

The Indigenous Law: A Mocking Step Backwards

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At the end of April, the Mexican Senate and House of Representatives passed a law on indigenous rights and culture. Around the world, people sympathizing with the indigenous cause first heard the news as a great legal victory and the culmination of efforts headed up by the Zapatistas' recent March for Dignity. But it soon became clear that the law is a big step backwards.

The law was immediately rejected by the Indigenous National Congress and by the EZLN, which further announced that it would not resume talks with Vicente Fox's government. The Democratic Revolutionary Party (PRD) and other progressive social and political forces also rejected the law, which has not yet been promulgated or ratified in Mexico's state congresses. Since the ruling National Action Party (PAN) and the Institutional Revolutionary Party (PRI) hold the majority there, it may happen, but the legislature's Harmony and Peace Commission (COCOPA) declared that it would fight to amend the legislation.

Three bills were on the table before the controversial law was approved. The first was drafted by COCOPA, which took up the indigenous people's ideas and feelings and the points agreed to in the San Andrés Accords between the EZLN and the government of former President Ernesto Zedillo. The second was Zedillo's bill, which made major changes to COCOPA's. And the third was the bill now approved, which was recently drawn up by the Senate.

The following analysis of the law's four especially controversial points, comparing the letter and spirit of the three bills, was written by Sergio Rodríguez Lascano and published in *La Jornada* on April 27, 2001.

Public right or public interest?

The first controversial point is that in COCOPA's bill, indigenous communities were considered as "entities of public right." In Zedillo's bill this concept was dropped and indigenous communities were defined as "subjects of public interest." The approved law recognizes the communities as "entities of public interest." Between COCOPA and Zedillo, the Senate chose Zedillo.

What are the implications of these different terms? COCOPA's bill, by recognizing Mexico's indigenous communities as subjects of public right, acknowledged them as part of the state. The article taken from Zedillo's bill, now law, treats them like a National Popular Subsistence (CONASUPO) outlet, considered "in the public interest." This contradicts the spirit of paragraph 1, article 2 of the same law, which states, "The nation is pluri-cultural, originally founded by its indigenous peoples." How can the law affirm such a principle and then grant indigenous communities a legal status similar to that of a CONASUPO store?

The concept of "territory" is excised

The second point revolves around the concept of territory. COCOPA's bill established the right to "collectively accede to the use and enjoyment of the natural resources in their lands and territories, understood as the totality of the habitat used and occupied by the indigenous people, except that under the direct authority of the nation."

Zedillo's bill said, "Accede to the use and enjoyment of the natural resources in their lands, respecting the forms, norms and limitations established for property by this Constitution and the law." The approved law states, "Accede, with respect to the forms and norms of property and land ownership established in this Constitution and in the relevant laws, as well as the rights acquired by third parties or by members of the community, to the preferential use and enjoyment of the natural resources in the places that the communities inhabit and occupy, except those corresponding to strategic areas in terms of this Constitution."

In this point, there is no doubt that Zedillo's bill counted more than COCOPA's. The concept of "territory," key to understanding and defining autonomy, was cut from the text. Excluding this concept severely limits the geographic space in which autonomy can be exercised. The law also violates the agreement reached at San Andrés that all issues related to land ownership would be discussed in the third round of negotiations on justice and development.

The law limits the scope of the right to association

The third point has to do with the scope of the right to association, essential in reestablishing communities that have been torn apart by history. COCOPA's bill stated, "Indigenous peoples' free self-determination will be respected in each of the spheres and levels in which they exercise their autonomy; this may include one or more indigenous communities, in accord with the particular specific circumstances of each state. The indigenous communities as entities of public right and the municipalities that recognize that they belong to an indigenous community may freely associate in order to coordinate their actions."

Zedillo's bill stated, "The communities of indigenous peoples as entities of public interest and the municipalities with majority indigenous populations may freely associate in order to coordinate their actions, always respecting the political-administrative division in each state." The approved law states, "The indigenous communities, within the municipal sphere, may coordinate and associate in the terms and for the effects established in this law." On this point, the approved law backpedals even from Zedillo's bill. It eliminates the possibility of associating on a regional level and limits association to existing municipalities, thus annulling a mechanism representing the only guarantee that indigenous peoples may reestablish themselves after more than 500 years of fragmentation and marginalization. Without this guarantee, the law is a mockery to indigenous peoples.

A serious step back: Only "when feasible"

The fourth controversial point has to do with political participation. COCOPA's bill stated, "In establishing the territorial demarcation of uninominal districts and pluri-nominal constituencies, the location of indigenous communities must be taken into account to ensure their political representation and participation in national life." Zedillo's bill stated, "In establishing the territorial demarcation of the uninominal electoral districts, the location of indigenous communities must be taken into account to ensure their political representation and participation in national life."

The approved law states, in the third transitory and thus non-binding provision, "To establish the territorial demarcation of the uninominal districts, the location of indigenous peoples and communities must be taken into account, when feasible, to favor their political participation." Here again, the approved law steps back even from Zedillo's bill in two respects. Not only does it refuse to grant their own specific representation to indigenous peoples, the original foundation of the nation, but it also no longer establishes that the location of the indigenous peoples must always be taken into account. That is now qualified with the term "when feasible."

A joke in bad taste and a pending subject

When Ernesto Zedillo presented his proposal, he said that it took up 85% of COCOPA's bill. The problem then was that the missing 15% included the core of the indigenous autonomy project. Worse yet, the law approved by Congress only takes up 80%, and the additional 5% represents the very backbone of indigenous autonomy. These omissions cannot be replaced with abstract, general statements about autonomy or a paternalistic government proposal (the law's entire section B), whose inclusion in the Constitution is shameful not least because it was taken straight from the political platform of the former state party, the PRI, despite the Mexican people's rejection of that system on July 2 of last year.

It is truly painful that the Senate—which refused to listen to the Zapatistas and the Indigenous National Congress members—as well as the House of Representatives have again turned their backs on the indigenous peoples of Mexico. The belief that the law they approved will heal a historical wound is not only false, it is a joke in bad taste. If this law is actually promulgated, appearances will have been maintained but the serious problems that over 10 million indigenous Mexicans face will not have been addressed and the rights and culture of the indigenous peoples will remain a pending subject for the nation.

Manifesto of the Indigenous National Congress

On May 1, the Indigenous National Congress issued this statement rejecting the approved law, whose complete text we reproduce here.

CONSIDERING that 509 years of history have meant exploitation, discrimination and poverty for our first peoples; and that the Mexican nation, born of our seed and our hearts, has been built by the powerful, denying our existence and our supreme right to walk our own path, which does not mean renouncing the country founded with our blood.

REMEMBERING that the San Andrés Accords on Indigenous Rights and Culture, signed on February 16, 1996, correspond only to the first round of negotiations between the federal government and the Zapatista Army of National Liberation, and are pledges and proposals that both parties agreed to in order to guarantee a new relationship between the country's indigenous peoples, society and the state. This set of proposals, which was sent to the national forums for debate and decision making, were taken up by the Harmony and Peace Commission (COCOPA)—made up of legislators from the various national political parties—in a bill it presented to reform the Constitution. Both the Zapatista Army of National Liberation (EZLN) and the Indigenous National Congress accepted the bill on November 29, 1996, not without noting its omissions but recognizing it as the first step towards constitutional recognition of our rights.

RECOGNIZING that the San Andrés Accords, as well as their legal constitutional interpretation expressed in the constitutional reform bill drafted by COCOPA, reflect the majority consensus of the indigenous peoples of Mexico, the government, and national society on the issue of indigenous rights and culture.

CONSIDERING that the constitutional recognition of indigenous rights and culture in accord with COCOPA's bill as one of the three signs demanded by the EZLN is a firm step towards achieving a just and dignified peace in Chiapas.

CONSIDERING that the march of 1,111 Zapatistas to Mexico City in September 1997, and the results of the National Consultation on Indigenous Rights and Culture conducted in March 1999, ratified the national consensus represented by the San Andrés Accords and the constitutional reform bill drafted by COCOPA.

REMEMBERING that our peoples, gathered together in the Third Indigenous National Congress held in Nurío, Michoacán, on March 2-4 of this year, unanimously agreed to demand constitutional recognition of the rights of indigenous peoples as subjects of right, as laid out in COCOPA's bill; the constitutional recognition of our inalienable right to free self-determination, expressed through autonomy as part of the Mexican state; and the constitutional recognition of our ancestral lands and territories that make up the whole of our habitat in which we reproduce our material and spiritual existence as peoples.

OBSERVING also that the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both with the rank of supreme law of the land, establish that all peoples have the right to free self-determination and that by virtue of this right may freely establish their political condition and provide at the same time for their economic, social and cultural development.

OBSERVING that Convention 169 of the International Labor Organization (ILO) on Indigenous and Tribal Peoples in Independent Countries, also ranked as a supreme law of the land according to our Constitution, establishes the right of our peoples to assume control of their own institutions, ways of life and economic development, and to maintain and strengthen their identities, languages, territories and natural resources in accord with the law of the State in which we live.

DENOUNCING that once again our words and our views have served only for the mockery and cruelty of the powerful; that the primary voice of our peoples and the majority of Mexican society expressed in February, March and April of the year 2001 in the March for Indigenous Dignity led by the Zapatista Army of National Liberation is not being heard by those who claim to represent the popular will; that the political and economic interests of those who wield power are seeking, once again, to relegate to the end of the line the very first peoples of these lands, our peoples, the indigenous peoples, disregarding our fundamental rights, leaving us exposed to dispossession, ethnocide and forced integration into a national project that is foreign to our history and our will; that they are now trying to snatch everything away from every last one of us, women and men. The peoples, communities and organizations that make up the Indigenous National Congress state that:

FIRST: We resolutely reject the indigenous law approved by the Congress of the Union, because it not only violates the popular will and is unconstitutional, but also is profoundly regressive in ignoring the fundamental rights of our peoples, established in the Constitution itself as well as the international treaties, accords and agreements that Mexico has ratified and that are the supreme law of the land as established in our constitutional order. In particular, the approved law incorporates some concepts and rights guaranteed by ILO Convention 169 in a partial and distorted form, and omits many other fundamental rights.

SECOND: The indigenous law approved by those who claim to represent the popular will does not incorporate either the spirit or the letter of the San Andrés Accords and substantially changes the constitutional reform bill drafted by COCOPA, by establishing that indigenous peoples and communities will be recognized according to state laws and constitutions, which in effect implies that our peoples and our rights will not be constitutionally recognized. The approved law is an obstacle to

the resumption of talks between the federal government and the Zapatista Army of National Liberation aimed at achieving a just and dignified peace. The legislators' vote was not a vote for peace.

THIRD: This constitutional counter-reform makes a mockery of our peoples and is a great affront to Mexican society, which decided to back our just cause, because it leaves the definition of indigenous autonomy and the mechanisms for its realization in the hands of the individual states, nullifying our right to free self-determination expressed in autonomy within the framework of the Mexican state, as well as our peoples' aspirations for their full restoration.

FOURTH: The approved law reduces the application of our autonomous rights to the municipal level. It does not resolve the issue of our access to and administration of the municipal resources that correspond to our peoples or enable the establishment of authentic indigenous municipal reservations.

FIFTH: The constitutional counter-reform grants indigenous communities, in the form of charity and pity, the status of entities of public interest rather than subjects of public right, as was established in COCOPA's bill so that, within the structure of the state and with their status fully recognized, the indigenous communities and the municipalities that recognize that they belong to an indigenous people can freely associate to coordinate actions. The constitutional counter-reform fails to guarantee the free self-determination of indigenous peoples at each of the levels and arenas in which we exercise our autonomy, in accord with the particular, specific circumstances of each state.

SIXTH: In the approved law, the possibility of redistricting the territories inhabited by indigenous peoples is omitted, and the fact that the territorial reorganization of the uninominal districts to encourage the political participation of indigenous peoples is relegated to a non-binding article of law only affirms the illusory, regressive nature of the constitutional reform that has been imposed.

SEVENTH: The law approved by Congress ignores the legal framework already established by ILO Convention 169 relative to our peoples' territories, and fails to recognize our lands and territories in accord with the concepts laid out in that Convention. The term "territories" is insultingly replaced by "places," which continues to despoil us of the immediate physical space for the exercise of our autonomy and the material and spiritual reproduction of our existence.

EIGHTH: The indigenous law they are now seeking to impose upon our peoples and society reaffirms and complements the individualist concept that inspired the counter-reform of article 27 of the Constitution in 1992, since it does not recognize our constitutional right to collectively determine the use and enjoyment of the natural resources in our lands and territories. To the contrary, it regressively restricts our exclusive right in this matter and converts it into a simple right of preference, limited by the forms and norms of property and land ownership already established by the Constitution and by the rights that have been acquired—generally, through illegal means—by third parties over our peoples. We have demanded recognition of our right of access to the natural resources found in the entire habitat occupied by our peoples. The legislators, however, chose to limit rights that we have already won, in fact and in law, through primordial titles and agrarian resolutions and the sweat and blood of our ancestors.

NINTH: The approved law, violating the format of the talks established between the federal government and the EZLN, attempts to dodge the agrarian question by using the language contained in the current article 27 of the Constitution, without considering that our peoples strongly opposed the reform of that article and forgetting that agrarian issues are to be discussed in the round of negotiations dealing with welfare and development.

TENTH: The indigenous law also establishes a section "B" in the second constitutional article the text that is not only inappropriate as constitutional text, but also reproduces the indigenist policies of ethnocide that the Mexican state has historically applied by defining a series of paternalistic aid policies that the legislators, in an authoritarian way, have decided will serve our peoples, when what we demand is effective recognition of indigenous peoples so we can define our own development priorities.

ELEVENTH: Today as before, we say: Never again a Mexico without us! Never again will the voice of the indigenous peoples be silent in the face of injustice! In this hour of national importance, we ratify and raise up this cry of protest against the new aggression represented by the recent constitutional counter-reform. We will make everyone see that a true, just, dignified Mexico will exist only when the rights of our people are fully recognized.

For these reasons, we call on all of the country's indigenous peoples, communities and organizations to unite in our beliefs, our paths and our voices in order to demand the constitutional recognition of our rights as laid out in COCOPA's bill, and organize every corner of the country to mobilize and resist this new mockery by the few who control power in this country and have kidnapped this Congress of the Union and the will of the nation through the most reactionary positions that exist in our country, represented by Diego Fernandez de Cevallos and Manuel Bartlett. We call on people to exercise the rights of political sovereignty that article 39 of the Constitution grants us, since the established legal order has clearly been weakened by the unconstitutional law that was approved. We will use all existing legal means, nationally and internationally, to ensure that the voice of the very first peoples, the indigenous peoples, is heard and our presence felt by the entire nation.

We call on urban and rural workers and on the entire Mexican people to organize a massive national movement that will lead to unity of action and at the same time allow us to build consensus and overcome weaknesses so we can gain constitutional recognition of the rights of our peoples and the cancellation of the neoliberal policies that are now destroying the whole nation. Never again a Mexico without us! For the full restoration of our peoples!

Mexico City, May 1st, 2001