

National Dong Hwa University
Department Of Law
Indigenous Law Program

Litigation Access and Rights Protection for Indigenous Peoples

Presented by: Awi Mona, Professor
and Department Head, Department of
Law, National Dong Hwa University

「正義．深耕：新世代法學人才培育」

國立東華大學法律學系原住民專班



行政訴訟 堅實第一審新制

自112年8月15日施行

行政訴訟制度里程碑
提供民眾更為專業、及時、
有效的權利救濟

行政訴訟新制度登場囉~



巡迴法庭

當事人一造與管轄法院相距遙遠時，得由行政法院的法官到當地的法院開庭。



陪同開庭

有聽覺、聲音及語言障礙者，要去開庭覺得擔心不安，經審判長許可後，可以由自己信賴的人陪同開庭。



漸進擴大 強制律師代理

沒錢也不怕，可以聲請依訴訟救助的規定幫你選律師囉！



保障原住民族、 弱勢兒少之權益

要幫助原住民及弱勢的朋友更容易利用法院囉！



完善替代裁判 之紛爭解決機制

強化和解功能也增加調解制度。

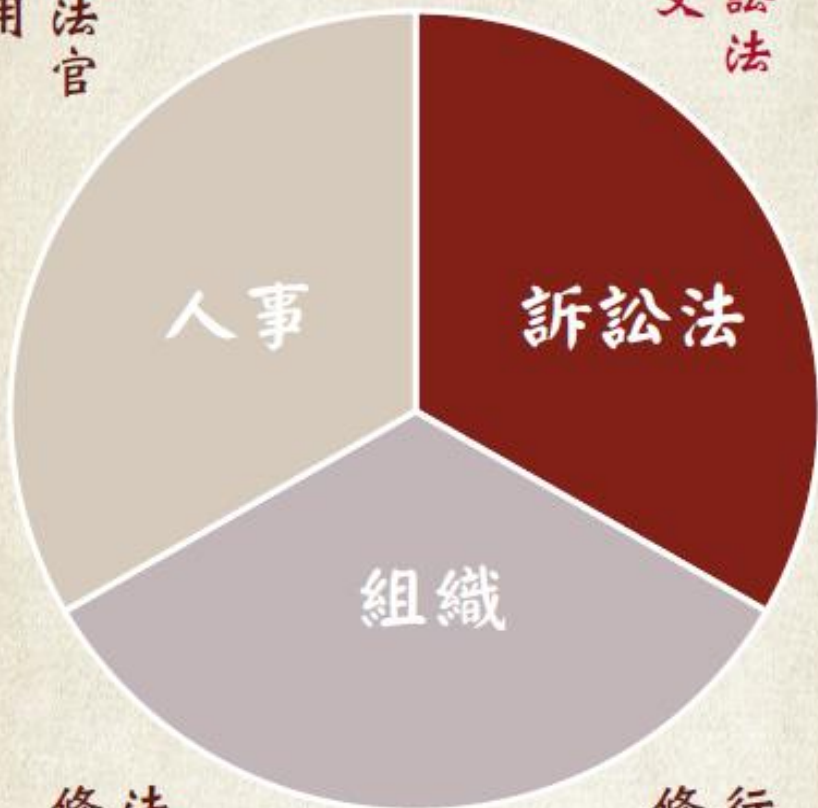


防杜濫訴

亂告狀是會被罰錢的喔！



地方庭法官
多元進用



行政訴訟法
修正條文

行政訴訟法施行法
修正條文

法官法
修正條文

法院組織法
修正條文

行政法院組織法
修正條文

行政法院巡迴法庭
即將正式上路啦！



為建構堅實第一審行政訴訟制度，原本分散於22所地方法院行政訴訟庭審理的事件，將改為集中於臺北、臺中、高雄3所高等行政法院「地方行政訴訟庭」專責辦理，並透過「巡迴法庭」、「線上起訴」、「遠距審理」等配套措施，兼顧人民訴訟便利性。



巡迴法庭是指

行政法院的法官
到當事人所在地的法院開庭

管轄法院	誰可以使用巡迴法庭？
臺北高等行政法院 地方行政訴訟庭	住在 <u>臺北市</u> 及 <u>新北市</u> <u>以外</u> 的當事人
臺中高等行政法院 地方行政訴訟庭	住在 <u>臺中市</u> <u>以外</u> 的當事人
高雄高等行政法院 地方行政訴訟庭	住在 <u>臺南市</u> 及 <u>高雄市</u> <u>以外</u> 的當事人

涉訟金額50萬元以下之簡易事件、交通事件或其他準用簡易訴訟程序之事件時，得使用巡迴法庭

法官會考量下列因素，決定是否使用巡迴法庭：

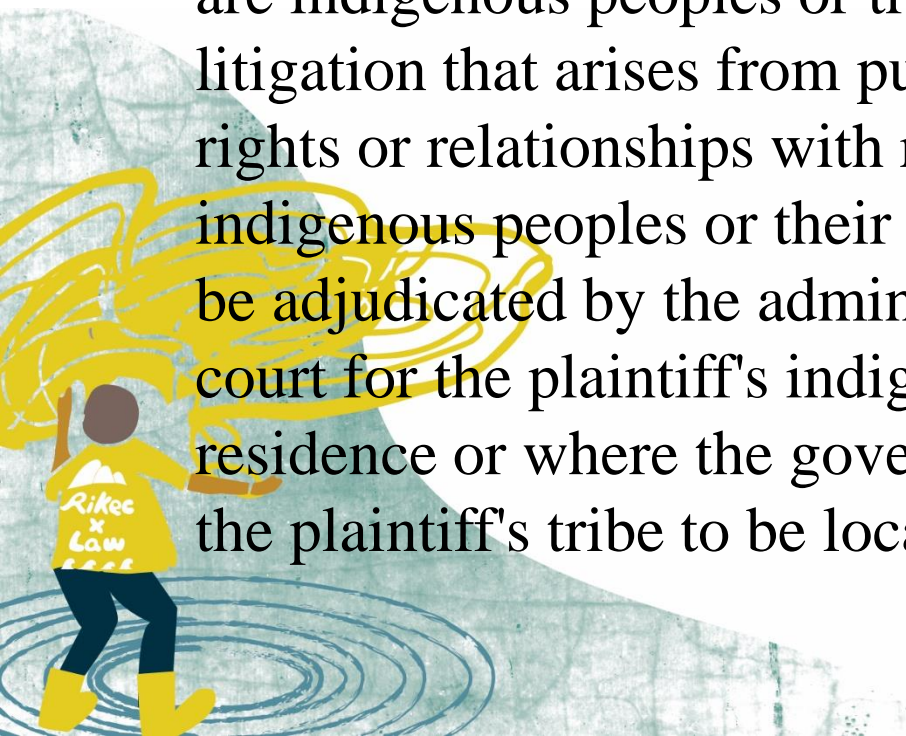
- ① 當事人的意願。如果當事人合意便利之方式，且法院認為適當者，應依其合意
- ② 行政訴訟法修法後對當事人應訴便利性的影響
- ③ 出借法院的辦公處所、人員及設備能否配合
- ④ 與法院端的遠距審理設備能否順利、安全地通聯
- ⑤ 遠距端能否適時提供法院端必要的協助
- ⑥ 陳述人能否自由及真實地陳述
- ⑦ 其他足以影響真實發現或審判公平的情事

Ensuring Indigenous Peoples' Rights to Access Justice

Article 15-3 of the Administrative Litigation Law:

Except for cases in which both parties are indigenous peoples or tribes, the litigation that arises from public law rights or relationships with respect to indigenous peoples or their tribes may be adjudicated by the administrative court for the plaintiff's indigenous residence or where the government finds the plaintiff's tribe to be located.

In accordance with Article 30 of the Indigenous Peoples Basic Law and the resolution of the National Judicial Reform Conference intended to ensure an effective protection mechanism for indigenous people's judicial rights, it has been stipulated that, except for cases where both parties are indigenous individuals or tribes, legal disputes concerning public law rights or relations involving indigenous peoples or their tribes may be adjudicated by the administrative court in the plaintiff's place of residence or the certified location of their tribe. This provision ensures easier access to judicial protection for indigenous peoples and recognized tribes by allowing them to seek legal assistance at nearby administrative courts.

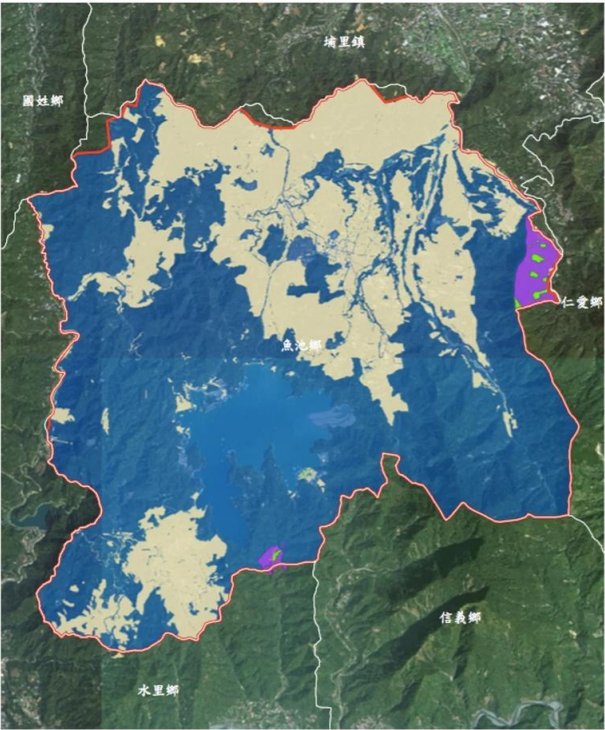




The administrative litigation system will introduce circuit courts for the first time, enabling indigenous plaintiffs to access judicial services in their local area.

Ensuring the protection of indigenous peoples' rights and facilitating their access to courts





Taipei High Administrative Court Decision No. 341, 2019



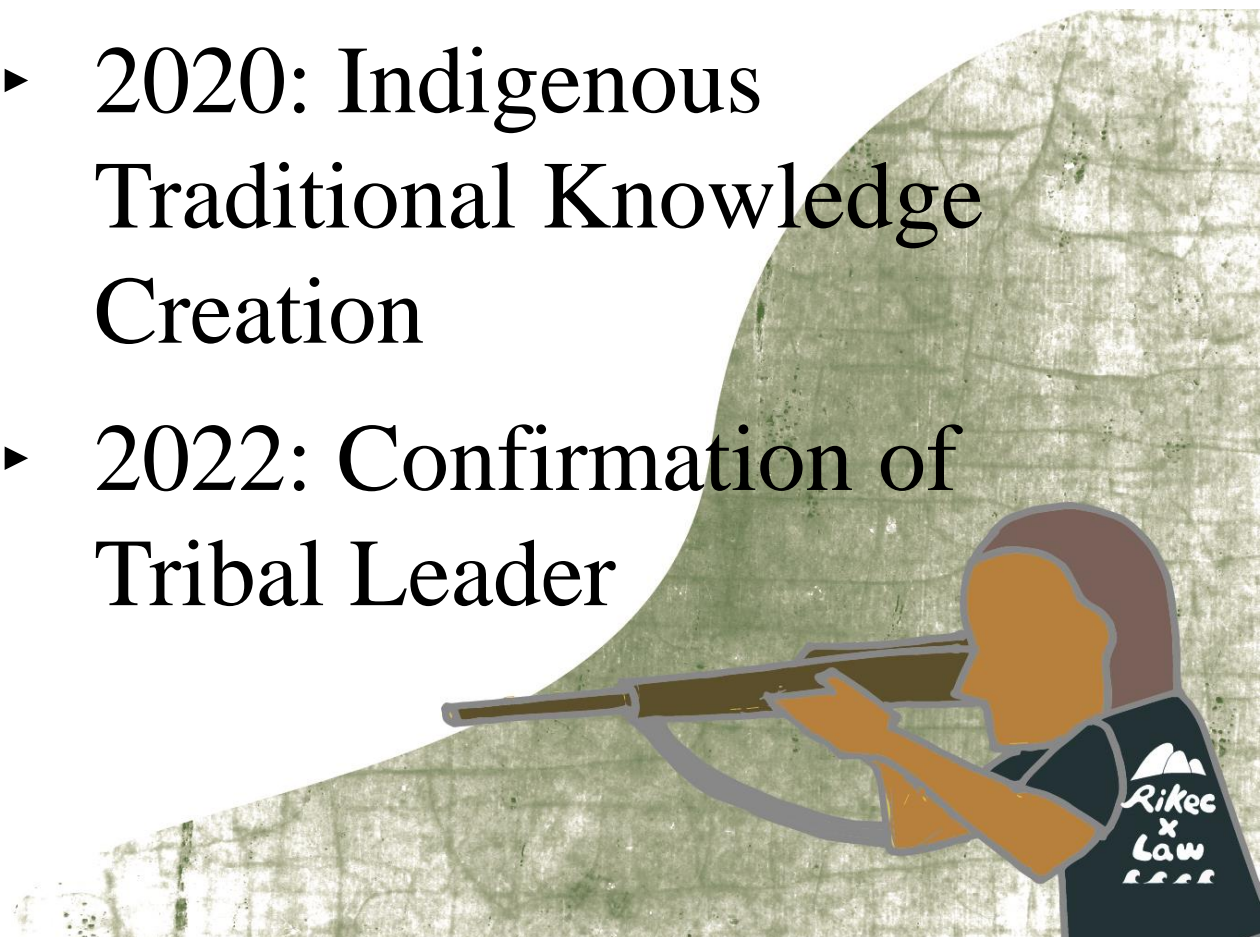
Taipei High Administrative Court Decision No. 1509, 2020

Taipei High Administrative Court Decision No. 1505, 2017



National Law and Indigenous Peoples' Rights

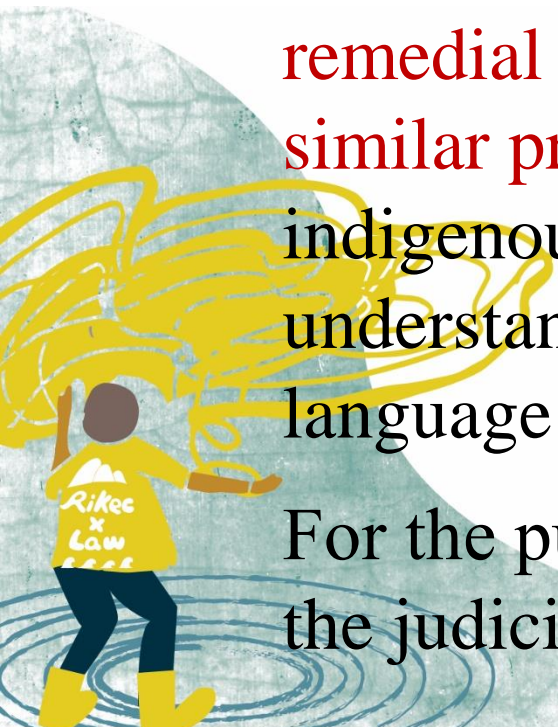
- ▶ 2004: Alishan Tsou Tribe Father and Son Wild Honey Case
- ▶ 2007: Smangus Wind-fallen Timber Case
- ▶ 2014: Wang Guang-lu Hunting Case
- ▶ 2020: Indigenous Traditional Knowledge Creation
- ▶ 2022: Confirmation of Tribal Leader



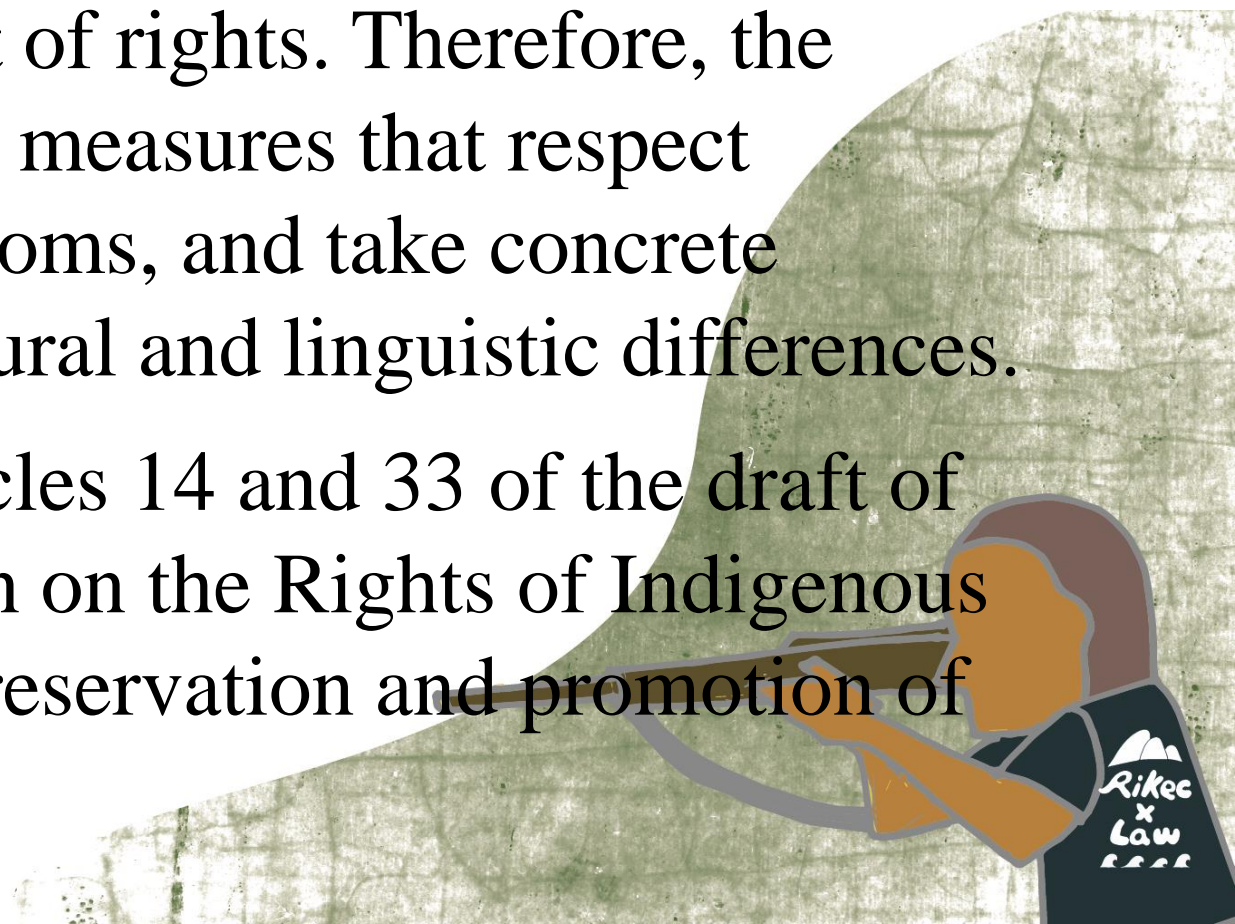
Article 30 of the Indigenous Peoples Basic Law

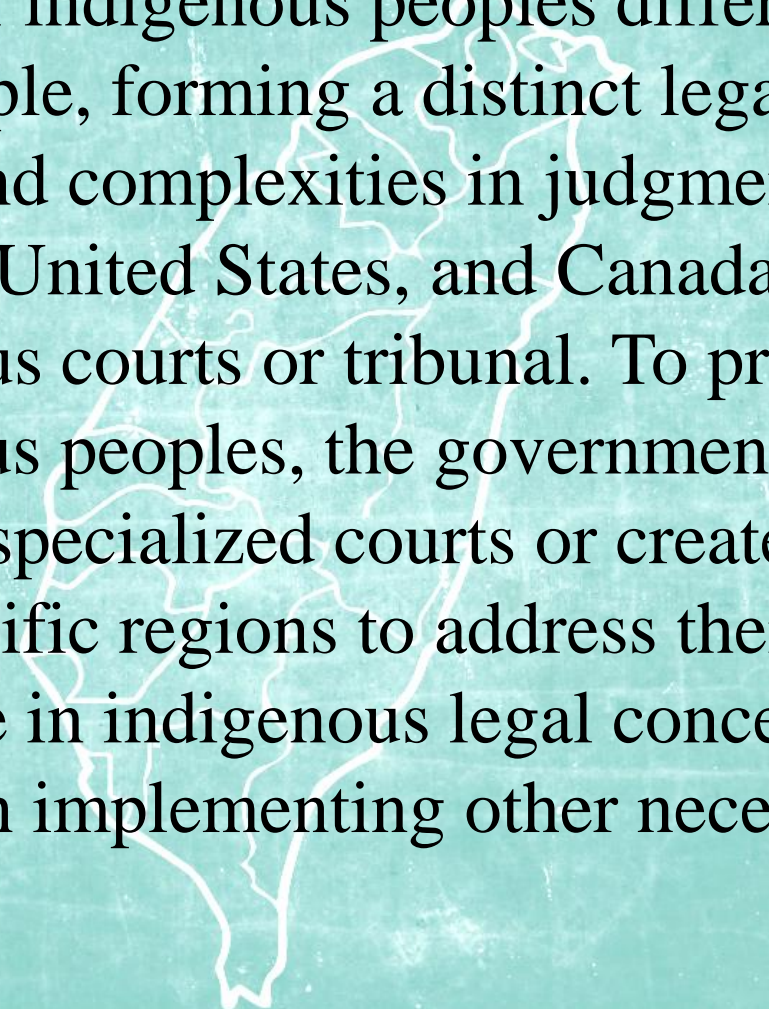
The government shall respect tribal languages, traditional customs, cultures and values of indigenous peoples in dealing with indigenous affairs, making laws or implementing judicial and administration remedial procedures, notarization, mediation, arbitration or any other similar procedure for the purpose of protecting the lawful rights of indigenous peoples. In the event that an indigenous person does not understand the Chinese language, an interpreter who speaks the tribal language shall be provided.

For the purpose of protecting indigenous peoples' rights and access to the judiciary, indigenous peoples' court or tribunal may be established.

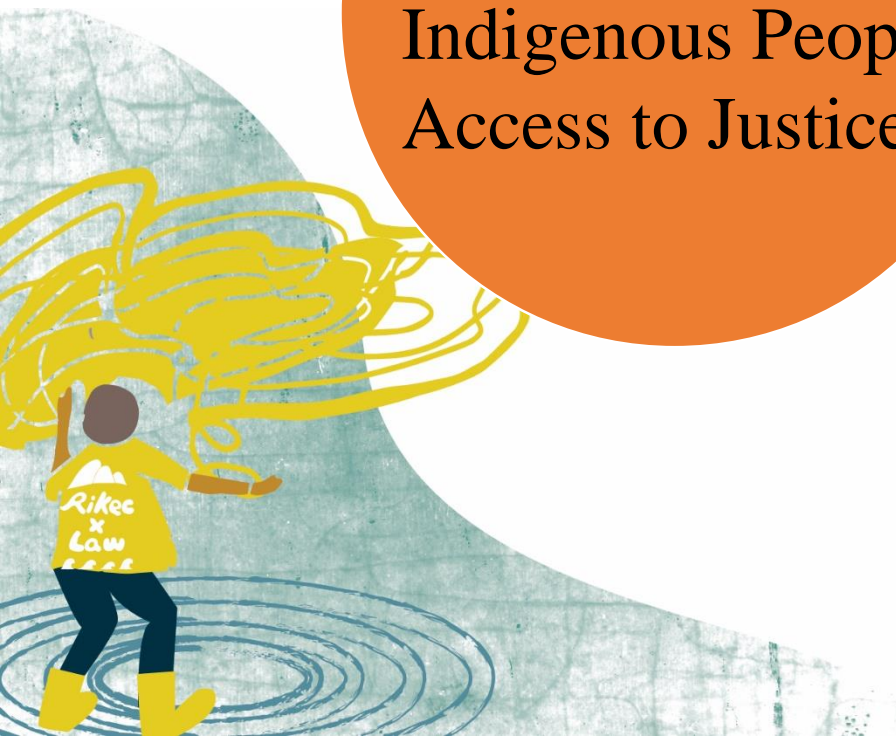


- The traditional customs and languages of indigenous peoples are distinct from those of other ethnic groups, often creating barriers to their full enjoyment of rights. Therefore, the government should implement measures that respect indigenous languages and customs, and take concrete measures to address these cultural and linguistic differences.
- This provision references Articles 14 and 33 of the draft of the United Nations Declaration on the Rights of Indigenous Peoples, which focus on the preservation and promotion of indigenous languages.





The legal concepts of indigenous peoples differ significantly from those of the Han people, forming a distinct legal system with its own particularities and complexities in judgments. Countries such as New Zealand, the United States, and Canada have already established indigenous courts or tribunals. To protect the rights and interests of indigenous peoples, the government should encourage the establishment of specialized courts or create dedicated courts or land tribunals in specific regions to address their unique needs. Judges with expertise in indigenous legal concepts should be appointed, along with implementing other necessary measures.



Protection of Indigenous Peoples' Access to Justice

Indigenous Peoples Specialized Court

Jan. 1, 2013: Indigenous peoples specialized courts established in 9 district courts under the jurisdiction of the Taiwan High Court.

Sep. 3, 2015: Except for the Supreme Court and outlying islands, Indigenous peoples specialized courts were extended to the High Court, Administrative Court, and District Courts across Taiwan.

Article 31 of the Code of Criminal Procedure

Jan. 14, 2015: Mandatory defense in all trial proceedings for indigenous peoples.

Presidential Apology to Indigenous Peoples

Mar. 12, 2018: Establishment of the Indigenous Peoples Legal Service Center by the Legal Aid Foundation.

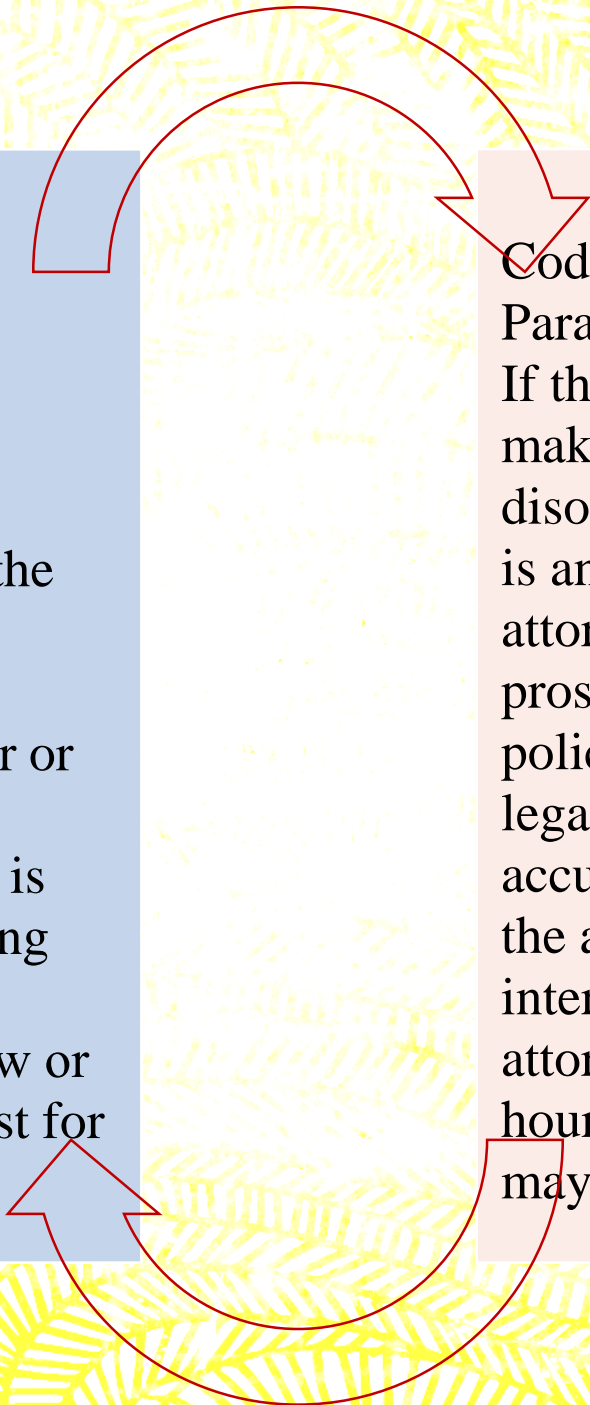
Code of Criminal Procedure Article 31,
Paragraph 1, Subparagraphs 3 to 5

If the accused has not retained a defense attorney in any one of the following circumstances, the presiding judge shall appoint a public defender or attorney for the defendant:

3. Where the accused is unable to make a complete statement due to mental disorder or other mental deficiencies.
4. Where the accused is an aborigine, and is being prosecuted or is put on trial following normal proceedings.
5. Where the accused's income level is low or middle-to-low, and has submitted a request for an appointment of a public defender or attorney.

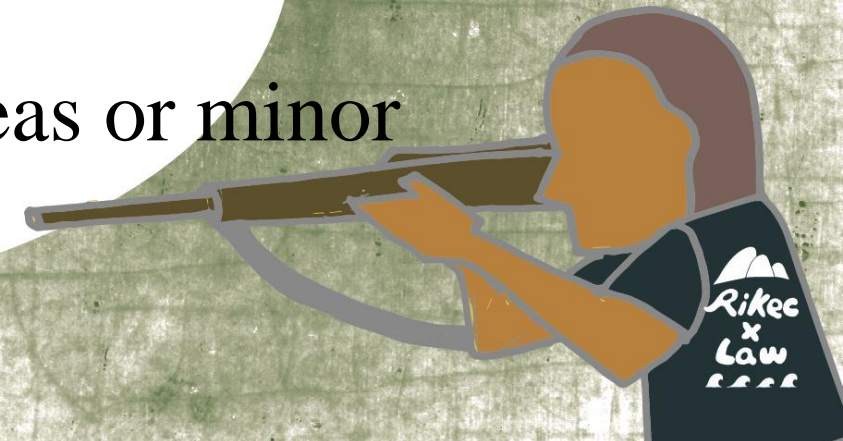
Code of Criminal Procedure Article 31,
Paragraph 5

If the accused or suspect, who is unable to make a complete statement due to mental disorder or other mental deficiencies, or who is an aborigine, has not retained a defense attorney during an investigation, the prosecutor, judicial police officer, or judicial police should notify a legally established legal aid agency to assign an attorney for the accused's or suspect's defense. However, if the accused or suspect requests an immediate interrogation or questioning, or if the defense attorney is not present after more than a four-hour wait, the interrogation or questioning may be commenced.



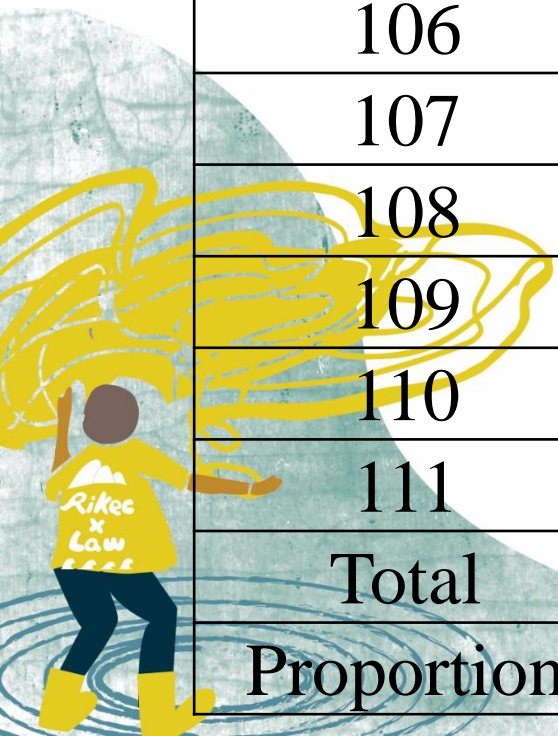
Mandatory defense in all trial proceedings for indigenous peoples: Is It Appropriate?

- ▶ Indigenous people's intellectual and economic capabilities
 - ▶ Is there a need?
 - ▶ Why is there a need?
- ▶ Judicial Practice
 - ▶ Cases where a defender is appointed for indigenous peoples
 - ▶ Guilty pleas or minor offenses



Judicial Access and Legal Aid for Indigenous Peoples

Year	Criminal	Civil	Family	Administrative	Total Case Count	Annual Growth Rate
105	2862	1438	596	61	4957	--
106	3533	1378	700	60	5671	14.40%
107	3348	1612	736	94	5790	2.10%
108	3619	1893	881	81	6474	11.81%
109	3631	2040	988	101	6760	4.42%
110	5002	2455	1114	176	8747	29.39%
111	6029	2399	1132	117	9677	10.63%
Total	28024	13215	6147	690	48076	
Proportion	58.29%	47.16%	46.52%	11.22%		



Top 10 Case Types from 2016-2022

Criminal	Number of Cases	Civil	Number of Cases	Administrative	Number of Cases	Family	Number of Cases
Fraud, Breach of Trust, Taking, and Usury (Chapter 32)	5816	Infringement of Rights	4102	Measures for the Development and Management of Original Protected Land	136	Dependent	2001
Injury (Chapter 23)	5490	Consumer Debt Clearance Statute	2446	Road Traffic Management and Penalty Act	116	Divorce	1072
Public Danger (Chapter 11)	2188	Ownership	2120	The Indigenous Peoples Basic Law	96	Custody	884
Narcotics Hazard Prevention Act	1872	Loans	1075	Land	46	Inheritance	462
Offenses Against Sexual Autonomy (Chapter 16)	1851	Labor	689	Labor Insurance Act	21	Parental Rights	456
Theft (Chapter 29)	1650	Other Contracts	423	Act of Military Service for Officers and Non-commissioned Officers of the Armed Forces	14	Guardianship or Assistance Declarations	241
Murder (Chapter 22)	935	Unjust Enrichment	372	Environmental Impact Assessment Act	13	Domestic Violence Prevention Act	225
Offenses against Personal Liberty (Chapter 27)	830	Purchase	332	Indigenous Peoples Status Act	11	Confirmation of Parent-Child Relationship	191
Offenses Against Reputation and Credit (Chapter 27)	738	Hire of Work	173	Designation of Indigenous Land as Public Land	8	Denial of Child	187
Forgery of Documents (Chapter 15)	593	Mortgage	133	Road Traffic Safety Regulations	7	Adoption	93

History of the Establishment of Specialized Courts in Taiwan

Over the past 20 years, the Judicial Yuan has successively established 3 specialized courts.

- ▶ September 15, 1999: Established the Kaohsiung Juvenile Court.
- ▶ July 1, 2000: Established three High Administrative Courts in Taipei, Taichung, and Kaohsiung.
- ▶ July 1, 2008: Established the Intellectual Property Court.
- ▶ June 1, 2012: Merged the Family Court in Kaohsiung District Court with the Juvenile Court, forming the Kaohsiung Juvenile and Family Court.
- ▶ January 15, 2020: The Intellectual Property Court was reorganized into the Intellectual Property and Commercial Court.

Specialized Courts

Currently, various courts have established specialized courts or designated personnel to handle cases related to labor disputes, electoral invalidation lawsuits, medical disputes, construction, intellectual property, juvenile cases, family matters, finance, sexual assault, and consumer debt clearance.

Right to access customary
systems of law



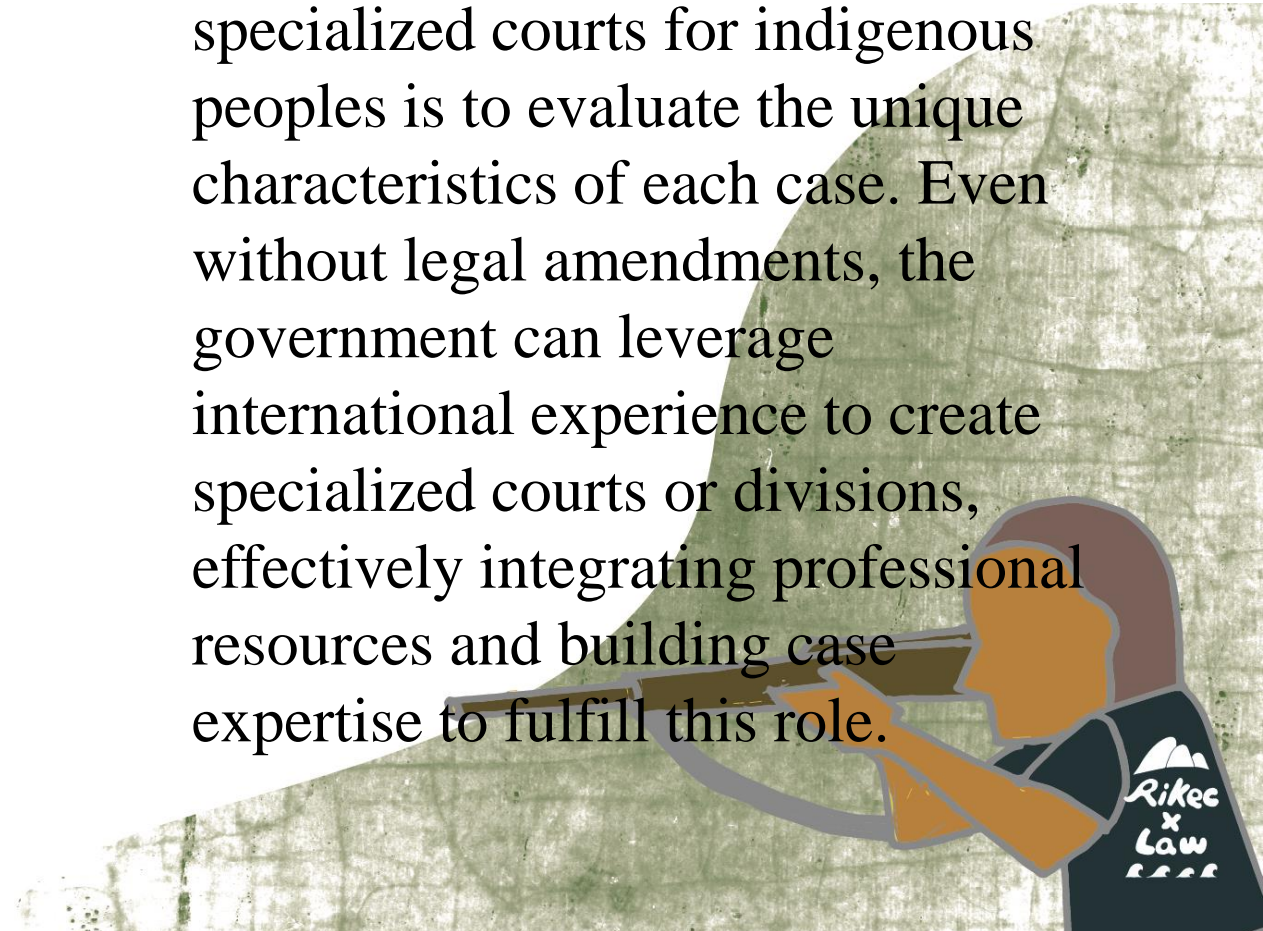
Self-Government and Indigenous Laws

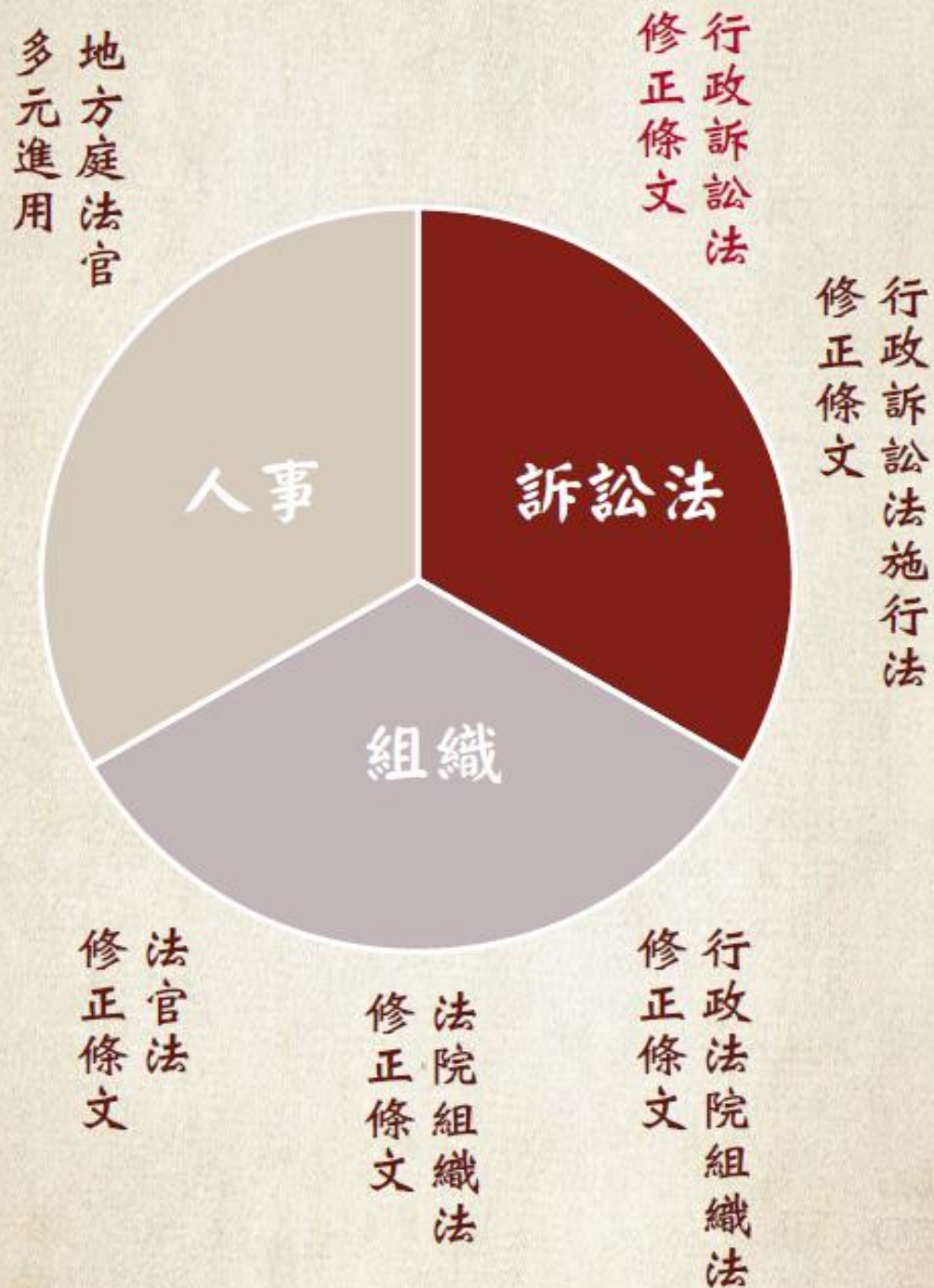
- ▶ Indigenous peoples' legal traditions and culture form the regulatory framework of indigenous self-government, deeply rooted in the historical patterns of interaction and control within tribal societies and their political organizations.
- ▶ If the individual or collective rights of indigenous peoples are not respected and are violated, indigenous peoples have the right to resolve disputes based on their legal traditions, customary norms, and cultural values, ensuring decisions are made in a fair and just manner.



Indigenous Peoples Specialized Court

- ▶ In the absence of revised or newly established laws, how can judicial and administrative remedial procedures, such as notarization, mediation, and arbitration, respect indigenous peoples' languages, traditions, customs, cultures, and values to safeguard their legal rights?
- The key principle for establishing specialized courts for indigenous peoples is to evaluate the unique characteristics of each case. Even without legal amendments, the government can leverage international experience to create specialized courts or divisions, effectively integrating professional resources and building case expertise to fulfill this role.

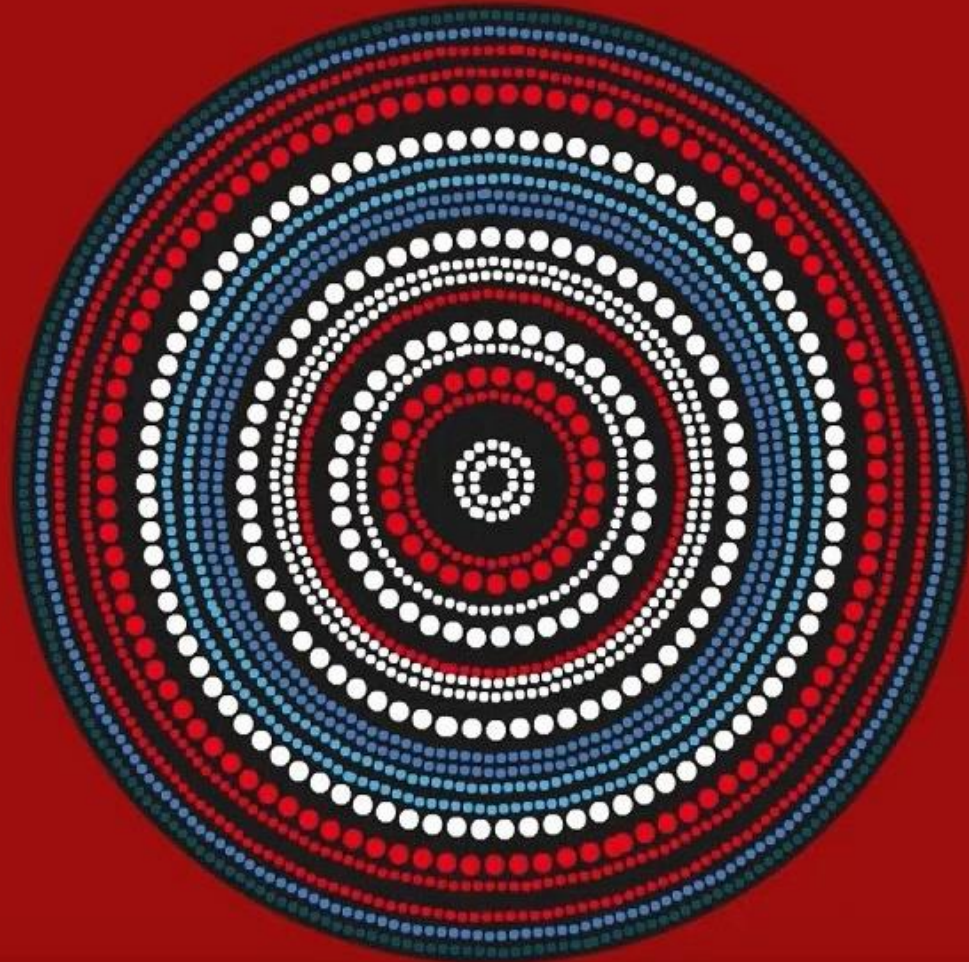




Applying the traditional customs of indigenous peoples as the basis for litigation is essential to protect their “right to access customary law.”

The practice of the “right to access customary law” cannot be fully realized by simply establishing specialized courts or panels within the current judicial system, even with judges who are knowledgeable about or sympathetic to indigenous peoples’ affairs.

Murri Court, Queensland, Australia



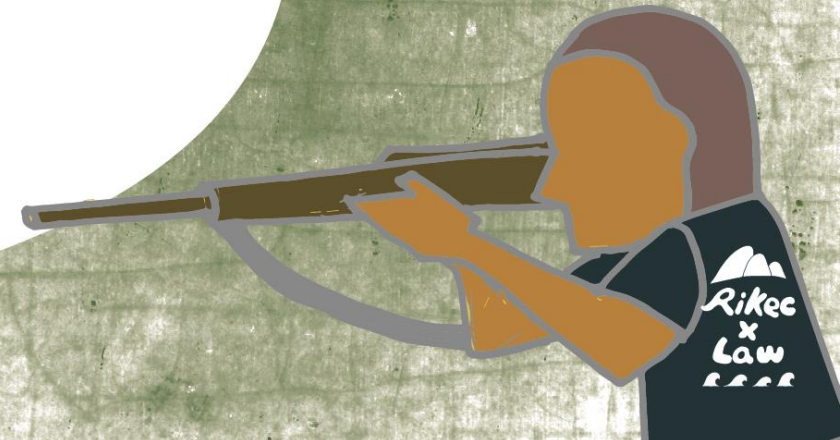
Indigenous People's Court to open in Thunder Bay Ontario Court of Justice, Canada

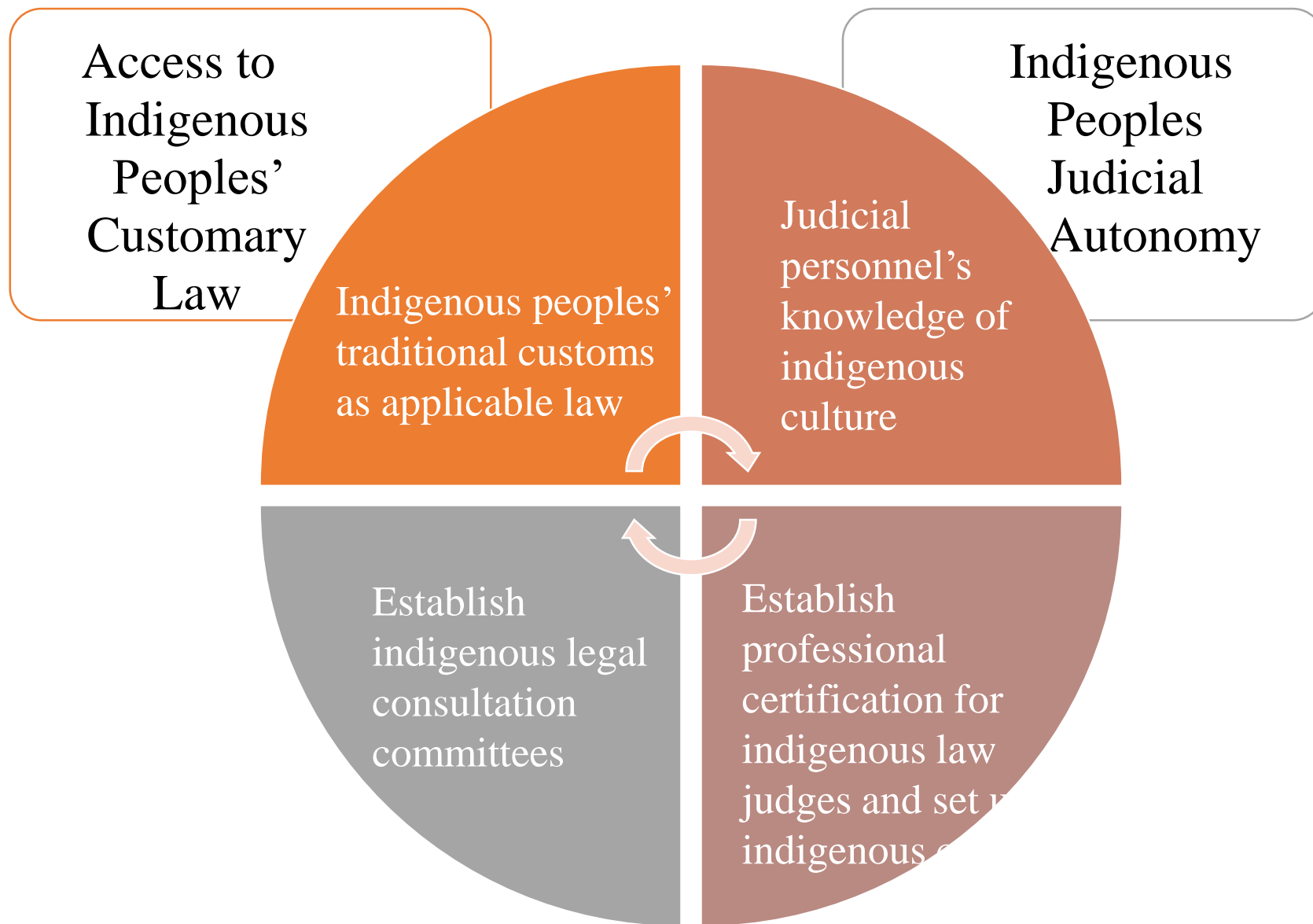


Institution		Organizational Designation	Work content	Interaction with the Tribe
Ministry of Justice	Maori Land Court	Judicial and Land Administration Institution	<ul style="list-style-type: none"> • Manage Maori land • Handle disputes over Maori land between individuals and families • Manage historical land records 	Land management Land dispute settlement
	Waitangi Tribunal	Investigation, Research, and Policy Recommendations	<ul style="list-style-type: none"> • Investigate Maori claims • Hold hearings • Publish reports and make policy recommendations 	Assist during the whole investigation and hearing process
	Te Arawhiti/ Office for Maori Crown Relations	Negotiation and Advocacy for Legislative Development Strengthen Government Agencies	<ul style="list-style-type: none"> • Negotiate and mediate agreements • Manage claims over foreshore and seabed rights • Enhance government capacity for interacting with Maori communities 	Assist in receiving authorization

Aotearoa New Zealand

Concluding Remarks





The legal sources and fundamental theories of Indigenous Peoples' Law.

A Model to Learn From: The Waitangi Tribunal

- ▶ Investigation: Tribal members are highly involved in the investigation process. There are also mechanisms in place for the Maori to conduct their own investigations or commission investigations.
- ▶ Hearings: Every participants recognizes the significance of hearings. When tribal members share their stories in the marae (meeting grounds), whether individually or as a family, they feel acknowledged, finding comfort and healing through the process.
- ▶ Reconciliation and Negotiation: The Maori can negotiate with the government for land restitution through administrative agreements or the creation of joint management plans. These plans are guided by principles rooted in Maori culture and customary law.



| *Knbeyax ta naq ka ita!*

