

Joint Declaration that the Federal Government and the EZLN shall submit to National Debating and Decision-Making Bodies

16 February 1996.

Within the framework of the dialogue between the EZLN and the Federal Government to reach an Agreement for Concord and Pacification with Justice and Dignity, held at San Andrés, Chiapas, the Parties have discussed the topic of Indigenous Rights and Culture and have agreed, under the terms of subparagraph 1.5 of the Rules of Procedure, to issue the present declaration.

The Resolutive Plenary Meeting of the EZLN and the Federal Government on Indigenous Rights and Culture is the most appropriate occasion and forum for the Federal Government and the EZLN to present the proposal for a “New relationship between indigenous peoples and the State.”

This declaration contains the necessary principles and foundations for building a social pact to establish a new relationship between indigenous peoples, society and the State. This social pact for a new relationship is based on the conviction that a new national and local situation for indigenous peoples will only take root and culminate with the participation of the indigenous peoples themselves and society as a whole, within the framework of a thorough-going reform of the State.

CONTEXT OF THE NEW RELATIONSHIP

1. History confirms that indigenous peoples have been the object of forms of subordination, inequality and discrimination which have determined a structural situation of poverty, exploitation and political exclusion. It also confirms that they have persisted in the presence of a legal order whose ideal has been cultural standardization and assimilation. It confirms, finally, that overcoming that reality requires new, profound, participatory and converging actions on the part of government and society, including, above all, indigenous peoples themselves.

It requires a new State policy, not circumstantial, which the current Federal Government commits itself to developing within the framework of a thorough-going reform of the State which promotes actions to raise the levels of well-being, development and justice of indigenous peoples and strengthens their participation in the various decision-making bodies and processes, with an inclusive policy.

It requires the cooperation of all citizens and civil organizations, which the current Federal Government commits itself to favoring, in order to do away with discriminatory mentalities, attitudes and behavior toward indigenous peoples, and to develop a culture of plurality and tolerance that accepts their views of the world, their ways of life and their ideas of development.

It requires the participation of indigenous peoples, which the current Federal Government commits itself to recognizing and encouraging, so that they become the key players in decisions affecting their lives, and reaffirm their condition as Mexicans with full exercise of the rights they have rightfully earned for their role in the building of Mexico.

In short, it requires a new effort of national unity, which the current Federal Government, with the participation of indigenous peoples and society as a whole, commits itself to promoting, so that there are no Mexicans with restricted capabilities, which should serve to aggrandize Mexico by proudly assuming the centuries-old history and spiritual wealth of indigenous peoples and to fully develop all of its economic, political, social and cultural capabilities.

2. The conditions of poverty and marginalization affecting indigenous peoples reflect the unequal nature of the development of Mexican society and define the scope of the demands for social justice that the State should address in order to contribute to the progress of this important nucleus of Mexicans.

The Federal Government is conscious of that responsibility and expresses its firm will to promote the policies and undertake the actions to deal with that national task. It fully assumes the commitment to strengthen the participation of indigenous peoples in national development, within a framework of respect for their traditions, institutions and social organizations, and of greater opportunities to improve their living standards, of broader political and cultural spaces for future progress, and of greater access to the joint building of a more modern and efficient society, more vigorous and united, more pluralistic and tolerant, that equitably distributes the benefits of development. Indigenous peoples will contribute with the best of their own cultures to that building of a pluralistic and tolerant society.

Mexico's development prospects are closely contingent upon the historical task of eliminating poverty and marginalization and insufficient political participation by millions of Mexican indigenous people. The objective of building a more just and less unequal society is the cornerstone for attaining more modern development and building a more democratic society. These goals are an essential part of the national project that the Mexican people want, not only as a moral commitment of society and of indigenous peoples and as an unavoidable responsibility of the Government of the Republic, but also as an indispensable condition for ensuring progress towards better levels of national development.

For the Federal Government, the historical task and the current social and structural demand of combatting the poverty and marginalization of indigenous peoples requires their participation and that of society as a whole as key factors for promoting the necessary establishment of a new relationship between the country's indigenous peoples and the State, its institutions and levels of government.

This new relationship should overcome the proposition of cultural integration to recognize indigenous peoples as new subjects of law, in view of their historical origin,

their demands, the pluricultural nature of the Mexican nation and the international commitments signed by the Mexican State, particularly Convention 169 of the ILO.

The Federal Government assumes that the establishment of this new relationship with indigenous peoples assigns it the commitment of contributing to solving their essential problems, and that this action should be expressed by systematic and specific policies, in keeping with the patterns imposed by regional diversities and the characteristics of each indigenous people.

COMMITMENTS OF THE FEDERAL GOVERNMENT TO INDIGENOUS PEOPLES

3. The responsibilities that the Federal Government takes on as commitments that the Mexican State should fulfill with indigenous peoples in their new relationship are:

1. Recognizing indigenous peoples in the general Constitution. The State should promote recognition, as a constitutional guarantee, of the right to free determination of indigenous peoples, who are those who “descend from populations that inhabited the country during the era of the conquest or colonization and of the establishment of the current state borders and that, irrespective of their legal status, conserve their own social, economic, cultural and political institutions, or part of them. Awareness of their indigenous identity should be considered a fundamental criterion for determining the groups to which the provisions on indigenous peoples apply.” The right to free determination shall be exercised within a constitutional framework of autonomy, ensuring national unity. They may, consequently, decide upon their form of internal government and their ways of organizing themselves politically, socially, economically and culturally. The constitutional framework of autonomy will make it possible to attain the effectiveness of social, economic, cultural and political rights with respect to their identity.

2. Broadening political participation and representation. The State should promote legal and legislative changes to broaden local and national political participation and representation of indigenous peoples, respecting their different situations and traditions, and strengthening a new federalism in the Mexican Republic. The claim that the voices and demands of indigenous peoples be heard and addressed should lead to recognition of the political, economic, social and cultural rights of indigenous peoples, within the framework of the Mexican nation, and to a decisive reform of the State with regard to institutional practices. The Federal Government shall promote the constitutional and legal amendments that correspond to the agreements and consensuses reached.

3. Guaranteeing full access to justice. The State should ensure full access by indigenous peoples to the jurisdiction of the Mexican State, with recognition of and respect for cultural specificities and for their internal regulatory systems, guaranteeing full respect for human rights. It shall promote that Mexican substantive law recognize the authorities, norms and internal dispute settlement

procedures of indigenous peoples and communities, in order to administer justice on the basis of their internal regulatory systems, and that their proceedings and decisions be accredited by the State's jurisdictional authorities by means of simple procedures.

4. Promoting the cultural manifestations of indigenous peoples. The State should promote national and local cultural policies of recognition and broadening of the spaces of indigenous peoples for the production, recreation and dissemination of their cultures; of promotion and coordination of the activities of institutions dedicated to the development of indigenous cultures, with the active participation of indigenous peoples, and of incorporation of the knowledge of different cultural practices into the study plans and programs of public and private educational institutions. Knowledge of indigenous cultures is national enrichment and a necessary step in eliminating misunderstandings and discrimination towards indigenous peoples.

5. Ensuring education and training. The State should ensure for indigenous peoples an education that respects and takes advantage of their knowledge, traditions and forms of organization. With processes of comprehensive education in the communities that broaden their access to culture, science and technology; professional education to improve their development prospects; training and technical assistance that improves the production processes and quality of their goods; and training for organization that raises communities' management capacities. The State should respect the educational activities of indigenous peoples within their own cultural space. The education provided by the State should be intercultural. Impetus shall be given to the integration of regional educational networks that offer the communities the possibility of access to the different levels of education.

6. Guaranteeing satisfaction of basic needs. The State should guarantee conditions for indigenous peoples that allow them to take care of their nutrition, health care and housing services in a satisfactory manner and at least an acceptable level of well-being. Social policy shall promote priority programs so that the infant population of indigenous peoples improves its levels of health and nutrition, and support is provided for the activities and training of indigenous women.

7. Promoting production and employment. The State should promote the economic base of indigenous peoples with specific development strategies agreed upon with them, that take advantage of their human capabilities by means of industrial and agroindustrial activities that cover their needs and produce surpluses for sale in markets, that contribute to generating employment through production processes that increase the added value of their resources and that improve the provision of basic services in the communities and their regional environment. Indigenous communities' rural development programs shall be supported by planning processes in which their representatives shall play a central role from the design stage until execution.

8. Protecting indigenous migrants. The State should promote specific social policies to protect indigenous migrants both within the national territory and beyond its borders, with inter-institutional actions of support for the work and education of women, of health care and education for children and young people, which in rural regions should be coordinated in the areas of contribution and of attraction of agricultural day laborers.

PRINCIPLES OF THE NEW RELATIONSHIP

4. The Federal Government undertakes the commitment that the Principles that should govern the actions of the State in its new relationship with indigenous peoples are:

1. Pluralism. The dealings between the peoples and cultures that make up Mexican society should be based on respect for their differences, under the assumption of their fundamental equality. Consequently, it should be the policy of the State to regulate its own actions and foster a pluralistic approach in society which actively combats all forms of discrimination and corrects economic and social inequalities. It will be equally necessary to advance toward the design of a legal order nourished by a pluricultural approach that lessens intercultural dialogue, with common standards for all Mexicans and respect for the internal regulatory systems of indigenous peoples. Recognition and promotion of the pluricultural nature of the nation means that, in order to strengthen the culture of diversity and tolerance within a framework of national unity, the actions of the State and its institutions should be carried out without making distinctions between indigenous and non-indigenous persons or in the face of any collective sociocultural option. The nation's development should be supported by plurality, understood as the peaceful, productive, respectful and equitable coexistence of diversity.

2. Sustainability. It is essential and urgent to ensure the continuance of nature and culture in the terms used in some way by indigenous peoples, as defined in Article 13.2 of Convention 169 of the ILO. By respecting the cultural diversity of indigenous peoples, the actions of the Mexican State's levels of government and institutions should consider criteria of sustainability. The traditional means of tapping natural resources put into practice by indigenous peoples and communities form part of their legislative strategies, of the right of indigenous peoples and communities to receive the corresponding settlement when the tapping of natural resources carried out by the State causes damage in their habitat which harms their cultural reproduction. In cases in which damage has already been caused and the peoples show that the settlement granted does not permit their cultural reproduction, the establishment of review mechanisms to allow the State and those affected to jointly analyze the specific case shall be promoted. In both cases the settlement mechanisms shall seek to ensure the sustainable development of indigenous peoples and communities. By common accord with the indigenous peoples, the State shall promote actions to rehabilitate those

territories as defined in Article 13.2 of Convention 169 of the ILO, and shall support its initiatives to create conditions that ensure the sustainability of their production and living practices.

3. Comprehensiveness. The State should promote comprehensive and concurrent actions by the institutions and levels of government that influence the life of indigenous peoples, avoiding partial approaches that make public policies react. It should also favor honest and transparent management of the public resources allocated to the development of indigenous peoples, by means of greater indigenous participation in decision-making and in the social comptrollership of public spending.

4. The state should encourage institutional actions promoting the participation of indigenous peoples and communities and respecting their forms of internal organization, in order to attain the goal of strengthening their capacity to be decisive players in their own development. It should promote, in collaboration with the organizational expressions of indigenous peoples, that they strengthen their own capabilities for decision-making and management. And it should ensure appropriate joint responsibility by the government and indigenous peoples in the design, planning, execution and evaluation of actions that have a bearing on indigenous persons. Since policies in indigenous areas should not only be conceived with the peoples themselves but also implemented with them, the current indigenist and social development institutions operating there should be transformed into others conceived and operated jointly with the State by indigenous peoples themselves.

5. Free determination. The State shall respect the exercise of free determination of indigenous peoples in each of the spheres and levels in which they will enforce and practice their separate autonomy, without detriment to national sovereignty and within the new regulatory framework for indigenous peoples. This involves respecting their identities, cultures and forms of social organization. It shall also respect the capabilities of indigenous peoples and communities to determine their own development. And as long as the national and public interest is respected, the Mexican State's different levels of government and institutions shall not intervene unilaterally in the affairs and decisions of indigenous peoples and communities, in their organizations and forms of representation, and in their current strategies for the tapping of natural resources.

NEW LEGAL FRAMEWORK

5. The establishment of the new relationship between indigenous peoples and the State is necessarily based on the building of a new legal framework at national level and in the states. The Federal Government assumes the commitment to promote the following actions:

1. Recognition in the national Political Constitution of indigenous demands that should be embodied as legitimate rights.

a) Political rights. To strengthen their political representation and participation in the legislatures and in the government, with respect for their traditions and in order to guarantee the validity of their own forms of internal government.

b) Jurisdictional rights. To accept their own procedures to designate their authorities and their regulatory systems for the settlement of internal disputes, with respect for human rights.

c) Social rights. To guarantee their forms of social organization, satisfaction of their essential human needs and their internal institutions.

d) Economic rights. To develop their organization schemes and alternatives for work and improve efficiency in production.

e) Cultural rights. To develop their creativity and cultural diversity and the continuance of their identities.

2. Recognition in national legislation of the communities as public law entities, the right of free association in municipalities with predominantly indigenous populations, as well as the right of various municipalities to associate, in order to coordinate their actions as indigenous peoples. The competent authorities shall carry out the gradual and orderly transfer of resources, so that they themselves administer the public funds allocated to them, and to strengthen indigenous participation in government, management and administration in their different spheres and levels. It will be the task of the state legislatures to determine, if applicable, the functions and powers that could be transferred to them.

3. Recognition that the characteristics of free determination and autonomy that best express the diverse and legitimate situations and aspirations of indigenous peoples should be established in the legislation of the states of the Republic.

In determining the legal framework and defining particular aspects of the new relationship between the State and indigenous peoples, the Legislative Branch shall be decisive. The Government of the Republic shall propose to the Congress of the Union that it establish a new national legal framework for indigenous peoples, and to state congresses that they legally embody the specificities that best reflect the diverse situations and aspirations of the country's indigenous peoples.

4. Various articles in the Constitution of the Republic should be amended. The Federal Government commits itself to promoting the following amendments:

a) Article 4. So that the demands indicated above (points 1 and 2) are embodied as legitimate rights.

b) Article 115. So that the federal pact is strengthened and the participation of indigenous communities in public affairs is guaranteed in the composition of town councils and of predominantly indigenous municipalities.

c) Other articles concerning the above-mentioned amendments and to express the content of the new relationship between the State and indigenous peoples in the Constitution.

5. The corresponding regulatory laws and legal instruments of a formal nature should establish the provisions to make them compatible with the constitutional amendments on new indigenous rights.

In this regard, the Federal Government commits itself to promoting, on the basis of the constitutional amendments, the issuance of the general legislation making it possible immediately to count on legal mechanisms and procedures so that:

a) the review and amendment of different federal laws is initiated;

b) legislation is passed in the states of the Republic.

6. In the legislation of the states of the Republic relative to the characteristics of indigenous free determination and autonomy, the Federal Government recognizes that the following elements should be taken into account:

a) Where different indigenous peoples with different cultures and geographical situations coexist, it would not be appropriate to adopt a uniform criterion on the characteristics of indigenous autonomy to be legislated.

b) The different specific forms of autonomy should be defined with the indigenous peoples themselves.

c) In order to determine in a flexible manner the specific forms of free determination and autonomy which best reflect each indigenous people's situation and aspirations, several criteria should be considered, such as: the validity of its internal regulatory systems and community institutions; the degrees of intercommunity, intermunicipal and state relationship; the presence and relationship between indigenous and non-indigenous peoples; the pattern of population settlements and the geographical situation; the degrees of participation in political representation bodies and levels of government, among others.

The Federal Government commits itself, within a framework of full republican respect, to promoting that the Governments and legislatures of the states of the Republic consider, among others, these elements as criteria in legislation to build the characteristics of indigenous free determination and autonomy.

CONCLUSION

1. The conflict that began on January 1, 1994 in Chiapas produced the feeling in Mexican society that a new relationship between the State and society and the country's indigenous peoples was necessary.
2. The Federal Government undertakes the commitment to construct, with the different sectors of society and in a new federalism, a new social pact that modifies at the root social, political, economic and cultural relations with indigenous peoples. The pact should eradicate the daily forms of public life that generate and reproduce subordination, inequality and discrimination and should make effective the rights and guarantees that pertain to them: the right to their cultural difference; the right to their habitat; the use and enjoyment of the territory in accordance with Article 13.2 of Convention 169 of the ILO; the right to community political self-management; the right to the development of their culture; the right to their traditional systems of production; the right to the management and execution of their own development projects.
3. The new relationship between the Mexican State and indigenous peoples is based on respect for difference, on recognition of indigenous identities as intrinsic components of our nationality, and on acceptance of their particular characteristics as basic elements consubstantial with our legal order, based on pluricultural relations.

The new relationship between indigenous peoples and the Mexican State should guarantee inclusion, ongoing dialogue, and consensus on development in all its aspects. Neither a unilateral approach nor underestimation of indigenous capabilities in building their future shall define State policies.

Quite the contrary: it will be the indigenous people who, within the framework of the Constitution and in full enjoyment of their rights, will decide on means and methods for directing their own transformational processes.