

PRACTICALITIES OF CONSTITUTIONAL REFORM

2008 Minnesota Indian Business
Conference and Showcase

Constitutional Reform

- Creates an environment that is conducive to economic development
- Allows tribal communities to lay a foundation to carry out effective self-governance
- Provides an opportunity for tribal communities to determine their economic, cultural and political futures

Practicalities of Constitutional Reform

- ▣ “A constitution must be a reflection of a people’s fears concerns, aspirations, vision and indeed the soul of that nation.”
 - Hassan Ebrahim, Soul of a Nation

Practicalities of Constitutional Reform

- ▣ Taken steps to consider why your community needs reform.
- ▣ Taken steps to determine that reform should be instituted.
- ▣ What's next?

Practicalities of Constitutional Reform

- ▣ How?
 - ▣ How can Constitutional Reform be instituted in my community?
1. Community Process
 2. Election Process
 3. Transition Process

Community Process

- ▣ In order to have a healthy and vibrant discussion the community needs to be involved.
- ▣ The reform process must have Community “Buy In”

What is Community Buy In

- ▣ The process must be accepted by the Community
- ▣ Community Members (Tribal Members) must feel like their opinion matters and their input matters
- ▣ Community Members should be invited and encouraged to participate fully and contribute to decision making process

Community Buy In

- ▣ Process Must be:
 1. Transparent / Open
Not Forced or Clandestine
 2. Involve a Cross-section of the community
Elders, Elected Leaders, Professionals,
Community Leaders, On & Off Reservation
members
 3. Educational Component
Provide opportunities to ask questions & get
answers
Provide materials and access to data & work
product

Stakeholders

- ▣ WHAT IS THE VALUE IN UNDERTAKING THIS ACTION?
- ▣ Fairness and distributional equity
- ▣ Trust and legitimacy
- ▣ The effect on future generations

Project Leader

- ▣ An individual or group should be designed to map out the process and carry it forward
- ▣ Individual or Firm
 - Attorneys
 - Project Coordinators
 - Chair of the Commission
 - ▣ Impartial Facilitator
 - ▣ Not necessarily an “outsider”
 - ▣ Impartial to the extent everyone voice is heard

Constitutional Convention Format

- ▣ Large Scale Reform Process
- ▣ Government Sponsored
- ▣ Funded for maximum public participation and planning

Examples:

- 1) Gila River
- 2) Comanche Nation
- 3) Osage Nation
- 4) Mandan Hidatsa Arikara Nation

Constitutional Convention Format

- ▣ Gila River Tribe (Arizona)
- ▣ In progress <http://www.mygilariver.com>
- ▣ Constitutional Reform Project
- ▣ Project Manager and Task Force
- ▣ Scheduled Presentations and Community “Fact Gathering”
- ▣ Targeted Areas
 - Per Capita Eligibility
 - Tribal Services (Housing, Health Care, etc..)
 - Elections
 - Enrollment
 - Tribal Structure

Constitutional Convention Format

- ▣ Comanche Nation
- ▣ In progress
- ▣ <http://www.cncrp.com/CNCWorkSession.html>
- ▣ Project Facilitator
- ▣ Organized presentations and meetings on and off reservation
- ▣ Progress reports
- ▣ Time line for approval and convention
- ▣ Website and downloadable information for membership

Constitutional Convention Format

- ▣ Osage Nation
- ▣ Completed –Successful
- ▣ Large Scale Committee
- ▣ Community Participation
- ▣ Major restructuring to a unicameral legislative type of governance
- ▣ Nebraska guidance
- ▣ Website with available materials, notices, and reports

Constitutional Convention Format

- ▣ Mandan Hidatsa & Arikara Nation (Three Affiliated Tribes)
- ▣ Ultimately unsuccessful
- ▣ Constitutional Revision Committee (District Representation)
- ▣ Multi-year process
- ▣ Community Meetings Presentations
- ▣ Materials available via web and mailings

Constitutional Convention Format

- ▣ Mandan Hidatsa & Arikara Nation
- ▣ Reason effort may have been unsuccessful
 - Administration Driven
 - No continuity to next administration
 - Committee Driven (surveys, but initial decisions were made by committee then presented)
 - Review showed “TMG” Too Much Government
 - Costs of Reform

Constitutional Convention Format

- ▣ Community Reform Process should include
 - Collection of Data (Surveys, Stats, Public Hearings)
 - Input (Through Hearings, Comment Process, Participation at Presentations)
 - Cross Section of Community to represent communities traditions and values
 - Education
 - Progress Reports
 - Time line

Constitutional Convention Format

- ▣ Ultimately the Timing of the Process is important
- ▣ Sensitive to pulse of change
- ▣ Community support is vital
- ▣ Controversial Issues may jeopardize everything else
- ▣ Compromise is key

Secretarial Election Process

- ▣ Instituted the Reform Process
- ▣ Conducted Meetings, Education, Input
- ▣ Draft Constitution that is ready
- ▣ It's time to vote!

Secretarial Election Process

- ▣ Elections called by the Secretary of the Interior for an Indian tribe to ratify, amend, or revoke a constitution and bylaws are federal, not tribal elections.
- ▣ 25 USC Section 476
- ▣ The rules identified in 25 CFR Part 81 regulate the conduct of Secretarial Elections
- ▣ A tribes current constitution and its provisions will also govern

Secretarial Election Process

- ▣ In order for an election to proceed the tribe must ask the Secretary of the Interior to call and conduct an election.
- ▣ After the Sec. receives a qualifying request to hold an election, the Secretary must call and hold an election within one hundred and eighty days. 25 USC Section 476(c)(1)(A).

Secretarial Election Process

- ▣ Election Board is convened per regulations in Part 81
- ▣ May contain some of the same individuals on the reform committee, may contain regular tribal election board members, generally representation from tribal enrollment department

Secretarial Election Process

- ▣ Election Board will
- ▣ 1. Notify Adult voters of the need to register
- ▣ 2. Must conduct registration separate and apart from a registration for purposes of a tribal election.
- ▣ 3. Create an eligible voter list

Reform Process

- ▣ Voting Complete and Constitution Revisions are successful
- ▣ What happens next?

Reform Process

- ▣ What's affected
 - Statutes and Tribal Code
 - Administrative Regulations
 - All needs to be disseminated in a timely manner

Reform Process

- ▣ Re-structuring
- ▣ Transition Committee or Plan

Constitutional Reform Process

- ▣ What driving the process?

Constitutional Reform Process

- ▣ No matter how wonderful the Constitution may be, unless it is respected by all- the government and citizens alike- it will not be of much value. Laws do not make a better society, people do. Law can only be of assistance in empowering people to achieve their aspirations.”
 - Hassan Ebrahim, Soul of Nation

Constitutional Reform Process

- ▣ Questions?

The end.

- ▣ Thank you.