



## INDIGENOUS TERRITORIAL AUTONOMY AND SELF-GOVERNMENT IN THE DIVERSE AMERICAS

Edited by Miguel González, Ritsuko Funaki, Araceli Burguete Cal y Mayor, José Marimán, and Pablo Ortiz-T

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# Building Autonomies in Mexico City

Consuelo Sánchez

The first Political Constitution of Mexico City was published on 5 February 2017. It recognizes the intercultural, multilingual, pluriethnic and pluricultural nature of the capital city of Mexico, establishes the collective and individual rights of the peoples, neighborhoods and communities and creates a system of territorial autonomy.<sup>1</sup>

In this chapter, we will discuss the actions of the Constituent Assembly that led to territorial autonomy for Indigenous Peoples and neighborhoods being established in the Constitution of Mexico City, based on my experience as an assembly member. I will first briefly consider the historical and contemporary basis of the Indigenous Peoples' demand for autonomy and its links to the demands of the capital city's population for a broadening of their rights and freedoms.

## The Historical Basis of Autonomy

The Constitution of Mexico City begins with a phrase in Nahuatl and Spanish by the author of the *Colhuacan Memorial*, Domingo Chimalpáhin: "For as long as the world endures, the fame, the glory, of Mexico Tenochtitlan will neither end nor perish." The city of Mexico Tenochtitlan was the main seat of the Triple Alliance of Tetzco, Tlacopan and Tenochtitlan, which dominated much of Mesoamerica from its foundation in 1428. Each of the three parts of the Alliance was composed of numerous *altépetl*, which were the

basic political-territorial units of belonging and sociopolitical differentiation among the different peoples of the region: Culhuaque, Cuitlahuaca, Otomí, Mixquica, Xochimilca, Chalca, Tepaneca, Acolhuaque and Mexica. The *altépetl* comprised a territory, a dynastic ruler or *tlatoani* and a set of territorial sub-units known as *calpulli*: each with their own authorities.

After the war of conquest (1521), the city of Mexico Tenochtitlan became the capital of New Spain. The defeated *altépetl* were reorganized into administrative centers along with their subjects and their forms of government, within the institution of the *cabildo* [town hall]. The administrative center was where the *tlatoani* had their main seat and it continued to be the seat of Indigenous government in the form of the *cabildo*; the neighborhoods, farms and villages (*calpulli* and/or *tlaxilacalli*) were subject to it. The villages and neighborhoods were given the Christian name of a patron saint along with the old Indigenous denomination. The Indigenous *cabildo* was made up of a governor and a variable number of mayors, councillors, notaries, bailiffs and other positions. At the end of the colonial regime, the Cortes of Cádiz enacted the Spanish Constitution of 1812, which annulled the system of Indigenous government and jurisdiction and instituted the *ayuntamiento* [town or city council] as the only form of local government, without any ethnic distinction in its configuration or operation.

In the run-up to independence, the Creole oligarchy that led the formational process of the Mexican State upheld the liberal ideology of the Cortes of Cádiz as the foundation on which to organize the nation; re-confirmed the cancelling of Indigenous governments and territorial jurisdictions; demanded the transfer of their assets and communal funds to the town councils; and prepared for the ascension of Creoles and *mestizos* to the main positions on the council, subsequently seeking to impose their class interests and their ethnic vision. At the same time, the liberal reforms of the second half of the 19<sup>th</sup> century prohibited the peoples from administering, owning or acquiring their own property; declared that the Indigenous Peoples no longer existed as legal entities; annulled communal property and imposed the privatization of communal lands. And yet, Indigenous Peoples endured, despite the State denying their existence (García Martínez, 1991; Powell, 1974).

In 1824, the Republic opted for federalism and the Federal District was created as the seat of the federation's powers. The jurisdiction of the Federal District included Mexico City, proclaimed capital of the Mexican Republic, as well as numerous peoples and neighborhoods incorporated into different

municipalities. The Federal District was not granted the same political status as other states in the federation, which had their own congresses with the capacity to draft their respective constitutions, laws and decrees. It was argued that, as the seat of the federation's powers, the Federal District depended on the Federal Executive (President of the Republic) for its political and economic system, this latter having delegated its powers to a public official known as the Governor, while the Chamber of Deputies had the power to legislate for the Federal District. The Federal Constitution of 1857 maintained the same political status for the Federal District and diminished the political rights of the capital.

Once the Federal Constitution of 1917 had been promulgated, in the aftermath of the Mexican Revolution, the constituent congresses of each federal state drafted their respective local constitutions. In contrast, the Federal District continued under the same political limitations as in the 19<sup>th</sup> century; the capital's legislative functions continued to fall to the Congress of the Union. In the capital, as in the rest of the country, free municipalities were established, administered by a directly elected local council. In 1928, the municipal system was abolished in the Federal District and the right of the capital's inhabitants to elect local authorities was removed. The capital's government continued to be under the responsibility of the President of the Republic through the Head of the Department for the Federal District, which exercised its powers via delegates sitting in delegations, thus replacing the local councils.

As a result of the agrarian reform, more than 90 farming settlements were created among the Indigenous Peoples of the Federal District, and these ended up covering almost half the district's territory. At the same time, the capital was emerging as a powerhouse of industry, commerce, infrastructure and urban and educational services, leading to an accelerated process of urbanization of rural areas and undermining of self-sufficient peasant agriculture. The population of the Federal District thus grew from 1.2 million inhabitants in 1930 to nearly nine million (8,831,079 inhabitants) in 1980 (Espinosa López, 2003).

The contradictions inherent in the capitalist urbanization of the city largely explain why it became the epicentre of social movements such as those of the workers (the railroad workers, in particular), students (as in 1968) and urban-popular organizations. These latter were particularly active in the 1980s, especially in the aftermath of the 1985 earthquake. This is considered

a key period of social ferment and politicization of the capital's inhabitants, accompanied by attempts to coordinate social and civil organizations around urban demands and policies of change in the relationship between the capital's society and the State. These organizations joined forces with groups of the Left to demand political rights for the capital and the conversion of the Federal District into an additional state of the federation, the "State of Anáhuac," with the same sovereign conditions. The protests led to the creation of the Legislative Assembly of the Federal District in 1987, initially only with regulatory powers although these were later extended to the legislative sphere. In response to this meagre gain, the peoples of the capital promoted and organized a referendum in 1993. This influenced the constitutional reform of that same year, which empowered the Federal Congress to issue a Statute of Government for the Federal District. This was approved in 1994. In 1996, another reform took place that finally recognized the political-electoral rights of the capital's population to freely and secretly elect their Head of Government in 1997 and, starting in 2000, the heads of delegation as well (Espinosa, 2004; Coulomb & Duhau, 1988). Notwithstanding these gains, many inhabitants of the capital continued to demand that the Federal District be granted the same powers as other states of the federation.

In January 2016, the Political Constitution of the United Mexican States was again amended with regard to political reform in Mexico City. It ordered the creation of a Constituent Assembly that would promulgate the *first* Political Constitution of Mexico City. The assembly was to be installed on 15 September 2016 and would conclude its legislative work on 31 January 2017. The amendment established that the Federal District would be known as Mexico City, and that it would be considered a federative entity without, however, being recognized as a state of the federation.

In this reform, the term *federative entity* includes both the states of the federation and Mexico City although Article 2 distinguishes between "the sovereignty of the states and the autonomy of Mexico City."<sup>2</sup> Some analysts interpret this political reform as instituting a special system of autonomy for Mexico City. Enrique Rabell García comments that:

The reform did, however, entitle the document the "Constitution" of Mexico City, and call it a constituent power; given this constitutional method, it is in reality the Statute of Government of an autonomous entity. (Rabell García, 2017, p. 265)

In my opinion he is mistaken because, according to the system for autonomy set out in the constitution, the statute of autonomy can be a law of varying rank: “constitutional law, organic law or ordinary law” (Díaz Polanco, 1991). This law or statute is approved by the legislature of the national or plurinational State in question, and any statutory reform is also limited by the intervention of the legislative state power, which is the power authorized to approve the planned reform (Álvarez Conde, 1980, pp. 105-144). The above corresponds to the Statute of Government of what was then the Federal District, approved by the Congress of the Union in 1994; this is not, however, the case of the Constitution of Mexico City, which was approved and promulgated by the Constituent Assembly of this entity itself; the approval of “additions or amendments to the Political Constitution of Mexico City” likewise corresponds to the congress of this entity.<sup>3</sup> The Federal Congress has no authority to approve, enact or amend Mexico City’s Constitution. It is therefore not a statute of autonomy but a Constitution, even though Mexico City is not specifically named as another state of the Republic.

The legislators who approved the federal reform did not want to attribute Mexico City with the status of “free and sovereign state” like the other federative entities, but they had to go beyond the system of autonomy that had already been achieved in the capital city as a result of the political reforms of the 1990s. On this occasion, as already mentioned, it was the Congress of the Union that drafted and approved the Statute of Government of the Federal District in 1994. For the 2016 reform to bear the political fruits expected by its advocates — especially as regards the Head of Government — it therefore had to go beyond the existing system of autonomy in the city. The fact is that the 2016 reform reduces the gap between the federal states and Mexico City; Mexico City acquires virtually the same powers as other member states of the federation while not actually being designated a state.

Mexico City continues to be the capital of the Republic and the seat of the Union’s powers; it is for this reason that it was not established as another state of the Federation — the 32<sup>nd</sup> state as the people of Mexico City had been demanding for decades — based on an argument maintained since the 19<sup>th</sup> century that the two federal and State powers cannot coexist in the same space. This is an unconvincing argument since other countries with a federal regime have established their capital city as a city-state: Berlin, for example, is the capital of the Federal Republic of Germany but also forms one of the 16 states of the German federation.

## The Preamble to the Constituent Assembly

The decree heralding Mexico City's political reform, published on 29 January 2016, contained three problematic aspects that limited the sovereign power of the Constituent Assembly and which this latter had to abide by, namely, the form of its make-up; the powers given to Mexico City's Head of Government to prepare the draft Constitution and then submit it to the Constituent Assembly; and the instructions on the structure of the city's government, established in Article 122 of the Federal Constitution, with which the Constituent Assembly had to comply. All of this seemed in contradiction to the transitory provision (Article Seven, paragraph F) of the same reform, which established that: "The Constituent Assembly shall exclusively exercise all the functions of Constituent Power for Mexico City."

Mexico City's political reform was part of the agreements of the so-called Mexico Pact, signed in December 2012 by President Enrique Peña Nieto and the leaders of the Institutional Revolutionary Party (PRI), National Action Party (PAN) and Democratic Revolutionary Party (PRD). The pact included commitments to promote neoliberal structural reforms in the areas of education, employment, telecommunications and energy, among others, thus completing the reforms initiated by President Carlos Salinas de Gortari (1988-1994). The reforms were framed around privatizing energy resources and oil revenue in the hands of transnational corporations; expanding the private sector in telecommunications and broadcasting; privatizing public education and restricting teachers' employment rights; and generally reducing workers' rights and promoting the casualization of labor (Contreras Carbajal & Mejía Montes de Oca, 2018; Cárdenas Gracia, 2016). It was a question, in short, of shoring up private business and "the power of the ruling classes" (David Harvey, 2007). The "Mexico Pact" was possible because, in short, the PAN was in favor of such reforms and the PRD had become a neoliberal party.

As part of Mexico City's political reform, the legislators from these parties established the procedure for creating the Constituent Assembly; it was to be made up of 100 deputies, of these, 60 would be elected by popular vote, according to the principle of proportional representation, and 40 would be appointed by the established powers; 14 by the Chamber of Senators; 14 by the Chamber of Deputies; six by the President of the Republic (Enrique Peña Nieto, from the PRI), and six by the Head of Government of the Federal District (Miguel Ángel Mancera, from the PRD). The legislators from the National

Movement for Regeneration (Morena) opposed this process and voted against it.<sup>4</sup> Social and civil society organizations also expressed their disagreement at the appointment of 40 non-democratically elected Constituent Assembly members. It was argued that this violated the sovereignty of the Constituent Assembly and the democratic principle of popular representation, which held that it was for the inhabitants of Mexico City to elect all the members of the assembly, not the constituted powers — the Congress of the Union, the federal and local Executive — who had attributed themselves the role of the “great electors.”

According to this reform, the 60 directly elected members would either be candidates from the political parties or independents. The legislators did not contemplate sectoral or geographic representation. Community members from Milpa Alta filed an injunction against the city’s political reform, arguing that the peoples had not been consulted and nor had their participation in the Constituent Assembly been considered, even though they owned a significant part of the territory of the metropolis.

The Higher Chamber of the Electoral Tribunal of the Federal Judiciary issued a ruling on 25 February 2016 ordering affirmative actions on behalf of young people and Indigenous persons, peoples and communities to guarantee their participation in the Constituent Assembly. To this end, it instructed the electoral institute and “the political parties that intend to register candidates [to] include at least one Indigenous candidate in the first block of ten they propose,” as well as a young person.<sup>5</sup>

Several analysts felt that there was a clear intention underlying this procedure for designating 40% of the Constituent Assembly members: firstly, to ensure an over-representation of the coalition parties (PRI, PAN and PRD) who would thus be able to control the constitutional process among themselves; and secondly, to prevent Morena from gaining a majority and thus being able to influence the direction of the new constitution. The Federal District elections for delegates, assembly members and federal deputies on 7 June 2015 had set a precedent, as Morena obtained the most votes in those elections, this being the first time it had participated in any electoral contest (Ascencio et al., 2016).

Within Morena, the question was raised as to whether or not the party should participate in the Constituent Assembly, knowing that the parties of the Mexico Pact had secured a prior advantage in terms of approving the constitution and thus blocking anything that did not suit them. There was

also a risk that they would use this advantage to impose a neoliberal agenda on the local constitution and deflect some of the social rights that had been achieved in Mexico City, such as the decriminalization of abortion (2007) and same-sex marriage (2009). A discussion took place in which it was concluded that Morena should participate in order, on the one hand, not to give the neoliberals free rein to produce a constitution that suited their needs and, on the other, to fight for citizen rights to the maximum and defend a city model other than the one produced by “urbanizing capital.”

Morena presented its list of 60 candidates for the Constituent Assembly members, based on a principle of gender parity; 30 women and 30 men. It refused the financial resources (more than 10 million pesos) granted by the electoral institute to each political party to finance their election campaign. Our campaign was therefore run on a shoestring, relying only on our own resources.<sup>6</sup> The candidates travelled to public squares, villages, neighborhoods and districts; we attended delegate and sectional assemblies organized by the party and provided information on the Constituent Assembly and the issues we would promote. In this process, Morena succeeded in placing several issues on the public agenda, some of which appeared in the draft Constitution for which the Head of Government was responsible.

The election of the sixty Constituent Assembly members took place on 5 June 2016. The following election results show that Morena obtained 22 Constituent Assembly members, followed by the PRD, with 19; the PAN, seven; the PRI, five; the New Alliance Party (Panal), two; the Social Encounter Party (PES), two; the Green Ecologist Party of Mexico (PVEM), one; the Citizen Movement, one; plus one independent. The balance changed somewhat following the appointment of 40 unelected members.

Morena was the only party that refused to appoint members, so it remained with only its 22 members elected by popular vote. The PRD obtained a total of 29 (19 elected and 10 appointed); the PRI, 22 (five elected and 17 appointed); the PAN, 15 (seven elected and eight appointed); Panal, three (two elected and one appointed); the PES, three (two elected and one appointed); the PVEM, three (one elected and two appointed); and the Citizen Movement, two (one elected and one appointed); plus one independent.

The PRI, which came fourth in the electoral preferences of the capital’s voters, benefited most from these appointments, ending up with the same number of members as the party that had come first in the elections: Morena. The number of deputies appointed and elected from the PRD, PRI and PAN

came to exactly the two-thirds required to approve or veto the articles of the constitution.

Morena members rejected the appointment of members to the assembly at every turn. Our protest was linked to another very heartfelt one in the country, through the slogan devised by the Morena parliamentary group coordinator, Bernardo Bátiz: “We’ve got 40 too many and we’re missing 43” (the latter alluding to the 43 young students who went missing from Ayotzinapa on the night of 26 September 2014 in an event that shocked the country, culminating in huge social discontent at the atrocious toll on human life caused by the so-called war on drugs).<sup>7</sup>

Another source of disagreement with the political reform was the provision that granted the Head of Government, Miguel Ángel Mancera, the “exclusive power” to prepare the draft of Mexico City’s Political Constitution and then submit it to the Constituent Assembly for discussion, amendment, addition and vote. The granting of such authority to a *constituted power* was considered another limitation on the exercise of the *constituent power* of the Constituent Assembly.

In February 2016, then president of Morena in the capital, Martí Batres, suggested drawing up an alternative proposal for Mexico City’s Constitution, with the participation and collaboration of citizens, social and civil society organizations, academics, and experts in the city’s different problems. A Drafting Council was therefore established, comprising a hundred personalities from different fields: philosophers, jurists, writers, economists, anthropologists, urban planners, ecologists, sociologists, artists, historians, filmmakers, sportspeople, human rights defenders and defenders of sexual diversity and women’s rights.<sup>8</sup> I had the opportunity to participate in this council, which was formed before Morena had decided on its Constituent Assembly candidates.

At the same time, Morena promoted a series of debates, through thematic forums, with the different social sectors (youth, Indigenous, intellectuals, LGBTQI community, etc.), in addition to consultations in all the delegations. At these events, proposals and future prospects for the city were shared. These occasions were also an opportunity to gather the historical and contemporary demands, desires and aspirations of residents, groups, social movements, Indigenous Peoples and communities, all of which were incorporated into the alternative draft Constitution.

After the elections on 5 June 2016, Morena's 22 elected Constituent Assembly members pursued the alternative proposal for the capital's constitution initiated by the above Drafting Council. We met once, twice and even three times a week to discuss each of the issues to be included in the Constitution and to try to reach a unified position in all areas. This work was intense but highly worthwhile as it required ideas and arguments to be discussed in order to achieve the internal consensus necessary by which we could jointly defend the fundamental proposals that were emerging from these meetings, one of which was Indigenous Peoples' autonomy.

Morena's assembly members were a highly diverse and pluralistic group of people. There was gender equity (11 women and 11 men), and the group included academics, artists and representatives of the civil and social organizations; many were "external" to the party but sympathetic to the ideals and fundamental approaches set out in the movement's political program, which helped both in the process of jointly constructing what was called "Morena's Constitutional Agenda," as well as gaining support for it. There was no party discipline, not only because many were not Morena activists but also because they were given the freedom to contribute on all issues, including those central to the party such as halting the privatization of water, services and public spaces; getting the social programs created by Andrés Manuel López Obrador when he was head of the Mexico City government (2000-2006) enshrined in the Constitution; expanding the rights and freedoms of the capital's inhabitants; the right to the city; measures to combat corruption and electoral fraud; and ensuring the rights of Indigenous Peoples and neighborhoods and resident Indigenous communities. There was unanimity on this latter point among the members; as for the proposal to institute a system of autonomy, however, there were certain objections from some of our fellow members. These were gradually resolved, however, as the scope, meaning and contribution of autonomy to democracy, justice and equality in the city became clearer. Only one member remained in disagreement, arguing that what was needed was a city government institution that would be responsible for protecting and ensuring the rights of social subjects, focusing particularly on the Indigenous peoples who had settled in the city from other regions of the country. We explained the need to address the different situations of Indigenous peoples in the city (Indigenous Peoples / neighborhoods, resident Indigenous communities and the Indigenous population transiting or living seasonally in the city) and to provide fair solutions for each case. This meant combining

different policies and enshrining them in the Constitution. It would not be fair to block the right to autonomy of those peoples who were claiming it. In addition, it was a right recognized in the Federal Constitution, and our legislative work consisted of instituting the local system for its exercise within the local constitution. Morena's president in Mexico City, Martí Batres, agreed with the autonomist position and also agreed to come to internal agreements.

At the end of August 2016, Morena Constituent Assembly members presented a document entitled "Sentiments of the City" to the general public of Mexico City. It contained 20 principles (which we were committed to promoting and defending in the Constituent Assembly), based on Morena's Constitutional Agenda (Morena, Constituent Assembly Parliamentary Group, Mexico City, 2016). These points became our unwavering and implacable precepts in the Constituent Assembly. We pledged that the Constitution of Mexico City would recognize the city as a "pluricultural, pluriethnic and multilingual community"; that there would be protection and expansion of the "human rights, both individual, collective and social, enshrined in the Federal Constitution and in international treaties signed by Mexico," as well as providing "the legal resources and means to guarantee their respect"; that there would be guarantees of political freedoms (for all, especially young people and women); freedom of assembly, demonstration, belief, thought and expression of ideas, including the right to civil resistance; that the rights of (international) migrants and their families would be respected; that there would be the right to sexual diversity; and to women's rights, ensuring gender equality and substantive equality of women and men, gender parity in legislative, judicial and government bodies, and the right of women to decide over their bodies; that Indigenous Peoples and neighborhoods would have the right to *self-determination and autonomy*, and the right to be consulted; that there would be the right to culture, collectively and individually, as well as to the preservation and enhancement of culture and urban, artistic and historical heritage; there would be the right to free, secular, universal and free education at all levels and grades; the establishment of free public education from preschool to higher education; the protection and preservation of the ecosystem and natural areas; the restoration to "workers [of] the labor rights and social guarantees of which they had been stripped in recent decades"; the "creation of cooperative enterprises, as well as plans and programs for workers to have the option of participating in the direction, management and ownership of enterprises"; institutionalization of the human right to water

and a guaranteed right to clean water for all; a halt to the privatization of water, establishing the public status of water collection and distribution systems in the city, as well as a ban on any privatization of these public services; the “right to sufficient, economical and non-polluting public transport”; the “right to health, to decent housing, to safe and efficient mobility”; the right to a pension for senior citizens and all social rights and programs to be included in the Constitution; the right of everyone to receive a universal basic income; promotion of the availability of the media, particularly electronic media, for higher education institutions, communities, Indigenous Peoples and organized citizens; the “right to free Internet access.”

We would also be responsible for establishing the sovereignty of the capital’s people and its exercise “through legislative, executive, judicial and popular or community citizen powers.” *Popular citizen power* would be exercised “through institutions of direct democracy such as people’s initiatives, referendums, plebiscites, revocation of mandates and citizen actions.” We would establish that major issues of interest to the city be “submitted for consultation, particularly high-impact urban development projects.” We would promote laws to combat corruption such as “transparency, oversight and citizen audits,” the removal of corrupt governors and legislators and the seizure of “assets resulting from their acts of corruption,” among other measures. And we would uphold the demand that the final text of the Mexico City Constitution be submitted for “the direct approval of the people by referéndum.”

In short, our commitment was to promote a democratic, participatory, multiethnic and popular constitution, with a vision of the law and rights that was opposed to the neoliberal approach, in other words, conceived from a position centered on the vital needs of individuals and communities, taking into account their sociocultural heterogeneity, an approach very different from that aimed at consolidating the dominance of business and the ruling classes.

## Constructing an Autonomy Project

I saw in the Constituent Assembly an historic opportunity to institute in Mexico City the longed-for autonomy claimed by the Indigenous Peoples and neighborhoods, one that would allow them to govern themselves and actively participate in the political, economic, social and cultural life of the city, as many of them had been demanding. In the 1990s, I had the opportunity to

collaborate with the country's Indigenous organizations in reflections on and the drafting of a political project for autonomy through the Plural Indigenous Assembly for Autonomy (ANIPA), and to participate as an adviser to the EZLN in the San Andrés dialogues that resulted in the agreements signed between the Zapatistas and the federal government in 1996, the central premise of which was the right of Indigenous Peoples to self-determination and autonomy (Burguete Cal y Mayor, 1995; Díaz Polanco & Sánchez, 2002).

The emergence of the EZLN had a dual key effect. On the one hand, it placed the issue of constitutional recognition of the rights of Indigenous Peoples in the spotlight of national public debate as never before in the country or city, particularly the issue of self-determination and autonomy. On the other, it encouraged Indigenous Peoples to affirm their identity and fight for their rights.

In general, the Zapatistas created an ethical and political scenario that was more favorable to the demands of Mexico City's Indigenous Peoples. It should be recalled that an EZLN delegation, made up of 23 *comandantes* (commanders) plus *Subcomandante* Marcos, had toured various parts of the country from 11 to 29 March 2001 in their March of the Color of the Earth, spending 18 days in Mexico City with the purpose of promoting recognition of Indigenous rights and culture in the Mexican Constitution, as an essential requirement for fulfilling the San Andrés Accords. During this time, they visited different Indigenous Peoples and universities, in very well-attended events, in addition to organizing a mass mobilization in the city's main square (March 11) and another outside the Chamber of Deputies on March 28, when *Comandante* Esther and *Comandantes* David, Tacho and Zebedeo spoke at the highest level of the Congress of the Union.

A few days after the Zapatistas had returned to Chiapas, the Congress of the Union approved a constitutional reform on Indigenous rights and culture. The EZLN and the Indigenous organizations were not satisfied with this because it did not meet their aspirations, nor was it in line with the San Andrés Accords.<sup>9</sup> Such disagreement discouraged the Federal District from promoting local legislation to implement the constitutional reform. The debate on the relevance of having local legislation on the rights of Indigenous Peoples and resident Indigenous communities was triggered by the growing demands of the subjects themselves to make it a reality and by the reports of the Human Rights Commission of the Federal District (CDHDF) on the alarming situation of discrimination, exclusion and harm to the individual

and collective rights of Indigenous peoples in the city (particularly resident communities). The CDHDF also made recommendations to the Legislative Assembly on the urgency of reforming the city's legal system to guarantee the rights of peoples and communities in accordance with the Mexican Constitution, the San Andrés Accords, ILO Convention 169 (ratified by the Mexican State in 1990) and the United Nations Declaration on the Rights of Indigenous Peoples (Human Rights Commission of the Federal District, 2007).

The CDHDF noted that, when legislating on recognition of Indigenous rights, the Legislative Assembly:

*Must take into consideration the different components of this plurality of which Indigenous peoples are a part, bearing in mind, in addition, the differences that exist among them and the variety of their respective situations, including that of Indigenous Peoples and resident Indigenous communities and even that of Indigenous migrants in transit through the city itself. (CDHDF, 2007; italics added)*

These legislative recommendations were repeated in the Human Rights Program for the Federal District, published in 2009, which stated that the first strategy was to “guarantee autonomy.” It therefore established two lines of action. In the first, it reiterated the responsibility of the Legislative Assembly to “make proposals for reforms to the current regulatory framework in Mexico City, through consultation and participation of the resident Indigenous communities and Indigenous Peoples themselves, in order to implement the right to self-determination.” In the second, it assigned the Legislative Assembly and the Ministry of Rural Development and Equality for Communities (SEDEREC) the responsibility for drafting a proposed Indigenous Law, specifying that the “drafting process must guarantee, as a *sine qua non* requirement, broad consultation” (CDHDF, 2009).

In the Federal District, the demand for: 1) a legal framework to “implement the right to self-determination” and “guarantee the autonomy” of Indigenous Peoples and communities; and 2) an assurance of the consultation, participation and consent of the Indigenous Peoples and communities in the drafting of such legal framework, was thus beginning to take shape.

In this context, between 2010 and 2011, three bills on Indigenous rights were tabled before the Legislative Assembly of the Federal District (ALDF). These were tabled, in the order of their submission, by: 1) the *Unión de Artesanos Indígenas y Trabajadores no Asalariados, A.C.* [Union of Indigenous Artisans and Unwaged Workers]; 2) SEDEREC (Secretary of Rural Development and Community Equity); and 3) the *Consejo de los Pueblos y Barrios Originarios del Distrito Federal* [Council of Indigenous Peoples and Neighborhoods of the Federal District].<sup>10</sup> Each of these proposals was received by different deputies.

The initiatives were referred to the ALDF's Commission on Indigenous Affairs, Indigenous Peoples and Neighborhoods and Care of Migrants. After examining them, the Commission resolved to pass an Opinion on the Bill of Rights and Culture of Indigenous Peoples and Communities in the Federal District, 2012. The opinion provided for the creation of a Monitoring Commission and a Mechanisms Committee to develop consultation with the Indigenous Peoples and Indigenous communities, "with the purpose of obtaining their free, prior and informed consent to the legislative measure proposed in this opinion."

The Mechanisms Committee was made up of representatives of the capital's government (the heads of the ALDF's Indigenous Affairs Commission, the Ministry of the Interior and SEDEREC, the Legal Counsel's Office and Legal Services); representatives of the Indigenous Peoples (six from the Indigenous Peoples and six from the resident communities, with their respective substitutes) and six "experts in culture and Indigenous rights," three of them belonging to the peoples and communities.

I was invited to join the Mechanisms Committee as an "expert". This collegiate body was formally established in December 2013. Within the Committee, we agreed to prepare a proposal for a draft bill, based on the initiatives received in the ALDF, the legislative measures in the opinion of the ALDF Indigenous Affairs Commission, the San Andrés Accords, the Mexican Constitution, ILO Convention 169 and the UN Declaration.

We adopted an autonomous approach to this process that guided the whole direction of the norms and rights that were being set out in the proposed law. New formulations of several rights were therefore produced in order to widen their scope and guarantee their effective exercise, including Indigenous Peoples' and resident Indigenous communities' right to self-determination and autonomy. I was responsible for developing the section on the system of autonomy, which was reviewed and agreed upon by the Committee members.

The policy document prepared by the Committee was entitled “Proposal for a Preliminary Draft Bill for the Law on Indigenous Peoples and Neighborhoods and Resident Indigenous Communities of the Federal District” (2014), which was submitted for consultation (Sánchez, 2018, pp. 305-336).

We also designed the consultation methodology (principles, rules and procedures). The consultation began in August 2014. Once the results of the consultation had been incorporated, the Preliminary Draft Bill was formally submitted to the Legislative Assembly of the Federal District on 22 March 2015. However, it was never tabled for review or approval by the assembly members. This was the same year in which Mexico City’s political reform was being discussed nationally.

This experience helped us to design the methodology for the consultation that we conducted in the Constituent Assembly. It also helped me to prepare the initiatives that I presented to the Constituent Assembly, especially the one on autonomy, which had the agreement of the members of the Indigenous Peoples and neighborhoods and Indigenous communities who participated in the consultation on that proposed law and gave their consent.

Once I was designated a candidate for the Constituent Assembly I visited Indigenous Peoples and neighborhoods, where we talked about the proposal for autonomy that we would promote within the assembly, among other issues, while gathering opinions, proposals and solutions.

## Constituent Process

We were not aware of the content of the Head of the City Government’s draft constitution for Mexico City until the day the Constituent Assembly was formally installed, 15 September 2016, when he formally handed it over.

Several of the Morena group’s demands were included in the Regulations for the Internal Governance of the Constituent Assembly, drafted by a drafting commission composed of assembly members from all political groupings, approved in a plenary session and published in the *Parliamentary Gazette* on 30 September 2016. These demands were aimed at making the Constituent Assembly a process open to citizens. Article 2 states that the assembly:

Shall be governed by principles of transparency, maximum publicity, access to information, an open parliament and the right of citizens, representatives of institutions and social organizations

to be received and heard by the commissions in order to make known their proposals regarding the drafting of the Political Constitution of Mexico City. (Regulations for the Internal Government of the Constituent Assembly of Mexico City, 2016)

We were appointed honorary members and received no remuneration. The assembly members had the right to submit possible additions, amendments or deletions with regard to any matter in the draft constitution submitted by the head of the city's government. The deadline for doing so was October 30. The initiatives were presented in the plenary and then referred to the corresponding commissions.

The regulations established the formation of eight legislative commissions,<sup>11</sup> each assigned that part of the Head of Government's draft constitution relevant to them. The commissions had to prepare their respective opinions or draft resolutions based on the amendments and additions proposed in the assembly member and citizen initiatives referred to them by the plenary. The opinion had to be approved by an absolute majority of the members present in the commission and issued no later than 30 November 2016. After this date, the commissions had to present their opinions to the plenary, where they would be discussed and voted on article by article.

Within the Morena parliamentary group, each of the assembly members drafted their own initiatives for the areas in which they had the greatest knowledge and interest, especially on issues that had been raised and agreed upon in the working meetings prior to establishing the Constituent Assembly, described above. There was a small team of advisers who provided support on technical issues. The Morena assembly members met several times a week to discuss the constituent process and the position of the parliamentary group on different issues.

Assembly members were able to participate in two commissions as voting members, and to attend the meetings of other commissions as an observer. I participated as a full member in the Commission on Indigenous Peoples and Neighborhoods and Resident Indigenous Communities and in the Commission on Citizenship, Democratic Exercise and System of Government.

On the first theme, I prepared and tabled three initiatives in a plenary session of the Constituent Assembly. Two of these were referred to the Commission on Indigenous Peoples and Neighborhoods and Resident

Indigenous Communities. One of the initiatives was aimed at establishing a system of autonomy for Indigenous Peoples and neighborhoods, their rights to lands, territories and natural resources, and establishing a new relationship between the urban, rural and environmental aspects of the city. The other was on the collective and individual rights of resident Indigenous communities. A third initiative, which was referred to the General Principles Commission, established the creation of a *fourth level of government* in the city, that of territorial autonomies.<sup>12</sup>

In my first two initiatives, I proposed amendments and additions to Articles 63, 64 and 65 of the city executive's draft constitution, which referred to the rights of "Indigenous peoples and communities and Indigenous neighborhoods." Let us first take a look at the weaknesses in the executive's draft constitution, and I will then address the content of our autonomy initiative.

The Head of Government's draft constitution did not adequately address the nature of the city's sociocultural diversity, particularly the differences that exist between Indigenous Peoples and resident Indigenous communities; it treated them as equal and standardized their rights. Article 65, section B entitled "Autonomy", diminished the scope of the right to self-determination (as set out in the United Nations Declaration on the Rights of Indigenous Peoples) and reduced it to "their internal affairs in accordance with their normative systems." It established the Indigenous jurisdiction and transferred into law the way in which it would be exercised and the powers it would have over criminal matters. It should be noted that, although autonomy includes Indigenous jurisdiction, it is far more than simply this. Autonomy includes *self-government*, and powers in various areas (political, cultural, economic, etc.) in addition to Indigenous jurisdiction, and budget. None of this was contained in the city executive's proposal. The most noteworthy aspect of this proposal was the recognition of peoples, neighborhoods and communities as subjects of public law, with legal status and their own assets.

The same Article 65, paragraph C, included a list of rights of the peoples and communities, as well as the obligations of the authorities, but it did not specify how the exercise of such rights was to be guaranteed. Section D established rights over the lands, territory and natural resources of the peoples, but, instead of providing measures to ensure their effective protection, it introduced the possibility of the city government and private individuals exploiting and using the natural resources (including minerals) existing on their lands. I observed that this was nonsense in Mexico City, since the lands

that are still held by the Indigenous Peoples are located in the city's environmental conservation area, meaning that their exploitation would have harmful environmental effects for the lands and, of course, for the peoples.

In the initiatives I presented, I sought to address the ethnic diversity of the city and to try to provide fair solutions in different cases, as the people themselves had been pointing out. Members of the Indigenous Peoples and neighborhoods are living on their traditional territories; in contrast, members of the resident Indigenous communities have moved from their traditional territories to Mexico City. This difference means that they have different experiences, problems and needs in the city, although they are united by the purpose of ending their situation of oppression, discrimination and exclusion. These are two categories of Indigenous peoples that need to be understood in terms of their specific characteristics, and to have their particular cultural, social, political, economic and territorial demands in the city fairly addressed.<sup>13</sup>

The constitutional basis for our initiative to create a system of autonomy in the local constitution was Article 2, section A, of the Political Constitution of the United Mexican States, reformed in 2001 to supposedly meet the requirements of the San Andrés Accords. I argued that this article states that “Indigenous Peoples’ right to self-determination shall be exercised within a constitutional framework of autonomy that ensures national unity” (Political Constitution of the United Mexican States, 2020). However, instead of establishing said constitutional framework for autonomy as demanded by the various expressions of the Indigenous movement, it transfers power to the constitutions and laws of the federal entities to determine “the characteristics of self-determination and autonomy that best express the situations and aspirations of the Indigenous Peoples in each entity.”<sup>14</sup> I therefore argued that it was up to the Constituent Assembly to establish the nature of the self-determination and autonomy of Indigenous Peoples and neighborhoods, which implied *not repeating* what the Federal Constitution says but setting out in the Constitution of Mexico City the bases, principles, instruments and norms for the establishment and functioning of autonomy — this being understood as the concrete form of exercising the right to self-determination — so that the peoples would be able to effectively exercise this right.

Our proposal recovered the national Indigenous movement’s project for autonomy as defended in the San Andrés dialogue, adapting it to the reality of the Indigenous Peoples and neighborhoods of Mexico City. It also rescued the

system of autonomy that we introduced in the Proposal for the Preliminary Draft of the Law on Indigenous Peoples and Neighborhoods and Resident Indigenous Communities of the Federal District (2014) prepared and put out for consultation by the Mechanisms Committee. And, of course, it gathered the feelings and desires expressed by the city's Indigenous Peoples and neighborhoods in meetings, interviews and documents issued by them.

I also emphasized that, in all countries where Indigenous Peoples' right to autonomy had been instituted, such as Nicaragua, Bolivia and Canada, the constitutional framework included the new territorial spheres as a new level of government.

Another source to support our proposal was the United Nations Declaration on the Rights of Indigenous Peoples (approved by the UN General Assembly on 13 September 2007), especially Article 3, which states: "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." And Article 4:

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions. (*United Nations Declaration on the Rights of Indigenous Peoples*, 2008)

It was necessary to understand that autonomy is not only a right but also *a means* to ensure that peoples can exercise all their rights: political, social, economic, cultural, legal, territorial, environmental, etc. Consequently, our initiative set out the essential mechanisms for establishing the system of autonomy, as summarized below.<sup>15</sup>

a. *Principles*. These established the right of Indigenous Peoples to self-determination, and the exercise of this right "within a legal framework of autonomy under the political and administrative organization of Mexico City." This section further established the principles on which autonomy is based: strengthening Mexico City's unity through diversity; "equality in plurality, democratic participation, recognition and respect for cultural diversity, intercultural coexistence and good living for all."

b. *Territorial sphere*: "Territorialities with the powers of self-government shall be instituted in those areas of Mexico City where Indigenous Peoples

and neighborhoods are located.” Adding: “The demarcation of the territorialities shall be based on historical, cultural, social and identitary characteristics, and on the will of the members of the peoples and neighborhoods, as expressed in assemblies or in consultations.”

“The different territorialities of the Indigenous Peoples and neighborhoods shall be recognized as subjects and entities of public law, with legal status, their own assets and autonomous forms of political and administrative organization.”

c. *Self-government*. Each territoriality to be constituted “shall have an internal government, which shall be formed and exercised in accordance with its own rules, institutions, authorities, forms of internal organization and election of authorities, and with the powers and competences that shall be conferred on it by the Constitution and the corresponding law...”

“The governments, authorities and representatives of the peoples and neighborhoods shall be elected in accordance with their own normative systems and procedures and recognized in the exercise of their functions by the authorities of Mexico City.”

d. *Powers and competences*. It shall confer “competences and powers in political, administrative, economic, social, cultural, educational, judicial, resource management and environmental matters on the territorialities of the Indigenous Peoples and neighborhoods”

The initiative listed a set of powers that would fall to the territorialities of the peoples-neighborhoods, arranged in 18 bullet points, and including: normative functions of a statutory nature; the application of their normative systems in the regulation of their territories and in the resolution of internal conflicts; the organization of consultations; the drafting, execution and monitoring of programs of health, education, housing and economic activities within their territory, in coordination with the city authorities, as well as in the protection of the environment, restoration and management of forests, lakes, aquifers and wild flora and fauna; the control of their knowledge and natural assets (medicinal plants, seeds); historical, architectural, cultural, symbolic, sacred, artistic, artisanal and linguistic heritage; the administration of their community assets and spaces, and so on. In addition to the powers set out in the initiative, it was noted that they could have access to other powers established by the corresponding laws and other applicable ordinances.

It established “an institutional body for the coordination of the *three levels of city government*: the city government, the mayor’s offices and the autonomous territories of the peoples and neighborhoods.”

e. *Budget*. It established a budgetary allocation to the territorialities of the Indigenous Peoples and neighborhoods, essential “to guarantee the exercise of their competences and powers, and to overcome socioeconomic and socio-cultural inequalities.” It stated that the “Congress of Mexico City shall assign the State funds to be transferred to the Indigenous Peoples and neighborhoods,” and which would be destined for community welfare, agro-ecological production, ecological conservation, etc. In short, the idea was that they would manage, as peoples — without the intermediation of the municipalities or any other authority — their own resources and have access to funds and the public budget in the exercise of a cooperative system of solidarity, essential for their bodies and authorities to carry out the tasks of government, administration and justice that the legal order itself assigns them.

f. *Representation in the local Congress*. Autonomy also includes the peoples’ participation in the decision-making bodies of Mexico City, and so these need to be shaped in line with the multiethnic composition of the entity. Autonomy is not self-absorption, isolation or autarchy but a search for full participation in the life of Mexico City. Our initiative established the following: “In order to guarantee the political representation of Indigenous Peoples in the Mexico City legislature, a special electoral constituency shall be created. The law shall define such a constituency.”

Sections C and D of the initiative established the rights of the peoples to their lands, territories and natural resources and the basis for a new relationship between urban, rural and ecological spaces and ways of life in Mexico City.

Our autonomy initiative contrasted with that of the other Constituent Assembly commissions. The assembly members from the PRI, PAN and PRD considered the Head of Government’s draft proposal to be acceptable and agreed to establish a body or institution whose function would be to promote the rights and development of the peoples, neighborhoods and communities. The PRI assembly member proposed converting the Council of Indigenous Peoples and Neighborhoods (which, as mentioned above, was created in 2007 as a body to coordinate between the city’s public administration, composed of various ministries of the capital’s government, the heads of the delegations and the representatives of the peoples and neighborhoods) into an

autonomous and decentralized body “subject to the instructions” of the executive branch of Mexico City to “assist in the governance” of the entity (Gómez Villanueva, 2016). A PRD assembly member proposed something similar, adding the following to the Head of Government’s proposal: “To have a body for the representation and participation” of subjects of law, which would be responsible for “producing, implementing and guaranteeing public policies for the attention and development of the Indigenous Peoples and neighborhoods and resident Indigenous communities.”<sup>16</sup> The PAN member proposed creating “adequate institutions to guarantee the rights and integral development” of the peoples, neighborhoods and communities.<sup>17</sup> In truth, proposals to create these types of organizations or institutions (whether or not they comprise Indigenous peoples or neighborhoods) is nothing new in our country or in Mexico City. They have been part of the various indigenist formulas that have been imposed on the people for the last century. In all cases, this has been done by denying or supplanting the autonomy of the peoples.

It was quite another thing to create a body to implement the autonomy of the peoples, *once this has been established* in the constitutional framework, as was finally established in the Constitution of the city.

Another member basically proposed what the Federal Constitution states in Article 2, section A, adding rights for resident Indigenous persons and communities, as well as the obligations of Mexico City’s authorities in fulfilling said rights (Mardonio Carballo, 2016). The point here is the absence of references to self-government, to consideration of the different situations of the Indigenous Peoples and neighborhoods as well as the resident communities, such that these groups would continue to depend on the capital’s authorities and institutions for many of the matters that could have been handled by the collectivities (resident and Indigenous) themselves. A comment from a representative of an Otomí community comes to mind:

What we want now is to no longer depend so much on the institutions, we have the capacity to help our families, our people, for us to do this ourselves, because an institution may or may not be concerned with a problem but as an Indigenous person we are concerned, because we are living the problem. (Quote taken from Lemos Igreja, 2005, pp. 305-306)

This was the initiative of the Chair of the Commission on Indigenous Peoples and Neighborhoods and Resident Indigenous Communities. He and his technical secretary were not in favor of autonomy and tried to get my proposal left out of the draft opinion. I objected to this, clarifying that the draft should include the initiatives presented in the plenary and referred to this commission for its examination and a vote by commission members. They agreed to include it but extracting from it the core issues of autonomy. I objected to this, pointing out that any change to my initiative would have to be the result of a vote of a majority of Commission members. At the last minute, we succeeded in retaining the fundamental elements of autonomy proposed in my initiative.

After the Commission chair had presented the draft opinion, the Commission secretary proposed putting the overall opinion to the vote, before discussing and voting on the individual details. I said that I would not vote on the overall text first because its content could turn out to be quite different after the vote on each article. The point was discussed and it was agreed to begin by deliberating and voting on the details, article by article, trying to seek a consensus. And this is what was done with the first two articles, which we reworked together.

The sticking point came when it was time to discuss the issue of autonomy. The assembly members from the PRD, PRI and PAN were opposed to establishing a system for autonomy.<sup>18</sup> The PRD deputies resorted to issuing reservations, with which they intended to eliminate all the provisions of my initiative on autonomy and territorial rights. Their reservations were, however, rejected. They then tried to avoid any discussion of the subject, trying to undermine the quorum on the day of its discussion.

They agreed to discuss the matter on the last day we had to approve the opinion, since the majority of Morena assembly members refused to approve the opinion if it did not include a system of autonomy within it.<sup>19</sup> The presence of a large number of individuals from the peoples, neighborhoods and communities at that day's session must also have influenced our opponents' mood. This presence was vital.

Once they had agreed to discuss the autonomy proposal, those opposing members admitted that they were rejecting the provisions on territorialities, self-government, competences and budget. So we discussed each point by point, as summarized below. My Morena colleagues allowed me to defend

the proposal and on behalf of my opponents it was the PRI member, Augusto Gómez Villanueva, who took the lead.

Our opponents said that they did not agree with establishing a level of Indigenous self-government or self-rule in the local constitution. I replied: autonomy is by definition self-government, and not recognizing the peoples their own government would be to invalidate their right to self-determination. It would be a mockery. To the PRI member, who had been the Minister for Agrarian Reform during the presidency of Luis Echeverría (1970-1976), I argued that, as he was well aware, the agrarian law had established *ejido* (cooperative) and communal authorities for the administration of their lands; in the case of autonomy, it was a matter of recognizing whatever government structure the peoples determined for the conduct, administration and determination of the affairs of their territoriality. I also argued that, in all countries where autonomy had been established, it had involved self-government. Furthermore, I added, the UN Declaration on the Rights of Indigenous Peoples identifies autonomy with self-government. The PRI member argued that there was no basis in the Federal Constitution, to which I replied that the constitution orders us to establish “the characteristics of self-determination and autonomy” and one of its characteristics is self-government. They ended up conceding, but instead of the term “own government” or self-government, it was established as “the forms of political-administrative organization that the peoples give themselves.” This empowers self-government. I discussed it, outside the hall, with some of the members of the Indigenous Peoples. They agreed with the formulation. And so it remained.

The aforementioned party bloc was also opposed to establishing territorialities for the exercise of autonomy. I argued that it was inconsistent to leave territory out, for a number of reasons: autonomy requires a space in which to implement it; it therefore implies establishing a territorial area with its own jurisdiction in which the peoples can exercise government, justice and their other cultural, socioeconomic and other rights and powers. The territory, I specified, would be the sphere of organization and operation of their “political-administrative forms” in which they would have jurisdiction. In addition, the Indigenous Peoples and neighborhoods already have a territorial base and identity, and have been demanding its recognition, which has been unjustly denied. They ended up agreeing to the inclusion of territory.

They also refused to set out the competences and powers of the autonomous territories in the Constitution and proposed that their definition should

be left to secondary legislation. We said that we did not agree since, as experience in our country shows, secondary legislation tends to reduce the scope of the rights enshrined in the Constitution. We argued that the issue of powers was central, as it is this that determines whether or not the peoples are able to effectively exercise their rights in a comprehensive manner, empowering them to make decisions for themselves on certain vital matters. Many of these decisions were currently under the control of the city authorities and needed to be transferred to the peoples. For this reason, I asserted, it was necessary to specify within the constitution some of the matters on which the peoples would be able to decide exclusively and those that required coordination with the city authorities. Autonomy implies political and administrative decentralization, I said. We therefore insisted on establishing a list of powers in the constitution that should be conferred on the peoples so that their substance would not be left to the discretion of secondary legislation. At the last minute, almost all of the powers set out in our initiative were included in the opinion.

The opposing assembly members tried to get some important aspects left out such as, for example, the power of the peoples to administer their community cemeteries. I argued that this should remain in the opinion since there was a vigorous Indigenous movement aimed at defending their cemeteries and their right to administer these, as well as to manage the cultural, religious and community practices surrounding them. For many Indigenous Peoples (especially those who have suffered the expropriation and urbanization of their territories), the cemetery is one of the few community assets they have been able to preserve. I stated that their claim was just and that not recognizing it would be an injustice. Even so, they did not consent; probably because the PRD and the PAN had been promoting the transfer of community cemeteries to the administration of the delegations, now mayoral offices (Romero Tovar, 2010). I repeated that the peoples' demands would become clear following the consultation; the most appropriate thing would therefore be to leave it in the opinion. They did not agree to this. Yet this demand did indeed come up in 42 of the sets of community minutes from the consultation. This issue was therefore reincorporated into the opinion and finally included in Article 59 paragraph F, section I of the Constitution of Mexico City, as follows: "The Indigenous Peoples and neighborhoods shall have the power and responsibility of administering and caring for the community cemeteries."

After an arduous battle of ideas and arguments, which space prevents me from fully detailing in this chapter, the Morena assembly members thus succeeded in ensuring that the basic elements of a system of autonomy for Indigenous Peoples and neighborhoods remained in the commission's report, albeit not quite as we would have wished.

The General Principles Commission, however, rejected my initiative to create a *fourth level of government*. I did not have a chance to participate in the Commission's session to defend it. Jaime Cárdenas, a fellow member from the Morena group in the Constituent Assembly, notes one of the shortcomings of the city's constitution as precisely its failure to recognize this fourth level of government (Cárdenas Gracia, 2017).

## Consultation

The rules of procedure of the Constituent Assembly assigned the Commission on Indigenous Peoples and Neighborhoods and Resident Indigenous Communities the responsibility of carrying out consultations "as determined by international standards" (Article 22, section 8). The commission's members designed the consultation protocol in accordance with ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples. Once the assembly members in the Commission had approved the above opinion, it was submitted for consultation to the peoples, neighborhoods and communities.

The approval of the consultation protocol took some time. The PRD, PRI and PAN members wanted the consultation to be conducted by Mexico City government agencies or other contracted bodies. We objected, arguing first that this violated the sovereignty of the Constituent Assembly; second, that it was up to the Commission's members to "carry out the consultations," as the regulations stated; and third, that the opinion to be submitted for consultation was the product of the Commission's work and, in line with the principles of consultation (informed, in good faith, prior to its approval in the plenary of the Constituent Assembly, free, based on dialogue and consent), we were required to submit it directly to the peoples and communities, without the interference of persons or organizations outside the constitutional process, who might obstruct the free and good faith nature of the consultation.

After long discussions, we reached an agreement that the Commission's members would be responsible for the consultation on the opinion on Articles

57, 58 and 59 of Chapter VII *Pluricultural City*.<sup>20</sup> Given the short timeframe we had in which to carry out the consultation (around a month) and the range of topics to be consulted, in addition to the fact that the Commission members also had to attend the plenary sessions of the assembly, since the articles of the constitution were beginning to be discussed and approved at that time, we proposed asking the peoples, neighborhoods and communities to help us organize the consultation, in an autonomous manner (Rodríguez Domínguez, 2019, pp. 228-232). In other words, our duty was to provide the infrastructure through which to achieve community assemblies for the consultation (divided into three phases: informative, deliberative and dialogue/consent); provide them with all the material and documentation for the consultation (the opinion of the Constituent Assembly's Commission on Indigenous Peoples and Neighborhoods and Resident Indigenous Communities, together with the protocol for the consultation and other materials); and disseminate the notification and the consultation process itself. We asked the subjects of the consultation if they were happy for us to disseminate and organize the assemblies in their communities. In addition, a technical team from the Commission was created to support all the requirements of the consultation subjects. The Commission members devoted the whole of Sunday (the only day the full Constituent Assembly was not in session), part of Saturday and any other opportunity to attend the consultation assemblies, especially the informational ones. In the deliberative assemblies, only the people involved by the consultation were convened (so that they could examine and deliberate independently with regard to the opinion in question). Their participation in organizing the consultation helped to ensure that 940 deliberative assemblies were held in a very short space of time, and the minutes of each were submitted to the Commission. Of these, 709 minutes approved the opinion without any proposed additions, and 231 approved the opinion generally, with proposed additions and/or clarifications. In all, 99% of the minutes from the community assemblies gave their consent.

Some of the minutes stated that the consultation should have included the entire text of the Constitution. The Morena members were of the same opinion. In the transitory provisions of my three initiatives, I stated that the Constitution of Mexico City would be understood as approved if it were endorsed by the Indigenous Peoples and neighborhoods and the resident Indigenous communities through consultation and consent. This could not be achieved, however.

Another issue that delayed the approval of the consultation protocol within the Commission was the binding nature of the consultation. We proposed that the results of the consultation should be binding on the plenum of the Constituent Assembly. In other words, once the subjects consulted had given their consent to the opinion, the plenum should abide by it and it could not therefore be modified or rejected. The members from the other parties said this was unacceptable, that we could not force the rest of the members to agree to the provisions of the opinion following consultation. We replied that the Commission members were representative of the different political forces in the Constituent Assembly and that, having approved the opinion, it was to be assumed that they had done so with the endorsement of their political grouping, and that the changes and/or additions resulting from the consultation were the product of dialogue and agreement between those consulted and ourselves. In any case, I stated, any changes made in the plenary session to an opinion for which the peoples, neighborhoods and communities had given their consent would need to be submitted to a further consultation.

Finally, consensus was reached on the binding nature of the consultation, with the support of assembly member Porfirio Muñoz Ledo and the recommendation of Victor Toledo, in his capacity as special advisor to the UN Special Rapporteur on the Rights of Indigenous Peoples. The fact that the Constituent Assembly agreed to the binding nature of the consultation was an important triumph since it meant that no assembly member put forward reservations in the plenary session of the assembly with the aim of changing the content of the opinion, and those who had reservations even withdrew them.

At the end of the consultation, the proposals made in the community minutes arising from the consultation were thus ordered and incorporated into the Commission's opinion and presented to the plenary session of the Constituent Assembly, where it was unanimously approved. No other opinion received such approval. This is largely explained by the *binding nature* of the consultation, as noted above. Also, above all because of the strong legitimacy that the consultation gave to the opinion: an unprecedented event in our country.

## Autonomy in the Constitution of Mexico City

Although the city's constitution does not envisage a fourth level of government in its political organization, it does create territorial autonomies in Article 59 section B, entitled "Self-determination and autonomy."<sup>21</sup> This discrepancy is likely to be a matter of controversy. It will, however, depend on the actions of the Indigenous Peoples themselves to resolve it in their favor. Let us now take a look at the provisions of the Political Constitution of Mexico City (2017) that establish territorial autonomy.

a) *Territory*. The Constitution's text establishes that "*autonomy shall be exercised in the territories* in which the Indigenous Peoples and neighborhoods are located, within the *demarcations* based on their historical, cultural, social and identitary characteristics." And it adds, "*In their territories and for their internal regime*, the Indigenous Peoples and neighborhoods shall have competences and powers over political, administrative, economic, social, cultural, educational, judicial, resource management and environmental matters." It also specifies that "*In this territorial dimension of autonomy*, social property, private property and public property shall be recognized and respected under the terms of the current legal order" (Article 59, B, 2 and 5; italics added).

b) *Political/administrative body*. The Indigenous Peoples and neighborhoods shall define their own *forms of political-administrative organization*: "The forms of political-administrative organization, including the traditional authorities and representatives of the Indigenous Peoples and neighborhoods, shall be elected in accordance with their own normative systems and procedures, and recognized in the exercise of their functions by the authorities of Mexico City" (Article 59, B, 7). It is understood that each *territorial demarcation* — which will be formed for the exercise of autonomy — shall have a *political-administrative* body, configured in accordance with the institutions, norms, authorities and forms of internal organization of the peoples.

And, in accordance with their self-determination, the constitution adds, "No authority may decide the forms of coexistence, or economic, political or cultural organization, of the Indigenous Peoples and communities; nor the forms of political-administrative organization that the peoples give themselves" (Article 59, B, 6).

c) *Powers and competences*. The constitution recognizes a series of powers to the Indigenous Peoples and neighborhoods to guarantee the exercise of

self-determination and autonomy. The powers are set out over fourteen paragraphs. In addition to these powers, the city's constitution indicates that they may have access to other powers as indicated by "the corresponding law and other applicable ordinances" (Article 59, B, 8, I to XIV).

d) *Budget*. It states that "the city authorities shall recognize this autonomy and establish specific budgetary allocations to fulfil their rights, as well as coordination mechanisms, in accordance with the relevant law" (Article 59, B, 4).

This forms the constitutional framework for autonomy in Mexico City. Finally, the Mexico City Constitution mandates the creation of a body to implement policies to guarantee the "exercise of autonomy," among other tasks (Article 59, M).

Once Mexico City's Constitution had been enacted, the Attorney-General's Office filed an action of unconstitutionality before the Supreme Court of Justice of the Nation (SCJN) in relation to all the articles of the city's constitution that referred to the rights of peoples, neighborhoods and communities, arguing that the consultation conducted was inadequate and that nineteen articles consequently had to be invalidated. After analyzing all the documentation and information on the consultation carried out by the Constituent Assembly's Commission, the Plenary Court of the SCJN found that the consultation had "complied with the requirements of the aforementioned convention [ILO Convention 169] since it was carried out in good faith and in a manner appropriate to the circumstances, with the purpose of reaching an agreement or achieving consent for the proposed measures, as set out in its text." The draft judgment was put to a vote and was "approved unanimously by 11 votes of the justices" with regard to "recognizing the validity of the legislative procedure that gave rise to the Political Constitution of Mexico City, on the grounds that consultation with Indigenous Peoples and communities was carried out" (Judgment of the Supreme Court of Justice of the Nation, 2017).

## Conclusion

A Constituent Assembly is an eminently political space, made up of representatives of different political forces, ideological narratives and projects for the country and the city. It is not then a uniform, neutral or even space but the arena for a battle of ideas and positions regarding the different issues of a

constitution; it is a contest over the meaning and scope of the norms that need to prevail in any constitutional text. In this context, formulating Indigenous Peoples' demands in a rights-based language entailed at least three inter-linked risks: the omission of the key issues that form the basis of Indigenous demands; the disconnection of Indigenous Peoples' rights from the changes (political, economic and sociocultural) that are necessary in Mexico City's structure for their realization; and the disarticulation of Indigenous Peoples' demands into a multiplicity or summation of rights, disregarding their integral nature.

One of the core issues at the root of Indigenous Peoples' demands is that they wish to stop being dominated and oppressed by the State and to exercise their right to self-determination and autonomy. Two basic positions were expressed among the Constituent Assembly members with regard to this collective right: one that recognized this and other collective rights (already instituted in the Federal Constitution, thanks to the struggle of the Zapatistas and other Indigenous organizations) but without establishing the legal-political means or instruments that would enable the peoples to decide on the exercise of their rights for themselves, leaving such decisions to the authorities or institutions of the city government. This was a heteronomous position that would have kept the peoples in the same situation as before. The other, which was the one we advocated, was to establish a system of autonomy within the constitution so that the peoples could govern themselves and decide collectively on the various issues that are central to them, establishing a relationship of coordination with (rather than subordination to) the city government. This position was achieved with the consent of those peoples and neighborhoods consulted, and was thus included in the constitution.

## NOTES

- 1 Parts of this paper were originally published in Sanchez (2019).
- 2 This distinction established in Article 2, paragraph A, section III, forms part of the 2016 reform of the Political Constitution of the United Mexican States. Article 122 establishes that Mexico City "is a federative entity that enjoys autonomy in all matters concerning its internal regime and its political and administrative organization"; and Article 40 states "...in a representative, democratic, secular and federal Republic, *composed of free and sovereign states* in all matters concerning their internal regime, *and of Mexico City*, united in a federation established according to the principles of this fundamental law." (The italics are ours.)

- 3 Article 122, paragraph A, section II of the Federal Constitution.
- 4 Morena is a left-wing party/movement, which obtained its official registration in 2014. Its leader, Andrés Manuel López Obrador, is now President of Mexico. I was a constituent assembly member for the Morena party, so my view of the process is inevitably clouded in some way by this.
- 5 TEPJF. Judgment No. SUP-RAP-71/2016 and following.
- 6 The political campaign began on 28 April 2016 and lasted 45 days.
- 7 The government of former President Peña Nieto (2012-2018) not only failed to solve the case of the 43 missing students but also covered up the facts, as has been documented by investigations being conducted by the Special Prosecutor's Office for the Ayotzinapa case, created at the behest of President Andrés Manuel López Obrador at the start of 2019.
- 8 Among them were Enrique Dussel, Laura Esquivel, Enrique Semo, Héctor Vasconcelos, Guadalupe Ortega, Héctor Díaz Polanco, Paco Ignacio Taibo II, Gabriela Rodríguez, Bernardo Bátiz, Irma Eréndira Sandoval, Jaime Cárdenas Gracia, Julio Boltvinik and John Ackerman.
- 9 In a communiqué of 29 April 2001, the EZLN stated its position with regard to the constitutional reform on Indigenous rights and culture (Indigenous Revolutionary Clandestine Committee-General Command of the Zapatista National Liberation Army, 2001).
- 10 The *Consejo de los Pueblos y Barrios Originarios del Distrito Federal* was created in 2007, "as a coordinating body between the Public Administration of the Federal District and citizen participation, focused on the promotion, preservation and dissemination of the original and traditional culture of the Indigenous Peoples and neighborhoods of Mexico City." The Council comprised the head of the capital city's government and the heads of the ministries of Government, Environment, Social Development, Health, Tourism, Culture, Civil Protection, Education and Rural Development and Equity for Communities, as well as the delegations. The Council was also to include "representatives of the Indigenous Peoples and neighborhoods and of social and civil organizations interested in the matter," according to its internal regulations. The Council reported to the entity's Ministry of the Interior of (*Agreement creating the Council of Indigenous Peoples and Neighborhoods of the Federal District*, 2007).
- 11 The Commissions were as follows: i. General Principles Commission, ii. Bill of Rights Commission; iii. Sustainable Development and Democratic Planning Commission; iv. Commission on Citizenship, Democratic Exercise and System of Government; v. Commission on the Judiciary, Procurement of Justice, Citizen Security and Autonomous Constitutional Bodies; vi. Mayors' Commission; vii. Commission on Indigenous Peoples and Neighborhoods and Resident Indigenous Communities; and viii. Commission on Good Governance, Combating Corruption and the Regime of Public Servant Responsibilities. Article 22.1 of the Regulations.
- 12 See bibliography for references to the three initiatives.
- 13 For further reflections on these differences see the compilation of texts in Yanes, Molina and González (2005); in particular, Figueroa Romero (2005).

- 14 This provision of the federal constitution left the right to autonomy to the local authorities. As mentioned above, the EZLN and the country's Indigenous organizations did not agree with either the procedure or the content of the reform. The EZLN stated in this regard: "With this reform, the federal legislators and the Fox government (...) are trying to divide the national Indigenous movement by passing a duty of the federal legislature down to the state congresses." (Indigenous Revolutionary Clandestine Committee-General Command of the Zapatista National Liberation Army, 2001)
- 15 The initiative can be consulted at: "Proposal for draft decree modifying and adding to Articles 63 and 64 of the Draft Political Constitution of Mexico City proposed by the Head of Government, regarding Indigenous Peoples, Communities and Neighborhoods and Resident Indigenous Communities, by assembly member María Consuelo Sánchez Rodríguez, of the Morena Parliamentary Group." *Parliamentary Gazette*. Constituent Assembly of Mexico City, No. 23-I, Friday, 28 October 2016.
- 16 Initiative of constituent assembly member Nelly Antonia Juárez Audelo, in the *Parliamentary Gazette*, Constituent Assembly of Mexico City, No. 26-VI, Thursday, 3 November 2016.
- 17 The PAN deputy also proposed eliminating the chapter on the rights of these peoples and incorporating them into two articles that would be moved from Title Four, On the Distribution of Power, to Title One, Bill of Rights. Carlos Gelista González, 2016.
- 18 The commission comprised five assembly members from the PRD, one from the PRI, one from the PAN and five from Morena.
- 19 I should emphasize that my fellow Morena assembly members on the Commission, Patricia Ruiz Anchondo and Bruno Bichir, supported the project at all times.
- 20 It should be noted that the article numbering of the Head of Government's draft constitution was changed during the constituent legislative process. In the latter, the rights of Indigenous Peoples and neighborhoods and of resident Indigenous communities were set out in Articles 63, 64 and 65; in the Political Constitution of Mexico City they were set out in Articles 57, 58 and 59.
- 21 Distinct forms of autonomy were established for each subject of law: territorial autonomy was established for the Indigenous Peoples and neighborhoods, while the resident Indigenous communities "will exercise their autonomy in accordance with their internal normative systems and forms of organization in Mexico City."

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