



SDSG
**SUSTAINABLE DEVELOPMENT
STRATEGIES GROUP**

RELEASE OF NEW PRELIMINARY STUDY

June 20, 2022

Consultation Policies for Government Activities Affecting Indigenous Americans

Sustainable Development Strategies Group is pleased to announce the release of a preliminary study on the right to consultation on decisions affecting indigenous communities and their land and resources in the United States.

International standards have advanced considerably in recent years, particularly in countries which have ratified the ILO Convention on the Rights of Indigenous and Tribal Peoples (ILO Convention 169). In those countries, courts are now frequently invalidating government decisions taken without proper consultation with affected indigenous communities. The U.S. is not a signatory of this treaty.

The elements of the required consultation are being defined both by the Inter-American Human Rights Court and the Supreme Courts of several countries. It is clear that international law requires a defined formal process, with rigorous requirements.

SDSG has led in the completion of an article, *The Path to Peace and Development: The Emerging Legal Framework for Natural Resource Development on Indigenous Lands*, a comparative study of the development of legal requirements for

consultation of indigenous peoples in Chile, Colombia, Ecuador, Guatemala, Mexico and Peru. This study is in the publication process and will be released in Spanish in January by the Human Rights Institute at the University of Deusto in Spain. It will be translated into English and released in April, 2023 by the Foundation for Natural Resources and Energy Law.

SDSG has also undertaken recent advisory projects in this area with two different Latin American governments.

The purpose of our preliminary study on **Consultation Policies for Government Activities Affecting Indigenous Americans**, is to evaluate current U.S. agency practice, and compare it to the benchmarks established in other countries.

One conclusion is that agency practice varies widely, with some government agencies developing more complex and rigorous systems of consultation, while other government bodies have done very little.

Another important conclusion is that many of the U.S. policies that do exist are not legally binding, and there are few if any legal consequences where they are ignored.

While the United States has not ratified ILO Convention 169, the cornerstone treaty in this area, many of these same rights are set out in the United Nations Declaration on the Rights of Indigenous Peoples (2007), which the U.S. has supported and voted for. This indicates that U.S. policy is in some manner supportive of consultation rights, but that there is a lack of uniformity, consistency, and willingness to enter into binding or enforceable commitments.

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