

This section is based on the politics of the Indigenous movement in Mexico. It is followed by the five articles listed after the introduction.

IV. Politics

Since its inception, the Zapatista movement has attempted to achieve change through political means. The weapons of the EZLN guerrillas have been presented as instruments intended to draw attention to their political demands rather than attempt to achieve them through violence. The movement for Indigenous rights and political recognition is now an entirely pacific force. Through their political struggle the movement hopes to instigate a reform of the Mexican State that will take into account the rights and necessities of Indigenous people.

The Indigenous political struggle seeks to establish more space for independent activity in which it can elaborate and consolidate itself on all levels and in every aspect of society. The concept of autonomy is seen by the Indigenous movement as the conceptual and organizational key to true democratic involvement. The method of organizing this autonomy varies, however at its base the independent political structure sought by the Indigenous movement is founded in a vision of continual dialogue and interaction within a community of diverse backgrounds and political alliances. The concept of political and cultural autonomy is based in the hope for inclusion in Mexican society rather than further isolation. The movement's concept of autonomy is a means of being recognized as a politically independent entity within Mexico with its own origins and goals.

After years of struggle and resistance the Indigenous movement has continued to exist as a political force largely due to a campaign to garner sympathy and support in Mexico and internationally. Through the use of modern media the movement has brought its message to an audience worldwide exposing the plight of Mexico's Indigenous people and the desire to determine their own future. The political campaign of the Indigenous people has sought to include not only the struggle of the poor and voiceless Indigenous peoples of Mexico, but that of all Mexicans. This is achieved through the recognition that many Mexicans share the political and social isolation that had driven the Indigenous movement to rise. The inclusion of Mexican civil society in the struggle for rights and representation is a key component of the movement's popularity and appeal.

In 1996, representatives from the EZLN and the Mexican government met to discuss the demands of the Indigenous movement. The San Andrés Accords, agreed upon and signed by both parties, were a result of this meeting. This historic document represented the first time the Mexican State had recognized that the Indigenous peoples "have been subjects of subordination, inequality and discrimination that has placed them in a situation of poverty, exploitation and political exclusion." It was also a formal recognition of the Indigenous rights, with reference to their historical origins. The Accords, which were presented to Mexican Congress as the COCOPA initiative, officially established a new political relationship between Indigenous groups and the State. However, when the initiative was first presented to Congress in 1997, President Ernesto Zedillo denied much of its most important elements, later modifying the document. This modified version was passed by Congress, but was wholly rejected by Indigenous groups.

On December 1st 2000 the newly elected Mexican President Vicente Fox came to power claiming that the original COCOPA initiative would be passed by Congress. In May of 2001 it was

considered by Congress, but largely modified, becoming instead the Barlett-Cevallos Law. This new version of the law was rejected by all parties of the Indigenous movement, but was passed by the majority of Mexican state legislatures. The changes represented by the law did not address the concerns of the Indigenous movement, which continued to call for the full implementation of the COCOPA initiative. The Indigenous people's political campaign has been an attempt to meet its demands within a government establishment hostile to their agenda. In spite of these challenges, however, politics will continue to be the main front of Indigenous movement.

Article 1: *The Indigenous Rights And Culture Law And The Peace Process*

Article 2: *Text of the San Andrés Accords*

Article 3: *THE SAN ANDRÉS ACCORDS: FIVE YEARS LATER*

Article 4: *More of the Same for the Indigenous Peoples and Dialogue*

Article 1

The Indigenous Rights And Culture Law And The Peace Process

-Responses to the Law of Indigenous Rights from the Miguel Agustín Pro Juárez Human Rights Center

-The Senate draft ignores the highest legal framework which exists concerning indigenous matters: Convention 169 of the ILO.

Miguel Agustín Pro Juárez Human Rights Center
Edgar Cortéz, Director
April 27, 2001

The draft voted on last night by the Senate to reform the Constitution regarding Indigenous Rights and Culture does not fundamentally recognize the historic demands of these peoples -- to be recognized as the subjects of right in terms of their collective nature and cultural diversity -- thus failing to take the opportunity to respond to this historic and just demand.

The reform proposal agreed to by the Senate in the matter of indigenous peoples would appear to respond to the circumstances of backwardness and the shameful economic, social and political disadvantage which the indigenous peoples experience, which should, obviously, be given priority attention. However, the fundamental aspect of the indigenous demands have to do with an historic demand of existing, developing, participating, deciding and relating to each other in conditions of equity with the population, and at the different levels of government, beginning with the recognition of and respect for their collective and culturally specific nature.

This fundamental aspect, expressed in Convention 169 on Indigenous and Tribal Peoples in Independent Nations of the International Labor Organization, as well as in the San Andre's Larra'inzar Accords, was not recognized by the Senate. However, secondary aspects were left in the

reform text which do not belong in a document like this. One only needs to refer to paragraph B of the second article of the draft, where there is a list of government obligations.

One of our greatest concerns is that this draft completely ignores what is established in Convention 169, and which, by virtue of Article 133 of the Constitution, is the domestic, operative law in our country. It should, therefore, have been the fundamental focus for the drawing up of this proposal for constitutional reform.

Thus, rights which are so clearly recognized and guaranteed in this Convention were, in the best of cases, reduced and delineated by secondary laws, or they were flatly eliminated as recognized rights within the approved draft. Among these rights are: the exercise and enjoyment of their collective and cultural rights as peoples; being informed and consulted in all those aspects which interest and affect them (such as in education programs and plans, in economic and social development, in the use of resources found in their lands, to mention just a few); the right to the use and enjoyment of their ancestral lands; the right to choose their authorities, of procuring and imparting justice according to their regulatory systems.

In addition to the above, we would like to emphasize -- as another of the reform program's primary deficiencies -- the concept which continues to be present of the indigenous peoples. It is worrisome to confirm that our legislators were not able to express in the draft the collective and culturally specific dimension of the indigenous peoples as subjects of right, as well as the collective nature of their cultural rights, reducing the subjects of right, as well as the nature of the rights themselves, to an individual perspective.

This draft issued by the Senate demonstrates that our legislators are ignoring the depths of the demands of the indigenous peoples and that, therefore, as long as this fundamental aspect is not come to terms with, there will be no concrete responses to the demands of the indigenous peoples.

For now it is left for us to wait for the Chamber of Deputies -- which, in this case, will act to review the Senate proposal -- to take on the role of correcting the errors which have been made, and, therefore, give full responses to the historic demands of our country's indigenous peoples.

In this regard, it is of fundamental importance to express to our Deputies that, in delivering their opinions, and in their votes, they should keep in mind -- in addition to the ethical commitment they have to the building of democracy, justice and equity in our country -- that which has already been recognized as law in indigenous matters in Convention 169 on Indigenous and Tribal Peoples in Independent Countries. We believe that, if they take this as the fundamental reference in rendering their opinion and in voting, there will certainly be a large number of observations and clarifications necessary in order to respond to the demands of the indigenous peoples.

Making a preliminary evaluation of this process: if we were to be on a course in which there were a starting point from which we wished to leave, with awareness of the place to which we wished to arrive, one would have to say that this proposal barely crosses the starting line. However, if we ventured to gaze towards the finishing line, we would recognize that we still cannot make it out on the horizon, and, barely taking the first step, we have already bumped into the first obstacle.

The avoidance of these serious omissions is in the hands of the Deputies. The peace process is at stake.

The National Indigenous Congress, through Adelfo Regino Montes, has already made a statement in this regard, affirming that this draft does not recognize indigenous rights. Various specialists in the field have begun to express themselves publicly since the draft was released, concerning its implications and the vast divergences between the draft, the Cocopa proposal and Convention 160 of the ILO itself.

At this critical moment in the country's evolution, add the political complications to the technical ones: among them, the attitudes of key actors who are keeping the spotlight on themselves at this moment, who can confuse society and, even worse, obstruct the possibilities for a peaceful, just and dignified solution to the Chiapas conflict.

The Senators consider themselves satisfied and are self-congratulatory. They are emphasizing that the approval of the draft in the Highest Chamber is a "great advance" for the country. President Fox has talkatively charged in once again, with statements right and left, asserting that "there are no guerrillas anymore," that peace "is now a fact," praising the Senate, claiming that that draft - incomplete and partial -- is one more step forward. He avoids, however, speaking about what it will involve politically for the peace process and about the draft's omission regarding the recognition of the concept of territory and communities as subjects of public right. He says "everything is going along fine." All of this without taking into consideration that the discussion in the Chamber of Deputies has not concluded.

These attitudes are either part of the discursive strategy regarding the conflict which has been being implemented since Fox assumed the post of President of the Republic -- whose statements have vacillated between voluntarism and political incompetence in dealing with the matter (We are a "few weeks away from reaching a peace agreement in Chiapas", "the government has the will for peace", "the indigenous are our brothers", "there are no guerrillas in Mexico anymore"), or they end up unmasking the profound ignorance which persists in our levels of government concerning the rights of the Indian Peoples.

For those of us who respect and recognize what the indigenous struggle for the recognition of their rights entails, this triumphalist attitude outrages us. We profoundly reject it, because it once again presents the possibility that the mere public image of the Mexican State could be used to try and legitimize any action whatsoever against the EZLN, against their support bases, against the CNI and against the Indian peoples who support the struggle for autonomy and free determination. They could be identified, following this logic, as the intransigent players who do not want the country to have peace. The basic argument could continue in the same way: "We've already given you your law. What more do you want?"

The Senate approved a draft law on indigenous rights and culture which - unless the Chamber of Deputies blocks it -- would once again put the peace process seriously at risk in a state as divided as Chiapas is. It would, of course, leave the guarantee of fulfilling the rights of autonomy and free determination of the Indian Peoples partially "noted" in the Constitution.

The ball is now in the Chamber of Deputy's court, in their authority as the body which reviews the draft proposal. We are appealing to their responsibilities as legislators and representatives of Mexican society.

The Pro Center Presents The Legislators With Observations Concerning The Draft Drawn Up By The Senate

Within the framework of the discussion concerning the draft proposal, the Prodh Center has today delivered to the Deputies and Senators observations concerning the draft, which we present to you:

Observations:

In our communication of March 29 we expressed the expectation that, at this legislative opportunity, the possibility was within your grasp to resolve, once and for all, the historic demands of the indigenous peoples of this country, setting the foundations for the full force of their collective rights, with the approval of the Cocopa proposal. We also said that, with this approval, the paths to peace would be facilitated. It would contribute to the strengthening of the Rule of Law, fulfilling the obligations which Mexico assumed when it ratified Convention 169 of the ILO. And it would open the way for a new kind of legislating, derived from the demands and aspirations presented by society.

However, following the review we have made of the draft which was approved by the Senate yesterday, we find that it does not substantively reflect that the different contributions made by experts, social organizations, indigenous organizations, the EZLN, etcetera -- who widely argued the need for approving the Cocopa proposal -- have been heard or incorporated. As a consequence, the expectations of making progress in the democratization of legislative action in the country seems to be diminishing, which concerns us, since it does not correspond to the offer you made in this matter, and even less to the expectations expressed by society.

Below we note the main problems which are contained, from our perspective, in the draft which was approved:

1. -- It ignores the fact that the operative legal frame of reference is Convention 169. It concerns us that the existence of Convention 169, in both the setting out of goals and in the contents of the draft, is completely ignored, not only as a frame of reference, but also as the supreme applicable law in the country, under the terms contained in Article 133 of the Constitution and Articles 26 and 27.1 of the Vienna Convention on Treaty Law.

- 2.- The draft not only fails to incorporate the contents of Convention 169, but it appears to start from zero, reducing, diluting and leaving out already existing concepts.

- a. The contents of the draft appear to reflect an idea of starting from zero regarding the recognition of the collective rights of the indigenous peoples and to refuse to recognize what is already Mexican Law, starting with the contents of the previously cited ILO Convention. And not only that, but rights and concepts which have been clearly established in said Convention are not incorporated in their totality, making not only their comprehension difficult, but also, and more importantly, their

application. An example of this is the concept of "people", "habitat", "land," or the subject of the rights and obligations contained, as in Article 2.A.V., where autonomy is recognized and guaranteed in order to "Conserve and improve the habitat and to preserve the integrity of their lands under the terms established in this Constitution."

b. It is important for the concept of people contained in Convention 169 to also be transferred to the "community." Nonetheless, if it is about transferring the rights contained in the Convention to the Constitution in order to facilitate their exercise and guarantee, the concept of "people" should not be left out. If it is done in any other way, instead of facilitating their application, it will make it more difficult. It is curious that this concept was left out, if we also note that it is a proposal which has been contained in almost all the initiatives which have been presented that, in general terms, have reproduced the concept contained in Convention 169.

c. The rights of the peoples regarding natural resources are even more restricted. The use and enjoyment of natural resources "of the places which they inhabit and occupy" are subjected to provisos regarding strategic areas, as well as the forms and means of ownership and possession contained in the Constitution and the collective rights acquired by third parties or by members of the community. In this aspect the contents of Convention 169 are not only not incorporated, but openly contravened.

d. The validation by judges and courts which is proposed regarding their own forms of conflict resolution is contrary to the concept of autonomy. That regarding conflict solution according to uses and customs subject to "validation" by relevant judges and courts is contrary to the recognition of their own forms of coexistence and organization, which Article 2.A.I. refers to. The addition to Article 18 is welcome, because it is a right of all persons, whether or not they are indigenous, but it does not incorporate the contents of Convention 169 relative to the application of alternative punishments.

3.- The draft demonstrates that it was conceived from a western individual frame of reference, and not for the protection and respect of the collective rights of the indigenous peoples.

It would appear that it is legislation for individual persons, with some relationship with the indigenous peoples, making repeated references to rights which, as persons and Mexican citizens, they already possess, and not for collective subjects whose existence has already been legally recognized in Convention 169, but without the ability to exercise their rights. Some examples are: the third paragraph added to Article 1 regarding discrimination; the contents of part B which refers to "promoting equality of opportunity for the indigenous and eliminating any discriminatory practice." This is a reflection of the continuation of indigenist policies, which are concerned with the poverty and exclusion suffered by members of the people. This is laudable, but it does not respond to the demand clearly made by the peoples, of being recognized as subjects of rights and abilities to decide how they want to live and to organize themselves.

4. It hands over to the states the legislating and resolving of questions which should be guaranteed and resolved by the Congress of the Union. The rights of free determination and autonomy are left without guarantees. As we stated in the documents we attached to our previous communication, we agree that the exercise of collective rights are guaranteed regarding diversity. Nonetheless, the

manner of dealing with this challenge is omissive and evasive in its handing over to the states the recognition of peoples and communities, as well as the characteristics of free determination and autonomy. We ask ourselves if they will not provoke the phenomena of "balkanization" which we wish to avoid. In this regard, we insist on the necessity for the federation to be the one which guarantees and ensures a minimum standard of rights, and that the states broaden and accommodate as necessary, dealing fairly with the specific natures of the peoples which compose them.

5. It leaves the expressly voiced demands of the indigenous peoples unresolved.

Regarding access to and administration of municipal resources. As it is thus far presented, the reform does not resolve the demands of the peoples regarding access to and administration of the municipal resources which correspond to them. Although the reform to Article 115 puts forward the possibility of coordination and association of indigenous communities within the municipal arena, it does not state that the aim is the administration of resources. Instead it makes reference to a law which does not yet exist.

6. -- The contents of part "B" of the proposed Article 2 lists what are more like agenda points which the government should carry out, instead of constitutional guarantees.

The entire contents of Part "B" of the proposed Article 2 constitute points for a government agenda, unfulfilled obligations contained in the existing Constitution as the responsibility of different bodies and levels of governments. They do not constitute new rights or guarantees which should be allocated to the dogmatic part of the constitutional regulations.

7. -- The addition to Article 1 which prohibits discrimination will facilitate the fulfillment of international obligations which the Mexican State has contracted in that regard, but it does not constitute a substantive advance towards its implementation.

This addition is welcome, even though it does not constitute a substantive response to the consistent demands expressed by the indigenous peoples, the full guarantee and protection of their collective rights.

The Modification Of The Draft Is Requested Based On The Above Presented Arguments

For the above stated reasons, we believe that the decree approved yesterday by the Senate should be modified by the Chamber of Deputies, incorporating the contents and meaning of the Cocopa proposal. If this does not take place, Mexico will lose this opportunity for fully resolving the circumstances of the indigenous peoples, for making the rights contained in Convention 169 effective, as well as for making peace possible. If not, they will fail to fulfill the Constitution and international State obligations.

We appreciate your attention and, above all, your timely intervention in order to ensure and guarantee, through this legislative action, the collective rights of this country's indigenous peoples.

Article 2

The San Andres accords

January 18, 1996

This is the text of the agreement negotiated between the Mexican government and the EZLN at San Andres in 1996 which the government then refused to implement.

Translated by Rosalva Bermudez-Ballin

Joint Proposals which the Federal Government and the EZLN commit to send to the Debate and National Decision Authorities, in Accord with Point 1.4 of the Rules of Procedure.

The various parties commit themselves to sending to the Debate and National Decision Authorities the following joint proposals upon which they have agreed".

On the basis of the new relationship between the State and the indigenous peoples it is necessary to recognize, insure and guarantee rights within an emended federalist framework. Such an objective implies the promotion of reforms and addenda to the Federal Constitution and the laws emerging from it , as well as to State Constitutions and local Judicial Dispositions, to further, on the one hand, the establishment of general foundations that may insure unity and national objectives; and, at the same time, allow the federative entities the true power to legislate and act in accordance to the particularities of the indigenous issues coming before them.

1.- To urge a profound transformation of the State, as well as of the political, social, cultural, and economic relationships with the indigenous peoples, which satisfies their demands for justice.

2.- To urge the emplacement of an all-inclusive new social agreement, based on the understanding of the fundamental plurality of Mexican society and on the contribution that the indigenous people can make to national unity, beginning with the constitutional acknowledgement of their rights, and in particular, to their right to self-determination and autonomy.

3.- The legal reforms to be promoted must originate from the principle of the equality of all Mexicans before the law and judicial organs, and not by the creation of special codes of law that privilege particular people; respecting the principle that the Mexican Nation is a pluricultural entity which is originally supported by its indigenous peoples.

4.- The constitutional modifications represent one of the most important factors in the new relationship between the indigenous peoples and the State within the framework of reforming the State, so that their demands may find support within the State legal system.

II.

1.- The creation of a judicial framework that establishes a new relationship between indigenous peoples and the State, based on the recognition of their right to self-determination and the judicial,

political, social, economic and cultural rights that obtain from it. The new constitutional dispositions must include a framework of autonomy.

2.- Such a judicial framework must be produced with the recognition of the self-determination of indigenous peoples, who, with previous societies, are the ones who have suffered a historical continuation of colonial oppression, maintain and recognize their own identities; and possess the will to preserve them, based on their own, distinct cultural, social, political and economic characteristics. Those attributes characterize them as indigenous peoples, and as such, they are constituted as subjects with a right to self-determination.

Autonomy is the concrete expression of the exercise of the right to self-determination, within the framework of membership in the National State. The indigenous peoples shall be able, consequently, to decide their own form of internal government as well as decide their way of organizing themselves politically, socially, economically and culturally. Within the new constitutional framework of autonomy, the exercise of self-determination of indigenous peoples shall be respected in each of the domains and levels in which they are asserted, being able to encompass one or more indigenous groups, according to particular and specific circumstances in each federal entity. The exercise of autonomy of indigenous people will contribute to the unity and democratization of national life and will strengthen national sovereignty.

It is appropriate to admit, as a fundamental demand of the indigenous peoples, their right to autonomy, insofar as they are communities with different cultures and they have the faculty to decide their own local issues within the framework of the National State. This acknowledgement is based on Agreement 169 of the OIT International Labor Organization, and ratified by the Senate of the Republic. Thus, the recognition of autonomy is based on the concept of indigenous group, which is founded on historical criteria and on cultural identity.

3.- National legislation must acknowledge indigenous peoples as subjects with the right to self-determination and autonomy.

4.- It is proposed to the Congress of the Union to recognize, in national legislation, these communities as entities with public rights, with the right to free association in municipalities with populations that are predominantly indigenous, as well as the right of a group of municipalities to associate, in order to coordinate their actions as indigenous peoples.

Competent authorities will execute the orderly and gradual transference of resources, so that the people themselves may administer the public funds assigned to them, and to strengthen the indigenous participation in government, negotiations and administration in the various domains and levels. It will be up to state legislatures to determine, in their case, the obligations and faculties that might be transferred.

State legislatures will be able to move forward on the remunicipalization in the territories in which the indigenous villages are established, said remunicipalization must be based on consultation with the towns involved.

In order to strengthen the federal contract, it is essential to revise in depth, not only the relationship between the Federation and the state governments, but also the relationship between the latter and the municipalities.

The union between townships and predominantly indigenous populations is proposed, not as a different type of municipality, but as one which, within the framework of the general concept of this political institution, may allow indigenous participation in its composition and unity, while, at the same time promoting and integrating indigenous communities into the municipal government. As to what constitutes a municipality with a predominantly indigenous population, reaffirming the full meaning of a free municipality on which federalism is based, it is considered necessary that the organizations be constitutionally strengthened, in such a manner that:

a) they may be endowed with duties that guarantee the exercise of autonomy of the indigenous peoples;

b) the structure foreseen in the Municipal Organic Law will guide and orient them toward facing the new challenges of development, and in particular to the needs and new forms of organization specifically for indigenous towns;

5.- It is proposed that the Congress of the Union and to the State Legislatures acknowledge and establish the characteristics of self-determination and the levels and modes of autonomy, taking into consideration what "autonomy" means.

a) Territory. Every indigenous town is found in a territory that covers the entire habitat occupied or used by indigenous people in one form or another. The territory is the material base of their reproduction as a people and it expresses the inseparable unity people-land-nature.

b) Demarcation of application. Jurisdiction is the spatial, material and personal normative field of validity in which the indigenous people apply their rights. The Mexican State will acknowledge the existence of said fields.

c) Responsibilities. There must be compatibility with various federal, state and municipal authorities, as well as a distribution of political, administrative, economic, social, cultural, educational, judicial resources, for the management and protection of natural resources, with the purpose of responding opportunely to the requirements and demands of indigenous peoples.

Furthermore, it will be required to specify the obligations, faculties and resources that are likely to be transferred to the indigenous communities and towns under the established criteria in Section 5.2 of the document entitled "Joint Pronouncements", as well as the various forms of participation by the communities and towns vis =E0 vis the government authorities, so that they may interact and coordinate their actions with them, particularly at the municipal level.

d) Self-development. The indigenous communities and towns themselves must determine their development projects and programs. For this reason, it is considered appropriate to incorporate, in local and federal legislation, the ideal mechanisms that would promote the participation of

indigenous peoples in the planning for development at all levels; so that the design of this participation may take into consideration their aspirations, needs and priorities.

e) Participation in the national and state channels of representation. Local and national participation and political representation must be ensured, respecting the various socio-cultural characteristics, in order to create a new federalism.

It is proposed to the Congress of the Union, the recognition, in constitutional and political reforms that may derive, of the rights of the indigenous woman to participate as an equal with men in all levels of government and in the development of indigenous peoples.

6.- It is proposed to the Congress of the Union and to the State legislatures that, in acknowledging indigenous autonomy and for the determination of all its levels, they take into consideration the main rights that are the objects of said autonomy; establishing the characteristics required to insure its free exercise. Among said rights, the following may be emphasized:

a) to exercise the right to develop the specific forms of social, cultural, political and economic organization;

b) to obtain the recognition of their internal normative systems for regulation and sanctions, insofar as they are not contrary to constitutional guarantees and human rights, especially those of women;

c) to agree to State jurisdiction in a better way;

d) to agree collectively to the use and enjoyment of natural resources, except those which fall under national jurisdiction;

e) to promote the development of the various components of indigenous identity and cultural heritage;

f) to interact with the various levels of political representation in government and the administration of justice;

g) to cooperate with other communities of their ethnicity or different groups, in joining efforts and coordinating actions for optimal use of resources, and the initiation of regional and general development projects for the promotion and defense of common interests;

h) to design their community and their municipal government representation freely, as well as selecting their authorities as indigenous peoples, in accordance with their own institutions and traditions;

i) to promote and develop their languages and cultures, as well as their political, social, economic, religious and cultural customs and traditions.

III.

1.- Increase in political participation and representation. Municipal strengthening. It is convenient to anticipate at the constitutional level the necessary mechanisms that:

a) Insure the adequate political participation of indigenous communities and peoples in the Congress of the Union and local congresses, incorporating new criteria in setting the boundaries of the electoral districts that correspond to the indigenous communities and towns;

b) Allow participation in the electoral processes without requiring participation of the political parties;

c) Guarantee the effective participation of the indigenous peoples in the publicity and supervision of those processes;

d) Guarantee the organization of internal election or nomination processes.

e) Recognize the system assignment of offices and other forms of organization, methods of designation of representatives, and the making of decisions in the assembly and of popular consultation.

f) (Establish the election of municipal agents or allied figures or, when appropriate, be named by the corresponding towns and communities.

g) Foresee in the state legislation the mechanisms that may allow the revision, and, when appropriate, the modification of the names of the municipalities, proposed by the population located in the corresponding boundaries.

2.- The guarantee of full access to justice. The State must guarantee the towns full access to the jurisdiction of the Mexican State, with recognition and respect for their own internal normative systems, guaranteeing full respect for human rights. It will promote the recognition that positive Mexican Law may acknowledge the authorities, norms and internal procedures for conflict resolution of towns and communities, will guarantee that local judgments and decisions are confirmed by the judicial authorities of the State.

The recognition of jurisdictional spaces to the designated authorities in the heart of the indigenous communities, towns and municipalities stems from a restructuring of the municipal charter, so that said authorities will be able to settle internal conflicts of coexistence; their knowledge and resolution may imply a better acquisition and distribution of justice.

The marginalization in which the indigenous people live and the conditions of disadvantage to which they consent in the system of granting and procuring justice, create the need for a serious revision of the federal and state judicial frameworks, so that effective access of the indigenous peoples be guaranteed, or in place of local action, access to its members to the State jurisdiction,

and in this manner, avoiding partial distribution of justice to the detriment of [the indigenous sector of the population.

In the legislative reforms that may enrich the internal normative systems it must be determined that, when sanctions are imposed upon members of the indigenous towns, the economic, social and cultural characteristics of those sanctioned must be taken into consideration, privileging sanctions other than incarceration. Preferably sentences may be carried out in places that are closer to home and also, that integration into the community be favored as an essential mechanism of social readaptation.

The insertion of the norms and judicial practices of the indigenous communities as a source of law applicable to procedures and resolutions of controversies under their authorities, will be encouraged; also, in order to provide constitutional guarantees, it is strongly suggested that federal and local judgments in which the indigenous people are involved be taken into consideration.

3.- Knowledge and respect of indigenous culture. It is considered necessary to elevate the constitutional rank of all Mexicans by means of a pluricultural education that acknowledges, disseminates and promotes the history, customs, traditions and, in general, the culture of the indigenous peoples, root of our national identity..

The Federal Government will promote the laws and necessary policies so that the indigenous languages in each state may have the same social value as Spanish, and it will promote the development of practices that deter discrimination against them in administrative and legal transactions.

The Federal Government commits itself to the promotion, development, preservation and practice of indigenous languages by providing education in the indigenous languages; moreover, it will favor the instruction of writing and reading in the languages themselves; and measures will be adopted to insure that these peoples have the opportunity to learn Spanish.

Knowledge of indigenous cultures is national enrichment and a necessary step to eliminate misunderstandings and discrimination toward indigenous peoples.

4.- Integral Indigenous Education. The various governments commit themselves to respect the educational tasks of the indigenous peoples within their own cultural space. The allocation of financial, material and human resources must be brought about with fairness to plan and carry out educational and cultural activities determined by the indigenous towns and communities.

The State must bring about the indigenous peoples' right to a free and quality education, as well as to encourage the participation of the indigenous towns and communities in selecting, ratifying and removing teachers, taking into consideration criteria on academic and professional performance previously agreed on by the indigenous peoples and the corresponding authorities, and to form supervisory committees on the quality of education within the framework of local institutions.

The right to bilingual and inter cultural education of the indigenous peoples is ratified. The definition and development of educational programs with regional content, where their cultural

heritage is recognized, are established as the jurisdiction of federative entities in consultation with the indigenous towns. It will be possible, through educational action, to insure the use and development of indigenous languages, as well as the participation of towns and communities in conformance with the spirit of Agreement 169 of the OIT (International Labor Organization).

5.- The provision of basic needs. The State must set up mechanisms to guarantee the indigenous towns the conditions that may allow them to satisfactorily tend to their nourishment, health, and housing at an adequate level of well-being. Social policy must set up priority programs for the improvement of the levels of health and nourishment of children, as well as support programs, in an egalitarian plane, for the training of women, increasing their participation in the organization and the development of the family and the community. Priority must be given to the intervention of the indigenous woman in the decisions regarding economic, political, social and cultural development projects.

6.- Production and employment. Historically, development models have not taken into consideration the productive systems of the indigenous peoples. Consequently, the utilization of their potentials must be encouraged.

The Mexican judicial system, both at federal and state levels must push for the recognition of the indigenous peoples' right to the sustainable use and the derived benefits of the use and development of the natural resources of the territories they occupy or utilize in any form, so that, in a framework of global development, the economic underdevelopment and isolation may be overcome. This action also implies an increase in and reorientation of social spending. The State must foster the development of the economic base of the indigenous towns and must guarantee their participation in designing the strategies directed toward the improvement of their living conditions and the provision of basic services.

7.- Protection of migrant indigenous peoples. The State must set up specific social policies to protect migrant indigenous people, both in the national territory as well as beyond its borders, with inter institutional actions to support work and education of women, and health and education for children and youth, which, in rural regions, must be coordinated in the areas of contribution as well as those that attract agricultural workers.

8.- Means of communication. With the purpose of creating an inter cultural dialogue from the community level up to the national level, that may allow a new and positive relationship between the various indigenous groups and between these groups and the rest of society, it is essential to endow these towns with their own means of communication, which are also key mechanisms for the development of their cultures. Therefore, it will be proposed to the respective national authorities, to elaborate a new communications law that may allow the indigenous towns to acquire, operate and administrate their own means of communication.

The Federal and State governments will promote that the means of communication currently in the hands of the Indigenists become indigenous means of communication, which is a demand made by the indigenous communities and towns.

The Federal Government will recommend to the respective authorities that the seventeen INI (National Indigenist Institute) radio stations be given to the indigenous communities in their respective regions, with the transference of permits, infrastructure and resources, when an expressed request by the indigenous communities has been issued to this effect.

In the same manner, it is necessary to create a new judicial framework in the area of communications that may consider the following aspects: national pluriculturalism; the right to use indigenous languages in the media; the right to rebuttal; guarantees to rights of expression, information and communication; and the democratic participation of the indigenous towns and communities before the authorities who decide on matters of communication. The participation of interested parties in establishing a civic responsibility process for the decision making authorities in the area of communication, can be realized through the creation of a communications Ombudsman or a citizens' Council of communications.

IV.

THE ADOPTION OF THE FOLLOWING PRINCIPLES, WHICH MUST GOVERN THE NEW RELATIONSHIP BETWEEN INDIGENOUS PEOPLE AND THE STATE AND THE REST OF SOCIETY:

1.- Pluralism. The contact between the peoples and cultures that constitute Mexican society must be based on respect for their differences, and must assume their fundamental equality. Consequently, it must be the policy of the State to regulate its action, to promote a pluralist orientation in society, capable of actively combating every form of discrimination, and of correcting economic and social inequalities. Similarly, it will be necessary to move towards the creation of a judicial order nourished by plurality, reflecting intercultural dialogue with common standards for all Mexicans and respect for the internal systems of law of the indigenous peoples.

2.- Self-determination. The State shall respect the exercise of self-determination by indigenous peoples, in all fields and levels where they will try to validate and practice their separate autonomy, without damaging national sovereignty and within the new normative framework for the indigenous towns. This implies respect for their cultural identities and their forms of social organization. It will also respect the abilities of the indigenous towns and communities to determine their own development, as long as national and public interest is respected. The various levels of government and State institutions will not intervene unilaterally in the affairs and decisions of the indigenous towns and communities, in their organization and forms of representation, and in their current strategies for the use of resources.

3.- Sustainability. It is necessary and urgent to safeguard the natural areas and culture of the territories of indigenous peoples. Legislation will push for the recognition of the rights of the indigenous towns and communities to receive the corresponding indemnization, when the exploitation of natural resources carried out by the State causes damages to their habitat which may endanger their cultural survival. In the cases where damage has already occurred, and the towns are where damage has already occurred, and these towns are able to show that the given compensation does not allow their cultural survival, the establishment of review mechanisms will be promoted to allow the State and the affected to jointly analyze the specific case. In both cases the compensatory

mechanisms will try to insure the sustainable development of the indigenous towns and communities.

In the same manner, there will be launched, in common accord with the indigenous towns, rehabilitation activities of those territories, and support of initiatives to create the conditions that may insure the sustainability of their practices of production and of life.

4.- Consultation and Accord. The policies, laws, programs, and public actions that might relate to the indigenous towns will be consulted. The State must promote the integrity and agreement of all the institutions and levels of government that influence the life of the indigenous towns, avoiding partial practices influence the life of the indigenous towns, avoiding partial practices that may split up public policy. To insure that their action corresponds to the distinct characteristics of the various indigenous towns, and to avoid the imposition of uniform policies and programs, their participation in all the phases of public action, including conception, planning and evaluation must be guaranteed.

Similarly, there must be a gradual and orderly transference of powers, obligations and resources to the municipalities and communities so that, with the participation of the latter, the public monies assigned to them may be distributed. As for resources, and for whatever purpose they may exist, they may be transferred to the forms of organization and association that are anticipated in point 5.2 of the document of Joint Pronouncements.

Since the policies in the indigenous areas should not only be conceived with the towns themselves, but implemented with them, the present indigenist and social development institutions that operate locally must be transformed into different entities that may be conceived and operated jointly and in concert with the State and the indigenous peoples themselves.

5.- Strengthening of the Federal System and democratic Decentralization. The new relationship with the indigenous peoples encompasses a process of decentralization of the obligations, faculties and resources of the federal and state authorities to themunicipal governments, in the spirit of point 5.2 of the document Joint Pronouncements, so that with the active participation of the indigenous communities and the population in general, they may assume the initiatives thereof.

V.

CONSTITUTIONAL AND LEGAL REFORMS

1.- The establishment of a new relationship between the indigenous peoples and the State has, as a necessary point of departure, the peoples and the State has, as a necessary point of departure, the creation of a new judicial framework at the national level as well as in the federative entities. The constitutional reforms that recognize the rights of the indigenous towns must be achieved through a creative legislative spirit, that may produce new policies and may give real solutions to social problems. To that effect, we propose that these reforms must contain, among others, the following general aspects:

- a) To legislate on the autonomy of the indigenous communities and towns, to include the recognition of the communities as entities with public law; their right to associate freely with municipalities that are of predominantly indigenous populations; and also the right of various municipalities to associate for the purpose of coordinating their actions as indigenous towns;
- b) To legislate to "guarantee the protection of the integrity of the lands belonging to indigenous groups," taking into consideration the specifics of the indigenous towns consideration the specifics of the indigenous towns and communities, in the concept of territorial integrity contained in Agreement 169 of the OIT (International Labor Organization), as well as establishing the procedures and mechanisms for the regularization of the various forms of indigenous property rights and for the promotion of cultural cohesion;
- c) In issues related to natural resources, to install a preferential order that privileges the indigenous communities in the granting of concessions in order to reap the benefits of the exploitation and use of natural resources;
- d) Legislate on the rights of the indigenous people, men and women, to have representatives in the legislative entities, particularly in the Congress of the Union and in the local congresses; incorporating new criteria to delimit the electoral districts that may correspond to the indigenous communities and towns, and that they be allowed to have elections in accordance to the legislation on that matter;
- e) Legislate on the rights of the indigenous towns to elect their own authorities and to exercise authority according to their own internal norms in their autonomous localities, guaranteeing the participation of women on equal terms;
- f) In the content of the legislation, to take into consideration the pluricultural nature of the Mexican Nation that may be reflected in intercultural dialogue, with common standards for all Mexicans and with respect for the internal normative systems of the indigenous towns;
- g) In the Constitution, to insure the obligation to not discriminate on the basis of racial or ethnic origin, language, gender, beliefs or social condition, thus, making possible the designation of discrimination as a crime.

The rights of the indigenous towns to the protection of their sacred sites and ceremonial centers, and the use of plants and animals that are sites and ceremonial centers, and the use of plants and animals that are considered sacred for strictly ritual use must also be insured;

- h) Legislate so that no form of coercion may be exercised against the individual guarantees and the specific rights and freedoms of the indigenous towns;
- i) Legislate the rights of the indigenous towns to the free exercise and development of their cultures and their access to means of communication.

Article 3

THE SAN ANDRES ACCORDS: FIVE YEARS LATER

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April 2001

This report is an attempt to clear up some of the confusion in the press regarding the San Andre's Accords, the three proposed pieces of legislation for constitutional reforms on Indigenous Rights and Culture (those of the COCOPA, then-president Zedillo, and the PAN), and the upcoming Zapatista march to the capital. It is also an attempt to brief the reader on the most important events affecting the peace process in Mexico since the San Andre's Accords were signed five years ago.

1. Introduction
2. The San Andre's negotiations and the Accords
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INTRODUCTION

February 16, 2001 marks the five year anniversary of the signing of the San Andre's Accords on Indigenous Rights and Culture between the Mexican government and the Zapatista National Liberation Army (EZLN) in the highland Chiapas town of San Andre's Larra'inzar (known to Zapatistas as San Andre's Sakamch'en de los Pobres). Five years later, those accords exist as nothing more than a series of documents, pieces of paper with various signatures of rebels and government officials. The government commitments acquired in the accords have not been honored. On February 24, 2001, a rebel delegation composed of 23 indigenous commanders and spokesperson Subcomandante Marcos will begin an unarmed march toward Mexico City, arriving on March 11, in order to press for congressional approval of a 1996 initiative for the constitutional implementation of the San Andre's Accords. That initiative, known loosely as the "COCOPA proposal," was drafted by members of a congressional commission entrusted with facilitating the peace process, the Commission on Concordance and Pacification (COCOPA), by agreement with both the EZLN and the Interior Ministry. The EZLN accepted the proposal; the federal government, after first saying yes, eventually said no, and plunged the peace process into a four-year nightmare of militarization, paramilitarization, massacres, and army occupations. The official mediation team dissolved itself after claiming the government had demonstrated no intent of seeking peace in Chiapas, much less of negotiating in good faith. A political (and peaceful) solution to the conflict in Chiapas seemed remote. In the year 2000, center-right populist Vicente Fox campaigned for the presidency on a platform which called, in part, for demilitarizing Chiapas, honoring the San Andre's Accords through Congressional approval of the 1996 COCOPA initiative, and restarting negotiations with the EZLN on the Zapatistas' terms. Since his election, his promises have been only partially fulfilled, and the implementation of the San Andre's Accords - the key to disentangling the peace process and putting negotiations back on track - appears only slightly less remote. It is for this

reason that the EZLN leadership is prepared to engage in a risky journey to Mexico City, in order to attempt to convince legislators, first, that honoring the San Andre's Accords and the commitments acquired by the federal government in negotiations is worthwhile for the sake of the peace process and the nation; and second, that the only acceptable way to implement the San Andre's Accords at the constitutional level is through acceptance of the COCOPA proposal. This report is an attempt to clear up some of the confusion in the press regarding the San Andre's Accords, the three proposed pieces of legislation for constitutional reforms on Indigenous Rights and Culture (those of the COCOPA, then-president Zedillo, and the PAN), and the upcoming Zapatista march to the capital. It is also an attempt to brief the reader on the most important events affecting the peace process in Mexico since the San Andre's Accords were signed five years ago.

THE SAN ANDRES NEGOTIATIONS AND THE ACCORDS

The San Andre's Accords are the result of nearly one year of peace talks between the EZLN and the Mexican government, which began in the aftermath of the latter's failed military offensive against the Zapatista Army in February, 1995. The importance of the Accords lay not only in their content, but also in the process through which the agreements had been reached in the first place. The EZLN insisted that its negotiating delegation--Tojolabal, Chol, Tzotzil, and Tzeltal--could not adequately speak for the rest of the nation's indigenous peoples when discussing national reforms on indigenous issues. To solve this problem, the EZLN literally invited them to the negotiations, and turned the motto "lead by following" into a reality. Taking into account an aspect of the procedural rules for the negotiations which allowed each side to invite an unspecified number of "advisors" and "guests" to the talks, the EZLN sent out invitations to more than 300 people and organizations, asking them to come to San Andre's and speak their minds. The EZLN's "guests" and "advisors" included representatives of indigenous and campesino organizations from various regions of Mexico, intellectuals, anthropologists, lawyers, and leaders of popular organizations and social movements. Nevertheless, 300 was hardly representative of all the opinions of indigenous Mexico and "civil society"; so in November of 1995, the EZLN called for regional indigenous forums to be held throughout the country so as to accumulate opinions and consensus (if possible) on the issues the EZLN was addressing with the government.

From the 3rd to the 9th of January, 1996, more than 500 representatives of 32 indigenous peoples and 178 indigenous organizations gathered in San Cristo'bal de las Casas, Chiapas, for the culmination of these forums and consultations: the National Indigenous Forum, presided over by twenty-four Zapatista commanders. After a week of workshops, assemblies, speeches, and discussions, the Forum reached consensus on a final document addressing the issues up for discussion in the Dialogue of San Andre's. The EZLN had previously said it would not only listen to the Forum's participants, but would accept and support its conclusions. The Zapatistas kept their promise, and inserted the resolutions of the Forum into their demands in the dialogue with the federal government. Just one month later, the EZLN and the federal government reached agreement on a 39-page set of Accords on Indigenous Rights and Culture. Among other things, the agreements set a requirement for national constitutional reforms which would legally establish a "new relationship between the State and the indigenous peoples," including the recognition of indigenous rights and autonomy--concepts explicitly defined in accordance with Convention 169 of the International Labour Organization (previously ratified by Mexico, but never observed). The Accords also included other required modifications of constitutional, federal, state, and local laws,

dealing with the remunicipalization of indigenous regions of the country, the free determination of indigenous peoples, the promotion and protection of indigenous cultures and customs, the use of natural resources on indigenous lands, the promotion of bilingual and culturally-aware education in indigenous communities, and the right of indigenous women to hold positions of authority equal to men at all levels of government and in the development of their communities. The agreements were clearly a victory--not only for the EZLN, but for all those across the nation who had taken part in the consultations and the dialogue. CRISIS However--contrary to what has often been reported in the national and international press--the Accords were not a "peace agreement" in and of themselves, as they covered only the first item on the agenda for the negotiations. According to the procedural rules established for the dialogue in San Andre's, under the legal guidance of the Law for Dialogue, Reconciliation and a Just Peace in Chiapas, the two sides were to discuss a variety of issues separately until arriving at a mutually satisfactory agreement for each one. Thus, after signing an accord on Indigenous Rights and Culture, the EZLN and the government were supposed to discuss and reach agreement on issues of Democracy and Justice, Social Welfare and Development, Women's Rights, Reconciliation in Chiapas, and--finally--the Cessation of Hostilities. But this didn't happen. The federal government, it seemed, had no intention of negotiating anything with the EZLN other than indigenous issues. The talks which got underway in San Andre's in the spring of 1996, dealing with Democracy and Justice, were nothing but a monologue. The federal government presented no proposals of its own. Its negotiators would not discuss any proposals from the EZLN. They refused to listen to the hundreds of Zapatista advisors and guests, and ignored the representatives of dozens of political and social organizations who took part in the Special Forum on the Reform of the State, convoked by the EZLN and held in San Cristo'bal de las Casas from June 30th to July 6th, 1996. Rather, the government's negotiators simply said there would be no agreement on Democracy and Justice, and that it was time to move on to discussions of Welfare and Development. Meanwhile, the accords on Indigenous Rights and Culture had initially been scheduled to be ratified "sometime after March, 1996" by the Mexican Congress. But this did not happen either. When the talks on Democracy and Justice entered into paralysis in late July and early August, the San Andre's Accords were still nothing more than 39 pages of ink-covered paper. Not only did the government refuse to negotiate the remaining issues on the agenda, but it seemed as though it was also refusing to implement the agreements it had already signed. In late August, the EZLN consulted its bases of support throughout Chiapas, and decided to suspend its participation in the negotiations until five basic conditions were fulfilled. What benefit is there in negotiating with an opponent--they asked rhetorically--who does not honor past agreements and refuses to work toward new ones? According to a communique issued on August 29th, 1996, the conditions laid out by the EZLN for a resumption of negotiations were:

1. Liberation of all the presumed-Zapatista political prisoners, as well as those members of the Zapatista support base detained in the north of Chiapas;
2. Designation of a government negotiating team with decision-making capacity, political will to negotiate, and respect for the Zapatista delegation;
3. Installation of the Implementation and Verification Commission, as well as the implementation of the accords signed on the issue of Indigenous Rights and Culture;
4. Serious and concrete proposals from the government for the talks on Democracy and Justice, and a commitment from the government delegation to reach agreements on this theme.

5. An end to the climate of persecution and military harassment against the indigenous communities of Chiapas, as well as the disappearance of the guardias blancas, or a law which gives them institutional recognition and uniforms so that they cannot operate with impunity.

Thus, the dialogue was suspended and a crisis ensued which, nearly five years later, has not been surpassed. In late 1996, only minimal efforts were made by the federal government toward fulfillment of the EZLN's conditions. Due to the efforts of the now-defunct National Intermediation Commission (CONAI) and the congressional Commission on Concordance and Pacification (COCOPA), all but one of the presumed-Zapatista political prisoners were freed; yet the number of civilian Zapatistas imprisoned in Chiapas under a variety of charges only grew, such that by the year 2000 there were more than one hundred still in jail. An Implementation and Verification Commission was installed with both government and Zapatista representation in late 1996 and early 1997; but it has literally done nothing since its first meeting, and most of its official tasks (as mandated by the 1995 Law for Dialogue, Reconciliation, and a Just Peace in Chiapas) have been relegated to the COCOPA or simply forgotten. The Zedillo government did not even demonstrate intent to fulfill the remaining conditions. And perhaps the most important demand of the EZLN—the implementation of the San Andre's Accords on Indigenous Rights and Culture—seemed to move farther out of reach.

THE COCOPA PROPOSAL

After the dialogue had been suspended for about one month, the COCOPA and the CONAI held a series of urgent meetings with Interior Ministry officials in Mexico City, on the one hand, and with EZLN representatives in San Cristóbal de las Casas, on the other. Through mutual arrangement with both sides, the COCOPA was given the task of writing a legal proposal for the implementation of the constitutional aspects of the Accords. In October and November of 1996, the COCOPA drafted a series of legislative proposals, and each side presented its observations, comments, objections, and suggestions to the COCOPA after each draft was written. Finally, in late November, the COCOPA announced it would receive "final" comments from both sides, after which it would elaborate an initiative to which each side had agreed to only respond "yes" or "no," without any further modifications. A positive response from both sides would supposedly lead to immediate approval of the initiative in Congress. However, a negative response from one of the sides, the COCOPA said, would mean its work had failed; the COCOPA would dissolve, and any further progress toward peace would be unlikely in the near future. Both the government and the EZLN agreed to these conditions. What was included in the COCOPA's draft initiative? Basically, it was a reduced and highly summarized version of the sections of the San Andre's Accords dealing with required constitutional changes, but was written as a legal proposal rather than as a simple set of commitments. It included reforms to articles 4, 18, 26, 53, 73, 115, and 116 of the Mexican Constitution, primarily with regards to protecting the rights of free determination and autonomy of the indigenous peoples of Mexico. The COCOPA's initiative further defined what this "autonomy" should legally signify, as stated in the commission's proposed addition to Article 4 of the Constitution:

"The indigenous peoples have the right to free determination and, as an expression of this, to autonomy as a part of the Mexican State, such that they may:

- I. Choose their internal forms of social, economic, political, and cultural organization;
- II. Apply their traditional [judicial] systems of regulation and solution for internal conflicts, respecting individual guarantees, human rights, and, in particular, the dignity and integrity of women; their proceedings, trials, and decisions will be validated by the jurisdictional authorities of the State;
- III. Elect their authorities and exercise their internal forms of governance, in accordance with their own norms and within the scope of autonomy, guaranteeing the participation of women in conditions of equity
- IV. Fortify their political participation and representation in accordance with their cultural specificities
- V. Collectively agree on the use and enjoyment of the natural resources of their lands and territories, understood as the total habitat used or occupied by the indigenous communities, with the exception of those lands whose domain corresponds directly to the Nation;
- VI. Preserve and enrich their languages, knowledge, and all the elements which form part of their identity and culture; and
- VII. Acquire, operate, and administrate their own means of communication."

The COCOPA's initiative would also amend article 115 of the Constitution to guarantee that all communities or municipalities which accepted their condition as indigenous communities would enjoy the right "to define, in accordance with the traditional political practices of each one [of the communities], the procedures for election of their authorities or representatives, and for the exercise of their own forms of internal governance, within bounds that will insure the unity of the national State." On December 1st, 1996, the EZLN publicly accepted the COCOPA's initiative, saying that although many important aspects of the San Andre's Accords were still lacking in the initiative, it was at least a step in the right direction. Following the EZLN's positive endorsement, the legislators of the COCOPA contacted the Interior Ministry for its response; and after first having received indications of approval, in the end did not receive either a "yes" or a "no" for an answer, but rather more "comments," as well as complaints that the document was "unconstitutional." Since this sounded disturbingly like a "no" to the COCOPA, the legislators decided to approach President Zedillo himself. On December 6th, the COCOPA left the presidential residence with "an important and confidential message" to the EZLN from the President, asking the Zapatistas to wait patiently for 15 days while Zedillo and his advisors further analyzed the COCOPA's initiative to "clear up their doubts" regarding the "problems" cited by the Interior Ministry. On December 20th, 1996, the government sent its response to the EZLN: an entirely different counterproposal, with 27 major objections and modifications to the COCOPA's initiative. Since the COCOPA had drafted its proposal straight out of the San Andre's Accords, it became clear that the government had either signed the Accords without thinking it would actually be asked to honor them, or that it had signed them without having read them in the first place. The EZLN rejected the government's counterproposal, both because it did not represent compliance with the San Andre's Accords and because it violated the procedural arrangement established by the COCOPA which terminated the observation/negotiation process when the legislative commission presented its final draft to the two sides. The legislators of the COCOPA, meanwhile, were astonished by the government's response to their initiative. The President's accusations that the autonomy clauses contained within the COCOPA's proposal would "create little States within a State" and "destroy national sovereignty" were not true, they

said, and appeared to be based on erroneous interpretations of the Accords. Even PRI deputies Jaime Marti'nez Veloz and Marco Antonio Michel Di'az insisted on the constitutionality of their proposal, saying that it is "absolutely respectful of the Constitution, and does not attempt to create any kind of state of exception in favor of the indigenous peoples." Although the COCOPA continued to back its original proposal, it nevertheless refused to present it before Congress, arguing that without support of the federal Executive it did not stand a chance of being approved. As military provocations against the Zapatistas steadily increased and paramilitary death squads took dozens of lives in the highlands and north of Chiapas throughout 1997, the EZLN continued to insist on the implementation of the San Andre's Accords as the only road toward a resumption of peace talks, adding that this could only be achieved through congressional approval of the COCOPA's proposal (without modifications). For its part, the federal government continued to attack both the COCOPA's proposal and the San Andre's Accords themselves for containing "unacceptable" language, especially regarding the autonomy issue. Meanwhile, hundreds of indigenous communities in Chiapas began to put their understanding of autonomy into practice, without waiting for approval from the federal government. Between 1996 and 1998, "Autonomous Municipal Councils" were created in 38 municipalities in the highlands, north, and jungle regions of Chiapas. Authorities were named to the councils according to the norms and customs of each autonomous region, and generally spent one year in their posts. Council decisions were made by consensus. Internal systems of justice and resource management were also created, all according to the rights of indigenous autonomy established by the San Andre's Accords.

COUNTERPROPOSALS

Following the paramilitary massacre of 45 unarmed civilians in Acteal, Chenalho' in late December, 1997, the government took on an increasingly hard line toward the EZLN, the San Andre's Accords, and the autonomous municipalities. It was evident by the growth of the autonomous municipalities, and by the popular reaction against the Acteal massacre, that the old strategy--that of administering a low-intensity war and waiting for the Zapatistas to simply get tired--was not working. The Interior Minister, the chief government negotiator, and the governor of Chiapas were all replaced, and a new, two-tier strategy emerged. The idea was to unconditionally force the EZLN back to the negotiating table by placing additional military pressure on the Zapatistas (surrounding, invading, or otherwise threatening indigenous communities), while simultaneously waging a public-relations war against the EZLN, the COCOPA, and the CONAI in an attempt to turn the tide of public opinion in the government's favor. Then, in late January, 1998, the Interior Ministry suddenly presented a new counterproposal for constitutional reforms on Indigenous Rights and Culture, this time with 20 pages of "observations" and modifications on the COCOPA's original 3-page document. After repeating over and over again that the government would only present such a constitutional reform initiative to Congress with the prior consent of the EZLN and a consensus among all political parties in Congress, Interior Minister Francisco Labastida declared on March 1st, 1998 that the executive proposal would indeed be presented to Congress for its approval during the next legislative session--regardless of whether it had the support of the EZLN, of all the political parties, or even of the COCOPA. The proposal was formally presented to the Senate by President Zedillo on March 15th, 1998. But unfortunately for Zedillo and Labastida, the 1997 legislative elections had given the lower house of Congress an opposition majority for the first time in contemporary Mexican history. And while the PRI deputies and Senators (where the PRI still

maintained a majority) offered their support to the presidential proposal, the center-left congressmen of the Party of the Democratic Revolution (PRD) generally refused to support any proposal for an "indigenous law" which was not based on the COCOPA initiative. And the center-right National Action Party (PAN), meanwhile, surprised everyone by presenting its own initiative of constitutional reforms to Congress regarding Indigenous Rights and Culture, a proposal which also differed significantly from the original COCOPA initiative. A legislative deadlock then ensued, which for the following three years has effectively torpedoed the peace process. The EZLN, for its part, rejected any attempt to legislate constitutional reforms on Indigenous Rights and Culture with proposals drafted outside of the dialogue and negotiation process - especially when those proposals are in theory based on the San Andre's Accords, but in practice are in fact an attempt to unilaterally renegotiate those agreements, as is the case with the PAN and Zedillo (PRI) proposals. One of the main differences between the presidential initiative and the San Andre's Accords is that the Accords clearly express the federal government's obligation to recognize the right of indigenous peoples to free determination and constitutional autonomy at many different levels, in accordance with Convention 169 of the International Labour Organisation (ratified by the Mexican Senate in 1991); whereas the government's initiative reduces this right to indigenous communities (eliminating references to land and territorial rights, as well as to indigenous "peoples"), and without mentioning how an indigenous community will be defined for these purposes (language? clothing? lifestyle? self-identification? government census?). Like the federal executive's initiative, the PAN's proposal also eliminates almost all references to the indigenous "peoples," substituting instead the idea of indigenous "communities" to be represented at the local level by the antiquated concept of "municipal charters." In addition, the PAN's proposal only allows for indigenous free determination and autonomy "at the municipal level, according to the terms established by state constitutions" (in other words, autonomy is not granted unless state governments decide to do so on their own). According to then-PAN deputy Germa'n Marti'nez Ca'zares (also a member of the COCOPA), the PAN's initiative was a project "with the principles and the platform of the National Action Party: defense of the municipality and the revindication of indigenous rights. All this is stated in our documents." In other words, the PAN's proposal was designed to place part of the PAN's political platform in the Constitution, rather than to honor the San Andre's Accords. The EZLN responded clearly to the government's attempt to renegotiate the accords. In a communique' drafted shortly after Interior Minister Labastida announced the imminent introduction of the President's proposal to Congress, the rebels wrote: "Upon deciding to present its initiative for an indigenous law before the Honorable Congress of the Union...the federal executive violates the San Andre's Accords in two respects: first, because the Accords say that they should be presented to organisms of national debate in a joint fashion; and second, because the federal executive's initiative does not recognize the documents signed by his representatives in San Andre's, and is based on the federal executive's conception of the indigenous problem rather than on the project to establish a new relationship between the indigenous peoples and the Mexican Nation, such as was agreed upon at the dialogue table...."

"The unilateral action of presenting a project for an indigenous law...without the consent of the other side--the EZLN and the indigenous peoples--does not mean there will be an untangling of the dialogue process. Rather, if allowed to move forward, it will cause its definitive collapse. With this action, trust and credibility are destroyed: you cannot dialogue and negotiate in order to reach agreements if there is not confidence that the sides will honor them. "

Why was the dialogue carried on for months if in the end the government was just going to present its own proposal, and not the one agreed upon? Why has the government rejected the Accords two years after they have been signed, and then presented a unilateral vision of the indigenous issue? "Because the government has never considered complying with the Accords or committing itself to the path of dialogue and negotiation. If it now decides to publicize its refusal to acknowledge the Accords and, passing above them, to turn its definition into law in the face of indigenous demands, it is because it would like public opinion to look favorably on a repressive action...."

THE GOVERNMENT OFFENSIVE AGAINST INDIGENOUS AUTONOMY

As the competing legislation on indigenous rights remained tied up in congressional committees (the COCOPA proposal was never officially presented), the government launched a military offensive against local de-facto indigenous autonomy in Chiapas. On April 10, 1998, a joint operation of the federal army, state police, and immigration officials carried out an attack on the community of Taniperla, the center of a newly-inaugurated autonomous municipality, named "Ricardo Flores Mago'n." It was the first of several measures taken by state interim governor Roberto Albores Guille'n in an attempt to honor his threat to "not permit the establishment of so-called autonomous municipalities" by the Zapatistas. Nine people were detained in the operation, including a human rights activist from the "Fray Lorenzo de la Nada" Human Rights Center and a Mexico City-based university professor. All were charged with "rebellion" and "usurping political functions" for their supposed roles in the autonomous municipality. An additional 12 foreign human rights observers were also arrested by immigration officials during the raid, and were promptly expelled from Mexico. The military, meanwhile, with the help of the paramilitary group MIRA, established a permanent base of occupation in the community. Four days later, the federal army, judicial police, public security forces and immigration officials launched a joint operation against the Zapatista community "10 de Abril" (in Altamirano). Several people were beaten during the operation, one of them severely; many people become sick from inhaling tear gas; and a number of women reported they were sexually harassed and/or assaulted. Three Norwegian human rights observers were also detained and were expelled from Mexico within 24 hours. On May 1, 1998, another joint military-police operation was launched against the community of Amparo Aguatinta, center of the "Tierra y Libertad" Autonomous Municipality. 61 people were arrested, and an undetermined number were wounded. As was the case with Taniperla, Amparo Aguatinta became an occupied town, controlled jointly by paramilitary groups and the federal army. On June 2, 30 families of EZLN sympathizers in the community of Nabil, Tenejapa, were driven out of their homes by paramilitary squads and public security police. On the following day, the municipality of Nicola's Ruiz-a constitutional municipality, operated legally by the opposition PRD party in coalition with civilian Zapatista sympathizers-was overrun and occupied by 3,000 troops of the Mexican Army, state public security police, state and federal judicial police, and members of the paramilitary group known as "Los Chinchulines". 167 people were detained in the operation, and many more were injured by clubs or tear gas grenades. On June 7, San Cristo'bal bishop Samuel Ruiz Garcí'a announced his resignation from the CONAI, accusing the government of closing down all possible paths for a continued role of the mediation. His resignation was followed by the self-dissolution of the CONAI by its remaining members, who also accused the government of provoking a war rather than seeking peace in Chiapas. Then, during a pre-dawn operation on June 10, more than 1,000 federal troops, judicial police, and state public security forces attacked various communities of the "San Juan de la Libertad" Autonomous Municipality (El Bosque), including its

municipal headquarters. San Juan de la Libertad had long been recognized as one of the best-functioning Zapatista municipalities, with more than 90% of the communities (representing 30,000 people) in the municipality expressing adherence to the autonomous local government. During the military and police operations--which included the burning of houses, tear gas and bazooka attacks, and the use of helicopter gunships to attack civilians--a gun battle broke out in the community of Unio'n Progreso between security forces and the Zapatista bases of support defending their community. At least six Zapatistas were killed, as was one policeman. Two other Zapatistas were killed by security forces in the town of Chavajeval a short time later. Nine people were wounded, and 57 were detained and taken to the Cerro Hueco state prison. All the remaining inhabitants of Chavajeval abandoned their homes and, as internally displaced refugees, marched toward the Zapatista center of Oventic on foot. One month later, the federal government presented a new "peace plan" for Chiapas. More of a threat than a peace plan, the proposal called for the EZLN to "hand in its weapons to the authorities" in exchange for "guarantees of personal security." The Zapatistas, obviously, declined the offer. It became clear that if the Zapatistas wanted to see the San Andre's Accords implemented at the constitutional level, and if they wished to engage in just and fair negotiations with the federal government in order to peacefully reach a political solution to the conflict in Chiapas, they would have to weather the remainder of the Zedillo presidency and hope for better possibilities with the next administration.

FOX AND THE EZLN

On July 2, 2000, history was made in Mexico as opposition presidential candidate Vicente Fox Quesada, a populist rancher representing the conservative National Action Party (PAN), not only won the elections, but was recognized as the winner by the Federal Electoral Institute, outgoing President Zedillo, and his rivals. In what was widely seen as an attempt to attract votes from supporters of center-left opposition candidate Cuauhte'moc Ca'rdenas, part of Fox's campaign included a series of commitments regarding the stalled peace process in Chiapas. Among those commitments was a promise to adopt the COCOPA initiative for constitutional implementation of the San Andre's Accords and to return the Mexican Army units deployed in Chiapas to their barracks, in order to pave the way for a resumption of negotiations with the Zapatistas. On December 2, 2000, one day after Vicente Fox took the presidential oath of office, EZLN spokesperson Subcomandante Marcos held a press conference in the rebel village of La Realidad, Chiapas. Marcos announced that the EZLN welcomed the change in government, that it continued to seek a peaceful resolution to the conflict in Chiapas, and that its five demands stated in 1996 as "preconditions" for resuming negotiations with the government had been reduced to three:

- a) Constitutional implementation of the San Andre's Accords via congressional approval of the COCOPA proposal;
- b) Liberation of all the Zapatista political prisoners, in Chiapas and elsewhere (one in Tabasco and one in Quere'taro);
- c) Complete withdrawal of federal army units from seven out of 259 military positions in Chiapas:
 - (a) Amador Hernandez
 - (b) Guadalupe Tepeyac
 - (c) Ri'o Euseba (near La Realidad)
 - (d) Jolnachoj (near Oventik)
 - (e) Roberto Barrios

- (f) La Garrucha
- (g) Cuxulja' (near Moise's Gandhi)

Fox responded positively to the press conference, immediately insisting he would gladly comply with all of the conditions. So far, he has not. Two months later, the Federal Army has withdrawn from Amador Herna'ndez, Jolnachoj, Roberto Barrios, and Cuxulja'. It remains entrenched in Guadalupe Tepeyac, Ri'o Euseba, and La Garrucha, and Fox has repeatedly made conflicting statements saying that the remaining three positions will not be demilitarized, that they will be demilitarized only after a peace agreement is signed with the EZLN, and that they will be demilitarized in coming weeks. The state government of Chiapas, led by newly-elected opposition governor Pablo Salazar Mendiguchi'a, has begun releasing Zapatista prisoners in Chiapas by granting them suspended sentences; but those with federal charges remain imprisoned, and President Fox has not pressed for their release. As of this writing, only 24 prisoners in total have been released, and over eighty are still incarcerated. Meanwhile, President Fox introduced the COCOPA initiative for implementation of the San Andre's Accords into the Senate as a presidential initiative. However, he insists that his responsibility stops there, as it is now up to Congress to decide what to do with the proposal. Since Fox has not made serious efforts at convincing even his own party members to support the COCOPA proposal, the PAN as a party continues to support its own counterproposal introduced in 1998. And the PRI, which remains the largest party in the Senate, is in no rush to support either initiative, saying instead-in good diplomatic fashion-that there are three indigenous rights proposals currently before Congress, and therefore the only way to approach the matter is to draft a new piece of legislation taking all three into account.

From Fox's myriad of statements regarding the Chiapas conflict, it has become clear that he has little grasp of the issues involved, but rather wants to sign a quick peace in Chiapas in order to score an important political and public relations victory, especially in the international sphere, where he is desperately trying to court investors by convincing them not only of the country's economic potential, but of its stability. And he seems to be increasingly angry and frustrated with a rebel army who won't sign peace at the drop of a hat with no guarantees, simply because Fox thinks it would be a good idea for foreign investment. The media, the private sector, and the Fox government itself have unleashed a public relations campaign in the past month designed to convince the public that the government has made sufficient- or too many-moves to convince the EZLN of its goodwill for peace, and that "it is now the EZLN's turn to demonstrate its will to negotiate." It also appears that Fox's idea of "negotiations" consists of a fifteen-minute discussion on disarmament, as he does not seem to understand the concept of negotiations on multiple issues which, like the original San Andre's talks in 1995 and 1996, can take months if not years. In early February, 2001, Fox even declared out of the blue-without any formal contact whatsoever having been established between the EZLN and his administration-that "Peace in Chiapas will be signed within a few weeks." It is in this context that a high-level EZLN delegation, in an attempt to move forward with the peace process in a serious fashion, will travel unarmed to Mexico City later this month. The primary political objective of the trip is to open a dialogue with federal legislators regarding the COCOPA proposal for implementation of the San Andre's Accords-not, as reported by President Fox, to open a dialogue with Fox or begin formal or informal negotiations with the executive branch of the federal government. Indeed, whether or not such negotiations eventually occur in the future depends largely on whether or not the Zapatistas are successful in convincing Congressional legislators-and

President Fox-that the San Andre's Accords represent obligations of the State. Otherwise, Fox's hope for a quick political solution in Chiapas will be far, far from reality.

Article 4

More of the Same for the Indigenous Peoples and Dialogue

La Jornada
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By Magdalena Gomez

On September 1, President Fox affixed his little star for the dialogue process and the recognition of the rights of the indigenous people. The message is clear: he believes he has already done everything, and, from his perspective, the only thing left is for the other side to accept the evidence the powers are presenting to them. How little does he know the indigenous peoples and their history of resistance and dignity.

During his speech, he announced that he had fulfilled the three peace signals, that the zapatista prisoners had been released, that the Army had withdrawn from the seven positions. He also noted that he had sent the proposal they had wanted to Congress which had, ultimately, approved the constitutional reform.

But, since he likes to respond to demands "quite fully", he added that he had put investment programs in place and, speaking for Congress, he announced that reforms to secondary laws are underway, which must be adapted to the changes. It does not matter that not everyone has been released, nor that there are ongoing denuncias from communities and human rights organizations about military movements. Generous, as he is, he stated that "in the name of pluralism we must recognize that there are different voices which need to be heard. Meanwhile, what the Permanent Constituyente has decided regarding constitutional reforms must be accepted. At this stage, it is obvious that the president sent the Cocopa proposal to the Congress without deeply sharing it. That is why he cannot appreciate the reasons of the EZLN, the CNI, and of numerous national and international civic organizations, for rejecting the contents of the counter-reform. What does listening mean? Permitting speaking and protesting? How does he reconcile his assessment about dialogue and the indigenous counter-reform with what he called his "political and moral commitment to the indigenous cause, convinced that Mexico cannot exist if we exclude them. Mexico cannot exist if we do not listen to them. Mexico cannot exist if we do not recognize that all Mexican men and women have a right to a dignified place under our skies"?

The subject has proved to be more complex than that rhetorical game, and the political class does not seem to be aware of that. If anyone doubts that the full realization of indigenous rights requires a profound State reform, they should observe the path of the indigenous peoples in their struggle for their full recognition. Two of the three branches have turned their backs on them. The EZLN uprising of 1994 opened the door for them to sit down at the table with representatives of the federal Executive. The signing of the San Andres Accords was achieved there (February 16, 1994), and their fulfillment necessitated a constitutional reform. It took five years for that proposal to be presented. And so it went. The Legislature ignored an agreement signed in the name of the State and

took Zedillo's old arguments out of the cupboard in order to draw up its own reform: the mutilated Cocopa. The indigenous peoples are now combining their political strategies and mobilizations with the presentation of various actions to the Supreme Court of Justice. The third of the branches into which the State is divided, which has not, up until now, revealed its positions on the indigenous peoples. Because, if one reviews that institution's resolutions, it would appear as if it has to do with another country. One in which no indigenous persons exist.

The extremely superficial level at which this is being addressed is worrisome. In its first year of government, the Executive is approaching Zedillo's position. The most minimal reflection has not been made about the political and social costs of the dialogue crisis. It was from that position that he once again congratulated the Congress regarding the decision it made on the reform. He did not even acknowledge receipt - in front of the President of the Court, who was there - or that he knew of the fact, that constitutional controversies exist which are pending resolution. The Executive, as well as the Congress and state legislatures, have been subpoenaed by the Judicial Branch. For political reasons, the President declared the indigenous counter-reform to be a done deal.

The human rights agenda did not fair any better in the first Report: nothing about the truth commission, or about releasing General Gallardo, or about the ecologist campesinos, or prisoners in Guerrero, nor about clarifying the case of the women murdered in Ciudad Juarez. Not forgetting Acteal, Aguas Blancas, El Charco.

We are certainly suffering from amnesia when we expect any other positions. We forget that the hegemony of the political class is represented by the PRI and the PAN, those who, at least in these matters, play ball together. Meanwhile, outside the official chambers, a social and indigenous movement is growing which is weaving alliances and defining strategies without the existence of a meeting point and place of dialogue with the State. Because the message from this first of September was that change has not come to Los Pinos.