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Joint Proposals That the Federal Government and the Ezln Agree to Remit to the National Debating and Decision-Making Bodies in Accordance with Paragraph 1.4 Of the Rules of Procedure

16 February 1996

The parties agree to remit the following proposals, jointly agreed upon, to the national debating and decision-making bodies:

In the framework of the new relationship between the State and the indigenous peoples, their rights need to be recognized, assured, and guaranteed under a renewed federalist arrangement. This goal implies working for reforms and amendments to the Federal Constitution, to the laws that derive from it, and to the state constitutions and local legislation, in order to agree upon, first, the establishment of general bases that will ensure the nation's objectives and unity and, second, to provide states with a real possibility of legislating and acting in accordance with the particular features of the indigenous component of each.

I

1. Promoting a far-reaching transformation of the State and of its political, social, cultural, and economic relations with the indigenous peoples that will satisfy their demands for justice.
2. Promoting the introduction of a new, inclusive social pact based on awareness of the fundamental plurality of Mexican society and on the contribution that the indigenous peoples can make to national unity through the constitutional recognition of the rights and, in particular, of their right to self-determination and autonomy.
3. The legal amendments introduced must be based on the fundamental legal precept of the equality of all Mexicans before the law and the judiciary and on the rejection of special jurisdictions that would privilege certain individuals, respecting the principle that the Mexican nation has a multicultural composition that originally stems from its indigenous peoples.
4. The constitutional amendments represent a central point for the indigenous peoples' new relationship with the State within the framework of the reform of the State, in order to ensure that their demands enjoy the support of the rule of law.

II

1. The creation of a new legal framework that will establish a new relationship between the indigenous peoples and the State, based on recognition of their right to self-determination and of the legal, political, social, economic, and cultural rights derived therefrom. The new constitutional provisions must include a framework of autonomy.
2. This legal framework has to be built on the basis of recognition for the self-determination of the indigenous peoples which, by reason of their historical continuity with the societies that predated the imposition of the colonial regime, maintain their own identities, awareness thereof, and the will to preserve them based on their particular different cultural, social, political, and economic characteristics. These features make them peoples and, as such, they are entitled to the right of self-determination.

Autonomy is the concrete expression of the exercise of the right of self-determination, expressed as a framework erected as a part of the National State. The indigenous peoples may therefore decide on their forms of internal governance and the ways in which they organize themselves politically, socially, economically, and culturally. Within the new constitutional framework of autonomy, the exercise of the indigenous peoples' right to self-determination in each of the spheres in which they choose to make use of it shall be respected, and this right may cover one or more indigenous peoples in accordance with the particular and specific circumstances of each state. The indigenous peoples' exercise of autonomy will contribute to the unity and democratization of the nation's life and will strengthen the country's sovereignty.

It is appropriate to recognize, as one of the indigenous peoples' basic demands, their right to autonomy as collectives with different cultures and with the ability to decide on issues central to them within the framework of the National State. This recognition is based on Convention 169 of the ILO as ratified by the Federal Senate. Thus, the recognition of autonomy is based on the concept of indigenous people as defined by notions of history and of national identity.

3. The nation's laws must recognize the indigenous peoples' entitlement to the rights of self-determination and autonomy,
4. It is suggested that the Congress of the Union should, in the nation's laws, acknowledge that communities, as entities under public law, enjoy the right to freely associate in municipalities with a majority indigenous population and the right of several municipalities to associate with each other in order to coordinate their actions as indigenous peoples.

The competent authorities shall undertake the gradual and orderly transfer of resources, so that the indigenous peoples 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. It shall fall to the state legislatures to determine what, if any, functions and powers can be transferred to them.

The state legislatures may undertake the redefinition of municipal boundaries in those territories inhabited by indigenous peoples based on consultation with the inhabitants thereof.

In order to strengthen the federal pact, a thorough revision is needed not only of the relations

between the Federation and the state governments, but also between those governments and the municipalities.

The creation of municipalities with majority indigenous populations is proposed not merely as a different type of municipality, but rather as that type in which said political institution's general conceptual framework will allow indigenous participation in its creation and conformation and, at the same time, encourage and incorporate the indigenous communities in the creation of municipal authorities.

With regard to municipalities with majority indigenous populations and to reaffirm the full sense of the free municipality upon which federalism is based, it is deemed necessary to strengthen them constitutionally so that:

- a. they are provided with powers to guarantee enjoyment of autonomy by the indigenous peoples;
 - b. the organization set forth in the Organic Municipality Law is revised in order to adapt and orient them to the new challenges of development and, most particularly, to indigenous peoples' needs and new forms of organization.
5. It is proposed that the Federal Congress and state legislatures should recognize and establish the characteristics of self-determination and the levels and forms of autonomy, bearing in mind that this entails:
- a. *Territory.* All indigenous peoples inhabit a territory covering the entire habitat that they occupy or in some way use. This territory is the material basis for their reproduction as a people and the expression of the indissoluble unity between man, land, and nature.
 - b. *Sphere of application.* The jurisdiction is the spatial, material, and personal sphere of currency and validity in which the indigenous peoples exercise their rights. The Mexican State shall recognize the existence thereof.
 - c. *Authorities.* It is necessary to configure powers concurrent with the agencies of the federal, state, and municipal governments, together with a distribution of authorities covering political, administrative, economic, social, cultural, educational, and judicial matters, the management of resources, and environmental protection among these political bodies of the government of the Mexican State, in order to offer a timely response to the indigenous peoples' requirements and demands. Similarly, it is necessary to specify the powers, functions, and resources that may be transferred to indigenous peoples and communities pursuant to the guidelines set forth in Paragraph 5.2 of the "Joint Declarations" document, together with the different mechanisms for participation by these communities and peoples vis-à-vis government agencies, enabling their interaction and the coordination of their actions with those agencies, particularly at the municipal level.
 - d. *Independent development.* It is the indigenous peoples and communities themselves who must decide on their development programs and projects. It is therefore deemed appropriate for the local and federal legislatures to incorporate appropriate mechanisms to encourage the indigenous peoples' participation in all levels of

development planning, in order for such planning to be designed in accordance with their aspirations, needs, and priorities.

- e. *Participation on national and state representative bodies.* The national and local political representation and participation of the indigenous peoples needs to be ensured in the legislative arena and within the different levels of government, with respect for their different socio-cultural characteristics, in order to construct a new federalism.

It is proposed that the Congress of the Union should recognize, in the constitutional and political amendments they reach, the right of indigenous women to participate, on an equal footing with men, at all levels of government as well as in the development of the indigenous peoples.

6. It is proposed that the Congress of the Union and the legislatures of the nation's states, in recognition of indigenous autonomy and for the determination of its levels, should take into consideration the main rights enshrined therein, with the establishment of the mechanisms needed to ensure their free exercise. Said rights include, primarily, the following:
 - a. the right to develop their particular forms of social, cultural, political, and economic organization;
 - b. obtaining recognition for their internal systems of governance as they apply to regulation and punishment, provided they do not infringe constitutional guarantees or human rights, particularly those applicable to women;
 - c. improved access to the legal protection of the State;
 - d. collective access to the use and enjoyment of natural resources, except for those over which direct control falls to the Nation;
 - e. promoting the development of the different components of their identity and cultural heritage;
 - f. interacting at the different levels of political representation, of government, and of the administration of justice;
 - g. agreeing, with other communities of their people or of other peoples, to combine efforts and coordinate actions for the optimization of their resources, the furtherance of regional development projects and, in general, the promotion and defense of their interests;
 - h. freely appointing their representatives, both within their communities and on municipal government bodies, and their authorities as indigenous peoples, in accordance with the particular institutions and traditions of each people;
 - i. promoting and developing their languages and cultures, together with their political, social, economic, religious, and cultural customs and traditions.

1. *Expanded political participation and representation. Strengthened municipalities.* At the constitutional level, mechanisms should be provided to:
 - a. ensure adequate political representation of indigenous peoples and communities in the Congress of the Union and local legislatures, including new guidelines for the demarcation of electoral districts inhabited by indigenous peoples and communities;
 - b. allow their participation in electoral processes without the need for the participation of political parties;
 - c. guarantee the effective participation of indigenous peoples in the dissemination and oversight of those processes;
 - d. guarantee the organization of the indigenous peoples' and communities' own electoral or appointment processes at the internal level;
 - e. recognize systems of community office and other organizational forms, methods for appointing representatives and decision-making by assemblies, and popular consultation;
 - f. establish that municipal agents or officials are to be elected or, if applicable, appointed by the corresponding peoples or communities;
 - g. provide, within state legislation, for mechanisms to allow the review and, when applicable, the modification of municipality names at the request of the inhabitants of the affected areas.

2. *Guarantee of full access to justice.* The State must guarantee the peoples' full access to the jurisdiction of the Mexican state, with recognition of and respect for their own internal systems of governance and guaranteeing full observance of human rights. It shall work for the recognition by Mexican positive law of authorities, rules, and procedures for resolving internal conflicts, to be understood as referring to conflicts in the internal coexistence of the peoples and communities, for the administration of justice in accordance with their internal systems of governance, and, by means of simple procedures, for their rulings and decisions to enjoy the validation of the judicial authorities of the State.

The jurisdiction of appointed authorities within the communities, indigenous peoples, and municipalities must be recognized by means of a redistribution of powers from the state sphere, enabling those authorities to settle internal disputes of coexistence, the recognition and resolution of which will lead to an improved administration of justice and enforcement of the law.

The marginalization in which the indigenous peoples live and their underprivileged conditions of access to the justice system make it necessary to thoroughly review the federal and state judicial framework, in order to guarantee effective access by indigenous peoples and, when appropriate, the members thereof to the jurisdiction of the State, thereby avoiding a one-sided administration of justice harmful to this sector of the population.

The legislative amendments that elaborate on the internal systems of governance should stipulate that when sanctions are imposed on members of indigenous peoples, the economic,

social, and cultural characteristics of the individuals being sanctioned must be taken into account, preference must be given to punishments other than imprisonment and, preferably, they must be allowed to serve their sentences in the establishments closest to their homes; when applicable, encouragement must be given for their reintegration into the community, which is an essential mechanism of social readaptation.

Emphasis shall be placed on the judicial practices and customs of indigenous communities as a source of law applicable to the procedures and resolution of disputes under their authority; in addition, as a constitutional guarantee, they should be taken into consideration at federal and local trials in which indigenous people are involved.

3. *Understanding of and respect for indigenous culture.* It is necessary to enshrine, at the constitutional level, the right of all Mexicans to a multicultural education that recognizes, disseminates, and promotes the history, customs, traditions, and general culture of the indigenous peoples, who are the root of our national identity.

The Federal Government shall promote the laws and policies necessary for the indigenous languages of each state to enjoy the same social value as Spanish, and it shall promote the development of practices to prevent discrimination against them in legal and administrative proceedings.

The Federal Government undertakes to promote, develop, preserve, and practice education in indigenous languages; acquisition of reading and writing skills in their own languages shall be encouraged, and measures shall be adopted to guarantee these peoples the opportunity to learn and master Spanish.

Understanding indigenous cultures enriches the nation and is a necessary step for eliminating incomprehension of and discrimination against indigenous people.

4. *Comprehensive indigenous education.* The governments agree to respect the educational undertakings of the indigenous peoples within their own cultural spheres. The allocation of financial, material, and human resources shall be carried out equitably in order to design and implement educational and cultural activities as decided upon by the indigenous peoples and communities.

The State shall make good on the indigenous peoples' right to a free, quality education; it shall promote the involvement of indigenous peoples and communities in selecting, accepting, and removing their teachers in accordance with academic and professional performance criteria previously agreed upon by the indigenous peoples and the appropriate authorities; and it shall create committees to monitor educational quality within its institutions.

The right of indigenous peoples to a bilingual and intercultural education is reaffirmed. The states, in consultation with the indigenous peoples, shall be empowered to define and develop academic programs with regional contents, in which their cultural heritage must be recognized. Through education it will be possible to ensure the use and development of indigenous languages, together with the participation of the peoples and communities in accordance with the spirit of Convention 169 of the ILO.

5. *The satisfaction of basic needs.* The State must promote mechanisms to guarantee indigenous peoples conditions that will allow them to take satisfactory charge of their food, health, housing, and, at the very least, an adequate level of well-being. Social policy must promote priority programs to improve health and nutritional standards among the children of indigenous peoples; it must also support, on an egalitarian basis, the training of women, expanding their participation in the organization and development of the family and the community. Priority must be given to the involvement of indigenous women in decisions regarding projects for economic, political, social, and cultural development.
6. *Production and employment.* In the past, development models have not taken the productive systems of the indigenous peoples into account. Consequently, making full use of their potential must be encouraged.

It is necessary to work for the recognition, within the federal and state levels of Mexico's legal system, of the indigenous peoples' right to the sustainable use and to all the benefits that derive from the use or exploitation of natural resources in the territories that they in some way occupy or use, so that, in a framework of global development, economic backwardness and isolation can be overcome; this also requires an increase in and reorientation of social spending. The State must promote the development of the economic base of the indigenous peoples and guarantee their participation in designing strategies aimed at improving their living conditions and access to basic services.

7. *Protection for indigenous migrants.* The State must promote specific social policies to protect indigenous migrants, both within the nation's borders and beyond them, with inter-institutional actions to support women's education and work and children's and young people's health and education; in rural areas, these policies must coordinate between the zones that provide agricultural laborers and those that make use of them.
8. *Communications.* In order to encourage an intercultural dialogue from the community to the national level, allowing a new and positive relationship among the indigenous peoples and between them and the rest of society, these peoples must be provided with communications media, which at the same time are also key instruments in the development of their cultures. Consequently, it will be proposed that the corresponding national agencies should prepare a new communications law to allow indigenous peoples to acquire, operate, and administer their own communications media.

The federal and state governments shall work for the indigenist communications media to become indigenous communications media, when so requested by the indigenous peoples and communities.

The Federal Government shall recommend to the appropriate agencies that the 17 broadcasting stations belonging to the National Indigenist Institute be handed over to the indigenous communities in the respective regions, with the transfer of permits, infrastructure, and resources, when the indigenous communities so request.

In addition, there is a need for a new legal framework for communications to address the following issues: the nation's cultural diversity; the right to use indigenous languages in the media; the right to reply; guarantees for the rights of expression, information, and communication; the democratic participation of indigenous peoples and communities before

the bodies responsible for decisions affecting the field of communications; and the participation of interested parties in civil society's empowerment on the decision-making bodies in the communications arena through the creation of a Communications Ombudsman or a Citizens' Communications Council.

IV

Acceptance of the Following Principles Must Govern the New Relationship Between the Indigenous Peoples, the State, and the Rest of Society

1. *Pluralism.* Dealings between the peoples and cultures that form Mexican society must be based on respect for their differences and the assumption of their essential equality. Consequently, it must be a policy of the State to regulate their interactions, encouraging within society a pluralistic orientation that actively combats discrimination of all forms and corrects economic and social inequalities. Similarly, it will be necessary to make progress toward the constitution of a legal order that feeds on cultural diversity and reflects intercultural dialogue, with common rules for all Mexicans and respect for indigenous peoples' internal systems of governance.
2. *Self-determination.* The State shall respect the indigenous peoples' enjoyment of self-determination in each of the spheres and levels in which it is applicable, and the indigenous peoples shall practice their differentiated autonomy without undermining national sovereignty and within their new framework of governance. This implies respect toward their cultural identities and forms of social organization. The State shall also respect the capacity of indigenous peoples and communities to decide on their own development, provided that respect is shown toward the national and public interest. The different levels of government and institutions of the Mexican State shall not intervene unilaterally in the affairs and decisions of indigenous peoples and communities, in their organizations and forms of representation, or in the strategies they adopt to make use of resources.
3. *Sustainability.* It is indispensable and urgent to ensure the preservation of nature and culture in indigenous peoples' territories. Encouragement shall be given, through legislation, to the right of indigenous peoples and communities to receive the corresponding indemnification when the State's exploitation of natural resources causes damage to their habitat and threatens their cultural reproduction. In cases where the damage has already been caused and the peoples show that the compensation awarded does not allow their cultural reproduction, the establishment of review mechanisms shall be sought in order to enable the State and the affected parties to jointly analyze the case in question. In both instances, the compensatory mechanisms shall strive to ensure the sustainable development of the indigenous peoples and communities.

In addition, with the agreement of the indigenous peoples, encouragement shall be given to rehabilitation efforts in those territories, and their initiatives to create conditions to ensure the sustainability of their productive practices and lifestyles shall be supported.

4. *Consultation and consensus.* Policies, laws, programs, and public actions affecting indigenous peoples shall be subject to consultation with them. The State shall promote the involvement and participation of all the levels of government and institutions that affect the life of indigenous peoples, eschewing one-sided practices that cause the fragmentation of

public policy. To ensure that its actions observe the differentiated characteristics of the various indigenous peoples and to prevent the imposition of homogenizing policies and programs, their participation in all phases of public action, including inception, planning, and assessment, shall be guaranteed.

In addition, there shall be a gradual and orderly transfer of powers, functions, and resources to the municipalities so that the allocated public funds can be distributed with the participation of the municipalities. Resources may be transferred to the forms of organization and association described in Paragraph 5.2 of the "Joint Declarations" document when such forms exist.

Since policies in indigenous areas must be not only conceived in coordination with the peoples themselves but also implemented with their participation, the existing indigenist and social development institutions operating in such areas must be transformed into others designed and operated by the indigenous peoples themselves in conjunction and coordination with the State.

5. *Strengthening the federal system and democratic decentralization.* The new relationship with the indigenous peoples involves a process of decentralizing the powers, functions, and resources of federal and state agencies to the municipal governments in accordance with the spirit of Paragraph 5.2 of the "Joint Declarations" document, so that with the active participation of the indigenous communities and the population in general, they can assume the initiatives thereof.

V

Legal and Constitutional Amendments

1. The essential starting point for the establishment of a new relationship between the indigenous peoples and the State is the construction of a new legal framework in the nation and in its states. The constitutional amendments recognizing the indigenous peoples' rights must be reached by means of a creative legislative spirit, forging new policies and offering real solutions to their social problems. We therefore propose that these amendments should contain, among others, the following general elements:
 - a. Legislating on the autonomy of indigenous peoples and communities to include recognition of those communities as bodies under public law, the right 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.
 - b. Legislating to "guarantee protection for the integrity of lands belonging to indigenous groups," taking into consideration the particular characteristics of the indigenous peoples and communities in accordance with the concept of territorial integrity as contained in Convention 169 of the ILO, together with the establishment of procedures and mechanisms to regulate indigenous property regimes and to promote cultural cohesion.

- c. With regard to natural resources, establishing a system of preferences that privileges indigenous communities in the granting of concessions for obtaining the benefits derived from the exploitation and use of natural resources.
- d. Legislating on the rights of indigenous men and women to have representatives within legislative bodies, particularly the Congress of the Union and the state legislatures, incorporating new guidelines for the demarcation of the electoral districts covering indigenous peoples and communities, and allowing elections to be held in accordance with the applicable legislation.
- e. Legislating on the rights of indigenous peoples to elect their authorities and exercise power in accordance with their own rules within their spheres of autonomy, and guaranteeing participation by women under conditions of equality.
- f. In legislative texts, taking into account Mexico's multicultural nature in order to reflect an intercultural dialogue with common rules for all peoples and respect for indigenous peoples' internal systems of governance.
- g. Enshrining in the Constitution the obligation of refraining from discrimination on the grounds of racial or ethnic origin, sex, creed, or social status, thereby enabling discrimination to be classified as a crime.

Assurance must also be given to the indigenous peoples' right to enjoy protection of their sacred sites and ceremonial areas and to use plants and animals considered sacred for strictly ritual purposes.

- h. Legislating so that no coercion may be exercised against the individual guarantees and specific rights and freedoms of indigenous peoples.
- i. Legislating on indigenous peoples' rights to freely practice and develop their cultures and to enjoy access to the communications media.

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