extensive coordination with domestic election monitors, ANFREL played a role in detecting and deterring any possible irregularities.

Equally important, a properly structured international election observation strategy adopted by ANFREL can help hold together shaky electoral processes. By forging a partnership with the national electoral administration organizations, related government agencies and local independent observation groups, ANFREL has proved that it can contribute greatly to the dissemination and propagation of basic standards of electoral administration. This can encourage wary voters to take the electoral process seriously and continue to participate in it. At the same time, sceptical politicians who feel they suffer from a non-level playing field will remain confident to compete in the polls.

Adding to that, ANFREL also believes that its participation in the electoral process in Taiwan is highly important for the attempt to build up networking of independent election monitors. It is ANFREL's vision that these organisations will work jointly to create new cultures and standards of democratic elections in the region, as well as heighten the significance of civil society participation in politics. In the long run, the consolidation of the Taiwanese people's participation in democracy can help promote and encourage further democratic reforms throughout the region.

## General Elections Observation Mission

### Short-term observation

A team of 12 experienced short-term observers from ANFREL's network in East Asia, Southeast Asia and South Asia were deployed to selected constituencies for a period of seven days. Based on information collected and analysed by ANFREL coordinating team and ANFREL's local partner, these short-term observers observed, investigated, assessed and documented the final stage of electoral campaign as well as the actual polling, counting and tallying processes.

The selection of both short-term-observers and areas of deployment were based on consultation with ANFREL's Taiwanese partners as well as the coordinating team's analysis of pre-election situation. The credentials of short-term observers were carefully chosen based on their experiences in areas related to election monitoring and local governance work. Moreover, they received pre-mission training to achieve a sound understanding of current situations in Taiwan.



*ANFREL and TANFREL observers with CEC Chair Masa J. S. Chang*

During the mission, short-term observers met representatives of the Central Election Commission and local election commissions,

candidates, political parties, and government officials at different levels, community leaders, civil society organizations and voters.

## Taiwan Overview

### Population

Taiwan's population numbers close to 23 million. Given its small area, this island is one of the most densely populated places on Earth; with the number of people per square mile double that of Japan and five times that of China. Taiwan's high population density, however, is of recent origin. In 1940, the island's population was only 5.8 million. An influx of people fleeing China after the Communist takeover in 1949, and a very high birthrate after that for a decade and half, pushed Taiwan's population to more than 10 million by 1960.

### Economy

With rapid economic growth since the early 1970s and successful political democratization in the 1990s, Taiwan has presented itself as a very unique case of regime transformation in the Third World for a couple of reasons.

First, economically, Taiwan's growth rate averaged 7 to 8 percent in the 1970s, 1980s, and 1990s. The gap between the rich and the poor, or the income disparity ratio, dropped from 15:1 in 1952 to 4.69:1 in 1987, although it rose a little to 5.5:1 by the mid-1990s.

Secondly, Taiwan's GNP per capita increased from roughly US\$50 in 1950 to US\$25,300 in 2004 (at purchasing power parity)<sup>3</sup>. The island's

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<sup>3</sup> CIA World Factbook, <http://www.cia.gov/cia/publications/factbook/geos/tw.html> .

unemployment rate has been kept low, at an average of 2 percent in the last five decades, despite its recent rise to almost 5 percent in mid-2001. Taiwan did not have significant foreign reserves prior to 1960, but because of rapid growth in exports, Taiwan's foreign reserves increased from less than US\$1 billion in 1973, to US\$73 billion in 1989, to almost US\$246 billion in 2004<sup>4</sup>.

With those shining macroeconomic figures, Taiwan's description as an economic miracle is "hardly an over-statement."

## **Ethnic Groups**

Taiwan's population is made of 4 major ethnic groups. They are the Indigenous Peoples, two groups of "Taiwanese" Chinese (Fukienese, also known as Hokkien or Hoklo, and Hakka), and "Mainlanders" (a catch-all term for people from any part of China who came after WWII and their descendants).

The Indigenous Peoples migrated either from South East Asia or South China in various waves beginning several millennia ago, and they populated the island before the arrival of any ethnic Chinese. Their languages are part of the Austronesian language group, which includes Malay languages spoken in the Philippines, Indonesia and Malaysia and thus there are resemblances in structure and vocabulary. They now make up around 2 percent of the population.

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<sup>4</sup> Ibid.



Figure 1: Language distribution in Taiwan  
(Source: [www.gio.gov.tw](http://www.gio.gov.tw))

"Taiwanese," and are often called "native Taiwanese" or "early immigrants". The other stage of Chinese migration into Taiwan was after 1945, when the ROC government and military, as well as many refugees, fled the advancing Communist forces. This group, although of diverse ethnic and provincial background, is today referred to as "Mainlanders" or "late immigrants." This characterization scheme of Taiwan's population is an oversimplification, but these are the salient categories in contemporary Taiwanese politics.

The Chinese entered Taiwan through two different stages. Although there is evidence of intermittent contact from probably a thousand years ago, the first major migrations began in the seventeenth century following the arrival of European colonizers, and lasted until the late nineteenth century. The Chinese who migrated to Taiwan were essentially from either the Fukienese or Hakka ethnic groups from the coast of Fujian and Guangdong Provinces respectively. These ethnic groups are today characterized as

## Culture

Taiwan's culture is primarily of Chinese origins, having been brought by Chinese immigrants from Fujian and Guangdong provinces and later from various parts of China<sup>5</sup>.

Limited Western cultural influence came to Taiwan through early missionary activities and the brief period of Dutch colonial rule in the seventeenth century. Japanese culture, however, had a major effect on the culture in Taiwan, most notably through Japanese education system and language, which were imposed on Taiwan during the Japanese colonial period.

The customs of Indigenous Peoples also influenced Taiwanese culture, as many tribes on the West coast of Taiwan became assimilated with Fujianese and Hakka immigrants. Those tribes in the central mountains and in Eastern Taiwan, on the other hand, were insulated from Chinese cultural influence until the 20<sup>th</sup> century, and their customs and culture remain largely intact.

The other major cultural impact to modern Taiwan came from the United States of America, which has had a major influence for the past 50 years.

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<sup>5</sup> James C. Hsiung, ed., *Contemporary Republic Of China: The Taiwan Experience, 1950-1980* (New York, Praeger, 1981)

## II. Taiwan: Political System and National Politics

### Political System

#### The Constitution

A good place to begin an assessment of Taiwan's political system is its constitution. The constitution currently in force in Taiwan was originally drafted as the constitution for all of China, and was brought to Taiwan, along with the entire government of the Republic of China (ROC), by Chiang Kai-shek after World War II. This document evolved from a draft constitution written in May 1936 that had become moot when Japan invaded China the next year<sup>6</sup>. The effort to write a constitution for the ROC was restarted at the end of World War II, even as the civil war between the Nationalists and the Communists followed on the heels of peace with Japan. A final document was, nevertheless, approved in late 1946. After the elections of 1947 and 1948 (held in only part of the country because of the widespread fighting between the Nationalists and the Communists), the document became the basis of constitutional government in areas controlled by the Nationalists, including Taiwan.

The framers of the ROC constitution designed a representative democracy style constitution. The system included cabinet, presidential, and parliamentary features. Based on neither executive nor legislative supremacy, the political system is unitary; nonetheless it had many characteristics of a federal system, such as allowing local government special prerogatives<sup>7</sup>.

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6 Copper, John F. Taiwan: Nation State or Province-4th ed.: Westview Press, 2003

7 Cline, Ray S. and Chiu, Hungdah, eds. The United States Constitution and

Constitutionalism in China, US Global Strategy Council, 1988

The ROC constitution is unique in that it established five branches of government (known as "Yuan") instead of three, as in typical Western systems. In addition to the normal branches of Legislative, Executive and Judiciary, the Taiwan constitution has an additional two, namely, Examination and Control branches. The former three were accorded powers and functions similar to those in Western systems, while the latter two reflected the importance given to recruitment of government officials and the need to keep check on bureaucracy to ensure its competency and honesty.

However, the ROC Constitution was essentially never implemented in its original form. In 1948, only one year after it entered into force, it was superseded by the so-called "Temporary Provisions Effective during the Period of National Mobilization for Suppression of the



*Prof. Mab Huang briefing observers on the development of human rights in Taiwan*

Communist Rebellion." The Temporary Provisions gave the president the power to take emergency measures to avert an imminent danger to the security of the nation or of the people, to establish an organ for making major policy decisions concerned with national mobilization

and suppression of the Communist rebellion, to make adjustments in the administrative and personnel organs of the central government, and to initiate regulations governing the elections for additional seats in the three parliamentary bodies. Besides, as stipulated in the Temporary Provisions, the president and the vice president may be re-elected without being subject to the two-term restriction prescribed in

Article 47 of the Constitution. Based on this authority, in 1949, the executive branch of the government pushed through the Legislative Yuan bill called Chieh Yen Fa (literally “vigilance measures law”) imposing martial law, which remained in effect until July 1987.

The current constitution has undergone many amendments. In particular, six rounds of amendments were carried out in the 1990s<sup>8</sup>, mainly to reflect more accurately Taiwan's transition to multi-party democracy.

Below is the outline of the changes made to the Taiwan Constitution after it became the document in power since 1991<sup>9</sup>.

### First Revision (1991)

After the repeal of the Temporary Provisions, it was immediately apparent that some of the articles in the Constitution were unsuitable for Taiwan. To meet the demands of constitutional rule, the First National Assembly, at its second extraordinary session in April 1991, adopted ten amendments to the Constitution. Promulgated by the president on May 1 of the same year, the highlights of these additional articles are:

- (1) To provide for complete re-election of the Legislative Yuan and the National Assembly by the people of Taiwan;
- (2) To authorize the president to issue emergency orders to avert imminent danger to the security of the nation or of the people;
- (3) To stipulate that rights and obligations between people on the two sides of the Taiwan Strait may be specially regulated by law.

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<sup>8</sup> Approved on 25 December 1946, amended in 1991, 1992, 1994, 1997, 1999, and 2000.

<sup>9</sup> Taiwan Documents Project (TDP), 1999-2000

### Second Revision (1992)

After the Second National Assembly was elected in December 1991, it met for its first extraordinary session from March to May of the following year. On May 27, 1992, eight amendments were adopted by the session and promulgated by the president on May 28, of which the most notable was the provision for direct election of the president

### Third Revision (1994)

In July 1994, the Second National Assembly adopted ten new amendments to consolidate and replace the eighteen amendments of the First and Second Revisions. These amendments were promulgated by the president on August 1 of the same year.

### Fourth Revision (1997)

The Third National Assembly adopted eleven new amendments in June and July of 1997 to replace the above-mentioned ten amendments. Promulgated by the president on July 21 of the same year, the most important stipulations are:

- (1) The president of the Executive Yuan shall be appointed by the president, requiring no consent of the Legislative Yuan;
- (2) The president may, within ten days following the passage by the Legislative Yuan of a no-confidence vote against the president of the Executive Yuan, declare the dissolution of the Legislative Yuan after consulting with its president;
- (3) The power to impeach the president or the vice president shall be transferred from the Control Yuan to the Legislative Yuan, and such action shall be initiated for high treason or rebellion only;
- (4) The Executive Yuan may request the Legislative Yuan to reconsider the passage of a bill that it deems difficult to

execute; but, should more than one-half, rather than two-thirds, of the total number of Legislative Yuan members uphold the original passage of the bill, the president of the Executive Yuan shall immediately accept said bill;

- (5) The Legislative Yuan shall have 225 members starting with the Fourth Legislative Yuan;
- (6) Beginning from the year 2003, the Judicial Yuan shall have 15 grand justices, including a president and a vice president of the Judicial Yuan. Each grand justice of the Judicial Yuan shall serve a term of eight years, independent of the order of appointment to office, and shall not serve a consecutive term;
- (7) The budget of the Judicial Yuan shall be independent, no longer requiring the approval of the Executive Yuan;
- (8) Taiwan provincial elections shall be suspended; Taiwan province shall have a provincial government and a provincial advisory council; the members of the provincial government, one of whom shall be the provincial governor, shall be nominated by the president of the Executive Yuan and appointed by the president of the Republic;

#### Fifth Revision (1999)

The Third National Assembly passed a further amendment on September 3, 1999, the substance of which was to extend the National Assembly's tenure beyond 2000 until the eventual abolition of the body. However, the Council of Grand Justices, in its Constitutional Interpretation No. 499 on March 24, 2000, announced that the amendment was itself unconstitutional and void effective immediately. This was a strong assertion of the power of judicial review, which however received a high degree of acceptance from both the public and political elites.

### Sixth Revision (2000)

Subsequent to the constitutional interpretation, the National Assembly immediately reconvened and passed a new set of amendments on 24 April 2000, promulgated by the president on the following day. These provided for a new constitutional revision process, in which the passage of an amendment bill by the Legislative Yuan (which had heretofore not had any role in constitution-making) would trigger a special election for an ad hoc session of the National Assembly to ratify the bill.

### Seventh Revision (2005)

The new procedure was invoked for the first time in 2004, when the Legislative Yuan passed an amendment bill in August. The most salient provisions of the bill for this report concerned the Legislative Yuan itself. Starting from the 2007, the election system for the Legislative Yuan will be changed from the SNTV system (see below), to a single-member district, two-vote system (similar to that in practice in Japan), the number of seats will be reduced from 225 to 113, and the term of office will be extended from three years to four. In addition, the method of changing the constitution will be changed again, so that future amendment bills will be ratified by popular referendum. Finally, the powers of impeachment of the president and adjusting the national territory were transferred to complete the abolition of the National Assembly.<sup>10</sup>

## National Politics

Taiwan's political culture traces its origins to local family rule, China's bureaucratic system, and Japanese social order, with some

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<sup>10</sup> These amendments were subsequently ratified by the ad hoc National Assembly in 2005, after the period of this report.

influence from Indigenous tribalism. The island had no real or effective central government until it was colonized by Japan in 1895.

After World War II, Chiang Kai-Shek transplanted to Taiwan the political system of the Republic of China. This was based on Sun Yat-Sen's writings and his goals of achieving Republicanism in China; it was outwardly democratic in form, as set forth in the 1947 Constitution. In practice, the system was authoritarian, with one party rule by the Chinese Nationalist Party (KMT), a strong executive and pervasive police and military control.

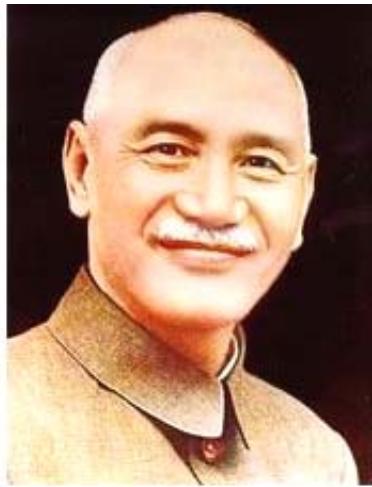
Taiwan has undergone a transformation in its political climate over the last 50 years, which many writers like to link to the conditions of Taiwan's economic situation in those periods of time. This will however not be the case in this report, as the primary function of laying out the changes of political climate in Taiwan is written for the benefit of knowing its political timeline to further understand its current political scenario.

The political climate of regime transformation in Taiwan can be divided into four phases, which are roughly based on the tenures of the last four ROC presidents.<sup>11</sup> The first can be described as the "hard authoritarian" regime of Chiang Kai-shek from 1949 to 1972. The second phase, under Chiang Ching-Kuo's rule from 1972 to 1988, saw a gradual "softening" of authoritarian rule. The third phase manifested Taiwan's democratic transition with Lee Teng-Hui's assuming the ROC's presidency in January 1988 and the implementation of political reforms afterward. The fourth phase of democratic consolidation

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11 Not counting Yen Chia-kan, who briefly served as president after the death of Chiang Kai-shek.

began in May 2000, when Lee was succeeded by Chen Shui-bian in the first democratic transfer of power.



*Former President  
Chiang Kai-shek*  
(Source: [www.president.gov.tw](http://www.president.gov.tw))

### **“Hard Authoritarianism” (1949-72)**

During the first twenty years of the ROC government on Taiwan, the island was strictly under the control of an authoritarian regime, empowered by the practice of martial law. Political parties were not allowed to form, although there were two nominal opposition parties, sponsored by the ruling KMT. There were strict restrictions on several political freedoms, such as speech, publication, and assembly, and human rights violations were frequent and

harsh. A fundamental problem was the issue of the ROC's legitimacy in Taiwan, mainly because both the executive and legislative branches were produced without the participation of the people of Taiwan. The only significant political advance in this period was the implementation of local elections, beginning in 1950. Although these contests were by no means free or fair, since the ruling party maintained tight control, they did contribute to the development of election administration and voter awareness. At the end of this period, in December 1969, eleven members of the Legislative Yuan and

fifteen delegates to the National Assembly were allowed to be directly elected by the people in Taiwan, although again in unfair contests.

### **"Soft Authoritarianism" (1972-88)**

Taiwan's politics turned a new page when Chiang Ching-kuo became the ROC's premier in 1972, wielding effective power during the last years of his father's life (Chiang Kai-shek died in 1975). The younger Chiang placed more emphasis on development of Taiwan, and recruited more native Taiwanese into the government and KMT. International pressures, notably the loss of the "China seat" at the United Nations in 1971 and the loss of official diplomatic ties with the US in 1978, created a need to introduce some political reforms, in spite of the continued practice of martial law.



*Former President*

*Chiang Ching-kuo*

*(Source: [www.president.gov.tw](http://www.president.gov.tw))*

In November 1977, the "Chungli incident" occurred in response to vote rigging in the local election in Taoyuan County. As the first time that civilians used violence against the powerful Kuomintang government, the incident marked the rise of growing opposition in Taiwan. In June 1979, the United Office of Popularly Elected Tangwai (non-KMT) Officials, a political party-like organization, was born. Two months later in August 1979, the journal Formosa was also established, a monthly periodical to represent the voices of the Tangwai movement. In September 1986, the Democratic Progressive

Party, the first opposition party, was officially established, although it remained formally illegal until 1991.



*Former President Lee Teng-hui*  
(Source: [www.president.gov.tw](http://www.president.gov.tw))

In the early 1980s, elections in Taiwan also became relatively more competitive, although opposition parties continued to be banned and the complete domination of the media and the election administration by the KMT ensured overall victories for the party. In the 1980 general elections for the Legislative Yuan, for example, the ruling KMT won 72 percent of the total votes, whereas Tangwai grabbed 13 percent of the votes in the Legislative Yuan and other

independent candidates obtained the remaining 15 percent of the votes. But in the 1986 legislative elections, the share of the votes for the KMT and the DPP was 64 percent and 24 percent, respectively.

A key watershed was the lifting of martial law by the ailing Chiang Ching-kuo on 15 July 1987. On 1 January 1988, restrictions on newspapers were removed, thereby allowing an independent mass media to emerge. On 11 January 1988, the Legislative Yuan passed the third version of the Law on Assembly and Parades, allowing ordinary citizens to apply for approval to hold public rallies.

### **The Democratic Transition (1988-00)**

When Lee Teng-hui succeeded Chiang Ching-Kuo as president in January 1988, it was the first time ever that a native Taiwanese served

as the head of state. With the formation of political parties and the practice of more political liberalization, the KMT government under Lee's leadership began to implement more far-reaching political reforms. On 1 May 1991, Lee terminated the Period of National Mobilization for the Suppression of the Communist Rebellion, lifting the Temporary Provisions and normalizing respect for and implementation of the ROC constitution. After a student movement, the convoking of a cross-party National Affairs Conference, and a ruling from the Constitutional Court, the "10,000 year parliamentarians" (those elected in China before 1949) were forced to resign, and the Constitution was revised to enable the legislative bodies to be elected only from the residents of Taiwan. In December 1991 and December 1992, Taiwan held its first-ever general elections, for the National Assembly and Legislative Yuan respectively. A subsequent constitutional amendment created direct elections for the presidency, the first of which were won by the incumbent Lee in 1996.

During that period, Taiwan also relaxed restrictions on most important civil rights and political freedoms. Taiwan now has more than 100 registered political parties, although only six have representatives in the Legislative Yuan. Taiwanese citizens are now allowed to organize public rallies after applying for a permit, and the mass media is now essentially free of government censorship. With six constitutional amendments during the 1990s, procedures to produce an elected government have been generally accepted by the major strategic political groups in Taiwan. With over a decade of prolonged transition toward democracy, Taiwan is now widely designated as a democratic polity. Lee did not stand for election in the second presidential election in 2000, and his chosen successor was defeated by the DPP candidate Chen Shui-bian, ushering in the current period of democratic consolidation.

## **Relationship with China**

Ever since coming under the ROC's control in 1945 after the defeat of Japan, the question of Taiwan's status has been a fundamental issue. The relocation of the ROC government to Taiwan in 1949 and the establishment of the PRC with nearly complete control of all of the rest of China (with the minor but symbolically potent exceptions of the islands of Kinmen, or Quemoy, and Matsu) resulted in the appearance of "two Chinas" on the international stage. Each maintained formal diplomatic relations with a certain number of countries, as well as a Hallstein doctrine vis-à-vis other countries and international organizations (i.e. not allowing dual recognition or dual membership). From the beginning, this competition was part and parcel of the bipolar politics of the Cold War, and the Taiwan Strait was a military front line of superpower conflict.

In 1971, the ROC lost its seat in the UN and began a precipitous decline in the number of its formal diplomatic allies, notably the United States, which switched its recognition in 1978 to consolidate China's support against the Soviet Union. The end of the Cold War, coinciding with the opening of Taiwan's political sphere, ushered in the present era. Taiwan began rebuilding "substantive relations" with major countries, and its number of allies stabilized around 30. In the 1990s, having dropped its claim to rule all of China, Taiwan began to assert its right to join the UN and other international organizations, such as the WHO, as a separate entity from China. However, to date the only major organization it has succeeded in joining is the WTO, under the name "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu."

As for China, it refuses to renounce its "right" to use force against Taiwan, and periodically buttresses this claim with military exercises,

notably the 1996-97 ballistic missile tests off Taiwan's coasts. It adamantly claims that Taiwan is one of its provinces, while offering Taiwan a version of the "one country, two systems" status given to Hong Kong and Macau (which are not provinces). It has been known to punish countries, international organizations, and even NGOs and academic organizations that do not pay at least lip service to its position, and its frequent warnings and threats are therefore usually effective.

On the other hand, although the majority of countries do not maintain formal ties with Taiwan, most do recognize its passports (usually also with visa treatment markedly different from China's) and at least indirectly its laws, especially in business and trade matters. Over 40 countries have established representative offices in Taipei, many of which are full-fledged de facto embassies, and almost none of which are considered to be under the jurisdiction of the respective embassies in Beijing. This creates an anomalous situation in international law and politics.

Within Taiwan, this situation has two main effects. First, the spectre of Chinese aggression hangs over the society. Many are fearful of somehow "provoking" military action, although it is never precisely clear what exactly would cause such an outcome. The military aspect also concerns other countries, especially the United States, which would likely feel at least a moral responsibility to intervene on Taiwan's behalf (and perhaps a legal one, according to the 1979 Taiwan Relations Act). Therefore, it is frequently the case that the US and other countries, as well as the mainstream international media, scholars, etc. warn Taiwan against "provocative behaviour."

Second, it creates a sense of grievance against the international community, especially among those who take pride in Taiwan's economic and democratic achievements. Repeated snubs at international venues, as well as lectures from the US and others, only serve to intensify this feeling.

Today, it is in no doubt that Taiwan's relationship with China is the single most important issue, not only during everyday (at all levels) discussion, but also during the campaigning period during election seasons. Whether this issue is manipulated to win votes remains an interesting area for study; nevertheless, the impact on the outcome of the results of elections is often very high.

### **Political spectrum**

Taiwan's politics cannot be easily analyzed in conventional ideological terms of "left" and "right," because all major parties contain a wide spectrum of views on topics such as economic and welfare policies, although overall Taiwan is relatively tilted to the "right," for example relative to most European countries. Instead, due to Taiwan's historical experience, as well as its unusual international situation described above, the primary political cleavage has been and remains the issue of national identity, often referred to as the "unification-independence" issue.

This implies a package of concepts. First, one's own self-identification as "Taiwanese" or "Chinese". Second, one's understanding of the current status of Taiwan, as either an independent state, the legitimate government of all of China, or a quasi-state entity somehow attached to China. Third, and perhaps most saliently today, there is the question of the aspiration for the future of Taiwan, whether it should seek

closer relations with China, and perhaps eventual unification, or whether it should keep its distance.

Since democratization, the second aspect of the issue has largely faded, since the categories other than independent state have almost completely lost their persuasiveness for the vast majority of people; instead, it has been mostly replaced by the debate over the whether the current status quo of independence is "one China, one Taiwan" (not to be confused with the "one China principle" advocated by China and some other countries, which considers Taiwan part of the PRC) or "two Chinas". The former implies a separate Taiwanese nationhood, while the latter implies a Chinese nation divided into two states. The issue of the name of the country is bound up in this debate, with "two Chinas" adherents insisting on the ROC name and national symbols, while "one China, one Taiwan" adherents prefer to use Taiwan.

However, this semantic issue may also have declined in salience since 2000, since the formerly pro-independence Democratic Progressive Party has governed under the ROC official name and flag. Despite the rise of the "name rectification" movement, it now seems that there is a "third way" which blends the two and equates the ROC with Taiwan.

## **Major Political Parties**

As of November 2004, a total of 108 political parties had registered with the Ministry of the Interior (MOI). However, most are defunct, with no candidates for any office. Six parties had seats in the Fifth Legislative Yuan (elected at the previous election in 2001): the Democratic Progressive Party (DPP), Kuomintang (KMT), People First Party (PFP), Taiwan Solidarity Union (TSU), Non-Partisan Solidarity Union (NPSU), and New Party (NP).

The "unification-independence" cleavage still defines the party structure, which is made up of four principal parties, combined into two camps, the relatively pro-independence "Pan-Green" camp and the relatively pro-unification "Pan-Blue" camp (green and blue being the colours, respectively, of the DPP and the KMT). It is important to note, however, that all major parties agree that the ROC/Taiwan is currently a sovereign state; the differences are partly a matter of the historical background of each party, and partly based on the relative weight of "ROC" and "Taiwan" symbolism and the aspiration for future relations with China. Table 1 provides the composition of the coalition in the past results of elections for the Legislative Yuan:

Election Year / Party	"Pan-Green"		"Pan-Blue"			Minor Parties	Non Party	Total Seats
	 DPP	 TSU	 KMT	 PFP	 NP			
2001	87	13	68	46	1	1	9	225
1998	70	n/a	123	n/a	11	9	12	225
1995	54	n/a	85	n/a	21	0	4	164

Table 1: The composition of the coalitions in the past representation in the Legislative Yuan<sup>12</sup>

12 Central Election Commission data. Note that the NPSU does not appear in this table, as it was only created in 2004 (see below).

## **Democratic Progressive Party**

The Democratic Progressive Party (DPP) (民主進步黨; abbrev. 民進黨, pinyin: mǐn jìn dǎng) is a liberal political party founded in 1986, but technically illegal until 1991.

The DPP was the first opposition party, gathering most of the opponents of the authoritarian regime under a "broad tent." It used to take a hardline stance in favour of Taiwanese independence and nationhood, and its platform still begins with a call for "[t]he establishment of a sovereign Taiwan Republic and the formation of a new constitution [which] shall be determined by all citizens of Taiwan through a national referendum." However, in 1999 it decided to modify this stance into an "ROC equals Taiwan" position through the "Resolution on Taiwan's Future," which states that Taiwan is already independent, that it is officially known as the ROC, and that "[a]ny change in the independent status quo must be decided by all the residents of Taiwan by means of plebiscite."

Since 2000, the DPP is the governing party and since 2001 is the largest party in the legislature. Formed on September 28, 1986, the DPP's organizational structure consists of a National Congress that elects 30 members to the Central Executive Committee and 11 members to the Central Review Committee. The Central Executive Committee, in turn, elects the 10 members of the Central Standing Committee. The members of these committees all serve two-year terms.

At an extraordinary session of the National Congress held on April 20, 2002, the DPP adopted a proposal stipulating that the president double as chairman whenever the party is in power. When it is not, the chairman will be directly elected by all party members. On July 21,

President Chen Shui-bian assumed chairmanship at the party's Tenth National Congress.

The nomination process for DPP candidates has undergone frequent changes in recent years. At the DPP's Sixth National Congress, held in April and May of 1994, a two-tier primary system was initiated in which ordinary members of the DPP voted for candidates in one primary election and party cadres voted in a second primary. The results of the two elections were combined, with equal weight given to each.



*President Chen Shui-bian at rally for DPP candidates in Nantou*

At the second plenary meeting of the Sixth National Congress held in March 1995, the nomination process for the presidential and gubernatorial candidates was modified to add open primaries for DPP members and non-members alike. It was also decided that candidate slots on the party's list of national constituency representatives for the

Legislative Yuan and National Assembly be allocated equally among three groups:

- (1) scholars and experts,
- (2) representatives of disadvantaged groups, and
- (3) politicians.

At the Seventh National Congress held in June 1996, additional changes were made to the nomination process. It was decided that the primary reserved for the party leadership would be abolished. A two-stage process, involving a closed primary for party members and an open primary for all eligible voters, with each given equal weight, would be used to nominate candidates for president, provincial governor, special municipality mayors, county magistrates, provincial municipality mayors, Legislative Yuan members, National Assembly members, and special municipal councilmen. However, this procedure was repealed at the provisional meeting of the Seventh National Congress held in December 1996. The second stage, an open primary for all eligible voters, was replaced by opinion polls.

## **The Kuomintang**

The Kuomintang (KMT) (中國國民黨 pinyin: Zhōngguó Guómíndǎng; literally the Chinese Nationalist Party), was founded in 1894 by Dr. Sun Yat-Sen as a revolutionary party to overthrow the Qing empire in China.

With this history, it was long seen as purely Chinese in outlook; being the party of Chiang Kai-shek, it was also known for staunch anti-communism and for authoritarianism. However, with democratization, it made serious efforts to expand its support among average Taiwanese. This trend was greatly encouraged during the presidency

of Lee Teng-hui, the first native Taiwanese KMT leader, allowing him to win the 1996 elections with a comfortable majority and the KMT to remain in power for eight years after the first founding election, an unprecedented feat among newly democratized countries. With the defeat in 2000 of Lee's anointed successor Lien Chan (the current party chairman), however, the party has partially returned to its roots, including expelling Lee and launching trial balloons of possible future relations with China, such as "confederation." It is now attempting to forge a new consensus between relatively pro-independence and pro-unification factions.



*KMT Chairman Lien Chan at rally for KMT candidates in Taichung City*

determines the party platform and other important policies, elects the party chairman and Central Committee members, and approves candidates nominated by the chairman to serve as vice chairmen and members of the Central Advisory Council. When the National Congress is in recess, the supreme party organization is the Central Committee, which holds a plenary session every year.

At the grassroots level, KMT members are organized into cells. Moving upward, there are district, county, and city congresses and committees. The highest level is the National Congress, the highest authority of the party, and the Central Committee. The congress amends the party charter,

The Central Standing Committee, which represents the Central Committee when it is not in session, serves as the most influential organization in the KMT. It meets every week to discuss and approve important policies and nominate candidates for important positions, with its secretary-general managing the KMT's general party affairs.

After the KMT lost the presidential election in March 2000, Lee Teng-hui resigned as party chairman, whereupon Lien Chan succeeded him. The 16th National Congress convened in September 2003 and ratified Lien's alliance with his People First Party counterpart James Soong in a joint bid for the 2004 presidential election. On May 19, 2004, following the defeat of the Lien-Soong ticket, the KMT Central Standing Committee unanimously approved Lien's further proposal to push for a merger with the PFP in an attempt to better compete with the DPP in future elections.

### **People First Party**

The People First Party (親民黨, pinyin: Qīnmíndǎng), is a splinter party of the KMT, formed in 2000 under the leadership of James Soong, who had left the party to run for president as an independent and finished second. Soong is currently the chairman and dominates much of its politics.

The PFP is considered to be somewhat more pro-unification than the KMT itself, although in fact its stated policies on cross-Strait relations are not significantly different from the KMT. Indeed, although the PFP has also made efforts to differentiate itself on other issues, its future autonomy is now challenged by the electoral pact it has made with the KMT, whereby Soong agreed to be Lien Chan's running mate in 2004.

## Taiwan Solidarity Union

The Taiwan Solidarity Union (TSU) (台灣團結聯盟, pinyin: Táiwān túanjé liánméng) was officially founded on July 24, 2001.

The TSU is the junior member of the "Pan-Green" camp, but it is not really a splinter of the DPP, having been formed with the encouragement of former president Lee Teng-hui from among a group of his followers, principally from the KMT. It does not govern in a coalition with the DPP, but largely supports it in parliament. Since it has largely failed to differentiate itself from the DPP on most other issues, it has been carving a niche by adopting the maximalist pro-Taiwan rhetoric that the DPP in government has toned down for foreign policy reasons; it has thus been criticized as a radical nationalist party.

In terms of internal structure, the TSU has a Party Congress serving as the highest authority of the party. The party chairman appoints 21 members to the Central Executive Committee every two years. In addition, the party chairman and current legislators are ex officio members of the Central Executive Committee. The party chairman, currently Huang Chu-wen, is directly elected by party members for a three-year term.

## Non-Partisan Solidarity Union

The Non-Partisan Solidarity Union (NPSU) (無黨籍團結聯盟, pinyin: Wúdǎngjí túanjé liánméng) was established in June 2004. Led by Chairwoman Chang Po-Ya, a former minister of interior, the party has garnered the support of 11 independent legislators. The party aspires to become a buffer between the Pan-Green and Pan-Blue camp.

## New Party

The New Party (新黨, pinyin: Xīndǎng) was formed in August 1993 by a group of dissatisfied KMT members. At the head of the party is the National Council, and its current chairman is Yok Mu-ming.

It is the mostly openly pro-unification of all major parties, although it also gained support at the beginning through its image of cleanliness. However, since the establishment of the PFP, as well as the calls from the KMT for its former comrades to "return home," the NP's base has shrunk dramatically. It won only one LY seat in 2001, and in 2004 negotiated with the KMT an arrangement to run the rest of its candidates under the name of KMT.

## III. The Legislative Yuan

Article 62 of the Constitution of the Republic of China stipulates that the Legislative Yuan is the highest legislative body in the country, and that it is to be constituted by members elected by the people who then make laws as representatives of the people.

### History

The original Legislative Yuan was formed in the ROC's capital Nanking in 1928. At that time, its 51 members were appointed to a term of two years. The 4th Legislative Yuan under this period had its members expanded to 194, and its term in office was extended to 14 years because of the Sino-Japanese War (1937-1945). According to KMT political theory, these first four sessions marked the period of "political tutelage." In this period, the Legislative Yuan passed many fundamental statutes, including those for civil law, criminal law, land law, labour law, commercial law and budgetary law. It also completed

the preliminary draft of the Constitution of the Republic of China, laying the legal foundation for the later transition to the stage of "constitutional government."

The first Constitution of the Republic of China came into effect on December 25, 1947. It provided for both a National Assembly and a Legislative Yuan to be elected separately. The first Legislative Yuan session convened in Nanking on May 18, 1948 with 760 members. In 1949, the mainland fell to the Communists and the Legislative Yuan (along with the entire ROC government) was transplanted to Taipei. On February 24, 1950, 380 members convened at the Sun Yat-sen Hall in Taipei.



*The Legislative Yuan building*

(Source: [www.ly.gov.tw](http://www.ly.gov.tw))

The first Legislative Yuan was to have been elected for a term of three years ending in 1951; however, the fall of the Mainland made it impossible to hold new elections. As a result, the Constitutional Court decided that the members of the Legislative Yuan would continue to hold office until new elections could be held on China (these members-for-life eventually became known

as the "10,000 year parliamentarians"). Over the years, deceased members elected on the mainland were not replaced; meanwhile additional seats were gradually added to be elected from Taiwan, starting with eleven seats in 1969.

Fifty-one new members were elected to a three-year term in 1972, fifty-two in 1975, ninety-seven in 1980, ninety-eight in 1983, one hundred in 1986, and one hundred thirty in 1989, which was still less than half of the total. Until 1991, opposition parties in Taiwan were formally illegal, and the KMT dominated the supplemental elections against independent candidates. In the 1970s, opposition candidates organized themselves as the Tangwai ("outside the party") movement and from 1986, candidates began to run under the banner of the Democratic Progressive Party.

The original members of the Legislative Yuan remained in office until December 31, 1991, when as part of a subsequent Constitutional Court ruling, they were forced to retire and the members elected in 1989 remained until the 161 members of the Second Legislative Yuan was elected in December 1992. The third Legislative Yuan, elected in 1995, had 157 members serving 3-year terms. The fourth Legislative Yuan, elected in 1998, was expanded to 225 members, in part to include legislators from the abolished provincial legislature of Taiwan Province.

The first transfer of control of the executive branch after 2000 greatly increased the prominence of the Legislative Yuan, because Taiwan entered a period of divided government, with the Executive Yuan and Presidency controlled by the DPP and the Legislative Yuan controlled by the KMT and its allies in the pan-blue coalition. The legislative elections in late 2001 returned a greatly reduced majority to the pan-blues, making the passage of bills often dependent on the votes of a few defectors and independents. Because of this situation, there have been constitutional conflicts between the Legislative Yuan and the executive branch, for example over the process of appointment for the

premier and whether the president has the power to call a special session.

## **Legislators**

The Legislative Yuan is constituted by members elected from four constituencies: (1) those elected from geographic districts; (2) those elected by Indigenous Peoples, who are considered to form two special electoral districts; (3) party-list representatives (4) a second set of party-list representatives for Overseas Chinese.

Legislators serve three year terms, and may be re-elected indefinitely. Elections for the succeeding Yuan must be completed within three months prior to the expiration of the seated Yuan's terms.

Legislators may not simultaneously serve as government officials. They are given legal immunity for their speech and votes inside the Yuan.

## **Administrative Structure**

The Legislative Yuan is headed by a President and a Vice President, equivalent to a Speaker and a Vice Speaker. These are elected from among and by the legislators for terms of three years. The President chairs meetings and supervises the general affairs of the Yuan; while the Vice President acts in his or her stead if the President cannot be available.

The Secretary-General is the highest staff member of the Yuan. He or she handles Yuan affairs under the direction of the President, and in turn oversees the staff members under his or her jurisdiction as well as those under the standing and special committees.



*The Legislative Yuan main chamber*

*(Source: [www.ly.gov.tw](http://www.ly.gov.tw))*

## **Powers**

According to the provisions of the Constitution, the main responsibilities of the Legislative Yuan include deliberating and voting on legislation, budgets, and the declaration of emergency law, amnesties, declarations of war and peace agreements, treaties, and other important national affairs.

Other responsibilities which fall to the Yuan include approving the Premier and the head of the Ministry of Audit of the Control Yuan, concurring with and following up emergency orders issued by the President of the country, drawing up proposed amendments to the Constitution, passing resolution to give financial subsidies to local governments, and resolving disputes over the division of powers between the central and local governments. Another important function in overseeing the work of the executive branch agencies is the interpellation power, exercised by legislators individually.

## Women's Representation

As for women's representation within the Legislative Yuan, legal guarantees for women have been codified into the constitution, during the amendments to create the modern Legislative Yuan. A complex formula provides a minimum quota based on the size of each district, amounting to roughly 10% of the seats<sup>13</sup>. Over the past decade, relative to many other developing democracies, women have earned a solid foothold in Taiwan national politics, regularly exceeding the minimum quota in the Legislative Yuan. Nevertheless, women participation in Taiwan's national politics is something that should be further promoted. In 1995, women earned 23 seats, or 14.0 percent, of the Legislative Yuan. Growth of women's participation was recorded in the 1998 election, where women garnered 43 seats, or 19.1 percent, and in the 2001 election, the number increased to 50 seats, or 22.2 percent.

Part of the absolute growth in numbers of women elected between 1995 and 1998 may be due to the growth of the total number of seats contested (from 164 in 1995 to 225 in 1998). Nevertheless, the percentage continued to grow, and continued to do so in 2001, when the number of seats contested remained the same.

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13 Additional Article 4, para. 3 reads in part: "Where the number of seats for each Special Municipality, county, and city as set forth in Item 1, and for each political party as set forth in Item 3 and Item 4 [i.e. nationwide and overseas constituencies], is not fewer than five and not more than ten, one seat shall be reserved for a female member. Where the number exceeds ten, one seat out of each additional ten shall be reserved for a female member." This article has, after the period of this mission, been superseded by the 2005 amendments changing the election system to single-member districts (see below). In future elections, women are to be guaranteed 50% of the party-list seats, but have no quota for district seats.

The summary of women representation in three past terms of Legislative Yuan Election that is mentioned above is as listed in Table 2 below.

Term/Year	Seats	No. of Candidates			No. of Elected Candidates			
		Male	Female	Female %	Male	Female	Female %	
5th	2001	225	474	110	18.8%	175	50	22.2%
4th	1998	225	412	86	17.3%	182	43	19.1%
3rd	1995	164	347	50	12.6%	141	23	14.0%

Table 2: Summary of women representation in three past terms of Legislative Yuan<sup>14</sup>

## Indigenous People's Representation

As mentioned above, a certain number of seats in the Legislative Yuan are reserved for Indigenous Peoples. Taiwan is unique among Asian countries in having such reserved seats. This is one very progressive element in Taiwan's election system which ANFREL must applaud.



Banner for Indigenous candidate Walis Pelin

The system was instituted in 1991 with the first revision of the Constitution, when 6 seats were reserved for the first full legislative elections held in 1992. The number was expanded to 8 by the fourth revision of the

Constitution in 1997, when the overall number of seats was raised from 157 to 225, and that remains the number today. The ratio can be considered sufficient compared to the Indigenous Peoples' share of the electorate.<sup>15</sup> When the amendments changing the number of seats and the election system for the Legislative Yuan go into effect for the 2007 elections (see above), the number of Indigenous seats will be reduced back to 6. However, since the total number of seats will be only 113, the ratio will be even higher.

The seats are apportioned equally into two districts, the "mountain" and "plains" districts, for which the SNTV system is used exactly as if they were ordinary geographic districts (see below). The distinction between the two constituencies is rather arbitrary, based on family records dating from the end of the Japanese colonial era.<sup>16</sup> They are only loosely correlated with tribal affiliation, and do not correspond at all to current residence. As a result, voters registered in both of these districts may be found in all cities and counties, and often even at the same polling stations. This leads to a slight variation in the polling procedure for most Indigenous voters (see below), and it also means that Indigenous candidates effectively need to campaign across the entire country and across most tribal and linguistic groups. In all other respects, comments pertaining to the geographic districts also apply to the Indigenous districts.

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15 The numbers of registered voters in the "mountain" and "plains" districts for the 2004 election were 155,629 and 144,646 respectively, together representing 1.8% of the 16,559,254 total registered voters; eight seats represent 3.6% of the total seats in the Legislative Yuan.

16 The Status Act for Indigenous Peoples (2001), Art. 2, states that "mountain" Indigenous Peoples are those who were "permanent residents of the mountain administrative zone before the recovery of Taiwan" and their descendants; likewise, "plains" Indigenous Peoples are those who were "permanent residents of the plain-land administrative zone before the recovery of Taiwan" and their descendants.

## IV. Elections in Taiwan

Taiwan's elections are governed by the Public Officials Election and Recall Law (POERL) and its subsidiary regulations, except for the presidential and vice presidential elections, which are governed by the Presidential and Vice Presidential Election and Recall Law. Voting eligibility is defined broadly: the minimum voting age is 20, and there is no gender, property, or educational requirements. Voter registration is automatic, using the national identify card and household registration systems. The government notifies citizens of an impending election through the distribution of a bulletin or gazette that lists the candidates and their platforms. Normally, voting is scheduled on a Saturday.

### Electoral system

Taiwan employs three different electoral systems, varying with the type of office. The first system is used for election of the president, mayors, and magistrates. Each voter casts one vote in a single-member district, and the candidate who receives a plurality of the vote is elected (first-past-the-post system).



*Prof. Lin Jih-wen briefing observers on  
Taiwan's election system*

The Legislative Yuan elections are a combined system. Members from geographic districts, as well as the two Indigenous Peoples districts, are elected through the single non-transferable vote (SNTV) method. Each voter still casts only one vote,

although there may be two or more seats available for each constituency, which are filled by the top-scoring candidates in order of the number of votes received. Normally, several representatives are elected from each electoral district, which are based essentially on existing administrative boundaries. This system is also used in elections for county, city, and township councils.

The SNTV system with multi-member districts, although apparently simple for voters to use (since all they need to do is simply pick their preferred candidate), is a highly idiosyncratic system that is very rarely used.<sup>17</sup> The reasons are that it usually creates perverse incentives for candidates to compete against their fellow party members or candidates with similar bases of support, rather than trying to expand their bases or reach to the centre. Therefore, it tends to damage party discipline and encourage factionalism and fringe appeals. It also creates a dilemma for larger parties as to how many candidates to nominate in a given district. Its main positive aspect is a relatively higher degree of proportionality than a pure "first-past-the-post" system, allowing smaller parties a chance to get at least one seat out of several.

The remaining Legislative Yuan seats are filled through proportional representation. Before an election, each party submits two lists of candidates, one for the national constituency and the other for representatives of overseas Chinese. However, voters do not vote directly for these lists. Instead, they vote in their respective SNTV districts, and the votes obtained by all candidates are added according to party affiliation. The seats for the national constituency and

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<sup>17</sup> Japan had used it until 1993, and in 1997 it was reported to be in use, besides Taiwan, in Jordan and Vanuatu. However, both Indonesia (for its new upper house) and Afghanistan (for its new parliament) have recently introduced it.

overseas Chinese communities are then distributed proportionally among the parties that get at least 5 percent of total valid votes nationwide. Twenty-two percent of the seats in the 2001 Legislative Yuan election were filled this way.

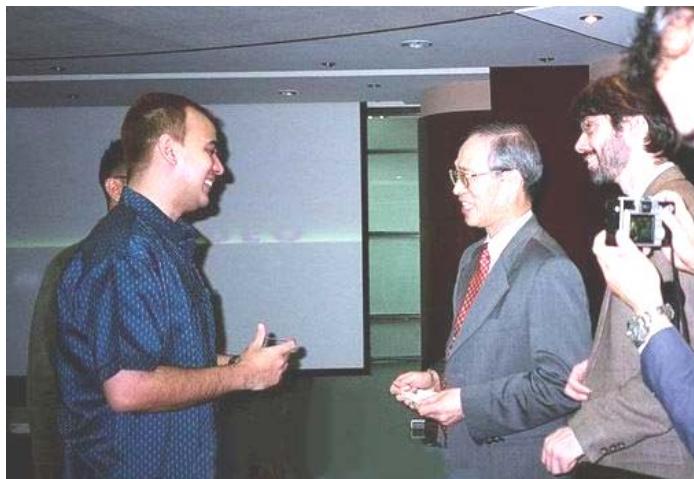
In Taiwan, the electoral system for the Legislative Yuan, particularly the SNTV, has come under much criticism for most of the reasons given above. Therefore, as a result of the seventh constitutional amendment passed by the Legislative Yuan in the summer of 2004<sup>18</sup>, the system is to be replaced with a single-member district, two-vote system for the 2007 legislative elections. Under this system, similar to that currently in use in Japan, voters will cast votes for a candidate in "first-past-the-post" contests in the districts, plus a second vote for a party to determine the number of party-list seats. However, the SNTV will apparently continue to be used for the Indigenous districts, which will have 3 members each, and it is still in use for the time being in local council elections.

### **Central Election Commission**

The CEC is a permanent organization in charge of election-related affairs, responsible for overseeing both national and local elections. Founded in 1980, the CEC under the Executive Yuan is responsible for holding and supervising national and local elections, including recalls and referendums; screening the qualifications of candidates; and drafting laws concerning elections.

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<sup>18</sup> These amendments were subsequently ratified by the ad hoc National Assembly in 2005, after the period of this report.



*Observers meeting with CEC Chair Masa J.S. Chang  
after briefing session*

The CEC has a chairman and between 11 and 19 commissioners who, after being nominated by the premier and approved by the president, serve for three-year terms. Although the POERL forbids any single political party from holding more than two-fifths of the commission seats, the method of nomination leaves the CEC open to criticism for lack of independence from the government. Such complaints have indeed arisen in recent years; however, during this mission, ANFREL generally observed the CEC, as well as the various local election commissions (which are similarly constituted by local governments), to be professional and dedicated.

## **Election Procedures<sup>19</sup>**

As described by the CEC, the following are the official election procedures in Taiwan.

### **A. Announcement of elections**

For the elections for public offices other than president and vice president, the election commission issues an election proclamation 40 days prior to the end of the term of the office in question. The announcement states clearly the type of election, constituency, polling date, ceilings on campaign expenditures.

### **B. Announcement and acceptance of registration for candidacy.**

Three days before the registration for candidacy starts, each local election commission should publicize related details with regards to the upcoming registration for candidacy. The publication should state clearly the time and place for registration, the documents and number of copies required, when and where the application forms are available as well as the amount of the required security deposit. On the fourth day after the proclamation calling on candidates to register is distributed, election commissions begin to accept registration by candidates. The registration period for most elections, including for the Legislative Yuan, should be no less than five days.

### **C. Assessment of qualifications.**

Following the registration by candidates, election commissions are responsible for reviewing related documents submitted by respective candidates as well as verifying with related agencies. Consequently, the commissions will release lists of qualified

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candidates.

D. The casting of lots to determine the sequence of candidates on the ballot.

Three days before an election commission issues the list of qualified election candidates, the casting of lots will be held by the commission to allow respective candidates to draw the lots publicly in order to determine the sequence in which the candidates' names appear on the ballot.

E. The public posting of electoral registers.

Fifteen days before a polling date, a copy of the electoral registers will be on public display in village and borough administrative offices for five days to serve as a reference to eligible voters. Should a voter spot any mistake or omission, the voter may then apply for correction to be made. After any necessary corrections are put in place, the electoral registers are then finalized. Three days prior to the polling date, the number of eligible voters will be announced.



*Typical polling station, in an agricultural cooperative office*

#### **F. Announcement of registered candidates.**

One day before the beginning of the official campaign period, election commissions release lists of qualified candidates, the starting and ending dates of the campaign period as well as the daily campaign hours.

#### **G. Campaign activities**

The length of the official campaign period varies according to the type of election. For election of legislators, the period is 10 days. Daily campaign hours are from 7:00am to 10:00pm.

During the official campaign period, candidates are entitled to establish campaign offices within their constituencies and disseminate printed campaign materials. The campaign materials should be personally signed by the candidates to indicate responsibility. To ensure a clean and beautiful environment, posters and campaign materials should be posted only at respective candidates' campaign offices and on campaign vehicles. Candidates are allowed to conduct rallies and on other campaign activities in accordance with related regulations stipulated in the Law on Assembly and Parades.

#### **H. Distribution of election bulletins and voting notices**

Election bulletins and voting notices are delivered to every household in each constituency two days prior to the election date.

#### **I. The casting and counting of votes**

Elections for all public offices in Taiwan are generally held on Saturdays, although some supplementary elections are held on Sundays. The Election Day is made a public holiday so as to allow

voters ample time to cast their ballots. Polls are open from 8:00am to 4:00 pm.

Ballots are counted at the polling stations immediately after the polling comes to an end. The ballot counting process is open to the public and the name of the candidate marked on the ballot is read when it is counted.

After the ballots are counted, the leading polling administrator and the chief election supervisor at the polling station immediately issue a written announcement of the results. Aside from posting the election result outside the polling station, they should also sign duplicate copies which then will be sent to the candidates' respective parties and to representatives of independent candidates. Within 10 days after winners are announced, election commissions at the level of special municipalities, counties and cities should mail to each candidate detailed results showing the number of votes the candidate received at each polling station.

The POERL (Art. 57)<sup>20</sup> allows for separate polling stations to be set up for Indigenous voters. In practice, however, except for areas with large numbers of Indigenous voters, they vote in the regular polling stations at their places of registered residence. Since they vote for separate constituencies (either "mountain" or "plains"), each polling station will have separate voter lists for the Indigenous voters registered there. When they arrive, they are

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20 POERL Article 57: "Polling stations shall be established in office buildings, schools, public places and other appropriate places in keeping with the size of the constituency and the geographical distribution of the electors. Election for aboriginal tribes constituencies shall be practiced by setting up separate polling stations, or where the need is determined by the election commission, in the local polling station."

issued a separate ballot, and place it in separate ballot boxes. Thus, a single polling station may have up to three ballot boxes in total. Under a ruling made by the CEC, where there is only one Indigenous voter registered at a particular polling station, he or she may request to be transferred to another polling station where other Indigenous voters are registered, to protect the secrecy of his or her ballot.

Once ballots are counted, the results from each polling station are sent immediately to vote tabulation centres in the respective urban and rural townships, county municipalities and districts within special municipalities for compilation. These compiled results are then sent to election commissions at the special municipality, county and city levels to be entered into a computer for tabulation. For the election of the president and vice president as well as central-level parliamentarians, central vote tabulation centres are established. Election commissions at the special municipality, county and city levels then use direct computer links to send polling results to the central vote tabulation centres. Computer entry is done by pairs of operators working on two separate computers, and the system is programmed to only forward results that are identical from both operators, thus virtually eliminating the chance of keystroke errors. This is a simple but ingenious practice that other countries should consider emulating.

Polling stations and vote tabulation centres are open to television and radio news crews so as to allow them to provide live coverage of the vote-counting process. In addition, the central vote tabulation centres can also transmit the latest results over the Internet, by facsimile and by video to mass media organizations, political parties and individual candidates.

#### J. Announcement of elected candidates

Within seven days after an election is held, election commissions verify election results before announcing the list of winners in the race.

#### K. Issuance of election certificates

Following elections for all public offices, certificates testifying to attainment of public offices are produced by election commissions and issued to the winning candidates.

### **Election Supervision<sup>21</sup>**

According to the CEC, there are two kinds of election supervisor in Taiwan. They are:

- a. Central-level elections are supervised by a team of prosecutors from the Supreme Court's Public Prosecutors' Office under the leadership of the Prosecutor-General. The team is responsible for investigation and handling of any criminal violations of election regulations. As for local-level elections, the chief prosecutor of the local court and the count's subordinate prosecutors' office shoulder this task.
- b. To ensure that elections are carried out fairly, impartially and openly, the CEC appoints impartial members of the community to serve as field supervisors. Election commissions at the level of special municipality, county and city also appoint a number of inspectors to monitor and supervise each step of the election process.

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## Election Litigation

As stipulated in the POERL, the election litigation system adopts a “one-trial one-appeal” approach. Courts handling election-related cases must make a final judgment within six months. Extensions are not allowed so as to ensure the best interests of the parties concerned are safeguarded. There are two categories of election-related litigations:

a. Suits to nullify an election

In the event that an election commission violates the law thereby affecting the results of the election in question, a prosecutor and a candidate must, within 15 days of the release of the list of winning candidates, bring a suit against the offending election commission in the appropriate court and request that the election be declared invalid.



*Tsai Pi-yu, Director of the Ministry of  
Justice Department of Prosecutorial Affairs, briefing observers*

b. Suits to nullify a candidate's elected status

Under the following two scenarios, the election commission, prosecutors or candidates in the constituency in question may sue for the nullification of certain candidates' elected status in the appropriate court within 15 days after the list of winning candidates is released. This move can be taken when the number of ballots received by the candidate elected in question is found to be so inaccurate as to have affected the election results, or when the candidate elected is suspected of having employed intimidation, violence, or bribery in the course of the election. In the event that the candidate elected is found to have been unqualified to run at the time of the election, a suit requesting that the results of the election be annulled may be brought at any time during the elected candidate's term of office.

## **V. Legislative Yuan Elections 2004**

The Election for the 6th Legislative Yuan was held on December 11, 2004. All 225 seats were up for election: 176 representing district constituencies (including the 8 seats reserved for Indigenous Peoples), 41 from party lists in the nationwide constituency and a further 8 from the special party lists for the overseas Chinese constituency.

## **VI. ANFREL Observations and Findings**

The ANFREL-TANFREL International Observation Mission consisted of 12 teams, each led by a highly experienced international observer from one of 8 countries, paired with 1-2 Taiwanese assistant observers. The teams were deployed to Taipei City (2nd District), Taipei County (3rd District), Taoyuan County, Taichung County,

Taichung City, Nantou County, Yunlin County, Chaiyi County, Tainan County, Kaohsiung City (1st District), Kaohsiung County, and Hualien County. Each team was deployed in their respective constituency continuously from 5-12 Dec. On polling day, the teams visited a total of 187 polling stations, 23 counting stations, as well as tabulation at several townships and districts.

## **Campaign observation**

### **Security and Campaign Atmosphere**

It was reported in all of ANFREL observation areas that campaigning activities for the 6<sup>th</sup> Legislative Yuan Election was peaceful. In particular, the campaign was generally described to observers as calmer than the zealous, agitated and tense atmosphere during the presidential election in March of the same year.

Although Taiwan has little history of election-related violence, observers noted that the authorities, notably the police, took a variety of measures that seemed to help ensure security during the campaign. For example, observers in Hualien reported that the local police implemented a special deployment for the safeguard of candidates, their offices, residential places and their campaigns. Observers in Taichung County remarked, "Usually two police cars follow each candidate during rallies, if not more." Taipei County observers reported, "Police officers come to check the situation every 5-10 minutes, just to make sure everything is safe and under control. They put the signature at the papers provides in front of the office/house of the candidates."

Observers found ordinary citizens quite willing to discuss the election and politics openly, with only a few exceptions. In a military village in Taichung City, observers noted, "There was a completely different atmosphere comparing to other areas of Taichung city. They paid careful attention to what they say and how it was being translated." In Tainan County, observers reported that people on the streets were "somewhat hesitant to discuss politics with strangers, especially the elders."



*Two groups of supporters converge on Chaiyi City's central square on the eve of polling*

## Campaigning Methods

Campaigning was observed to be very active throughout the country. Campaign advertisements and publicity were also widely used. As described by observers in Taipei County: "Most of the candidates held the campaign everywhere from morning until night time, taking every opportunity to promote themselves and their programs, from leaflets, banners, and billboards, down to shaking hands directly with the people in the night market."

The most immediately noticeable campaign tools in most districts were flags with name, number and face of candidates (described by one observer as "in Chinese style"). For example, observers in Tainan

County found them along the highway and local roads leading to Madou Township. In Taoyuan County, observers said that flags and banners "could be found in literally all the important areas: at temples, outside government buildings, along the roads, at tourist spots, etc., but since there was a general balance between blue and green camp flags, we assumed it as fair play." On the other hand, observers in Chiayi reported that such flags and other small campaign materials were usually restricted to within 30 meters around the campaign HQ of the candidates.

The most common form of campaign activity was the deployment of propaganda units, both in cars and on foot, roaming around the constituencies, as well as small gatherings. ANFREL observed that such activities were normally done in an orderly manner. Campaigns were largely concentrated in areas where there were large numbers of people such as wet markets, night markets, temples and residential areas. Normally, campaigning activities were conducted by a party candidate and team, moving around from one place to another.



*Sound car of the TSU candidate in Chiayi City, fully loaded*

Sound cars were used extensively, either by themselves or together in vehicle parades. In Taichung City and urban areas of Tainan County, such cars were described as "everywhere, belting out music" and "trailing along city

streets all day long." Likewise in much more sparsely populated Hualien County, "All 6 candidates used cars and vans decorated with their photos, large signboards, and banners, which ran around the region."

Campaign leaflets were heavily used also, either handed out on the street or stuffed in mailboxes. Door-to-door and telephone campaigns were also conducted by candidates with the means to do so. Some novel tactics were also tried, for example in Taichung City the DPP organized a dancing event on 5 December to try to attract younger voters. Observers in Taoyuan County summarized campaign tactics, comparing urban and rural areas (see Table 3).

Urban Areas	Rural Areas
<ul style="list-style-type: none"><li>• High-exposure rallies (supported by high profile central-level leaders, singers etc.)</li><li>• Leafleting and person to person visit (particularly in concentrated areas such as market etc.)</li><li>• Advertisement in the local sections of the printed national newspapers.</li><li>• Banners/ flags campaign</li><li>• Clan Association's endorsement</li><li>• Car Parade</li></ul>	<ul style="list-style-type: none"><li>• Small open campaigns, stressing face to face contact.</li><li>• Leafleting and person to person visit (house to house)</li><li>• Banner/Flag campaign (even in remote or mountain areas, sufficient flag presence was observed)</li><li>• Influence of the local leader/ village leader important and Clan Association's endorsement</li><li>• Car Parade</li></ul>

Table 3: Comparison of campaign methods between urban and rural areas

Large gatherings or rallies were also organised, with featured speakers such as the party heads or other national leaders. For these a special permission from the local police authorities and election commissions needed to be obtained first. Such rallies were organised in a concert-like environment, in an open area with music, large speakers, projectors and pyrotechnics, and all "the bunting and the trimmings," as the observers in Taipei City described it.

ANFREL observers witnessed several of these rallies in various parts of the country. In Taichung County, a "huge rally" was held on 8 December for one of the KMT candidates, described as "very colourful, including Chinese traditional demon figures." Two DPP rallies in Tainan, at which the President was the main speaker, were broadcast with continuous live coverage on one of the main cable networks "as if they were commercially-paid airtime."

One common feature of such gatherings was extensive use of fireworks and firecrackers. In an interview with the CEC, ANFREL observers learnt that there is no regulation on the use of controlled



*Child "supporter" at rally for KMT candidate in Nantou*

pyrotechnics in electoral campaigns. For example, observers attended one major DPP rally in Taipei County organised in a small stadium very near a residential building, and the program included an elaborate pyrotechnic show. Although the organisers of the event claimed that the show was

under ‘computerised control’, there appeared to be no inspection by the authorities. Moreover, observers noted many children participating in the event, some of whom were playing very near to the fireworks launching pads.

ANFREL observers also reported that, when interviewed, many candidates or campaign workers often complained about their rivals’ campaigning materials and methods used. A common complaint told to ANFREL observers was the use of slanders against rival politicians. From experience in other countries, ANFREL terms such methods as ‘black campaigning’. <sup>22</sup> However, when the ANFREL observers in Yunlin asked the head of the District Prosecutors Office, they were told that no official complaints on ‘black campaigning’ had been filed. It is unclear why this would be the case; however ANFREL observers noted that the lack of information on complaining avenues for ‘black campaigning’ might be the most possible reason to this phenomenon.

In relations to the ‘black campaigning’ phenomenon, ANFREL observers reported that the operations of ‘underground’ radio stations have an impact on the election. Such reports were received in several constituencies, of which Yunlin had the most complaints. ‘Underground’ radio stations are a legacy of the movement for free and independent media during the period of martial law of 1948-1987, and continued to flourish subsequently to circumvent onerous licensing procedures. Although the press is generally free today in Taiwan, the ‘underground’ radio stations are still active, with a different agenda. Today, these ‘underground’ radio channels are used by political parties to speak ‘their dirty language’. They are one of the

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22 Shimizu, Maiko and Hazri, Herizal., Hazri, Herizal ed., ‘Indonesia: General Assembly and Presidential Election Observation Report 2004’, ANFREL, Thailand

main channels through which slanders and insults to rival political figures are made. When interviewed, a local councillor in Yunlin said that reports have been sent to the central government regarding the matter, but that nothing had been done to tackle this problem. He also further mentioned that there is nothing the local government can do, since licensing of radio and television transmission falls under the jurisdiction of the central government.

## **Vote Allocation**

As noted above, Taiwan used the unusual SNTV system for this election. This led to many practices by the parties to try to achieve optimum vote allocation, to maximize the return of seats, and not to have one candidate attracting too many votes at the expense of his/her party colleagues. Candidates, on the other hand, had incentives to work against their party colleagues to maximize their own personal vote tallies.

Observers in several districts witnessed the ill-effects of the system. For example, observers in Tainan County commented, "It is remarkable that the two KMT candidates we visited, as well as the others, do not organize joint campaigns; they would only appear together in large rallies organized by the party. Despite the full support from one's party, campaigning has to be on one's own and against everybody else. Backstabbing is certain because 'everybody is against everybody.'"



*Banner for DPP candidates in Tainan County,  
indicating vote allocation instructions*

DPP called on its voters to vote based on the month of their birth, with newspaper ads telling supporters how to vote (January-April for candidate A, May-August for candidate B, etc.). In Tainan County, DPP supporters were instructed to distribute their votes in accordance with the last digit of their national ID numbers (1-2 for candidate A, 3-4 for candidate B, etc.). In Kaohsiung City (North District), the distribution rule was by month, and it included the TSU candidate together with the three DPP candidates.

This method of vote allocation was described as a way for voters to support the party, rather than simply picking their favourite candidate. The practise appeared to be accepted by most people, but while some voters interviewed said they would follow the instructions, many others said that they would not, or that they doubted that many would. In Taipei City, numerous citizens interviewed by observers said that

The most extreme effort parties made to counter this effect was the so-called "vote allocation" system. This is when a political party devises arbitrary rules to instruct their supporters how to choose among the party's candidates. For example, in Taichung City, the

the allocation wouldn't work. In Taichung City, some pan-blue supporters thought the KMT's allocation wouldn't work.

ANFREL also heard that voters would sometimes try to second-guess the allocations promoted by the parties and carry out their own forms of tactical voting. For example, again in Taichung City, "There were also a few DPP supporters who re-allocated the votes within their family so that the DPP candidates who they think would be likely "in danger" would be successfully elected." Observers also heard reports of candidates trying to subvert the system, by spreading rumours that other candidates' seats were safe, and that voters should ignore the party's instruction and vote for them instead to "save" them.

Whatever the justification, ANFREL is highly uncomfortable with the idea that voters would be encouraged to cast their votes according to such random criteria. Although vote allocation does not in principle violate any of the election laws, ANFREL believes that it does not help to promote the concept of voting based on informed decision making by the voters. On the contrary, it shows little knowledge on the concept of a democratic election. Furthermore, for political parties to practise such an exercise goes against their role as a responsible democratic institution. As several observers noted, the energy spent by the parties to "educate" their supporters about the different vote allocation rules in each district directly reduced the amount of effort spent to promote the parties' platforms or achievements. ANFREL urges relevant authorities to promote the awareness amongst voters to vote according to informed decisions made by them, not by blindly following any party's allocation strategy.



*MOJ vote-buying hotline logo, based on a legendary Chinese judge*

special task force of prosecutors to investigate allegations of vote-buying. To encourage tips from the public, generous rewards were offered and a 24-hour hotline was also set up<sup>23</sup>. ANFREL was pleased to learn that both the "buyer" and "seller" can be punished under Taiwan's law, and that the punishments are quite strong.

In Taoyuan County, observers found the anti vote buying campaign very visible, on public notice boards, TV advertisements, special features in newspapers, etc. Observers in Taichung County

### **Vote Buying**

Vote buying was frequently cited by interviewees and experts as continuing to be practiced in Taiwan, although some experts expressed the opinion that it was less prevalent than in the past. Certainly the authorities expended significant resources in an effort to reduce the incidence. At a briefing at the Ministry of Justice (MOJ) before deployment, ANFREL learned that the MOJ had established a

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23 Rewards ranged from NTD500,000 up to NTD10,000,000, depending on the rank of the offender caught as a result of the tip, and were to be released in stages along with the progress of the prosecution (1/4 at indictment, 1/4 at conviction in the first instance, and the rest after final confirmation of a guilty verdict).

interviewed a man known as the "Ghost Buster" because he had won around NT\$5 million in the past by catching six vote buyers. In Yunlin, the District Court organized a program on anti-vote buying for all the candidates, where leaflets and car stickers displaying the toll free number for reports on vote buying were distributed. A prosecutor mentioned that all the candidates vowed to paste the car sticker on their campaigning vehicles; however the observers did not spot any campaign cars with the sticker. In Taoyuan, local prosecutors told observers that the fact that people were more careful what they said indicated that the anti-vote buying campaign was working.

Most interviewees reported a relatively higher prevalence in rural areas as opposed to urban ones. An academic told observers in Tainan that as city voters are more independent, vote-buying is not effective. For example, observers in Taichung City found that most voters didn't believe vote-buying was still taking place in the city, although it had existed in the past. In contrast, in neighbouring Taichung County, a reporter told observers that it was still common for some candidates of both camps, and that it was especially effective against the older generation in rural areas, where local factions have deeper penetration. On the other hand, one Indigenous professor in Nantou told observers that vote buying among Indigenous communities is declining, because voters are more educated and there is more civic education in schools.

The forms of vote buying also were reported to have become very sophisticated, to evade detection. The Tainan academic stated, "Bribery, in a real sense, takes place long before elections." Observers in Taipei County also found it difficult to find concrete cases, reporting that "mostly candidates conduct vote-buying as a dinner, a trip, etc. They also give cash but usually the candidates' agents are very careful." In Taoyuan County, observers were convinced that it

was still happening, especially in smaller communities, where people are reluctant to expose neighbours, relatives, etc. It was implemented through clan associations and other local leaders, and included tactics such as over-valued purchases of some product from targeted voters or future agreements to compensate voters, rather than cash payments at the time of the election.

Observers in Yunlin reported that 300 cases had been reported by the third day before polling, and that judicial proceedings had begun in 20 of these; the county EC chair reported that all the campaigns of all six leading candidates in the county had been accused. In Taipei County, prosecutors were already handling around 600 cases, reported by local residents, police, and agents of the Investigation Bureau (MJIB); of these over 20 were being brought to court. Prosecutors in Taichung County told observers that over 600 cases had been filed there. The KMT campaigns in Chiayi and Nantou told observers that the DPP was vote-buying there, whereas in Kaohsiung County the DPP told observers the KMT was doing it.

## **Campaign Finance**

In general, observers found that it was obvious that very large quantities of resources, financial and staff, were employed, even without including any vote-buying that may have occurred. Observers in the capital, Taipei City, described the campaign as "an ostentatious display of wealth by the political parties and the candidates," while even in rural Hualien, observers remarked that "all the candidates pumped the money and other resources into the campaign." This immediately raised the question of how all this activity was financed. Although a proper investigation of this complicated issue was well beyond the means of this mission, some preliminary observations can be made.



*KMT candidate in Chiayi City speaking at rally*

First of all, it was apparent that resources were spent by both local party branches (present in every district) as well as by the candidates themselves.

For example, the head of the KMT party branch in Taichung City told observers that it had erected 30 large billboards in support of the party's candidates in the city, while one of these candidates had mobilized 400 volunteers at her own campaign headquarters. Meanwhile, in Tainan County, observers found that one of the several DPP candidates in that district had opened 4 campaign offices on his own, in addition to the party offices. Small campaign activities were usually organized by individual candidates, whereas large rallies were often organized by parties.

Observers attempted to collect some data on actual expenditures. In Kaohsiung City, it was reported that candidates were spending about NT\$200,000 for a single campaign event, with grand totals of millions of NT dollars and above. Most of them get financial support from the supporters, party, own money, and lend some money from the bank. In Taipei County, one DPP candidate considered to be at a middle level told observers he would spend around NT\$2,000,000, but observers were unable to get similar information for the candidates with the largest war chests.

On average, party candidates had easier access to funds than independent candidates, except when the latter had specific backing. In Tainan County, observers found that only independent and small-party candidates had poor visibility. Likewise, in Taichung City, observers felt the difference of the campaign budget between party candidates and independent candidates was obvious. For example, KMT rally "volunteers" told observers that their pay per hour was NT\$100. But even here, one independent candidate told observers he had about NT\$2,000,000 in funding, which he said he spent on 7 billboards, 2 campaign cars, and 300,000 posters.

Sources of funds were also difficult to determine. In general, individuals are allowed to give up to NT\$1000, but there are a variety of supporting groups that also work to raise funds. For example, two independent candidates in Taichung City received respectively donations from a dentists' association and a teachers' association.

It also seemed clear to observers that the election authorities were not able to control expenditures very effectively. As observers in Taoyuan summarized, "The election system in Taiwan discourages good quality people to stand for election, as it requires a lot of money. The first thing a candidate worries after the election is how to pay back the debt, whether in money terms or otherwise." The current system of reimbursing campaign expenses (at a rate of NT\$30 per vote gained) is only partially effective at providing a level playing field.

### **Issues that dominated Campaigning Period**

According to various media reports, in the period leading up to the election several major issues dominated Taiwan's political agenda.

One of course was the ongoing controversy about the presidential election held in March of the same year. In addition to the riots and demonstrations that followed the extremely narrow victory of President Chen, there were his accusations of a so-called "soft coup" after the election, as well as the legal efforts (which most considered unlikely to succeed) by the leaders of the Pan-Blue Coalition to overturn the results.<sup>24</sup> In a related issue, the Pan-Blue camp expressed concerns that the pre-election shooting incident was staged; an investigatory committee established through special legislation by the Legislative Yuan on a strict party-line vote (and after overriding a cabinet veto) was criticized by the pan-green camp, which refused to appoint any of its members to the committee.

Even more fundamental was the debate over whether to further amend or even replace the Constitution. In fact there was a general consensus across party lines that the Constitution needed reworking, but disagreement on the degree and type of reform. In his second inaugural address in May 2004, President Chen proposed to hold a referendum in 2006 on an entirely new constitution to be adopted in 2008. Many members of the Pan-Green Coalition argued that the current Constitution is outdated and unfit for Taiwan, despite the series of amendments, which they viewed as piecemeal and incoherent. Though Chen promised not to change the name or flag of the country, the proposal nonetheless drew intense criticism from China. The Pan-Blue Coalition opposed enacting a new Constitution, seeing the act as unnecessary, but supported amending it. In the

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24 Chairmen Lien and Soong filed two lawsuits, one against President Chen and Vice President Lu to nullify their elected status, and one against the CEC to nullify the election (see Election Litigation, above). At the time of the legislative election, both suits had failed at the first instance in the High Court, but had been appealed. After the period of this report, both appeals were rejected by the Supreme Court, ending the legal challenges to the presidential election.

summer of 2004, all four major parties voted to pass a series of proposed constitutional amendments to halve the size of the legislature and abolish the National Assembly, among other measures (see *The Constitution*, above).

It was also reported that the US\$18 billion arms deal with the United States was another sensitive issue. President Chen regarded the arms deal as necessary for the defence of Taiwan against the PRC, but the Pan-Blue Coalition has blocked the deal from passing the legislature, arguing the money should be spent on other measures.



*Joint rally for DPP candidates in Taichung City*

At the party level, ANFREL observers reported that President Chen also complained that the party emblem of the KMT is too similar to the national emblem of the Republic of China, and if the KMT does not change its emblem, a newly elected pan-green legislature would force it to do so. On the other side of the coalition, media reports indicated that during the campaigning period, the KMT had been

laying off workers and shedding millions of dollars' worth of assets it accumulated when it monopolized power. Analysts were quoted as saying that the downsizing was prompted by fear that a DPP controlled legislature might call for new investigations of the party's finances.

However, despite all these national issues at stake, what ANFREL actually observed in the campaign was quite different. As described by observers in Taipei City, "Little attention has been paid on issues. Seldom do people vote for the candidate on the basis of the issue he/she presents. Voters are nourished with sensationalism, instead of rational news and discussions. The main 'issue' raised by the parties is the vote allocation mechanism."

In Chiayi, traditional faction politics and the personalities of the candidates were seen as the key elements in the campaign. To note one example, one KMT candidate from a politically known family was popular for that reason, more than her party affiliation, and her campaign materials did not display her party affiliation prominently. Rather than policies, candidates of all parties emphasized "service," meaning how much infrastructure, government resources and favours they have delivered to the district. This traditional politics, however, was seen as turning off many voters, especially younger ones. Likewise, at a major rally in Taichung City by the DPP on 5 December, observers found that "none of the candidates or supporting party members talked about their policies at all."

## **Voter education**

ANFREL observers reported that the voter education program in Taiwan is far from satisfactory, especially in light of the relative lack of substance in the campaigns as described above.

Currently, as per ANFREL's observations, voter education is conducted solely by election commissions and related authorities, especially county and city commissions. This is effective at providing information as to how and where to vote, as well as in some related areas, notably the anti-vote buying campaign described above. In all districts, even in remote villages, ethnic minority communities, etc. observers found voters generally knowledgeable about the election procedures.

Local election commissions produced a variety of posters, booklets, and flyers to carry these messages. The Taipei City Election Commission sent materials to every household that were described by observers as "very user friendly." The Tainan County Election Commission produced VCD and audio cassette materials to explain, for example, the rules for valid and invalid ballots. The Chiayi County Election Commission sent out roving teams to remind citizens in the final days before the elections. In Yunlin, on the other hand, the Election Commission was observed conducting field work on voter education, but it relied instead on a cable TV program which it produced to educate voters.

However, in addition to these technical aspects, which are generally quite good, much more effort needs to be made to focus on issues, on how to make informed choices. Observers in Taipei felt that "The EC does not educate the voters to be sharp-thinking and critical voters." As one NGO worker told observers in Kaohsiung City, "People know

how to vote for the candidates, but they really don't know what the candidates promise for them."

The official public forums for candidate to announce their platforms seem to be ineffective. Observers in Chiayi attended a public forum that was held on 7 December at a local TV station were candidates were given 20 minutes to talk and give a speech. However, they found that the value was much reduced because there was no participation by the audience.

In many countries where ANFREL has observed elections, civil society organizations play a critical role in educating voters about the issues at stake and how to make an informed decision. Unfortunately, we observed very little such activity in this election in Taiwan. Observers in most counties reported that there were no civil society efforts at all in this area. At the local level, the only exceptions observed were clan associations in Taoyuan (which endorsed candidates with similar surname, without regard for ideology), and some religious groups in Hualien which openly expressed their favoured "colour"; obviously these are not ideal cases.

At the national level, there was one significant initiative from an organization called the Taipei Society, which produced a list of unfit legislators (similar to the "blacklists" used by civil society in South Korea and elsewhere). Observers in Taipei City interviewed the leader of the project, Chang Mao-kuei, research fellow of the Academia Sinica. Dr. Chang said the project received a weak response from the rest of civil society, and instead he was harshly criticized for two "mistakes" in the list. Citing his words: "I'd rather go back to my professional career, and forget about it. It's really discouraging." Another advocacy group, the Humanistic Education Foundation, told

observers they had presented some issues in past legislative elections, but didn't do so this time because they expected that the issues wouldn't be taken into consideration.

## Media and Information

With neither the political parties nor civil society playing a strong role to inform the voters about the issues at stake in the election, the role of the media was even more critical. Although this observation mission did not have the time or resources to conduct a comprehensive evaluation of the media coverage, ANFREL's preliminary conclusion is that the media has largely failed in its role to educate voters, focusing much too heavily on personalities and mudslinging. As observers in Taipei City remarked, "The media won't even raise the question why there aren't any issues in the campaign."



*Observer discussing Taiwan's media situation with media workers in Nantou*

Ironically, the freeness of the media in Taiwan seems to be making the situation worse. Since democratization, almost all media are run as commercial enterprises for profit. With licenses relatively easily available, many new entrants have caused over saturation in the market (especially in television: Taiwan has seven 24-hour cable news channels), leading to cutthroat competition.

Sensationalism is the order of the day. Commented observers in Taipei City, "The media sector puts its eyes on a short term basis, that is profit without taking the responsibility to educate the public. 'Professional ethics' are rarely mentioned." Observers in Taoyuan reported that many candidates complained that media is not interested to report their policy: "For the reporter, policy is not news." Commercial radio and cable TV are full of talk shows featuring so-called "famous mouths." These often end up using their program to promote their personal images or as a tool to attack their opponents.

Perennially in search of revenue and lacking a strong core of values, the media can easily be manipulated by political parties that have the resources to do so and turned into a major campaigning tool. Reported observers in Kaohsiung City, "Most resource persons we interviewed said that the media are not fair. The views of the owner of a media company will affect the news policy. The supported candidates will get a larger and good coverage." Observers in Kaohsiung County described the phenomenon as a "triangular relationships between media, businessmen and candidates." Parties and candidates are major purchasers of advertisements on both broadcast and print media, which gives them influence. Advertisements are also sometimes disguised as news stories. Another technique is to purchase entire evenings of airtime, for example to broadcast an entire rally live.

A more direct mechanism is to own a stake in media companies, which provides a strong and functioning mass mobilizing tool. At the time of this election, the KMT had direct stakes in one TV station as well as the largest radio network. One of the DPP candidates (in Chiayi City) was chairman of another TV station. In addition, the government retained stakes in two television stations, and observers heard allegations of bias in their coverage as well.

This phenomenon has resulted in the lack of an independent informative channel for the people. Whether directly or indirectly influenced, it is clear that smaller or poorer political parties and independent candidates are at a great disadvantage. They are simply unable to compete at the same level as bigger and richer political parties.

Another issue is lack of local news. All broadcast media and all major newspapers are based in Taipei, meaning that there is no regular TV coverage of local issues or candidates from the rest of the country, and newspaper coverage is relegated to regional supplements behind the main sections. Only in Hualien did observers notice a significant role for a local media, the Keng Sheng Daily News. This gap is partially filled by underground radio stations, but as described above, these are even less responsible outlets, free as they are from any regulation or supervision.

Unable to rely on the media, conscientious voters have to make extra efforts to learn about candidates and issues. Observers in Taoyuan reported that some voters found leaflets from campaign team an important source to learn the views and policies of various candidates. Meanwhile, in remote areas of Taoyuan and Nantou, observers reported that word of mouth was still the most important source of related information. Sources of information, based on the observation in Taoyuan, are compared in Table 4.

Urban Areas	Rural Areas
<ul style="list-style-type: none"><li>• Electronic media very common. Cable subscription fees very cheap considering Taiwan average GDP: NT\$500 per month for more than 70 channels.</li><li>• Media impact hence is very important for those that have time to watch it.</li><li>• Many shops turn the TV to news channels reporting political news.</li><li>• All major bus terminals turn the TV on news channel reporting regarding election.</li><li>• In all major railway stations, voter education advertisements featured an election quiz offering big money rewards.</li></ul>	
<p>Conclusion: voters are aware of the election.</p> <ul style="list-style-type: none"><li>• Spill over effect of Taipei political issues to the areas. (electronic and printed media)</li><li>• What the people said is very identical to what they have listen and read from the media respective to their political affiliation.</li></ul>	<ul style="list-style-type: none"><li>• Impact of media less important compare to the interpersonal relationships (relatives, relatives' friends, clan, etc)</li><li>• It was reported that a family might split their vote equally to all the candidates that they feel have some connection.</li></ul>

Table 4: Comparison between information sources in urban and rural areas

All in all, ANFREL views the situation of the media in Taiwan as very unhealthy. Not only has the media's own proper development been stunted, but also it is not fulfilling its role as an independent political education channel in Taiwan.

## Adherence to Election Law

It is ANFREL's strongest conviction that all democratic civilians and institutions should uphold the spirit and act as responsible actors in a democratic space. It is reasonable to mention here that although democracy guarantees freedom for expression and speech, it is obvious that in many circumstances, this allowance must be governed

by reasonable laws to ensure fairness to all parties concerned; one example is during the election season. Adherence to the law, especially during the election season, is important; if this is not upheld, the pillars of democracy could slowly crumble.

The most obviously violated rule is Article No. 45 of the Public Officials Election and Recall Law (POERL), which states that the campaigning period for the Legislative Yuan Election can be conducted 10 days before the polling day. ANFREL observers in all parts of the country found that all political parties had started their campaigning activities long before the 10 days period started, with billboard space, banners and fliers already distributed, and television advertisements running regularly, and even official campaign activities under way. Both the Central Election Commission and local election commissions have apparently taken the posture that this is simply the normal state of affairs in Taiwan. If all political actors genuinely prefer a longer campaign period, however, then why hasn't the law been changed accordingly?

As also mentioned in paragraphs above, the usage of banned articles such as fireworks during election campaigns also shows little respect to the election law. Furthermore, the usage of 'underground radio' for 'black campaigning' also shows that there are many actors within Taiwan's democratic society who are not acting like responsible democratic citizens.

Some speeches and other activities were also perhaps crossing the line into "black campaigning." For example, in Taichung City, observers witnessed a speech by the KMT Chairman containing some strong expressions and words. In Kaohsiung County, a number of candidates

were also reported to be using strong and often defamatory language against other politicians and parties.

In another example, observers in Tainan asked the local election commission whether they verified the information submitted by candidates before printing it in the election bulletins, but the commission replied that it did not have such responsibility. Despite noting that if a false report were found to be filed, it was a criminal offence, he reasoned that the commission should just passively transmit the information for all candidates and "let society be the judge."



*Taipei City Mayor Ma Ying-jeou campaigning for KMT candidate in Tainan County*

Another issue is the use of government resources in campaigning. Official vehicles, for example appeared to be used frequently by officials of both the central government (i.e. from the ruling DPP), as well as local governments (all parties). However, it was difficult for

observers to determine in specific cases whether such use had been properly authorized. For example, media reports during the observation period accused the president of using "Air Force One" to travel to campaign activities. In Nantou, observers noticed a large number of official-looking vehicles in a DPP parade on 8 December, which were described to observers as vehicles from the Legislative

Yuan. The KMT Mayor of Taipei City was also observed campaigning in distant Tainan County during regular work hours, raising the question of taking leave from official duties. On the other hand, observers in Taoyuan reported, "All party agents or civil servants interviewed are aware that government officials can only assist in the campaign after office hours or else they need to take leave." The question again is one of supervision, whether the election authorities are able to monitor such activity to ensure that the rules are being followed correctly.

For all of these cases, it seems an effective enforcement mechanism is not available, that the competition is a "free for all" with no referee, for example to decide what speech is acceptable. The POERL, Article 12, provides for a system of election inspectors, who might in theory play such a role. ANFREL observers in each district made an effort to ascertain whether such inspectors were fulfilling this role; unfortunately, the verdict must be that they are not. The only important activity they were observed to undertake was to supervise the distribution of ballot papers (in Hualien). In Kaohsiung City, observers were only informed by the EC that 12 inspectors had been appointed. In Taichung City, observers met the chief inspector, who informed them that 29 inspectors had been appointed on a part-time rotating basis; observers "had an impression that inspectors are hesitant to intervene and point out violations by candidates." In Taipei County, observers found that the EC had appointed suitable persons, but that they would perform inspection on polling day only.

When it came to the general public, awareness of the inspectors system was nonexistent. Not only did active NGOs (in Kaoshiung City) know nothing of their activities, but even people directly involved in the election sometimes didn't either. For example, the

chairman of the Taichung City branch of the KMT did not recognize the chief inspector. A prosecutor in Yunlin County said he was aware of Article 12, but had never met any inspectors. He also noted that the roles of the Inspectors are not clearly defined by the law.

This is not meant to criticize the work of those individual inspectors. As noted, they are only part-time, short-term appointees with no real powers. However, ANFREL believes Taiwan needs a much stronger inspection system.

### **Conclusion on the pre election campaigning observation**

Taken altogether, the good points of the campaign were that it was conducted peacefully, and that freedom of speech, assembly, etc., were strongly exercised by all participants and by citizens in general. However, ANFREL characterizes the current electoral-political exercise in Taiwan as an election characterized by the "politics of money" and the "politics of celebrity" (i.e. personality based). Taiwan has an apathetic electorate (save for the diehard partisans) and media that have failed in its sworn duty to inform, to enlighten and to inspire with truth as its beacon. Civil society is a big disappointment in that it has largely failed to transcend its own parochial concerns (their respective causes) to get involved in a cause greater than their own – the future of the nation. In conclusion, based on the findings elaborated above, to a large extent, ANFREL observers agreed that a lot more must be done to deepen the understanding of democracy in Taiwan, as so much more remains to be desired in the political life of this nation.

## **VII. Election Day Observation**

ANFREL observers reported that in all observation areas, there were no disruptions for voters to turn up to the polling stations. Voters were well informed on the locations of polling stations.

Although no complaints were made to ANFREL observers on the unsuitability of the locations of the polling stations, observers in a number of locations saw campaign materials posted too near to polling stations. For example, one polling station in Yunlin had a candidate's poster still hanging just outside. Likewise, in Nantou, some polling stations had campaign posters and candidates' flyers near the entrances, and a similar problem was observed in one military village in Taichung City.

At some polling stations, people were observed loitering near polling stations in a way that might be inappropriate. In one polling station in Taichung City, a woman was observed at the entrance flashing hand signals for a particular candidate. In another polling station in Taichung County, a group of supporters flashing hand signals were told to leave by police, but returned quickly. Also in Taichung County, observers witnessed 2 different groups of supporters at 2 polling stations who dispersed at the sight of observers, and one polling station where a candidate provided refreshments outside. Furthermore, in several polling stations, various people were observed loitering in front of the polling station.



*Most polling stations were as efficient and orderly  
as this one in Tainan County*

On the general administration of the elections, ANFREL would also like to commend the CEC for effectively organising the polls. As ANFREL observers in Chiayi reported, "The polling process was very efficient. Poll workers were on time for opening, election materials were sufficient, and they have done their duty in orderly and honest fashion. Poll workers it seems are so used to administering elections." In Nantou, observers were impressed by the policy of the local EC to rotate poll workers where possible from the polling stations they had worked in previous elections, in order to prevent them from getting too close to local voters; it was also appreciated that all poll workers and police were enabled to vote by appending their names to the voter lists at the polling stations to which they were assigned. ANFREL observers in Taichung County reported, "The election commission was in full preparation and quite confident for holding a peaceful election."

## Opening of the Polling Stations

All ANFREL observers reported that the polling stations they visited opened on time. There were also virtually no reported problems on logistics, in that all required materials were delivered to the polling stations in good time. A minor exception occurred in one polling

station in Fengshan, Kaoshiung County (#74), where one piece of equipment did not arrive until 8:12 am, but this did not appear to affect voters.



*Ballots in Taichung City were stored with 24-hour closed circuit TV monitoring*

ready with their ID card and personal stamp. In addition, the poll workers checked voters' IDs and voter lists carefully. In relation to this, ANFREL would like to congratulate the CEC and local Election Commissions for organising proper briefings and trainings to the poll workers. However, one area that remained weak was the checking for cameras and cell phones. In Taipei County and Taoyuan this was reported to be generally not done properly; on the other hand, one polling station in Nantou (#232) was enforcing the rule strictly.

On logistics, ANFREL observers in Taipei County and Kaoshiung City reported that they were concerned with the security of the ballot papers as the ballot papers in the polling stations they visited were

kept in the polling stations the night before the Election Day. In Taipei City one polling station had had custody of the ballots for 2 days. However, other ANFREL observers did not report such problems. On the contrary, some observers specifically commended the tight security of the ballots. For example, observers in Nantou reported, "We were satisfied with the coordination of logistics in the polling stations we observed. All polling equipment (except ballot papers) came to polling stations since the day before election and the places were closed and safeguard by some security guards." Meanwhile, ANFREL observers in Taichung County reported, "We learnt that the county Election Commission had a proper monitoring system for the ballot papers stored before and after the Election Day. We asked about this monitoring system to EC staff, and learned that they have been recording every room of the EC 24 hours a day after Presidential Election in April. Everybody who came in to the EC could see how the ballots are stored through this monitoring system." A similar system was observed in Taoyuan.

### **Polling Process**

ANFREL observers reported that the ballot papers had no running number on it. ANFREL praises the CEC for this measure, as ballot papers with running numbers can compromise vote secrecy. All ANFREL observers also reported that the voter lists had been prepared effectively. Observers in Kaohsiung City reported that two voters were turned away from one polling station (#340) because their names were not on the list, apparently because they had moved to the city too recently.

However, surprisingly, ANFREL observers from Nantou and Kaoshung County reported that they did not see party agents in any polling stations. Observers from Nantou reported, "No representative

from party observed election but there were 3 poll workers who were doing this duty instead. When asked, the poll workers said that the parties trust the system and the poll workers therefore there is no need to observe the process." In Kaohsiung City the situation was mixed, with 5 out of 7 polling stations observed having party agents, while the other 2 (#344 and #345) had none, only the EC-appointed monitors. Observers in Taipei County reported seeing very few party agents, whereas ANFREL observers in Chiayi reported that they met with party officials who were observing the elections. However, they reported that these observers seemed to be not very diligent in performing their duties. They (ANFREL observers) reported, "Party agents seem relaxed in performing their duties. Interviews that we had done with party agents suggest that they have complete faith in the process. They do not expect anything extraordinary to happen." Likewise, observers in Taoyuan found party agents present in polling stations, but focused solely on the ballot box, not the process as a whole.

ANFREL concludes from the observation of its observers that the system of election monitors in the polling stations is inadequate, providing too few monitors, and places them in a peculiar position, since they are technically hired by the local EC and supposed to be impartial. This is quite different than the practice in most countries of having party agents as monitors representing their parties' interest in the polling process. Making matters worse, Taiwan has no civil society monitors or observers.

Another alarming report came from ANFREL observers in Nantou, Yunlin and Taipei City, as they reported that there were no spare ballots allocated in the polling stations they visited. Their (observers) reports said, "There were no spare ballot papers for voters who have 100

made mistakes. They may lose their right to vote if they do not stamp or fold the ballot paper properly. Voters may stamp the paper with too much ink and that may make a stain to another part of the ballot paper while folding. These ballots may be counted as spoilt ballots."



*A typical voting booth, open to the centre of the station, with a thin curtain*

ANFREL observers in Taoyuan and Taipei County reported that they were concerned about the setting up of the polling booths, because the screens that covered the doors of the booths were almost transparent. As the Taipei County observers noted, "As we observe we can see clearly through inside the ballot screen, parts of the screen looks like a net. In addition, nobody seemed to be aware of this problem, including the inspector." ANFREL observers in Nantou also reported on the same issue: "Polling booths were set up improperly. Most booths were set up with curtains which are too short and thin and voters can be seen from outside. We (observers) feel that the doors to the booths should face against the wall or face to closed windows rather than facing the centre of the polling station."

From these observations, ANFREL concludes that polling booths in several areas failed to adequately protect the secrecy of the marking of the ballots. In almost all polling stations, the booths were opened towards the centre of the station, and in many cases the curtains in

front of the booths were nearly transparent, allowing other voters and poll workers the possibility to see who voters were choosing. ANFREL calls for better planning on the layout and the materials used in the polling stations from the CEC in coming elections.

All ANFREL observers also noted that the national identity cards, which are the primary means of identifying voters, suffer from the fact that many of the pictures are simply too old to be useful. ANFREL feels that it is necessary for the CEC to come out with a new way to identify voters if the national identity cards are not more regularly renewed by the government.

In polling stations where Indigenous voters were registered, separate ballot boxes were set up for them. However, the ballot papers for the Indigenous constituencies were the same colour as those for the district constituencies.

### **Counting and Tabulation**

Counting was generally very efficient and smooth. Indeed, the most common observation by ANFREL observers was the speed of the count. In one polling station in Rueifang Township, Taipei County, the process was finished in 45 minutes, while observers in Chiayi reported that the polling station they observed finished the count in 30 minutes, and the county EC had complete results three hours after the close of polls. In some cases the process was felt to be too fast to allow proper public scrutiny. For example, in two polling stations in Kaohsiung County (#579 and #581), the chairman did not show the ballots individually to the public, but simply read out the results quickly. In Nantou a group of adjacent stations were observed (#136, #137, #138, #139), and it was found that the procedures were different, apparently according to the preferences of the various

polling station chairmen, but that in general ballots were not shown to the public clearly.

A number of isolated incidents were also reported. In one polling station in Taipei City the door was closed for a short period in between the close of polls and the beginning of the count, preventing the public from directly observing the disposition of unused ballots. Observers in Taoyuan noted that the total number of ballots was not announced before beginning to count them. On a cultural note, observers in Yunlin witnessed multilingual counting, with ballots sometimes read out in Mandarin, sometimes in Hokkien, or even mixed, although this apparently posed no difficulty for the public to understand.



*In this station in Tainan county, ballots could be viewed clearly by the public*

After the count at the polling stations, observers witnessed tabulation at the district or township level in Taipei County, Taichung City, Chiayi City, Nantou, and Kaohsiung County, where the ballot reports were keyed into the computer for transmission to the local EC and CEC. Observers in Nantou followed the ballots and reports to the township office, and noted that the venue was well equipped, including a fire truck, flashlights, etc. to prevent anything from disrupting the process.

## **Voter Turnout**

All ANFREL observers reported that the voter turnout for the 6<sup>th</sup> Legislative Yuan Election 2004 was quite low. This may be in consequence to the long and very tiring period of the Presidential Election earlier in 2004.



*The vote tabulation centre in Chiayi City*

ANFREL is concerned about the low voter turnout, worrying that this election fatigue syndrome may dampen the fast moving democratization efforts in Taiwan. For instance, ANFREL observers in Taipei County detailed the voter turnout in three different districts which they observed. Their findings are shown in the table 5 below:

District No.	Registered Voters	Total votes cast	Turnout (%)
1	783,824	435,149	55.52
2	981,318	554,118	56.47
3	914,628	535,290	58.53
<b>Total</b>	<b>2,679,770</b>	<b>1,524,557</b>	<b>56.89</b>

Table 5: Voter turnout in Taipei County's three election districts

All other ANFREL observers reported low voter turnouts in their respective areas of observation. This observation was borne out by the final statistics announced by the CEC, which showed a total turnout of 59.16% (9,796,299 votes cast, out of 16,559,254 eligible voters). ANFREL views this as a very alarming situation and strongly urges the CEC to formulate a fast and comprehensive solution to the matter.

On the other hand, those voters who went to the polls were had a generally high awareness of proper voting techniques. This was indicated by the number of invalid ballots, which was quite low (78,940 votes, or 0.81% of the votes cast), despite the relatively strict standards used.

### Immediate Post-election Environment

With the computerized tabulation system automatically updating the CEC's website, running results began to appear on the television an hour after the close of polls, and final results were available for almost all districts within 3-4 hours. Crowds of supporters gathered at their candidates' campaign offices and party headquarters to watch the results come in, but the general atmosphere remained peaceful.

Observers in Kaohsiung City visited the offices of the four main candidates, and found that those of elected candidates were very festive, while that of one defeated candidate was closed, with an angry man at the front driving away visitors. The chief of the city police department visited all elected candidates office to offer congratulations. A similar situation obtained in Nantou, where ANFREL observers went to the offices of KMT and the DPP, where both were holding a big celebration of their victory. In Hualien, on the other hand, observers were impressed by the fact that all four candidates, including the two defeated candidates, held public parades to thank the voters.

### **Conclusion on the Election Day Observation**

Generally, a well-administered and relatively peaceful polling/counting day was conducted in a favourable climate where voters cast their votes without serious incident. There were a few technical or logistical problems reported, but they were mostly successfully resolved at the lower levels.

ANFREL is glad to rate the administration of the 6<sup>th</sup> Taiwan Legislative Election 2004 as Good (a few incidents or irregularities were observed that had no significant effect on the integrity of the process.)

### **VIII. Recommendations**

Based on the findings of its observers, ANFREL-TANFREL joint International Election Observation Mission for the 6<sup>th</sup> Legislative Yuan Election would like to make the following recommendations.

## 1. Pre-election

- Especially in light of declining turnout, Taiwan should move to implement absentee voting, as well as lowering the voting age to 18.
- The members of the CEC should be chosen through a process which ensures that they are seen to be non-partisan. The proposal to have them appointed by the President with approval from the Legislative Yuan would probably be an improvement over the current system.
- It is in ANFREL's opinion that the CEC must firmly act on any kind of outlet that allows 'Black Campaigning' activities. It is both unhealthy for the development of democracy while able to distort positive efforts to create a politically educated society in Taiwan.
- The CEC should establish an effective elections inspection system, with sufficient numbers of full-time specialist staff. Ideally this would operate on a separate line of command from the election commissions, creating an additional check on violations.
- ANFREL suggests that a law that limits campaigning expenditure per political party be formulated by the CEC, to guarantee the ability for every political party to contest at the same level. With no limit on election campaigning funds, only a few political parties that are financially strong are able to compete at the top level, while the rest would fall below. This clearly puts poorer parties or candidates at a distinct disadvantage, even if they have better policy or issues to address.
- Media should place more emphasis in their reporting on issues and policies of the candidates and parties, in order to uphold the professional responsibilities of journalists.

- Likewise, parties should spend more efforts to promote their platforms, which should consist of clear and specific policies. In addition to following their parties' platforms, candidates should also raise issues of local concern to their constituents.
- In general there is need for more voter education. ECs need to go beyond the technical aspects of voting to discuss the value of voting and the issues involved in each election. In addition, NGOs should engage in voter education, with public funding if necessary. The current system of "public platform presentation forums" is largely useless, but could perhaps be improved by increasing both the quantity and quality of such events, turning them into genuine forums for increasing public awareness. State broadcasting could support these forums to enable them to reach larger audiences.
- Civil society observers (see below) should also be active in observing the campaign, in order to assess the quality of the process.
- Campaign propaganda should be cleaned up the night before polling day, i.e. at the end of the official campaign period, rather than the night after.
- Consideration should be given to defining smaller districts for the reserved seats for Indigenous Peoples, such as by geography, so that these candidates are not forced to campaign across the entire country. In particular, it would be a great pity if, while the rest of the Legislative Yuan moves to a single-member district system, the Indigenous Peoples continue to use the flawed SNTV system.

## **2. Polling**

- Polling booths should be made more secure, for example by simply turning them around, so the wall of the room is at the back of the voter, or else by using a fully non-transparent curtain.
- National identity cards should be renewed regularly, so that pictures are up to date.
- No people should be allowed to loiter in front of the polling station; preferably a clear radius should be established; likewise a prohibition of campaign materials within a certain radius of polling stations should be strictly enforced.
- Ballot boxes for Indigenous voters should be brought to a centralized counting centre at the township or county level, and mixed before counting, in order to preserve the secrecy of their ballots.
- In addition to any monitors hired by local ECs, the party agent system should be fully implemented, whereby each party (or independent candidates) would automatically have a right to a party agent in each polling station. But their compensation, if any, should be arranged by the parties or candidates themselves.
- Civil society monitors should be not only allowed (currently there is no space for them in the election regulations), but positively encouraged. A complete system of accreditation of such neutral monitors should be implemented, including provisions for international observers.

## IX. Result of the 6<sup>th</sup> Legislative Yuan Election 2004

### Overall Data

In this election, 9,796,299 votes were cast, representing a turnout of 59.16% of eligible voters. There were 78,940 invalid votes, representing 0.81% of votes cast.

In district and Indigenous constituencies, 386 candidates (including 344 men and 42 women) contested the 176 seats. Of the elected candidates, 144 were men and 32 were women. Including party list seats, a total of 48 women were elected, or 21.3% of the members, representing a slight decrease from the previous election. Given that the new single-member district system is generally expected to be disadvantageous for women, more efforts may be needed to promote women's participation in the future.

### Political Results

The Pan-Blue Coalition (consisting of the Kuomintang, People First Party, and New Party) narrowly retained its majority in the Legislative Yuan, winning 114 seats (one fewer than in 2001), compared to 101 seats won by the Pan-Green Coalition (consisting of the Democratic Progressive Party and Taiwan Solidarity Union), representing a net gain of one seat. The remaining ten seats went to the Non-Partisan Solidarity Union and independents. Those elected will serve three-year terms beginning in February 1, 2005 and ending January 31, 2008.

This was the first election following Pan-Blue's narrow defeat in the March presidential election. Many saw the legislative election as a

referendum on President Chen's government and, on the other hand, on the Pan-Blue Coalition's electoral viability. With the failure of the Pan-Green Coalition to win a majority, Chen will likely find it difficult, as in the past, to enact his policies.

Table 6 below summarizes the results of the 6<sup>th</sup> Legislative Yuan Election 2004.

Political Party	Nationwide valid votes	Nationwide percentage	Seats won	Change (over 2001 results)
 Democratic Progressive Party	3,471,429	35.72%	89	+2
 Kuomintang	3,190,081	32.83%	79	+11
 People First Party	1,350,613	13.90%	34	-12
 Taiwan Solidarity Union	756,712	7.79%	12	-1
 Non Partisan Solidarity Union	353,164	3.63%	6	n.a. (formed in 2004)
 New Party	12,137	0.12%	1	0
Other Minor Parties	5,931	0.06%	0	-1
Non Party	577,292	5.94%	4	-5
<b>Total</b>	<b>9,717,359</b>	<b>100%</b>	<b>225</b>	<b>0</b>

Table 6: Overall result of the 6<sup>th</sup> Legislative Yuan Election

Source: Central Election Commission



Figure 2: Map of the overall results by county – coalition based

## X. Annexes



### Taiwan Network for Free Elections (TANFREL) Asian Network for Free Elections (ANFREL)

## Statement on Taiwan Legislation Election Observation 2004

### Introduction

The Asian Network for Free Elections (ANFREL) was invited by the Taiwan Network for Free Elections (TANFREL), with financial support from the Taiwan Foundation for Democracy (TFD), to conduct the first-ever systematic and professional nationwide election observation mission in Taiwan.

The mission consisted of 12 teams, each led by a highly experienced international observer from one of 8 countries, paired with 1-2 Taiwanese assistant observers. The teams were deployed to Taipei City (2<sup>nd</sup> District), Taipei County (3<sup>rd</sup> District), Taoyuan County, Taichung County, Taichung City, Nantou County, Yunlin County, Chaiyi County, Tainan County, Kaohsiung City (1<sup>st</sup> District), Kaohsiung County, and Hualien County. Each team was deployed in their respective

constituency continuously from 5-12 Dec. On polling day, the teams visited a total of 187 polling stations, 23 counting stations, as well as tabulation at several townships and districts.

ANFREL and TANFREL would like to express their appreciation to the Central Election Commission (CEC) and City and County Election Commissions (ECs) for their assistance and cooperation. We hope that such observation will become more and more common in the future, in line with international trends. There is certainly much to be learned by other Asian countries from Taiwan's experience, and much as well that Taiwan could learn from comparing with international best practices.

## **Basic Findings**

This election process was very peaceful, and carried out with a high degree of professionalism. Politically, participants in the elections were able to campaign very freely, using all manner of means to reach out to the voters. Therefore, the result can be considered to express the will of the voters.

However, the quality of the campaign left much to be desired, and voter disaffection was noticeable, and may be of concern in the future. In addition, attention needs to be paid to ensure that public confidence in the election system remains high, in the face of the strong political polarization in the society.

## **Pre-Election Period**

The campaigns, both by parties and individual candidates, are obviously very expensive, as can be easily observed from the election rallies, paraphernalia, etc. In addition, the campaign lasted much longer than the official campaign period. Under such conditions, it is an open question whether the best candidates can always compete

freely, or whether only those with better access to financing can compete.

Moreover, the tone and content of the campaigns in Taiwan is relatively low. Policies and programs are severely neglected, and replaced by personal appeals and mudslinging or “black campaigning” attacks.

A unique feature of Taiwan’s campaigns is the voter allocation strategies employed by major parties

The media in Taiwan largely fail to play a constructive role in the public service. Instead, even the mainstream media are usually both partisan and non-constructive, contributing substantially to the negative election culture noted above. In some areas, underground radio stations play an even less wholesome role, free as they are from most legal liability.

Voter education programs are greatly inadequate. What programs do exist, sponsored by the CEC and ECs, are usually confined to technical matters, such as how and where to vote. Lacking are any programs to address the content of election, including the platforms of parties and candidates, stimulating public understanding of major issues facing the country.

We observed a high level of apathy in the society. Voters were obviously fatigued with electioneering, and even very imaginative and expensive campaigns found it difficult to arouse much interest. More seriously, Taiwanese civil society also showed a surprising level of indifference, with many organizations even giving up trying to promote their issues in the election.

We are concerned about the possible politicization of election authorities, especially the CEC, whose members are appointed through a process that leaves them vulnerable to accusations by opposition parties. Nonetheless, we should note that we did not observe any evidence of partiality in their operation during this

election. In addition, the system of election inspection, as provided for in Art. 12 of the Public Officials Election and Recall Law, did not appear to be functioning effectively.

Observers in many constituencies heard reports of widespread vote-buying, and many citizens clearly believe that it is prevalent. Statistics of the Ministry of Justice confirm that it is indeed still a significant issue in Taiwan, although they also indicate some success in cracking down on the practice, which could provide useful reference for other countries facing this problem.

### **Polling Day**

In general, the polling and counting were conducted extremely efficiently. Poll workers were obviously well trained and experienced, and the process was quite smooth. In addition, the election was extremely peaceful, with no major incidents of violence reported, and an overall atmosphere of security.

Nonetheless, several technical issues were noted by observers which need improvement. These included the following:

- The system of monitors in the polling stations is inadequate, providing too few monitors, and places them in a peculiar position, since they are technically hired by the local ECs and supposed to be impartial. This is quite different than the practice in most countries of having party agents as monitors representing their parties' interest in the polling process. In addition, Taiwan has no civil society monitors or observers.
- Although the principle of reserving seats for Indigenous Peoples is a very positive step, the system of separate voting means that the secrecy of the ballot for many indigenous people is seriously compromised.
- Polling booths in several areas failed to adequately protect the secrecy of the marking of the ballots. In almost all

stations, the booths were opened towards the center of the polling station, and in many cases the curtains in front of the booths were nearly transparent, allowing other voters and poll workers the possibility to see who voters were choosing.

- In several polling stations, various people were observed loitering in front of the polling station. In three cases, they appeared to be reminding voters to vote for particular candidates.
- The national identity cards, which are the primary means of identifying voters, suffer from the fact that many of the pictures are simply too old to be useful.
- The enforcement of the ban on carrying mobile phones into polling stations was enforced very unevenly.
- Campaign materials were not taken down until after polling day, so that they were often visible along voters' routes to and from polling stations.

Generally, the counting process was conducted in an orderly manner; however, observation suggests that there is still room for improvements in the process. One basic observation is that the counting process was unnecessarily too fast. For example, in some cases ballots were not shown clearly to the public when being read, and in other cases the marking of the tally board was not clearly visible. In some polling stations, ballots were counted by two teams simultaneously, which is much more difficult for the tallying.

Three more technical problems observed during counting were:

- No announcement was made of the total number of voters (calculated from the voter's register) before counting began. This prevented an important double-check against adding extra ballots.

- In some polling stations, all the doors were closed at 4 pm for 10-15 minutes for “resetting”, before “re-opening” for the count. This degraded the transparency of the counting process in these polling stations.
- In some places ballot boxes were emptied onto a table before counting, rather than ballots being drawn directly from the box as stipulated.

Taiwan’s system of tabulating the votes and transmitting them to the CEC is one of the best elements of its system, strongly worthy of study by other Asian countries. Not only does it deliver the results speedily, it minimizes the risk of error and the opportunity for fraud.

## **Recommendations**

### **1. Pre-election**

- Especially in light of declining turnout, Taiwan should move to implement absentee voting, as well as lowering the voting age to 18.
- The members of the CEC should be chosen through a process which ensures that they are seen to be non-partisan. The proposal to have them appointed by the President with approval from the Legislative Yuan would probably be an improvement over the current system.
- The CEC’s inspection system should be strengthened, with adequate resources and powers, as well as adequate independence from the CEC itself.
- The system for campaign finance control still needs to be upgraded.
- Media should place more emphasis in their reporting on issues and policies of the candidates/ parties, in order to uphold the professional responsibilities of journalists.

- Likewise, parties should spend more efforts to promote their platforms, which should consist of clear and specific policies. Candidates should not only follow their parties' platforms, but also raise issues of local concern to their constituents.
- In general there is need for more voter education. ECs need to go beyond the technical aspects of voting to discuss the value of voting and the issues involved in each election. In addition, NGOs should engage in voter education, with public funding if necessary. The current system of "public platform presentation forums" is largely useless, but could perhaps be improved by increasing both the quantity and quality of such events, turning them into genuine forums for increasing public awareness. State broadcasting could support these forums to enable them to reach larger audiences.
- Civil society observers (see below) should also be active in observing the campaign, in order to assess the quality.
- Campaign propaganda should be cleaned up the night before polling day, rather than the night after.
- Consideration should be given to defining smaller districts for the reserved seats for Indigenous Peoples, such as by geography, so that these candidates are not forced to campaign across the entire country.

## 2. Polling

- Constituencies with small numbers of registered Indigenous voters should have their ballot boxes brought to one counting center where the ballot papers are mixed before counting.
- Polling booths should be made more secure, for example by simply turning them around, so the wall of the room is at the

back of the voter, or else by using a fully non-transparent curtain.

- National identity cards should be renewed regularly, so that pictures are up to date.
- No people should be allowed to loiter in front of the polling station; preferably a clear radius should be established.
- The party agent system should be created, whereby each party (or independent candidates) would automatically have a right to a party agent in each polling station. But their compensation, if any, should be arranged by the parties or candidates themselves.
- Civil society monitors should be not only allowed (currently there is no space for them in the election regulations), but positively encouraged. A complete system of accreditation of such neutral monitors should be implemented.

### **3. Counting**

- The CEC should develop guidelines for reasonable length of time to count each ballot, to encourage slower counting, and prevent large polling stations from feeling pressure to rush.
- The total number of voters should be counted and announced before the start of counting.
- Under no circumstances should the doors of the polling station ever be closed during or between the polling and counting processes.
- More monitors should be deployed at the count, especially to double-check the marking of the tally board.

## International Observers

Name and Nationality	Title and Organization
1. Damaso Guerrero MAGBUAL 【Philippines】 (Mission Leader)	National Council Deputy Secretary General, Chairman, National Capital Region National Citizens Movement for Free Elections (NAMFREL)
2. Arief BUDIMAN 【Indonesia】	Commissioner Komisi Pemilihan Umum Jawa Timur (East Java Provincial Election Commission)
3. Rathnayake Uyanwatte Mahinda Senevi GUNARATNE 【Sri Lanka】	National Coordinator People's Action for Free and Fair Elections (PAFFREL)
4. Somsri HANANUNTASUK 【Thailand】	Coordinator Asian Network for Free Elections (ANFREL)
5. Mohd. Herizal bin Hazri 【Malaysia】	Project Coordinator ANFREL
6. KANG Iong Nian 【Malaysia】	Acting Director, Program on Human Rights Promotion Asian Forum for Human Rights and Development (Forum Asia)
7. MAR Sophal 【Cambodia】	Monitoring Coordinator Committee for Free & Fair Elections in Cambodia (COMFREL)
8. James Javier OLABRE 【Philippines】	Program Staff Institute for Political and Electoral Reform (IPER)
9. Maiko SHIMIZU 【Japan】	Program Coordinator InterBand
10. Ichal SUPRIADI 【Indonesia】	Jakarta Project Coordinator Komite Independen Pemantau Pemilu (Independent Committee for Election Monitoring, KIPP)
11. Chamnong WATANAGASE 【Thailand】	Director Poll Watch Foundation Advisor and Spokesman, Senate Sub- committee on People Participation's Good Governance Taskforce
12 Sher ZAMAN 【Pakistan】	Monitoring Officer Democratic Commission for Human Development (DCHD)

## Domestic Observers

1. Chris Carlmorden	9. Sara Huang
2. Tarco Chang	10. Mujibul Alam Khan
3. Brian Chen	11. Molly Koo
4. Elena Chen	12. Lynne Lai
5. Mia Chen	13. Ken Lin
6. Yu-ling Chen	14. Bo Tedards
7. Aruai Dodalimau	15. Mayeesha Tseng
8. Honey Huang	16. Hsing-chung Wang

## Foreign observers have bones to pick with vote allocation

By Melody Chen

STAFF REPORTER

TAIPEI TIMES

Tuesday, Dec 14, 2004

The vote-allocation strategies employed by the major political parties in the legislative elections restricted the freedom of expression of voters and infringed on their privacy, a group of international election observers said.

The Asian Network for Free Elections, which observed the weekend's poll with financial support from the Taiwan Foundation for Democracy, publicized its findings at a press conference yesterday.

A "genuinely fair" election requires that voters are able to exercise the fundamental right of freedom of expression and that their privacy is protected, said Philippine electoral observer Damaso Guerrero Magbual, who headed the mission.

"The vote allocation system violates the freedom of expression because [the candidates] that the parties allocate to voters may not be consistent with choices of the voters," Magbual said.

Despite the ballot-allocation strategies, many voters tended to vote for candidates of their own choice, said Thai electoral observer Chamnong Watanagase, who agreed that the strategy was also unfair to candidates.

The group, consisting of local and foreign election observers from Japan, Indonesia, Cambodia, Malaysia, Pakistan and Sri Lanka, said the election process was peaceful and carried out with a high degree of

professionalism but the tone and content of the campaign was not so admirable.

"Policies and programs are severely neglected and replaced by personal appeals and mudslinging or 'black campaigning' attacks," the group said in its report.

Taiwan's media, the report said, failed to play a constructive role in the process. It said that even mainstream media outlets were usually partisan and not constructive.

"In some areas, underground radio stations play an even less wholesome role, free as they are from most legal liability," the report said.

The media should place more emphasis in their reporting on issues and policies of the candidates and parties to uphold the professional responsibilities of journalists, the group said.

"We observed a high level of apathy in the society. Voters were obviously fatigued with electioneering, and even very imaginative and expensive campaigns found it difficult to arouse much interest," said the observers, adding many organizations gave up trying to promote their issues in the election as a result.

The observers expressed concern about the politicization of election authorities, especially the Central Election Commission (CEC), whose members are appointed through a process that leaves them vulnerable to accusations of bias by opposition parties.

But the group found no evidence of partiality in the CEC's operations.

## STATUS ACT FOR INDIGENOUS PEOPLES

Promulgated 17 January, 2001

Section 1 Said act is promulgated for the recognition of the indigenous peoples status and protection of indigenous peoples rights.

Unless herein provided, the relevant existing laws shall govern.

Section 2 The term "indigenous people" herein includes native indigenous peoples of the mountain and plain-land regions. Status recognition, unless otherwise herein provided, is as provided in the following:

1. Mountain indigenous peoples: permanent residents of the mountain administrative zone before the recovery of Taiwan, moreover census registration records show individual or an immediate kin of individual is of indigenous peoples descent.
2. Plain-land indigenous peoples: permanent residents of the plain-land administrative zone before the recovery of Taiwan, moreover census registration records show individual or an immediate kin of individual is of indigenous peoples descent. Individual is registered as a plain-land indigenous peoples e in the village (town, city, district) administration office.

## THE PUBLIC OFFICIALS ELECTION AND RECALL LAW

Promulgated 17 January, 2001

Promulgated on 14 May, 1980

Amended in 1983, 1989, 1991, 1992, 1994, 1997 2000, 2002, 2003.

This version as amended and promulgated on 7 April, 2004

### Chapter One: General Provisions

#### Article 1

The election and recall of public officials shall be governed by the provisions of this law; matters not provided in this Law shall be governed by other relevant and applicable laws and regulations.

#### Article 2

The public officials herein referred to include the following:

1. Central public officials: delegates of the National Assembly, members of the Legislative Yuan.
2. Local public officials: councilors of the Provincial Assembly and of the Municipal Council, councilors of County (City) Council, representatives of the Township (City) Representative Conference, Provincial governors and Municipal mayors, County magistrates and City mayors, Township (City) chiefs, Borough (Village) chiefs.

#### Article 3

The election of public officials shall be conducted by universal, equal, direct, and secret suffrage and by single ballots.

The election of central public officials through nation-wide and overseas Chinese constituencies shall be based on proportional representation among the political parties.

The recalls of public officials shall be decided by the electors of their respective constituencies with secret ballots.

## Article 4

The calculation of the age and length of residence of electors and candidates shall follow the dates recorded on the household registration books, as of the day immediately preceding polling day.

The length of residence mentioned in the preceding Paragraph shall be calculated from the date of submission of an application for change of household registration address.

When balloting is re-held, the original balloting day shall be used for these calculations.

## Article 5

The calculation of the various lengths stipulated by this law shall be in accordance with the provisions of the Civil Code, provided that the length shall not be lengthened where its last day is a holiday.

# Chapter Two: Election and Recall Organs

## Article 6

For the election of public officials, there shall be established Central, Provincial (Municipal), and County (City) Election Commissions which shall conduct election affairs at their respective levels.

## Article 7

The Central Election Commission shall be in charge of the elections of the central public officials, councilors of the Provincial Assembly and Municipal Councils, Provincial governors and Municipal mayors. The Commission shall also direct and supervise various levels of election commissions to conduct election affairs.

The Provincial Election Commissions shall be in charge of the elections of County (City) councilors, County magistrates and City mayors. The Commission shall also direct and supervise the County (City) Election Commissions to conduct elections affairs.

The County Election Commission shall conduct the elections of the Township (City) representatives and Township (City) chiefs.

The Municipal Election Commissions and County (City) Election Commissions shall conduct the elections of Borough (Village) chiefs.

The elections stipulated in Paragraph 2, 3, and 4 shall also be under the supervision of the superior election commission thereof.

During the election period, the Municipal and County (City) Election Commissions shall also establish offices of election affairs in each Township (City, District).

## **Article 8**

The Central Election Commission shall be under the jurisdiction of the Executive Yuan and shall consist of several commissioners. The commissioners shall be appointed by the President upon the recommendation of the Premier of the Executive Yuan. One appointee shall be designated as chairman. The organization shall be prescribed in other laws.

Provincial and Municipal Election Commissions shall be under the jurisdiction of the Central Election Commission and shall consist of several commissioners, appointed by the Premier of the Executive Yuan upon the recommendation of the Central Election Commission, and one appointee shall be designated as chairman.

The County (City) Election Commissions shall be under the jurisdiction of the Provincial Election Commissions and shall consist of several commissioners, appointed by the Central Election Commission upon the recommendation of the Provincial Election Commission, and one appointee shall be designated as chairman.

The Organic Rules of Provincial (Municipal) Election Commissions and County (City) Election Commissions shall be

prescribed by the Central Election Commission and shall be submitted to the Executive Yuan for approval.

There shall be non-partisan commissioners in each election commission. The number of commissioners from any single party shall not exceed two-fifths of the total commissioners of the Central Election Commission and shall not exceed one-half in case of the Provincial (Municipal) Election Commissions and County (City) Election Commissions respectively.

The election commissions at all levels shall officiate their duties impartially in accordance with the relevant laws and regulations.

#### **Article 9**

The recalls of public officials shall be conducted by the election commissions at all levels, applying the provisions of Article 7 mutatis mutandis.

#### **Article 10**

During the period of conducting election or recall, the election commissions of various levels may transfer civil servants from any level of government to carry out election or recall affairs.

#### **Article 11**

The election commissions of all levels shall be in charge of the following affairs:

1. Proclamation of elections and recalls.
2. Preparation of the procedures and plans for elections and recalls.
3. Screening of the qualification of candidates.
4. Planning for election publicity.
5. Inspection of election and recall activities.
6. Establishment and management of polling and counting stations.
7. Examination of the results of election and recall.

8. Preparation and issuance of certificates for the elected persons.
9. Enactment of the rules for the utilization of television and other forms of mass media by the political parties for campaigning and propaganda activities.
10. Other affairs pertaining to election and recall.

The Municipal and County (City) Election Commissions shall be in charge of supervising Township (City) offices to conduct the following affairs of various of public service election and recall:

1. Public promulgation of electoral registers.
2. Establishment and management of polling and counting stations.
3. Recruiting and deployment of polling and counting station staff.
4. Distribution of election and recall ballots.
5. Distribution of election bulletins and voting notices.
6. Publication of electoral regulations.
7. Other matters pertaining to election and recall affairs.

## Article 12

The Central Election Commission shall select several impartial persons qualified to vote to serve as circuit inspectors. They shall be appointed by the Premier of the Executive Yuan upon the recommendation of the Commission. One appointee shall be designated as convener. The Municipal, County (City) Election Commissions shall each establish an inspection task force composed of several members. These members shall be selected by the Commission thereof among impartial persons qualified to vote, and shall be recommended to the Central Election Commission or the Provincial Election Commissions for appointment. One inspector of each panel shall be designated as its convener. Each inspection task force section shall carry out the following duties:

1. To supervise if there is any violation of election laws and regulations by candidates, campaign staff, recall initiators or officials to be recalled.
2. To supervise if there is any violation of election laws and regulations by voters.
3. To supervise if there is any law violation by elections officials or staff.
4. Other inspectional affairs pertaining to election and recall.

All inspectors in the preceding Paragraph shall be honorary positions without salary. The terms of office and the number of inspectors shall be prescribed in the Organic Rules and Regulations of the Central, Municipal and County (City) Election Commissions.

The Municipal, County (City) Election Commissions shall each select impartial persons qualified to vote as inspectors to work at the public meetings for presentation of candidates' political views.

The "Regulation for Execution of Inspection Functions and Duties" shall be prescribed by the Central Election Commission.

## **Article 13**

The regular annual budget for the election commissions of various levels shall be coordinated and appropriated by the central government. Expenditures for holding elections and recalls shall be budgeted as follows: for election and recall of central public officials, expenditures shall be budgeted by the central government; for election and recall of Municipal City councilors and mayors, expenditures shall be budgeted by Municipal City governments; for election and recall of County (City) councilors and magistrates and mayors, expenditures shall be budgeted by the County (City) government; for election and recall of Township (City) representatives, Township (City) chiefs and Borough (Village) chiefs, expenditures shall be budgeted by the Township (City) offices; for election and recall of

Borough chiefs in a Municipal City or City, expenditures shall be budgeted by the Municipal City or City government.

## **Chapter Three: Elections**

### **Section One: Electors**

#### **Article 14**

All citizens of the Republic of China who have attained the age of 20 shall be eligible to vote, except:

1. If they have been deprived of civil rights, which deprivation has not yet been restituted.
2. If they have been declared incompetent, which declaration has not yet been abrogated.

Where deprivation of civil rights results from a sentence ruled in accordance with the Regulations Governing the Punishment of Seditious Elements during the period of enforcement of Martial Law, the provisions in Subparagraph 1 of the preceding Paragraph shall not be applied.

#### **Article 15**

In an election of public officials, a person having the right to vote shall be an elector in the constituency where he/she has resided sequentially for more than four months.

The length of residence as provided for in preceding Paragraph shall be the length of his/her residence in the administrative district where he/she lives even if a new constituency has been created; however, a person who moves into a new constituency after the election proclamation is made shall have no right to vote in that constituency.

## Article 16

In an election of public officials representing aboriginal tribes, the electors shall be those possessing both aboriginal identification and the qualification set forth in the preceding Article.

**Article 17** *(Deleted)*

**Article 18** *(Deleted)*

**Article 19** *(Deleted)*

## Article 20

Unless otherwise provided by law, an elector shall cast ballots at the polling station in the place of his/her household registration. The staff of the polling station may cast their ballots either in the place of their household registration or in the polling station to which they are assigned, if the two places are located in the same constituency and the same Municipality or County (City).

## Article 21

An elector shall obtain his/her ballot in the polling station upon the presentation of his /her national identification card.

When obtaining his/her ballot, the elector shall sign or affix a seal or fingerprint on the electoral register. For those who give their fingerprints, one poll worker and one monitor should both affix seals as certification. One shall not obtain a ballot if his/her name does not match that in the electoral register or is not present in the electoral register. However, if a discrepancy of name between the electoral register and the national identification card is due to clerical error or to a change in marital status, one may obtain a ballot after examination by the director together with the chief monitor.

Each elector shall mark his/her vote after obtaining the ballot. However, a disabled person unable to mark the ballot but able to express his/her will may be assisted in marking the ballot in

accordance with his/her will by a family member. Such persons not accompanied by family members may request one poll worker and one monitor to render such assistance.

## **Article 22**

All electors shall go to polling stations to obtain and cast their ballots during the prescribed polling time. After time, electors shall not be permitted to enter polling stations; however, those who have entered the polling station but not yet finished casting their ballots may continue doing so.

## **Section Two Electoral Registers**

### **Article 23**

The electoral register shall include a serial number, name, sex, date of birth, and address of household registration and shall be compiled by the household registration authorities of each Township (City, District) based on the household registration books. All those whose household registration has been completed on twentieth day before polling day have the right to vote and shall be included in the register. Those electors who change their registered residence less than twenty days before polling day may exercise their right to vote in the constituency where they are originally registered.

After the electoral register is compiled, it may not be provided to anyone else, apart from election commissions and Township (City, District) offices and household registration authorities for use as provided by this Law, in any ways including transcribing, copying, photography or any other methods.

### **Article 24** *(Deleted)*

### **Article 25**

The electoral register of the aboriginal tribes shall be compiled by the household registration authorities in accordance with the

provisions of Article 23. The identification of an aborigine shall be based on the record in the household registration books.

## **Article 26**

When elections of more than two categories of public officials are held simultaneously, the electoral registers may, according to the actual need, be compiled either separately or jointly.

**Article 27**      *(Deleted)*

**Article 28**      *(Deleted)*

## **Article 29**

Upon completion of the compilation of the electoral registers, the household registration authorities shall submit them to the Township (City, District) office for transmittal to the respective Municipal, County (City) Election Commission for reference. At the same time it shall send a copy to each Borough (Village) office to be put on display, public reading, and promulgation in each Neighborhood office respectively for five days. Any elector who finds a mistake or an omission on the copy may apply for correction during that period.

## **Article 30**

At the expiration of public display, reading, and promulgation days, the Borough (Village) chief shall immediately submit the electoral register together with a report on the applications for corrections, if any, to the Township (City, District) office for transmittal to the household registration authorities for re-checking and correcting.

The electoral registers shall be finally established and fixed after public promulgation and corrections, and the Municipal, County (City) Election Commissions shall proclaim the numbers of electors.

### Section Three Candidates

#### Article 31

An elector who has attained the age of 23 may register as a candidate for public official in the constituency in which he is eligible to vote; however, for a candidate for Provincial governor or Municipal mayor, the age shall be 35, for County magistrate or City mayor the age shall be 30, and for Township (City) chief the age shall be 26.

An elector who has attained the age of 23 may be registered by a legally established political party as a candidate for central public official of the nation-wide constituency.

A citizen of the Republic of China who has attained the age of 23 but who has no household registration or who has resided abroad sequentially not less than eight years may be registered by a legally established political party as a candidate for public official representing Overseas Chinese.

The calculation of period of residence abroad shall be counted from the day of moving out of his/her household registration address.

Those who are to be registered by a political party as a candidate for the nation-wide or Overseas Chinese constituencies shall be members of that political party and agree with the nomination in a written agreement; the list of a party's candidates shall be made in written form with the order specified.

A person whose ROC nationality has been restituted for not less than three years or has been procured by naturalization for not less than ten years may be registered as a candidate in accordance with the provisions set forth in the preceding four paragraphs.

The calculation of the time periods in this article shall be made from the day before polling day.

#### Article 32 *(Deleted)*

## Article 33

When elections of two or more categories of public officials are held simultaneously, a person shall be permitted to register as candidate only for one of them. A person who is qualified for two or more types of candidacy in the election of one category of public officials shall be permitted to register only one candidacy.

The registration of a person who has registered simultaneously for two or more different categories or two or more candidacies shall be null and void.

## Article 34

The following persons shall not be registered as candidates:

1. Those who have been finally convicted in accordance with Criminal Code, after the termination of the Period of Mobilization for Suppressing of the Communist Rebellion, for the offenses of rebellion or sedition.
2. Those who have been finally convicted for an offense of corruption.
3. Those who have been finally convicted under Articles 142 and 144 of the Criminal Code.
4. Those who have been finally convicted for a crime, other than the offenses set forth in the preceding three Subparagraphs, and sentenced to a fixed prison term which has not been fully served; however, this provision shall not be applied to those who have been granted parole.
5. Those who have been confined under peace and safety preservation measures or ordered to receive reformatory education, the term of which has not yet been completed.
6. Those who have been declared bankrupt and not yet declared restored.

7. Those whose official position has been suspended in accordance with law and has not been restored.
8. Those who have been deprived of civil rights, which deprivation has not yet been restituted.
9. Those who have been declared incompetent, which declaration has not been abrogated.

### **Article 35**

The following persons shall not be registered as candidates:

1. Those in active service in the Military or Police, or enrolled in Military and Police schools.
2. Students currently attending schools.
3. Persons handling election affairs at any levels of election administration including election commissioners, election inspectors, election commission staff, staff handling election affairs in Township (City, District) offices, and staff of polling stations and counting stations.

Persons in active military service as mentioned in the preceding paragraph shall not include those who are in the reserves or military on call before they are ordered to enlist for active service, or when they are on educational service or muster duties.

Incumbent public officials currently attending school shall not be limited as mentioned in Subparagraph 2 of preceding paragraph.

### **Article 35-1**

All legally established political parties may nominate candidates to participate in the elections for public office. Such candidates shall be members of the party and submit the party's letter of nomination with the official seal of the party's central authority to the relevant election commission for registration during the candidate registration period.

The preceding letter of nomination shall be submitted when candidates apply for registration. Any submission after the end of the registration period shall not be accepted.

### **Article 36**

After the list of candidates has been proclaimed, if any of the circumstances below is found to have arisen, the election commission concerned shall revoke the candidate's registration. If such fact is found after the election of a candidate, the election commission concerned shall bring a lawsuit against him/her to invalidate the election in accordance with the provision set forth in Article 103-1.

1. The qualifications of the candidate do not meet the requirements specified in Article 31 or such qualifications have been nullified.
2. Any of the circumstances in Article 34 or Article 35 (1) and (4).
3. The candidate's registration is forbidden by Article 85 (1).

### **Article 36-1**

If, because of death of a candidate between the deadline of candidates' registration and balloting day, the number of candidates does not exceed the number to be elected in the concerned constituency, all election activities shall be suspended and a new date for the election be fixed.

### **Article 37**

A person who has registered as candidate may not withdraw such registration.

A political party which has nominated persons to register as candidates in geographical constituencies or aboriginal tribe constituencies may withdraw its nomination by submitting, before the deadline of the registration period, a withdrawal statement with the

official seal of the party's central authority to the relevant election commission. Withdrawal after the deadline shall not be accepted.

The party list registered by a political party of the candidates in the nation-wide and overseas Chinese constituencies may be withdrawn or changed by submitting, before the deadline of the registration period, a withdrawal statement with the official seal of the party's central authority to the relevant election commission. Withdrawal after the deadline shall not be accepted. Such changes include the total number of candidates, replacement of candidates, and adjustment of order. If any new candidates are added, the political party shall submit necessary forms and documents and security deposit as regulated.

The candidacy of a registered candidate who, after the end of the registration period, changes residence or whose household registration is revoked shall not be affected, and he/she may still exercise his/her right to vote in that constituency.

### **Article 38**

At the time of registration, a candidate shall make a security deposit, the amount of which shall be duly announced in advance by the election commission; however, candidates for Borough (Village) chief shall be exempted.

The security deposits of candidates in the nation-wide and overseas Chinese constituencies shall be paid by the political party which registers them.

The security deposit referred to in the preceding two Paragraphs shall be refunded within ten days after the official announcement of the election results; however, no refund shall be made in any of the following circumstances:

1. For candidates of the nation-wide and overseas Chinese constituencies who fail to be elected.

2. For candidates who have failed to receive ten per cent of the quotient resulting from dividing the total number of eligible electors in the candidate's constituency by the number of seats to be elected therein.

### **Article 38-1**

When registering, a candidate should prepare the forms and security deposit regulated by the election commission, and apply to the relevant election commission. Applications lacking or having discrepancy of documents and forms, lacking security deposit, or submitted after the deadline shall be rejected.

### **Article 38-2**

The qualifications of candidates for election to public office shall be examined by the relevant election commission.

Candidates for nation-wide and overseas Chinese constituencies shall be disqualified if they are found not to meet the regulations. The other names on the list will move up in sequence.

In geographical constituencies, aboriginal tribes constituencies, and elections for all local offices, after the list of candidates is verified, the election commission shall notify candidates to draw lots for ballot position number three days before proclamation of the candidate list. However, such drawing of lots for candidates for Township (City) representatives, Township (City) chiefs, and Borough (Village) chiefs shall be carried out by Township (City, District) offices.

Such drawing of lots shall be supervised by inspectors. Any candidates who do not attend the drawing, or, although being present, do not exercise his/her drawing after being called three times, lose their right to draw lots, and the election commission or Township (City, District) offices shall draw the lots on their behalf.

The sequence of candidates in the nation-wide and overseas Chinese constituencies shall follow the sequence of each party's certificate as issued by the Ministry of Interior.

## Section Four Constituencies

### Article 39

For the election of public officials, the constituencies shall be prescribed as follows:

1. For delegates of the National Assembly to be elected by Municipality and County (City): each Municipality and County (City) shall be a constituency, but may be subdivided.
2. For members of the Legislative Yuan to be elected by Province (Municipality): each Province (Municipality) shall be a constituency, but may be subdivided.
3. For members of the Provincial Assembly to be elected by County (City): each County (City) shall be a constituency; for Municipal city councilors, each city shall be a constituency, but may be subdivided.
4. For County (City) councilors and Township (City) representatives: the administrative areas they shall be their respective constituencies, but may be subdivided.
5. For Provincial governors and Municipal mayors, County magistrates and City mayors, Township (City) chiefs and Borough (Village) chiefs, each of these administrative areas shall be their respective constituencies.

### Article 40 *(Deleted)*

### Article 41

For delegates of the National Assembly, members of the Legislative Yuan, Provincial (Municipal) councilors, County (City)

councilors, and Township (City) representatives to be elected by aboriginal tribes, the constituencies shall be fixed according with the following provisions:

1. For delegates of the National Assembly and member of the Legislative Yuan to be elected by aboriginal tribes, all such tribes shall constitute a constituency, which may also be demarcated between "plains aborigines" and "mountain aborigines".
2. For Provincial (Municipal) councilors, County (City) councilors, Township (City) representatives to be elected by aboriginal tribes, the constituencies shall be the administrative areas of Province (Municipality), County (City), and Township (City), which may also be subdivided into "plains aborigines" and "mountain aborigines" or within the administrative areas thereof.

## **Article 42**

The constituencies provided for in Article 39, Subparagraph 1 to 3 and Article 41, Subparagraph 1 and 2 for the election of Provincial (Municipal) councilors shall be demarcated by the Central Election Commission; the constituencies set forth in Article 39, Subparagraph 4 and Article 41, Subparagraph 2 for the election of County (City) councilors shall be demarcated by the Provincial Election Commissions; the constituencies set forth in Article 39, Subparagraph 4 and Article 41, Subparagraph 2 for the election of Township (City) representatives shall be demarcated by the County Election Commissions; the constituency demarcations shall also be proclaimed simultaneously together with the election proclamation. Where there is a change in constituency demarcation, the proclamation shall be made one year before the expiration of the terms of office of the public official concerned, or before a prescribed date.

In making the constituency demarcations, administrative districts, population distribution, geographical environment, transportation situation and the number of public officials to be elected shall all be taken into account.

## Section Five Election Proclamations

### Article 43

Election commissions shall issue various proclamations in accordance with the following provisions:

1. An election proclamation shall set forth the category of election, the number of public officials to be elected, the demarcation of constituencies, the election date and the beginning and ending time of polling. The proclamation shall be issued forty days before the expiration of terms of office of the public official concerned or before the prescribed dates; however, when holding a re-balloting or supplementary election, the forty days stipulation shall not apply.
2. Days for candidate registration shall be proclaimed twenty days before polling day. The registration period shall not be less than five days; however, in elections for Township (City) representatives or chiefs and Borough (Village) chiefs, the duration shall not be less than three days.
3. The electoral register shall be proclaimed fifteen days before polling day, and shall be made public for not less than five days.
4. The list of registered candidates shall be proclaimed one day before the beginning of campaign activities.
5. The number of electors shall be proclaimed three days before polling day.

6. The list of elected persons shall be proclaimed within seven days after polling day.

When the number of Public officials to be elected prescribed in subparagraph 1 of the preceding paragraph is to be calculated in accordance with population, the relevant number shall be the population data from the household registration as of the end of the sixth month before the month of the election.

When no candidate registers in a constituency during the period prescribed in Subparagraph 2 of the preceding paragraph, a second proclamation for candidate registration shall be issued, the duration of which shall not be less than two days.

## **Article 44**

The election of public officials shall be completed ten days before the expiration of their respective terms of office or the prescribed dates; however, this provision shall not apply in case of holding a re-balloting or supplementary election.

## **Section Six Election Activities**

### **Article 45**

The duration of campaign activities of candidates for public office shall be as follows:

1. Twenty-five days for candidates for Provincial governor.
2. Fifteen days for candidates for Municipal mayor.
3. Ten days for candidates for delegates to the National Assembly, members of the Legislative Yuan, Provincial (Municipal) councilors, County (City) councilors, County magistrates and City mayors, and Township (City) chiefs.
4. Five days for candidates for Township (City) representatives, and for Borough (Village) leaders.

The duration of campaign activities referred to in the preceding Paragraph shall be counted backward from the day before polling day, and the beginning and ending time of each campaign day shall be prescribed by the respective election commission.

### **Article 45-1**

The maximum amounts of campaign expenditures of various public officials shall be calculated according to provisions by the election commission and be announced simultaneously together with the election proclamation.<sup>25</sup>

The maximum amounts of campaign expenditures mentioned in the preceding paragraph shall be calculated in accordance with the following provisions:

1. For the election of delegates to the National Assembly, members of the Legislative Yuan, Provincial (Municipal) and County (City) councilors, and Township (City) representatives, the amount shall be equal to 70 percent of the population of the constituency divided by the number of seats multiplied by 15 New Taiwan Dollars, plus a fixed amount.
2. For the election of Provincial governors or Municipal mayors, County (City) mayors, Township (City) Chiefs, or Borough (Village) chiefs, the amount shall be the sum of resulting from 70 percent of the total population of the constituency concerned multiplied by 8 New Taiwan Dollars, plus a fixed amount.

The fixed amount as prescribed in the preceding paragraph shall be 10,000,000 New Taiwan Dollars for Provincial governors or Municipal mayors; 6,000,000 New Taiwan Dollars for delegates of

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25 Violators of this article shall be punished according to Article 95-1 of this Law.

the National Assembly, members of the Legislative Yuan, County (City) mayors; 4,000,000 New Taiwan Dollars for Provincial (Municipal) councilors; 2,000,000 New Taiwan Dollars for County (City) councilors or Township (City) chiefs; 500,000 New Taiwan Dollars for Township (City) representatives; and 80,000 New Taiwan Dollars for Borough (Village) chiefs.

These maximum amounts shall be rounded down to the nearest 1,000 New Taiwan Dollars. The total population of the constituency mentioned in Paragraph 2 means the total number of the population in the household registration of the constituency as of the end of the sixth month before the month of the election.

### **Article 45-2**

No political party and no candidate may receive contribution of campaign expenditures from the following sources:

1. A foreign group or juridical person or individual, or a group or juridical person whose main membership is composed of aliens.
2. Another political party or candidate for the same office.
3. A government enterprise or a juridical person which receives contribution(s) from the government.<sup>26</sup>

### **Article 45-3**

Every candidate shall establish an account book, ready for inspection, for campaign revenues and expenditures. The account book shall be maintained either by the candidate personally or by a designated person.

Each candidate shall, within 30 days after polling day, submit this account book together with the campaign revenues and expenditures reckoning form, both bearing the official seal of the

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26 Violators of this article shall be punished according to Article 88 of this Law.

candidate or the designated accountant, to the relevant election commission.

If the election commission finds any items in the account book or reckoning form which appear to be inaccurate, it shall request the original receipts or documents for inspection.

All receipts and documents regarding campaign revenues or expenditures shall be preserved for six months after submission of the account book and reckoning form. However, if a lawsuit is filed, they shall be preserved until three months after the final verdict is announced.

Campaign finance accounting standards shall be set by the Central Election Commission.<sup>27</sup>

#### **Article 45-4**

If, from the day of election proclamation to the thirtieth day after polling day, the candidate's payable campaign expenditures pertaining to campaign activities is within the maximum amount as prescribed by Article 45-1, these expenditures, minus the portion collected as contributions, may be claimed as a tax deduction in the income tax report of that year.

An individual's campaign contribution to a candidate may not exceed 20,000 New Taiwan Dollars. A profit-seeking enterprise's contribution may not exceed 300,000 New Taiwan Dollars. The sum of contributions received by a candidate may not exceed the maximum amount as prescribed by Article 45-1.

All individual's contribution to a legally established political party may not exceed 20% of his/her annual total income and may not exceed 200,000 New Taiwan Dollars. A profit-seeking enterprise's contribution may not exceed 10% of its annual total income and may not exceed 3,000,000 New Taiwan Dollars.

The contributions mentioned in the preceding two Paragraphs may be claimed by individuals as tax deductions in the income tax report of that year, or claimed by profit-seeking enterprises as expenses or losses of that year. However, these claims may not be made in the case of contributions to a political party, if the candidates of that party failed to obtain an average of 5% of the ballots cast in an election of public officials at the Provincial (Municipal) level or higher. If there was no election in that year, the data from the most recent election shall be used. For a newly established political party, the average shall be the average in the year of the next election.

A profit-seeking enterprise which has failed to record a profit for three or more consecutive years may not make any campaign contributions.

#### **Article 45-5**

Candidates, other than those in the nation-wide and overseas Chinese constituencies, shall be subsidized 30 New Taiwan Dollars for each vote exceeding one third of the votes sufficient to win a seat in the constituency concerned, if it is a single-seat constituency, or one half of the votes sufficient to win a seat if multiple seats are elected in the constituency; however, the sum so subsidized may not exceed the maximum amount of campaign expenditures prescribed in that constituency.

In a constituency with more than one seat, the number of votes mentioned in Paragraph 1 shall be the smallest number of votes gained by an elected candidate. If the elected candidate receiving the smallest number is a female candidate whose seat is guaranteed by the law, the second smallest number of votes received by an elected candidate shall be used.

The amount of subsidy mentioned in Paragraph 1 shall be examined and calculated by the election commission within twenty days after the day following proclamation of the election results, and the election commission shall notify candidates to bring receipts to claim the subsidy within three months.

The government shall issue subsidies for election campaign expenditures of each political party every year. The amount of subsidy is based on the results of the most recent election of members of the Legislative Yuan. The political party's campaign expenditures of the nation-wide and overseas Chinese constituencies shall be subsidized 50 New Taiwan Dollars for each vote exceeding five percent of total. The amount of subsidy shall be examined and calculated by the Central Election Commission each fiscal year until the expiration of the current term of members of legislators, and the Central Election Commission shall notify political parties to claim the subsidy by showing their receipts to the Central Election Commission within one month.

The election commission shall warn those candidates and political parties who do not claim their subsidy for campaign expenditures to do so within three months, otherwise the subsidy would be withdrawn and kept in accordance with the law. However, those who forgo their claim by means of a written statement shall not be included.

The allocation for such subsidies shall be prepared in the budget in accordance with the provisions of Article 13.

#### **Article 46**

Each candidate during the period of campaign activities may set up a campaign headquarters in his/her constituency and employ campaign staff.

Regulations pertaining to campaign headquarters and to the employment of campaign staff shall be prescribed by the Central Election Commission.

### **Article 47**

The following persons shall not be qualified to serve as campaign staff:

1. Registered candidates, except for those registered in the nation-wide and overseas Chinese constituencies.
2. Public functionaries.
3. Those who have any of the disqualifications set forth in Article 34 or any of the circumstances in Article 35 (1).

"Public functionaries" in this paragraph shall be those public officials prescribed in Article 24 of the Public Service Law.

### **Article 48 (Deleted)**

### **Article 49**

For elections of public officials, except for representatives of nation-wide and overseas Chinese constituencies, the election commissions in each constituency shall hold public meetings during the period of campaign activities at which all candidates shall personally present their political views. However, with the unanimous consent of all the candidates in a constituency, the event may be cancelled. For elections of Township (City) representatives and (Borough) Village chiefs, commissions may decide whether or not to hold such meetings.

At these meetings, each candidate should use more than fifteen minutes to present their political points of view. Detailed regulations, including number, time and procedure for such presentations, shall be prescribed by the Central Election Commission.

The Municipal, County (City) Election Commissions shall proclaim in advance the locations within their jurisdictions suitable for

campaign activities, after consulting and obtained the consent and rental terms, if any, from the managing agencies, managers, and or property owners.

## **Article 50**

Election commissions shall compile data pertaining to the candidates' political views, ballot position numbers, photographs, names, ages, sexes, places of ancestry, birthplaces, party affiliations, educational backgrounds, experiences, occupations, addresses, and print all these data, together with election regulations, in an election bulletin.

The compilation and printing of the candidates' political views, ballot position numbers, photographs and places of ancestry set forth in the preceding paragraph shall not apply in an election for nation-wide and overseas Chinese constituencies.

Content of the candidate's political points of view shall not exceed 600 words, and educational background and experiences shall not exceed 150 words. However, educational background and experiences of candidates for nation-wide and overseas Chinese constituencies shall not exceed 75 words.

The data of candidates and political parties set forth in paragraphs 1 and 2 shall be submitted to the election commission in charge during candidacy registration.

If the content of a candidate's political views violates Article 54, it shall be revised after notification by the relevant election commission. If it is not duly and timely revised or continues in violation after revision, the violating portion shall not be printed in the bulletin.

Candidates and the political parties shall be responsible for their own data respectively. When an election commission finds that any data are not correct, it shall not print them. The candidates nominated

by political parties shall be so identified. For candidates who are not nominated by any party or in cases where a party's formal nomination had been withdrawn, the candidates' party affiliation shall be left blank.

The election bulletins shall be distributed to every household in the constituency and be posted on the proper places, at least two days before polling day. Bulletins for election to nation-wide and overseas Chinese constituencies may instead be published in newspapers by the Central Election Commission.

Election commissions may, as needed, make use of television and other mass media to conduct election affairs and for the campaign activities of the political parties. The regulation of such use shall be prescribed by the Central Election Commission.

### **Article 50-1**

With regard to the election for nation-wide constituencies, Provincial governors, and Municipal mayors, the relevant election commissions shall appropriate public funds for candidates and political parties thereof to conduct not less than two televised meetings for presentation of political views. The television or broadcasting period shall not be shorter than one hour each time. The designated television station may not refuse the designation.

Radio stations, television stations, and cable broadcasters shall be just and fair in handling news pertaining to candidates and their affiliated political parties.

Political parties, candidates or other persons themselves, except prescribed by Paragraph 1, may not engage in campaign activities or make publicities and advertisements through radio or television broadcasting.

### **Article 51**

Campaign propaganda materials printed with words or pictures and distributed shall be personally signed by the candidates concerned. They shall not be posted, except on campaign headquarters and campaign vehicles.

Slogans, billboards, pennants, banners, cloth or other advertising materials posted or erected by candidates shall not obstruct public safety or traffic order, and shall be removed within seven days after polling day. Violators shall be punished in accordance with relevant laws and regulations.<sup>28</sup>

#### **Article 51-1**

During the period of campaign activities, political parties may print and distribute campaign propaganda materials with words and pictures, as well as hang or erect slogans, billboards, pennants, banners, cloth or other advertising materials for the candidates they have nominated.

The propaganda materials printed and distributed by the political parties shall clearly bear the responsible party's name. They shall not be posted, except at party offices and on campaign vehicles.

The hanging and erecting of slogans, billboards, pennants, banners, cloth or other advertising materials by political parties shall mutatis mutandis be regulated by the provisions of the preceding Article Paragraph 2.

#### **Article 52**

Political parties and candidates may use campaign vehicles and loudspeakers during the period of campaign activities.

For campaign activities the number of such vehicles for any candidate shall not exceed 20; however, vehicles for a candidate whose constituency is a Municipality or County (City) shall not exceed 10, those for a candidate whose constituency is a Township

(City) shall not exceed three, and those a candidate whose constituency is a Borough (Village) shall not exceed one. Political parties may not use more than 10 such vehicles in each Municipality or County (City), or 1 in each Borough (Village).

The campaign vehicles used by the political parties and by the candidates shall fly the pennants prepared and issued by the election commissions.

The loudspeakers used by the political parties and candidates thereof for campaign activities shall be installed on the campaign vehicles and campaign offices only, and shall be used properly so as not to interfere with the presentation of political views by other political parties and candidates.<sup>29</sup>

#### **Article 53 (Deleted)**

#### **Article 54**

The utterances of political parties and candidates and/or their campaign staff shall not include any of the following:

1. Incitement to commit offenses against the internal or external security of the state.
2. Incitement to undermine social order by rioting.
3. Commission of other offenses set forth in the Criminal Code.<sup>30</sup>

#### **Article 55**

Political parties and candidates or their staff shall not conduct public campaign activities during the prescribed campaign period outside the prescribed beginning and ending times of each day.<sup>31</sup>

#### **Article 55-1 (Deleted)**

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28 Violators of this article shall be punished according to Article 97 of this Law.

29 Violators of this article shall be punished according to Article 97 of this Law.

30 Violators of this article shall be punished according to Article 86 of this Law.

31 Violators of this article shall be punished according to Article 97 of this Law.

**Article 56 (Deleted)****Article 56-1**

No political party and no individual shall be permitted to conduct any campaign activity on polling day.<sup>32</sup>

**Article 56-2**

In elections for nation-wide and overseas Chinese constituencies, no candidate registered by a political party may accept campaign contributions. The campaign activities of such candidates shall be limited to those set forth in Article 51-1.

**Section Seven Casting and Counting of Ballots****Article 57**

Polling stations shall be established in public office buildings, schools, public places and other appropriate places in keeping with the size of the constituency and the geographical distribution of the electors.

Election for aboriginal tribes constituencies shall be practiced by setting up separate polling stations, or where the need is determined by the relevant election commission, in the local polling station.

Apart from those family members prescribed in Article 21 of the Law, no one lacking identification issued by the appropriate election commission shall enter polling stations, except for prosecutors executing his/her legal duty.

Upon completion of voting, each polling station shall become a counting station, and the ballots shall be orally counted in public. After all ballots are counted, the director and the chief monitor of the counting station shall proclaim the results of the count in a written statement. The statement shall be posted outside the counting station,

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32 Violators of this article shall be punished according to Article 97 of this Law.

and one copy shall be signed and given to each of the agents of candidates' political parties and of independent candidates.

In case of any discrepancy between the signed statements and the one posted at the counting station, the former shall govern.

After counting finishes, the director and the chief monitor shall pack the unused ballots, valid ballots, invalid ballots and electoral registers separately and seal the packages. These packages shall be delivered to the local Township (City, District) office and then transferred to the Municipal or County (City) Election Commission for safekeeping. The packages shall not be opened except by a prosecutor or court in the course of executing legal duties.

The electoral registers and ballots in the preceding paragraph shall be preserved for the following periods:

1. One month for unused ballots.
2. Six months for valid ballots and invalid ballots.
3. Six months for electoral registers.

During these periods, any materials that are part of evidence related to an election lawsuit shall be preserved by the court until the conclusion of the suit.

## **Article 58**

Each polling and counting station shall have one director and several poll workers appointed by the election commission to take charge of polling and counting affairs.

These personnel shall be recommended and assigned by governmental organizations at all levels and public schools by request. Such assignments shall not be refused.

Security guards at polling and counting stations shall be assigned and deployed from local police stations by the request of Municipal, County (City) election commissions.

## **Article 59**

Each polling and each ballot-opening station shall have one chief monitor and several monitors to supervise the polling and counting.

These monitors shall be recommended by the candidates and submitted to the election commission in charge for screening and appointment; however, for a party-nominated candidate, this recommending right shall be exercised only by that political party. The candidate or the political party may assign their recommended monitors to designated polling and counting stations to monitor. If the assigned monitors are more than the prescribed number for a polling or counting station, the final selection shall be made by drawing lots. However, it must not be that all the monitors at a polling or counting station are representing the same political party.

When the total number of monitors is less than the number needed, the election commission in charge shall appoint additional monitors from among the following persons:

1. Local impartial individuals.
2. Personnel of government offices, private organizations and schools.
3. Adult university students.

Regulations governing the recommendation of inspectors and their service shall be decreed by the Central Election Commission.

### **Article 59-1**

All staff in polling and counting stations shall attend training workshops held by the election commissions.

### **Article 60**

The ballots shall be printed and distributed by the election commission, taking into account the different constituencies. The ballot shall bear the ballot position numbers, names, and photographs of all candidates. However, in an election for central-level public

officials, the ballots shall also bear the party affiliation for party candidates.

Ballots shall be printed by the Municipal, County (City) Election commission in accordance with the regulations prescribed by the Central Election Commission. The printing shall be supervised by the respective inspection task force, and the ballots shall be transmitted to each polling station one day before polling day to be checked in public by the polling station director and chief inspector.

## **Article 61**

When casting a ballot, an elector shall vote for a single candidate with a marking tool prepared by the election commission. The mark shall be put on the marking column of the ballot.

After marking on the ballot, the elector shall not show the marked ballot to others.<sup>33</sup>

Marking tools shall be prepared by the Municipal (City), County (City) election commissions following the format regulated by the Central Election Commission.

## **Article 62**

A ballot shall be invalid in any of the following circumstances:

1. It is not prepared and distributed by the election commission in charge.
2. It is marked for two or more candidates.
3. The mark is put in such a place that the elector's choice cannot be ascertained.
4. The ballot is altered after marking.
5. The ballot bears a signature, name chop, fingerprint, words

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<sup>33</sup> Violators of this paragraph shall be punished according to Article 93 of this Law.

or any other writing sign.

6. The ballot is torn in such a way that part is missing.
7. The ballot is so stained that the elector's choice cannot be ascertained.
8. The ballot is completely blank without marking.
9. The ballot is not marked with the tool prepared by the election commission in charge.

Invalid ballots shall be determined by the director together with the chief monitor of the counting station. If there is a disagreement between them, it shall be voted upon and decided by all monitors. In the event of a tie, the ballot shall be declared valid.

### **Article 63**

The director together with the chief monitor shall order a person to leave the polls or the counting station if any of the following events occur:

1. The person has made a disruption or has interfered with or persuaded others to vote or not to vote, in defiance of orders to desist.
2. The person carries a weapon or dangerous articles into the polls.
3. The person has committed other improper acts and has defied orders to desist.<sup>34</sup>

If an elector is ordered to leave for any of these reasons, any ballot received shall be taken back, and the incident shall be recorded under his/her name in the electoral register. If the case is serious, a specific report shall be made to the election commission.

Electors, and their family members as prescribed in Article 21 (3), shall not take cell (mobile) phones or cameras into the polling station.

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34 Violators of this paragraph shall be punished according to Article 93 of this Law.

No person shall use any kind of camera to record an elector's marked ballot.<sup>35</sup>

## Article 64

If polling or counting is prevented by a natural calamity or an unavoidable accident, the director of the polling or counting station shall report the situation to the Municipal, County (City) Election Commission, and shall ask for approval to change the date or place for polling or counting the ballots. If the election is for central public officials, Provincial (Municipal) councilors, Provincial governor or Municipal mayor, County (City) councilors, County magistrate or City mayor, the case shall also be reported and transmitted to the Central or Provincial Election Commissions respectively for reference.

## Section Eight Election Results

### Article 65

Unless otherwise provided, in elections for public office, the candidates shall be elected in order of numbers of votes received, up to the number of seats to be elected in each constituency. When two or more candidates receive equal numbers of ballots, the winner shall be determined by drawing lots.

The apportionment of seats in the nation-wide and overseas Chinese constituencies shall be as follows:

1. The number of ballots received by a political party shall be the sum of all the ballots received by all candidates nominated by the party for delegates of the National Assembly or members of the Legislative Yuan in the geographical and aboriginal tribe constituencies. The quotient of this number divided by the sum total of the

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35 Violators of these two paragraphs shall be punished according to Article 93-1 of this Law.

ballots received by all political parties shall be the proportion of votes won by that political party.

2. This proportion, multiplied by the number of seats to be elected, rounded down to the nearest whole number, shall be the quota of seats for that political party. The seats shall be apportioned among candidates of that political party according to the sequence fixed on the party list.
3. If, after this apportionment, one or more seats are left unfilled, it (they) shall be apportioned to the political parties according to the size of the remainder of ballots. When there are equal remainders of ballots, the seat apportionment shall be determined by drawing lots.
4. When fewer women are elected than the quota of seats for women, the respective political parties shall give precedence to their female candidates so as to fill the quota.
5. When a party list as registered contains fewer names than the number of seats that political party is entitled to, or when the female candidates are fewer than the prescribed number of guaranteed seats, the resulting unfilled seats shall be regarded as vacant.
6. A political party which fails to receive five percent of the ballots cast shall not be entitled to seat apportionment, and the number of ballots received by that party shall not be included in the calculation of the total sum of ballots in Subparagraph 1.
7. The ballots received by candidates not nominated by any political party shall not be included in the counting as provided in Subparagraphs 1 and 6.
8. Proportions of votes referred to above shall be calculated to four decimal places, and the fifth decimal place shall be rounded off.

## Article 65-1

When there is a quota for women in an election for public office, but the number of elected women is less than the quota, the ballots received by the female candidates shall be counted separately, and the one who receives a plurality of these ballots shall be elected, but this provision shall not apply in a constituency where there is no woman candidate. The calculation shall be made as follows:

1. In geographic constituency elections for delegates of the National Assembly or members of the Legislative Yuan, if the counted ballots do not result in sufficient women being elected to meet the quota, the total amount of ballots for all female candidates who are not yet elected should be counted separately. The candidates shall be elected in order of amount of ballots obtained in the constituency, up to the number of unfulfilled seats in the quota.
2. Geographic constituency elections of Municipal City Councilors, County (City) Councilors, and Township (City) representatives shall be handled in the same manner, mutatis mutandis.
3. Elections for aboriginal tribes constituencies for County (City) Councilors, Township (City) representatives, shall be handled in the same manner, mutatis mutandis.

The quota for women of each political party prescribed in Paragraph 2, Subparagraph 4 of the preceding article shall be distributed as follows:

1. When the number of women elected is less than the prescribed quota, the priority should go to those female candidates on the list in order of the sequence of the list.
2. If the number of female candidates on the party list is fewer than quota of seats reserved for women, the unfilled seats shall be considered vacant.

## Article 66

When the number of candidates does not exceed or is less than the seats to be elected in a constituency, except in elections for Borough (Village) chiefs, only the candidates who have received the following prescribed number of ballots shall be declared elected:

1. In elections for delegates of the National Assembly or members of the Legislative Yuan, Provincial (Municipal) councilors, or Township (City) representatives: 10 percent of the quotient resulting from dividing the total number of the electors in the constituency by the number of seats to be elected.
2. In elections for Provincial governors or Municipal mayors, County magistrates or City mayors, or Township (City) chiefs, 20 percent of the total number of the electors in the constituency.

When, in an election for Provincial governor, Municipal mayor, County magistrate or City mayor, or Township (City) chief, even after applying the preceding paragraph, no one is elected, another election shall be proclaimed and held within a fixed period after polling day. When, in an election for delegates of the National Assembly or members of the Legislative Yuan, Provincial (Municipal) councilors, County (City) councilors, or Township (City) representatives, no one is elected or the number of persons to be elected does not reach the number of seats to be filled, the unfilled seats shall be considered vacant. If such vacancies reach one-half of the total number of the seats to be elected in a constituency, a by-election shall be held within three months after the day this occurred.

The provisions set forth in the preceding two paragraphs shall not apply in nation-wide and overseas Chinese constituencies.

## Article 67

If, before taking office, an elected person dies or a court judgment annuls his/her election, the following provisions shall apply:

1. For a Municipal Mayor, County magistrate or City Mayor, Township (City) chief, or Borough (Village) chief, the election shall be re-held within a fixed period.
2. For a delegate of the National Assembly, member of the Legislative Yuan, Municipal City councilor, County (City) councilor, or Township (City) representative, when the death is by unnatural causes, the seat shall be regarded as vacant. If such vacancies reach one-third of the total number of seats to be elected in the constituency, a by-election shall be held within a fixed period. In the case of nation-wide and overseas Chinese constituencies, such seats shall be filled by candidates according to the sequence of the party list; if there are not sufficient candidates on that party list, the seat shall be considered vacant.
3. For a delegate of the National Assembly, member of the Legislative Yuan, Municipal City councilor, County (City) councilor, or Township (City) representative, when the death is by natural causes, or when his/her election is annulled by a court judgment, the seat shall be filled by the remaining unelected candidates in order of the amount of received ballots. If there are no more candidates to fill the seat, a by-election shall be held within a fixed period of time. In the case of nation-wide and overseas Chinese constituencies, seats shall be filled as in the previous paragraph.

Re-election as prescribed in Subparagraph 1 of the preceding paragraph and by-election prescribed in Subparagraphs 2 and 3 of the preceding paragraph shall be completed within three months after the

elected candidate dies or the election commission receives the decision from the court. Proclamation of substitute candidates as prescribed in Subparagraph 2 and Subparagraph 3 of the preceding paragraph shall be done by the election commission within fifteen days after the elected candidate dies or the election commission receives the decision from the court.

If a candidate elected in the nation-wide and overseas Chinese constituencies is deprived of party affiliation before inauguration, he/she shall lose the qualification of election as of the day after such deprivation. His/her seat shall be filled by the next candidate of the party according to the sequence of the party list; if there are not sufficient candidates on that party list, the seat shall be considered vacant.

Deprivation of party affiliation shall be reported to the Central Election Commission together with a certificate of deprivation for reference. The Central Election Commission shall proclaim the substitute within fifteen days after receipt of the certificate.

### **Article 67-1**

All elected persons possessing any foreign nationality must renounce it before taking office. Failure to do so shall nullify his/her election, and the seat shall be filled according to the preceding Article.

### **Article 68**

The persons duly elected in an election shall take office at a stipulated date. In the case of a person who, having been elected in a by-election or a re-balloting, cannot take office at the stipulated date, his/her term of office shall nonetheless be considered to have begun from the original stipulated date.

### **Article 68-1**

Filling a vacant position of a central public official created by death, resignation, or other causes shall be handled as follows:

1. If the seat represents a geographical or aboriginal tribes constituency, and the vacancies reach one-half of the number of the seats to be elected, the Central Election Commission shall fix a date to hold a by-election. However, when the term of office left to be served is shorter than one year, a by-election shall not be held.
2. If the seat represents the nation-wide or overseas Chinese constituencies, it shall be filled according to the sequence on the party list, and it shall be regarded as vacant when there are insufficient candidates on the list.

A central public official elected in the nation-wide or overseas Chinese constituencies who is deprived of his/her party affiliation after taking office shall be disqualified from office. The Central Election Commission shall request a formal disqualification from the National Assembly or the Legislative Yuan. His/her seat shall be filled according to the sequence fixed on that party list, and it shall be considered vacant if there are insufficient candidates on the list.

By-elections as prescribed in Paragraph 1, Subparagraph 1 should be finished within three months of the day of death, resignation or receipt of the court decision by the election commission. The names of substitutes prescribed in Paragraph 1, Subparagraph 2 and in the preceding paragraph should be proclaimed by the Central Election Commission within fifteen days after the official National Assembly or Legislative Yuan document confirming the disqualification has been received.

Deprivation of party affiliation shall be reported to the Central Election Commission together with a certificate of deprivation for reference.

## Chapter Four

### Recalls

#### Section One Initiation of a Recall Case (Articles 69-72)

#### Section Two Establishment of a Recall Case (Articles 73-79)

#### Section Three Balloting on a Recall Case (Articles 80-85)

## Chapter Five

### Punishment of Election and Recall Offenses

#### Article 86

Violators of the provisions of Article 54, Subparagraph 1 shall be punished with imprisonment for not less than seven years; violators of Subparagraph 2 shall be punished with imprisonment for not less than five years. Penalties for violations of Subparagraph 3 shall follow the relevant provisions of the Criminal Code.

#### Article 87

Any person who, during campaigning or assisting in a campaign, openly assembles a crowd to disturb social order by rioting shall be punished with imprisonment for not less than seven years. The ringleader shall be punished with imprisonment for life or with imprisonment for not less than ten years.

An attempt to commit such an offense is punishable.

#### Article 87-1

During the period of election or recall, any person who intends to obstruct an election or recall by committing acts of violence against or threatening a public functionary executing official duties shall be punished with imprisonment for not more than five years.

If such an offense leads to the event of the death of a public functionary, the offender shall be punished with imprisonment for life or not less than seven years. If it leads to severe injury of a public functionary, the offender shall be punished with imprisonment for not less than three years but not more than ten years.

### **Article 87-2**

Openly assembling a crowd to commit the offenses in the preceding Article shall be punished with imprisonment for not more than three years, detention or a fine of not more than 300,000 New Taiwan Dollars, the ringleader and perpetrators shall be punished with imprisonment for not less than three years but not more than ten years.

If the offenses provided in the preceding Paragraph result in death of a public functionary, the ringleader and perpetrators shall be punished, with imprisonment for life or for not less than seven years; if the offenses result in severe injury of a public functionary, the same persons shall be punished with imprisonment for not less than five years but not more than twelve years.

### **Article 88**

A candidate violating Article 45-2, Subparagraph 1 shall be punished with imprisonment for not more than five years; those violating Subparagraph 2 and 3 of the same Article shall be punished with imprisonment for not more than one year, detention, or a fine of not more than 100,000 New Taiwan Dollars.

If a political party, a responsible person or representative of a political party, or the agent or employee of a candidate commits the offenses set forth in the preceding Paragraph, he/she/it shall also be punished accordingly. Where the offenses pertain to the first part of the preceding Paragraph, the political party or candidate may, in addition, be imposed a fine of not less than 100,000 but not more than 500,000 New Taiwan Dollars; if the offenses pertain to the last part of

the preceding Paragraph, the fine imposed shall be less than 100,000 New Taiwan Dollars.

The property accepted as contributions by those who commit the offenses listed in the preceding two Paragraphs shall be confiscated. If the whole or a part of the property in question cannot be confiscated, a fine shall be ordered to make up the difference.

### **Article 89**

A person who offers, agrees to pay, or pays a bribe, or offers other improper benefits to a candidate to make him/her withdraw from the election or engage in particular campaign activities shall be punished with imprisonment for not more than five years and may, in addition, be imposed a fine of not less than 600,000 but not more than 6,000,000 New Taiwan Dollars.

The above provisions shall also apply to a candidate who demands, agrees to accept, or accepts such a bribe or benefits.

The bribes involved in an offense under Paragraph 1 shall be confiscated, whether or not they belong to the offender. In the case of offenses under Paragraph 2, the accepted bribe shall be confiscated; if the whole or a part thereof cannot be confiscated, a fine shall be ordered to make up the difference.

### **Article 90**

A person who has committed one of the following offenses through violence, threat, or other illegal means shall be punished with imprisonment for not more than five years:

1. Interfering with another's campaign or forcing another to withdraw from the campaign.
2. Obstructing others to initiate or cosign a case of recall or forcing others to initiate or cosign a case of recall.

Attempts to commit such offences shall be punishable.

## **Article 90-1**

A person who promises, offers, or gives a bribe or other improper benefit to a qualified voter for refraining from exercising his/her right to vote or for exercising such right in a particular manner shall be punished with imprisonment for not more than five years; in addition, he/she shall be imposed a fine of not less than 400,000 but not more than 4,000,000 New Taiwan Dollars.

A person who prepares to commit such an offense shall be punished with imprisonment for not more than one year.

Any such bribes or benefits shall be confiscated, whether or not they belong to the offenders.

Persons committing such offenses who surrender for trial within six months may have their punishments reduced or remitted; where such surrender results in a conviction against a candidate as an accomplice, the punishment shall be remitted.

Persons committing such offenses who confess during investigation may have their punishments reduced; where such confession results in a conviction of a candidate as an accomplice, the punishment may be reduced or remitted.

## **Article 91**

A person who has committed any of the following offenses shall be punished with imprisonment for not more than five years and may, in addition, be imposed a fine of not less than 500,000 but less than 5,000,000 New Taiwan Dollars:

1. To offer, pay, or agree to pay money, goods, or other improper benefits to a group or organization in the constituency under the pretext of donation in order to induce the members of the group or organization not to exercise their right to vote or to exercise it in a particular manner.
2. To offer, pay, or agree to pay money, goods, or other

improper benefits to an initiator or cosigner of a case of recall in order to induce him/her to refrain from initiating or cosigning the case or to proceed to initiate or cosign in a particular way.

A person who prepares to commit an offense specified in the preceding Paragraph shall be punished with imprisonment for not more than one year.

The money, goods, or benefits shall be confiscated, whether or not they belong to the offenders.

### **Article 91-1**

A person who intentionally assumes the guilt of another for offenses specified in Article 89 (1) and (2), Article 90-1 (1), or Article 91 (1) shall be punished with imprisonment for more than one year but less than seven years, and may, in addition, be imposed a fine of more than 500,000 but less than 5,000,000 New Taiwan Dollars.

An attempt to commit such an offence shall be punishable.

### **Article 92**

Anyone employing with intent to influence the election of a candidate writing, pictures, audiotape, videotape, speech or other methods to circulate rumors or falsehoods sufficient to damage the public or another person shall be punished with imprisonment for not more than five years.

### **Article 93**

A person who has committed any of the offenses set forth in Article 61 (2), Article 81 (2), Article 63 (1) and has refused to leave the place after having been ordered to do so shall be punished with imprisonment for not more than two years, detention, or a fine of not more than 200,000 New Taiwan Dollars.

## Article 93-1

A violator of the provisions set forth in Article 63 (3) shall be punished with imprisonment for not more than one year, detention, or a fine of not more than 30,000 New Taiwan Dollars.

A violator of the provisions set forth in Article 63 (4) shall be punished with imprisonment for not more than five years, and may, in addition, be imposed a fine of not more than 500,000 New Taiwan Dollars. Any camera equipment discovered shall be confiscated.

## Article 94

During the recall process, a person who commits any of the following offenses shall be punished with imprisonment for not more than one year, detention, or a fine of not more than 100,000 New Taiwan Dollars; the ringleader and perpetrators of any of these offenses shall be punished with imprisonment for not more than five years:

1. Assembling a crowd to surround the person involved in the recall, the initiators or cosigners of the recall, or of the organization, headquarters, domiciles or residences of the staff thereof.
2. To employ violence, threat or other illegal means to obstruct the person involved in the recall to perform their duties or the initiator, cosigners, and their staff members to proceed with the recall process.

## Article 94-1

Any person who takes a ballot away from a polling station shall be punished with imprisonment for not more than one year, detention, or a fine of not more than 15,000 New Taiwan Dollars.

## Article 95

Any person who, with an intention to hinder or disrupt polling and counting by withholding, destroying, concealing, exchanging, or seizing a ballot box, a ballot, an electoral register, a polling report, a counting statistics sheet or a ballot-marking tool shall be punished with imprisonment for not more than five years.

## Article 95-1

A person whose campaign expenditures exceed the maximum amount set forth by the election commission in charge in accordance with Article 45-1 (1) shall be imposed a fine of not less than 100,000 but not more than 500,000 New Taiwan Dollars.

## Article 96 *(Deleted)*

### Article 96-1 *(Deleted)*

## Article 97

A violator of the provisions set forth in Article 45-3 (1)(2)(4), Article 51 (1), Article 51-1 (2), or the standards of Paragraph 5 of Article 45-3 (5), shall be imposed a fine of not less than 10,000 but not more than 100,000 New Taiwan Dollars.

A violator of the provisions set forth in Article 52(2)(3)(4)(5), Article 55, Article 56-1, Article 79 (2), or the provisions of either Article 46 (2) or Article 79 (3), and who do not obey inspector's attempt to curb the offending behavior, shall be imposed a fine of not less than 10,000 but not more than 100,000 New Taiwan Dollars.

A person who puts anything other than a ballot into a ballot box or deliberately destroys a ballot shall be imposed with a fine of not less than 5,000 but not more than 50,000 New Taiwan Dollars.

### Article 97-1 *(Deleted)*

### Article 97-2

A person who has committed the crime described in Article 89 (2) of this Law or Article 143 (1) of the Criminal Code, but who surrenders within three months after the offense shall have his/her punishment remitted. Where the person surrenders more than three months after the offense, the punishment may be reduced or remitted. Where the person confesses during the investigation or trial, the punishment may be reduced.<sup>36</sup>

A person who surrenders as described in the preceding Paragraph but fabricates stories with intent to have someone else punished shall be punished in accordance with the Criminal Law provisions regarding false accusation.

## Article 98

Where other laws provide for more severe penalties for offenses listed in this Chapter, their provisions shall govern.

Any election official who makes use of his/her official power, opportunity or means of duty to commit the crimes listed in this Chapter shall receive a penalty one and a half times more severe than that (those) herein prescribed.

A person sentenced to a prison term for an offense listed in this Chapter or offenses of interference with voting contrary to the special provisions of Chapter 6 of the Criminal Law shall be deprived of civil rights.<sup>37</sup>

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36 For Article 143 of the Criminal Code, see the following footnote.

37 The special provisions of Chapter 6 of the Criminal Law pertaining to interference with voting are:

### Article 142

A person who by threat, violence, or other illegal means interferes with another in the free exercise of his right to vote in a election duly authorized by law or in the free exercise of his other voting rights shall be punished with imprisonment for not more than five years.

An attempt to commit such an offence is punishable.

## Article 99

If a public functionary who has also registered as a candidate has been determined by the election commission to have performed any of the following acts, the commission shall first notify the supervisory authority of the offending functionary to suspend his/her duties and then handle the case in accordance with the law:

1. Rejecting without justifiable reason the election commission's request for assisting in certain matters or for

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## Article 143

A qualified voter who demands, agrees to accept, or accepts a bribe or other improper benefit for refraining from exercising his right to vote or for exercising such right in a particular manner shall be punished with imprisonment for not more than three years; in addition, a fine of not more than 5,000 New Taiwan Dollars may be imposed.

Any benefit received through the commission of such an offence shall be confiscated; if the whole or part of such benefit cannot be confiscated, the value thereof shall be collected from the offender.

## Article 144

A person who promised, offers, or gives a bribe or other improper benefit to a qualified voter for refraining from exercising his right to vote or for exercising such right in a particular manner shall be punished with imprisonment for not more than five years; in addition, a fine of not more than 7,000 New Taiwan Dollars may be imposed.

## Article 145

A person who induces a qualified voter to refrain from exercising his right to vote or to exercise such right in a particular manner by offering an economic advantage or by threatening an economic disadvantage shall be punished with imprisonment for not more than three years.

## Article 146

A person who by fraud or other illegal means procures an incorrect result from voting or alters election results shall be punished with imprisonment for not more than five years.

An attempt to commit such an offence is punishable.

## Article 147

A person who interferes with or creates a disturbance at an election shall be punished with imprisonment for not more than one year, detention, or a fine of not more than 500 New Taiwan Dollars.

## Article 148

A person who endeavors to learn the content of a secret ballot shall be punished with a fine of not more than 300 New Taiwan Dollars.

assigning its staff members.

2. Interfering in the personnel or operations of the election commission.
3. Using under a pretext or embezzling public funds to pay campaign expenses.
4. Demanding an organization and its responsible person subordinate to or under the command or supervision of him/her to support his/her campaign.
5. Abusing his/her power to make campaign personnel arrangements by transferring persons without due reason.

## **Article 100**

In elections for central public offices, the Prosecutor-General of the Supreme Court shall oversee the prosecutors of all levels; in elections for local public offices, the chief prosecutors of the competent courts shall oversee their subordinate prosecutors. The duties of prosecutors shall be to monitor and to prosecute on their own initiatives all criminal cases regarding interference in an election or a recall, and to investigate accusations, complaints, or surrenders to justice brought by an organization, group, or individual. Each prosecutor must immediately investigate.

In conducting the above-mentioned investigations, a prosecutor may command the police in accordance with the provisions of the Code of Criminal Procedure and the Statute for Transferring and Directing the Police.

## **Article 100-1**

In any cases pertaining to the offenses listed in this Chapter or offenses of interference with voting contrary to the special provisions stipulated in Chapter 6 of the Criminal Code, final judgment shall be made by the competent court within six months.

## Chapter Six

### Election and Recall Suits

#### Article 101

When an election commission has violated the law so as to affect the results of an election or a recall, a prosecutor, a candidate, the person under recall or the initiator of a recall may, within fifteen days after the proclamation of the list of elected persons or the proclamation of the result of a recall, bring a suit against that election commission before a competent court to request nullifying the election or recall.

#### Article 102

In a suit to nullify the result of an election or recall, when the court has adjudicated and declared the invalidity of the election or recall, the election or recall shall be null and void. A period of time then shall be set in which a by-election or supplementary recall be held. Where the legal violation involves only a part of the election or the recall process, only that part of the process shall be null and void, and a re-balloting for that part shall be held within a fixed period; however, this shall not apply to a situation in which the nullified part obviously has not affected the result of the election or recall.

#### Article 103

When a person who is elected has committed one of the following acts, the election commission, the prosecutor or the other candidate(s) of the same constituency may, within fifteen days after the proclamation of the list of elected persons, sue for the nullification of the election in a court with competent jurisdiction:

1. The number of ballots won by the person elected is so inaccurate as to have affected the election results.
2. The person has employed threat, violence, or other illegal means to obstruct another candidate from campaigning, a

qualified voter from freely exercising his/her right to vote, or staff of election affairs from executing their duties.

3. The person has committed offenses under Article 89 or Article 91 (Subparagraph 1) of this Law, or under Article 146 (1) of the Criminal Code.
4. The person has committed acts described in Article 90-1 (1) sufficient as to affect the election results.

When an election result has been nullified by a court in accordance with the preceding paragraph, the nullification shall not be affected if a court subsequently acquits the person of criminal responsibility for the deeds specified in the preceding Paragraph.

#### **Article 103-1**

An election commission, a prosecutor or another candidate of the constituency of an elected official may, within the terms of office thereof or a prescribed date, bring a suit against the elected official before a competent court to request nullifying his/her qualification as an elected official under any of the disqualifying facts set forth in Article 36.

#### **Article 104**

The election of a person shall be null and void after the court has adjudicated the suit for nullification and has declared his/her election invalid.

#### **Article 105**

A judgment on the invalidity of an election or of a candidate being elected shall not affect official duties undertaken as an elected official during the period between his/her taking office and the judgment.

## Article 106

After the approval or rejection of a recall, where the number of ballots is found to be so inaccurate as to affect the balloting result, the election commission, a prosecutor, the recalled person or the initiator of the recall case may, within fifteen days after the proclamation of the results, bring a suit against the initiator of the recall or the recalled person before a competent court to apply for nullifying the approval or rejection of the recall.

After the court has adjudicated and declared that the approval or rejection of the recall is null and void, the approval or rejection shall be null and void, and a period of time shall be set in which a re-balloting shall be held.

After the nullification of the approval of a recall, the official duties of the recalled person shall be restored.

## Article 107

When an elector discerns a fact that may invalidate an election, the election of a person, a recall or the approval or rejection of a recall, he/she may, within seven days after the proclamation of the list of the elected persons or the result of the recall, file an accusation with a prosecutor or an election commission together with supporting evidence.

## Article 108

The following courts possess jurisdiction over election and recall suits:

1. The district court and its branch courts located in the constituency where the election or recall suit arises have jurisdiction over the trial in the first instance. When the act(s) or situation(s) straddle(s) two or more constituencies, all the relevant district courts and their branch courts shall have jurisdiction over the suit.

2. In election and recall suits where one party refuses to accept the verdict of a district court or a branch district court and lodges an appeal, the High Courts and branch High Courts superior to that district court shall have jurisdiction over the appeal of election and recall suits.

### **Article 109**

In an election or recall suit, the court shall establish a special chamber and try the case with a panel of judges. The court shall try such cases before handling any suits of other kinds. Election and recall suits shall be finally adjudicated in the court of second instance and application for a retrial shall not be allowed. Each competent court shall make final judgment within six months.

### **Article 110**

In addition to the provisions regarding procedures for election and recall suits set forth in this Law, those in the Code of Civil Procedure shall apply mutatis mutandis; however, those provisions relating to the effect of abandonment, acceptance of liabilities and admission of undisputed facts that do not apply to the actions shall not apply.

## Chapter Seven

### Supplementary Provisions

#### **Article 111**

The fines stipulated in this Law shall be ruled by the election commission. When a fine is not paid in time after notification, the case shall be referred to a law court for compulsory execution.

#### **Article 112**

The Enforcement Rules of this Law shall be prescribed by the Central Election Commission and be submitted to the Executive Yuan for approval.

#### **Article 113**

This Law shall come into force on the day of its promulgation.