

This section contains an introduction to the subject of Indigenous rights in Chiapas and five articles that are listed below.

## **I. Indigenous Rights**

The rights of Indigenous peoples of Mexico is an issue which grows in significance as the process of globalization opens up Mexican society to economic expansion. Chiapas is a crucial piece in the Mexican neoliberal model, possessing an enormous wealth of natural and strategic resources. The Indigenous people of this region understand the role that their land stands to play in the economic policy of the Mexican government and have seen their opportunity to demand their rights in this context. The Zapatista slogan “Never again a Mexico without us” is a demand to be included in and considered part of the process of economic development as well as a call for representation in the Mexican political and social structure. Having a say in the ownership, use, and distribution of natural resources, as well as an acknowledged inclusion in Mexican society are key tenets of Indigenous rights.

The struggle for rights is waged especially around the issue of autonomy of Indigenous communities in which peoples have the right to self-determination, by virtue of which they “freely determine their political status and freely pursue their economic, social and cultural development.” In this sense, it is important that these communities define the character of Indigenous autonomy and the mechanisms for its implementation. These are fundamental themes in the San Andres Accords, signed by the Mexican government and Zapatista representatives in 1996 and further elaborated in the COCOPA initiative presented to the Mexican congress. While the progress to Indigenous rights represented by these constitutional amendments have yet to become reality, their significance cannot be ignored. The movement for rights of the Indigenous peoples of Chiapas has become an important and politicized national issue owing to the internationally recognized demands of the Indigenous people's movement.

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### **Article 1**

#### **The People of the Corn Strike Back**

Harry Cleaver

Since erupting into public view on January 1, 1994 the Zapatista Rebellion in Chiapas has become a world-event. A rag-tag indigenous army with more wooden rifles than real ones, and with more human dignity in its few thousands than the whole corrupt Mexican government and its army put together, the Zapatistas have found ways of expressing the hopes and aspirations of Chiapanecan peasants that have touched hearts and fired imaginations throughout Mexico and around the world. In a simple language, rooted in the day to day lives and cultures of its communities, Zapatista communiqués and writings have elaborated a critique of Neoliberalism that while focused on Mexico has resonated with its victims and opponents in both hemispheres. At the same time, their major spokesperson Subcommandante Marcos has conjured from the same source visions of alternatives that have had an equally wide appeal despite their largely local origins and framing.

Against Neoliberal reforms the Zapatistas have revealed its brutal reality: the final enclosure of the Mexican commons, deepened exploitation, increased suffering from malnutrition, lack of medical care, daily violence and cultural genocide against the indigenous. Against the Mexican government's Neoliberal Dream of a competitive Mexican ship rowing vigorously in a free market sea captained by Harvard-trained economists, the Zapatistas have revealed a Nightmare. The boat, they have pointed out, is no free adventurer but a slave ship, the rowers are chained to their oars and the captains either corrupt or delusional. Ex-president Carlos Salinas and current President Ernesto Zedillo are neither Jason nor Odysseus but mad Ahabs who have been steering their country to catastrophe. Faced with such madness, the Zapatistas have demanded direct democratic control over their own lives and convoked others (in civil society) to demand the same.

Against the vertical subordination of indigenous needs to those of "Mexican" development, whose dynamic in turn has been subordinated to global markets (i.e., capitalist global policy in this period), the Zapatistas have called for a horizontally interlinked and cooperative pattern of autonomy -- for the indigenous communities, for women, and for bioregions. No pastoralists, despite their agrarian origins, they envision no abandonment of modern industries and technologies that can be turned to good account, but instead offer a fundamental reordering of social priorities and liberation from all mandates of development (accumulation).

At the same time, they have refused to be caught in what Marcos calls the trap of mirrors, in illusions of difference which upon close examination turn out to be but inverted mirror images. The most important of these mirrors have been political ones: oppositional political parties which remain integral cogs of a repressive political machine and more broadly socialism as mirror image of capitalism, differing only in patterns of ownership and the distribution managerial responsibility among private and public sectors, but at the core no different from its supposed nemesis. Such a perspective almost guaranteed immunity from the seductions of "sustainable" development.

By July of 1994 the Zapatista Rebellion had turned "sustainable development" into an issue of National Security in the United States. Not only was the US Defense Department aiding the Mexican government with advice and materiel for low intensity warfare, but Senator Timothy Wirth gave a speech before the National Press Club in which he suggested that sustainable development could provide a policy framework to replace the now vanished Cold War. One of his examples was Chiapas where "resource conflicts", he argued, "underlie the insurgency". Unfortunately, the concrete contribution of the US government to sustaining Neoliberal development in Mexico has been to ship more military hardware (e.g. helicopters) for political

repression and vast monies (\$50 billion) to bailout panicked speculators (in the wake of the Peso Crisis in December 1994). . . .

In a week of intensive interaction, in the rain and mud of Chiapanecan jungle villages, these thousands discussed and debated the global relevance of the Zapatista critique of Neoliberalism and began a discussion of alternatives --a discussion in which "sustainable development" was often evoked, and critiqued. The manifest differences in perspective and analysis were many and expected. What was unexpected was the extraordinary consensus that the real problem, of which Neoliberalism was only the current manifestation, was capitalism. Gustavo Esteva and several other contributors to the Development Dictionary mentioned above attended the Intercontinental Encounter and their anti-economy critique of development, sustainable and otherwise, was received with sympathy or with echoes. But by far the central object of critique and ire was capitalism, not this or that kind of capitalism, but capitalism per se. What also became apparent was that even among the politicians in attendance, among those whom one might have expected to evoke past visions of socialism or communism, the Zapatista discourse and example of looking for alternatives within concrete communities overshadowed old inclinations and stirred new imagination.

Since the first few weeks of the Zapatista uprising, their struggle has been primarily political rather than military and their victories have been multiple. Surrounded by tens of thousands of Mexican troops and constantly subjected to all the ploys of low intensity warfare, the Zapatistas have repeatedly confounded and confused the officials of the Mexican government. They have reenacted, in their own ways, the ancient Mayan story told in the Popol Vuh of the defeat of the vicious Xibalbans by two children: little Hunahpu and Xbalanque. In that story the Xibalbans are portrayed in words quite appropriate for the Mexican government:

They are makers of enemies, users of owls,  
they are masters of hidden intentions as well,  
they are black and white, masters of stupidity,  
masters of perplexity

Like the two boys, the Zapatistas have been achieving victory over the more powerful not through the force of arms but "only through wonders, only through self-transformation." Their imagination and creativity in struggle is already legendary.

Many who have read the Odyssey, upon coming to the passage where Odysseus must choose between Charybdis and Scylla have asked themselves the obvious question: why didn't he just sail somewhere other than the Straits of Medina and avoid two bad choices? Why take Circe's word that no other path was feasible? She may have been a Goddess, but by that time Odysseus should have learned to be wary of advice from on high! (It was jealous Circe [capital?], after all, who had turned Glaucus' [ecologists?] lovely Scylla [respect for Nature?] into a monster [sustainable development?].) Drawing on an entirely different mythological tradition, that of Mesoamerica, the Zapatistas have avoided Odysseus' mistake. They have looked sideways, not up, for advice, to peasants (Old Man Antonio) and even beetles (Don Durito) and they have been rethinking many things, including the relationship between humans and the world around them.

In Mayan mythology as in the daily life of the men and women of the corn, Nature is not a unified something but a multiplicity of which they are a part. The milpa from which they draw sustenance from the earth and sky and the comida where together they consume it link them with the rest of the cosmos. In some ways their vision was expressed in poetic echo by Fernando Pessoa in the 20th Century:

I saw that there was no Nature,  
That Nature does not exist, That there are mountains, valleys, plains,  
That there are trees, flowers, grasses,  
That there are streams and stones,  
But that there's not a whole to which this belongs,  
That any real and true connection  
Is a disease of our ideas.  
Nature is parts without a whole.  
This is perhaps that mystery they speak of.  
(Caeiro/Pessoa)

The Zapatistas are revolutionaries, not ecologists, certainly not environmentalists, but they have learned on the ground that there can be no harmony in the indigenous cosmos without a reversal of their separation from the land and a grounding of their own health in that of the soil, the forests and the rivers. The people of the Zapatista communities are not hunter gatherers, they are not forest dwellers and when the Mexican Army has forced them to flee into the deep jungles and mountains they have suffered atrociously. They are people of the soil, agriculturists, even when they go into the cities to work for wages because other options have been stolen from them. In their public discourse the Zapatistas have emphasized these particularities of their roots and their culture but they have not held it forth as a universal guide, or template, for others to follow or fit themselves into. They have set them forth to demonstrate not THE way, but one way, one alternative to what are usually presented as the only options. And by so doing they -- like other indigenous groups in recent years -- have stirred others, even city folk, to look away from the mirrors of reflected inverted images for real, instead of illusory alternatives.

From my point of view, one of the most attractive things about Zapatista thinking and politics is just this emphasis on multiplicity, on the power of collective bodies and on diverse paths or lines of flight that these bodies can trace into the future. Two great mistakes in the Western revolutionary tradition have been the obsession with totalization and the idea that system must follow system. Revolutionaries, despite their rejection of capitalism's imperial efforts to absorb the world and impose a universal hegemony, have still thought the future in terms of unity and counter-hegemony. Many Marxists have believed that just as a unifying capitalist system followed feudalism, so must some unifying system called socialism (or communism) be constructed to replace capitalism. Many radical environmentalists, while condemning the destructiveness of capitalism's imposed unity, think in terms of bio-systems, of a holistic Gaia. To use Marcos' metaphor of mirrors, such conceptions, even in the intellectual form of the dialectic, or the spiritual form of Goddess worship, never escape an endlessly repeated mirroring of the past in which the best you get is inversion (e.g., public instead of private ownership, Mother Nature instead of God-the-Father) but no liberation of human society from a single hegemonic framework for the organization of life, no liberation of humans or the rest of Nature from the imposition of singular measures of value (e.g., money or

labor). To see that mirrors can be set aside and newness crafted links the Zapatistas' vision to the best of contemporary Western thought, to a certain anti-dialectical tradition of philosophy, to the embrace of difference within contemporary feminism, to autonomist Marxism and to the most interesting biocentric explorations of deep ecologists.

The implications of this line of thinking are at least two-fold: first, recognizing that we can reject the normally inescapable framework of the economy (capitalism) means that we are freed to see what alternatives are already being elaborated, and second, freed from the search for a single comprehensive alternative, we can take a more enjoyable phenomenological and experimental approach to the study of and participation in the crafting of alternatives. Unlike Odysseus, we can thank Circe sweetly for her "roasted meat and good red wine" and sail off into the sunset on courses of our own choosing. Whether we sail in search of Cam<sup>eth</sup>'s Isle of Love or follow Odysseus to Lisbon or head off into completely unknown waters, we are truly free to choose. We can even, like Old Man Antonio, simply paddle our log canoe into the middle of a quiet mountain lake, under a full moon, have a smoke and tell old tales for each other's amusement and edification.

To conclude. We must find ways to link the emerging alternative new approaches to redefining and organizing the genesis and distribution of "wealth" and to crafting new relationships among humans and between them and the rest of the universe in ways that are capable of linked or complementary action. There are many on-going experiments around the world whose experiences and creativity can be shared. This does not mean unity for socialism or any other singular post-capitalist "economic" order, but rather the building of cooperative interconnections among diverse projects. Nor does it mean a delinked and divided localism. It means putting together a new mosaic of interconnected alternative approaches to meeting our needs and elaborating our desires. It means inventing new politics that welcome differences but provide processes of interaction which minimize antagonism.

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## Article 2

### **Declaration by the National Indigenous Congress about the Law of Indigenous Rights**

The Indigenous National Congress

May 1, 2001

Translated by Agustin J. Avila-Sakar and B.J. Kowalski

WHEREAS 509 years of history have signified nothing but exploitation, discrimination, and misery to our peoples, who are the primordial inhabitants of this nation; and whereas this Mexican Nation, born from our seed and heart, was built by powerful rulers in denial of our existence and of our supreme right to walk along our own path -and by this we don't mean that we ourselves deny of our Fatherland, which was founded with our blood;

REMEMBERING that the San Andrés Accords on Indigenous Rights and Culture, signed on February 16, 1996, are but the First Stage of Dialogue between the Federal Government and the Zapatista Army for National Liberation (EZLN), and that the Accords represent a joint proposal and commitment to guarantee a new relationship among Indigenous peoples, Society and State.

Remembering, also, that such proposal was offered for national debate and decision and was gathered by the Commission for Peace and Concord (COCOPA) -integrated by legislators of various national political parties- into a legal Initiative for Constitutional Reform; that such Initiative was accepted by the EZLN and the National Indigenous Congress on November 29, 1996, and recognized as a first step toward the constitutional acknowledgement of our rights, notwithstanding some omissions which were pointed out at that time;

ADMITTING that the San Andrés Accords, as well as their translation into the COCOPA Initiative, reflect the consensus of the majority of Mexican Indigenous peoples, the Federal Government and the Civil Society with respect to Indigenous rights and culture;

WHEREAS the constitutional acknowledgement of Indigenous rights and culture, along the terms of the COCOPA Initiative, and as one of the three signals demanded by the EZLN, is the next firm step toward peace and justice with dignity in Chiapas;

WHEREAS the March of 1111 Zapatistas to Mexico City in September 1997, and the results cast by the National Poll on Indigenous Rights and Culture of March 1999, ratified the national consensus expressed by the San Andrés Accords and the COCOPA Initiative;

REMEMBERING that our peoples, represented at the Third National Indigenous Congress in Nurio, Michoacán on March 2,3 and 4, 2001, unanimously agreed to demand: the constitutional acknowledgement of Indigenous rights -with Indigenous peoples legally regarded as subjects with rights, as per the COCOPA Initiative; the constitutional acknowledgement of our inalienable right to self-determination -that is, to our autonomy within the Mexican State; and the constitutional acknowledgement of our territories and ancestral lands, which represent the totality of our habitat, where we, as peoples, continually regenerate our material and spiritual existence;

OBSERVING that the International Covenant on Civil and Political Rights, as well as the International Covenant on Economic, Social and Cultural Rights, both with the rank of Supreme Law in our country, establish that all peoples have the right to self-determination, by virtue of which they "freely determine their political status and freely pursue their economic, social and cultural development";

OBSERVING, furthermore, that the 169th Convention of the International Labor Organization (ILO), Concerning Indigenous and Tribal Peoples in Independent Countries, also with the rank of Supreme Law in Mexico, under the current constitutional order, recognizes the right of our peoples to assume control of our own institutions, ways of life and economic development, as well as the right to maintain and fortify our identities, languages, lands and natural resources, within the framework of the national State;

DENOUNCING that, once again, our words and sentiments have only nourished the scorn and mockery of the powerful rulers; that the voice of our peoples and of the majority of the Mexican society, expressed during the EZLN March for Indigenous Dignity in early 2001, has not been listened to by those who claim to be the bearers of the popular will; that the economic and political interests of the ruling class prevail once more over our Indigenous peoples, who, while being descendants from the original inhabitants of these lands, are being denied their most fundamental

rights and have fallen victims of plunder, ethnocide and forced integration to a national project that is foreign to our history and sentiments and which now attempts to seize everything away from us;

THE PEOPLES, COMMUNITIES AND ORGANIZATIONS THAT COMPOSE THE NATIONAL INDIGENOUS CONGRESS DECLARE: ...

FIRST: We categorically reject the constitutional reform on the rights of indigenous people approved by Mexico's Congress because not only does the new law flout the will of the people but it would result in a profound decline in the recognition of our peoples' fundamental rights, as provided in the Constitution itself as well as in the agreements, pacts, and international treaties that Mexico has signed. Specifically, the new law distorts the precepts of the International Labor Organization's Article 169 and omits many fundamental points.

SECOND: The constitutional reform on indigenous rights, approved by persons claiming to represent the popular will, does not conform to the letter or the spirit of the San Andres Accord. Indeed, it substantially diverges from the statements on indigenous rights put forth by the Peace Commission (COCOPA), for it says that the recognition of the rights of indigenous peoples will occur on the state (and not the federal) level. In reality, this means that our rights and laws will not be respected. The new law is an obstacle to the resumption of the dialogue between the federal government and the Zapatista Army of National Liberation (EZLN) regarding a peace with equality and dignity. The legislature's vote was not a vote for peace.

THIRD: This constitutional reform makes a mockery of our communities by putting into the hands of local authorities the power to define the character of indigenous autonomy and the mechanisms for its implementation. It is an insult to the majority of Mexican society, who decided to support our just cause. It subverts our right to self-determination and the aspirations of our communities for the full expression of our autonomy within the structure of the Mexican state.

FOURTH: The reform relegates our right to autonomy to the municipal level. It does not resolve the question of access to municipal government and resources for indigenous peoples. It lays the basis for the construction of territorial reservations for indigenous peoples.

FIFTH: In a pious and demeaning way, the constitutional reform would make the indigenous communities dependent on public charity and override our rights as citizens within the national structure established by COCOPA. It negates our rights to freedom of assembly in order to coordinate our activities. The new law fails to guarantee self-determination for indigenous peoples at every level.

SIXTH: The reform does not allow for the reintegration of the land where indigenous people are currently living. The fact that some districts would be reorganized in order to placate indigenous peoples only confirms the regressive character of the constitutional reform.

SEVENTH: With respect to our communities' land, the new law does not recognize the standard set by Article 169 of the International Labor Organization. The word "territories" is crudely substituted for "places." Under the new law, we are left without a place to exercise our autonomy and provide for our physical and spiritual needs.

EIGHTH: The indigenous law that is being imposed on our peoples reinforces the individualism behind the counter-reform of the Constitution's Article 27, approved in 1992. The current legislation is a complement to that law, which does not recognize our constitutional right to collectively use and enjoy the natural resources found on our lands. On the contrary, it negates our constitutional rights of ownership, overrides our customs, and allows access to our land and resources to be acquired by outsiders. We have demanded recognition of our rights to the natural resources that are found on our lands. Instead, the politicians have decided to deny those rights, which were won with the sweat and the blood of our ancestors.

NINTH: Contrary to the dialogue begun between the federal government and the EZLN, the new law seeks to obviate agrarian reform and return to the backward provisions of Article 27 without taking into the account the overwhelming opposition of our communities to that law. The politicians forget that the agrarian question should be addressed at the negotiating table as part of a discussion of well-being and development.

TENTH: Similarly, the indigenous law adds a provision to the second article of the Constitution that revives the politics of ethnic genocide that have historically existed in Mexico, signaling a series of authoritarian political moves on the part of the legislators, in opposition to our demand for recognition of the rights of indigenous people to define our own priorities and development.

ELEVENTH: Today, as we did yesterday, we continue to say: Mexico cannot exist without us! No longer will the voices of indigenous peoples be silent in the face of injustice! In this time of crisis, we stand firm against the new attack that this law constitutes. There will be no true, just, and fair Mexico until the rights of our peoples are recognized. For all of these reasons, we call on all indigenous peoples, communities, and organizations to unite with us, in voice and in action, to demand the recognition of our rights, in accord with the COCOPA agreement. We must organize in every corner of the country. Through their regressive policies, presented by Diego Fernandez de Cevallos and Manuel Bartlett, backward politicians have kidnapped Congress and the will of the nation. We call for the exercise of our rights of sovereignty as guaranteed by Article 39 of the Constitution, which has been violated by the new law. We remind the authorities, both national and international: The voice of the first peoples, the indigenous peoples, will be heard and felt throughout the nation. To the workers of the farms and the cities, and to all the people of Mexico, we call on you to organize a united national movement. We must find a consensus and overcome the obstacles to our goal of achieving constitutional recognition of the rights of our peoples and an end to the neo-liberal policies that are destroying the entire nation.

Never again a Mexico without us!

On to the unity of our peoples!

The Indigenous National Congress

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**Article 3**

## **A Foreign Nation: Indigenous Rights and State Reform**

*We have walked now, for many years,  
weaving the lands of morning on the back of our Mother Earth,  
so that today we hope that they begin to awake.*

Communiqué of the National Indigenous Congress, 3 March 2001.

Who defines what is good about "different" cultures, and from what is this definition constructed? From the conception of liberalism, the State has considered Indigenous people to be an obstacle to development and, with this viewpoint, has determined which values the Indigenous cultures must preserve. In order to maintain the domination and marginalization of the Indigenous people, the State has created judicial instruments to homogenize Indigenous culture, designed Indigenous politics, and implemented economic plans and programs from an integrationist perspective and without the participation of Indigenous communities.

All with no result.

The Indigenous peoples continue; alive, dignified, and struggling.

In Latin America, at the beginning of the past decade, the sorrows and great struggles of diverse movements and Indigenous organizations gathered in what constituted a synthesis of their demands. In Mexico that moment was used by Indigenous organizations to open negotiations with the Mexican state, suggesting the need for democratization.

In the last few years the Indigenous movement has developed concurrently with other movements driven by diverse social sectors that also see the need for democratization and agree with the demands to reform the State. The rebellion in 1994 showed, with all its crudeness, the profound problem, not only of the Indigenous of Chiapas, but also in all of Mexico, and managed to get the diverse sectors of society to adopt democratization as a national concern. With the forums on Indigenous Rights and Culture called by the Zapatista Army for National Liberation (EZLN) in the context of dialogue with the federal government, the Indigenous movement initiated a new stage of expression. The face of the Indigenous people is reflected in the National Indigenous Congress, a space of convergence and articulation for diverse Indigenous movements and organizations.

During the forums, some demands that were articulated to diverse organizations and movements were the recognition of Indigenous peoples, the right to land, the right to self-determination and autonomy, and the recognition of communities as entities of public law.

The demands were not considered merely in an Indigenous sphere. The contributions of the Indigenous people were considered in the approach to cultural diversity in the definition of a truly modern model of democracy. Unfortunately, adherent to the Latin American tendency, the process of democratic transition in our country has been limited to the formal electoral scope.

Even though many sectors of civil society have actually understood and endorsed the Indigenous struggle, the political class prefers to ignore these demands and has shown a profound incapacity to

understand contemporary Indigenous political thinking. On the other hand, they have been attentive to the opinions and dictates of international financial organisms and transnational corporations. Unfortunately, internal colonialism still permeates the governmental discussions, social relations and politics.

One of the expressions of this colonialism is Neoliberalism. With the progress of capitalism corroded, a new type of State is taking shape in Latin America; the "new democracies" of the market reduce the role of the State and are highly exclusive to huge sections of the population.

In Mexico the issue of State reform has been left behind. The strategy of the Indigenous movement (together with other sectors) has called attention to this matter. However, without a doubt, it became evident that this was the subject of two national projects, each contradictory of the other.

The Zapatista rebellion and the resulting process of dialogue between the federal government and the EZLN, in which numerous organizations and citizens from diverse sectors of the country participated, represented a moment of reevaluation for the government, obligating it to enter seriously into the matter of State reform.

The San Andrés Accords are a comparison in the history of Indigenous struggle. For the first time the Mexican State recognized that the Indigenous peoples "have been objects of subordination, inequality and discrimination that have determined for them a structural situation of poverty, exploitation and political exclusion." Likewise, in the Accords it was established that the state must "recognize the Indigenous peoples as new subjects of law, with attention to their historical origin, to their requests, to the multicultural nature of the Mexican nation, and to the international agreements signed by the Mexican State, in particular Convention 169 of the International Labor Organization."

In the San Andrés Accords, the government and the Indigenous representatives established seven commitments that regulate State actions in its new relationship with the Indigenous people, and they outlined the criteria of the new judicial framework upon which this new relationship will be built.

Furthermore, the type of State desired by the Indigenous peoples clearly appears in these Accords, a plan which was enriched by the contributions made by diverse organizations in the Democracy and Justice discussion forums previous to the second negotiation table. The contributions were in regards to the principles that must direct State reform, democratic participation, national sovereignty, and federalism, among others.

In any event, the importance of the first agreements in the negotiations between the EZLN and the Mexican government were undeniable: the judicial framework on Indigenous Rights and Culture would be established, it would be the starting point to base the national bill as soon as it was enunciated by the Indigenous people in San Andrés and in the National Indigenous Council. Even though the legal Initiative on Indigenous Rights and Culture developed by the Commission for Peace and Reconciliation (COCOPA) signified a reduction of the rights recognized in the San Andrés Accords, it was endorsed by the EZLN. However, it was not endorsed by the federal government for their own reasons, and the dialogue entered into a critical phase until the suspension of talks in February of 1997.

More than four years later, on April 25, 2001, the Congress of the Union approved a legal report that substantially modified the legal initiative proposed by COCOPA.

### The Report Approved in Congress

It should not surprise us that a government like this one, that supports the continuation of the Neoliberal model, endorses an Indigenous law that tries to restrict Indigenous rights to their most minimal expression. In the framework of State reform the recognition of Indigenous rights has implications in the scope of political and economic control and exposes the national program and the State vision on Indigenous rights.

The legal report approved by the federal legislators does not recognize the Indigenous people as legal subjects, it does not recognize the multicultural nature of the Mexican nation, and it violates the agreements signed by the Mexican state, in particular Convention 169 of the International Labor Organization. In short, the report is not in harmony with the San Andrés Accords; in this way it violates what was agreed upon with regard to procedures at the negotiation table.

One of the most grave aspects of the report is that it is left to state legislators to define core aspects like self determination and autonomy. The reduction of Indigenous rights established in Convention 169 and in the San Andrés Accords suffered with the COCOPA Initiative. Now with the legal report Indigenous rights will suffer another reduction.

The report pretends to recognize Indigenous autonomy; however, it restricts the rights and the capability necessary for its implementation. It does this through two fundamental mechanisms: on one side, pertaining to core aspects like the agrarian question, it does not establish anything new, and it refers to laws and regulations that have not favored the solutions to structural problems of the Indigenous peoples. On the other side, it provides that state congresses decide upon the rules of autonomy without considering that many Indigenous communities are situated only in certain states.

The report reduces the right to free community association at the municipal level, and it limits the right to determine the type of development desired by the Indigenous as a people. It does not increase political representation at the state and federal levels as had been demanded by the Indigenous representatives, and it limits the election of representatives to the municipal councils.

The reallocation of municipalities and districts, which had been stressed insistently by Indigenous communities as urgent requirements, have been modified greatly. The report eliminates the modification of article 53 of the COCOPA Initiative which would establish that "in order to set the territorial boundaries of the uninominal districts and the multi nominal electoral circumscriptions, the location of the Indigenous communities must be taken into account so to assure their political participation and representation at the national level . . ." This became a transitory article that could either be applied or not applied, which speaks of taking the Indigenous communities into account only when it is feasible. Contrary to this, the San Andrés Accords suggested the transfer of authority and duties in order to establish autonomy.

The establishment of the Indigenous law also deviates from what was established in Convention

169 and in the San Andrés Accords pertaining to the question of ownership of communication media, the authentication of regulatory systems, participation in the creation of development programs, and the distribution of other rights such as health and education. These programs are viewed as government assistance services rather than programs whose organization could be determined by Indigenous communities as was suggested in the San Andrés Accords.

In general, it will hinder the construction of a multiethnic state in our country if these reforms are endorsed by the majority of state congresses and converted into law, and if the peace process is cut short in Chiapas and Mexico. Whether or not the Indigenous law is approved, it does not appear sufficient to have a judicial legislation create some sort of mediation between the national plan suggested by the Indigenous people and the plan that the federal government is continually offering.

### Violence and state reform

The consolidation of the Neoliberal economic model in our continent has been achieved through the exercise of political on the part of the State and as a requirement to consolidate oligarchic regimes and to exclude democratic forces. In this way the State has momentarily salvaged the capacity for economic accumulation, but in the eyes of organizations that fight for a just and dignified life for all, it has lost the ability to politically manage the country.

The Neoliberal State, "a political giant, but a social dwarf," abides less and less by the collective rights of citizens, and distances itself more and more from recognizing Indigenous rights in our countries.

Neoliberalism has put in motion a huge agrarian counter reform across the entire continent; because of this, violence has been directed with increasing frequency toward the Indigenous peoples and the peasants on this continent.

However, in our country the consolidation of Neoliberal models are up against an Indigenous movement more and more articulate with the capacity for collective action and increasingly bold solutions.

That is why the judicial framework has always gone to the rear of the range of demands from the Indigenous movements, and the construction of the multiethnic State in Latin America is delayed, disguised by the fiction of a representative democracy.

What will be the "new" causes for contention among the Indigenous movements and their demands? What will be the mechanisms of control and repression in the "new Mexican democracy"?

We should not forget that during the last decade paramilitaries have developed with terrifying force in certain countries in our continent, including Mexico. These function as a form of violence that wears down the resistance of thousands of peasant and Indigenous communities who oppose economic extermination and political exclusion.

In Mexico, the Plan Pueblo Panama (PPP) is one of the government sponsored Neoliberal projects; with it they try to "redraw" our country's map to function for the needs of the market. Furthermore,

the rejection of Indigenous autonomy is a rejection the territorial map suggested by the Indigenous people.

With the entry of corporations into Indigenous territory, the State has not only abandoned its obligation to guarantee economic, social and cultural rights of citizens, but it has also placed the control of security for these corporations into private hands. Private security will confront the pressure by organizations and Indigenous who defend their rights. The privatization of violence is also an option in the Neoliberal model.

The Indigenous people are now an undeniable social force and a central political actor. In various ways they are expressing the national hope for their inclusion, and desiring to become full citizens of the law.

During the last National Indigenous Congress the Indigenous delegates drafted a declaration for the constitutional recognition of Indigenous rights. They also initiated a series of actions in their regions such as the formation of autonomous municipalities, resisting the war which is in their communities, strengthening the voice of their communities and regions, and carrying out a peaceful national civil uprising. "Never again a Mexico without us" is the slogan of the National Indigenous Congress, a movement of Indigenous peoples that are not prepared to wait passively while a foreign nation is imposed upon them.

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#### **Article 4**

#### **Indigenous Rights: A Historical Challenge**

Juan Anzaldo Meneses  
Mexico City  
5 February 1997

#### **INDIGENOUS RIGHTS: AN HISTORICAL CHALLENGE**

On February 4th, 1997, the debate on "Indigenous Rights: An Historical Challenge" was held at the Polyforum Cultural Siquieros in Mexico City. The result of the debate, thanks to the quality of the participants and their presentations, was a success due to the thoroughness of the concepts it dealt with, which managed to clarify the background of national discussion with regards to the constitutional recognition of the rights of the indigenous peoples of Mexico.

On the part of the National Indigenous Congress, its representatives objectively profiled the indigenous demands contained within the San Andres Accords, and which the COCOPA has elaborated on in its initiative of constitutional reforms. These are backed up by national laws already in existence, as well as by international conventions signed by Mexico regarding indigenous peoples, such as Convention 169 of the International Labor Organization (ILO), ratified by the Senate of the Republic in 1991. They clarified that these demands are not about secessionism, nor about creating little states within the Mexican State, and neither do they attempt to attack national sovereignty; rather, they are about recognizing the indigenous peoples in Mexico as subjects of

public law, permitting their development with their own authorities and their own decisions regarding plans and programs, all of which would configure the first step towards paying off the immense historical debt owed by the Nation to its original inhabitants.

On the part of the lawyers consulted by the Federal Government, represented by the leadership of the National Lawyers Bar, they insisted that it was inconsistent to say that they [the government] now want to apply the law and respect the Constitution, when the violations and non-fulfillment of the Constitution have been carried out by the government itself. As an example, they mentioned the unconstitutional sacking of two judges of the National Supreme Court in December of 1994, on the part of the Executive. They expressed their feeling that it is inconceivable that now, under the pretext of valuing the State of Law, the recognition of the rights of indigenous peoples in Mexico is being blocked. Nevertheless, by their judgement, legislation should be passed to regulate the current wording of Article 4 of the Constitution, which already contains sufficient elements for the achievement of this goal. On the other hand, they warned of the possibility that [the COCOPA proposal] could generate problems of human rights violations, such as poligamy and lynchings, points which were later cleared up by other participants as simply a result of ignorance about the San Andres Accords which, along with the COCOPA's proposal, is very clear on the subject of guaranteeing human rights, particularly those of women, and in terms of the impartition of justice for the resolution of internal affairs of the indigenous communities.

For their part, the specialists who have participated in the dialogue and negotiations process between the EZLN and the federal government, and who know very well the form in which the COCOPA's initiative for constitutional reforms was drafted, insisted in valuing the importance of this historical moment through which Mexico is passing. They pointed out the dangerous governmental alternative of opting for a solution by way of force, instead of a peaceful and consensed solution to the most important national problems. They also analyzed the resistance of the governing system to any type of social advance, not only of the indigenous peoples or of zapatismo, but even within the system of political parties and the strategies of economic development, as but one more expression of the presidential authoritarianism which Mexicans have been suffering from for decades. They demanded respect for the separation and autonomy of the Powers of the Union, and further insisted that the President refrain from using "his" majority to influence the decisions of the legislature, and that the work of the COCOPA, a Commission of the Congress of the Union with the participation of members of the Senate as well as of the Chamber of Deputies and all the parties represented therein, be strengthened.

Finally, the deputies and members of the COCOPA who participated in the debate described some passages from the process of dialogue and negotiation, pointing out the repeated lack of fulfillment on the part of the federal government, in particular referring to the offers of President Zedillo, who guaranteed his support of the COCOPA only to later put that organization into crisis by contravening their work of facilitation of the peace process, and by violating the Accords signed by his representatives, in which a textual commitment was made to carry out constitutional reforms which recognize the collective rights of the indigenous peoples, with a series of characteristics and elements which are contained word-for-word in the San Andres Agreements as well as in the constitutional reform initiative presented by the COCOPA, accepted by the EZLN and rejected de facto by President Zedillo. In this sense, they also pointed out the unscrupulous attitude of Zedillo who, after presenting observations regarding the COCOPA's initiative, withdrew them and then

asked, at the beginning of December, 1996, for 15 days so as to carry out "some consultations" regarding some of the aspects about which he might have "doubts". What followed, according to the legislators, was that on December 19th the president did not deliver a response resulting from his consultations, nor did he present "observations", as he called them, but rather gave them a full counterproposal, which in effect signifies the discrediting of the work drafted by the legislators. Deputy [Juan] Guerra, in particular, indicated that the current situation is such that it not only places us once again at a point of imminent risk of armed confrontation, but also at the point of cancellation of any efforts for dialogue and peaceful understanding between the society and its government. This implies, said Guerra, a justification for all the armed groups which might exist in the country to close off this and all other avenues of social negotiation.

In conclusion, it is important to point out that in this encounter there were multiple expressions given with regards to the proposals for initiatives on constitutional reforms; however, it was demonstrated that based in a spirit of constructiveness, inclusion, and respect, it is possible to arrive at solid conclusions, and to avoid the squandering of resources in disinformation campaigns at the hands of the public treasury, such as the thousands of publicity "spots" the federal government uses so as to sharpen its image. Even worse are the uncountable expenses caused by the deployment of tens of thousands of soldiers and federal and state judicial police, not only in Chiapas, but throughout a large portion of indigenous regions of the country, which interfere with their productive lives, their security, and even put their lives at risk.

The National Indigenous Congress publicly announced its disposition to carry out any type of effort to debate with all of the important figures of this History, so as to arrive at a just and dignified solution for all of Mexico. The National Lawyers Bar ratified its invitation for the Zapatistas to come directly to Mexico City and carry out a direct dialogue with the government's legal consultants, while the members of the COCOPA made the assurance that they would use all means available to them so that this event might be made a reality.

Following three hours of intense discussion, the hundreds of participants left the Polyforum Cultural Siquieros, with the assurance that they had made very important contributions to the process of national debate regarding the legal and social recognition of indigenous rights.

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## **Article 5**

### **Why Indigenous Rights?**

Adelfo Regino, Procedural Commission-National Indigenous Congress  
Feb. 1997

To relate the injustices committed against our communities and our peoples does not cause us pity or compassion, but pain and sorrow because it is our own story.

The reality of our communities, the integrity and effectiveness of our customs and traditions, are the reasons why we can argue to continue our legitimate rights which are not recognized by the laws of our nation. Once accomplished, this, in the best of cases, can avoid serious interference in the life of

our communities and persuade our indigenous authorities to apply a "norm" from our own culture. Until today, there has not been a legal framework which recognizes our proceedings and our own way of life.

For the authorities of the State the only "rights" are those which are discussed, sanctioned, and publicized by the State. Our rights, even when they hold an obligatory significance and they are effective in resolving conflicts and achieving harmony in our communities, do not have value and cannot be applied by the state. They argue "authority can only do what is permitted by law" and obviously our rights do not exist within the law.

What can be done then so that these rights have value and can be fully applied?

The answer is simple: convert our demands and grievances - manifest in indigenous rights - into legal concepts in the Constitution. In order to make these proposals concrete, it has been necessary to expose and create consensus among the different indigenous peoples the contents which should be inserted into the Constitution. This task has been given impetus by the State, through the national consultations of indigenous peoples promoted concretely by the legislative power, as well as by organizations, communities and peoples who make up the indigenous movement.

The work developed by our organizations, communities and peoples has generated an entire process which becomes accelerated after January of 1994 through public forums, assemblies and congresses. The activity of creating consensus was configured basically after listening to the voice of the communities and putting them together with theoretical elaborations and international instruments which already contain some of our principal demands. At the present time we have gained considerable agreements which are acceptable to us all and which are the minimum agreements which should appear in the Constitution. Our diverse realities share common points and very similar aspirations.

In this way, the concepts of autonomy, as expressed through self-determination, territory and community, remain as a triad of demands upon which should sit all the other indigenous rights. Complementing these were the rights of culture and indigenous law, the latter understood as the present judicial system which now exists in each of our communities, all of which would not make sense if the first three did not exist. This explains why the existing Article 4 of the Constitution, which has some cultural content, was rejected as an effective guardian of our rights.

We present some theoretical details in terms of our concepts of community and autonomy;

"There are fundamentally two ways of utilizing the concept of community. In its first definition it refers to the whole of citizens who make up a country [...] the second definition is that which refers to the whole of traits which characterize a human gathering in territorial, historic, cultural, ethnic, terms which give it a sense of identity.

(Rodolfo Stavenhagen: "Indigenous rights; some conceptual problems." Magazine of the IIDH, vol.15, Costa Rica, 1992, p:138).

To some extent, legal instruments such as covenant 169 of the International Organization of Labor [OIT] say;

"Art.1.b).-To the indigenous peoples in independent countries, considered indigenous because they descend from populations which inhabited the country or a geographical region belonging to the country during the era of the conquest or colonization and the establishment of the actual borders of the present states and which, no matter their legal situation, still preserve all their appropriate social, economic, cultural institutions or remnants of them."

The International Pact on Civil and Political Rights and the International Pact of economic, social and cultural rights also say in their Article 1:

"1.-All the communities have the right to free determination. In virtue of this right they freely establish their political condition and provide therefore for their social, economic and cultural development.

2.- In order to achieve their ends, all the communities can freely dispose of their natural wealth and resources, without jeopardy from the obligations derived from international economic cooperation."

Given the previous, it should be pointed out that autonomy will be no more concrete than the one the indigenous peoples of Mexico are freely choosing ..the right to self-determination of the peoples.

We will now try to examine why the demands for indigenous autonomy have as their base the recognition of the community as a legal public entity and the possibility of association of the communities and municipalities which recognize that they belong to an indigenous community in order to coordinate their actions.

The community is the most concrete and general expression of the indigenous peoples. Within it take place the most diverse activities to fulfill human needs and the specificity of our cultures. If we seek an example of how an indigenous norm is applied, of how it is expressed in the relationship with nature, of the means of participation as a collective member, of the conception of authority, the participation of the elderly, the process of creation of norms, or even a document of collective property over the lands, we must necessarily look toward a community.

It is in the community where we indigenous have a certain level of autonomy. It is in this environment where we elect our authorities according to our own procedures and without the intervention of political parties. We can also say with all confidence that the community is where, according to norms and procedures the conflicts and problems which occur within it are resolved. The assembly is a collective organism, it is the primordial authority even in non-agrarian issues. The responsibilities and tasks which a member of the collective must carry out have reason only within the context of the community and for its own ends. In this way the community is the space where culture is created and re-created.

It should be noted that the indigenous community, in its actions, is not limited to consider only the agrarian aspects. It goes beyond and covers those broad social aspects I have just described, such as politics, the meting out of justice, and cultural reproduction.

That is why it is necessary to recognize in the Constitution what is already a reality; the community as an integral collective, and not just its agrarian aspect.

Now it is important to emphasize that the entirety of communities with a common origin make possible the construction of indigenous communities as collective entities. To propose our reconstruction as peoples, we must necessarily contemplate the question of municipalities now seated in indigenous territories. The municipal entity, as it has been in the past, was imposed ignoring the social, cultural and geographic reality of indigenous peoples. The municipality as an institution attempted to destroy it, by imposing its own ways of organization and election of authorities.

At this point we do not attempt to destroy the municipality as an institution, but to adjust it to indigenous reality. The experience of Oaxaca has shown us it is possible to make compatible indigenous forms of organization within the municipal entity, and with the general system of political parties. We do not attempt to exclude one or the other, but to make them compatible and fortify the municipality even more.

The task of reconstituting our indigenous communities will occur within the association of communities and municipalities which recognize that they belong to an indigenous people, in order to coordinate the common actions of so many peoples. With this we do not attack the structure of government of the Mexican State. We also do not attack the spirit of everyday life in our communities.

We can affirm that the proposals for constitutional reforms which we are proposing according to the Agreements of San Andres (gathered and reflected by the COCOPA) constitute a response to the recommendations emitted in 1987 by the Special Report of the United Nations in its Study of the Problems of Discrimination against Indigenous peoples Vol. V. The content of said proposals can be synthesized in this way:

1. We present our demand to be recognized as peoples and as such, the right to self-determination. Nevertheless, our proposal does not use all the strength contained in those concepts in international instruments. We accept the fact that we belong to the Mexican State. At the same time we demand a new relationship with the state with our peoples, a need which each day grows more urgent in these times.

2. Autonomy is demanded as a means by which we can freely determine our existence within the Mexican state; as a collective right to be different and to have our diversity respected. Similarly, we say that it is an indispensable condition for enjoying the fundamental rights of our peoples and determining our future.

3. We take into account the reality of indigenous peoples so that;

- A. We seek recognition of the community as a public entity with a legal character.

B. We propose to reinforce the municipality as an institution which must be adapted in a realistic manner to the particular situation of indigenous peoples.

C. This opens the possibility that municipalities may become associated among themselves as indigenous communities in order to coordinate their actions.

4. The intent of all reforms, at least those which are to have practical application, in other words, effective ones; make no sense if it is known beforehand that they cannot be applied.

5. To an extent the recognition of indigenous rights becomes a formal way of breaking with the traditional schemes of Western culture, it does not demand individualistic rights or norms at the service of the State. It points out clearly to the recognition of a legal regime which reflects the plurality of the Mexican State.

Our demands have been repeated individually and collectively. It is a fact that we preserve them in every day life in our communities. It is also a fact that the lack of respect for many others is a constant reality in many tribunals and before certain state authorities. To continue to ignore these rights will result in hundreds of jails filled with indigenous people and will continue the genocide which began more than 500 years ago.