

2002

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### Recommended Citation

Robert M. Kossick Jr., *Mexico's Emerging E-Government Program: The Role of the Internet in Promoting Economic Development, Democratic Governance, and the Rule of Law*, 8 LAW & BUS. REV. AM. 141 (2002)  
<https://scholar.smu.edu/lbra/vol8/iss1/9>

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# Mexico's Emerging E-Government Program: The Role of the Internet in Promoting Economic Development, Democratic Governance, and the Rule of Law

*Robert M. Kossick, Jr.*

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## I. Introduction

Prior research<sup>1</sup> and the experience of other nations<sup>2</sup> indicates that the Internet can play an important role in promoting democratic governance, economic development, and the rule of law. In express recognition of this potential, Mexico has, as part of its National Development Plan, recently initiated an ambitious project to create a networked society wherein certain government information, services, and transactions can be obtained and/or realized with enhanced integrity from any location in the republic (the "E-Mexico" program).<sup>3</sup> As described by the *Asociación Mexicana para el Comercio Electrónico* (AMECE), a leading private sector advocate for Internet issues, the E-Mexico program "is an integrating project, one that seeks to articulate the interests of distinct levels of government, diverse entities and public dependencies, operators of telecommunications networks, as well as public and private institutions in order to expand the

1. See HOWARD RHEINGOLD, *VIRTUAL COMMUNITIES* 279 (1993) (stating that information technology, "if properly understood and defended by enough citizens, does have democratizing potential in the way that alphabets and printing presses had democratizing potential"); ROBERT H. ANDERSON ET AL., *International Implications for Global Democratization*, in *UNIVERSAL ACCESS TO E-MAIL: FEASIBILITY AND SOCIETAL IMPLICATIONS*, at <http://www.rand.org/publications/MR/MR650/mr650.ch6/ch6.html> (last visited July 15, 2001) (asserting that e-mail interconnectivity shrinks the globe, overcomes political barriers, and enhances the growth of democracy); Mund Americas, *Mexico and Brazil: Toward eGovernment*, *IT—WEEKLY BULLETIN*, Nov. 2000, at 1 (noting that governments which are able to use the Internet and incorporate new information technologies will be playing a dynamic role in the general culture, as well as the development of the market); Geoffrey Kirkman and Jeffrey Sachs, *Subtract the Divide*, *WORLDLINK*, at [http://www.worldlink.co.uk/stories/storyReader\\$523](http://www.worldlink.co.uk/stories/storyReader$523) (last visited July 11, 2001) (arguing that e-government has become a "central means" of global change and predicting that IT connectivity will be a "fundamental hallmark" of successful economic development in the coming years); MICHAEL MAZAAR, *GLOBAL TRENDS* 205 227 (1999) (pointing out the revolutionary shift away from a republican government of de facto elites, and towards a government of more direct participation, along with the consequent emergence of "unitary" democracy). But see Shanthi Kalathil & Taylor C. Boas, *The Internet and State Control in Authoritarian Regimes: China, Cuba, and the Counterrevolution*, at <http://www.ceip.org/files/Publications/wp21.asp> (last visited July 17, 2001) (stating that certain authoritarian regimes have been able to control the development of information and communications technologies, such as the Internet, by using different kinds of reactive and proactive strategies).
2. Argentina, Brazil, Chile, Colombia, Peru, and Venezuela are examples of Latin nations that have, with varying degrees of success, moved different government services and functions online. Of these countries, Brazil, Chile, and Mexico have been identified as e-government leaders. See *Brasil, Chile y Mexico con Iniciativas de E-Gobierno*, at <http://www.amece.com.mx/emexico/egobierno/sep-brasil-chile-mexico.htm> (last visited Oct. 27, 2001).
3. *Plan Nacional de Desarrollo 2001–2002*, at <http://www.cddhcu.gob.mx/bibliot/publica/pnd2001/index.htm> (last visited Aug. 19, 2001); Ivonne Valera Munoz Torres, *El Programa de Desarrollo Informático Dentro del Plan Nacional de Desarrollo*, at [http://publicaciones.derecho.org/redi/No.\\_26\\_-\\_Septiembre\\_del\\_2001/7](http://publicaciones.derecho.org/redi/No._26_-_Septiembre_del_2001/7) (last visited June 25, 2001); Sergio Rodríguez Castillo, *E-Mexico Will Receive US\$ 200–300 Million in 2002*, at <http://www.bmck.com/elaw/getarchive.asp?action=Iso> (last visited Apr. 23, 2001).

coverage of health, education, commerce, and government services."<sup>4</sup> Properly managed, this Internet-based program could serve as a mechanism for: (1) overcoming the developmentally debilitating effects of endemic inefficiency, formalism, corruption, mistrust, and lack of penetration; and (2) creating the conditions under which Mexico's prior efforts at economic, political, and legal reform can flourish.<sup>5</sup> These developments could, in turn, facilitate Mexico's ongoing transformation from an authoritarian state characterized by a patrimonial socio-political organization, to one dedicated to building pluralistic, meritocratic, and transparent institutions capable of supporting its integration with the developed world.

The first part of this paper identifies and analyzes the core components of Mexico's e-government program as presently conceived and/or implemented. In accomplishing this objective, attention is paid to the program's underlying political, legal, and technological framework, as well as its developmental impact. The second part of this paper makes a series of policy recommendations, the adoption of which would permit Mexico to more fully benefit from the developmental opportunities presented by the Internet. Comparative consideration of the e-governance experience of other Latin nations is undertaken to the extent that it puts the development of the E-Mexico program into clearer perspective. The paper concludes by arguing that Mexico's timely implementation of a functional and responsive e-government program could help restore the country's diminishing faith in neoliberal economic policy and democratic governance, thereby strengthening its competitiveness in the global economy.

## II. Initial Developments

Under the determined leadership of the Fox administration, Mexico has taken the first step toward e-governance by facilitating the migration of certain governmental functions and services—namely, citizen participation, civil servant declarations, *tramites* (official solicitations and registrations), procurement, the *registros publicos* (public registries), and tax filings—to an expanding network of government operated websites.<sup>6</sup> Reflecting

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4. *Sistema E-Mexico*, at <http://www.amece.com.mx/boletines/home.html> (last visited Oct. 27, 2001).
  5. As shall be developed in greater detail, Mexico's ability to use the Internet as a mechanism for overcoming the negative effects of deep seeded practices and attitudes will be a function of its willingness to "renegotiate the tradeoffs and sacrifices that lie at the heart of its political and social structures, and create a new order based on a reworked social contract." Jorge Castaneda, *Mexico's Circle of Misery*, FOREIGN AFF., July–Aug., 1996, at 100. Absent such a willingness, Mexico will likely "muddle through, enacting superficial reforms while failing to confront its imposing dilemmas." *Id.* at 92. See also Marta Lagos, *Public Opinion in New Democracies: Latin America's Smiling Mask*, 8 J. DEMOCRACY 125, 127 (1997), available at [http://muse.jhu.edu/journals/journal\\_of\\_democracy/VOCE/8.3lagos.html](http://muse.jhu.edu/journals/journal_of_democracy/VOCE/8.3lagos.html) (noting the statistically significant level of distrust amongst Latin Americans with respect to each other).
  6. Although not addressed in the present work, it is noted that the government has also undertaken to move health, education, and customs services online. See Sergio Rodriguez-Castillo & Alejandra Lopez-Contreras, *E-Mexico Makes Communications, Education, and Health All Priorities*, at <http://www.bmck.com/elaw.asp?action=Iso> (last visited Aug. 6, 2001); *Portal SEP*, at <http://www.sep.gob.mx> (last visited Nov. 26, 2001); *Sepiensa*, at <http://www.sepiensa.org.mx>
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the nascent state of e-government in Mexico, some of these websites have the look, feel, and functionality of static electronic brochures. Those sites that are not already interactive will undoubtedly become so, going forward, as the Mexican government comes under pressure to meet the demands of increasingly service- and performance-oriented citizens and investors.<sup>7</sup> The ways in which the aforementioned governmental functions and services are amenable to the transformative influences of the Internet are discussed below.

#### A. CITIZEN PARTICIPATION

Notwithstanding the fact that it has a governmental structure organically similar to that of the United States (i.e., a tri-partite division premised on the notion of a separation of powers), Mexico has never had a strong tradition of citizen participation in government.<sup>8</sup> Testifying before the House Committee on Small Business, noted Mexican scholar John Bailey characterized Mexico's political system as one "obsessed with central control, lacking a tradition of democracy and participation, and deeply skeptical about

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(last visited Nov. 23, 2001); *Aduana Mexico*, at <http://www.aduanas.sat.gob.mx> (last visited Dec. 2, 2001); *Instituto Mexicano del Seguro Social*, at <http://www.imss.gob.mx> (last visited Nov. 16, 2001).

7. Consistent with Michael Porter's notion of the "competitive advantage of nations," the existence of an efficient and responsive government portal will be one of several key determinants of Mexico's prospective ability to attract capital and investment. MAZAAR, *supra* note 1, at 219.
8. The reason for this can be traced back to the vastly divergent social, political, economic, and religious institutions and philosophies brought to the new world by Spanish settlers and English colonists. Generally considered, the Spanish territories were formalistically governed by the powerful representatives of the administratively overextended Spanish crown. Laws came directly from the crown, without significant input from the settlers. In contrast, Britain made little initial attempt to supervise its colonies (so called "self-government by the King's command"). This inattention, coupled with the novelty of the legal issues encountered by the original colonists (thereby making the direct application of English jurisprudence more difficult), fostered an empirical and pragmatic approach to governance, facilitated the early emergence of representative assemblies and elected officials, and helped the colonies to operate independently of the English crown. PAUL JOHNSON, *A HISTORY OF THE AMERICAN PEOPLE* 71 (1997). Although the establishment of the PRI (following the Mexican revolution) did give rise to the emergence of a corporatist structure of governance (whereby vast sectors of the population were co-opted and/or incorporated into either the labor, agricultural, or popular arm of the party), this did little to increase the actual civic involvement of most Mexicans. Underscoring the absence of change over time with respect to this issue, the contemporary Mexican political process has been described as being "largely conducted through back room deals between party bosses more concerned with personal power, than any public interest or accountability." *Now For Action*, *ECONOMIST*, Aug. 10, 1996, at 32. Notwithstanding the political opening that has occurred in Mexico over the last four years, the negotiation and resolution of many issues continues to be characterized by a circumscribed participation. See Wilbert Torre, *Negociar en 'Lo Oscuro' Gobernalidad del PRI*, *REFORMA*, Nov. 18, 2001, at 4A.

the uncertainties of risk taking inherent in democratic competition.”<sup>9</sup> Continuing, he noted: “Its basic instinct in confronting opposition is to co-opt, negotiate, and persuade; if these fail, its methods include divide, debilitate, denounce, and—as a last resort—repress.”<sup>10</sup>

The historic losses recently suffered by the PRI contain important implications for the process of governance in Mexico.<sup>11</sup> Where the PRI’s long-standing control of the Congress facilitated a top-down, “metaconstitutional” approach to law making, Mexico’s legislators must now develop and deploy consensus and/or coalition building skills.<sup>12</sup> As one trade publication relates, “Mexico is shaking off the authoritarian one-party state that has governed for most of this century and a more plural and democratic country is emerging. With it, too, a new culture is slowly forming, characterized for the first time by negotiation and persuasion and democratic give and take.”<sup>13</sup> The novel situation of legislative uncertainty produced by this change, coupled with the contemporaneous explosion of political awareness made possible by the rapid spread of information and communications technologies (ICT), has opened up unprecedented opportunities for

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9. *Mexico’s Political and Legal Environment for Doing Business, 1993: Testimony Before Committee on Small Business, Hearing on North American Free Trade Agreement 103rd Cong.* (Feb. 23, 1993) (statement of John Bailey).
  10. *Id.* In this connection, Octavio Paz once likened the office of the Mexican presidency to an “ogro filantropico” (i.e., that of a philanthropic ogre).
  11. Following seven decades of uninterrupted power, the PRI lost control of Congress in 1997 and the executive branch in 2000. As one writer relates,

“[W]ith the emergence of plurality, most notably since 1997, Congress has become a principal player in the Mexican political arena. In that year, for the first time in modern history, Mexico began experiencing a divided government, in which the president’s party did not enjoy an absolute majority in the Chamber of Deputies. That fact began to change the logic and nature of relations between the executive branch and the legislative branch, and led to unprecedented forms of political bargaining and compromise.”

Luis Carlos Ugalde, *The Transformation of Mexican Presidentialism*, 25 FLETCHER F. 115, 123 (2001).

12. See Maria Amparo Casar, *Mexico’s July 2 Elections and Governability*, VOICES MEX., Oct.–Dec. 2000, at 13; Ugalde, *supra* note 11, at 116 (noting the way power has slipped from the office of the presidency); Joel Estudillo Rendon, *Inside, Outside*, BUS. MEX., Feb. 1999, at 16; Sallie Hughes, *A President’s Best Friend*, EL FINANCIERO INT’L EDITION, Sept. 12–18, 1994, at 10. An example of this principle in action involves the debate and compromise associated with the establishment of the federal budget for FY 2002. David Aponte and Alejandro Suverza, *Reforma Fiscal: Pacto Inedito*, CAMBIO, Jan. 6, 2002, at 22; Fenico de Moraes, *Las Alianzas en el Congreso Prefiguran una Nueva Geometria Politica*, VERTIGO, Jan. 6, 2002, at 16 (noting that sight of Argentina’s recent economic collapse, much of which is attributable to intransigent political practices and inept budgeting, incited Mexican lawmakers to reach an accord with respect to fiscal reform).
  13. Sam Quinones, *The New Influence Peddlers*, LATIN TRADE, Nov. 1999, at 24. Emphasizing the measured and evolving nature of Mexico’s political reality, one Mexican editorial likened the state of the country’s democratic development to that of an adolescent on the verge of adulthood. Carmen Gonzalez Costo, *Adolescencia Democratica*, REFORMA, Nov. 30, 2001, at 19A.
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citizen participation in Mexico.<sup>14</sup> Although Mexico retains a representative form of political organization, its elected officials are learning that legislative and political success in the knowledge era comes to those who are most responsive to the input of an expanding range of increasingly organized constituents and interest groups.<sup>15</sup>

In recognition of the changing political role of the Mexican citizen, the Fox Administration has established a digital channel whereby individual citizens and civic groups can participate in the articulation of Mexico's National Development Plan (the "*Consulta Ciudadana*").<sup>16</sup> Based on the "E-Advocacy"<sup>17</sup> and "Interactive Service" (G2C2G)<sup>18</sup>

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14. *Mexico's Congress Shows Muscle*, at [http://news.findlaw.com/ap\\_stories/i/1102/4-22-2001/20010422170159220.html](http://news.findlaw.com/ap_stories/i/1102/4-22-2001/20010422170159220.html) (last visited Apr. 24, 2001).
  15. The increase in citizen participation that has occurred in tandem with the florescence of the knowledge era is supported by complexity theory. Under this view, the creative potential of the interactions of individual actors improves the social order by enhancing productivity, fostering economic growth, allowing for unprecedented personal fulfillment, and contributing to self-organizing systems. See MAZAAR, *supra* note 1, at 218. In this connection, the Mexican government's increasingly tolerant attitude towards open dissent has spawned the formation of numerous autonomous and politically active civic groups (including, for example, the *Centro de Investigacion y Docencia Economica*, the *Centro de Estudios Economicos del Sector Privado*, the *Centro de Investigacion para el Desarrollo, A.C.*, the *Centro de Analisis y Difusion Economica*, the *Alianza Civica, El Barzon, inter alia*) and inspired the creation of new political parties. Jorge Octavio Ochoa, *52 Agrupaciones Buscan Registro*, EL UNIVERSAL, Jan. 4, 2002, at A8. Leveraging the dissemination opportunities associated with the Internet, such groups have become adept at using the power derived from their bases of support to force the nation's political leaders to focus on their agendas. See Robert O. Keohane & Joseph S. Nye, Jr., *Power and Interdependence in the Information Age*, 75 FOREIGN AFF. 81, 83 (1998).
  16. *Sistema Internet de la Presidencia de la Republica*, at <http://www.presidencia.gob.mx> (last visited Nov. 13, 2001). The legislative parallel to the establishment of this channel involves Diputado Villa Preciado's recent bill regarding popular initiatives. See *Decreto por el que se Reforma el Artículo 41 y se Adicionan el Artículo 71 con una Fraccion IV y el 99, con una Fraccion V Bis., de la Constitucion Politica de los Estados Unidos Mexicanos, se Crea la Ley Reglamentaria de la Fraccion IV del Artículo 71 de la Constitucion Politica de los Estados Unidos Mexicanos y se Reforman Diversas Disposiciones delCodigo Federal de Instituciones y Procedimientos Electorales, de la Ley Organica del Congreso General de los Estados Unidos Mexicanos, del Reglamento para el Gobierno Interior del Congreso General de los Estados Mexicanos, de la Ley General del Sistema de Medios de Impugnacion en Materia Electoral y de la Ley Organica del Poder Judicial de la Federacion*, Gaceta Parlamentaria, 26 de septiembre de 2001, at <http://gaceta.cddhcu.gob.mx/Gaceta/58/2001/sep/20010926.html> (last visited Dec. 6, 2001).
  17. An E-Advocacy model of digital governance entails the use of planned, directed, and strategic flows of information for the purpose of implementing real world decision-making processes. "The strength of the model is in the diversity of the virtual community, and the ideas, expertise, and resources accumulated through this virtual form of networking." The model can be used to form issue specific pressure groups and to catalyze broader participation in the decision making process. *Digital Governance: Building and Sustaining Democratic and Accountable Government Structures Using ICT*, at <http://www.cddc.vt.edu/digitalgov/gov-e-advocacy-models.html> (last visited July 11, 2001) [hereinafter *Digital Governance Models*].
  18. An Interactive Service (G2C2G) model involves the direct participation of individuals in the governance process. This model is characterized by an interactive, two-way flow of information between citizens and government. *Id.*
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models, the *Consulta Ciudadana* facilitates both the expression of opinion (*Foro de Consulta*)<sup>19</sup> and the proactive presentation of legislative proposals (*Buzon de Consultas*).<sup>20</sup> The creation of this channel is positive, insofar as it enables more individuals and groups to gain admission to the law-making arena by removing the barriers of distance and political access.<sup>21</sup> This is noteworthy, given the fact that Mexico's laws have traditionally been made by Mexico City based elites, with little first-hand knowledge of the social, economic, legal, and political interests and/or concerns of the people they govern.<sup>22</sup> Going forward, the *Consulta Ciudadana* has the potential to serve as: (1) an important conduit for the expression of fresh political thoughts, practices, and values; and, (2) a mechanism for assuring that laws promulgated in the capital pragmatically relate to the reality of the subject matter they intend to regulate.

The *Consulta Ciudadana* is additionally significant, in that it marks the beginning of the disintermediation of politics in Mexico, and the rise of a more "direct" form of

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19. Many Latin governments, including Mexico, have set up online "foros" for the exchange of ideas with respect to certain legislative topics. Examples include Argentina (<http://www.nacion.ar/espaciocivico/foros/foros.asp>), Chile ([http://ww2.minvu.cl/minvu/new\\_foro/tema.asp](http://ww2.minvu.cl/minvu/new_foro/tema.asp)), Colombia (<http://www.aganda.gov.co>), Mexico (<http://www.secofi-ssci.gob.mx/siger>), and Venezuela (<http://www.gobiernoenlinea.ve/gobierno/>).
  20. Only Brazil (<http://www.camara.gov.br/Internet/comissao/index/perm/clp/apresentacao.htm>) and Mexico (<http://www.presidencia.gob.mx>) have established online mechanisms for the presentation of citizen generated legislative proposals. Although a good start, Mexico's system for the direct submission of citizen proposals is not as advanced as Brazil's *Comissão de Legislação Participativa*. Where the Mexican government's effort to provide a channel for the expression and/or presentation of individual initiatives is judged to be inadequate, citizens have demonstrated a proactive tendency to establish their own channels of political expression. For example, the citizens of the state of Nuevo Leon have recently used the Internet as a platform for promoting citizen initiatives. See *Ley Sobre Iniciativas Ciudadanas del Estado de Nuevo Leon*, at <http://paginas.infosel.com/rzaragoz/archivos/intro.htm> (last visited July 3, 2001). Argentina's private sector has established a similar site for citizen participation. See *Poder Ciudadano*, at <http://www.poderciudadano.org.ar> (last visited Oct. 10, 2001).
  21. The *Consulta Ciudadana* will facilitate the participation of Mexicans domiciled in rural areas, as well as those who have left the country and now reside abroad (commonly, the U.S.). The input of this latter group, shaped as it is by their exposure to U.S. values and practices, is especially valuable for the potential it has to inject new ideas, standards, and energy into the process of governance in Mexico. Sam Quinones, *Just a Click Away: Websites Put Mexicans in Touch with Their Hometowns*, *LATIN TRADE*, Sept. 2001, at 34. Analogously, improved access to electronic media has been identified as a means of erasing the disparities of distance and geography and "minimizing" the urban-rural distinction that has had political implications in Africa." Dana Ott, *Power to the People: The Role of Electronic Media in Promoting Democracy in Africa*, at [http://www.firstmonday.dk/issues/issue3\\_4/ott](http://www.firstmonday.dk/issues/issue3_4/ott) (last visited Mar. 8, 2001).
  22. Peruvian economist Hernando de Soto touches on this point when he notes the way that existing law in Latin America frequently does not address the needs and aspirations of the people. HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* 150 (2000). Other scholars have argued that this disconnect between practical reality and idealized law has been a common feature of the civil law going back to the time of the Roman empire. KENNETH L. KARST & KEITH S. ROSENN, *LAW AND DEVELOPMENT IN LATIN AMERICA: A CASE BOOK* 13-57 (1975).
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democracy.<sup>23</sup> Assuming, (1) the rectification of Mexico's substantial Internet access problem, and (2) the existence of the genuine political will to expand the substantive scope of the channel,<sup>24</sup> the *Consulta Ciudadana* could help bring about a fundamental redefinition of the social contract underlying the citizen-government relationship.<sup>25</sup> These ICT related developments could, in turn, contribute to the transformation of Mexican authority structures, and facilitate the growth of self-regulatory practices.<sup>26</sup>

## B. TRANSPARENCY

Mexico has a deeply entrenched history of non-transparency.<sup>27</sup> The PRI's seven-decade stranglehold on power, coupled with its careful control of information and

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23. This development, to the extent citizens (either individually or in groups) are able to directly create and present legislative proposals, is in line with the form of democracy originally advocated by Aristotle—i.e., a system characterized by direct communication between political actors. Because social organization and communications practices have become significantly more complex since the time of Aristotle, it is imperative that Mexico's government carefully guard against the confusion and paralysis that could result from sudden and excessive citizen inputs of information ("information overload"). The main challenge here will be structuring the channel(s) of citizen participation in such a way as to assure the orderly reception and productive dissemination of informational input. In the case of the *Consulta Ciudadana*, there is no indication of the way in which citizen input is used, if at all.
  24. As presently set up, citizen input (in the form of either opinions or legislative proposals) is limited to the subject of the National Development Plan, as opposed to any and all matters of interest to the population. In a related vein, the government could more clearly ascertain the will of the people by using the *Consulta Ciudadana* for the conduction of plebiscites and referenda. Although these features are not part of the *Consulta Ciudadana*, The *Tramitanet* component of the E-Mexico program, (under construction) promises to remedy the aforementioned limitations by offering citizens a means of submitting commentaries and/or suggestions, without regard to the subject matter of the input, and participating in opinion polls. See *Tramitanet*, at <http://www.tramitanet.gob.mx> (last visited Aug. 23, 2001).
  25. The legitimacy of the government-citizen social contract in Mexico has long been undermined by the arbitrary, self-serving, and unrepresentative quality of the country's political leadership. The operation of this channel in the context of a new legislative environment holds the potential to strengthen the foundation upon which the government-citizen social contract rests.
  26. A basic tenet of the IT revolution is that the rapid rate of technological change, considered in conjunction with the nascent nature of the knowledge era, favors pragmatic and responsible self-regulation over untimely and potentially growth stifling governmental regulation. Beyond providing the organic flexibility required by today's ever-changing technology environment, it has been noted that self-regulation is an important means of avoiding "onerous regulations imposed by less informed, although possibly well intended legislators." *Responding to the Legal Obstacles to Electronic Commerce in Latin America*, 17 ARIZ. J. INT'L & COMP. L. 5, 9 (1999). An early example of self-regulation in Mexico involves the establishment of the AMIPCI (*Asociacion Mexicana de la Industria Publicitaria y Comercial en Internet*). This watchdog consortium of portals is dedicated to monitoring adherence to Mexico's new e-commerce laws. Sergio Rodriguez-Castillo, *Major Portals Form Internet Watchdog Association*, at <http://www.bmck.com/elaw/getarchive.asp?actione=ISO> (last visited June 26, 2001).
  27. See *United Mexican States v. Metalclad Corp.*, No. L002904, 2001 B.C. Sup. Ct., LEXIS 14181, available at <http://www.naftaclaims.com> (last visited Oct. 16, 2001) [hereinafter *Metalclad*]
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adherence to the principle of self-determination, insulated Mexico from adverse scrutiny and, to a lesser degree, accountability. Considered in the context of Mexico's patrimonial socio-political organization, this lack of transparency fostered rampant corruption<sup>28</sup> and eroded economic, political, and legal certainty.<sup>29</sup>

Drawing on the experience of other Latin nations in using the Internet as a tool for overcoming the developmental impediments posed by non-transparency and corruption,<sup>30</sup> the Fox administration has begun to use the E-Mexico program as a platform for showcasing the patrimonial information of civil servants (*Declaranet*).<sup>31</sup> Premised on the "Broadcasting/Wider Dissemination" model, this type of digital resource "opens up

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(decision of the Supreme Court of British Colombia upholding the ruling of a NAFTA dispute panel, that Mexico's lack of transparency made it impossible for a foreign investor to open a business).

28. The only recourse available to citizens in connection with the discovery of information controlled by the government involves the filing of an *Amparo*.
  29. Notwithstanding the enactment of numerous economic, political, and social reforms over the last two decades, corruption in Mexico appears to be as ubiquitous as ever. *Transparency International's 2000 Corruption Perception Index*, at <http://www.gwdg.de/~uwww/2001Data.html> (last visited Apr. 6, 2001) (giving Mexico a corruption perception score of 3.7 out of a possible top score of 10). See also *Denuncian Gastos Ilegales e Inmorales en Hacienda*, CNI en Línea, at [http://mx.yahoo.com/noticias/010620/actualidad/cni/prd\\_lorena\\_brugada\\_gastos\\_hacienda\\_99308](http://mx.yahoo.com/noticias/010620/actualidad/cni/prd_lorena_brugada_gastos_hacienda_99308) (last visited June 25, 2001); *Mexican Official Details Chaos and Corruption in His Office*, BALT. SUN, Mar. 4, 1993, at 12A; Maria Idalia Gomez, *La Corrupcion en el Gobierno de Albores*, MILENIO, Aug. 13, 2001, at 39 (alleging Mexican governor's misuse of public resources); Ernesto Nunez, *Acusan a Ricardo Monreal de Manipular Presupuesto*, REFORMA, Jan. 6, 2002, at 11A; Juan Ramon Nava, *Descubre Congreso Desvios en Tribunal*, REFORMA, Jan. 10, 2002, at 16A; Ricardo Rodriguez Olivo, *Corrupcion y Complicidad en la Funcion Publica: R. Castro*, EXCELSIOR, Jan. 14, 2002, at 1 (noting negative effects of continuing tax evasion, public sector corruption, and impunity).
  30. Once viewed as merely a "chronic characteristic of human behavior" with negligible effects on economic and political activity, corruption is now considered to be a major impediment to the growth of the global economy and liberal democracy. As Andres Oppenheimer states, "policymakers and legislators are realizing that corruption is the number one threat to Latin American democracies." Andres Oppenheimer, *Global War on Corruption Will Help Hemisphere*, MIAMI HERALD, Feb. 25, 2001, at 7A. The correctness of this perspective is manifest in Foreign Affairs' brief review of the pervasiveness of executive branch corruption in Latin America: "In Latin America, bribery charges resulted in the impeachment of President Fernando Collor de Mello of Brazil and Carlos Andres Perez of Venezuela, as well as the resignation of President Abdala Bucaram of Ecuador. In Mexico, President Carlos Salinas de Gortari was tarnished by his brother's illicit accumulation of huge sums. President Ernesto Samper of Colombia avoided impeachment over his acceptance of money from the Cali drug cartel, but his political authority was eroded and his party lost the recent political election." John Brademas & Fritz Heimann, *Tackling International Corruption; No Longer Taboo*, FOREIGN AFF., OCT. 1998, at 17; *Montesinos Recalls Ease of Bribing Lawmakers*, THE NEWS, Dec. 29, 2002, at 11. More recent events underscore the politically destabilizing effects of corruption (consider, for example, the corruption related charges brought against Argentina's Menem and Peru's Fujimori, as well as the way in which excessive levels of corruption have weakened the authority of Brazil's Cardoso, and incited coup attempts in Bolivia and Paraguay).
  31. See *Declaranet*, at <http://www.declaranet.gob.mx/quedecpat.html> (last visited Sept. 3, 2001) [hereinafter *Declaranet*]. As presently structured, civil servants can present their declarations
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an alternate channel for people to access information, as well as to validate information available from other sources.<sup>32</sup>

While *Declaranet* constitutes a revolutionary step in the direction of transparency, it may ultimately be of limited value, in that all quantitative and qualitative issues of disclosure are left to the absolute discretion of the government. Viewed next to Argentina's "cristal.gov" (which contains, *inter alia*, information regarding the national debt, the national budget, the national currency, the financial records of public figures, as well as the techniques and/or standards used in collecting this data), for example, Mexico's *Declaranet* appears both substantively anemic (it only provides information about the patrimonial declarations of civil servants),<sup>33</sup> and methodologically ambiguous (no indication is given as to how data is generated and/or audited).<sup>34</sup> By acting to improve

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either electronically, or using traditional paper based methods. See "Acuerdo por El que se Establecen las Disposiciones para el Uso de Medios de Comunicacion Electronica, en la Presentacion de Situacion Patrimonial de los Servidores Publicos de las Dependencias y Entidades de la Administracion Publica Federal," D.O., 30 de abril de 2001, at <http://www.declaranet.gob.mx/normat.html> (last visited Nov. 7, 2001). Civil servants that elect to present patrimonial declarations via electronic means must obtain a digital certificate bound by the *Secretaria de Controlaria y Desarrollo Administrativo*. *Id.* Other Latin governments which have established transparency-oriented websites include: Argentina (<http://www.cristal.gov.ar>), Brazil (<http://www.brasiltransparente.gov.br>), and Peru (<http://www.transparencia-economica.mef.gob.pe>). Similar channels of disclosure have been set up by state level governments in Mexico. An example is the state of Nuevo Leon's "Cuentas Claras" website. See *Declaracion Patrimonial Actual*, at <http://www.nl.gob.mx/pagina/servicios/CuentasClaras.html> (last visited June 26, 2001). *Transparencia Mexicana* (<http://www.transparency.org>) is the private sector analog to *Declaranet*.

32. *Digital Governance Models*, *supra* note 17. This model can be used to put online information pertaining to the financial information of government personnel, budgets, expenditures, performance, etc. A private sector organization in Colombia has even used the model to provide background information about political candidates. See *Candidatos Visibles*, at <http://cv.uniandes.edu.co/index.htm> (last visited Aug. 2, 2001).
  33. Civil servants are required to present the following patrimonial information: (1) the *Registro Federal de Contribuyentes*, with accompanying homoclave; (2) the *Clave Unica de Registro de Poblacion* (CURP); (3) *escrituras* pertaining to real property; (4) receipts pertaining to vehicles and other personal property; (5) contracts and statements pertaining to bank accounts, investments, mortgages, liens, and credit cards; (6) verification of all income connected to the subject's public service; (7) documentation of the income and patrimony of a spouse and dependants; and (8) a copy of the last patrimonial declaration presented. See *Declaranet*, *supra* note 31.
  34. The *Declaranet* site does make available to viewers a copy of the *Ley Federal de los Servidores Publicos* ("L.F.S.P."). See *Normatividad*, at <http://www.declaranet.gob.mx/normat.html> (last visited Oct. 6, 2001). This piece of legislation does not, in its current form, provide significant insight into the accounting and valuation standards applicable to the collection of patrimonial data. Forthcoming revisions to the L.F.S.P. will, *inter alia*, expand the law's coverage to include the department heads of decentralized agencies and parastatal entities. Daniel Lizarraga & Victor Fuentes, *Podra SECODAM Indagar Cuentas*, *REFORMA*, Nov. 30, 2001, at 1 (noting Mexican Senate's approval of new L.F.S.P.). As shall be discussed, *infra*, other data regarding government transactions is available at *Compranet*. Even considering information from this additional source, transparency-related disclosure in Mexico remains relatively limited.
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both the quality and quantity of information disclosed, Mexico could strengthen citizen and investor perceptions regarding the integrity of the political system, and improve its record of compliance with international treaty obligations.<sup>35</sup>

Another way transparency can be enhanced in Mexico is through the adoption and enactment of a Habeas Data law.<sup>36</sup> Conceptually and functionally akin to the Freedom of Information Act (FOIA) in the United States, the Latin American Habeas Data action remedies “information failure” by giving citizens access to government information that has been withheld.<sup>37</sup> Assuming an effective legal procedure,<sup>38</sup> Mexico’s promulgation of a Habeas Data action could function as a powerful tool for influencing

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35. The arbitral tribunal in the Metalclad case interpreted the “fair and equitable treatment” standard contained within NAFTA art. 1105, as including an obligation for governments to act in a transparent manner. Metalclad, *supra* note 27. Although this ruling does not have a binding, *stare decisis* quality, it will likely be persuasive in the eyes of future arbitral tribunals.
36. Although Habeas Data has been the subject of frequent debate and discussion in Mexico, there is still no such right of action, *per se*. See *Iniciativa de Ley Federal de Protección de Datos Personales*, Gaceta Parlamentaria, 15 de febrero de 2001, at <http://gaceta.cddhcu.gob.mx/gaceta/58/2001/feb/20010215.html> (last visited June 26, 2001); *Bancos de Datos de Leyes de Prensa: Mexico*, at <http://www.sipiapa.org/espanol/projects/laws-mex22.cfm> (last visited June 26, 2001); *Beatriz Paredes Apoya la Ley de Información Pública 18 de Junio de 2001*, at <http://vlex/actualidad//1003> (last visited June 25, 2001); Antonio Aveleyra, *Propuesta Legislativa de Nuevos Tipos Penales en Relación con la Informática*, at <http://www.inegi.gob.mx/pdi/nv/asesoria/foro/temas6/propomf.htm> (last visited Aug. 16, 2001); *Iniciativa del Ejecutivo Federal, de la Ley Federal de Transparencia y Acceso a la Información*, Gaceta Parlamentaria, 4 de diciembre de 2001, at <http://gaceta.cddhcu.gob.mx/Gaceta/58/2001/dic/2001/dic/20011204.html> (last visited Dec. 6, 2001); Victor Fuentes, *Entregan Hoy Proyecto de Ley de Información*, REFORMA, Nov. 30, 2001, at 15A (notwithstanding the law’s intended application to the executive, legislative, and judicial branches, it only specifies the administrative procedures governing the obtainment of executive branch information); María de la Luz González, *Otorga Ley Tres Instancias para Acceso a Información*, REFORMA, Dec. 4, 2001, at 2A (noting the access to information initiative proposes a three step solicitation and review procedure, in addition to carving out eleven access exceptions). The continued absence of this action in Mexico is conspicuous, given its widespread availability throughout Latin America, including Argentina, as guaranteed by art. 43 of the Constitution of 1994, and Law No. 25.326 of November 2, 2000, at <http://www.uni-wuerzburg.de/law/ar0000.html>; Brazil, as guaranteed by art. 5 of the 1988 Constitution and Law No. 9.507 of November 12, 1997, at [http://infojur.cj.ufsc.br/arquivos/direito\\_administrativo/9507\\_97.htm](http://infojur.cj.ufsc.br/arquivos/direito_administrativo/9507_97.htm); Colombia, as guaranteed by art. 15 of the Constitution of 1997, at <http://www.georgetown.edu/pdba/Constitutions/Colombia/Col91.html>; Paraguay, as guaranteed by art. 135 of the Constitution of 1992, at [http://www.uni-wuerzburg.de/law/pa00t\\_.html](http://www.uni-wuerzburg.de/law/pa00t_.html); and Peru, as guaranteed by art. 200 of the Constitution of 1993, at <http://www.georgetown.edu/pdba/Constitutions/Peru/Per93.html>.
37. Latin American Habeas Data actions also provide for the correction of erroneous information. Andreas Guadamuz, *Habeas Data, An Update on the Latin American Data Protection Constitutional Right*, at <http://www.bileta.ac.uk/01papers/guadamuz.html> (last visited Aug. 28, 2001).
38. The effectiveness of the procedure provided for in the final versions of Mexico’s future Habeas Data legislation will reflect the political will, which exists with respect to the creation of such a remedy.
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governmental action,<sup>39</sup> facilitate the clarification and/or settlement of past controversies,<sup>40</sup> and strengthen the rights of Mexican citizens set forth in the Constitution, and other international treaties to which it is a party.<sup>41</sup> As was the case with the issue of

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39. Various aspects of the NAFTA negotiation, the Zapatista uprising in Chiapas, and Mexico's experience before the Inter-American Commission of Human Rights, demonstrate the way in which the discovery and dissemination (either actual or threatened) can be used to shape government conduct. See HERMANN VON BERTRAB, *NEGOTIATING NAFTA* 27–97 (1997); Maria Jose Martinez Vial, *La Rebellion por Internet*, *CAMBIO*, Aug. 12, 2001, at 32; *Casos 9768, 9780 y 9828 (Mexico)*, *Resolucion No. 01/90, 17 de mayo de 1990, Comision Interamericana de Derechos Humanos*, at <http://www.cidh.oas.org/annualrep/89.90/Cap3d.htm> (last visited June 25, 2001).
40. In the same way Argentines, Brazilians, and Paraguayans have used the Habeas Data action to shed light on “Operation Condor” and other events associated with the “dirty war,” Mexican citizens could use the Habeas Data action to obtain information about individuals that “disappeared” in connection with its own counter-insurgency operations during the 1970s and 1980s. Stella Calloni, *Los Archivos del Horror del Operativo Condor*, at <http://www.derechos.org/nizkor/doc/condor/calloni.html> (last visited Aug. 23, 2001); Horacio Verbitsky, *El Camino de la Verdad*, *PAGINA 12* (Oct. 16, 1998), at <http://www.pagina12.com.ar/1998/98-10/98-10-16/pagina0201.htm> (last visited Aug. 23, 2001); *Fox Esta Lejos de Crear Comision de la Verdad*, at [http://mx.yahoo.com/noticias/010624/actualidad/cni/newsweek\\_fox\\_993431760.html](http://mx.yahoo.com/noticias/010624/actualidad/cni/newsweek_fox_993431760.html) (last visited June 25, 2001); *Mexico Considers Truth Commission*, at <http://www.hrcr.org/hottopics/mexico.html> (last visited Aug. 2, 2001); Alan Zarembo, *Reniega Fox de Promesa Sobre Comision de la Verdad*, *EL UNIVERSAL*, Dec. 3, 2001, at A20; Juan Velez, *Postales de la Guerra Sucia: Los Ninos Rehenes en el Campo Militar*, *MILENIO*, Aug. 13, 2001, at 28. While a recently completed CNDH (*Comision Nacional de Derechos Humanos*) investigation confirms the link between the government (including, *inter alia*, the Mexican Army, the *Direccion Federal de Seguridad*, the *Policia Judicial Federal*, and the *Brigada Blanca*) and forced disappearances which occurred during this time, the names of the responsible officials have not been disclosed and the initiative to appoint a special “fiscal” (investigator) remains a hotly debated issue. See *Informe Especial Sobre Las Quejas en Materia de Desapariciones Forzadas Ocurridas en la Decada de los 70 y Principios de los 80*, at <http://www.cndh.org.mx/principal/document/informe/introduccion.htm> (last visited Dec. 6, 2001); Marcela Turati, *Reportan Detenciones Ilegales en Campo Militar: Revela Informe de CNDH Colusion de Autoridades*, *REFORMA*, Nov. 30, 2001, p. 6A; Guadalupe Irizar, *Rechazan Existencia de ‘Guerra Sucia:’ No Reprimi, Afirma LEA [Echevarria] . . . y No Supe, Dice JLP [Portillo]*, *REFORMA*, Nov. 30, 2001, at 4A; Adolfo Aguilar Zinser, *Volver al Pasado*, *REFORMA*, Nov. 30, 2001 (claiming that clarification of past crimes is essential to establishing a state of law in Mexico); Miguel Cabildo & Maria Luisa Vivas, *No Quierren Llegar al Fondo*, *PROCESO*, Nov. 25, 2001, at 27.
41. Absent an effective legal means of requesting and securing information (that neither compromises national security nor disrespects individual rights and/or reputations), the rights which Mexico has guaranteed its citizens under art. 6 of the Constitution (“. . . the right to information will be guaranteed by the state”) and arts. 1 and 19, respectively, of the American Convention of Human Rights and the International Covenant on Civil and Political Rights (“. . . the freedom to seek, receive, and impart information”) are illusory. See also Fabio Ruben Truncozo Auld, *El Derecho a la Intimidad y el Derecho a la Informacion: ¿Garantias Encontradas?* at [http://publicaciones.derecho.org/redid/No.\\_31\\_-Febrero\\_del\\_2001/7](http://publicaciones.derecho.org/redid/No._31_-Febrero_del_2001/7) (last visited June 26, 2001); Monica Alvarez Guerrero, *Habeas Data*, *ABZ*, Dec. 2000, at 9.
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*Declaranet*-related information disclosure, *supra*, the introduction of a mechanism for discovering information pertaining to the official acts of government personnel, coupled with an increased commitment to securing accountability, could result in more stable developmental conditions in Mexico.

### C. ELECTRONIC TRAMITES

One of the greatest obstacles to economic development faced by both Mexico and Latin America involves the inefficient, formalistic, and corruption-ridden process of soliciting and/or obtaining government permits, licenses, and/or concessions (for example, in connection with incorporations; the registration of intellectual property; the issuance of powers of attorney; dissolutions; etc.).<sup>42</sup> Faced with slow response times, high costs, complicated procedures, and uncertain results, citizens and foreign businesses frequently attempt to structure their affairs around the government.<sup>43</sup> This practice hinders economic development to the extent that: (1) informally operated small- and medium-sized companies are unable to title, insure, and leverage assets and/or avail themselves of potentially lucrative government programs and benefits (involving, for example, the obtainment of microcredit; health care; export assistance; etc.); and (2) the government is unable to collect the tax revenue it needs to create and support infrastructure and industrial development projects, education and training programs, regulatory enforcement regimes, and social security services.<sup>44</sup>

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42. Most corruption in Mexico occurs in connection with the filing of *tramites*. *Corrupcion por Estados y Servicios: Indice de Corrupcion y Buen Gobierno de Transparencia Mexicana*, LA CRISIS, Nov. 10–16, 2001, at 39. According to a recent *Berumen* survey involving 13,790 Mexican respondents: (1) an estimated 214 million acts of corruption occurred during the past year; (2) the total estimated value of corruption-related payments in Mexico was “23,400 million” pesos; and (3) corruption related payments represented an estimated 6.9% of the average Mexican household budget. Roy Campos, *Actos que Son una Mina de Oro*, LA CRISIS, Nov. 10–16, 2001, at 41.
43. According to Hernando De Soto, most people in developing and former communist nations operate in the informal sector as a result of “bad legal and administrative systems.” DE SOTO, *supra* note 22, at 156. Analogizing Latin America’s political-economic reality to a bell jar, De Soto adds: “inside the bell jar are elites who hold property using codified law borrowed from the west. Outside the bell jar, where most people live, property is protected by all sorts of extralegal arrangements firmly rooted in informal consensus.” *Id.* In Mexico, an estimated 25 million people—representing approximately 55% of the overall workforce—realize their productive activity in the informal economy. A 1998 INEGI study indicates that up to 12% of Mexico’s GDP is derived from informally conducted economic activity. These figures are expected to increase in response to declining rates of economic growth and formal sector employment. Mario Lopez, *Los Reyes de la Calle*, CAMBIO, Jan. 6, 2002, at 62.
44. By officially registering informal sector enterprises, the Peruvian government was able to collect an additional \$1.28 billion in tax revenue. DE SOTO, *supra* note 22, at 154. The Mexican government, on the other hand, loses an estimated “61,000 millones” pesos in tax revenue each year to informal economic activity. Lopez, *supra* note 43, at 62. A recent study conducted by the *Centro de Analisis y Proyecciones Economicas de Mexico* (CAPEM) notes that political interests have impeded prior attempts to tax the informal economy. Valeria Reyes Campos, *Interes Politico en No Gravar al Ambulantaje*, UNOMASUNO, Jan. 9, 2002, at 16.
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Cognizant of the obstacle posed to development by excessive and complicated registration and permit filing procedures, the Zedillo administration introduced a deregulation program designed to reduce "the bureaucratic red tape that stifles competitive markets and limits economic growth."<sup>45</sup> Most recently, the Fox administration has sought to achieve further administrative and regulatory efficiency by making it possible for citizens and investors to realize certain filings online (*Tramitanet*).<sup>46</sup> Borne of the Interactive Service (G2C2G) model,<sup>47</sup> the completed *Tramitanet* site will provide information pertaining to substantive and procedural filing requirements (for example, content; form; authentication; costs; etc.) and enable the electronic submission of routine *tramites* and denouncements.<sup>48</sup> The legal viability of electronic filings made through the *Tramitanet* system is assured by the fact that Mexico's civil, commercial, and procedural codes, as reformed,<sup>49</sup> expressly recognize the validity of electronically generated data messages,<sup>50</sup>

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45. *Examples of Recent Public Management Initiatives in Mexico: Regulatory Reform*, at <http://www.oecd.org/puma/focus/compend/mx.html> (last visited June 26, 2001). The main components of this program, the "Agreement for the Deregulation of Business Activity" and the "*Miscelanea de Desregulacion Economica*," did much to simplify and speed up the regulatory and administrative procedures confronting new and existing businesses. For example, the implementation of the *Sistema de Apertura Inmediata de Empresas* (SAINE) reduced the time required to begin operating a business from 200(+) days in 1997 to between 7 and 21 working days for, respectively, low and high risk activities (73% of the business activities listed in the Mexican Classification of Activities and Products are considered to be "low" risk). Similarly, action taken by the Ministry of Commerce's "Economic Deregulation Unit" has resulted in a 38% reduction in the total number of formalities associated with the creation and/or operation of a business in Mexico. *Id.* A current inventory of required business formalities can be obtained at <http://www.cdc.gob.mx>.
46. See *Tramitanet*, at <http://www.tramitanet.gob.mx> (last visited Aug. 10, 2001) (the *Tramitanet* site is still under construction). The "*Registro Federal de Tramites*" (RFT), an important supplement to the *Tramitanet* site, contains extensive catalogues of *tramites* utilized by federal and state government secretariats and entities. While the RFT provides valuable information pertaining to filing requirements and procedures, it does not offer a means of submitting *tramites* electronically. See *Registro Federal de Tramites*, at <http://www.rft.gob.mx> (last visited Aug. 14, 2001).
47. *Digital Governance Models*, *supra* note 17.
48. The features of the completed *Tramitanet* site will be on par with or superior to those found at government sites throughout Latin America, including Argentina (<http://www.nacion.ar/espaciocivico/tramites/tramites.asp>); Brazil (various links within the government's main portal, at <http://www.redegoverno.gov.br>); Colombia (<http://www.dafp.gov.co/> and <http://www.gobiernoenlinea.gov.co/overview/0,1351,ES-COgl,00.html>); Peru ([http://www.perugobierno.gob.pe/tramites/busq\\_tramites.asp](http://www.perugobierno.gob.pe/tramites/busq_tramites.asp)); and Venezuela (<http://www.gobiernoenlinea.vz/gobierno/portal/?Mlval=tram>).
49. *Decreto por El que Se Reforman y Adicionan Diversas Disposiciones delCodigo Civil para el Distrito Federal en Materia Comun y para Toda la Republica en Materia Federal, delCodigo Federal de Procedimientos Civiles, delCodigo de Comercio, y de la Ley Federal de Proteccion al Consumidor*, EL DIARIO OFICIAL DE LA FEDERACION, 29 de mayo de 2000, at <http://www.natlaw.com/ecommerce/docs/e-commerce-initiative-mexico.htm> (last visited May 12, 2000) [hereinafter D.O.].
50. *Codigo Civil*, D.O., 26 de marzo de 1928 (Mex.) (as reformed with respect to arts. 1803, 1805, and 1811, and adding art. 1834 Bis.), art. 1834; *Codigo de Comercio*, D.O., 17 de octubre de

and assure nondiscrimination with respect to data messages as a form of proof.<sup>51</sup> Properly executed, this site could enhance economic growth and development in Mexico by: (1) encouraging informally operated small- and medium-sized business entities to register with the government; (2) reducing opportunities for fraud and error; (3) saving citizens, investors and the government time and money;<sup>52</sup> and (4) contributing to the formation of a robust and reliable database regarding economic and civic activity.

#### D. ELECTRONIC GOVERNMENT PROCUREMENT

Government procurement has traditionally been one of the most important drivers of economic activity in Latin America. In Mexico, it is estimated that 25 to 30 percent of the federal budget regularly goes to the purchase or lease of goods and/or services.<sup>53</sup> Notwithstanding the substantial economic upside associated with this activity, government procurement in Mexico has long been a fertile breeding ground for inefficiency and corruption. Responding to the absence of clearly defined (and/or enforced) guidelines, and the overabundance of poorly paid intermediaries, private sector suppliers commonly assess up to a 20 percent surcharge on government sales, so as to cover losses caused by bureaucratic inefficiency and bribes demanded by government purchasing officers.<sup>54</sup> The net effect of this overcharging, is to diminish the governmental resources available for development related projects such as schools, hospitals, and infrastructure.

As part of Mexico's attempt to promote development by reducing inefficiency and corruption, the *Secretaria de Controloria y Desarrollo Administrativo* (SECODAM) has recently acted to automate and disintermediate government procurement by launching the *Compranet* site.<sup>55</sup> Representing a fully Interactive Service (G2C2G) model, *Compranet*

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1889 (Mex.) (as reformed with respect to arts. 18, 20–27, 30–32, 49, and 80, and adding arts. 89–94), art. 93. To be legally valid, both codes require that the information contained in an electronically created and signed data message be (1) attributable to the obligated person, and (2) accessible for subsequent consultation.

51. *Código Federal de Procedimientos Civiles*, D.O., 24 de febrero de 1942 (Mex.) (adding art. 210-A), art. 210-A; *Código de Comercio*, D.O., 17 de octubre de 1889 (Mex.) (as reformed with respect to arts. 18, 20–27, 30–32, 49, and 80, and adding arts. 89–94), arts. 1205 and 1298.
52. Improvement in this regard would be positive insofar as the infringement opportunities created by Mexico's slow IP registration procedures have long been a source of concern for foreign business. Gretchen A. Pemberton & Mariano Sony, Jr., *Mexico's 1991 Industrial Property Law*, 25 CORNELL INT'L L.J. 103, 117 (1992).
53. *Informacion de Compranet*, at <http://www.compranet.gob.mx/ayudas/general/informacion.html> (last visited June 25, 2001).
54. Michael Badillo, *Asigna PEMEX Contrato con 20% de Sobreprecio*, EL UNIVERSAL, Dec. 3, 2001, at 4; Andres Oppenheimer, 'Towelgate' Could Start a New Trend in Anti-Graft Efforts, MIAMI HERALD, June 24, 2001, at 5A [hereinafter *Towelgate*].
55. SECODAM had previously operated an EDI system for public sector tendering. The high cost of accessing this system precluded significant participation. Many Mexican states have taken steps to link their own online procurement sites to the federally operated *Compranet*. Other Latin nations which have followed Mexico's leadership in automating and disintermediating government procurement include Argentina (government sites are <http://www.nacion.ar/mercado/licitaciones/licitaciones.asp> and <http://www.cristal.gov.ar/lrf/compras/main.html>;



is intended to simplify and modernize the procurement process by: (1) making it easier for suppliers to discover government needs; (2) standardizing the procedures and documentation involved in procurement; (3) minimizing the involvement of civil servants; and (4) providing for the electronic submission of bids.<sup>56</sup> Each bid submitted must be authenticated by means of a digital signature.<sup>57</sup> As of October 1999, the *Compranet* site was accommodating more than 6,000 public sector tenders on a daily basis, and had registered more than 20,000 service providing firms as regular users.<sup>58</sup>

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other government procurement related information is available at the private sector site <http://www.mercadostransparentes.com>); Brazil (<http://www.redegoverno.gov.br/ServInfo/ServInfo.asp>); Chile ([http://www.chilecompras.cl/Publico/entrada\\_publico.asp](http://www.chilecompras.cl/Publico/entrada_publico.asp)); Colombia ([http://www.imprenta.gov.co/consultas\\_contratos.asp](http://www.imprenta.gov.co/consultas_contratos.asp), and for complaints <http://www.contaloriagen.gov.co/control/quejas.htm>); Peru (<http://www.perugobierno.gob.pe/adquisiciones/index.shtml>); and Venezuela ([http://www.gobiernoenlinea.ve/gobierno/portal/?Mlval=licitaciones\\_pub](http://www.gobiernoenlinea.ve/gobierno/portal/?Mlval=licitaciones_pub)). The transparency of government procurement in Colombia is additionally enhanced by the use of "integrity pacts." Under these agreements, bidders explicitly promise to each other, and the government, not to resort to bribery. Parties that breach such an agreement are subject to fine. *Red Por la Integridad, la Probidad, y la Transparencia*, at <http://www.transparenciacolombia.org.co/1inicitivas.html> (last visited Oct. 27, 2001).

56. Though created to improve efficiency and transparency, practical experiments involving supposed experts suggest that *Compranet* is actually complicated and confusing. *Falla Compranet en Transparencia*, at <http://www.elnorte.com> (last visited July 25, 2001).
57. As discussed, *supra*, art. 93 of Mexico's *Codigo de Comercio*, as reformed, provides for the use of electronic signatures in connection with acts of commerce. *Compranet en Transparencia*, *supra* note 56. The procedures pertaining to the issuance of the certificates underlying the digital version of such signatures are the subject of the two collaboration agreements recently entered into between SECOFI and (1) the National Association of Public Brokers, and (2) the National Association for Public Notaries. See *Convenio de Colaboracion para Establecer los Mecanismos de Emision y Administracion de los Certificados Digitales, que se Utilizaran para Acceder al Registro Publico de Comercio y para Realizar Transacciones Comerciales, que Celebran la Secretaria de Comercio y Fomento Industrial y el Colegio Nacional de Correduria Publica Mexicana*, AC, D.O., 6 de octubre de 2000; *Convenio de Colaboracion para Establecer los Mecanismos de Emision y Administracion de los Certificados Digitales, que se Utilizaran para Acceder al Registro Publico de Comercio y para Realizar Transacciones Comerciales, que Celebran la Secretaria de Comercio y Fomento Industrial y la Asociacion Nacional del Notariado Mexicano*, AC, D.O., 6 de octubre de 2000. The digital-specific nature of these collaboration agreements is inconsistent with the technology neutral electronic signature provisions set forth in the 2000 electronic commerce legislative reforms.
58. This said, however, the fact that only an estimated two percent of government procurement is realized via *Compranet* indicates that considerable work remains to be done in terms of increasing awareness and use of the site. *E-Mexico*, at <http://www.amece.com.mx/emexico/home.html> (last visited Sept. 2, 2001). By way of comparison, Chile's government procurement site registered 454 suppliers in over 75 different business activities between October 1999 and February 2000. *Sistema de Informacion de Compras Publicas*, at <http://www.chilecompras.cl>; Claudio Orrego et al., *Chile's Government Procurement E-System*, at [http://www1.worldbank.org/publicsector/egov/eprocurement\\_chile.htm](http://www1.worldbank.org/publicsector/egov/eprocurement_chile.htm) (last visited Aug. 28, 2001).
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The standardization, automation, and disintermediation of government procurement practices, considered in conjunction with the reduced cost of accessing the government's electronic procurement network, has improved economic transparency, increased citizen participation in the bidding process for public contracts, and enabled the government to curtail supplier surcharges. More importantly, the expanded monitoring and auditing opportunities presented by *Compranet's* searchable archive of procurement records, will make it easier to detect and punish civil servant fraud. In this regard, Mexico's recent experience with the "Towelgate" scandal clearly demonstrates the system's capacity to expose fraudulent violations of the public trust.<sup>59</sup> Finally, by reducing opportunities for corruption, *Compranet* permits Mexico to more fully comply with its obligations under the OECD's Convention on Combating Bribery of Foreign Public Officials, and the OAS' Inter-American Convention Against Corruption.<sup>60</sup>

#### E. ELECTRONIC PUBLIC REGISTRIES OF COMMERCE AND PROPERTY

The unavailability of commercial credit that Mexico has experienced since 1993<sup>61</sup> has created a significant drag on the country's economic growth and development.<sup>62</sup>

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59. A search of procurement records archived on *Compranet* revealed that the Fox administration had purchased luxury items at highly inflated prices, including a \$443.00 towel. *Towelgate*, *supra* note 54. It should be noted that *Compranet* presents only executive branch procurement information. This situation is expected to change, going forward, as dependencies within the legislative and judicial branches make their procurement information available to the public (on a trimester basis, via internet) in conformity with the *Presupuesto de Egresos. Presupuesto de Egresos de la Federacion para el Ejercicio Fiscal 2002*, D.O., 1 de enero de 2002, art. 28; Victor Fuentes, *Ordenan a los 3 Poderes Poner en Red Licitaciones*, REFORMA, Jan. 8, 2002, at 1.
60. *The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, Feb. 15, 1999, at <http://www.oecd.org/daf/nocorruption/> (last visited Aug. 2, 2001); *Inter-American Convention Against Corruption*, Mar. 6, 1997, at <http://www.oas.org/default.htm> (last visited Nov. 18, 2001). In addition to ratifying these anti-corruption conventions, Mexico has also set up a "Working Group on Prevention and Action Against Corruption." *Working Group on Prevention and Action Against Corruption*, at <http://www.oecd.org/puma/focus/compend/mx.htm> (last visited Aug. 29, 2001). It is generally believed that these conventions (and related actions) will help "level the playing field" for U.S. businesses, long accustomed to having to conduct international business within the framework of the FCPA (Foreign Corrupt Practices Act). An additional measure of Mexico's commitment to combating corruption entails its recent proposal to create an UN-based global anti-corruption network. Jorge Teheran, *Propone Mexico una Red Anticorrupcion*, EL UNIVERSAL, Dec. 3, 2001, at A17.
61. As of 2000, only one-third of Mexico's work force has access to credit. Commercially considered, only 29% of Mexican businesses participate in the national financial system. "Since 1994, financial support for businesses has dropped 91%. Four years ago, in 1996, more than 136,000 companies were granted loans; by 2000, only 12,000 have been so favored." Enrique Pino Hidalgo, *Small Business: The Long and Winding Road to Credit*, VOICES MEX., July–Sept. 2001, at 55. The current economic downturn has resulted in a 10% reduction in non-bank financing, and a projected 7% contraction in commercial bank lending. Alicia Salgado, *Anticipan Bancos Comerciales Contraccion de 7% en el Credito*, EL FINANCIERO, Nov. 19, 2001, at 55.
62. Relatively considered, medium- to large-sized corporations with the ability to raise capital through either private (national and/or global securities markets, multinational banks,
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While many factors account for this reality,<sup>63</sup> one of the most important involves the nonexistence of a functional and reliable system of secured financing. Referring to the “defective” form in which property is documented and held in many Latin nations (including Mexico), Hernando De Soto notes: “assets cannot readily be turned into capital, cannot be traced outside of narrow local circles where people know and trust each other, cannot be used as collateral for a loan, and cannot be used as a share against an investment.”<sup>64</sup> The underproductive nature of the majority of

etc.) or public (government and/or multilateral institutions) sources have not been adversely impacted by the dysfunctional state of Mexico’s credit markets. This group, however, only accounts for a small part of Mexico’s overall commercial sector. Of Mexico’s estimated 3.5 to 5 million businesses, only 179 are listed on the BMV (and of this sub-group, only thirty-one are listed either on the NASDAQ or NYSE). Louise Guinette, *¿Que Le Pasa a la Bolsa? EXPANSION*, Aug.–Sept. 2001, at 38–40. Mexico’s micro- and small-sized businesses face fewer, less attractive financing options. While there does exist a network of credit granting governmental organizations (for example, NAFIN, FONAES, the Ministry of Economy and Finance), locally organized credit unions, savings and loan associations, and cooperatives, their lending capacity is typically too small to adequately meet the financing needs of formally operated micro- and small-sized entities. In this connection, it has been estimated that the financial institutions composing the aforementioned network cover 2.5 million people representing approximately 1 percent of all assets in Mexico’s banking system (by way of contrast, it is estimated that 87 percent of the value of all bank resources and deposits is held in only 4% of accounts). Hidalgo, *supra* note 61, at 55; Carlos Marichal, *The Rapid Rise of the Neo-Banqueros*, 30 *NACLA REP. ON AM.*, at 27, 28 (May–June 1997). Unable to obtain lower interest rates from commercial banks or trade financing from suppliers, these formally operated entities, many of which are too poorly managed to survive in today’s increasingly competitive business environment, typically merge, sell, or cease operations. The only sources of financing available to informally operated micro- and small-size businesses, on the other hand, are the loans sharks of the informal credit market or the “SOFLEs” (limited object finance companies). Elisabeth Malkin, *Need a Loan? Here’s Where to Find One*, *BUS.WK.*, Apr. 30, 2001, at 37 (noting that working class demand for SOFLE originated loans jumped 33.4 percent last year to \$6.9 billion dollars). With interest accruing at up to 5 percent a day, such loans offer little in terms of a practical financing solution. The disparate nature of financing options is an obstacle to economic growth and development, in that it is Mexico’s “hundreds of thousands of micro-, small-, and medium-size entrepreneurs whose companies provide the majority of the country’s jobs.” Hidalgo, *supra* note 61, at 55. This last observation is consistent with economic experience elsewhere in Latin America. For example, a recent ILO (International Labor Organization) report found that since 1990, 85 percent of all new jobs in Latin America have been created by the small- and medium-sized entities in the informal economy. De Soto, *supra* note 22, at 69.

63. The following combination of factors account for the shortage of credit in Mexico: (1) the end of the state’s role as a major participant in the economy; (2) the existence of debtor favorable laws and legal procedures; (3) the absence of the element of moral hazard in lending; (4) a poor credit culture; (5) lax regulatory oversight of the banking sector; (6) extensive self-dealing by bankers; (7) the persistence of fraudulent deposits (8) expanded portfolios of non-performing assets; and (9) high interest rates.
64. DE SOTO, *supra* note 22, at 6; Boris Kozolchik, *What to Do About Mexico’s Antiquated Secured Financing Laws*, at <http://www.natlaw.com/pubs/bk9.htm> (last visited Nov. 27, 2001); Todd Nelson, *Secured Financing Project*, at <http://www.natlaw.com/pubs/sfproj.htm> (last visited Nov. 27, 2001).

Latin America's capital constitutes a fundamental obstacle to the region's sustained development.

Consistent with its efforts to transform the country's moribund financial system into an engine of economic productivity,<sup>65</sup> the Mexican government recently announced its intent to join forces with the states in integrating and automating Mexico's antiquated network of public registries of commerce and property (the SIGER network).<sup>66</sup>

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65. Other efforts in this connection include: reforming foreign investment and bankruptcy laws, so as to induce foreign banks to enter into and service the market; abolishing the former practice of providing full deposit insurance coverage; adopting the Basle Core Principles for bank supervision, as well as more rigorous accounting and loan classification practices; creating the IPAB for the bailout of Mexico's banks (the cost of this bailout is estimated to be on the order of US \$70 billion); modernizing the law of secured financing with an eye to increasing deal flow and asset based lending; creating secondary markets for the trading of asset backed financial products; creating small cap markets (for example, the "Section A" and "M-Mex" market segments); easing registration and disclosure requirements in order to facilitate the listing of companies on the BMV; expanding the range of investments available to pension fund managers; protecting the country's investment grade status through the pursuit of responsible fiscal and monetary policies; strengthening the availability of micro-credit; encouraging companies operating in the informal sector to enter into the formal economy; promoting savings; and controlling inflation. Alison Wright, *Giving Credit Where Its Due*, MB, June 2000, at 18; *El Fortalecimiento de Uniones de Credito*, MACROECONOMIA, Oct. 1997, at 36; Eduardo Garcia, *Moody's Upgrades Mexico's Outlook*, MIAMI HERALD, Sept. 5, 2001, at 2C; Hidalgo, *supra* note 61, at 55; Marichal, *supra* note 62, at 28; World Trade Executive, *Mexican Banks Progress Toward Secondary Markets for Local Currency ABS Issues*, at [http://www.imakenews.com/texcele\\_article000024689.cfm?x=14310,483583](http://www.imakenews.com/texcele_article000024689.cfm?x=14310,483583) (last visited June 25, 2001); John Rogers et al., *The Restructuring of Mexican Financial Services and the Application of Chapter 14 of NAFTA*, 7 U.S. MEX. L.J. 67, 71 (1999); *Memorandum of Economic Policies Attached to the Letter Sent to the IMF*, at <http://www.shcp.gob.mx/english/docs/m990615.html> (last visited Jan. 7, 2000); *Instituto para la Proteccion al Ahorro Bancario*, at <http://www.ipab.org.mx> (last visited Dec. 25, 1999); Monica Perez Velazquez, *¿Quien Ordenara a la Vaca del Gobierno?* MILENIO, June 11, 2001, at 60 (noting Government plan to create a new social bank—the *Nacional Hipotecaria*—with an eye to strengthening the construction industry and creating a market for mortgage backed securities); Eduardo Garcia, *Mexico May Ease Rules for Stock Listings*, MIAMI HERALD, Feb. 26, 2000, at C2; *Investment Rules Loosened*, MIAMI HERALD, Oct. 24, 2001, at 3E; Secretary of the Treasury and Public Credit, *Mexico: Challenges and Opportunities at the Turn of the Century*, at <http://www.shcp.gob.mx/english/docs/991007.html> (last visited Jan. 7, 2000) [hereinafter *Challenges and Opportunities*]; Angelo Young, *Settling the Bill*, MB, Mar. 1999, at 14; Cristina Adams, *Small Wonders: The Inter-American Development Bank Has Its Eyes on Mom and Pop Businesses*, U.S./MEX. BUS., Oct. 1997, at 22 (noting that the IADB will invest up to US \$100 million per year in entities with fewer than ten employees); INTERNATIONAL CAPITAL MARKETS & SECURITIES REGULATIONS RELEASE NO. 132, VOL. 10C, at 4A-39-41 (Harold S. Blumenthal & Samuel Wolff, eds., Dec. 1999); *Citigroup Buying Banacci*, MIAMI HERALD, July 18, 2001, at 2C.
66. *Sistema Integral de Gestion Registral*, at <http://www.secofi-ssci.gob.mx/siger> (last visited Nov. 18, 2001). To the extent it integrates information pertaining to state filings into one federally administered system, the creation of the SIGER necessarily implies the ceding of a function traditionally realized by Mexican states. This online resource will be akin to the online UCC filing systems maintained by American states (for example, the "SOSDirect" at
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Conforming to the Interactive Service (G2C2G) model, the completed system will respond to the requirements of article 20 of the *Codigo de Comercio*, as reformed, by providing an Internet-based means of interfacing with Mexico's registries.<sup>67</sup> Considered from the perspective of secured financing, the SIGER will facilitate the conduction of registry searches, and the registration of liens (and/or related mercantile acts). As was the case with the *Tramitanet* system, the juridical security of electronic filings in the public registries of commerce and property, is assured by the recent reforms to Mexico's *Codigo de Comercio*, *Codigo Civil*, and *Codigo Federal de Procedimientos Civiles*.<sup>68</sup>

The launching of the SIGER will improve Mexico's registry systems, by reducing the likelihood of fraud and error, expediting the process for ascertaining the existence of specific filings (for example, a lien), and enabling the establishment of an integrated database of encumbered property. Assuming the establishment of a meaningful degree of Internet access, these improvements will facilitate economic growth and development by providing merchants with the transactional certainty necessary for entering into an increased number of deals with an expanded range of business partners.

#### F. ELECTRONIC TAX FILINGS

The massive privatization program carried out in the 1990s,<sup>69</sup> combined with the implementation of economic policies designed to reduce Mexico's dependence on revenues generated by the sale of oil,<sup>70</sup> the continued loss of human capital in the form of

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<http://www.sos.state.tx.us/corp/sosda.index.shtml>). Mexico is at the vanguard when it comes to automating *registros publicos*. As of the time of this writing, Peru is the only other Latin nation to have put its *registros publicos* online (Venezuela's government portal suggests that it will provide a link to the country's *Registro Nacional*, but this feature is not yet operative). See *Registros Publicos* (Lima y Callao), at <http://www.orlc.gob.pe> (last visited Nov. 18, 2001).

67. See *Codigo de Comercio*, D.O., 17 de octubre de 1889 (Mex.) (as reformed with respect to arts. 18, 20–27, 30–32, 49, and 80, and adding arts. 89–94), art. 20. Some Mexican states already provide online information regarding *registros publicos*. For example, the state of Guanajuato permits users to search its electronic *registro publico* archives, although certificates regarding the status of a property require a five day processing time. See *Registro Publico en Linea*, at <http://www.rpgto.gob.mx/enlinea.htm> (last visited Nov. 15, 2001).
68. *Codigo de Comercio*, D.O., 17 de octubre de 1889 (Mex.) (as reformed with respect to arts. 18, 20–27, 30–32, 49, and 80, and adding arts. 89–94), arts. 93, 1205, 1298; *Codigo Federal de Procedimientos Civiles*, D.O., 24 de febrero de 1942 (Mex.) (adding art. 210-A), art. 1834; *Codigo Federal de Procedimientos Civiles*, D.O., 24 de febrero de 1942 (Mex.) (adding art. 210-A), art. 210-A. The *Norma Oficial Mexicana* (NOM) contemplated by art. 49 of the *Codigo de Comercio*, as reformed (i.e., addressing the conservation and preservation of original data messages), is expected by Jan. 2002. *Preparan el Uso de e-Factura a Traves de la Norma de Conservacion de Datos*, at <http://www.amece.com.mx/emexico/legislacion/conservaciondedatos.html> (last visited Oct. 27).
69. Under this program, the number of state owned entities decreased from 1,155 in 1982 to 247 in 1999. Of the approximately 247 entities remaining under state control, 52 were in the midst of being privatized. *Challenges and Opportunities*, *supra* note 65. In addition to reducing the amount of resources available for budgeting, Mexico's privatization program also reduced the number of citizens susceptible to PRI control by virtue of their state employment.
70. "Oil is fundamental to state income, since PEMEX supplies from 30% to 40% of all tax revenues." Rosio Vargas & Victor Rodriguez-Padilla, *Mexico's International Oil Diplomacy*, VOICES
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temporary or permanent migration to the United States, and generally weakened levels of inbound tourism,<sup>71</sup> have resulted in the elimination and/or circumscription of traditionally lucrative sources of budget revenue, and have underscored the need for diversifying government income. Lacking the funds to simultaneously service its foreign debt<sup>72</sup> and operate the government in a way that adequately meets the needs of its citizens, Mexico has undertaken a program of fiscal reform designed to shutdown loopholes, expand the tax base, and increase the federal budget.<sup>73</sup>

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MEX., Apr.–June 1999, at 59 available at <http://www.unam.mx/voices/1999/abr/padilla.html>; Jorge Fernandez Menendez, *Una Encrucijada de Petroleo e Impuestos*, MILENIO, Nov. 28, 2001, at 14. The recent drop in global crude prices has negatively impacted Mexico's budget. Leopoldo Alvarez Luna, *Perderemos \$30 Mil Milliones en 2002*, EL HERALDO DE MEXICO, Nov. 30, 2001, at 1.

71. As of 1996, an estimated 7.3 million Mexicans resided in the U.S. The majority of these individuals were of working (and hence, tax-paying) age. *Migracion Mexico-Estados Unidos: Presente y Futuro*, at <http://www.conapo.gob.mx/presente/cap06n.htm> (last visited July 3, 2001). Remittances from Mexicans working abroad recently displaced tourism as the third largest source of income for the national economy. Jorge Francisco Moncada, *En Busca de un Mejor Manejo de las Remesas*, VERTIGO, Jan. 6, 2002, at 28; Jose Antonio Caporal, *Disminuyo la Afluencia Extranjera*, VERTIGO, Jan. 6, 2002, at 22.
  72. Already the second largest in the world, Mexico's total foreign debt stands in excess of U.S. \$170 billion. The awesome payment schedule linked to this debt requires Mexico to transfer abroad a huge quantity of funds that could otherwise be used for productive domestic investment. Carlos Marichal, *The Vicious Cycles of Mexican Debt*, 31 NACLA REP. ON AM. 25, (Nov.–Dec. 1997). The lost commercial opportunities associated with Mexico's debt position are, in turn, "detrimental to the U.S. economy in terms of jobs, exports, and economic growth." MARK P. SULLIVAN, *LATIN AMERICAN DEBT: CHARACTERISTICS, TRENDS, AND U.S. POLICY*, CRS REPORT FOR CONGRESS 1 (1991). The effect of decreased revenue streams is manifest in the public spending cuts made by the FY 2002 budget. Koichiro Matsuura, *Sin Recursos, No Hay Calidad Educativa*, REFORMA, Dec. 5, 2001, at 15A; Juan Carlos Cordova, *Insuficiente, el Monto Asignado a la CDHDF*, UNOMASUNO, Jan. 9, 2002, at 12; *Injusto, Recorte a SRE, Dice Consul*, UNOMASUNO, Jan. 9, 2002, at 5; Ruben Vazquez Perez, *PRD: Irresponsable, Recorte de SHCP al Gato Publico*, UNOMASUNO, Jan. 9, 2002, at 6; Mayela Cordoba, *Afecta Reducion Presupuestario: Dependera PEMEX solo de los PIDIREGAS*, REFORMA, Jan. 8, 2002, at 4A; Laura Cardoso & Mauricio Padilla, *El PRI no Quiso Estorbar en el Congreso*, VERTIGO, Jan. 6, 2002, at 11 (noting funding reductions experienced by other federal secretariats and dependencies).
  73. To this end, Mexico has introduced new taxes, minimized the benefits associated with storing profits in expressly identified offshore tax havens, advocated the use of internationally accepted accounting principles, enacted tougher transfer pricing laws, created an "amnesty" program for pre-2000 tax obligations (the "cuenta nueva y borron"), and stepped up prosecution efforts with respect to tax evaders. *Ley de Ingresos de la Federacion para el Ejercicio Fiscal de 2002*, D.O., 1 de enero de 2002; *Ley de Impuesto Especial Sobre Produccion y Servicios*, D.O., 1 de enero de 2002; Geri Smith, *So Far, Fox Can't Rally His Own Troops*, Bus.Wk., May 7, 2001, at 24 (noting that only 11% of Mexico's GDP comes from taxes); David Armstrong, *New Mexican Tax Law Effects Offshore Planning and Time Share Projects*, at <http://www.natlaw.com/pubs/spmxtx2.htm> (last visited Aug. 15, 2001); *Cuenta Nueva y Borron*, at [http://www.sat.gob.mx/AGJI/acac97/int\\_2001/borron5a](http://www.sat.gob.mx/AGJI/acac97/int_2001/borron5a) (last visited Aug. 17, 2001); *Challenges and Opportunities*, *supra* note 65. Garance Burke, *Here Comes the Tax Man*, MB, Jan.–Feb. 2001, at 14; *Por Defraudacion Fiscal, Decretan la Formal Prision Contra Cabal*
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Noting the success that other Latin nations have encountered in using the Internet to maximize tax revenue,<sup>74</sup> Mexico recently expanded its e-government program to include the electronic presentation of corporate tax declarations (through the *Servicio de Administracion Tributaria*, or "SAT").<sup>75</sup> Constituting an Interactive Service (G2C2G) model,<sup>76</sup> the SAT site permits inscribed users to file tax statements, make payments (realized via electronic transfer from the user's bank), confirm receipt of payment, and review prior tax transactions.<sup>77</sup> Security for this system is accomplished through the use of a "security key" (i.e., a private key) bound by the "*Modulo de Atencion Fiscal de la Administracion Local de Recaudacion*" corresponding to the user's domicile (the corresponding digital certificate required to use the system is subsequently sent by e-mail).<sup>78</sup>

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*Peniche*, EL HERALDO DE MEXICO, Nov. 14, 2001, at 1; Karina Aviles, *Los Sectores Ricos No Quieren Pagar Impuestos Consideran Especialistas de la UNAM*, LA JORNADA, Jan. 11, 2002, at 5 (noting that wealthy Mexicans avoid paying taxes either by outright evasion or the filing of delay inducing *amparos*); Sara Ruiz, *Reclama PRD Aplicar el ISR a Grupo de Ricos*, REFORMA, Nov. 30, 2001, at 9A; Daniel Millan & Ivonne Melgar, *Pretenden Repatriar Capitales a Mexico*, REFORMA, Dec. 4, 2001, at 12A (noting Mexico's desire to create a mechanism for the repatriation (and/or *embargo*) of capital transferred out of the country by corrupt civil servants). In a related vein, Mexico continues to encourage remittances from its citizens living in the U.S. In 2000 alone, Latin American emigrants remitted an estimated \$20 billion. This figure is expected to reach \$300 billion over the course of the next decade. *Contributing to the Old Country*, N.Y. TIMES, June 1, 2001, at 18a, available at <http://www.presidencia.gob.mx/?Orden=Leer&Tipo=pe&art=1183> (last visited July 10, 2001).

74. The introduction of online tax filing has resulted in the submission of record numbers of corporate and individual tax returns in Brazil and Chile. Juliana Viegas, et al., *Brazil: Record Number of Income Tax Returns Filed Through Internet*, at <http://www.bmck.com/elaw/getarchive.asp?action+Iso> (last visited May 5, 2000); <http://www.receita.fazenda.gov.br/novapag/apresentacao.htm> (Brazilian tax site); Lisecott Kana & Fernando Barraza, *Taxing Time for E-Government*, at <http://www.oecdobserver.org/news/fullstory.php/aid/424.html> (last visited Aug. 28, 2001); *Servicio de Impuestos Internos*, at <http://www.sii.cl> (last visited Oct. 28, 2001) (Chilean tax site).
75. See *Declaraciones Electronicas*, at [http://www.sat.gob.mx/declaraciones\\_electronicas/derecha.html](http://www.sat.gob.mx/declaraciones_electronicas/derecha.html) (last visited Nov. 4, 2001). While individual taxpayers can obtain tax-related information, forms, and software at the SAT's website, online filing and payment is only available to corporate tax entities. Other Latin nations which have moved, in varying degrees, tax services online include: Argentina ([http://www.gobiernoelectronico.ar/sitio/sitio\\_varios/form&prog.htm](http://www.gobiernoelectronico.ar/sitio/sitio_varios/form&prog.htm)); <http://www.nacion.ar/espaciocivico/tramites/tramites.asp>); Colombia (<http://www://impuestos.dian.gov.co>); Peru (<http://www.sunat.gob.pe/detalle.htm>); and Venezuela (<http://www.seniat.gov.ve>).
76. *Digital Governance Models*, *supra* note 17.
77. Use of the SAT system is obligatory for entities that file consolidated tax returns, as well as for banking, insurance, and other financial services institutions. *Declaraciones Electronicas*, at [http://www.sat.gob.mx/declaraciones/declaraciones\\_texto.htm](http://www.sat.gob.mx/declaraciones/declaraciones_texto.htm) (last visited Sept. 15, 2001). The SAT could expand its range of online tax services and functions by making it possible for users to respond to audits, arrange and make estimated tax payments, and receive refunds via electronic means.
78. As is the case with the realization of other official electronic transactions, the recent reforms to Mexico's *Codigo de Comercio*, *Codigo Civil*, and *Codigo Federal de Procedimientos Civiles*
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Similar online tax filing and payment systems have been set up by different state governments in Mexico.<sup>79</sup> Again assuming adequate Internet access, the SAT system can help the Mexican government maximize tax revenue by: (1) contributing to the preservation of scarce government resources (via the dissemination of tax filing information and instructions in a more cost effective manner); (2) removing distance as a barrier to tax filing; (3) minimizing the opportunity for fraud and error; (4) expediting processing time; (5) enabling the establishment of a reliable taxpayer database; and (6) facilitating the prosecution of tax evaders. These developments could, to the extent they expand the base of government resources, help avert a reduction in foreign investment occasioned by the perception that the weakened state of Mexico's public finances, effectively precludes the realization of large scale infrastructure projects.<sup>80</sup> The expansion of Mexico's tax base, on the other hand, could be accomplished by making the SAT's online tax filing and payment services available to all Mexican citizens.

### III. Policy Recommendations

Recognizing the power of the Internet to fundamentally improve traditional political and economic systems, Mexico has aggressively initiated the process of moving official functions and services online. As a result of these efforts, Mexico's citizens are better able to claim a stake in a more transparent and potentially less corrupt government. The communications and operational efficiencies associated with the Internet have, moreover, resulted in both increased revenues and substantial savings in terms of time and resources.<sup>81</sup> These developments, in aggregate, have justifiably improved the confidence of citizens and investors in Mexico. More can, and must be done, however, if Mexico is to fully realize the developmental opportunities associated with the Internet. The adoption of the following policy recommendations will further strengthen democratic governance, economic development, and the rule of law in Mexico.

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provide juridical certainty for digitally signed data messages. *Código de Comercio*, D.O., 17 de octubre de 1889 (Mex.) (as reformed with respect to arts. 18, 20–27, 30–32, 49, and 80, and adding arts. 89–94), arts. 93, 1205, and 1298; *Código Federal de Procedimientos Civiles*, D.O., 24 de febrero de 1942 (Mex.) (adding art. 210-A), art. 1834; *Código Federal de Procedimientos Civiles*, D.O., 24 de febrero de 1942 (Mex.) (adding art. 210-A), art. 210-A. Pending legislation (the *Nueva Hacienda Pública Distributiva*) will enhance the certainty of online tax transactions by making it possible for filers to obtain an electronic "comprobante fiscal" or "e-factura" (i.e., a tax receipt). Erika Uribe, *Reglas Claras*, E-EMPRESA, Dec.–Jan., 2001–2002, at 14.

79. The state of Puebla, for example, permits residents to file and pay various automobile, labor, hospitality, and lottery taxes online. See *Secretaría de Fianzas y Desarrollo Social de Estado de Puebla*, at <http://www.sfdspuebla.gob.mx/sfds4000.html> (last visited Oct. 25, 2001). The establishment of this online tax payment system is expected to increase tax collections by 10–15%. Sergio Rodríguez-Castillo, *Mexico: Online Tax Payment*, at <http://www.bmck.com/elaw/getarchive.asp?action=Iso> (last visited Mar. 19, 2001).

80. Jorge Reyes & Jorge Arturo Hidalgo, *Preven Caída en Inversiones*, REFORMA, Nov. 30, 2001, at 11A.

81. It has been estimated that the E-Mexico program will generate annual savings of 100 billion pesos. E-Gobierno, *Grandes Ahorros Anuales*, at <http://www.amece.com.mx/emexico/gobierno/Verdaderos-ahorros.html> (last visited Aug. 29, 2001).

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A. EXPAND THE E-MEXICO PROGRAM TO INCLUDE ELECTRONIC VOTING AND THE ADMINISTRATION OF JUSTICE

While significant advances have been made in bringing the Mexican government into the digital age, the issues of voting and the administration of justice have remained largely outside the scope of the E-Mexico program. The subsequent sections identify and explore the benefits that would flow from the digitalization of these historically inefficient areas of public administration.

1. *Electronic Voting*

Elections have long been problematic in Mexico. Notwithstanding the creation of an independent Federal Electoral Institute, the presence of international observers, and the dramatic rise to power of non-PRI candidates and parties,<sup>82</sup> the following nefarious techniques persist: reports of missing and/or overstuffed ballot boxes (the latter tactic is known as the “*taco*”); unclear voting station procedures (a tactic known as the “*raton loco*,” or crazy rat); identification fraud (tactics involving the fraudulent manipulation of voter lists are locally known as the “*cambio de panal*,” or diaper change); vote buying; intimidation tactics; and questionable tabulation.<sup>83</sup> The degree to which Mexican elections accurately reflect the will of the people is further reduced by the large number of voters who, for reasons of age, health, or distance, do not vote. Particularly significant in this regard, is the increasing number of Mexicans that live, either permanently or temporarily, outside the country.

The experience of other Latin nations indicates that the conduction of electronic elections can save scarce government resources (by minimizing the need for the deployment of large numbers of election personnel, and reducing the volume of paperwork involved in the process); improve voter turn out (by eliminating the obstacles posed to rural inhabitants and expatriates by poor travel infrastructure and/or distance); counter

82. In addition to the election of the PAN's Vicente Fox (summer 2000), opposition parties (1) govern a significant majority of the Mexican population at the level of either the state or municipal government and (2) constitute a controlling majority in the Federal Chamber of Deputies. Ugalde, *supra* note 11, at 115.

83. Meyer Brownstone & John Foster, *Mexico 2000: Democracy in Challenge*, at [http://www.web.net/comfront/cf\\_docs\\_mexico1.html](http://www.web.net/comfront/cf_docs_mexico1.html) (last visited Aug. 28, 2001); Luisa del Valle Aaron, *La Corrupcion en el IFE Arroja un Saldo de 15 Expedientes Sobre Graves Irregularidades*, LA EXTRA, Aug. 19–25, 2001, at 1E; *Se Debe Respetar Triunfo Priista en Tabasco: Madrazo*, at <http://mx.yahoo.com/noticias/010620/actualidad/cni/madrazo-amenaza-993071520.html> (last visited June 25, 2001); *El TEE Anula Elecciones en el Distrito XII de Yucatan*, at <http://mx.yahoo.com/noticias/010625/actualidad/cni/tee-yucatan-993478020.html> (last visited June 25, 2001); *Impugna PRD Candidatura de Priista a Gobierno de Michoacan*, at <http://mx.yahoo.com/noticias/010620/actualidad/cni/michoacan/-prd-candidatura-pri-993073800.html> (last visited June 25, 2001); *Destruyen 139 Casillas en Once Municipios de Chiapas*, at <http://www.excelsior.com.mx/9707/970707/nac21.html> (last visited June 25, 2001); *Un Error del IET en Tlaxcala Provoco Confusion en Ixtenco*, EL FINANCIERO, Nov. 12, 2001, at 6; Juan de Dios Moreno, *Crecen Protestas por la Toma de Posesion de Alcaldes en Chiapas*, EL SOL DE MEXICO, Jan. 3, 2002, at 14/A; Mario Castellanos, *Disminuyen Conflictos Postelectorales en Oaxaca*, EL SOL DE MEXICO, Jan. 3, 2002, at 15/A.

the effects of illiteracy (by using photographic images in a touchscreen format); and produce more objective, error-free, and timely tabulations.<sup>84</sup> Assuming the existence of the political will, and the implementation of the appropriate authentication and/or security procedures, the introduction of an IFE managed interactive system of electronic voting could reduce the frequency with which the legitimacy of elected officials becomes controverted, and mitigate lingering notions of disenfranchisement (i.e., on the part of those individuals and/or groups which claim to have been victimized by electoral fraud). These results could in turn help free up the *Amparo* dockets, and enhance the overall perception of Mexico's stability in the eyes of both citizens and investors.

## 2. *The Administration of Justice*

Latin America's political and economic development has been increasingly linked to the rule of law.<sup>85</sup> As military dictatorships have given way to civilian rule, and free trade in competitive markets has displaced trade protectionism (for example, import substitution), nations throughout the region have discovered that cosmetic changes in the law, unaccompanied by changes in the underlying culture and values of legal and political institutions, will not produce the certainty necessary for the growth and development of free markets and societies. Speaking to the economic aspect of this equation, noted constitutional scholar Lawrence Lessig states, "[I]f anything makes an economy work, it is a stable political environment governed by the rule of law."<sup>86</sup> Focusing, in turn, on the political component of this equation, the President of Mexico's Supreme Court asserts "there can be no solid democracy [in Mexico] without a strong and independent federal judicial power."<sup>87</sup>

Having determined that a greater level of legal certainty is critical to both the country's internal development and participation in the global economy, Mexico has, over the course of the last decade, undertaken the reform of its notoriously slow, corrupt, and

84. Juan Fernandez, *Democracia Electronica*, I-BIZ, July 2000, at 63 (noting that the cost of holding electronic elections in Colombia is approximately 40% less than that entailed in a traditional election) at <http://www.ibiz.net/july00/table.htm>; Christian Hess Araya, *¿Es Viable el Voto Electronico?* at <http://www.democraciadigital.org/formacio/arts/0106/votelec.html> (last visited June 25, 2001) (noting that Costa Rica is in the process of shifting to an online voting system); Claudia Silvina Dorrego, *Argentina: De Politicas Informaticas: El Voto Electronico: Su Problematica Social y Juridica*, at [http://publicaciones.derech.org/redi/No.\\_31\\_-\\_Febrero\\_del\\_2001/1](http://publicaciones.derech.org/redi/No._31_-_Febrero_del_2001/1) (last visited June 25, 2001); Juliana Viegas et al., *Brazil: Electronic Elections*, at <http://www.bmck.com/elaw/getarchive.asp?action=ISO> (last visited Oct. 9, 2000) (noting that in October 2000, over 100 million Brazilians representing more than 5,199 municipalities participated in the electronic election of mayors and representatives).

85. "Unreliable judiciaries," a report by the World Bank alleges, "hinder development, discourage and distort trade, raise transaction costs, and foster corruption." John Otis, *The Clamor to Clean Up Latin America's Judiciary is Growing*, at <http://www.latintrade.com/archives/june97/law1.html> (last visited Mar. 4, 1999).

86. Lawrence Lessig, *The Rules of Law*, *INDUSTRY STANDARD*, Dec. 11, 2000, at 51.

87. *Gongora: Gobernar con Democracia Requiere de un Orden Juridico Legal y Legitimo*, at <http://vlex.com/mx/actualidad//1004> (last visited June 25, 2001).

costly system of judicial administration.<sup>88</sup> In this connection, Mexico has identified—though not yet coherently developed—a central role for the Internet (premised on both the Broadcast/Wider Dissemination and Interactive Service models) in the process of strengthening the country's legal system. For example, federal and state judicial authorities have recently begun to use the Internet for the dissemination of legal content, (laws, initiatives, *jurisprudencia*, *teses*, *boletines*, and other official publications),<sup>89</sup> and the delivery of ADR services.<sup>90</sup> While these developments undoubtedly make the administration

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88. The inefficiency and corruption that plague Mexico's system of judicial administration flow from the following factors: (1) a weak ethical and/or professional responsibility framework; (2) the absence and/or non-use of meaningful disciplinary sanctions; (3) the existence of numerous delay inducing rules and procedures (*chicanas*); (4) an indulgent appellate process; (5) the poor state of the judicial branch's administrative infrastructure; (6) a low status and under-paid judiciary; (7) weak enforcement powers; and (8) its lack of independence from executive or other pressures (for example, *narcotraficantes*). Michael C. Taylor, *Why No Rule of Law in Mexico? Explaining the Weakness of Mexico's Judicial Branch*, 27 N. Mex. L. Rev. 141, 166 (1997); Rafael Estrada Samano, *Administration of Justice in Mexico: What Does the Future Hold?* at <http://www.natlaw.com/pubs/usmxmlaw/usmjnm4.htm> (last visited Mar. 4, 1999) (acknowledging that the administration and procuration of justice in Mexico, as well as respect for the rule of law and the observance of human rights, is quite distant from the high principles and noble purposes set forth in the Mexican Constitution); Tim Golden, *Mexican Judge is Shot Dead*, at <http://www.latino.com/mexkil.html> (last visited Mar. 4, 1999). Surveys repeatedly reveal, moreover, that the perception of judicial corruption is widespread amongst Mexicans. Otis, *supra* note 85; U.S. Dep't of State, *Mexico Country Report on Human Rights Practice for 1996*, at <http://www3.itu.ch/missions/us/hrc/mexico.html> (last visited Mar. 4, 1999). Recent reforms have placed increased emphasis on using administrative bodies for the resolution of disputes, improved judicial training, qualification standards, and compensation, changed the structure of the supreme court, and strengthened its power of judicial review. Sallie Hughes, *Law and Disorder*, MB, Mar. 1995, at 109. Notwithstanding the introduction of these reforms, however, the increasing number of cases on the nation's dockets continues to impede the timely administration of justice in Mexico. *Consejo de la Judicatura Federal, Informe Anual*, at <http://www.cjf.gob.mx/cap01consejo/estadistica/estadistica.html> (last visited Feb. 5, 2000).
89. Mexico's Chamber of Deputies has put a compilation of federal legislation on its website. See *Legislacion Federal de Mexico*, at <http://www.cddhcu.gob.mx/leyinfo> (last visited Sept. 9, 2001). It has similarly placed all congressional initiatives online. See *Iniciativas Presentadas al Congreso*, at <http://www.cddhcu.gob.mx/bibliot/infolegis/consedos> (last visited Sept. 19, 2001). These actions are consistent with the Center for Democracy and Technology's recommendation that the government provide citizens with "access to all laws, decrees, resolutions, and judicial rulings, including draft laws." Center for Democracy and Technology, *Legal and Policy Framework Supporting Development of the Internet*, at <http://www.cdt.org/international/principles/sld006.htm> (last visited June 25, 2001) [hereinafter CDT Framework].
90. The advent of online dispute resolution mechanisms (involving conciliation, mediation, and arbitration), to the extent they produce out of court settlements, can help clear Mexico's bloated dockets. An example in this connection involves PROFECO, Mexico's consumer protection agency, which undertakes to resolve e-commerce related consumer complaints within 48 hours. See *El Arbitraje en las Relaciones de Consumo*, at [http://www.profeco.gob.mx/servicio/mj\\_arbit.htm](http://www.profeco.gob.mx/servicio/mj_arbit.htm) (last visited June 28, 2001). The operation of the WIPO Arbitration and Mediation Center for the Resolution of Domain Name Disputes

of justice more efficient, there is significant room for improvement. The federal and state legal databases available online are frequently uneven in terms of coverage depth and quality. *Reglamentos*—the critical regulations that accompany and flesh out primary Mexican legislation—are often not presented.<sup>91</sup> In a related vein, the online version of the *Diario Oficial* is of limited value, in that its coverage extends back only as far as 2000.<sup>92</sup> The utility of the Mexican Supreme Court's database of *jurisprudencia* is, on the other hand, diminished by the sub-par functionality of the site's search feature.<sup>93</sup> Finally, online notification systems (i.e., electronic *boletines oficiales*)—where the service is even available—tend to be primitive in terms of scope and execution.<sup>94</sup>

Going forward, Mexico should consider bringing the administrative infrastructures of the federal and state judicial systems under the technical umbrella of the E-Mexico program. In networking these systems, Mexico would be able to: (1) centralize and standardize legal content, thereby improving the functionality of the government's law-oriented websites; (2) improve the quality and timeliness of legal information disseminated online; (3) facilitate the use of online ADR services; (4) expand the ability of parties to file certain pleadings and documents online (assuming the use of security measures to protect the content of filings); (5) send and receive notifications electronically; and (6) use information technology in the conduction of hearings (offering, for example, testimony by means of video-conference or video-deposition).<sup>95</sup> These developments

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has similarly helped alleviate the heavy caseload regularly shouldered by Mexican courts. See Administrative Panel Decision, *Banco Mercantil del Norte, SA v. Servicios de Comunicacion en Linea*, Case No. D200-1215 (Nov. 23, 2000). Examples of private sector providers of online dispute resolution services are the U.S. based Virtual Magistrate, at <http://www.vmag.org> and Peru's Ciber Tribunal, at <http://www.cibertribunalperuano.org>.

91. A few state websites include an incomplete listing of *reglamentos*. Examples of such sites include those of Sonora, at <http://www.congreson.gob.mx/reglamentos.htm> and Mexico, at <http://gem.edomexico.gob.mx/portalgem/legistel/PrnCnt.asp>.
  92. The *Diario Oficial*, from January 2000 forward, can be viewed at <http://www.juridicas.unam.mx/infjur/leg> (the UNAM is Mexico's largest public university).
  93. Information regarding matters before the Mexican Supreme Court can be obtained at <http://www.scjn.gob.mx.mx/consultas/licitaciones/licitaciones.asp>. Information regarding *jurisprudencia* and *teses* is available at <http://www.scjn.gob.mx.ius/default.asp>. Labor related *jurisprudencia* and *teses* can be found at <http://info4.juridicas.unam.mx/juslab/teslab/>. Other Latin nations which provide citizens with access to precedential information include: Argentina (<http://std.saij.jus.gov.ar/>); Brazil ("*justicia*" link at <http://www.redegoverno.gov.br> or <http://www.tst.gov.br/brs/juni.html>); Chile (<http://www.viajuridica.cl>); Colombia (<http://www.ramajudicial.gov.co/menu.htm>); Peru (<http://www.minjus.gob.pe/spij/spij.htm> or <http://www.mef.gob.pe>); and Venezuela (<http://www.tsj.gov.ve>).
  94. Electronic versions of *boletines oficiales* are typically characterized by one way notifications involving edicts, *acuerdos*, *resoluciones*, and *diligencias*. See *Boletin Judicial*, at <http://www.htsjem.gob.mx/boletin/septiembre-2001/3424-1801.htm> (last visited Sept. 20, 2001); *Boletin Judicial*, at <http://www.poder-judicial-bc.gob.mx/boletinj> (last visited Sept. 20, 2001).
  95. It has been suggested, in this connection, that art. 8 of the Mexican Constitution be amended to expressly guarantee the right to petition by electronic means. Luis Vera Vallejo, *Propuesta de Reformas y Adiciones a la Constitucion Politica de los Estados Unidos Mexicanos, a la Luz de los Nuevos Medios Electronicos*, at [http://www.sct.gob.mx/entrada/salas/7/04\\_Reformas\\_Luis%20Vera\\_Vallejo\\_archivos/slide000](http://www.sct.gob.mx/entrada/salas/7/04_Reformas_Luis%20Vera_Vallejo_archivos/slide000) (last visited Oct. 31, 2001). Judicial
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could, in turn, strengthen the penetration of laws and *jurisprudencia*, expedite legal proceedings,<sup>96</sup> clear dockets, improve judicial record keeping practices, eliminate sources of corruption, and decrease the cost of litigation. The ultimate beneficiary of a more efficient and equitable judicial system would, of course, be citizens and investors. Having increased faith in the ability of Mexican courts to resolve disputes in a swift, impartial, and cost effective manner, individuals and entities—national and foreign alike—would be less inclined to structure their affairs outside the court system and/or restrict their dealings to parties with whom they have established relationships. This certainty driven rise in the number of market participants would, to the extent it translated into enhanced levels of deal flow, promote economic growth and development.

#### B. IMPROVE INTERNET ACCESS

If Mexico's fledgling E-government program is to develop in accordance with its potential, Internet access must be improved.<sup>97</sup> It is estimated that Mexico currently has 2.2 computers for every one hundred people.<sup>98</sup> Stated in terms of population, this signifies that only 1.5 million of Mexico's ninety-six million citizens (i.e., between 1–2 percent of the population) have access to the Internet.<sup>99</sup> While these numbers are slowly

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systems throughout Latin America are using the Internet in a more interactive way. In Peru, for example, Law No. 27.419 has modified the code of civil procedure to allow for electronic notifications. See *Ley No. 27.419, Sobre Notificacion por Correo Electronico*, D.O., 7 de febrero de 2001. Venezuela and Brazil have undertaken similar legislation with an eye to expediting the process of litigation. Juliana Viegas et al., *Brazil: Courts May Soon Use Information Technology in Proceedings*, at <http://www.bmck.com/elaw/getarchive.asp?action=ISO> (last visited June 7, 2001).

96. This result would be positive given the fact that excessively formalistic proceedings, indolent judges, and the absence of meaningful ethical restraints on lawyers impede the proper operation of Mexico's system of judicial administration. Said shortcomings can, in extreme cases, result in *de facto* denials of justice. Samano, *supra* note 88.
97. Low levels of Internet access have obstructed the florescence of e-government plans throughout Latin America. In attempting to overcome this obstacle, some Latin governments have introduced (or plan to introduce) laws establishing the right of Internet access. See *Proyecto de Ley No. 113/98 Sobre Regimen de Libre Competencia para el Acceso a Internet*, at <http://proyectos.senado.gov.ar/> (last visited May 12, 2001) (Argentine bill addressing Internet access); *Decreto No. 825, Sobre Internet Como Prioridad*, Gaceta Oficial, 22 de mayo de 2001, at [http://www.analitica.com/biblioteca/conatel/decreto\\_Internet.asp](http://www.analitica.com/biblioteca/conatel/decreto_Internet.asp) (last visited June 20, 2001) (Venezuelan decree identifying the Internet as a political priority for the development of the country); *Proyecto de Ley de Derecho de Acceso a Internet, Expediente No. 14.029*, at <http://www.asamblea.go.cr/boletines/proyectos/comisiones/economicos/14029.doc> (last visited June 20, 2001) (Costa Rican initiative declaring the public's right to Internet access).
98. PC penetration statistics are expected to improve in response to the introduction of cheaper hardware, bundled packages (hardware and connection), and more dynamic financing and leasing options. Paul Day, *Dot-Com or Dot-Gone?*, MB, June 2000, at 60; Angelo Young, *Mexico's Future Online*, MB, Dec. 1999, at 39.
99. Daniel Cavallos, *Internet Use is Growing, But Only For a Few*, at [http://www.hrea.org/lists/huridocs\\_tech/markup/msg00193.html](http://www.hrea.org/lists/huridocs_tech/markup/msg00193.html) (last visited June 24, 2000); Sergio Rodriguez-Castillo & Alejandra Lopez-Contreras, *Internet User Estimates*, at <http://www.bmck.com/elaw/>
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increasing, the developmental benefits to be derived from moving governmental functions and services online will remain illusory, pending the rectification of the access issue and the establishment of a functional "critical mass" of users.<sup>100</sup> As one writer relates in this regard, "the Internet may be growing exponentially, but it is only very slowly representing a more democratic cross-section of our society."<sup>101</sup>

Mindful of the obstacles posed to Internet access by relatively low PC penetration rates, high service and connection costs (i.e., telephone, ISP), and the poor quality of transmission signals caused by the country's weak telecommunications infrastructure,<sup>102</sup> the government and private sector are working to raise the number of Internet users in Mexico.<sup>103</sup> To this end, secretariats, institutions, and corporations such as the SCT, COFETEL, SEDESOL, SEP, the ITESM, and TELMEX, *inter alia*, have undertaken projects to boost teledensity (for example, by integrating the countries fixed and wireless communications networks),<sup>104</sup> and increase Internet connectivity (by enhancing access to the necessary equipment and connections).<sup>105</sup> In the same vein, private sector entities

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getarchive.asp?action=Iso (last visited July 2, 2001) (citing OECD study estimating that only 1.9% of Mexico's population is connected to the internet). By way of comparison, it is estimated that the United States has between 54 and 68 million Internet users representing approximately 54.7% of the population. Angelica Marquez, *El Comercio Electronico y Sus Implicaciones Legales*, at [http://www.amiti.org.mx/cont\\_recursos\\_a.html](http://www.amiti.org.mx/cont_recursos_a.html) (last visited Sept. 15, 2001); Mimi de la Sierra, *Gaining Access*, *Bus. Mex.*, Feb. 1999, at 42.

100. The number of Internet users in Latin America is projected to increase from approximately 20 million users (2000) to between 75 and 77 million by 2005. *LatAm Web Users Seen Totaling 75 Million by 2005*, at [http://dailynews.yahoo.com/h/nm/20010330/wr/latam\\_users\\_dc\\_1.html](http://dailynews.yahoo.com/h/nm/20010330/wr/latam_users_dc_1.html) (last visited Apr. 2, 2001); Ken Guggenheim, *Internet Changing Latin America*, at [http://www.dailynews.yahoo.com/h/ap/20010420/tc/Latin\\_America\\_Internet\\_1.html](http://www.dailynews.yahoo.com/h/ap/20010420/tc/Latin_America_Internet_1.html) (last visited Apr. 23, 2001).
  101. Kirsten Hall, *Cyberdemocracy: Truth or Fiction*, at <http://hoshi.cic.sfu/~cm/issues/schreck.html> (last visited Mar. 8, 2001).
  102. Sergio Rodriguez-Castillo & Alejandra Lopez-Contreras, *Project E-Mexico*, at <http://www.bmck.com/elaw/getarchive.asp?action=Iso> (last visited Oct. 8, 2001) (noting major impediment to E-Mexico project is weak infrastructure); Hugo Gonzalez, *Pierden Mucho las Empresas al Quedar sin Linea Electronica*, *EL FINANCIERO*, Nov. 12, 2001, at 62 (noting the high financial cost of internet service interruptions to certain businesses).
  103. The network upon which the E-Mexico program is being built has been dubbed the "Megared."
  104. Sergio Rodriguez-Castillo, *Mexico's SCT to Detail E-Mexico Plan*, at <http://www.bmck.com/elaw/getarchive.asp?action=ISO> (last visited Jan. 29, 2001).
  105. Juan Antonio Oseguera, *Elejido.com*, *CAMBIO*, Aug. 2001, at 10, 12. (describing how government agencies, private sector companies, and academic institutions have worked together to provide schools in rural communities with satellite access to the internet); *Red Escolar*, at <http://www.redescolar.ilce.edu.mx/redescolar/queesred/redesc.htm> (last visited Oct. 27, 2001) (noting existence of 25,000 scholastic linkups to the Edusat satellite); *Convenio Internet UCLA USA y E-Mexico*, at <http://www.amece.com.mx/emexico/eeducacion/ucla.html> (last visited Oct. 27, 2001) (reporting agreement to connect Mexican universities to the internet academic network); *Tecnologias de Informacion Apoyan E-Mexico via el ITESM*, at <http://www.amece.com.mx/emexico/eeducacion/sep-tecnInfo.htm> (last visited Oct. 27, 2001) (reporting Intel's donation of an e-business laboratory to the ITESM). Elsewhere in Latin America, governments are taking similar steps—either independently or in conjunction with
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are pursuing large-scale projects designed to bring Internet access, e-mail content, and multi-media capabilities to public places (for example, airports, bus terminals, hospitals, shopping centers, etc.).<sup>106</sup> These endeavors have been supplemented by the introduction of alternative, less costly means of accessing the Internet (for example, via PDA, web phone, smart phone, cable set top box equipped with bi-directional modem, etc.).<sup>107</sup>

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the private sector—to increase student Internet connectivity. The government of Argentina, building on a \$11.3 million donation by expatriate billionaire Martin Varsovsky, recently announced its intent to connect its 52,000 national schools to the Internet over the next four years, effectively creating a pool of 12 million new users. Daniel Helft, *PCs for the People*; INDUSTRY STANDARD, May 15, 2000, at 152. Eleanora Rabinovich, *Argentina Struggles to Get Online*, at <http://www.wired.com/news/politics/0,1283,45064,00.html> (last visited July 30, 2001); *Educ.ar*, at <http://www.educ.ar/educar/index.jsp> (last visited Oct. 27, 2001). Brazil's Ministry of Education likewise announced a plan to create information technology labs in all public schools (involving the purchase of 33,000 computers). Juliana Viegas et al., *Internet Connection to Public Schools*, at <http://www.bmck.com/elaw/getarchive.asp?action=Region&RID=4&5=the+americas> (last visited Oct. 28, 2001). Upon this foundation Brazil plans, in turn, to connect its high velocity academic backbone (the RNP2) to America's Internet. Eduardo de Carvalho Viana, *Administración Pública e Sociedade da Informação: Como Anda o Governo Eletrônico?* at <http://www.rnp.br/newsgen/0101/e-gov.shtml> (last visited May 12, 2001). Finally, the Chilean government, together with SONDA, a private sector entity, recently inaugurated its plan to provide Internet access to 10,000 small businesses and professors. *SONDA se Adjudica la Provisión de 10 Mil Computadores*, at <http://www.sonda.cl/prensa/noticias/032.asp> (last visited Jan. 10, 2001).

106. For example, TELMEX is spending \$10 million to create approximately 2000 public Internet access terminals. Sergio Rodriguez-Castillo, *TELMEX Launches LAD@NET Project*, at <http://www.bmck.com/elaw/getarchive.asp?action=ISO> (last visited Apr. 9, 2001). Elektra is also undertaking to provide public Internet access through the installation of "kioskos" at its shopping centers. Similar efforts to strengthen access to the Internet have been realized in Brazil (installation of hundreds of "information centers" and "future stations" in poor and rural districts pursuant to assistance from governmental, supra-governmental, and non-governmental organizations), Chile (creation of an online network of "infocentros"), Ecuador (fluorescence of cyber cafes, notwithstanding Conatel Resolutions 266-13-2000 and 461-19-2000), Peru (installation of public "cabinas"), and Venezuela (installation of "centros de acceso publico a Internet"). Peter Muello, *Slum Moves Into Computer Age*, MIAMI HERALD, July 31, 2001, at 8C; Paulo Rebelo, *Casting a Wider Net in Brazil*, at <http://www.wired.com/news/politics/0,1283,45526,00.html> (last visited Aug. 2, 2001); Juliana Viegas et al., *São Paulo to Take Internet to Poor Districts*, at <http://www.bmck.com/elaw/getarchive.asp?action=ISO> (last visited Dec. 11, 2000); *Viva Favela*, at <http://www.vivafavela.com.br> (last visited Sept. 22, 2001); *Ministro Garcia Inauguro la Oficina Chile en Silicon Valley*, at <http://www.zamora.cl/segpres/noticias/21.html> (last visited Sept. 22, 2001); Luis Barnola, *Centros de Acceso Publico a Internet*, at [http://www.idrc.ca/pan/puburri1-3\\_3.htm](http://www.idrc.ca/pan/puburri1-3_3.htm) (last visited Sept. 22, 2001); *Regulación de los Cyber Cafes, Resolución No. 266-13-Conatel-2000*, at <http://www.supertel.gov.ec/english/regulacyb.htm> (last visited Sept. 21, 2001); *Resolución 461-19-Conatel-2000*, at <http://www.conatel.gov.ec/rescibercafe2.htm> (last visited Sept. 21, 2001).
107. The emergence of these new media of Internet access are positive insofar as they alleviate pressure on Mexico's existing fixed line networks, and exploit the country's high cable and mobile phone subscription rates.
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The success of Mexico's e-government program will ultimately depend on its ability to create and assure infrastructure, investment, and regulatory conditions conducive to the realization of projects geared toward increasing Internet connectivity.<sup>108</sup> In this connection, Mexico must take steps to enhance competition in the telecommunications and IT sectors by curtailing the monopoly power of TELMEX and vesting COFETEL with meaningful regulatory authority.<sup>109</sup> Presuming such optimal developmental conditions, it is reasonable to think that Mexico will accomplish its goal of connecting approximately 2,500 municipalities to the Internet by the end of 2001, and 10,000 by the end of the Fox administration (2006).<sup>110</sup>

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108. The realization of the E-Mexico program will likely produce significant business opportunities for private sector providers of goods and services to the "dot-gov" market (including, for example, web site developers, hardware suppliers, network builders, ASPs, integrators, aggregators, data storage facilities, consultants, etc.). *Infrastructure Initiatives to Drive the Low End Server Market in Latin America in 2001*, at [http://idc.com/idcl/whatsnew/infrastructure\\_initiatives.htm](http://idc.com/idcl/whatsnew/infrastructure_initiatives.htm) (last visited Apr. 16, 2001); *Is Government the Ultimate ASP Vertical?*, at <http://www.idc.com/aspadvisor/aa20010207.stm> (last visited Mar. 8, 2001) (noting that Oracle accrues approximately \$2 billion in revenues from software sales to governments); Press Release, *Webmethods Announces Seminar for Public Sector: Deploying a Common Integration Platform for Greater E-Government Efficiencies* (March 6, 2001); at [http://www.webmethods.com/press\\_release\\_detail/1,1075,1161,10.html](http://www.webmethods.com/press_release_detail/1,1075,1161,10.html); Keith Perine, *A Better Ballot*, INDUSTRY STANDARD, Jan. 15, 2001 (identifying opportunities for businesses that provide online voting services); Araceli Munoz Valencia, *La Industria de Telecomunicaciones Frágil*, MILENIO, Nov. 26, 2001, at 54 (estimating that the development of Mexico's telecommunications sector will require up to US \$15 billion over the next 3 to 5 years).
109. TELMEX controls 95 percent of Mexico's fixed telephony market and 70 percent of the country's cellular telephony market. Valencia, *supra* note 108, at 54. Notwithstanding the fact that peak and off-peak Internet access rates are unmetered in Mexico, TELMEX's monopoly position permits it to significantly elevate the cost of dial-up phone service, ISP connections, and last mile access. *The OECD Makes an Internet Access Price Comparison*, Organization of Economic Co-Operation and Development, at <http://www.oecd.org/dsti/sti/it/cm/stats/price99.isp-htm> (last visited Sept. 22, 2001); David Maher, *Access to the Internet: The Cost of Connecting*, at <http://www.isoc.org/oti/articles/1000/maher.html> (last visited Sept. 22, 2001); Jim Landers, *Climate Hampers Latin Telecom Market's Growth*, DALLAS MORNING NEWS, July 5, 2000, available at [http://www.adti.net/html\\_files/telecom/dallasmorningnews\\_jlanders070500.html](http://www.adti.net/html_files/telecom/dallasmorningnews_jlanders070500.html) (last visited Sept. 22, 2001). This is contrary to the Center for Democracy and Technology's recommendation that telephone dial-up and internet connection costs be structured in such a way as to not inhibit Internet access. CDT Framework, *supra* note 89. TELMEX has recently leveraged its dominant position to seek further increases in the cost of Internet access. This move is being challenged by the Mexican Internet Association (SIM) on the grounds that it will seriously jeopardize the future development of the E-Mexico program. Sergio Rodriguez-Castillo & Alejandra Lopez-Contreras, *Proposed Internet Rate Hike Jeopardizes E-Mexico*, at <http://www.bmck.com/elaw/getarchive.asp?action=Iso> (last visited Aug. 27, 2001). The reduction of the interconnection and access costs charged by TELMEX could, in theory, expedite the development of Mexico's telecommunications infrastructure insofar as TELMEX's competitors would have more resources available to invest.
110. Laurence Iliff & Brendan M. Case, *Wiring a Nation: Cyber Cafes Make Internet Available to More Mexicans*, DALLAS MORNING NEWS, July 9, 2001, available at <http://www.dallasnews.com>
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C. INCREASE INFORMATION TECHNOLOGY TRAINING AND SUPPORT  
FOR GOVERNMENT OFFICIALS AND CITIZENS

Another impediment to the successful development of the E-Mexico program involves the relatively limited technological skills and knowledge of Mexico's government officials and citizenry. Facing what one Mexican government official describes as "profound computer illiteracy," it is crucial that Mexico take steps to increase training and support with regard to new technology (for example, the use of electronic signatures, digital certificates, database management, etc.).<sup>111</sup> Failure in this regard would undermine the communications and operational benefits of the E-Mexico program, insofar as technologically unsophisticated government officials and citizens would be required to continue interacting, pursuant to traditional paper-based methods.

One way of avoiding this outcome would be for the Mexican government to establish "in house" training programs tailored to the specific needs and functions of each branch of government (as well as their assorted dependencies).<sup>112</sup> Alternatively, the Mexican government could require key officials to attend the OAS-IACD sponsored "E-Government Academy."<sup>113</sup> On another level, the provision of more detailed (yet nonetheless "user friendly") online instructions and expanded telephonic assistance, could help Mexico's citizens master applications and programs with respect to which they have had no prior experience. A good example in this connection involves the way *Declaranet* provides civil servants, electing to file electronic declarations with training courses, technical assistance (via e-mail or telephone consultation), and comprehensive download instructions.<sup>114</sup>

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(last visited July 26, 2001); Sergio Rodriguez-Castillo, *E-Mexico Project Schedule*, at <http://www.bmck.com/elaw/getarchive.asp?action=ISO> (last visited Apr. 9, 2001). The process of digitalizing all government services and functions is expected to be complete by 2007. Sergio Rodriguez-Castillo & Alejandra Lopez-Contreras, *E-Government*, at <http://www.bmck.com/e-law/getarchive.asp?action=Iso> (last visited July 30, 2001).

111. Debra Guzman, *Development-Mexico: Internet Use Is Growing, But Only for a Few*, (July 8, 1999) at <http://www.hrea.org/lists/huridocs-tech/markup/msg00193.html>. The necessity of improving IT skills and training has been recognized by scholars, groups, and trade organizations throughout the world. CDT Framework, *supra* note 89 (advocating that government education has a role in producing a broader population base that understands the Internet as a tool of commerce, government, and human development); REPORT WITH RECOMMENDATIONS TO MINISTERS, FTAA Joint Government-Private Sector Committee of Experts on Electronic Commerce, (Nov. 4, 1991) (calling for raised skills and awareness with respect to technology).
  112. While Mexico has not, to date, introduced such a program, the establishment of a cabinet level "E-Czar" position has been discussed. The creation of such a position would enhance the likelihood of executive action on the issue of technology training.
  113. This program offers training to mid- and senior-level government officials in information and telecommunications technology. *New Initiative for E-Government Academy*, Inter-American Agency for Cooperation and Development, (Feb. 1, 2002) at [http://www.iacd.oas.org/news\\_e\\_government.htm](http://www.iacd.oas.org/news_e_government.htm)
  114. See *Calendario de Capacitacion*, at <http://www.declaranet.gob.mx/calendario.html> (last visited Nov. 7, 2001); *Asistencia Tecnica*, at <http://www.declaranet.gob.mx/aseo.html> (last visited Nov. 11, 2001); *Generacion de Requerimineto*, at <http://certificacion.gob.mx/uno.html> (last visited Nov. 7, 2001); *Entre en Contacto con la SCT*, at (<http://www.sct.gob.mx/inicio/1800.html>) (last visited Nov. 5, 2001); *Archivos del Siger*, at <http://www.secofi-sci.gob.mx/siger/archivos>
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An important corollary to the aforementioned endeavors involves the strengthening of information technology training programs at academic institutions and private sector corporations. While universities such as the ITESM and ITAM have recently launched graduate level IT programs for the benefit of citizens in major population centers, there are significantly fewer training opportunities available to citizens in other areas.<sup>115</sup> As virtual universities and other online training and learning centers become better established, however, it will be possible for a larger, more geographically diverse groups of citizens to obtain IT training.<sup>116</sup> Corporations (particularly medium- to large-sized entities), on the other hand, are increasingly training employees to operate basic hardware

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(last visited Nov. 20, 2001) (*instructivo de instalacion*). Examples of such services in other Latin nations include Chile's "ask a Chilean" (<http://www.preguntachileno.cl>) and Venezuela's "Centros Telefonicos de Atencion al Ciudadano" ("CTAC").

115. Similar IT-oriented programs have been established in Argentina (*Universidad de Belgrano*), Brazil (*Universidad de São Paulo*), and Chile (the *Centro de Formacion Tecnica*, or "CFT"). See *Universidad de Belgrano*, at <http://www.ub.edu.ar/facultades/IngTecInfo/menu.htm> (last visited Oct. 26, 2001); *Universidad de São Paulo*, at <http://www.usp.br> (last visited Oct. 26, 2001); *Imparten Primera Carrera de Comercio Electronico del Pais*, at <http://www.chiletech.com/news/generales/generales.htm>, (last visited Jan. 12, 2001).
116. The ITESM opened Mexico's first virtual university. The operation of online training and learning centers, on the other hand, rely on the backing of the government, academic institutions (namely the ITESM), and/or private sector foundations and corporations (for example, Ford, JP Morgan, Hewlett Packard, etc.). Osguera, *supra* note 105 (noting creation of *centros de capacitacion y aprendizaje*, or "CCAs," in rural communities); *Educacion por Internet*, at <http://www.amece.com.mx/emexico/educacion/Edu-Internet.html> (last visited Oct. 27, 2001) (noting CONEVYT proposal to create 50,000 internet based community learning centers for adults); *Centros de Tecnologia Educativa*, at <http://cte.ilce.edu.mx/> (last visited Oct. 27, 2001) (noting SEP proposal to create technology education centers in each of Mexico's states). Realizing that the creation of a class of technologically sophisticated educators is critical to the success of the aforementioned initiatives, Mexico's government has also taken steps to provide the country's teachers with IT training. See *Capitacion en Tecnologia para 7,000 Maestros Mexicanos*, at <http://www.amece.com.mx/emexico/educacion/7000maestros.htm> (last visited Oct. 27, 2001); *La Educacion Es la Base de la Tecnologia*, at <http://www.amece.com.mx/emexico/educacion/Edu-tecno.html> (last visited Oct. 27, 2001). International distance learning opportunities are, moreover, expected to increase with the easing of U.S. copyright restrictions on Internet based educational content. *U.S. Senate Approves E-Learning Copyright Bill*, at <http://www.newsbytes.com/news/01/106653.html> (last visited Nov. 12, 2001) (noting passage of S.487, the "Technology, Education, and Copyright Harmonization Act of 2001"). H.R.2100, the companion bill to S.487, was introduced on June 7, 2001, and is currently pending before the House Judiciary Committee. When enacted, the law will permit films and video to be downloaded, notwithstanding a valid copyright, for educational purposes. The recent agreement made between the U.S., Argentina, Brazil, Peru, Paraguay, Ecuador, and Bolivia to eliminate regulatory barriers on the flow of voice, data, and or video transmission will also be a catalyst for increased distance learning activities. Avelino Rolon et al., *Telecommunications—Right of Education Protection*, at <http://www.bmck.com/elaw/default.asp> (last visited Apr. 17, 2001). Underscoring the significance of this revolution in the education process, IDC has estimated that the distance learning market will reach \$2.2 billion by 2004. *E-Learning is Burgeoning*, E-BUS. TRENDS NEWSL., Apr. 26, 2001, at 1.
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and applications.<sup>117</sup> In some cases, employee training has even extended to programming and software development.<sup>118</sup> By acting to provide basic training for today's population—forty percent of which is under age fifteen—Mexico will assure the technological proficiency of the E-Mexico program's future users.<sup>119</sup>

#### D. ENSURE CITIZEN PRIVACY AND TRANSACTIONAL SECURITY

The final policy recommendation this paper focuses on the necessity of ensuring the privacy and security of electronically realized citizen-government transactions.

Mexicans have, in the past, been unwilling to express their true thoughts and beliefs for fear of political and/or economic retaliation by local and/or regional political leaders.<sup>120</sup> Despite the fact that the citizenry's susceptibility to this sort of pressure is gradually dissipating with the emergence of real competition amongst the country's political parties, many Mexicans—especially the rural poor—continue to keep their political views and actions closely guarded. If Mexico's citizens are to embrace the enhanced participation opportunities made possible by the E-Mexico program, it is imperative that their rights of privacy and anonymity be assured and strictly upheld.<sup>121</sup> An analogous issue exists with respect to the citizenry's willingness to entrust personal or commercial data in digitalized form to public officials and/or third party intermediaries (for example, banks or ISPs).<sup>122</sup> Absent the introduction of adequate security measures, many Mexicans may be inclined to reject Internet-based methods of filing tax returns, procuring government contracts, and registering assets.

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117. Mathew Gowler, *Top 10 Strategies*, Bus. Mex., Jan. 2001, at 45 (relating how companies such as Miebach Logistica and Grupo Posadas have stepped up efforts to provide employees with high-tech training); *Oracle Education Training Methods Seminar*, at <http://www.skylab.us.oracle.com/seminars/lacountries.html> (last visited Aug. 21, 2000).
118. *Proyecto E-Mexico en Etapa Embrionaria*, at <http://www.amece.com.mx/emexico/infraestructuratecnologia/sep-contenidos> (last visited Oct. 27, 2001); Sergio Rodriguez-Castillo & Alejandra Lopez-Contreras, *Microsoft Will Invest US \$58 Million in E-Mexico*, at <http://www.bmck.com/elaw/default.asp> (last visited Sept. 3, 2001) (reporting that Microsoft will train 20,000 people to develop Mexico-specific software).
119. David Lund, *Mexico Infrastructure Still Weak*, LATIN FIN., June 1999, at 55.
120. Mexico has a tradition of developmental or infrastructure projects being held up by local "caciques" pending the correct manifestation of support with respect to certain issues and/or candidates.
121. The Center for Democracy and Technology notes in this connection that "protecting the right of anonymity is . . . an essential goal for the protection of personal freedoms in the online world." *The Internet and Human Rights: An Overview*, Center for Democracy and Technology, at <http://www.cdt.org/international/000105humanrights.shtml> (last visited June 25, 2001). The same privacy and security concerns would apply to online voting, in the event it is introduced in Mexico.
122. *Regulaciones Fiscales y Legales Determinan Confianza en el E-Commerce*, at <http://www.amece.com.mx/emexico/legislacion/sep-regulaciones.htm> (last visited Oct. 27, 2001) (noting that a strong percentage of internet users in Mexico are reluctant to conduct personal and official business electronically because of concerns about the lack of network security).
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Consistent with the recommendation of the AMITI and other groups,<sup>123</sup> Mexico has, over the course of the last year, taken legislative steps to strengthen citizen privacy and security on the Internet. Mexico's Federal Consumer Protection Law, as reformed, sanctions the failure of a "provider" (for example, an ISP or other intermediary) to keep consumer-citizen information confidential.<sup>124</sup> Citizen privacy and security are further strengthened by the terms of the March 22, 2000 initiative regarding information crimes.<sup>125</sup> In its current form, the bill criminalizes: (1) the interruption of communications on public networks;<sup>126</sup> (2) the opening or accessing of written electronic communications directed to others;<sup>127</sup> (3) the use of electronic data to fraudulently obtain, transfer, or acquire the property of another;<sup>128</sup> (4) the unauthorized alteration, use, and/or modification of personal, financial, or commercial data registered in programs or codes;<sup>129</sup> and (5) the unauthorized disclosure of the data mentioned in item "4," *supra*.<sup>130</sup> While these legislative endeavors appear to bode well for the E-Mexico program, it is too early to determine either the degree to which they will be enforced (assuming, in the case of the *Iniciativa*, that it is ultimately enacted), or the impact they will have on citizen confidence. Mexico could reinforce online privacy and security by formally adopting the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data,<sup>131</sup> and/or expanding the scope of article 16 of the Constitution (regarding

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123. Sergio Rodriguez-Castillo, *E-Mexico Project Requires Urgent Legal Certainty*, at <http://www.bmck.com/elaw/default.asp> (last visited Mar. 5, 2001); *Servicios Electronicos Gubernamentales*, at [http://www.sct.gob.mx/entrada/salas/3/pon14/index\\_files/slide0130.htm](http://www.sct.gob.mx/entrada/salas/3/pon14/index_files/slide0130.htm) (last visited June 25, 2001) (identifying privacy and data integrity as key factors in the development of the E-Mexico program).
  124. *Ley Federal de Proteccion al Consumidor*, D.O., 24 de diciembre de 1992 (Mex.) (as reformed with respect to art. 128, and adding fraction VIII to art. 1, fraction IX to art. 24, and art. 76 Bis.), arts. 76 Bis. and 128 [hereinafter L.F.P.C.].
  125. *Iniciativa de 22 de marzo de 2000 en Materia de Delitos Informaticos*, at <http://sites.netscape.net/rktconsulting/DI/pan220300.htm> (last visited Oct. 21, 2001).
  126. *Iniciativa de 22 de marzo de 2000 en Materia de Delitos Informaticos*, art. 167, at <http://sites.netscape.net/rktconsulting/DI/pan220300.htm> (last visited Oct. 21, 2001) (this offense would be punishable by 1–5 years in prison and a fine).
  127. *Iniciativa de 22 de marzo de 2000 en Materia de Delitos Informaticos*, art. 173, at <http://sites.netscape.net/rktconsulting/DI/pan220300.htm> (last visited Oct. 21, 2001) (this offense would be punishable by 3–180 days of community work).
  128. *Iniciativa de 22 de marzo de 2000 en Materia de Delitos Informaticos*, art. 389 *ter.*, at <http://sites.netscape.net/rktconsulting/DI/pan220300.htm> (last visited Oct. 21, 2001) (this offense would be punishable by 3 months to 12 years in prison and a fine).
  129. *Iniciativa de 22 de marzo de 2000 en Materia de Delitos Informaticos*, art. 399 *ter.*, at <http://sites.netscape.net/rktconsulting/DI/pan220300.htm> (last visited Oct. 21, 2001) (this offense would be punishable by 2–5 years in prison and a fine).
  130. *Iniciativa de 22 de marzo de 2000 en Materia de Delitos Informaticos*, art. 399 *ter.*, at <http://sites.netscape.net/rktconsulting/DI/pan220300.htm> (last visited Oct. 21, 2001) (this offense would be punishable by 2–5 years in prison and a fine).
  131. *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data*, Organization of Economic Co-Operation and Development, at [http://www.oecd.org/dsti/sti/it/secur/prod/priv\\_en.htm](http://www.oecd.org/dsti/sti/it/secur/prod/priv_en.htm) (last visited June 26, 2001).
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the inviolability of private communications) to expressly include data messages generated by electronic media.<sup>132</sup>

#### IV. Conclusion

The fall of communism in 1989, coupled with the rapid evolution of global communications capabilities, resulted in the validation of developmental strategies premised on a neoliberal economic policy and a democratic governance. In the case of Mexico, it was specifically hoped that economic liberalization would help overcome the setbacks of the 1980s (i.e., the “lost” decade Mexico experienced as a consequence of imprudent and short-sighted policies), and plant the seeds of meaningful political and social transformation. Reviewing Mexico’s development over the course of the last decade, it is evident that the aforementioned transformation has yet to occur.

Ten years of neoliberal reform—as embodied by extensive privatizations, the NAFTA, and Mexico’s insertion into the global economy—have yet to improve the living and economic conditions experienced by the majority of Mexicans.<sup>133</sup> Pointing to, decreased levels of government social spending; the diminished salaries and purchasing power of citizens;<sup>134</sup> elevated rates of loan default and bankruptcy (particularly amongst small- to medium-sized entities); the disappearance of domestically controlled commercial entities (inciting, in turn, a nationalism-tinged resentment amongst Mexicans, that they are no longer the masters of their own destiny); rising unemployment figures; unbridled child labor abuses; heavy flows of out-migration (commonly to the U.S.); and an increasingly unstable social situation (characterized by heightened levels of crime and

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132. Vallejo, *supra* note 95.

133. This outcome is consistent with the Center for Economic and Policy Research’s finding that economic growth and social progress have declined as a result of globalization. Marc Weisbrot et al., *The Scorecard on Globalization 1980–2000: Twenty Years of Diminished Progress*, at [http://www.cepr.net/globalization/scorecard\\_on\\_globalization.htm](http://www.cepr.net/globalization/scorecard_on_globalization.htm) (last visited Oct. 30, 2001); Jane Bussey, *Promise and Peril of Globalization*, *MIAMI HERALD*, Aug. 5, 2001, at 1E. In a related vein, a recent World Bank study found that the number of people living in poverty in Latin America increased from 136 million in 1986 to 180 million at present. “One of every six persons . . . was extremely poor in LAC [Latin American and the Caribbean] in 1999, and one of three persons was poor.” These rates are “higher” than those recorded during the mid-1980s. QUENTIN T. WODON, *THE WORLD BANK, POVERTY AND POLICY IN LATIN AMERICA AND THE CARIBBEAN 1* (2000). Andres Oppenheimer, *Gloomy Times: Latin American’s View of the Future No Longer as Shiny as in Early ‘90’s*, *MIAMI HERALD*, June 17, 2001, at 1L [hereinafter *Gloomy Times*]. Hernado De Soto brings this point home when he writes: “Advocates of capitalism are intellectually on the retreat. Ascendant just a decade ago, they are increasingly viewed as apologists for the miseries and injustices that still effect the majority of the people.” DE SOTO, *supra* note 22, at 209.

134. The price of the basic food basket in Mexico has increased approximately 400% over the last six years. Burke, *supra* note 73. Carlos Velasco, *Presentera CT Queja Contra el Gobierno*, *EL UNIVERSAL*, Jan 4, 2002, at A9 (noting the intention of the *Congreso del Trabajador* to file a constitutional action in Mexico’s Supreme Court alleging that the minimum salary established by law does not cover the actual necessities of Mexican families).

drug cartel activity); many citizens now claim that Mexico's adherence to the neoliberal concept of withstanding economic "pain" before the "gain," has been excessive.<sup>135</sup>

135. Marvella Colin, *Caida de 13 Mil 220 MDP en los Ingresos Presupuestarios*, EL FINANCIERO, Nov. 12, 2001, at 3A (noting that declining levels of government income have produced three major spending cuts between January and November of 2001, curtailed economic development, and prompted speculation of increased austerity during 2002); Rafael Sandoval, *Lejana, la Posibilidad de que la Economía Entre en una Fase de Reactivación en lo que Resta del Año*, EL FINANCIERO, Nov. 19, 2001, at 4A; Armando Talamantes, *Preve SHCP Caida en \$30 Mil Milliones*, REFORMA, Nov. 30, 2001, at 1 (The SHCP's estimate that government income will decline by up to \$30 billion pesos in 2002, largely as a result of the low price of crude); Velazquez, *supra* note 65, at 40 (relating that the debts associated with the FOBOPROA and *Pidiregas* issues will further strain government resources); Eduardo Baena & Norberto Lopez, *Sin Reforma Fiscal, Peligro de la "Argentización"*, EXCELSIOR, Dec. 5, 2001, at 1; D. Antoni et al., *Los Rostros del Desempleo*, CAMBIO, Nov. 2001, at 10 (noting that between 200,000 and 617,000 Mexicans have lost their jobs during the last year); Roberto V. Gonzalez, *Fox: Imagen Sepulcral*, LA CRISIS, Nov. 10–16, 2001, at 18 (citing data from the Secretary of Labor indicating that 800 jobs per day are currently being lost in Mexico); Samuel Garcia, *Amenaza el Desempleo*, EXPANSION, Nov. 14–28, 2001, at 31 (reporting that 166,000 Mexican workers had become eligible from IMSS benefits between January and August of 2001); Hermengildo Castro, *Pronostican un Million Mas de Pobres Cada Año en Este Sexenio*, LA CRONICA DEL HOY, Jan. 7, 2002, at 8; Maurizio Guerrero, *Con Mexico al Hombro*, CAMBIO, Nov. 25, 2001, at 70 (asserting central importance of child labor in Mexican economy); Cesar Aguilar Garcia, *Deterioro en Comunidades Rurales: Experta*, UNOMASUNO, Jan. 9, 2002, at 10, (noting UNAM study indicating that an estimated 75% of Mexico's rural population does not receive adequate nutritional and educational inputs); Richard Parker, *Mexico's Poor Trading Machetes for AK-47s*, at <http://www.abqjournal.com/news/drugs/1drug5-12.htm> (last visited Mar. 23, 2002); Paige Bierna, *The Next Hot Export: Heroin—Farmers Turn Small Plots of Land Into Subsistence Living with Mexican Black Tar*, U.S./MEX. BUS., Oct. 1998, at 18; Tim Coone, *Dirty Laundry*, LATIN TRADE, Sept. 1997, at 56 (noting that as much as 5% of Mexico's GDP derives from illicit activity); Jose Reveles, *Larga Lista de Ejecuciones de Abogados y Jueces*, EL FINANCIERO, Nov. 19, 2001, at 74 (noting assignation of 79 legal professionals in Mexico during the past 10 years); Francisco Rejendiz & Jose Navarro, *Analiza Gobernacion como Proteger a Jueces*, EL HERALDO DE MEXICO, Nov. 14, 2001, at 1 (identifying connection between the assignation of magistrates and *narcotraficantes*); Ignacio Aczaga, *Seguridad para Magistrados, Exigen a Fox*, EL SOL DE MEXICO, Nov. 20, 2001, at 2A (noting supreme court's rejection of Colombian-style "*jueces sin rostros*"); *Acribilla Comando a Una Familia en NL*, REFORMA, Nov. 30, 2001, at 30A (reporting increase in violent activity perpetuated by armed commandos—presumably with narco links—in Monterrey); Ricardo Ravelo, *Sinaloa, Otra Vez Bajo Dominio Narco*, PROCESO, Nov. 25, 2001, at 30; Alejandro Gutierrez, *En Aumento, las Narcodesapariciones*, PROCESO, Nov. 25, 2001, at 32; Pablo Hiriart, *Secuestro: Negocio con Mayor Garantía de Éxito en Mexico*, LA CRONICA DEL HOY, Jan. 7, 2002, at 4 (noting that between 1980 and 1994 the number of "prolonged" kidnappings in Mexico increased from 140 to 300 per year; in contrast, the number of "express" kidnappings committed each year in Mexico has risen to approximately 10,000); Daniel Millan and Jose Luis Tapia, *Inhiben Secuestros La Inversión, Advierten Embajadores a Creel*, REFORMA, Jan. 8, 2002, at 6A (noting that concern over physical security is adversely impacting foreign investment in Mexico); Eva Lozano Estrella, *Robo, Via Secuestro Express*, LA CRISIS, Nov. 10–16, 2001, at 40; Francisco Gomez, *Ciudad Juarez, Asesinatos de Mujeres: Mas Crimenes e Impunidad*, EL UNIVERSAL, Dec. 3, 2001 (reporting that over 360 female *maquila* laborers have been either killed or

Mexico's experience with neoliberal economic policy appears, moreover, to have perpetuated the gulf between the nations wealthy and poor. According to the recent "Human Development Study" conducted by the United Nations Development Fund, the "richest 20% of [Mexico's] population gets 57% of the country's income, which is 14 times what the poorest 20% get."<sup>136</sup> Considering these negative results, it should come as no surprise that a *Reforma* poll found that: (1) almost 60 percent of respondents thought Mexico had not benefited from NAFTA, and (2) approximately 90 percent of respondents thought NAFTA had produced increased levels of unemployment in Mexico.<sup>137</sup> The current reduction in the level of U.S. FDI, coupled with the recent drop in industrial output, occasioned by a weakening U.S. demand for Mexican exports, will only exacerbate Mexico's precarious economic situation.<sup>138</sup> It is unlikely that Mexico will be able to

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disappeared along the border over the last decade); Irasema Pineda, *Reconoce la PGJDF los Nexos de Agentes con las Mafias Dedicadas al Robo de Autos*, EL HERALDO DE MEXICO, Nov. 14, 2001, at 10A; Juan Carlos Cordova, *La Vigilancia del Primer Mundo: Godoy*, UNOMASUNO, Jan. 9, 2002, at 5 (noting Mexico is far from accomplishing the developed nation ratio of 1 policeman for every 200 citizens); Christian Jamar & Angeo Young, *NAFTA at 5*, MB, Apr. 1999, at 26; Mauro Jimenez Lazcano & Albert Rodriguez de la Pena, *Se Excedieron los Neoliberales*, MACROECONOMIA, Jan. 1999, at 14; Mariana Fuentes, *Urge Renovar el Sistema Financiero Internacional*, REFORMA, Jan. 6, 2002, at 6A (noting criticisms of Mexico's ambassador to the EU with respect to the IMF); Albert Huerta G., *Teoria y Practica del Neoliberalismo y Globalizacion en Mexico*, MACROECONOMIA, Jan. 1999, at 28; Marta Lagos, *Latinobarometro 2000*, at <http://www.latinobarometro.org> (last visited Nov. 20, 2001) (relating that 55% of respondents in a recent poll disagreed or strongly disagreed with the proposition that privatization has been beneficial to Mexico). Notwithstanding the aforementioned social, economic, and political developments, Mexico has known recent stability with respect to interest rates and inflation.

136. *HDR 2000*, at <http://www.undp.org/hdr2000/english/HDR2000.html> (last visited Oct. 31, 2001). Andres Oppenheimer, *Latin America Leads World in Inequality*, U.N. Study Says, MIAMI HERALD, July 12, 2001, at 14A; Stephen Fidler, *Lands Where Rich and Poor Are Furthest Apart*, FIN. TIMES, Mar. 26, 1993, at 3. The uneven distribution of wealth was identified as the biggest problem facing Latin America according to a recent Arthur Andersen survey of regional executives. Kevin G. Hall, *South American Economies Still at Risk*, MIAMI HERALD, May 13, 2000, at 1E. The developed world's failure to make globalization more inclusive, according to Klaus Schwab of the World Economic Forum, could raise the "prospect of a resurgence of the acute social confrontations of the past, magnified at the international level." Klaus Schwab & Claude Smedja, *Globalization Needs a Human Face*, INT'L HERALD TRIBUNE, Jan. 28, 1999. Miguel Szekely, *Desigualdad*, NEXOS, Jan. 2002, at 18 (noting that Mexico's exaggerated levels of income inequality have remained relatively constant since 1992).
137. Sam Quinones, *A Win-Lose Situation*, MEX. BUS., Mar. 1996, at 10. Similarly, a recent *Berumen* poll involving approximately 500,000 Mexicans found only 35% of respondents to be in favor of Globalization. *Opinion Sobre la Conveniencia de que el Gobierno Apoye la Globalizacion; Encuesta Nacional en Viviendas—27 al 31 de Octubre 2001*, at [http://www.berumen.com.mx/presidencia\\_pagina/boletin%207%20de%20noviembre/cuadros%](http://www.berumen.com.mx/presidencia_pagina/boletin%207%20de%20noviembre/cuadros%20) (last visited Nov. 25, 2001).
138. *Patterns of Investment in Latin America*, at <http://www.latinnews.com> (last visited Mar. 23, 2002) (noting that FDI in Latin America dropped by approximately 20% in the last year); Roberto Aguilar, *Inversion Extranjera: ¿y la Bolita?* EXPANSION, Nov. 14, 2001, at 24; Jane Bussey, *Latin Outlook: Will Argentina's Proposed Solution Brighten the Region's Fading*
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pick up this economic slack by relying on its web of FTAs, given the global nature of the present downturn.

Compounding the negative record of neoliberalism, is the fact that the values and practices of the country's political and legal classes have failed, for the most part, to evolve in a way that engender greater citizen confidence in the operation and integrity of government and the rule of law. Notwithstanding the dramatic electoral accomplishments of the past four years, political and legal processes in Mexico continue to be characterized by corruption, inefficiency, and impunity.<sup>139</sup> In the words of one high-ranking former Mexican official, the country's politicians are still "faced with the temptation to disregard

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*Economies?* MIAMI HERALD, Apr. 23, 2001, at 6; Doug Henwood, *Profiteering in the Hemisphere*, NACLA REP. ON AM., Nov.-Dec. 2000, at 49 (presenting export statistics that indicate U.S. market means more to Mexico than the Mexican market does to the U.S.); Eleazar Rodriguez, *En Octubre La Inversion Extranjera en Valores de Renta Fija Toco Minimo de 10 Anos: Mil 178 MDD*, EL FINANCIERO, Nov. 12, 2001, at 6A; Velazquez, *supra* note 65, at 40 (reporting fall in economic growth from 7% to 0% between December 2000 and November 2001); Sandoval, *supra* note 73 (noting 1.6% decrease in Mexico's GDP during third trimester of 2001); Isabel Becerril, *Desfallecen Maquiladoras de Exportacion; Apoyos, una Ilusion*, EL FINANCIERO, Nov. 19, 2001, at 21; Banco de Informacion Economica, *Indicadores Economicos de Coyuntura*, at <http://dgcnesyp.inegi.gob.mx/cgi-win/bdi.exe> (last visited on Dec. 7, 2001) (statistics reflecting sharp decline in FOB exports from Mexico between 2000 and 2001); Lourdes Sierra Arenas, *En 2001, Caída de 60 Mil MDD el las Exportaciones*, UNOMASUNO, Jan. 9, 2002, at 19. The economic uncertainty triggered by the recent terrorist attacks on the United States, considered in conjunction with the continued strength of the peso relative to the U.S. dollar, will only exacerbate this already delicate situation. Caroline Anstey, *Poverty to Rise in Wake of Terrorist Attacks in the U.S.*, at <http://www1nwen18.worldbank.org/news/pressrelease.nst/673fa6c5a2d50a2d50a6782565e200692a79/76> (last visited Oct. 13, 2001); Elisabeth Malkin, *Walloped by the Super-Peso*, BUS.WK., May 14, 2001, at 66 (collapse in export profitability caused, in part, by peso's 4% gain against the U.S. dollar).

139. The recent assignation of a prominent Mexican human rights advocate highlights the essentially superficial nature of the country's democratic reform. As one commentator relates: "Those who hailed last year's election of President Vicente Fox as a turning point in Mexico's transition to a full democracy may have spoken too soon: While there were free elections and an opposition leader was allowed to take office, the old system's repressive apparatus is far from dead." Andres Oppenheimer, *Murder of Rights Leader Is a Test For Mexico's Democracy*, MIAMI HERALD, Oct. 25, 2001, at 8A; Juan Antonio Zuniga, *El Sistema de Seguridad y Justicia, al Servicio de la Delincuencia: SSP*, LA JORNADA, Jan. 11, 2002, at 42 (reporting findings of study conducted by the *Secretaria de Seguridad Publica* that: 1) Mexican judges operate within a formalistic, slow, and corrupt system, free from accountability; and 2) the justice and security systems work to serve the interests of the governing class and organized delinquency); Douglas W. Payne, *Between Chile and Chiapas: Democracy and Economic Reform May be Short Lived If They Do Little Beyond Perpetuating the Perks of the Ruling Class in Latin Societies*, U.S./LATIN TRADE, Dec. 1994, at 96; *Gloomy Times*, *supra* note 133; *Mexican Corruption Condoned at Highest Level, World Policy Institute Says*, at <http://www.ndsn.org/JULY93/CORRUPT.html> (last visited Mar. 23, 2002); Carlos Hamann, *Eduardo Valle Espinoza: The Whistle Blower*, MEX. BUS., Dec. 1995, at 28 (detailing corruption amongst Mexico's power brokers). Other criticisms regarding the Fox administration's reluctance to end past practices of impunity, and accomplish true democratic reform stem from the fact that the government has yet to carry out any prosecutions in connection with the FOBAPROA scandal, the disappearances which occurred during the "dirty war," or past acts of official corruption.
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their mandate, and to govern in their own interests, or on behalf of the interest groups with whom they are allied."<sup>140</sup> Because of this propensity on the part of Mexico's political leadership, "it is imperative to establish control mechanisms to ensure that elected officials, especially those in the executive branch, will perform their duties honestly and efficiently."<sup>141</sup> Focusing on the present administration, another Mexican commentator underscores the fundamental lack of real change by noting:

"A year after his formal assumption of power, Fox appears more and more like the representatives of the regime he criticized so much during his presidential campaign. The crimes of the PRI regime—ranging from an abusive exercise of discretion with respect to public resources, to violations of human, political, and labor rights—continue unpunished."<sup>142</sup>

The cynicism and disillusionment that this situation incites within Mexico's citizens directly undermines the development of democratic and pluralistic institutions.<sup>143</sup>

Against this backdrop of discontent, has emerged a growing rejection of U.S. inspired economic policies and political practices. Addressing the global manifestations of this backlash, Michael J. Mazaar, of the Center for Strategic and International Studies (CSIS) observes: "Economic and social reform and democracy have swept the region, sparking alienation and exacerbated economic inequalities. Cultural and ideological reactions to capitalism are gaining strength. The great expectations that accompanied reforms in Argentina, Brazil, Mexico, and Chile have given way to widespread disaffection with reform."<sup>144</sup> While governments throughout the hemisphere have adopted

Araceli Guardarama, *FOBOPROA, Tumba Millonaria*, IMPACTO, Aug. 12, 2001, at 40 (noting government's continued refusal to release the names of the wealthy businessmen implicated in the 1995 bank bailout); Carlos Benavides, *PGR Critica Fallos de Jueces; Hay Imagen de Impunidad*, EL UNIVERSAL, Jan. 9, 2002, at 1; Norma Jimenez & Victor H. Michel, *El Primer Ano, lo Personal Trascendio a lo Politico*, MILENIO, Nov. 26, 2001, at 28 (noting the PGR's total lack of progress in the investigation of twenty corruption cases involving public officials).

140. Ugalde, *supra* note 11, at 124; Ciro Perez & Roberto Garduno, *Mostraron Legisladores Interes Personales Durante los Cabildos de la Miscelanea Fiscal*, LA JORNADA, Jan. 11, 2002, at 7.

141. Ugalde, *supra* note 140.

142. Raul Jimenez, *Disparates de Fox*, LA CRISIS, Nov. 10–16, 2001, at 14; Antonio Juaquez, *Primer Ano de Gobierno: Pasado Sin Castigo*, PROCESO, Nov. 25, 2001, at 8; Guillermo Cantu, *Los Grupos de Poder se Resisten el Cambio*, LA CRONICA DEL HOY, Jan. 7, 2002, at 11; Joel Estudillo Rendon, *Back to the Future: Will the Dark Forces of Mexico's Past Hijack Mexico's Democratic Transition?* BUS. MEX., Jan. 2002, at 23 (noting that it is "worrisome" that those responsible for Mexico's "political change have not been capable of establishing the basic agreements that would carry through a real transformation of the political regime")

143. The cause and effect nature of this issue is illustrated by the common perspective towards paying taxes. Having lived through decades of economic crisis, "many Mexicans believe paying taxes is pointless, since corrupt authorities will inevitably abscond with the funds." Burke, *supra* note 73. As Dip. Marti Batres, a member of Mexico's Chamber of Deputies notes: "If people can't trust the government, we can't expect them to feel any commitment to paying their taxes." *Id.*

144. MAZAAR, *supra* note 1, at 188. Andres Oppenheimer, *House Vote Creates 'New Momentum' for U.S.-Latin Ties*, MIAMI HERALD, Dec. 9, 2001, at 12A (noting "increasingly anti-free trade atmosphere" in Brazil); Andres Oppenheimer, *¿Se Viene la Ola Neopopulista?* REFORMA, Jan. 8, 2002, at 22 [hereinafter *Neopopulista*] (noting, in the wake of Argentina's economic collapse,

the Inter-American Democratic Charter,<sup>145</sup> the annual *Latinobarometro* survey reveals that the number of Mexicans that believe democracy to be preferable to any other kind of government is dropping.<sup>146</sup> Even more alarming, however, is the survey's finding of a growing tolerance on the part of Mexicans for "dictatorship."<sup>147</sup> Consistent with this finding, one Mexican publication recently stated: "the miseries of our democracy incite within many citizens, a longing for the return of dictatorship."<sup>148</sup> Another Mexican commentator echoes this sentiment, when he observes that democracy in Mexico—which has yet to be consolidated—"could still fail, creating a vacuum that could engender conflict and violence."<sup>149</sup> Reflecting the dissatisfaction of the times, Mexico has, since 1994, witnessed increased levels of civil disobedience and guerilla activity—as well as the corresponding militarization (involving the deployment of both official and private paramilitary forces) of the domestic sphere.<sup>150</sup> This is consistent with

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a growing rejection of the neoliberal model throughout the Americas, and an increasingly strong showing of populist candidates in Brazil, Colombia, and Ecuador).

145. Inter-American Democratic Charter (*Resolucion de San Jose, Costa Rica*), Sept. 11, 2001, at [http://www.oas.org/charter/resolucion1\\_en\\_p4.htm](http://www.oas.org/charter/resolucion1_en_p4.htm) (last visited Nov. 18, 2001); Andres Oppenheimer, *Is Latin America Ready for Tough Democracy Rules?* MIAMI HERALD, May 13, 2001, at 5A.
146. Lagos, *supra* note 135; Andres Oppenheimer, *Dear Mr. President: Latin America Needs Your Attention*, MIAMI HERALD, Aug. 5, 2001, at 8A [hereinafter *Mr. President*]. In this connection, it should be noted that expressions of "democracy fatigue" (including, for example, the recent protest votes in Argentina and Chile, as well as Venezuela's increased willingness to disregard democratic forms) are occurring with increasing frequency throughout Latin America. Andres Oppenheimer, *Latin America Suffering Democratic Fatigue*, MIAMI HERALD, Oct. 18, 2001, at 6A; Alfredo Riquelme, *Voting for Nobody in Chile's New Democracy*, NACLA REP. ON AM., May–June 1999, at 31; Andres Oppenheimer, *Venezuela's Chavez is Facing Coup Rumors in Latin America*, MIAMI HERALD, Nov. 25, 2001, at 6A.
147. *Mr. President*, *supra* note 146. Similar expressions of support for a return of the Latin "caudillo" have been registered on behalf of Argentina's Menem and Peru's Fujimori. Responding to these expressions, Menem, (who governed Argentina for ten consecutive years), recently promised to regain the presidency. Raul Justes Lores, *Menem: "Soy Como Alejandro Magno,"* CAMBIO, Nov. 25, 2001, at 48.
148. Fernando Rivera Calderon, *Dictadura Perfecta v. Democracia Imperfecta*, MILENIO, Aug. 13, 2001, at 24; John Ward Anderson, *Mexico's Dinosaurs Resurgent*, WASH. POST FOREIGN SERVICE, May 23, 2000, at A23; Carolina Navarette, *Debe el PRI Recuperar la Presidencia: De La Madrid*, LA PRENSA, Nov. 17, 2001, at 28; Elliot Abrams, *How To Avoid the Return of Latin Populism*, WALL ST. J., May 21, 1993, at 16 (stating that as long as large portions of Latin America's population continues to live in poverty, the pull of populist rhetoric is far from dead). These developments coincide with what has been perceived to be an increasing degree of intolerance and authoritarianism on the part of Vicente Fox. Jimenez, *supra* note 142, at 14.
149. Rendon, *supra* note 142.
150. Jorge Fernandez Mendez, *La Guerilla Mala*, MILENIO, Aug. 13, 2001, at 8; Enrique Moran Monroy, *Guerilla en el DF*, IMPACTO, Aug. 12, 2001, at 20; Zeferino Garcia Sainz, *El Mexico Bronco: 81 Grupos Armados*, LA EXTRA, Aug. 19–25, 2001, at 1; Juan de Dios Moreno Valle, *Emboscada en Chiapas*, EL SOL DE MEXICO, Aug. 20, 2001, at 1; Tim Weiner, *In Latin America, Foes Aren't the Only Danger*, N.Y. TIMES, Apr. 29, 2001, sect. 4, at 1 (noting that in much of Latin America, the military still serves and represents the ruling class); *Militarized Democracy*
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the observation that, "many governments in the face of economic hardships and social dislocations caused by neoliberal restructuring have adopted authoritarian measures and bolstered the state's capacity for repression."<sup>151</sup> The economic and political stagnation underlying this backlash is contrary to U.S. interests, insofar as it: (1) diminishes the prestige of American developmental initiatives and strategies; (2) complicates a U.S.-Mexico relationship already strained by issues of drugs, immigration, and terrorism; (3) makes hemispheric economic and trade integration less attractive to the other Latin nations;<sup>152</sup> and (4) strengthens the hand of America's Asian and European competitors in the region.<sup>153</sup> These developments are, alternatively, contrary to Mexico's interests, to the extent that such expressions of social, political, economic, and legal instability run the risk of diminishing the country's overall competitive advantage in the global order, thereby leading foreign investors to locate their commercial activities elsewhere. The recent entry of China and Taiwan into the WTO could, in this connection, adversely impact Mexico's ability to attract and retain desperately needed foreign investment.<sup>154</sup>

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*in the Americas*, NACLA REP. ON AM., Nov.-Dec. 1998, at 15 (noting that since the end of the cold war, Latin American militaries have assumed an expansive and multi-dimensional role in confronting drug trafficking, terrorism, insurgency, immigration, and refugee flows); Linda Robinson & Lucy Conger, *Mexico's New Revolution*, U.S. NEWS & WORLD REP., Aug. 15, 1994, at 40 (noting that the Mexican Attorney General is monitoring guerilla bands in 10 states including Guerrero, Hidalgo, Morelos, Michoacan, and Chiapas); Joshua Paulson, *Rural Rebellion in Southern Mexico*, NACLA REP. ON AM., Mar.-Apr. 2000, at 26; *Reaperece el EPR en Guerrero*, EL FINANCIERO, Nov. 12, 2001, at 83; Jorge Torres Jimenez, *La Vida en la Clandestinidad*, CAMBIO, Nov. 25, 2001, at 40; Jesus Guerrero, *Piden Ganadores Permiso para Armarse en Guerrero*, REFORMA, Jan. 6, 2002, at 11A. Notwithstanding the destabilizing and disruptive effects of such groups, it is unlikely that Mexico would jeopardize its increasing stature in the world economy by resorting to overtly dictatorial ways.

151. J. Patrice McSherry, *The Emergence of "Guardian Democracy"*, NACLA REP. ON AM., Nov.-Dec. 1998, at 16; Vanessa Moussa, *Chile's Carabineros Cock a Snook at the Civilian Government*, at <http://www.latinnews.com/newsroom.htm#0> (last visited Dec. 4, 2001).
  152. Andres Oppenheimer, *The Three Americas*, MIAMI HERALD, June 25, 2000, at 11 (noting that the specter of a divided hemisphere threatens free trade and fledgling democracies in Latin America); Susan Kaufman Purcell, *The New U.S.-Brazil Relationship*, in *BRAZIL UNDER CARDOSO* 89, 90 (Sarah Kaufman Purcell & Riordan Roett eds., 1997) (noting Brazil's reluctance to encourage a "hub and spoke" trade integration model in which the U.S. is the center point).
  153. Jane Bussey & Glenn Garvin, *China Exerting Regional Influence: Analysts Warn of Political, Strategic Challenge to U.S. Interests in Latin America*, MIAMI HERALD, Apr. 15, 2001, at 1.
  154. Javier Rodriguez, *Seis Anos para Elevar la Competitividad del Pais*, EL FINANCIERO, Nov. 12, 2001, at 1 (noting entry of China and Taiwan into WTO forces Mexico to become more competitive and productive over the next six years); *¿Mexico se Desmaquila?* VERTIGO, Jan. 6, 2002, at 55 (noting reports that many U.S. companies are abandoning their Mexican maquila operations in favor of China, where labor rates are as low as \$.25 per hour). It is noted in this connection that Mexico—along with most other Latin nations—received a low ranking in the World Economic Forum's recent "Competitiveness Report" due to its "structural weaknesses in areas like rule of law and public institutions, as well as on innovation and absorption of technologies." Klaus Schwab & Jeffrey D. Sachs, *The Latin American Competitiveness Report 2001-2002*, at <http://www.weforum.org/pdf/Gcr/LACA.pdf> (last visited Mar. 23, 2002) (Mexico's "competitiveness" ranking was 43 in a total field of 75 nations).
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The E-Mexico program, in tandem with the broad range of economic, social, political, and legal reforms undertaken over the past twenty years, presents an unique opportunity to overcome the systemic formalism, inefficiency, fraud, mistrust, and impunity that have long operated to preclude sustainable economic and substantive political development in Mexico. Assuming a timely and meaningful implementation, the E-Mexico program could improve the efficiency and certainty of commercial and governmental dealings, and bolster Mexico's diminished faith in free markets and liberal democratic values. Accomplishing these advances could, moreover, confirm Mexico's commitment to confronting the technological challenges of the future, and protect its place in an increasingly competitive global economy. This progression, viewed from a long-term perspective, would be optimal, insofar as history teaches that the strongest democracies are not those accomplished by fiat, but, rather, those that represent organic outgrowths of development.<sup>155</sup> Mexico's failure to take advantage of the developmental opportunities made possible by the Internet, considered in light of the cyclical nature of history in Latin America,<sup>156</sup> and the immediacy of the economic crisis produced by the terrorist attacks of September 11, 2001, will likely facilitate either a perpetuation of the status quo associated with the country's currently incomplete economic, political, and legal transformation or, in the worst case scenario, a partial or full return to previously discredited policies and perspectives.

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155. Robert D. Kaplan, *Was Democracy Just a Moment?* ATLANTIC MONTHLY, Dec. 1997, at 55.

156. Latin America has, on at least four previous occasions since its independence from Spain in the 1820s, embraced neoliberalism and/or democracy. Notwithstanding these earlier efforts at trade liberalization, privatization, fiscal and debt restructuring, and constitutional reform, the absence of a corresponding change to the region's underlying value system, practices, and socio-economic structure effectively assured the subsequent return of centralized economic and political control. DE SOTO, *supra* note 22, at 208; Marichal, *supra* note 72, at 25; Paul Drake, *The Money Doctors*, NACLA REP. ON AM., Nov.-Dec. 1997, at 32 (noting the occurrence of successive Latin debt cycles); *Neopopulista*, *supra* note 144 (noting the possibility of a gyration toward populist leadership in keeping with the region's established pattern of successive "populist-military junta-democracy" cycles of government).

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TABLE 1  
GOVERNMENT PORTALS

| <i>Country</i> | <i>URL</i>   |
|----------------|--|
| Argentina      | <a href="http://www.nacion.ar">www.nacion.ar</a> ;<br><a href="http://www.gobiernoelectronico.ar">www.gobiernoelectronico.ar</a> |
| Brazil         | <a href="http://www.redegoverno.gov.br">www.redegoverno.gov.br</a>   |
| Colombia       | <a href="http://www.gobiernoenlinea.gov.co">www.gobiernoenlinea.gov.co</a>   |
| Chile          | <a href="http://www.estado.cl">www.estado.cl</a> ;<br><a href="http://www.gobiernodechile.cl">www.gobiernodechile.cl</a>         |
| Mexico         | <a href="http://www.e-mexico.gob.mx">www.e-mexico.gob.mx</a>   |
| Peru           | <a href="http://www.perugobierno.gob.pe">www.perugobierno.gob.pe</a>   |
| Venezuela      | <a href="http://www.gobiernoenlinea.ve">www.gobiernoenlinea.ve</a>   |

TABLE 2  
CITIZEN PARTICIPATION

| <i>Country</i> | <i>URL</i>   |
|----------------|--|
| Argentina      | N/A  |
| Brazil         | <a href="http://www.camara.gov.br/Internet/comissao/index/perm/clp/apresentacao.htm">www.camara.gov.br/Internet/comissao/index/perm/clp/apresentacao.htm</a> |
| Colombia       | N/A  |
| Chile          | N/A  |
| Mexico         | <a href="http://www.presidencia.gob.mx">www.presidencia.gob.mx</a>   |
| Peru           | N/A  |
| Venezuela      | N/A  |

TABLE 3  
TRANSPARENCY

| <i>Country</i> | <i>URL</i>   |
|----------------|--|
| Argentina      | <a href="http://www.cristal.gov.ar">www.cristal.gov.ar</a>   |
| Brazil         | <a href="http://www.braziltransparente.gov.br">www.braziltransparente.gov.br</a>                   |
| Colombia       | N/A  |
| Chile          | N/A  |
| Mexico         | <a href="http://www.declaranet.gob.mx/quedecpat.html">www.declaranet.gob.mx/quedecpat.html</a>     |
| Peru           | <a href="http://www.transparencia-economica.mef.gob.pe">www.transparencia-economica.mef.gob.pe</a> |
| Venezuela      | N/A  |

TABLE 4  
HABEAS DATA LAWS

| <i>Country</i> | <i>URL</i>  |
|----------------|---|
| Argentina      | Art. 43 Constitution and Law 25.326, at<br><a href="http://www.uni-wuerzburg.de/law/ar/00600_.html">www.uni-wuerzburg.de/law/ar/00600_.html</a>   |
| Brazil         | Art. 5 Constitution and Law 9.507, at<br><a href="http://infojur.cj.ufsc.br/arquivos/diieto_administrativo/9507_97.htm">http://infojur.cj.ufsc.br/arquivos/diieto_administrativo/9507_97.htm</a>  |
| Colombia       | Art. 15 Constitution, at<br><a href="http://www.georgetown.edu/pdba/Constitutions/Colombia/colombia.html">www.georgetown.edu/pdba/Constitutions/Colombia/colombia.html</a>  |
| Chile          | N/A   |
| Mexico         | Art. 6 Constitution, at<br><a href="http://gaceta/cddhcu.gob.mx/gaceta/58/2001/feb/20010215.html">http://gaceta/cddhcu.gob.mx/gaceta/58/2001/feb/20010215.html</a> ;<br><a href="http://gaceta/cddhcu.gob.mx/gaceta/58/2001/dic/20011204.html">http://gaceta/cddhcu.gob.mx/gaceta/58/2001/dic/20011204.html</a> |
| Peru           | Art. 200 Constitution, at<br><a href="http://www.georgetown.edu/pdba/Constitutions/Peru/peru.html">www.georgetown.edu/pdba/Constitutions/Peru/peru.html</a>   |
| Venezuela      | N/A   |

TABLE 5  
ELECTRONIC FILINGS (*TRAMITES*)

| <i>Country</i> | <i>URL</i>   |
|----------------|--|
| Argentina      | <a href="http://www.nacion.ar/espaciocivico/tramites/tramites.asp">www.nacion.ar/espaciocivico/tramites/tramites.asp</a>   |
| Brazil         | <a href="http://www.redegoverno.gov.br">www.redegoverno.gov.br</a> (various links)   |
| Colombia       | <a href="http://www.gobiernoenlinea.gov.co/overview/0,2043,ES-Cogl,00.html">www.gobiernoenlinea.gov.co/overview/0,2043,ES-Cogl,00.html</a> ;<br><a href="http://www.dafp.gov.co">www.dafp.gov.co</a> |
| Chile          | N/A  |
| Mexico         | <a href="http://www.tramitanet.gob.mx">www.tramitanet.gob.mx</a> ;<br><a href="http://www.rft.gob.mx">www.rft.gob.mx</a>   |
| Peru           | <a href="http://www.perugobierno.gob.pe/tramites/busq_tramites.asp">www.perugobierno.gob.pe/tramites/busq_tramites.asp</a>   |
| Venezuela      | <a href="http://www.gobiernoenlinea.vz/gobierno/portal?Mlval=tram">www.gobiernoenlinea.vz/gobierno/portal?Mlval=tram</a>   |

TABLE 6  
ONLINE GOVERNMENT PROCUREMENT

| <i>Country</i> | <i>URL</i>   |
|----------------|--|
| Argentina      | <a href="http://www.cristal.gov.ar/lrf/compras.main.html">www.cristal.gov.ar/lrf/compras.main.html</a> ;<br><a href="http://www.mercadostransparentes.com">www.mercadostransparentes.com</a> |
| Brazil         | <a href="http://www.redegoverno.gov.br/ServInfo/ServInfo.asp">www.redegoverno.gov.br/ServInfo/ServInfo.asp</a>   |
| Colombia       | <a href="http://www.imprensa.gov.co/consultas_contratos.asp">www.imprensa.gov.co/consultas_contratos.asp</a>   |
| Chile          | <a href="http://www.chilecompras.cl">www.chilecompras.cl</a>   |
| Mexico         | <a href="http://www.compranet.gob.mx">www.compranet.gob.mx</a>   |
| Peru           | <a href="http://www.perugobierno.gob.pe/adquisiciones/index.html">www.perugobierno.gob.pe/adquisiciones/index.html</a>   |
| Venezuela      | <a href="http://www.gobiernoenlinea.ve/gobierno/portal/?Mlval=licitaciones_pub">www.gobiernoenlinea.ve/gobierno/portal/?Mlval=licitaciones_pub</a>   |

TABLE 7  
ONLINE PUBLIC REGISTRIES

| <i>Country</i> | <i>URL</i>   |
|----------------|--|
| Argentina      | N/A  |
| Brazil         | N/A  |
| Colombia       | N/A  |
| Chile          | N/A  |
| Mexico         | <a href="http://www.secofi-ssci.gob.mx/siger">www.secofi-ssci.gob.mx/siger</a> |
| Peru           | <a href="http://www.orlc.gob.pe">www.orlc.gob.pe</a>                           |
| Venezuela      | N/A  |

TABLE 8  
ONLINE TAX FILINGS

| <i>Country</i> | <i>URL</i>   |
|----------------|--|
| Argentina      | <a href="http://www.gobiernoelectronico.ar/sitio/sitio_varios/form&amp;prog.htm">www.gobiernoelectronico.ar/sitio/sitio_varios/form&amp;prog.htm</a> ;<br><a href="http://www.nacion.ar/espaciocivico/tramites/tramites.asp">www.nacion.ar/espaciocivico/tramites/tramites.asp</a> |
| Brazil         | <a href="http://www.receita.fazenda.gov.br/novapag/apresentacao.htm">www.receita.fazenda.gov.br/novapag/apresentacao.htm</a>   |
| Colombia       | <a href="http://impuestos.dian.gov.co">http://impuestos.dian.gov.co</a>  |
| Chile          | <a href="http://www.sii.cl">www.sii.cl</a>   |
| Mexico         | <a href="http://www.sat.gob.mx/decdec/cinfodec.htm">www.sat.gob.mx/decdec/cinfodec.htm</a>   |
| Peru           | <a href="http://www.sunat.gob.pe/detalle.htm">www.sunat.gob.pe/detalle.htm</a>   |
| Venezuela      | <a href="http://www.seniat.gob.ve">www.seniat.gob.ve</a>   |

TABLE 9  
 OLINE JUDICIAL RESOURCES (*JURISPRUDENCIA, FALLOS, AND/OR SUMULA*)

| <i>Country</i> | <i>URL</i>   |
|----------------|--|
| Argentina      | <a href="http://std.saij.jus.gov.ar/">http://std.saij.jus.gov.ar/</a> (subscription)   |
| Brazil         | <a href="http://www.redegoverno.gov.br/ServInfo/ServInfo.asp?gdGrupo=18&amp;IdGrupo=18&amp;NoGrupo;">www.redegoverno.gov.br/ServInfo/ServInfo.asp?gdGrupo=18&amp;IdGrupo=18&amp;NoGrupo;</a><br><a href="http://www.tst.gov.br/brs/juni.html">www.tst.gov.br/brs/juni.html</a> (labor) |
| Colombia       | <a href="http://www.ramajudicial.gov.co/menu.htm">www.ramajudicial.gov.co/menu.htm</a>   |
| Chile          | <a href="http://www.viajuridica.cl/index.asp?art=00&amp;tp=67">www.viajuridica.cl/index.asp?art=00&amp;tp=67</a>   |
| Mexico         | <a href="http://www.scjn.gob.mx;">www.scjn.gob.mx;</a><br><a href="http://info4.juridicas.unam.mx/juslab/teslab/">http://info4.juridicas.unam.mx/juslab/teslab/</a> (labor)  |
| Peru           | <a href="http://www.minjus.gob.pe/spij/spij.htm">www.minjus.gob.pe/spij/spij.htm;</a><br><a href="http://www.mef.gob.pe">www.mef.gob.pe</a> (fiscal)   |
| Venezuela      | <a href="http://www.tsj.gov.ve">www.tsj.gov.ve</a>   |

TABLE 10  
 OTHER MEXICAN E-GOVERNMENT SITES

| <i>Area</i> | <i>URL</i>   |
|-------------|--|
| Education   | <a href="http://www.sep.gob.mx;">www.sep.gob.mx;</a><br><a href="http://www.sepiensa.org.mx">www.sepiensa.org.mx</a> |
| Customs     | <a href="http://www.aduanas.sat.gob.mx">www.aduanas.sat.gob.mx</a>   |
| Health      | <a href="http://www.imss.gob.mx">www.imss.gob.mx</a>   |



