

## **Commitments for Chiapas by the State and Federal Governments and the EZLN under Paragraph 1.3 of the Rules of Procedure**

16 February 1996

I.

### **PROPOSED CONSTITUTIONAL AMENDMENTS IN THE STATE OF CHIAPAS**

The indigenous rights to be enshrined in the General Constitution of the Republic must also be stated explicitly in the Constitution of the State of Chiapas to the full extent of their political, economic, social, and cultural scope.

The new relationship between the indigenous peoples and communities and the State requires the assurance and guarantee of new indigenous rights. In addition to the constitutional amendments already indicated within the framework of the current phase of the dialogue, this goal requires the enactment by the state legislature of amendments to the Chiapas state constitution and to the laws and regulations that derive therefrom.

Amendments to several articles of the state constitution are therefore needed to recognize and guarantee the fundamental rights of indigenous peoples. Presented below are the central themes of the legislative proposals that, in accordance with the amendments to the Federal Constitution, must be introduced into the legislation of the state of Chiapas.

#### **Constitutional Framework for Autonomy**

Recognition is given to the indigenous peoples' right to self-determination and autonomy as collectives with different cultures and with the ability to decide on issues central to them within the framework of the National State.

Recognition of indigenous peoples' autonomy will be promoted in accordance with the additions and amendments to the General Constitution of the Republic.

Recognition of the multicultural composition of the state of Chiapas, which originally stems from the presence of its indigenous peoples, will be promoted; an indigenous people is to be understood as one which enjoys historical continuity with the societies that predated the arrival of the Europeans and maintains its own identity and the will to preserve it, based on its own territory and different cultural, social, political, and economic characteristics.

The design of the constitutional framework for autonomy must establish the characteristics of self-determination and autonomy that best represent the different and legitimate aspirations and situations of the indigenous peoples.

Recognition is to be given to the indigenous peoples':

- a) Right to use, promote, and develop their languages and cultures and their political, social, economic, religious, and cultural customs and traditions.
- b) Right to practice, exercise, and develop their particular forms of political, economic, and social organization.
- c) Right to enjoy respect for their own autonomous methods of governance in the communities and municipalities they inhabit. Elections for indigenous authorities shall be carried out in accordance with the particular traditions of each people.
- d) Right to use and enjoy the natural resources of their territories, as defined by Articles 13.2 and 14 of ILO Convention 169, through the agency of government or administration established, with the exception of resources in strategic areas and those over which exclusive control falls to the Nation.
- e) Right of recognition for the traditional authorities of indigenous peoples and communities, and the acceptance of their jurisdictional forums which are compatible with current legal precepts.
- f) Right, in trials and proceedings involving indigenous people, for their habits, customs, and internal systems of governance for resolving conflicts to be taken into consideration.
- g) Right to participate in the design of the development plans, projects, and programs of the communities and municipalities they inhabit. The competent authorities shall undertake the gradual and orderly transfer of resources, so that they can themselves administer the public funds they are assigned and in order to strengthen indigenous participation in the different levels and spheres of government, control, and administration.
- h) Right to develop their own methods of and alternatives for labor organization.

The establishment of the right of, and applicable mechanisms for, indigenous women to participate, on an equal footing with men, in all matters dealing with the governance and development of indigenous peoples and to enjoy priority intervention in the economic, educational, and health-care projects specific to them.

Similarly, the Chiapas state government shall promote and protect the organization and development of indigenous families, providing for and recognizing the traditional ways in which they are constituted.

In addition, it shall promote indigenous peoples' access to the legal protection of the State, by incorporating their practices and methods for resolving conflicts, in agrarian, civil, criminal, and administrative proceedings; the state of Chiapas shall commit to adapting its local constitution to the amendments to the General Constitution of the Republic as they are approved.

To guarantee enjoyment of the above rights, the autonomy of the indigenous peoples based on their right to self-determination must be recognized. We propose recognizing the right of communities to freely combine into municipalities with a majority indigenous population and the right of several municipalities to join together in order to coordinate their actions as indigenous peoples.

These modifications require amendments to Article 4 of the Chiapas state constitution.

#### Redistribution of Municipalities

An updating of the municipal division of the State of Chiapas will be promoted by way of a Municipal Reform Commission, comprised pursuant to Chapter 11 of this document entitled Actions and Measures. The President promises to support all resolutions adopted by said Commission, which he shall put before Legislative Power, repealing current conditions calling for the approval of half of the town councils.

These proposals imply amendments to Article 3 of the Constitution of the State of Chiapas.

#### Expansion in political participation and representation

The basis of territorial organization and political and administrative organization in the State is the free municipality.

In order to administer the municipalities, there will be councils elected by direct popular vote, as well as indigenous councils elected according to practices and customs, subject to their prior regulations and their incorporation into the electoral law currently in force in the State of Chiapas, which shall be defined when it is considered as an indigenous council.

Organization figures such as the State Indigenous Council must be abolished or reformed in accordance with the organization forms of indigenous communities and peoples which arise as a result of the process of constitutional changes which take place.

These modifications imply amendments to Articles 29 and 58 of the Constitution of Chiapas.

#### Municipalities, the majority of whose people are indigenous

In municipalities where the majority of the people are indigenous, the right of the indigenous people and communities will be recognized to elect their traditional municipal authorities in accordance with their practices and customs and to have juridical validity granted to their institutions and practices.

In particular, recognition will be given to the system of offices, assembly, public opinion, and open discussion.

Municipal agents will be elected to and removed from office by the corresponding peoples and communities, and not through appointment by the municipal president.

It is best to plan ahead for mechanisms enabling the indigenous peoples and communities to participate in electoral processes, without the necessary participation of political parties. These mechanisms must guarantee the effective proportioning of natives on civic election councils and in the diffusion and supervision of these processes.

Communities and municipalities the majority of whose population is indigenous, by the powers expressly granted to them under the law, may meet and form associations among themselves so as to undertake actions in the region which optimize efforts and resources, thus raising the capacity for administration, development and coordination of their actions as indigenous peoples. The competent authorities shall effect the orderly and gradual transfer of resources so that they administer the public funds set aside for them and strengthen indigenous participation in government, management and administration in its different spheres and levels.

The practices and customs which in mainly indigenous towns and municipalities define the specific duration terms of offices must be respected.

Municipalities with a mainly indigenous population may submit to local Congress the name they wish their municipality to have.

Municipalities with a mainly indigenous population may refuse to recognize the municipal authorities in power if the latter commits irresponsible acts which contravene the rights or practices and customs of the former, and local Congress shall endeavor to respect and support its decision.

These modifications imply amendment and addition to Articles 59 and 60 of the Constitution of Chiapas.

#### Guarantees of full access to justice

That the legislative, administrative and judicial authorities, within their spheres of competency, in the matters in which they have to intervene and at the time of decreeing their resolutions regarding affected indigenous peoples, take into consideration the latter's condition of culture, their system of internal regulations and other special related circumstances so that they may receive the guarantees to which they are entitled under the Political Constitution of the United Mexican States :

- a. The use of their own tongue in statements and affidavits, which must be recorded with a translation into Spanish. Statements and affidavits given in

indigenous tongues shall be recorded on audio tape and these recordings shall be annexed to the particular file, should consultation be necessary.

b. The appointment of interpreters, with their express approval, who command both the native tongue as well as Spanish, and who share and respect the culture and have a knowledge of the indigenous juridical system.

c. That the court-appointed defense counsel to which they are entitled know the indigenous tongue, culture, and juridical system.

d. The execution, in cases where deemed necessary, of anthropological experts' reports so as to examine the practices and customs, or any other cultural factor which might come to bear on the judicial opinion. Priority shall be given to the intervention of the indigenous authorities in appointing the experts or testifying to the veracity of the latter's credentials.

These modifications imply amendments to Article 10 of the Constitution of Chiapas.

The reasons for the suspension of political rights referenced under the current Article 11 of the Political Constitution of the State apply only to the rights to vote or be voted for in the different election levels. In the case of section II of said article, when the suspension is owing to having been deprived of liberty without the right to provisional freedom and that the full enjoyment of these rights is recovered as of the moment the cause ceases which gave rise to said suspension.

These modifications imply amendments to Article 11 of the Constitution of Chiapas.

That agents of the State's Attorney's Office for the communities and municipalities inhabited by indigenous peoples be appointed based on proposals from the citizens of those communities, and may be removed from their posts when proven guilty of unlawful acts following accusations made against them before the respective legal bodies established for the purpose in these areas.

These modifications imply amendments to Article 48 of the Constitution of Chiapas.

In the framework of the amendments to the General Constitution of the Republic, in affairs of autonomy for the indigenous communities, it is proposed that specific competency and jurisdictional dimensions be granted to the indigenous authorities.

These modifications imply amendments to Article 56 of the Constitution of Chiapas.

Indigenous intercultural bilingual education

Recognition of the multi-cultural composition existing in the State of Chiapas, as well as the respect of the right of its indigenous peoples to promote and spread the significant elements which make up their culture creates the need, on the one hand, to incorporate

into the local Constitution the right of the citizens of Chiapas to receive an education pursuant to the letter and spirit of the federal constitution's Article 3 and regulations of the General Education Act and, on the other, in the framework of the amendments set forth in the Federal Constitution, it is necessary that local reform take into consideration the following :

- a) That the education received by all citizens of Chiapas spread and promote the history, customs, traditions and all those values which form part of our cultural roots and national identity.
- b) Indigenous education must be bilingual and intercultural.
- c) The State must guarantee the indigenous peoples an education which respects and avails of their knowledge, traditions, and forms of organization.
- d) Respect the educational tasks of the indigenous peoples within their cultural dimension.
- e) That in the organization and formulation of school study plans and programs, the indigenous peoples have priority participation for decision making as regards regional content and cultural diversity.

These modifications imply amendments to Article 4 of the Constitution of Chiapas.

## II.

### AMENDMENT PROPOSAL TO THE SECONDARY STATUTES OF THE STATE OF CHIAPAS

As regards amendments to the secondary statutes, State Congress will be asked to bring the normative juridical framework into line with the constitutional amendments that come about. The government of the State of Chiapas promises to promptly carry out the amendments within its power in the opportune legislative appointment. In particular, amendments are required to the Civil Code for the State of Chiapas, the Penal Code for the Free and Sovereign State of Chiapas.

Likewise, in the corresponding legislative proceedings the Federal Government will promote follow-up to the amendments which arise so they may be incorporated into Mexican positive law.

The State government will promote before local Congress a bill on the Justice and Agrarian Development Act, which includes instrumental mandates for dissolving and penalizing latifundium owners and establishes the necessary conditions so that agrarian nuclei, communities, and indigenous peoples may generate their own development by availing of the resources of their own land, pursuant to Articles 13.2 and 14 of Convention 169 of the ILO. It is proposed that the agrarian aspect be reviewed based on

the consensus and agreement reached at the Welfare and Development Table established under the Procedure Regulations of the dialog process.