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Department Of Justice Plan To Develop A Tribal Consultation and Coordination Policy Implementing Executive Order 13175

PURPOSE: President Obama’s Memorandum on Tribal Consultation (“Presidential Memorandum”), signed November 5, 2009 pronounces tribal consultations “a critical ingredient of a sound and productive Federal-tribal relationship.” The Presidential Memorandum directs all federal agencies to develop a detailed plan of the actions they will take to fully implement President Clinton’s Executive Order 13175 on “Consultation and Coordination with Indian Tribal Governments” within ninety days, and to provide a progress report on implementation and any updates to the plan within 270 days and annually thereafter. Executive Order 13175 sets forth criteria “to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications.”

The Justice Department embraces this responsibility and the principles of tribal sovereignty and Indian self-determination. The Department, at all levels, is committed to developing a comprehensive communication and coordination policy with tribes that is predicated on robust tribal input.

The following report outlines the Department’s plan of actions for developing a consultation and coordination policy (hereinafter, “consultation policy”) that not only implements Executive Order 13175, but identifies other ways in which the Department shall ensure ongoing and effective communication and coordination with tribes.

GUIDING PRINCIPLES: The Justice Department is committed to developing a comprehensive consultation policy with tribes after robust tribal input. In developing such a policy, the Department’s efforts will be guided by three principles:

- The Department must engage with tribal nations on a government-to-government basis.
- Tribal sovereignty and Indian self-determination are now, and must always be, the foundations of every policy or program.
- Communication and coordination — with our tribal partners, among federal agencies, and with our state and local counterparts — are essential to accountability and thus to success.

NARRATIVE: In October 2009, the Attorney General convened a Tribal Nations Listening Session on Public Safety and Law Enforcement. This was the first time that all three principals of the Justice Department engaged in dialogue with tribal nations on the pressing public safety challenges confronting their communities. Over 300 tribal leaders, approximately 85 Department of Justice officials, and six federal agencies participated in the two-day session. The insights shared by tribal leaders during the listening session will inform the efforts the Justice Department will undertake, in close partnership with tribes, to improve public safety in tribal communities.

To commence the process for developing a consultation policy, the Attorney General addressed a letter dated November 13, 2009 to leaders of all federally recognized tribes to solicit their input on the key criteria for a DOJ policy. In particular, the Attorney General identified five questions at the core of the consultation process:

- what actions or events should trigger consultation;
- what procedures best ensure meaningful, timely consultation;
- who should participate in consultation;
- how should follow-up after consultation be documented and communicated; and
- when are alternatives to consultation, such as conferences, workshop sessions or task forces, appropriate to improve communication and coordination with tribal nations?

The Attorney General invited tribes to submit written comments to the Justice Department, and to participate in regional consultation conference calls.

On December 1 through December 8, 2009, the Office of Tribal Justice -- the Department's primary point of contact and liaison with tribal nations, and a key advisor on all tribal policies for the Department -- conducted a series of regional consultation conference calls to solicit input from tribal leaders on the elements of a consultation policy. To facilitate more centralized opportunities for tribes to provide comments to multiple agencies, the Justice Department invited other agencies to participate in these consultation calls.

PLAN OF ACTIONS:

1. **Office of Tribal Justice Role.** The Department plans to reorganize the Office of Tribal Justice into a separate component, an organizational status that appropriately conveys its prominence and important functions. The Office of Tribal Justice serves as a single point of contact for tribal nations within the Justice Department, and is the Department's principal liaison with all federally recognized tribes. In this capacity, the Office of Tribal Justice advises the Department as a whole on all policies affecting tribes. It ensures a central source of communication and coordination between the Department and tribal nations. The Office of Tribal Justice reports to the Deputy Attorney General. The Director of the Office of Tribal Justice is designated as the official with coordinating and implementing responsibility for the plan of

actions that follows and the progress reports required by the Presidential Memorandum.

2. **Creation of Tribal Nations Leadership Council.** To ensure ongoing communication and collaboration with tribal leaders, the Department is creating a Tribal Nations Leadership Council. This Council will be composed of a tribal representative of each of the twelve BIA tribal regions, to be selected by the tribes of that region, and will meet biannually.
3. **Consultation Policy Development.**
 - a. **Review of Tribal Comments.** The Justice Department will review all comments from tribes or tribal organizations provided in writing or during the consultation conference calls detailed above, as well as the comments and recommendations currently being prepared by the Office of Justice Programs' Tribal Justice Advisory Group. In addition, the Department plans to solicit comments on the consultation policy at Department forums and inter-tribal organization sessions including the National Congress of American Indians conference in March 2010.
 - b. **Draft Consultation Policy.** After considering tribal input, the Justice Department will prepare a draft consultation policy within 270 days of the Presidential Memorandum, and report to OMB on the draft policy in its next progress report.
 - c. **Tribal Nations Leadership Council Review.** The Department will then ask the Tribal Nations Leadership Council to review the draft consultation policy and provide additional comments.
 - d. **Federal Register Publication.** The Department also will publish the draft consultation policy in the Federal Register, and provide for a 60-day comment period. In addition, the Department will e-mail the draft consultation policy to all tribal leaders, and make it available for comment on the Office of Tribal Justice website.
 - e. **Final Publication.** Within 90 days of the close of the comment period on the draft consultation policy, the Department will issue a final policy. The final consultation policy will be published in the Federal Register and posted on the Justice Department website.
4. **United States Attorneys Actions.** Every United States Attorney with primary jurisdiction over major crimes on tribal reservations will convene a consultation with the tribes located within his or her district to develop an operational plan to improve public safety for those tribes. These district-based consultations will enable United States Attorneys, in partnership with the tribes in their districts, to develop

communication protocols and action plans uniquely tailored to the needs of the tribes in their districts.

5. **Combating Violence Against Women.** The Department recognizes that combating violence against women is a critical issue for many tribal communities. Accordingly, the Department undertakes the following efforts:
 - a. **VAWA Consultation.** The Department has expanded the annual tribal consultation required by the Violence Against Women Act of 2005 (“VAWA 2005”) to include representatives from the leadership offices and other components with responsibilities to address violence against women in tribal communities.
 - b. **Section 904 Violence Against Women in Indian Country Task Force.** The Department’s Section 904 Violence Against Women in Indian Country Task Force, which was created pursuant to section 904(a)(3) of VAWA 2005 and is composed of a diverse cross section of national tribal domestic violence and sexual assault organizations, tribal governments, and national tribal organizations, continues to advise the Department’s National Institute of Justice on a program of research on violence against Indian women in Indian Country.
 - c. **New Federal-Tribal Task Force.** At the suggestion of tribal leaders, the Department will create a new federal-tribal task force to develop strategies and guidance for federal and tribal prosecutions of crimes of violence against women in tribal communities.
6. **Federal Bureau of Investigation Efforts.** The Federal Bureau of Investigation will continue to manage and fund Safe Trails Task Forces, which provide important opportunities for tribal law enforcement to coordinate and collaborate with federal, state, and local law enforcement to fight crime in tribal communities.
7. **Grant Opportunities.** Each of the Department’s three grant-making components will ensure that it meets, on an annual basis, with tribal governments or their designees to discuss resource needs, grants policy development, and grant funding priorities of tribal governments.
8. **Multi-Agency Approach.** The Department will continue to invite other federal agencies to coordinate and collaborate on tribal public safety priorities.
9. **Ongoing Evaluation.** The Department is evaluating additional ways to ensure effective and consistent consultation and coordination with tribes, and will report on those efforts within 270 days of the Presidential Memorandum and in annual progress reports thereafter.