

# MCT CONSTITUTIONAL REFORM DRAFTING COMMITTEE

Date: 3/14/23 Time: 6 PM

Facilitator: Carol J.

Present: Marcie M., Julie H-C., Rita E., Wally S., Michaa A.,

Guest: Birdie R & Al Olsen Mille Lac

## **OLD BUSINESS:**

1. Amend the Alliance document.

## **NEW BUSINESS**

**Addressed concerns from the Mille Lacs Band which were brought into the following letter:**

*Thank you for the effort you put into the questions and statements.*

*Here is the Drafting Committee's response to the concerns of Mille Lacs Band regarding the Alliance document. I hope it is helpful.*

*The definitions of Constitution, Declaration, Alliance, Constitution, Manifesto, Preamble, Declaration of Independence, and the difference between them, were helpful as a review.*

*We see your notes were dated 12/3/22. The drafting committee has had two revisions since that date. We sent Draft 3 to the delegates before the January Convention. Draft 4 will be sent after our 2/14/23 Drafting Committee meeting.*

*We think that the issue we all have is what to call this document, but we should all understand its purpose by now.*

*Governing documents that serve as a constitution are called all sorts of things. Some tribes do not have a written form of a constitution.*

- **Cultural vs. U.S. Law**

## **Questions**

*What are we trying to achieve with this document?*

*What is the foundation of the document?*

Will this document need "approval" from the Secretary of the Interior since its language includes recognition of U.S. law?

***Answer***

1. *To achieve the goal of keeping the bands together under one umbrella document.*
2. *Incorporate our culture, traditions, principles, and values.*
3. *Remove the Secretary of the Interior from our governing documents. Then, our elections would be tribal, run by the tribe rather than BIA.*
4. *To provide oversight.*

***Yes, the Secretary will have to approve the document ONE LAST TIME***

- a. *We can request an informal review of our document at the beginning of the Secretarial Election process.*
- b. *The Secretary will provide technical assistance, will provide comments, and will determine if the provisions are contrary to applicable law (i.e., Treaties)*

When we remove the Secretary of Interior from our document, there are longer reviews and approvals of the Secretary.

- We will not lose our Sovereignty. Removal of the Secretary will only enhance our Sovereignty.
- We will not lose our federal recognition.
- We will not lose the "Trust Responsibility" of the U.S. government.
- We will not lose funding.

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**Question**

Is the document's foundation based on cultural or U.S. law?

- We need a better understanding of political science ideas and compare if they align with our cultural beliefs. This document mixes the two.
- Every input should be based primarily on that foundation; the other is eliminated or secondary.

**Answer**

The definition of political science is the scientific study of politics, social science dealing with systems of governance and power, analyzing political activities, thought, behavior, and the associated constitutions and laws. Political science also includes comparative politics, international relations, political theory, public policy, domestic and government politics, political economics, and law, to name a few.

History shows that the United States patterned its Constitution on tribal governing structures. Early Native government included Wampum belts and alliances, and we know others that did not have written rules. Alliances go way back before the United States. Alliances represent how we relate to each other and how we will live our lives. To say that western and native governance is inconsistent is not borne out by history. We have had a mix of the federal government and native culture. Now we have an opportunity to tip the balance more toward culture, but we will not be able to rid ourselves of the federal system altogether.

This document will be a combination of both. Unfortunately, that is the system and structure we are now under, a 1936 regime that established law and order in which we had no rights or due process. Since 1936 our "rights" have been violated. Civil rights are congruent with native culture. We are still American citizens.

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## **Statement**

This document combines the MCT – U.S. law and a tribe's cultural and traditional history. This does not work. These are opposites; it's either one or the other.

This document continues to align with the IRA.

The Nelson Act birthed the reservations, another U.S. law.

## **Response**

Unfortunately, we wrote our governing document under the IRA structure. We are amending it, but that does not mean we can eliminate all federal policies and laws. We Are stuck with some of them. Again we are trying to tip the balance in the document in favor of the culture and traditions.

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## **Statements regarding U.S. Law**

The Ojibwe understanding of things is what the Creator provided us, not U.S. law. Again, we shouldn't mix culture and U.S. law since our culture contradicts U.S. law. We are not looking for permission; an alliance is an organization; it's all in the same vein. We don't or shouldn't follow U.S. law if this document is culturally based.

### **Response**

As stated earlier and will be reiterated below in some of the questions, we will not be able to totally separate the two.

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### **Question**

Do we agree to organize an alliance under the IRA, or do we agree to organize under our culture, principles, and values?

### **Answer**

Unfortunately, it is the IRA system we have been under for 87 years. A system that dictates by federal codes what we are required to do if we wish to amend the current Constitution and remove the Secretary.

Our Constitution Reform delegation directed our committee to draft a governing document that removes the Secretary of the Interior and to write a document with more influence from our culture and traditions.

We agreed that we need to change our current structure to a governing system that provides oversight and transparency and one in which the people have input.

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### **Questions related to Sovereignty**

If we are sovereign, do we need to put it in the declaration? Whom are we trying to persuade? Under U.S. law, we are not sovereign. We are **quasi-sovereign**. If we are quasi-sovereign, why would we be looking at U.S. law?

### **Answer**

We have inherent Sovereignty that has been diminished. We need a change in our mindset that emphasizes that there is nothing about our Sovereignty that is quasi.

We are not quasi-Indian because our blood quantum diminishes with every generation., nor are we not sovereigns because it has been diminished. We need to protect what we have and not allow any further diminishment by the actions of our governing bodies.

So when we write a Declaration of Sovereignty, we are no longer asking; we are telling other nations, including the U.S., that we are an equal Nation.

The treaties are how we established our nationhood, and Supreme Court decisions set it firmly in the federal Laws.

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### **Statement**

There is no mention of Federal Statutes or judicial decisions to support or confirm a statement when referring to U.S. law.

### ***Answer***

*On the one hand, you are asking for no U.S. law mixed with culture and now asking for us law and decision referenced. No other areas need a reference other than when reservations were established, Citizenship, and Territory/Jurisdiction.*

*It is recommended that we should try to avoid mentioning specific law in the document. If the law is changed and you disagree with the change, you are bound by it unless you amend your document to remove it.*

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### **Points within the Articles**

#### **Power**

There are powers of government under the declaration; a declaration has no power; it is just an announcement.

What power does this have? It doesn't, since it's just a declaration.

Alliances also have no real recognized power; they are declarations of a partnership.

We need to acknowledge the power of the people and not be bound by U.S. law but by the six Bands.

### **Response**

This is a governing document that requires various minimum requirements. The following guidelines are from the book **Structuring Sovereignty**:

Regardless of the form of government, it chooses, a tribe will want to ensure that the government serves its citizens by:

1. maintaining order
2. providing services and
3. safeguarding cultural values

A government can serve its citizens only if it is clear who those citizens are; thus, tribes need to determine the following:

1. who qualifies for tribal citizenship and
2. the receipt of tribal benefits

Consider the following:

1. Relationship between the government and the citizens
2. Any rights and responsibilities the citizens will possess in detailing the authority and structure of the government.

At a minimum, address the following questions:

1. What are the boundaries of the government's authority over citizens, its geographical Territory, and the people within the Territory?
2. What specifically will the different parts of the government be?
3. How will the various parts relate to each other?
4. Who will exercise the powers within the government?
5. How will officials be selected, held accountable, removed, and replaced?

6. How will the document be created, drafted, ratified, implemented, and revised?
  7. Who will have the authority to interrupt the Constitution and resolve disputes about its meaning?
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### **Create a Tribe**

Does this document attempt to create something like another tribe from reservations? The 1935 Constitution was created as an organization. The smoke and mirror tactic referred to it as a government. The IRA does not allow for the formation of a new Indian Tribe, so you aren't able to form a political government.

### **Answer**

No. We are creating a tribe. We are developing an umbrella governing document. The name and structure of our government will change.

Since 12/3/2022, The Committee has presented Draft #2 at the convention in August 2022; based on those suggestions, it was mended and sent as Draft #3. We have been working on Draft #4, which has addressed some of the concerns Mille Lacs now presents.

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Articles 1 & 12 **Rights of Nature and Civil Rights** Maybe one paragraph is identified as the Rights of The Ojibwe. We need better clarification of rights relating to culture, traditions, principles, and values, referring to the creator and what was given to us. What about the rights to hunt, fish, gather, and breathe clean air and water, rights of privacy, and abortion rights? Shouldn't we simply focus on the inherent rights of the people and not established U.S. law? Civil rights are U.S. laws; we have to decide if we are creating an alliance based on our culture or on U.S. law.

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### **Answer**

At the January convention, we discussed how to stay relevant in the future for our descendants. The concept that UNDRIP's rights applied to us because of the concepts Inherent Sovereignty, Treaties, Protectorate

Principle, Cession of land, and Customary Law apply to us. Therefore, we are suggesting the use minimum standards for all indigenous people. What makes the most sense is to state indigenous people's rights, which are in Draft 4. They emphasize culture, traditions, and human rights. They span all ages and genders.

Civil Rights should go into individual bands' documents. They have to be addressed, our citizens have a right to be treated accordingly. A document needs to address the needs of the people.

We have addressed the retained treaty rights in the Alliance.

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Article 2 -**Origin** The majority of the origin story is meaningless when constructing a declaration; what are we declaring within the Article?

### **Answer**

The origin story is the fundamental belief that the Creator prepared Earth for us and taught us to respect it, use it to sustain and keep us well, and protect it. It has everything to do with our behavior and the rights of nature.

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Article 3 –**Treaty Rights** Is this Article necessary, and if so, why? Some of this language could be part Rights of the Ojibwe.

### **Answer**

Treaties are one of the most important concepts that give us legitimacy as sovereign nations and standing in the international arena. They identify rights that we retained. If we don't include them in our documents, how will we expect others to respect those rights and abide by their promises? For example, treaty rights and the exercise of our rights under them don't mean we go out and rely on hunting, fishing, gathering, and trapping like our ancestors. But our ancestors wanted to preserve those rights so we could survive. What we do in the 21st century is combined two systems. Gathering now means the right to make a living, exist, and sustain ourselves. We currently use our traditional ways, but we can also gather natural resources and convert them into a form we can sell, make money, buy food, feed our families, etcetera.

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## Article 4 & 5 — **Federal Relationship and State and Local Relationships**

The issue is this document acknowledges the Federal relationship between the U.S. and the Ojibwe by the Constitution. Why? State and local governments which are under the U.S. structure are also recognized.

### **Answer**

We have to set some terms for interaction with other sovereign entities. We need to control these relationships and not be controlled by them, which has been the case throughout our history. We define that relationship and what we expect from other governments to guide our General Assembly and Citizen councils. We are equal to the United States government. We had Sovereignty before the U.S. existed, and our inherent Sovereignty is why we entered treaties with the government.

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Articles 6 – **Jurisdiction** The word reservations are used interchangeably to describe the people; people and reservations are not the same. It should be referred to as the tribes or the people only; reservations do not have sovereignty rights; it's a geographical location only. Article 6 appears to apply jurisdiction with the use of the word "reservations." An Alliance organization should never have jurisdiction over the land or the people.

### **Answer**

Alliance #4 has Territory to clarify that it is a geographic description and jurisdiction is different.

Jurisdiction is the territory within which a court or government may properly exercise its power. Treaties formed reservations. Federal recognition by the federal government defines the tribe.

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### **Question**

There is confusion in meanings within Articles 6 and 7, **Admission of Additional Reservation**.

### **Answer**

Our history shows that we were divided and used against each other. As Anishinaabe, we had alliances and relationships with tribes all over. The

US government put the borders between us and Canada and the States and tribes. Our Alliance could "reunify" the multiple bands of the Ojibway people as a Nation. These other tribes with the same historical relationship can also agree, enter and help us with significant issues, now and in the future. Issues like preserving and maintaining natural resources. We would have strength in numbers to tackle alliance work.

The other tribes would not become our citizens. Their citizenship and constitution would remain in their local tribe.

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Article 8 –~~Sovereign Rights of Constituent Reservations~~ Use of reservations instead of the people again. Reservations don't have Sovereignty; only the people hold the sovereignty rights. This is also another example of applying jurisdiction in a powerless declaration.

**Answer**

We removed the wording "Constituent Reservation" Yes, it is the people who make up our tribes that have sovereign rights.

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Article 9 –~~Citizenship~~ Original enrollees? U.S. law. Who would be in and who would be out if didn't recognize U.S. law?

**Answer**

First, it is the law and Supreme Court decisions that state that tribes determine their criteria for enrollment.

There has to be some starting point, and it could be April 14, 1941, base roll, or other rolls.

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Article 11 –~~Elections~~ Why is an election process included in the document? That would belong in a constitution, bylaws, or an Alliance agreement document for the Alliance organization.

**Answer**

Consistency! We want our governing officials to be elected, not appointed. The individual bands will determine what their election procedures are.

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Something to include: an idea that decisions shouldn't be made at the whim of a person. This idea aligns with Ojibwe's culture, principles, and beliefs.

### **Response**

We are in the drafting stage. People suggest things. We then research the topics, follow up with a discussion and, when appropriate, bring it to the delegations.

Sometimes, the information stays in the Alliance doc. And other times, it is suggested that it belongs in the individual constitution.

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*A recommended book that will help in drafting the individual governing document/Constitution.*

***Structuring Sovereignty: Constitutions of Native Nations*** by Melissa L. Tatum, Miriam Jorgensen, Mary E. Guss, and Sarah Deer, 2014, published by the UCLA American Indian

**Actions:**

**Next meeting:** 3/21/23 at 6 PM