

Indigenous nations and peoples

Indigenous peoples in all nations engage in commercial ventures consistent with their history, culture and values, and also seek to assure that those interests are protected when national governments and private parties engage in activities that might affect those interests. Our lawyers have assisted indigenous peoples in achieving cultural and commercial goals, and have also counselled private sector clients and national sovereigns on building solutions and partnerships with these communities.

The issue

The United Nations Declaration of the Rights of Indigenous Peoples recognizes that “indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such.” Indigenous peoples have a special role in social and economic development. Their interests come from unique perspectives, based on long histories and deep cultures, and those perspectives must be given equal weight with all other factors, while acknowledging and honouring those differences. It is also true that indigenous peoples have often suffered from discrimination and injustice, and as a result, suffer from economic disadvantages.

These issues are particularly critical for effective engagement with indigenous nations and peoples; it is vital that corporations, sovereigns, and other stakeholders are prepared to address these issues as the investment and regulatory communities move towards a more holistic approach that goes beyond fiscal metrics. The rights of indigenous people affect all of the UN Sustainable Development Goals, but are especially relevant to Goal 10, which is to reduce inequality within and among countries. Meeting this Goal by bringing indigenous issues to the forefront will have ripple effects throughout the implementation of the SDGs.

What we do

Our lawyers often represent indigenous peoples. In the U.S., for example, we have lawyers who advise Native American Tribes and Alaskan Native Corporations on regulatory and legislative initiatives addressing land protection, water rights, and cultural resources protection, and tribal sovereignty. We also worked alongside Lightyears IP to assist the Maasai people of southern Kenya and northern Tanzania in a long-term strategy to assist the Maasai in claiming the intellectual property rights that are based on or which exploit their cultural heritage. As part of this strategy, we prepared a declaration regarding the rights of the Maasai as indigenous peoples. We have also represented indigenous peoples in court proceedings and administrative actions to protect their rights and interests.

We also assist companies and sovereigns in incorporating consultation with indigenous peoples as part of commercial investment and project development. These consultations typically result in the incorporation of procedural protections and specific actions that assure protection of the cultural interests of indigenous peoples. Indigenous interests are often a key component of international lending and investment as well. For example, a sovereign or private company will often be required to consider which actions might require the “free, prior, informed consent” (FPIC) of indigenous peoples. Our lawyers assist in addressing that process, and have designed a mutually acceptable, practical solution to FPIC implementation. We also assist clients in incorporating stakeholder engagement in projects and investments, including the use of community development agreements, as a way to assure productive engagement and consultation with indigenous interests.

Our impact

- Representing tribal interests in litigation, including at the U.S. Supreme Court level. Cases include protection of the Bears Ears National Monument in Utah, protection of tribal authority over hazardous waste disposal on tribal lands, and the protection of tribal sovereign immunity
- Representing an Indian Tribe in federal appellate courts and the U.S. Supreme Court to protect tribal sovereignty, including the landmark victory in the Supreme Court in *Michigan v. Bay Mills Indian Community*. In that case, the Supreme Court ruled that tribal sovereign immunity prevents a state from suing in federal court to enjoin a tribe from violating the Indian Gaming Regulatory Act outside of Indian lands
- Advising renewable companies regarding projects on indigenous lands
- Assisting an energy pipeline company in successfully completing indigenous consultations related to a project in Mexico
- Providing analysis to Zimbabwe Environmental Law Association of proposed changes to Zimbabwe minerals law and a proposed minerals development policy, including provisions related to the rights of indigenous peoples
- Developing a form community development agreement for the Government of Mongolia, which includes a process for engagement with indigenous stakeholders
- Preparing the declaration of the Maasai as indigenous peoples under the United Nations Declaration of the Right of Indigenous Peoples
- Resolving long-standing, historic grievances of tribes regarding loss of land, hunting and fishing rights, and self-governance authority
- Advising on emerging market developments globally across multi-billions of economic development, often on “game changing projects” including addressing local and indigenous concerns, equitable development principles/ local content and political concerns

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