National Congress of American Indians

TRIBAL-STATE RELATIONSHIPS

Numerous tribes have established collaborative agreements and/or compacts with surrounding state governments on a broad range of activities, from law enforcement and taxation to climate change planning and education. Contrary to popular belief, these agreements do not diminish tribal sovereignty, nor do they undermine the tribes' trust relationship with the federal government. Rather, when a tribe enters into an intergovernmental agreement with a neighboring jurisdiction, it exercises sovereign authority to govern its citizens in the manner in which it sees fit. Tribal-state collaboration enables tribal governments to leverage scarce resources in serving their citizens while maintaining sovereignty in the decision-making process. When effectively implemented, it also benefits the surrounding communities and the state as a whole.

Indian Country urges the Obama Administration to continue supporting engagement between tribes and states on a government-to-government basis and in a manner similar to the relationships between other state or federal government agencies. At a time of budgetary challenges, it is critical that states and tribes respect each other's sovereignty and develop mutually beneficial working relationships.

RECOMMENDATIONS

1. **Limit state jurisdiction over tribes where there has been no consultation with or consent by tribes**
   The Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) is a perfect example of the chaos that can ensue when the federal government authorizes state assumption of jurisdiction over tribes under specific circumstances where there has been no consultation with or consent by tribes. That law strips a subset of tribes that are subject to state jurisdiction under Public Law 53-280 (P.L. 280) of civil regulatory authority over their members, and it has the potential to create state criminal jurisdiction in non-P.L. 280 states where it has never before existed. This is an unfunded mandate on states, an affront to tribal sovereignty, and a dramatic departure from the federal policy of self-determination. The federal government should under no circumstances authorize state jurisdiction—civil or criminal—over American Indian and Alaska Native tribes without full consultation with and consent of affected tribes.

2. **Urge state governments to engage in and formalize tribal-state consultation policies and protocol**
   Several states (for example, the state of New Mexico) already have formal policies in place to consult regularly with the tribes residing within their state's borders. These mechanisms for timely and ongoing communication between the appropriate parties on issues of mutual interest have had marked and demonstrable success. The institutionalization of tribal-state consultation processes provides certainty about the process and forums through which issues can be discussed and addressed, even with changes of political leadership at the tribal and state levels.

3. **Promote an understanding of and respect for tribal sovereignty and the federal trust relationship**
   State legislators are often unfamiliar with the bounds of tribal sovereignty and the contours of the federal trust relationship with tribes. The federal government must seize every opportunity to promote and educate state officials about the special trust relationship it has with tribes and about the unique political status of American Indians and Alaska Natives in our country. The federal government should also raise cultural awareness about Native customs and traditional tribal governmental structures.

4. **Require states to wholly fulfill their obligations under P.L. 280**
   Passed in 1953, P.L. 280 gave jurisdiction over criminal offenses involving Indians in Indian Country to certain mandatory states and allowed other states to assume jurisdiction in a similar manner. Since its inception, P.L. 280 has caused jurisdictional confusion, increased tension between states and tribes, and resulted in profuse litigation. While some states have accepted their obligations under P.L. 280, most have viewed it as an unfunded mandate, and they have refused to take their law enforcement responsibilities on tribal lands seriously. This lack of law enforcement presence has resulted in epidemic rates of violence on Indian reservations and in a direct threat to Native people. Given the federal government's trust responsibility to provide for the public safety of tribal members, it should make it a priority to ensure that states are carrying out their P.L. 280 obligations.

5. **Provide more federal incentives and funding for tribal-state collaborative efforts**
   Section 202 of the recently enacted Tribal Law & Order Act (P.L. 111-211) authorizes the Attorney General to provide technical assistance funds to encourage tribal, state, and local law enforcement agencies to enter into cooperative law enforcement agreements to combat crime in Indian Country and nearby communities. Particularly when all government budgets are constrained, the federal government should provide similar support in other issues that transcend jurisdictional boundaries such as climate change planning, natural resources, transportation, and watershed management.

6. **Support efforts to address restrictive state settlement acts**
   A number of tribes entered into settlement agreements whereby they gave up large land claims in return for federal acknowledgement. The states often had the upper hand in these settlements and successfully insisted on restrictions which limited tribal sovereignty, including criminal, civil, and regulatory jurisdiction; the application of aspects of the Indian Self-Determination and Education Assistance Act (P.L. 93-638); and the application of the Indian Child Welfare Act (P.L. 95-608), among others. The federal government should consult with tribes to develop a framework for tribes and states to work together to eliminate excessive and unnecessary restrictions on tribal sovereignty.

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