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THE VIOLATION OF THE HUMAN RIGHT TO HEALTH AS A FACTOR IN THE ZAPATISTA REVOLUTION OF CHIAPAS, MÉXICO

Parastoo Anita Mesri†

I. INTRODUCTION

This article will examine the revolution led by the Ejército Zapatista de Liberación Nacional (EZLN, Zapatista National Liberation Army) in Chiapas, México.1 I will argue that the violation by the Mexican government of the international human right to health in the southernmost state of the country was in large part responsible for the Zapatista rebellion.2 Chiapas, at the time of the uprising was, and today continues to be, the poorest and most marginalized state in México.3 Among the many factors contributing to the situation of poverty in this Mayan state is the lack of the international human right to health, in its many dimensions. The lack of even the most basic health care, and very low health standards overall, helped set the stage for the armed uprising. The right to health embraces socio-economic factors that promote conditions in which women

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1. See infra Part II.
2. See infra Part II, IV.A.
3. See infra Part IV.A.
and men can live a healthy life.\textsuperscript{4} I will look at several such socio-economic factors to show that conditions in Chiapas were such that even the most basic elements of the right to health, including potable water, adequate food and housing, as well as related elements such as work and education, were not met.\textsuperscript{5} This will set the framework for my argument that the violation of the human right to health was a factor in the Zapatista revolution.

In Part II of this article, I discuss the uprising in Chiapas that occurred on January 1, 1994. I will describe the public health situation in the state prior to the rebellion, one of many factors that influenced the decision by the indígenas (indigenous peoples) to turn to armed struggle.\textsuperscript{6} In Part III, I will explore theoretical models of guerrillero (guerrilla) led revolution. According to Ernesto “Che” Guevara de la Serna, for a guerrillero led revolution to occur, both objective and subjective conditions for revolution must exist.\textsuperscript{7} In Part IV, I will apply the Guevarista model to the case of the revolutionary uprising of the Ejército Zapatista de Liberación Nacional, thus demonstrating that both the objective and subjective conditions necessary under the Guevarista framework for a guerrillero led revolution to occur existed in Chiapas. Specifically, the lack of the human right to health was one of the objective conditions which existed in Chiapas that led to the armed uprising by the indígenas.\textsuperscript{8}

In Part V, I will outline pertinent international law relating to the right to health. I will discuss the definition of the right to health provided in the International Covenant on Economic, Social and Cultural Rights, Article 12.\textsuperscript{9} I will then examine General Comment Number 14 of the Committee on Economic, Social and Cultural Rights, presented in the year 2000.\textsuperscript{10} I will analyze the health situation in Chiapas and how, prior to the revolution, as well as today, the Mexican government is failing to meet its obligations and responsibilities concerning the right to health in this poor and marginalized state, as outlined by the Committee. In addition, I will discuss the Indigenous and Tribal Peoples Convention of 1989, an additional international treaty to which México is a party that spells out

\textsuperscript{5} See infra Part IV.A.
\textsuperscript{6} See infra Part IV.A.
\textsuperscript{7} See infra Part III.
\textsuperscript{8} See infra Part IV.A.
\textsuperscript{9} See infra Part V.A.
\textsuperscript{10} See infra Part V.B.
the government's obligation to provide health care for its indigenous citizens.¹¹

In Part VI, I will explore the right to health as set out in the Constitución Política de los Estados Unidos Mexicanos (Mexican Constitution) and the Ley General de Salud (General Health Law). The violation of the human right to health in Chiapas is not only a violation of responsibilities the Mexican government has under international law, but under domestic law as well. Failure by the Mexican government to act on its duties both under international and domestic law to provide the indígenas of Chiapas with the right to health, in its many dimensions and meanings, was one of the many factors that led to armed rebellion in Chiapas.

II. THE ZAPATISTA UPRISING IN CHIAPAS

On January 1, 1994, the day that the North American Free Trade Agreement (NAFTA, or Tratado de Libre Comercio, TLC) entered into force, the Ejército Zapatista de Liberación Nacional led an armed rebellion in the state of Chiapas, México.¹² Approximately 3,000 booted, uniformed, masked and well-trained women and men, all armed, moved out from numerous clandestine bases, concentrated in several units, and went to battle.¹³ The Zapatista army occupied the cities of San Cristóbal de las Casas,¹⁴ Altamirano, Las Margaritas and Ocosingo.¹⁵ As much as

¹¹. See infra Part V.C.

¹². Although this article is focusing primarily on the right to health and its role in the Zapatista uprising, there were, of course, many other important factors that led to the decision among many in Chiapas to turn to armed struggle. NAFTA in particular and neoliberalist policies in general were another reason for the uprising; the Zapatistas picked the day that the treaty came into force to make their point. Sub-Comandante Marcos, the spokesperson of the EZLN, has said the following concerning NAFTA:

NAFTA is a death sentence for the indigenous people. NAFTA sets up competition among farmers, but how can our campesinos-who are mostly illiterate-compete with U.S. and Canadian farmers? And look at this rocky land we have here. How can we compete with the land in California, or in Canada? So the people of Chiapas, as well as the people of Oaxaca, Veracruz, Quintana Roo, Guerrero, and Sonora were the sacrificial lambs of NAFTA.


¹³. See JOHN WOMACK, JR., REBELLION IN CHIAPAS, AN HISTORICAL READER 12 (1999).

¹⁴. Of the taking of San Cristóbal, it has been written that:

Political theatre throbs in the veins of Latin American revolutionaries from Sandino to Che to Sendero Luminoso, and with its narrow cobbled
one third of the state was blockaded by the EZLN. These Mayan rebels burned archives in the municipal offices of San Cristóbal and opened jails and released prisoners. In Ocosingo, nearly two hundred indigenous prisoners were set free, and following the seizure of the government radio station, rebel broadcasts were aired. Government stores were looted and the food distributed to the populace. "As their leadership announced, they were the Ejército Zapatista de Liberación Nacional, the EZLN, the

streets, high colonial walls, graceful stone archways, and dramatic street lighting, the jewel-box city of San Cristóbal de las Casas made an exquisite stage set for one of the most innovative pieces of political theatre ever mounted on the continent.


15. See Alberto Huerta, Seeds of a Revolt, in FIRST WORLD, supra note 12, at 31. See also THOMAS BENJAMIN, A RICH LAND, A POOR PEOPLE 255 (1996). In all, the Zapatistas took seven municipalities, San Cristóbal de las Casas and six in Los Altos (the Highlands) and the lowlands (one of which was Las Margaritas), all in the eastern and southeastern part of Chiapas. The Selva Lacandona (Lacandón Jungle) is in the southeast of the state. The municipal seats were taken in all municipalities (the cities of San Cristóbal de las Casas and Ocosingo are two such municipal capitals). In December of 1994 the Zapatistas peacefully occupied 38 municipalities in Chiapas, and have since established various autonomous communities, or aguascalientes, in their zone of influence/control. See ROSS, supra note 14, at 8, 13, 22.

16. See Blanche Petrich, Voices from the Masks, in FIRST WORLD, supra note 12, at 45.

17. See Juan Bañuelos, The Unfinished War, in FIRST WORLD, supra note 12, at 196.

18. See John Ross, Who Are They, What Do They Want?, in FIRST WORLD, supra note 12, at 82-83.

19. See BILL WEINBERG, HOMAGE TO CHIAPAS 107 (2000). In describing the broadcasts, John Ross, perhaps the most well known journalist who covers the EZLN, who lives in Mexico City, wrote:

XEOCH, the state radio station in southeastern Chiapas that has all the jungle for an audience, had been in rebel hands since before breakfast, and the comandantes took turns broadcasting the details of the new war tax, announcing that the Banamex branch on the plaza had been expropriated, that all prisoners except narcotics traffickers and murderers would be released from jail. Tenants who had lived in one place for 15 years would no longer be required to pay rent. Wife beaters would be hunted down and severely punished. All families were encouraged to take in the homeless kids who roam the cities of the region. The Zapatistas also asked for donations for their wounded and their dead.

ROSS, supra note 14, at 23.

20. See id. The Zapatistas also kidnapped former governor Absalón Castellanos Domínguez, whom they subjected to a judicial tribunal, found guilty of the massacre at Colonchán in 1980 and other crimes, and then magnanimously released. See THOMAS BENJAMIN, A RICH LAND, A POOR PEOPLE 255 (1996).
Zapatista Army of National Liberation, at war with the Mexican army and under orders to move on Mexico City and overthrow the Mexican government. The next day, however, they evacuated San Cristóbal de las Casas and the other cities and towns they had taken and retreated. The Mexican army sent 14,000 soldiers to search for them and to destroy them. Armed confrontations between the Zapatistas and government troops lasted eleven days; the government carried out air raids on populated areas and villages that led to a national as well as international outcry.

On January 12th, one of the biggest marches since 1968 was held in Mexico City's zócalo (central plaza) in protest of the repression; Cuauhtémoc Cárdenas and other opposition leaders demanded a halt to the offensive. The same day, buckling to public pressure, then President Carlos Salinas de Gortari declared a unilateral ceasefire and appointed a Commission for Peace and Reconciliation. By then more than seventy rebels had died fighting. On January 15th, México's National Human Rights Commission investigators uncovered a mass grave in Ocosingo. Some, if not most, of the bodies were of civilians. Autopsies showed that many of the young rebels had been shot dead while wounded, forced to kneel with their hands tied behind their backs and shot to the back of the head. In addition, accounts mounted of summary execution and torture.

21. The rebels took the name of the revolutionary troops of Emiliano Zapata of the Revolución Mexicana (Mexican Revolution) of 1910.
22. WOMACK, supra note 13, at 12.
23. See id.
24. See id.

By the end of the first 10 days of the war in Chiapas, the bombs were starting to have an international echo. They were certainly on former U.S. attorney general Ramsey Clark's mind as he motored into the war zone early in January. This is like Kurdistan, the well-traveled human rights lawyer observed, or Iraq....

ROSS, supra note 14, at 28.
26. See WEINBERG, supra note 19, at 109.
27. See WOMACK, supra note 13, at 12.
28. See id. Of the bloody battle in Ocosingo, Marcos would later say, "Our troops did what they had to do—die for the people." Ross, supra note 14, at 25.
29. WEINBERG, supra note 19, at 109.
30. "Among the dead were at least eight civilians killed at a local hospital, some still in their beds." Ross, supra note 14, at 25.
31. See WEINBERG, supra note 19, at 109. See also Ross, supra note 14, at 24. "Ocosingo, 60 kilometers downhill to the east [from San Cristóbal], a cowboys-and-Indians city that bills itself as 'the gateway to the Lacandón jungle,' was the Zapatistas' theater of
by government troops during the fighting. The revolution took the whole world by surprise. One journalist wrote:

The Zapatista Army of National Liberation marched up to the alabaster government palace built stone by stone by the Indian day laborers of San Cristóbal and using sledgehammers, the tools and weapon of the peones of the old city, smashed down its doors, emptied out the contents of the offices, climbed to the balconies, declaimed the first Declaration of the Lacandón Jungle, declared war on the Mexican Army, and launched the first post-Communist, post-modern, anti-neoliberal uprising in the Americas. To make their point palpably clear, the Zapatistas timed this unique uprising to coincide with the very first blood. The rebels would lose nearly 50 insurgents there and the civilian population suffer even more grievous 'collateral damage.' Six years after the siege of Ocosingo, the brutality of the Mexican military's counterattack there continues to outrage national and international human rights groups.” Ross, supra note 14, at 21.

32. See id.

33. Those familiar with the history of Chiapas, however, should not have been surprised. As one author wrote:

The cultural matrix from which the new zapatismo emerged is a centuries-old tradition of Maya resistance to the Conquest. With a resilience that almost defies imagination, the myth of the returning Indian king remained a spiritual wellspring of resistance to domination, genocide and cultural erosion. Under the colonialists, the caudillos who followed them, and the new technocrats of the ruling party-state, the Maya have been the most rebellious of Mesoamerica’s conquered peoples. With the new zapatismo, this tradition of rebellion was wedded to a conscious revolutionary analysis. But the centrality of indigenous identity is at the heart of the new Zapatista radical democracy ethic. The first Latin American guerilla movement to emerge after the supposed death of socialism is also the first with real Indian leadership, to whom Marcos is officially subordinate. Neo-zapatismo is something new precisely because it is rooted in something ancient.

Bill Weinberg, Homage to Chiapas 16 (2000). Another author wrote, “Rebellion in the highlands rises like a dark underground river, bursting into the blazing sunlight once or twice a century.” Ross, supra note 14, at 5-6. In addition:

[T]he coming of violence had been announced long before. Guillermo Correa, (echoing the concern of the Catholic Church) writing in Proceso in 1983, warned that Chiapas was 'one step away from guerrilla war.' That was . . . just about the time when the Zapatista movement, according to one of its leaders, was becoming organized. What did regional politicians and the national authorities do at this time? As far as anyone can tell, not very much, at least not enough.

Lorenzo Meyer, Preface to Benjamin, supra note 20, at xv.
hours of that beacon of globalization, the North American Free Trade Agreement.  

The documents generated during the Zapatista revolution demonstrate the role that the lack of the right to health, in its various dimensions, played in the uprising. The *Primera Declaración de la Selva Lacandona* (First Declaration of the Lacandón Jungle), the first of what are now five declarations issued by the Zapatistas, written and signed by Sub-Comandante Marcos, declared the revolution and set forth the basic demands of the EZLN. In the Declaration, the EZLN asked the people of México to support their struggle for “trabajo, tierra, techo, alimentación, salud, educación, independencia, libertad, democracia, justicia y paz.” Thus, *salud*, or health, was one of the specific demands made by the Zapatistas. Other demands are intimately related to salud, such as *trabajo* (work), *techo* (housing), *alimentación* (food) and *educación* (education). As one well-known historian put it, “The poverty in the highlands [of Chiapas] justifies the revolt there.”

### III. Guevarista Theory on Guerrillero Led Revolution

Ernesto Guevara de la Serna, or “Che,” spoke of the conditions necessary for a guerrillero led revolution to occur. According to Guevara, both objective and subjective conditions must be ripe for revolution. Objective conditions include things such as poverty, lack of education, and control of government backed by the military. These “propel the masses to violent actions against their bourgeois and landlord

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34. Ross, *supra* note 14, at 4-5.

35. The *Declaración* was read by Comandante Felipe from the balcony of the government palace in San Cristóbal de las Casas on the morning of January 1, 1994.


37. WOMACK, *supra* note 13, at 12.

38. It has been written that “in Mexico, in January 1994, the Zapatista National Liberation Army (EZLN) boldly announced its insurgency to protest the North American Free Trade Agreement, political corruption, and injustice but not, as their leader, [Sub] Comandante Marcos, made explicit, to take power and create a socialist regime. As Che Guevara had written, guerrilla warfare was a *method*—but it was a method that Mexican ... guerrillas could use in the ... 1990s for purposes other than those exposed by Che, even as it had been used historically for the most varied causes.” Brian Loveman & Thomas M. Davies, Jr., *Preface to CHE GUEVARA, GUERRILLA WARFARE*, at xi (1997).
Subjective conditions include the "consciousness of the necessity of change, and confidence in the possibility of this revolutionary change." In other words, before rising up in armed rebellion, the revolutionaries must be conscious of the necessity of change and must believe that such change is possible. According to Che, once confident of their ability to bring about change, those who suffer the objective conditions necessary for revolution will rise up in arms.

In his discussion of *la guerra de guerrillas* (guerrilla warfare), Che wrote that "[i]n underdeveloped America the countryside is the basic area for armed fighting." The rural nature of the uprising in Chiapas is significant for two reasons: first, under Guevarista theory, there is a focus on the campo (countryside) as the ideal place in Latin America for guerrillero led revolution; and second, for our purpose of examining the right to health in Chiapas, the rural nature and geographical isolation of the state were primary factors in the poverty of the indígenas and the systematic violation of their right to health. In the state of Chiapas, 99.2% of the 16,422 localidades (localities, towns), are rural; rural being defined as having a maximum population of 2,499. Sixty percent of the population is rural. The level of urbanization in Chiapas is one of the lowest in the country, 40.4%, as compared to the national average of 71.3%.

The practical effects that residing in the predominantly rural state of Chiapas have on the lives of the indígenas are telling and include the violation of the right to health. Referring to Ejido Morelia, an indigenous pueblo (village) attacked by the Mexican Army on January 7th, 1994 in response to the Zapatista uprising, journalist John Ross wrote that "the abandonment of Morelia by its government has been spectacular. The ejido had a basketball court but no baskets, a government clinic building but no doctor, a powerful thirst but no potable water, a full schoolhouse with one teacher three days a month, a priest who attended to the ejido

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40. ld. at 152.
41. CHE GUEVARA, Guerrilla Warfare (1960), in GUERRILLA WARFARE, supra note 39, at 50.
42. See Rosa Isabel Estrada M., Costumbres Jurídicas y Derecho Positivo en Comunidades Indígenas (Chiapas-México), in HACIA UNA FUNDAMENCiON TEÓRiCA DE LA COSTUMBRE JURídICA INDIA 101 (Carlos H. Durand Alcántara et al. eds., 2000).
43. See id.
44. See id.
every four months." Ejido Morelia is just one of many examples showing the lack of basic human rights in Chiapas, including the right to health and its many components, such as potable water and health care. It also demonstrates that objective conditions for revolution were ripe in the campo in Chiapas.

IV. APPLICATION OF THEORY TO CHIAPAS

A. Objective Conditions in Chiapas

Objective conditions for revolution existed in México prior to the Zapatista uprising. In Chiapas, the southernmost state of México, these conditions were indeed among the worst in the nation. The situation of poverty, lack of basic services, and extremely poor living conditions effectively denied the indígenas of Chiapas a tangible right to health. This was one of many factors that made it almost impossible for Chiapanecos (people of Chiapas) to live a dignified life and caused many of them to turn to armed struggle.

Objective conditions of poverty and neglect are not something new; to the contrary, the situation in Chiapas can be described as one of historical marginalization. Many of the factors that Guevara saw as persistent in creating objective conditions necessary for revolution were still a reality in Chiapas in 1994. Writing about Latin America fifty years ago, Guevara stated that wretched poverty in the countryside, persistence of the latifundio (large rural estates that control most of the best agricultural land), and repressive, dictatorial political regimes were unchanging realities that created the "ideal conditions for the fight." Unfortunately, the situation in Chiapas in 1994 showed that, in many parts of the continent, these realities have indeed proven to be persistent.

Manuel Mejido, a reporter for the well-known Mexican newspaper, Excélsior, wrote a book based on five years (1969-1973) of travels all over México. Mejido, in 1973, wrote about one town in the Selva Lacandona, or Lacandón Jungle, one of the areas of Zapatista influence and control, called Lacanjá Chanswahayb:

45. See Ross, supra note 14, at 29. During the attack of the pueblo by the Mexican army, all the men were dragged out of their homes and herded onto the basketball court at the center of the pueblo, and three were tortured for four hours. Those tortured were then taken away, along with thirty-three others, by the military for an unending nightmare of torture, and death for the three who were singled out in the village. See id. at 29-30.
46. See Loveman & Davies, supra note 38, at ix.
47. His book is called México Amargo, which literally translated means Bitter Mexico, and in Spanish connotes the ironic and bitter state of affairs in certain parts of México.
The lacandones [people of the selva]... continue to be isolated, hungry, consumed by diseases . . . . They watch with sad eyes, because they have never known happiness . . . . They know, because they are not stupid, that thousands and thousands of words have been written about their desperate situation, about their necessities, about the urgent need to rescue them from the sub-human life they are condemned to live, but they also know that it has simply remained this: words.48

Mejido reported that for these indígenas who speak maya there are no roads that go to their towns, they don’t have electricity or potable water, and they do not even have one cow from which to draw milk to feed their children.49 In addition, "[w]hen diseases attack them, they aren’t able [in the position] to even take an aspirin, because medicine never arrives to these corners of the jungle."50 Sadly, Mejido wrote that when the inhabitants of this town were taken to the health care center (or clinic) in the larger town of Altamirano 100 kilometers away, they found out that forty percent of the “survivors” of this group had tuberculosis.51 The author stated that, “for this reason, in the town . . . the cough of all the men, women, and children accompanies every conversation.”52 The author reported that half of the seventy-one lacandones who live in this village have either tuberculosis, dysentery, diarrhea, parasites or bronchial infections.53 They are malnourished and this makes them “a weak race, without reserves to enable them to resist dangerous diseases or [tolerate] hard work—it begins, with the first cry, upon birth . . . . From this tender [stage of] infancy parasitic diseases begin for the children: nobody boils the water from the river Lacanjá before using it for drinking.”54

48. MANUEL MEJIDO, MEXICO AMARGO 101-02 (1973) (translated by author). Original text reads as follows: “Los lacandones siguen aislados, con hambre, consumidos por las enfermedades . . . . Miran con ojos tristes, porque nunca han conocido la felicidad . . . . Saben, porque no son tontos, que se han escrito miles y miles de palabras sobre su angustiosa situación, sobre sus necesidades, sobre la urgencia de rescatarlos de la vida infrahumana que están condenados a vivir, pero también saben que todo ha quedado en eso: palabras.” Id.

49. See id. at 102.

50. Id. (translated by author). Original text reads as follows: “Cuando las enfermedades los atacan, no están en posibilidades ni de tomar una aspirina, porque las medicinas nunca llegan hasta esos rincones de la selva.” Id.

51. See id.

52. Id. (translated by author). Original text reads as follows: “Por eso en el poblado... los tos de los hombres, las mujeres y los niños acompañan todos los diálogos.” MEJIDO, supra note 48, at 102.

53. See id. at 103.

54. Id. (translated by author). Original text reads as follows: “una raza débil, sin reservas para resistir ni enfermedades peligrosas ni trabajo duros—principia, con el primer
Mejido, "The principle enemy of the lacandones—one of the main reasons for the extinction as a race—is hunger." \(^{55}\)

Mejido also described the horrible public health situation in the city of San Cristóbal de las Casas and its surrounding areas, also in the Zapatista area of the state.

Two hundred eighty thousand indígenas that live in the 5000 square kilometers of the highlands (tierras altas) of Chiapas, bitter, suspicious, indifferent, submissive, contemplate powerlessly the consequences of their sub-subsistence: 80% have tuberculosis, typhoid, or parasites; everyone is undernourished (they only eat beans once a week); 90% of the women and 50% of the men don't speak Spanish; the land only produces 20% of what it should; they only have work three months of the year; and the abuse of alcohol is commonplace among them. \(^{56}\)

Mejido noted that the most serious problem in las tierras altas, or Los Altos, of Chiapas is disease, which has greatly undermined the productive capacity of these indígenas who speak tzeltal and tzotzil (from the Mayan family of languages). \(^{57}\) Disease is coupled by little or no access to health care services. As the then governor of the state, Dr. Manuel Velasco Suárez, noted, "[F]or many years, the health care centers of this unhealthy region plagued by diseases only work at 12 or 15% of their capacity." \(^{58}\) Mejido also noted that the indígenas' diet is so precarious that they do not eat meat, eggs or drink milk even once a month; instead, their staple is maíz (corn) with a little bit of potato. \(^{59}\) Due to their poor diet and the resulting malnutrition, Mejido stated, as well as unhealthy living conditions, which includes defecating outdoors, they cannot fight off...
In addition, the lack of potable water leads to high incidents of diseases that originate in unclean water. Mejido concluded his discussion of Los Altos by declaring that, "of the 280,000 indígenas that live in these conditions, you cannot even call it living, but simply, that they do everything possible not to die."

The existence of objective conditions necessary for guerrillero led revolution is not a new or surprising phenomenon in Chiapas. The historic situation of poverty in Chiapas, of which the lack of the right to health is an integral and important part, has never been a secret; reporters like Mejido are not the only ones who have discussed it in the past or who continue to do so. In 1985, then President Miguel de la Madrid declared that "[t]he natural wealth of the state of Chiapas contrasts with the imbalances in its development." General Absalón Castellanos Domínguez, who became the governor of Chiapas in 1982, stated in an interview six months after taking office that "Chiapas is a paradox. It is one of the country's three main food producers but also one of the three states with the most malnutrition and hunger." He went on to point out that Chiapas is also "second in importance in cacao and banana production and also second in the nation in fatalities caused by infectious and parasitic diseases." He claimed that during his campaign tour "[he] encountered the age-old problems besetting us: caciquismo, alienation, lack of education and public health, meager productivity, the poverty of the Indians and campesinos."

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60. See id.
61. See id. at 105.
62. Mejido, supra 48, at 106 (translated by author). Original text reads as follows: "De los 280,000 indígenas que viven en estas condiciones, no puede decirse, ni siquiera, que vivan, sino simplemente, que hacen todo lo posible por no morir." Id. Another author has written that "in 1970 more than 90 percent of economically active Chiapanecos earned less than 1,000 pesos a month, or slightly more than eighty dollars. Nearly 40 percent of the population was illiterate; about 50 percent of all the houses were without running water and electricity; and 80,000 day laborers worked on fincas and plantations, often living in miserable huts and receiving less than the minimum wage. Chronic alcoholism, malnutrition, and diseases such as tuberculosis, typhus, and intestinal parasites plagued Indian communities. Perhaps 90 percent of Indian children were undernourished." Thomas Benjamin, A Rich Land, A Poor People 231 (1996).
63. Lorenzo Meyer, Preface to Benjamin, supra note 62, at xvii.
64. Benjamin, supra note 62, at 247.
65. Id.
66. Caciquismo refers to the total and dictatorial influence welded by rich, usually landowning elite, in rural areas of México.
67. Id.
ZAPATISTA REVOLUTION

The Mexican government has long known that this rich land, as it has been often called, is home to a very poor, marginalized people. The objectively poor living conditions and the general lack of any real protection of the health of the indigenas of Chiapas has been witnessed by the government for years. As one author said:

A rich land, a poor people. It is the unhappy byword of Chiapas. Distant, provincial, and underdeveloped, Chiapas has generally kept to itself and is largely unknown . . . except by reputation . . . . Reports of endemic poverty and repression occasionally make their way into the newspapers and magazines of Mexico City. In the public mind the state is representative of the worse conditions of rural Mexico.68

Chiapas is rich in natural resources (fertile farmlands, pastures, forests, coffee, cattle, cacao, petroleum) and in productive enterprises, all of which is owned by only a few families.69 The majority of the people are poor and malnourished.70

Endemic poverty and lack of the right to health set the stage for armed rebellion in Chiapas; the situation during the years right before the revolution continued the usual pattern of systematic marginalization. In 1994, Chiapas was still the most marginalized state in México.

In the 1990 statement of “socioeconomic indicators and index of municipal marginalization,”71 as compared to the rest of the states in México, Chiapas was rated as having a “very high” rate of marginalization, the highest in the country.72 Illiteracy and lack of basic services were also prevalent in pre-1994 Chiapas. The 1990 data from the National Population Council showed that of the over 3.5 million inhabitants of Chiapas, 30.1% were illiterate, 62% did not complete primary education, and over 35% lived in dwellings which lacked electricity or drainage.73

68. Lorenzo Meyer, supra note 63, at xvii.
69. See id.
70. See id.
72. See id. Several factors are considered when determining the level of marginalization of a state. These factors include the percentage of the population under fifteen years of age that is illiterate; the percentage of the population living in homes without electricity; and the percentage of the population living in homes with dirt floors. See id. at 340. Those municipios in the east of the state, where the Zapatista rebellion was centered, are among those with the highest rate of marginalization in the state of Chiapas (Larrainzar, Las Margaritas, Ocosingo, Altamirano), classified as “very high”, this being the highest grade in both tables. See id. at 342-43.
73. See Living Conditions, in FIRST WORLD, supra note 12, at 33-34.
Sub-comandante Marcos reported that in the Ejército Zapatista de Liberación Nacional, about 75% of the soldiers were illiterate in both their own language and in Spanish.\textsuperscript{74} The lack of electricity is especially ironic, because in 1994, Chiapas was México's largest generator of hydroelectric energy, producing 55% of the country's total.\textsuperscript{75} The state was also México's third largest producer of gas and fourth largest producer of oil.\textsuperscript{76} Sub-Comandante Marcos, spokesperson of the EZLN, referred to objective conditions in Chiapas at the time of the uprising:

When we talk about living conditions, about the tradition of indigenous resistance, of the special conditions in the southeast of México, where there is more anti-democracy-if this is possible-, more oppression and racism than in the rest of the country, we are describing what could be considered the origin of the revolution.\textsuperscript{77}

The ex-Bishop of the Dioceses in San Cristóbal de las Casas, Samuel Ruiz García, gave a similar description of the situation in Chiapas at the time of the Zapatista uprising. “In Southeastern Mexico, day after day, people live in thinly disguised slavery. Landed cattlemen, ranch owners, and ladinos [Mexicans perceived to be of mixed blood or European descent] are the main oppressors of more than 850,000 indigenous peasants, among them Tzeltal, Tzotzil, Ch'ol, Tojolabal, Zoque, Mame, Zapotec, and Lacandon.”\textsuperscript{78}

At the time of the uprising of 1994 the people of Chiapas were among the poorest in México and received few resources from the government. Chiapanecos were also the most oppressed politically and socially in the nation. The Mexican Center for Human Rights reported that in 1992 and 1993, Chiapas had the highest number of individual rights violations of any state, and that the majority of aggressions were against Tzeltal and Tzotzil peoples.\textsuperscript{79} As one author put it, “Chiapas is a rich land with a poor people
as a result of a political process burdened by violence, and a society profoundly divided ethnically and, above all, economically.\textsuperscript{80}

The historical nature of the objective conditions necessary for revolution in Chiapas is telling; indeed, the government consciously allowed the situation in Chiapas to remain one of extreme poverty and misery. Speaking about the former ruling party, the Partido Revolucionario Institucional (PRI), and particularly, the historical marginalization of Chiapas, Harvard historian John Womack, Jr., wrote:

Not only has the Institutional Revolution been torturous and treacherous in the course of time . . . . Through fat years it has favored some sections of the country more than others; through lean years ruined less in some sections than in others. The northern border states, Jalisco, and Mexico City have prospered most and suffered least. The South Pacific states, Guerrero, Oaxaca, and Chiapas, have prospered least and suffered most. Of all the states, the most agricultural, least electrified, least schooled, least literate, and poorest has been Chiapas. Its population in 1994 was about 3,700,000. Officially half of these people were malnourished. Almost 60 percent of the people working there lived on less than the nationally defined minimum wage, then equivalent to U.S. $1,500 a year. Within each state, regions and districts differ grossly in living standards . . . . What makes Chiapas the poorest state in Mexico is the sorry plight of the central highlands, Los Altos, the cañadas, the Lacandón.\textsuperscript{81} There the population in 1994 was around 650,000. Over 40 percent aged 15 and older had no schooling, 56 percent of those 15 and older could not read or write, probably two-thirds of the homes, crowded, dirt-floor shacks, had no electricity, drinking water, or drainage, and almost 70 percent of working people made less than the minimum wage.\textsuperscript{82}

Objectives conditions, including the violation of the basic human right to health, were pointed to by the revolutionaries as the reason for their decision to turn to armed struggle. On January 15th, 1994, then President Carlos Salinas de Gortari proposed an amnesty that would pardon all insurgents who had been "pressured" into participating in the uprising.\textsuperscript{83} Sub-Comandante Marcos issued a reply to the Salinas offer in one of his most impressive communiqués, and his allusion to the health of the

\textsuperscript{80} Meyer, supra note 63, at xiii.

\textsuperscript{81} These are the areas of Zapatista influence/control, and where the Zapatista troops who staged the armed uprising came from.

\textsuperscript{82} See Womack, supra note 13, at 10-11.

\textsuperscript{83} See Ross, supra note 14, at 38.
Chiapanecos is a straightforward and clear indication of the role it played in their uprising:

Why do we have to be pardoned? What are we going to be pardoned for? For not dying of hunger? For not being silent in our misery? For not humbly accepting our historical role of being the despised and outcast? For having picked up arms after finding all other roads closed to us? . . . Who must ask for pardon, and who can grant it? Those who for years have satiated themselves at full tables while death sat beside us so regularly that we stopped being afraid of it? Those who filled our pockets and our souls with empty promises? Or should we ask pardon from the dead, our dead, those who died “natural” deaths from measles, whooping cough, breakbone fever, cholera, typhoid, mononucleosis, tetanus, malaria, and other lovely gastrointestinal and lung diseases? Our dead, the majority dead, the democratically dead dying from sorrow because no one ever did anything? Because the dead, our dead, went just like that, without anyone ever counting them, without anyone ever saying ¡Basta ya! [enough already] . . . Good health and a hug to you all, and in this cold weather, you should be thankful for both, even if they come from ‘a professional of violence.’

In addition, in an interview given, also in 1994, Sub-Comandante Marcos spoke of objective conditions in Chiapas. The interviewer asked him if the EZLN was “fighting for socialism, like in Cuba.” Marcos responded that, “The directorate of our army has never spoken about Cuban or Soviet socialism. We have always spoken about the basic rights of the human. Education, housing, health, food, land . . . .” Pointing out the need for land, Marcos added that that was not all that the indigenas of Chiapas needed: “We need roads, water, schools, hospital . . . .”

In sum, objective conditions in Chiapas prior to, and at the time of, the Zapatista uprising clearly existed; as ex-Bishop Samuel Ruiz Garcia said, “what alternative was left to them? There was no other way out.” These objective conditions include extreme poverty, lack of access to health care, and lack of basic services such electricity and potable water, as well as sanitation. Unfortunately, these conditions still exist, as will be discussed later on in this article.

84. Id. at 38-39.
85. WEINBERG, supra note 19, at 128.
86. Id.
87. Id. at 129.
88. HERMOSILLO, supra note 78, at 71.
89. See infra Part V.B.
B. Subjective Conditions

Subjective conditions, under the Guevarista framework, must also exist for a guerrillero led revolution to occur. These conditions constitute the "consciousness of the necessity of change and confidence in the possibility of this revolutionary change." According to Guevara, "[t]he subjective conditions in each country, the factors of revolutionary consciousness, of organization, of leadership, can accelerate or delay revolution, depending on the state of their development. Sooner or later... as objective conditions ripen, consciousness is acquired, organization is achieved, leadership arises, and revolution is produced." Guevara insisted that it was not necessary to wait until all the subjective conditions for revolution existed, but that the guerrillas could, themselves, create such revolutionary conditions. To do so, "intensive popular work must be undertaken to explain the motives of the revolution, its ends" and the fact that victory is possible.

Guevara stressed the importance of leaders and popular organizations in the creation of subjective conditions for revolution. He wrote that "it is necessary also to make use of popular organizations of workers, professional people, and peasants, who work at sowing the seed of the revolution among their respective masses, explaining, providing revolutionary publications for reading, teaching the truth.... This is the outline of civil organization within and outside guerrilla territory at a time of popular struggle."

The subjective conditions necessary for guerrillero led revolution to occur existed in Chiapas in 1994. In describing the Zapatista uprising, one historian wrote that, "[M]any small acts of resistance created the conditions of possibility for the Zapatista uprising. When the EZLN appeared on January 1, 1994, it was not a small band of guerrillas hoping to incite a popular uprising. Rather, it was a well-organized indigenous army with a mass base of support."

The creation of the subjective conditions necessary for revolution in Chiapas is linked to organizing that occurred among the campesinos (those who live in the campo, or countryside) and indígenas of the state, especially in the twenty years prior to the revolution. The beginning of the

90. GUEVARA, supra note 39, at 152.
91. Id. at 150. Here, Guevara was citing the Second Declaration of Havana.
92. Loveman & Davies, supra note 38, at xii.
93. GUEVARA, supra note 41, at 56.
94. Id. at 111.
radical campesino movement in Chiapas can be traced to the request by the state governor in 1974 of Bishop Samuel Ruiz to organize an Indigenous Congress (Congreso Indígena), commemorating the birth of Fray Bartolomé de las Casas.96

Before 1974, the Catholic Church had already begun extensive grass roots evangelizing in eastern Chiapas, in part to ward off the advance of Protestantism. When asked to help prepare for the Congress, church planners made use of their evangelical networks . . . . In addition to translating sermons and books of the Bible into indigenous languages, the catechists, many indigenous people themselves, talked about Fray Bartolomé de las Casas and his struggle for Indian rights. They asked indigenous people to think about their current circumstances and difficulties and to delegate members of their communities to come to the Congress and talk about their hopes, desires, and priorities for the future.97

Most importantly, the Congreso Indígena helped to transform the campesino consciousness "provid[ing] a model of bottom-up organizing upon which independent peasant organizations subsequently drew."98 The Congreso Indígena opened in San Cristóbal de las Casas on October 13, 1974.99 Many of the indigenous delegates came from ethnic groups that

96. George A. Collier, Basta! Land and the Zapatista Rebellion in Chiapas 61 (1994). It has been written that:

By the mid-1970s, the Mayans of Los Altos and the jungle were fast coalescing into a social force that the government, the Catholic Church, and the Marxist-Maoist Left were each seeking to control. It was into this activist cauldron that a young radical from the north [of México] plunged in 1983, armed with ideological firepower and a few fast-oxidizing weapons, prepared to make a revolution. 'When we first came here, we thought we were invincible. We thought we were the light of the world sent here to organize the Indians,' [Sub-Comandante] Marcos once told Mexican journalist Blanche Petrich.

Ross, supra note 14, at 6.

97. Collier, supra note 96, at 62.

98. Id. at 63. Another author wrote:

Indian politicization and organization were assisted by the First Indian Congress in Chiapas, sponsored by Bishop Samuel Ruiz in San Cristóbal de Las Casas in 1974. The Congress brought together Tzotzil, Tzeltal, Chol and Tojolabal leaders representing more than 300 communities... Local organization was also assisted by activist priests, members of regular orders, and catequistas as well as radical political activists (refugees from the Student Movement of 1968).

Benjamin, supra note 62, at 235.

99. WOMACK, supra note 13, at 31.
were involved in the armed uprising and live in the Zapatista area of control and influence. There were 587 Tzeltales, 330 Tzotziles, 152 Tojolobales, and 161 Choles, representing 327 communities.

The work done and resolutions emitted by the delegates at the Congreso Indigena show the importance of the right to health for the indigenas of Chiapas and their long held consciousness concerning the violation of this right. On the third day of the Congreso, the delegates reached their accords, and these outlined the need for doctors, effective programs of public health, proper medications, an end to traffic in government-dispensed medicines, and the need for basic services like running water. In addition, "poor sanitation and the lack of medical services and clinics outside of the main towns were denounced as responsible for high indexes of disease and infant mortality, which was estimated at forty-two deaths per thousand births in 1970." This is evidence that even at this early stage of development of the subjective conditions necessary for armed rebellion, the right to health was a central concern for the indigenas of Chiapas.

Most campesinos organizing in Chiapas drew lessons and inspirations, and in some cases their actual beginnings, from the 1974 Congress. The Zapatistas themselves point to 1974 as the starting point for organizing and radical agitation. The EZLN has reported that, "Years have passed, since about 1974, when we began trying to get land, dwellings, roads, rural clinics, but without any success." Once again, there is a mention, early on, of the importance of the lack of the right to health in Chiapas as a factor in the indigenous organizing that would later led to armed rebellion.

Following the Congreso Indigena was the rise of various campesino organizations in Chiapas, including the OCEZ (Organización Campesina Emiliano Zapata) and Política Popular. It has been shown that these and other groups set the state for the Zapatista uprising. Guevara

100. Harvey, supra note 95, at 77-78.
101. See id.
102. See Womack, supra note 13, at 32.
103. Harvey, supra note 95, at 78.
104. See Collier, supra note 96, at 65.
105. See id.
106. Id.
107. See Weinberg, supra note 19, at 35. These groups are also discussed in detail in Collier, supra note 96, at 69-74.
108. See Collier, supra note 96, at 69-74. See also Guillermo Correa, Hay Guerrilleros en Chiapas Desde Hace Ocho Años; Grupos Radicales Infiltraron a la Iglesia y a las Comunidades, Proceso, Sep. 13, 1993, at 12. Major Mario of the EZLN reported that the Zapatista army was born on November 16, 1983, "when six idealists from Mexico's north
mentioned the importance of organizing and leadership of such groups in the achievement of the subjective conditions and consciousness necessary for revolution when he argued that in Latin America:

[T]he poor rural population constitutes a tremendous potential revolutionary force . . . . But the peasantry is a class which, because of the ignorance in which it has been kept and the isolation in which it lives, requires the revolutionary and political leadership of the working class and the revolutionary intellectuals. Without that, it cannot alone launch the struggle and achieve victory.109

In conclusion, in Chiapas, the subjective conditions for armed insurrection developed beginning in the 1970s; people organized, leaders and instrumental players took their places, and revolution resulted.110 Putting Chiapas in the context of the political reality of México as it stood in 1994, one author pointed to “an accelerating failure of the political process,” continuing that “[n]ow the chain has shattered at its weakest link: in Chiapas, land of the poorest of the poor.”111

V. INTERNATIONAL TREATIES

A. Article 12 of the International Covenant on Economic, Social and Cultural Rights

The failure to provide an effective right to health, in all its dimensions, to the indígenas of Chiapas is a violation by México of its duties under international law. Indeed, failure to provide for the protection of the health of the Chiapanecos was one of the reasons many in the state rose in arms in January of 1994. They felt that no other option was left to them, and that only through armed rebellion could they force the government to

arrived to join forces with dissident peasants and Indians in a movement that immediately went underground to begin military and political organizing.” COLLIER, supra note 96, at 81. Sub-Comandante Marcos was one of the six. Id. at 81.

109. GUEVARA, supra note 39, at 149-50 (quoting the Second Declaration of Havana).

110. A brief appearance was made by armed rebels in San Cristóbal de las Casas two years before the revolutionary uprising: “San Cristóbal first found out about the EZLN during tumultuous demonstrations October 12, 1992, to mark 500 years of heroic resistance by the indigenous peoples of the continent against would-be European conquest. Then masquerading as the campesinos they would still prove to be under their ski masks and paliacates (kerchiefs), the ‘Emiliano Zapata National Association of [Independent] Farmers’ (ANCIEZ) attacked a statute of Diego de Mazariegos, the Conqueror of Chiapas, yanking him from his pedestal and torching the bronze figure with gasoline before disappearing back into the jungle. Now the days of civil resistance were narrowing towards war.” ROSS, supra note 14, at 7.

111. MEYER, supra note 63, at xii-xiii.
finally do something to eliminate the systematic marginalization to which they have been subjected to for years.

Before discussing the obligation México has under various international instruments regarding the human right to health, it is useful to briefly discuss what this right entails. It has been said that the right to health embraces two larger parts: first, those elements related to "healthcare," and second, those elements concerning the "underlying preconditions for health." The elements that make up the second part, those concerning the underlying preconditions necessary for health, include a healthy environment, safe drinking water, adequate sanitation, and health-related information. In the case of Chiapas, it is clear that neither set of elements were provided for in 1994. The indígenas and campesinos had little or no access to health care, that is, clinics, doctors or any other kind of health care facility. For instance, a study done in 1994 of 1,100 households in Chiapas showed that forty-two percent of the women had inadequate pre-natal care in births which occurred within the two years prior to the study, that being only between zero and four visits with a health care professional. Additionally, the underlying preconditions necessary to lead a healthy life were not present: the majority of Chiapanecos did not have access to potable water, their towns lacked adequate sanitation, and they lacked access to even the most basic health-related information, as was witnessed in the village of Lacanjá Chanswahayb, where no one boiled their water before drinking it.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), to which México is a party as of 1981, establishes the international human right to health. Article 12 of the Covenant declares that the States Parties to the Convention "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." Therefore, México is obligated to provide Chiapanecos with the

113. See id. at 668.
means to achieve the highest attainable standard of physical and mental health. If one remembers the two parts which make up the right to health, mentioned above, this means that to achieve this goal, México must not only provide sufficient health care services to the people of Chiapas, but also ensure that the underlying preconditions for health are met, including access to potable water, electricity, sanitation, housing, and education. Only then can the enjoyment of the highest attainable standard of health be a reality.

The Covenant mentions particular steps that States Parties must take to ensure the achievement of the highest attainable standard of health possible by their populace. Among the steps to be taken by States are those necessary for the “prevention, treatment and control of epidemic, endemic, occupational and other diseases.”

As we have seen, in the case of Chiapas, disease is a grave problem. Under the ICESCR, México is obligated to prevent, treat and control the diseases that plague the population of Chiapas. Additionally, the Covenant dictates that States must create conditions to ensure to everyone medical service and medical attention in the event of sickness. Therefore, additional clinics must be built throughout the state, and health care workers must be assigned to work in them, so that the vast majority of Chiapanecos, who live in the campo, have access to medical service and attention. In sum, the horrible situation of public health in Chiapas is a violation of México’s obligations under the Covenant, and much needs to be done to rectify the situation.

B. General Comment No. 14

General Comment No. 14 of the U.N. Committee on Economic, Social and Cultural Rights focuses on the right to health set out in the ICESCR. It is important for our analysis because it defines in a more detailed fashion what the right to health contained in the Covenant entails. Specifically, by looking at what the General Comment dictates concerning health, we can see in what ways the Mexican government failed to provide for the health of Chiapanecos.

General Comment No. 14 establishes that, “Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard

117. Id. art. 12(c).
118. See id. art. 12(d).
of health conducive to living a life in dignity." Significant for the
situation in Chiapas, the Committee clarified that:

The right to health is closely related to and dependent upon the
realization of other human rights, as contained in the International Bill
of Rights, including the rights to food, housing, work, education, human
dignity, life, non-discrimination, equality, the prohibition against
torture, privacy, access to information, and the freedoms of association,
assembly and movement. These and other rights and freedoms address
integral components of the right to health.

Thus the right to health is composed of many other rights, including
the right to food, housing, work, education, and non-discrimination, as well
as access to information.

The Zapatistas have consistently maintained that all the factors listed
above were crucial in their decision to take up arms and fight for their
rights. The Mexican government has historically and continually failed in
its duty to provide the indígenas and campesinos of Chiapas with adequate
food, housing, work, or education, factors which add to the discrimination
they face socially as members of a marginalized, poor, and culturally
isolated group. They lack access to information, as they live in an area of
geographic isolation and neglect as well as extreme poverty. Concerning
food, a study showed that in Chiapas the percentage of families who do not
drink milk is 51%, the second highest in the country, after the also
southern and Mayan state of Yucatán; the national average is 35%, with
the northern state of Chihuahua in first place with 8%. In relation to
housing, 59.3% of the housing in Chiapas is classified as “Viviendas de
calidad mala y muy mala”, or houses of bad or very bad quality, the second
worst in the nation behind the state of Guerrero, also a southern state with
a large indigenous population. The small central state of Aguascalientes
is in first place with only 6.7% of its housing falling into this category.

In addition, what the General Comment says concerning equality and
non-discrimination is extremely relevant in the case of Chiapas and other
areas of the country where indígenas comprise the majority. The
government has failed to equalize conditions between the regions and

120. Committee on Economic, Social, and Cultural Rights, The Right to the Highest
121. Id. ¶ 3.
122. La Desnutrición Infantil en el MedioRrrural Mexicano, available at
http://www.insp.mx.salud/35/356-175html [hereinafter Desnutrición Infantil].
123. See id.
124. See id.
states. Indeed, Americas Watch reported that “[i]ndigenous people, who are among Mexico’s poorest . . . live in remote areas characterized by malnutrition, and lack of public services such as potable water, sewers, and health clinics. Linguistic, education and cultural barriers can make them poor advocates on their own behalf.” 125 This goes against the spirit of the ICESCR, and the General Comment made clear that this is not acceptable in the realm of health.

The U.N. Committee on Economic, Social and Cultural Rights declared in General Comment 14 that “the right to health contains both freedoms and entitlements . . . the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.” 126 The fact that Chiapas ranks among the lowest of all Mexican states in all crucial factors of health and access to health care shows that the Mexican government has not provided for its people in an equal fashion. 127

General Comment No. 14 makes clear that States have a positive duty to ensure that their indigenous populations health needs are met, and that their right to health, in all its dimensions, is not violated. The Committee, in speaking on, and setting guidelines concerning, the right to health, recognized the distinct needs of indígenas and their often precarious position in societies. General Comment No. 14 declared that:

the Committee deems it useful to identify elements that would help to define indigenous peoples' right to health in order better to enable States with indigenous peoples to implement the provisions contained in article 12 of the Covenant. The Committee considers that indigenous peoples have the right to specific measures to improve their access to health services and care. These health services should be culturally appropriate, taking into account traditional preventive care, healing practices and medicines. States should provide resources for indigenous peoples to design, deliver and control such services so that they may enjoy the highest attainable standard of physical and mental health . . . . The Committee notes that in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. 128

Thus, the General Comment dictates that specific measures must be taken to improve access to health services and care among indígenas.

126. General Comment No. 14, supra note 120, ¶ 8.
127. See supra Part IV.A.
128. General Comment No. 14, supra note 120, ¶ 27.
México, therefore, has the duty to take positive actions, such as the building of clinics and hospitals and the supplying of necessary medications, to improve the public health situation in Chiapas. Due to the fact that health has a "collective dimension" in indigenous societies, improvement of the health of the communities as a whole must be sought.

Statistics show that the public health situation in the southern and eastern, and vastly indigenous, states of México is markedly different from that in the richer central and northern states. For instance, one study concerning malnutrition showed that in Chiapas, as well as Yucatán, Guerrero, Campeche, Oaxaca, Quintana Roo y Puebla, the rate of moderate and severe malnutrition is higher than 40%, as opposed to less than 20% in the richer northern states of Tamaulipas, Chihuahua, Coahuila, Jalisco, Sinaloa, Sonora y Baja California.129

General Comment No. 14 makes clear México's obligations to Chiapanecos, and the rules it sets out can provide a useful framework for the government in its efforts to improve the health of the indígenas of Chiapas. The Mexican Government must ensure that the basic needs of Chiapanecos are met. These needs are embodied in their right to food, housing, work, and education, as well as access to information, especially, for our purposes, health-related information. These basic human rights are important components of the right to health. In addition, as indigenous peoples, Chiapanecos are entitled to health services that are culturally appropriate, as well as resources to design, deliver and control such services. By fulfilling their obligations under the ICESCR, as outlined in Article 12 of the Covenant and General Comment No. 14, the Mexican government can effectively provide for the right to health of all its peoples.

C. The Indigenous and Tribal Peoples Convention

The ICESCR and General Comment No. 14 are useful in beginning to understand the international human right to health and all that it entails. However, the situation in Chiapas is special in the sense that its population is almost all indigenous,130 and during the recent history of the Americas, the situation of native populations has been one of distinct, and to a large

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129. Desnutrición Infantil, supra note 122. Original text reads as follows: "se observa un notable contraste entre las entidades federativas: Yucatán, Chiapas, Guerrero, Campeche, Oaxaca, Quintana Roo y Puebla presentan una prevalencia de desnutrición moderada y severa superior a 40%, mientras que en Tamaulipas, Chihuahua, Coahuila, Jalisco, Sinaloa, Sonora y Baja California ésta es inferior a 20%." Id.

130. "Chiapas es el estado donde existe uno de los volúmenes más altos de población indígena." Original text is translated as follows: Chiapas is the state where one of the highest volumes of indigenous populations exists. Estrada, supra note 42, at 101-02.
degree, characteristic marginalization.\textsuperscript{131} One part of this marginalization is the violation of the basic human rights of indigenous peoples. As one such basic right, the right to health is less a reality for the indígenas of Chiapas than for other Mexicans.

Recognizing the special needs of indígenas and their often precarious position in national societies, the international community attempted to address their situation in the Indigenous and Tribal Peoples Convention of 1989, to which México is a party.\textsuperscript{132} Article 1, which defines the groups to which the Convention applies, clearly includes the indígenas of Chiapas.\textsuperscript{133} Under the Indigenous Peoples Convention, México has an affirmative duty to protect the rights of its native populations,\textsuperscript{134} promoting the full realization of their social, economic and cultural rights\textsuperscript{135} and working to eliminate socio-economic gaps that exist between indigenous groups and

\begin{quote}
\textsuperscript{131} Guevara wrote that: "At the outset of the past century, the peoples of America freed themselves from Spanish colonialism, but they did not free themselves from exploitation. The feudal landlords assumed the authority of the governing Spaniards, the Indians continued in their painful serfdom, the Latin American man remained a slave one way or another . . . ." \textit{Guevara, supra} note 39, at 156 (quoting the Second Declaration of Havana).

\textsuperscript{132} México was the first Latin American country to ratify the Convention when it did so in 1990. \textit{See} CLETUS GREGOR BARIF, PUEBLOS INDÍGENAS Y DERECHOS CONSTITUCIONALES EN AMÉRICA LATINA: UN PANORAMA 389 (2000).

\textsuperscript{133} International Covenant on Economic, Social and Cultural Rights, \textit{supra} note 166, art. 1.

This Convention applies to (a) \textit{t}ribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; (b) \textit{p}eoples in independent countries who are regarded as indígenas on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

\textit{Id.}

\textsuperscript{134} \textit{See id.} art. 2, ¶ 1. Article 2 provides that "[g]overnments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity." \textit{Id.}

\textsuperscript{135} \textit{See id.} art. 2, ¶ 2(b). Article 2 states that required government measures include "[p]romoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions . . . ." \textit{Id.}
other members of society.\textsuperscript{136} Clearly, because Chiapas is one of the poorest, most marginalized states in México, the government is not fulfilling its obligation to eliminate socio-economic gaps that exist between the indígenas and other members of the national community. In addition, the government is not employing the measures necessary to either protect or promote the full realization by Chiapanecos of their basic human rights.

The state of marginalization and poverty that exists in Chiapas, which is nothing new and can be characterized as both historical and endemic,\textsuperscript{137} clearly demonstrates both discrimination and a hindrance of the human rights of the indígenas. This discrimination and hindrance of fulfillment of even the most basic of human rights is in violation of the Indigenous Peoples Convention. Article 3 of the Convention provides that indigenous peoples “shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination.”

The international human right to health is specifically mentioned and prioritized by the Convention, binding México to deal with the poor health conditions that exist in Chiapas. Article 7 of the Convention declares that, “The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority . . . .” By not prioritizing the improvement of the horrible health conditions in Chiapas, the Mexican government is ignoring its duties under international law. The government must work hard to improve the health situation in Chiapas and provide for access to health care (clinics, doctors), adequate sanitation, clean drinking water, education, and all the other basic components integral to the human right to health.

Article 25 of the Convention focuses exclusively on health. This article declares that:

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic,

\textsuperscript{136} See \textit{id} art. 2, ¶ 2(c). Article 2 provides that the government must eliminate “socio-economic gaps that may exist between indigenous peoples and other members of the national community . . . .” \textit{id}.

\textsuperscript{137} See \textit{supra} Part IV.A.
geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.

4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

This article explicitly lays out steps that must be taken by the Mexican government in relation to its indigenous peoples. This, of course, applies specifically to Chiapas. Adequate health services must be provided in a manner that takes into account the cultural norms of the various Mayan groups in Chiapas. Local community health workers must be trained, and there must be a focus on primary health care. Provisions providing for desperately needed health services must go hand in hand with others that provide for the other social and economic needs of the communities. The indígenas must have access to education, housing, and other basic rights.

The most recent government statistics available from the Instituto Nacional de Estadística Geografía E Informática (INEGI, or the National Institute of Statistics, Geography and Informatics) illustrate that the health situation in Chiapas is as poor today as it was before the uprising; Chiapas is still among the most marginalized states in the nation, indeed, by most standards, the most marginalized. For instance, Chiapas ranks last in number of hospital beds per 100,000 people at 43.9. The second worst is the state of Oaxaca, with 48.6, another southern state with a mostly indigenous population. The highest ranked is the capital, or Distrito Federal (Federal District) with 189.2; the rich central state of Jalisco has 92.5; and the rich northern states of Nuevo León and Baja California Sur have 99.5 and 153.1, respectively. The national average is 78.8, almost double the number found in Chiapas. Chiapas has 88.2 doctors per 100,000 people, the fourth worst in the nation, well below the national average of 117. Jalisco has 114 and the capital, 257.

Authors writing on the situation in Chiapas in 2000 echoed remarks made concerning the situation before the uprising, illustrating the continued marginalization of Chiapas. As one author wrote, "The conditions of backwardness and marginalization of the majority of the

population of the state are remarkable."139 "Of the 111 municipios in Chiapas, ninety-four are officially characterized as suffering from levels of high or very high marginalization, making the state the poorest in the nation."140 "Thirty-four municipios in Chiapas are considered to be in a state of extreme poverty."141 There is no municipio in Chiapas classified to be in a state of low or very low marginalization; "only 19% of the population (those who live in the main cities) live in conditions characterized as a medium level of marginalization, 22% in the level of high marginalization, and 58% in the level of very high marginalization."142

Around thirty percent of the population doesn’t know how to read or write.143 "Of the 855,000 people who make up the Población Económicamente Activa [PEA, or economically active population] 162,000 have no income, and 67% have an income lower than the minimum wage."144

Clearly, as a signatory to the Indigenous Peoples’ Convention, México has an affirmative duty to address the rights and needs of its indigenous peoples; the failure to do so, specifically, for our analysis, in Chiapas, is a failure to complete its duties under international law. An integral part of this obligation is the international human right to health.

139. See Estrada, supra note 42, at 102 (translated by author). Original text reads as follows: "Son notables las condiciones de atraso y marginalidad de la mayoría de la población del estado.” Id.

140. See id. Original text reads as follows: “De los 111 municipios de Chiapas, 94 arrojan niveles de alta y muy alta marginalidad y colocan al estado en el primer lugar nacional de pobreza.” Id.

141. See id. Original text reads as follows: “34 municipios chiapanecos son considerados de extrema pobreza.” Id.

142. See Estrada, supra note 42, at 102. Original text reads as follows: “En Chiapas no hay marginación baja ni muy baja, sólo 19 % de la población (la que habita en las principales ciudades) está ubicada en el nivel medio de marginación, 22 % en el nivel alto de marginación, 58% en el nivel muy alto de marginación . . . .” Id.

143. See id.

144. See id. Original text reads as follows: “Respeto al ingreso mensual, de 855 mil personas de la Población Económicamente Activa (PEA) 162 mil no reciben ingresos . . . . El 67% de la población reciben ingresos menores al salario mínimo.” Id.
VI. LA CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXicanos Y LA LEY GENERAL DE SALUD

A. La Constitución Política de los Estados Unidos Mexicanos (The Mexican Constitution)

Artículo 4 (Article 4) of the Constitución Mexicana (Mexican Constitution) declares the right to health. The fact that the Mexican government has not made good on this constitutional promise in Chiapas was one of many factors that set the stage for an armed guerrilla uprising.

Artículo 4 states that, “Everyone has the right to the protection of their health. The law will define the conditions/requirements and procedures for the access to health services and will establish the concurrent relationship of the Federation and the states in the area of general health . . . .” The Ley General de Salud, or General Health Law, details the right to health in México.

Artículo 4 is also important in our discussion of Chiapas because it is the only place where the Constitución Mexicana refers specifically to the indígenas of the country. The Artículo states that, “The Mexican nation has a multicultural composition upheld originally by its indigenous peoples. The law will protect and promote the development of their languages, cultures, habits, customs, resources and specific forms of social organization . . . .” The language is, unfortunately, focused on cultural and linguistic rights and is vague. But it is testimony to the obligation of the government to respect and further the development of the indígenas of the nation.

B. La Ley General de Salud

La Ley General de Salud (la Ley) provides a vast, elaborate, and detailed framework for the implementation of the right to health in

146. Artículo 4 is in the section of the Constitution which lays out las garantías individuales, individual guarantees or rights. MEX. CONST. art. 4.
147. MEX. CONST. art. 4 (translated by author). Original text reads as follows: “Toda persona tiene derecho a la protección de la salud. La ley definirá las bases y modalidades para el acceso a los servicios de salud y establecerá la concurrencia de la Federación y las entidades federativas en material de salubridad general . . . .” MEX. CONST. art. 4.
148. At this point I would like to clarify that I am using the word indígena in the way it is commonly employed to refer to people who still speak an indigenous language, live in a community with others of their specific ethnic group, and/or practice their traditional customs. I am not attempting to isolate or define who is indigenous in México and who is not; the reality is that most people in México are of indigenous background but do not continue to either speak their language or live in their communities, factors traditionally used to define (and limit) who is “officially” indigenous.
México. I will outline many of the provisions of this law because they provide the best national framework for México's obligations to its population in the realm of health and health care.

Article 1 of la Ley\(^{149}\) provides for the implementation and regulation of the right to health set out in Artículo 4 of the Constitución Mexicana.\(^{150}\) The law applies all throughout México.\(^{151}\) In Article 2, the law states the goals of the right to health\(^{152}\) as being:

1. The physical and mental well-being of the person so that she/he can achieve the utmost of their abilities;

2. The prolongation and improvement of the quality of human life;

3. The protection and growth of the values that help the creation, conservation and enjoyment of health conditions that contribute to social development;

4. The extension of attitudes of solidarity and responsibility among the population in the preservation, conservation, improvement and restoration of health;

5. The enjoyment of health services and social assistance that satisfy efficiently and opportune the necessities of the people;

6. The [attainment of] knowledge necessary to adequately take advantage of and utilize health services; and

7. The development of technological and scientific research and teaching for health.\(^{153}\)

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150. *See id.* at 3.

151. *See id.*

152. *See id.* The Article begins with, "The goals/objectives of the right to the protection of one's health are the following" (translated by author). Original text reads as follows: "El derecho a la protección de la salud, tiene las siguientes finalidades:" *Id.*

153. *Id.* (translated by author). Original text reads as follows:

I. El bienestar físico y mental del hombre para contribuir al ejercicio pleno de sus capacidades; II. La prolongación y el mejoramiento de la calidad de la vida humana; III. La protección y el acrecentamiento de los valores que coadyuven a la creación, conservación y disfrute de condiciones de salud que contribuyan al desarrollo social; IV. La extension de actitudes solidarias y responsables de la población en la preservación, conservación, mejoramiento y restauración de la salud; V. El disfrute de servicios de salud y de asistencia social que satisfagan eficaz y oportunamente las necesidades de la población; VI. El conocimiento
Thus the right to health in México, as dictated by national law, is broad and comprehensive and focuses primarily on a state of physical and mental well being which allows all peoples to achieve the utmost of their abilities.

Article 5 of la Ley General de Salud states that the role of the National Health Care System in México is to enforce and provide for the realization of the right to the protection of one’s health, that is, the constitutional right set out in Artículo 4 of the Constitution. More specifically, Article 6 states that the National Health Care System’s objectives are, among others, to provide health care services to the entire population and to better the quality of said services, giving priority to sanitary problems and factors which cause harm to one’s health, with special interest in preventive care, and contribute to the “harmonic demographic development of the country.” Thus, under national law, the Mexican government must provide health care services to its entire population, giving priority to sanitary and other health threatening problems, and do so in an equal fashion, so that there is demographically equal development.

Artículo 23 of la Ley defines health care services as “all actions realized in benefit of the individual and society as a whole, aimed to protect, promote and restore the health of the person and the community as a whole.” Artículo 24 states that health care services can consist of medical attention, public health services, or social assistance. Therefore, the health care the state must provide for all its citizens is not limited

Id.

154. See id. (translated by author). The Article reads, “El Sistema Nacional de Salud... tiene por objeto dar cumplimiento al derecho a la protección de la salud.” Id.

155. See 12 A CUADERNOS DE DERECHO, supra note 149, at 3-4 (translated by author). The Article reads as follows: “El Sistema Nacional de Salud tiene los siguientes objetivos: I. Proporcionar servicios de salud a toda la población y mejorar la calidad de los mismos, atendiendo a los problemas sanitarios prioritarios y a los factores que condicionen y causen daños a la salud, con especial interés en las acciones preventivas.” Id.

156. Id. at 4 (translated by author). Original text reads as follows: “II. Contribuir al desarrollo demográfico armónico del país.” Id.

157. Id. at 6 (translated by author). Original text reads as follows: “servicios de salud todas aquellas acciones realizadas en beneficio del individuo y de la sociedad en general, dirigidas a proteger, promover y restaurar la salud de la persona y de la colectividad.” Id.

158. See id. (translated by author). Original text reads as follows: “Los servicios de salud se clasifican en tres tipos: I. De atención médica; II. De salud pública; y III. De asistencia social.” Id.
simply to medical attention, but also comprises of other public health services and other forms of social assistance. Thus, under national law, the diverse needs of Chiapas can be addressed, including sanitation, education, housing, and access to health care services and medical attention.

Artículo 25 of the Ley General de Salud is probably most compelling in the case of Chiapas. This article guarantees that health care services are to be improved and extended in an equal fashion, both quantitatively and qualitatively, to all populations, with preference given to grupos vulnerables, or vulnerable groups/populations. Therefore, increasing both the number and the quality of health care services available to Chiapanecos must be a priority for the Mexican government.

C. A Note on Customs and Practices of the Indigenas of Chiapas

Both the Indigenous People’s Convention and General Comment No. 14, as well as Artículo 4 of the Constitución Mexicana, allude to traditional preventive care, healing practices, medicines and customs. Any discussion of the human right to health in Chiapas, and government action to ensure this right, is not complete without some mention of traditional practices and how they are related to the health of Chiapanecos.

The understanding of costumbres indígenas (indigenous customs) in general is not an easy task. It is made difficult by the great diversity among Mexican indigenous groups, a diversity that is ethnic, geographic, social, economic and political. This diversity existed before the arrival of the Spaniards and is further complicated by the different levels and types of integration or assimilation that each ethnic group, and within that, each community, has gone through over the years. What today are referred to as costumbres jurídicas indígenas (indigenous legal customs) is a mix of pre-Hispanic traditions and the normative influence of colonial governments as well as governments of independent México, up until modern times. "Indigenous groups, far from suffering with time complete assimilation to the dominant [national] culture, preserved their respective identities, in spite of undeniable changes."

159. See id. at 6. Article reads as follows: "Conforme a las prioridades del Sistema Nacional de Salud, se garantizará la extension cuantitativa y cualitativamente de los servicios de salud, preferentemente a los grupos vulnerables." Id.

160. See Estrada, supra note 42, at 99.

161. See id.

162. See id. at 99-100.

163. Id. at 100 (translated by author). Original text reads as follows: "Los grupos indígenas, lejos de sufrir con el tiempo una asimilación completa a la cultura dominante, preservaron sus respectivas identidades, a pesar de indudables cambios." Id.
The reality of modern day México is the existence of both national law and custom and indigenous laws and customs. Any attempt at legal action or reform must take both into account.

On the one hand, we have a national society with its statutory legal regime; on the other, we have the sure existence of communities in her midst that are guided by various conceptions of the world, from which are derived a great variety of legal systems. In order to arrive at solutions in this context is important not to forget the double nexus; indigenous communities should be understood according to the internal logic which is their own, but also in relation to national institutions, avoiding both romantic idealizations and the denial of cultural pluralism and the right to be different.

164. It is not within the scope of this article to discuss the proposed Ley de Derechos y Cultura Indígenas (Law Concerning the Rights and Culture of Indigenous Peoples), formulated by La Comisión de Concordia y Pacificación (Cocopa, The Committee on Reconciliation and Peace) and the product of los Acuerdos de San Andrés Larráinzar. See Álvaro Delgado & Julio César López, En Chiapas, “buenas señales”, PROCESO, Dec. 3, 2000, at 20. The Zapatistas and the Mexican government came together in the town of San Andrés Larráinzar, Chiapas, very close to the important city of San Cristóbal de las Casas, in 1995 and early 1996, to engage in dialogue. Los Acuerdos de San Andrés, (San Andrés Accords) were agreed to and signed by both the Zapatistas and the government. As part of its work to implement los Acuerdos de San Andrés, Cocopa drafted the Ley de Derechos y Cultura Indígenas, which would provide for the constitutional recognition of indigenous peoples rights and culture, as called for by los Acuerdos. This proposed legislation was accepted by the EZLN but rejected by ex-President Ernesto Zedillo. In September of 1996, the EZLN abandoned la mesa del diálogo (the dialog sessions) because the government refused to complete its promise to implement provisions of los Acuerdos de San Andrés into the Mexican Constitution. Recently, a trumped version of this law was passed by the Mexican Congress; the Zapatistas have flatly rejected the revised law as going against the spirit of los Acuerdos de San Andrés. Therefore, los Acuerdos de San Andrés remain today unenforced due to lack of implementation on the part of the government. See the Zapatista website, www.ezln.org, for a detailed history of the dialogue, los Acuerdos de San Andrés, and the Ley de Derechos y Cultura Indígenas.

165. See Estrada, supra note 42, at 100 (translated by author). Original text reads as follows:

Por un lado, contamos con una sociedad nacional con su orden jurídico estatuido; por otro, verificamos la existencia de comunidades en su seno que se guían por diversas concepciones del mundo, de los que deriva una gran variedad de órdenes normativos. Para llegar a soluciones en este contexto es importante no olvidar el doble nexo; las comunidades indígenas deben ser comprendidas en la lógica interna que les es propia, pero también en su relación con las instituciones nacionales, evitando tanto las idealizaciones románticas como la negación del pluralismo cultural y el derecho a la diferencia.

Id.
To understand the functioning of *la costumbre jurídica indígena* (indigenous customary law) it is necessary to understand that there are certain divisions characteristic of "modernity" that do not apply. For instance, the separation of church and state, or better yet, the differentiation between that which is civil and that which is religious, is fundamental in the majority of legal systems today, but is unknown to indigenous communities, where religious affairs are inseparable from all day-to-day activities, and therefore, from legal affairs. "What perhaps makes the study and understanding of *la costumbre jurídica indígena* most difficult is that it is composed of norms that generally are not written, but transmitted orally and by the practice of diverse rituals in which religious and political acts are combined." However difficult it may be, in taking legal action to implement the international (and national) human right to health in Chiapas, the national government must take these factors into account, and go through the legal mechanisms and abide by the legal customs of the communities involved.

In the specific area of health and health care, costumbres indígenas are age-old and integral to the culture and practices of the indígenas. One author wrote that, "[i]n the symbolic universe of the mayan culture, the cosmological origin of disease is supernatural, and therapeutic magic obliges the curer to use herbs [natural treatments] with holy reverence." The author points out that the role of traditional healers and medicine people is not limited to attending to mothers and pregnant women, but also commonly extends to health care for children in the treatment of

166. *See id.* at 101. "Para entender el funcionamiento de la costumbre jurídica indígena es necesario comprender también que hay ciertas divisiones características de la modernidad que no tienen curso en ella." *Id.*

167. *See id.* "Por ejemplo, la diferenciación entre ámbito religioso y ámbito civil es fundamental en los ordenamientos jurídicos de nuestros días, pero es desconocida por las comunidades tradicionales, donde lo religioso está indisolublemente atado a todas las actividades cotidianas y, por tanto, también a lo jurídico." *Id.*

168. *See Estrada, supra* note 42, at 101 (translated by author). Original text reads as follows: "Quizá la mayor dificultad para el estudio y la comprensión de las costumbres indígenas sea el hecho de que son normas que generalmente no se encuentran asentadas en disposiciones escritas, sino que se trasmiten oralmente y por la práctica de diversos actos rituales en los que se encuentran combinados elementos de carácter religioso y político." *Id.*

169. José Antonio Durand Alcántara, *Costumbres Indígenas sobre Medicina y Enfermedad, in HACIA UNA FUNDAMENCION TEÓRICA DE LA COSTUMBRE JURÍDICA INDIA* 128 (Carlos H. Durand Alcántara et al. eds., 2000) (translated by author). Original text reads as follows: "En el universo simbólico de la cultura maya, el origen cosmogónico recurrente de la enfermedad es lo sobrenatural, y en la magia terapéutica se obliga el curandero-rezador al uso de la herbolaria con santiguo." *Id.*
various diseases. The author defines *parteras* (healers or providers of traditional health care services), as "people who belong to the community where they work, whom the social group recognizes as bearing knowledge, training or ability to cure, who diagnose diseases according to an understanding [belief] of causality that is held by the group, and whose belief system, ideas and practices clearly separate them from the practitioners of academic medicine."

It is beyond the scope of this article to discuss and analyze in detail la costumbre jurídica indígena in the various communities in Chiapas and among the various ethnic groups, or la costumbre indígena in Chiapas concerning medicine or treatment. However, it is necessary to keep in mind that any government action taken to implement health care and other services in Chiapas must take into account and incorporate costumbres indígenas in general, and la costumbre jurídica indígena in particular, so that government efforts do not in effect result in either the imposition by the national government of a foreign regime and rules of conduct on the people, or the negation of health care services by the indígenas because they do not conform to the ideas and customs held by the community.

**VII. CONCLUSION**

On January 1, 1994, the EZLN changed the face of modern México. By deciding to take up arms to fight against injustice and inequality, these indígenas drew the attention of the international community to their situation. Some may ask why these Mayan campesinos decided to stage an armed rebellion. Authors who discuss guerra de guerrilla, or guerrilla warfare, speak of the conditions necessary for guerrillero led fighting to occur. As one author put it:

When there are no economic and political foundations for the guerrilla movement, there will be no guerrilla movement. The bulk of any guerrilla force joins out of belief in what it is doing; the hard core of

170. *See id.* at 129. Original text reads as follows: "La función de las parteras tradicionales no se circunscribe a la atención de la embarazada y de la puérpera, pues comúnmente extiende sus servicios al niño en lo que respecta al tratamiento de diversas enfermedades." *Id.*

171. *Id.* (translated by author). Original text reads as follows: "Las parteras son personas que pertenecen a la comunidad en donde ejercen, a las que el grupo social reconoce como dotados de los conocimientos, habilidades o facultades para curar, que diagnostican las enfermedades conforme a una idea de causalidad que es compartida por el grupo, y cuyo sistema de creencias, conceptos y prácticas las distinguen claramente de los terapeutas de la medicina académica." *Id.*
leaders keeps going because of political beliefs. If the bulk of the band find they can live as decent human beings . . . and can have land and homes, they will be poor guerrillas from then on. If the great mass of the population knows it will be protected by a strong, just government, it has no reason to cooperate with the guerrillas . . . .

That is, as stated by Ernesto Guevara de la Serna fifty years ago, both objective and subjective conditions must exist for a guerrilla-led insurgency to occur. Those people who suffer under a government who treats them unjustly, who are subjectively aware of this fact and believe they can change their situation, and have leaders present who are ready to lead them, will often turn to guerrilla warfare, as did the indígenas of Chiapas. As another author wrote, "Civilians do not ordinarily desire to disrupt the pattern of their day-to-day living with the violence of military conflict . . . there must be a motivating factor which will cause a widespread spirit of resistance . . . . It is those who have nothing to lose who ordinarily become the active members [of a guerrilla movement]. The peasant farmer and the poorer rural dweller are in this category."173

What is important for our analysis of the state of Chiapas is what can be done to rectify the situation of marginalization so as to improve living conditions and lessen the sense of desperation and oblivion in which the indígenas live. One aspect of the reality of life in Chiapas that must be dealt with and improved is the public health situation and all that this entails.

México is obligated by various international treaties to ensure the fulfillment of the human right to health in Chiapas. One key factor to bringing peace as well as equality to the state of Chiapas is the fulfillment by the Mexican government of its obligation, both under international as well as domestic law, of providing for the realization of the international human right to health.

In the case of Chiapas, historically and systematically, steps have not been taken by the government to deal with issues of utmost importance in the area of health. Under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Mexican government has an obligation to all its people to provide for their enjoyment of the highest attainable standard of physical and mental health. By failing to do so in the state of Chiapas, the Mexican government is faltering on its international treaty obligations.

Additionally, it helped perpetuate the objective conditions that caused the indígenas to turn to armed struggle in an attempt to have their demands be heard.

Article 12 of the ICESCR highlights four areas of the right to health which the State must focus on, said list, of course, not being an exhaustive one: children’s (including newborns and infants) health; environmental and industrial standards; occupational diseases; and access to health care and medical services. Both diseases and access to health care were huge problems for Chiapanecos at the time of the rebellion, and indeed continue to be so today. The health of the children of Chiapas was not, before 1994, and still is not today, adequately provided for, either. Efforts to curb infant mortality due to enfermedad diarreica (ED, or diarrheic disease) in Chiapas, for instance, have demonstrated what a problem the disease is in this state. Doctors reported that:

Despite recent advances, the number of deaths caused by ED continues to be unjustifiably high; in 1995 this illness was the fourth highest cause of infant mortality with a rate of 127 per 100,000 registered births, and the third highest in the death of preschool aged children (with a rate of 15 per 100,000 in this age group). The problem was most evident in some parts of the country with conditions of extreme poverty, like Chiapas and Oaxaca.\textsuperscript{174}

Thus, the public health situation in Chiapas is one of the many factors that make it a poor and marginalized state, contrary to the spirit of the ICESCR.

As one author recently wrote, international law “requires nation states to take affirmative steps to assure that residents of the country have access to population-based health protection measures and also affordable health care in the context of the nation’s economic resources and cultural mores.”\textsuperscript{175} Closely linked to the protection of health and health care facilities are many other rights. General Comment No. 14 of the

\textsuperscript{174} La Mortalidad por Enfermedad Diarreica en México: ¿Problema de Acceso o de Calidad de Atención? [Mortality Due to Diarrhea in México: A Problem of Access or Quality of Service?] 40 \textit{Salud P\textsuperscript{u}b\textsuperscript{u}lico de México} 4 (1998), available at http://www.insp.mz/salud/40/404.3html. The original text reads as follows: “No obstante los avances logrados, el número de muertes por ED sigue siendo injustificadamente elevado; en 1995 esta enfermedad fue la cuarta causa de mortalidad infantil con una tasa de 127 por 100 000 nacidos vivos registrados, y la tercera en mortalidad preescolar (tasa de 15 por 100 000 niños de este grupo de edad). El problema fue más evidente en algunos estados del país con condiciones de pobreza extrema, como Chiapas y Oaxaca.” Oaxaca is another southern and mostly indigenous state in México near Chiapas. \textit{Id.}

\textsuperscript{175} Kinney, \textit{supra} note 119, at 1458.
Committee on Economic, Social and Cultural rights made clear that the right to health is:

[A]n inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, and adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information . . . . 176

Those rights closely linked to the right to health, such as food, sanitation, and housing, were also lacking for the majority of Chiapanecos before the uprising of 1994. Indeed, these basic human rights are still denied to the indigenas of Chiapas today.

The Indigenous Peoples Convention further binds México in its obligation to provide for its native peoples. The Convention specifically mentions the right to health and the principle of equality and closing of socio-economic gaps between indigenous peoples and other members of the national community.

Mexican law also imposes an obligation on the Mexican government to protect the health of all its people. La Constitución Mexicana guarantees the right to the protection of one's health, and la Ley General de Salud outlines what this right means and how it should be achieved. Equality and priority to vulnerable populations are emphasized, as are the recognition and protection of indigenous customs and methods.

The international human right to health of the people of Chiapas was systematically and historically violated by the Mexican government prior to the uprising of January 1, 1994. Indeed, the Zapatistas point to the right to health and its components, such as food and housing, as central demands in their struggle. The situation that existed prior to the rebellion has not improved. Chiapas still remains poor and marginalized and the right to health is not a reality for much of its population.

The Mexican government must make the right to health a reality for the people of Chiapas. Failure to do so is not only a failure to fulfill international treaty obligations, but also a violation of the Mexican Constitution and national law. Objective conditions of poverty and marginalization must be dealt with by the government. The struggle for democracy, justice and equality taken on by the Zapatistas is one that should be taken seriously by the government. Chiapanecos have cried out against injustice and poverty, and they deserve to be heard.

176. General Comment No. 14, supra note 120, ¶ 11.