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THE FIGHT AGAINST CORRUPTION IN MEXICO

RODRIGO LABARDINI*

This paper will discuss Mexico's fight against corruption. For years, Mexico has unfortunately been synonymous to the rest of the world with at least two things. The first set includes beaches, food, mariachis, and maybe some pyramids. The second refers to a pervasive idea of some kind of corruption, *mordidas* (bribes), and drug trafficking. With that in mind, the Mexican Government has attempted, for several years now, to combat corruption through diverse mechanisms. The latest one is the formal incorporation of different social sectors into the fight against corruption. This is due to the premise that the fight against corruption is a shared responsibility and not a responsibility solely of the government.

Fundamentally, a corrupt act occurs because a public official, a member of the government, is carrying out his duties in an inappropriate way,¹ or in fact may be doing something illegal. The Mexican Federal Criminal Code provides that the crime of *cohecho* (bribery) is committed by the public official who receives or solicits, directly or through somebody else, for him or herself or for somebody else, money or any other *dádiva* (gift), i.e., a compensation or its equivalent,² "or accepts or makes a promise to do or not do something just or unjust, related with its duties."³ Therefore, anything a public official does or does not do related to its functions and duties, including pulling up a file a little higher so it can be earnestly attended, as a result of the *dádiva* or money⁴ received or offered, that is just or unjust in executing said duty, would definitely fall within *cohecho*.

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1. MEX. CONST., art. 109 (III) provides the general rules prohibiting actions or omissions that affect the "legality, honesty, loyalty, impartiality and efficiency that [public officials] must observe in the execution of their employment, offices or commission" (author's translation).

2. The concept of *dádiva* (gift) is not clearly defined in Mexico. However, it should be construed as any kind of gift or monetary-equivalent benefit. "...to give or offer money or any other *dádiva* or monetary benefit [*ventaja pecuniaria*] to a public officer". COHECHO ACTIVO, ELEMENTOS QUE INTEGRAN EL TIPO PREVISTO EN LOS ARTÍCULOS 222, FRACCIÓN II, DEL CÓDIGO PENAL FEDERAL Y 174, FRACCIÓN II, DEL CÓDIGO PENAL PARA EL ESTADO DE MICHOACÁN, Suprema Corte de Justicia de la Nación, 9ª Epoca, 1ª Sala, Semanario Judicial de la Federación y su Gaceta, Tomo: XIV, Diciembre de 2001, Tesis: 1a./J. 99/2001, Página: 7, Materia: Penal (translation provided by Mr. Labardini). Additionally, see articles 215 (IX), 222, 222-Bis, 389, 403 (VI), 403 (XI) of the Mexican Federal Criminal Code, in which the definition of other crimes include the concept of *dádiva* alluding to some kind of gift and/or benefit, not necessarily restricted to monetary references.

3. "El servidor público que por sí, o por interpósita persona solicite o reciba indebidamente para sí o para otro, dinero o cualquiera otra dádiva, o acepte una promesa, para hacer o dejar de hacer algo justo o injusto relacionado con sus funciones". "The public servant, per se or through a third party, requests or receives for his/her benefit or for that of a third party, money or any other gift, or accepts a pledge, in order to do or refrain from doing something, whether just or unjust, related to his/her functions." Article 222 (I), Mexican Federal Criminal Code. This is known as passive *cohecho*.

4. The amount of money needs not to have been precisely specified. "... the fact that the amount of money had not been specified is irrelevant, for it is undisputed that if an offering of a gift in money existed, per the [Criminal Code's] provision, that suffices to configure the offense of *cohecho*. COHECHO, DELITO DE. (LEGISLACION PENAL FEDERAL). Suprema Corte de Justicia de la Nación, Primera Sala, 6ª Epoca, Semanario Judicial de la Federación, Parte : CXXVI, Segunda Parte, Página: 11. Amparo directo 4579/66. José Dueñas Carlin. 6 de diciembre de 1967. Unanimidad de 4 votos. Ponente: Mario G. Rebollo. Quinta Epoca: Tomo LII, pág. 664 (translation by the author).

On the other hand, an act of corruption by a public official exists because there is somebody from society who is concurrently willing to provide the inducement or its promise in order to have a corrupt or an illegal act executed. In this sense, the definition of *cohecho* also provides that the person who gives or simply offers said *dádiva* commits bribery.⁵

While the general population recognizes the corruption carried out by some officials, it is also very difficult to try to get the Mexican population in general to understand that corruption is not just the act of a public official, but also an act of society or of any individual. Hence, Mexico is trying to encourage corporate and social self-regulation, essentially trying to get everyone and all social sectors involved.

Corruption is a silent and insidious element that permeates all facets of society. In Mexico, there is an unfortunate social perception similar to "Why act against corruption or some other wrong in society when my individual action would be just one grain of sand compared to an entire beach?" People seem to think that one good act might not have any effect in the long run. However, as is evident, the problem is that if no one acts against corruption, definitely nothing will happen. The fight against corruption must start somewhere and sometime, here and now, and then proceed step by step.

In 2000, there was quite a change in Mexican policy and Mexican politics when President Vicente Fox of the *Partido de Acción Nacional* (PAN), National Action Party, won the election and came into office.⁶ After 71 years of *Partido Revolucionario Institucional* (PRI), Institutional Revolutionary Party, government,⁷ the Fox administration was a watershed event, a defining moment in Mexico's democratic history, and a welcomed change felt throughout the world. The election of Fox, and the generalized popular sentiment of change it brought, both domestically and internationally, has made the fight against corruption somewhat easier. Mexico's efforts are better understood and properly weighed in Mexico and

5. "El que de manera espontánea dé u ofrezca dinero o cualquier otra dádiva a alguna de las personas que se mencionan en la fracción anterior, para que cualquier servidor público haga u omita un acto justo o injusto relacionado con sus funciones". "Any one who spontaneously gives or offers money or any other gift to any person described in the previous section, in order to cause any public official to carry out any activity, whether just or unjust, related to his functions." Article 222 (II), Mexican Federal Criminal Code. This is known as active *cohecho*.

6. In political terms, it was very favorable to Mexico's democracy that the first preliminary official data showed a difference of almost 10 points between the two leading candidates (Fox [PAN] and Labastida [PRI]) (unofficial numbers even gave a difference of almost 17 points), with such a landslide preventing any social unrest or reaction. The Program of Preliminary Electoral Results (PREP) showed that after counting 84% of ballots Fox had 43.71% and Labastida had 34.91% (Alianza por el Cambio had 43.71%; PRI had 34.91%; Alianza por México had 16.43%; Partido de Centro Democrático, 0.56%; Partido Auténtico de la Revolución Mexicana, el 0.41%; and Democracia Social had 1.69%). Instituto Federal Electoral (IFE), *Las Elecciones Mexicanas Fueron Una Auténtica Fiesta Democrática: Woldenberg*, PRESS BULLETIN 102, July 3, 2002. The final tally was Alianza por el Cambio (AC), Vicente Fox, with 15'988,740 votos (42.52%); Partido Revolucionario Institucional (PRI), Francisco Labastida, with 13'576,385 votos (36.10%); Alianza por México (AM), Cuauhtémoc Cárdenas, with 6'259,048 (16.64%); Partido de Centro Democrático (PCD), Manuel Camacho Solís, with 208,261 votos (0.55%); Partido Auténtico de la Revolución Mexicana (PARM), whose candidate resigned at a time when he could not be legally substituted, with 157,119 (0.42%); and Democracia Social Partido Político Nacional, Gilberto Rincón Gallardo, with 592,075 (1.57%). IFE, *Concluye El Cómputo En La Totalidad De Los Distritos Electorales Federales Para La Elección Presidencial*, PRESS BULLETIN 107, July 7, 2002.

7. In 1929 the *Partido Nacional Revolucionario* (PNR), National Revolutionary Party, was established and ruled the country. PNR changed its denomination to Partido de la Revolución Mexicana (PRM) in 1939 and to PRI in 1946.

abroad without a stigma of corruption. If Labastida, the PRI candidate, had won the election, one could imagine what the general message to the Mexican public and the world could only have been: we are doing it (the fight against corruption) for the good of the country. Yet because of the PRI's past history of corruption, there would have always remained some kind of distrust behind the government's motives or instrumentation of efforts and measures adopted to combat corruption. Disbelief would have been directed to their design, effectiveness, results, implementation, or impartiality. It would have affected the way the domestic and international communities would receive and ponder on the measures adopted. However, since the vast majority, especially in the international community, considered that the only way Mexico's electoral system could prove its transparency was with Fox declared as winner,⁸ it proved to be a prophecy come true.⁹ Fortunately for Mexico, the *Instituto Federal Electoral* (IFE), Electoral Federal Institute, came through, and the elections proved to be amongst the most clean and transparent in Mexican history and resulted in Vicente Fox as President.

The Fox administration came into power very focused on corruption and on organized crime. For the first time, an integral program against corruption was implemented. The "*Por un Mexico Integro, Ya No Mas Mordidas*"¹⁰ ("For an Integral Mexico, No More Bribes") program attempted to encompass all social facets: government, society, and the general population. The program promotes transparency in Mexican society. It compels the government departments and officials to act against corruption, and involves society in general – individuals, businesses, non-government and civil organizations. Most importantly, a law of access to information was finally promulgated,¹¹ which was a huge step for Mexico. Again, the law is an instrument that tries to involve society in the development of a culture of transparency.

The integral program to fight corruption compels every single federal ministry and entity to partake in the effort for the first time in Mexico's history. It promotes transparency of government actions, like the aforementioned Law for Access to Information.¹² It stresses prevention and internal controls. Most significantly, it involves society in the construction of a culture of transparency. These events imply several big steps in Mexico in order to change the Mexican legal framework and to develop and enact new legal provisions that would incorporate transparency into the

8. E.g., "A victory by Mr. Fox would dislodge the PRI from the presidency for the first time since the party was formed by the victorious generals of the Mexican Revolution 71 years ago. Such change is overdue and would be a healthy development for Mexican democracy. But a Labastida victory could also serve democracy if it is achieved fairly." *Watching Mexico's Election*, THE NEW YORK TIMES (editorial desk), June 30, 2000, p. 24A

9. Julia Preston, *Mexican President Denounces Predictions of Election Fraud*, THE NEW YORK TIMES, June 20, 2000, p. 11A.

10. For general information, see the website of the Secretariat of the Comptroller and Administrative Development (SECODAM), <http://www.secodam.gob.mx>.

11. *Ley Federal de Transparencia y Acceso a la Informacion Publica Gubernamental* (LF-Transparencia), published in the *Diario Oficial de la Federacion* on June 11, 2002 (visited March, 27, 2003) <http://www.cddhcu.gob.mx/leyinfo/pdf/244.pdf>.

12. *Supra*, note 11.

Mexican system in accordance with international trends.¹³ The federal administration needed to be redeveloped, and finally, there are some good ideas.

The *Secretaría de la Controlaría y Desarrollo Administrativo* (SECODAM), Ministry of the General Comptroller and Administrative Development, the ministry that takes care of fighting corruption among public officials, was established in its current form in 1994.¹⁴ SECODAM maintains a database that gathers a vast amount of information from public officials. All governmental officials have to file an annual statement detailing their property and possessions.¹⁵ It includes the annual salary, the number of cars, movable property, houses, and real property owned, and their location, as well as the bank accounts held and assets in them, including investments, shares, debts, loans, etc. The property included must be not only that of the public official but also of his or her spouse¹⁶ and any children.¹⁷ It requires total disclosure. The information can be made public if the public official acquiesces.¹⁸

Ever since the *Declaración de Situación Patrimonial*, Statement of Property Assets, was enacted, it has been mandatory for all public officials to duly complete and file it before May 30 of each year.¹⁹ Sanctions for not filing or untimely filing the statement, range from a private or public reprimand and the destitution from office to economic sanctions and a prohibition of up to 10 years from work in a public office.²⁰ They may also lead to criminal prosecution if the acts or conducts committed by the official may represent a criminal offense,²¹ like bribery.²²

In 2002, the administration, for the first time, made it mandatory for all public officials to complete the declaration via the internet. By doing so, the administration actually made the system more effective, because for the first time since its adoption, there was a passive workforce (the public officials) that was filling in all the needed data. Information was being fed directly into SECODAM's database in order to comply with the May 30 deadline. Thus, a promissory mechanism now keeps tabs on the more than two million employees of the Mexican Federal Government. However, this is only one way to combat corruption. Mexico is now developing the human resources capabilities to train employees about anti-corruption and to instill the idea that corruption is bad.

13. Some examples are the Organization for Economic Cooperation and Development's (OECD) Anti-Bribery Convention, *infra* note 24; OAS's Inter-American Convention Against Corruption, *infra* note 25; Criminal Law Convention on Corruption, Jan. 27, 1999, Council of Europe, European Treaties, ETS No. 173.

14. The origins of SECODAM go back to 1824 when the *Departamento de Cuenta y Razón* (Dept. of Accounts and Motives) is created in the Ministry of Finance (*Secretaría de Hacienda*).

15. *Declaración de Situación Patrimonial* (Statement of Property Status), article 8 (XV) of the *Ley Federal de Responsabilidades Administrativas de los Servidores Públicos* (Federal Act of Administrative Responsibilities of Public Officials) (LFRASP), published in the *Diario Oficial de la Federación* (DOF) on March 13, 2002. See <http://www.cddhcu.gob.mx/leyinfo/pdf/240.pdf> (visited March 27, 2003).

16. Also of the concubine, i.e., the partner of an unmarried public official. Art. 44 LFRASP, *supra* note 15.

17. Articles 39 and 40, LFRASP, *supra* note 15.

18. Article 40, LFRASP, *supra* note 15.

19. This is the annual statement (art. 37 (III) LFRASP, *supra* note 15). Statements must also be filed within sixty days after taking or leaving any public office (art. 37 (I and II) LFRASP, *supra* note 15).

20. Art. 13, LFRASP, *supra* note 15.

21. Art. 19, LFRASP, *supra* note 15.

22. The crime of *cohecho* comes to mind. See *supra* notes 3 and 5.

PROCUREMENT

This continued effort has resulted in some very important overall changes. Bylaws, or *reglamentos* (the regulatory provisions of a law), to the Law of Acquisition, Leasing, and Services of the Public Sector were enacted.²³ The *Reglamento* clearly defines bidding policies, basis and guidelines; rejects proposals where the prices of goods are lower than the defined budget; provides for the establishment of technical committees to assist with technical decisions; and ensures transparency by inviting all interested parties as observers in public bids. Essentially it regulated governmental policies for procurement, which are very important for companies and enterprises in Mexico. The *Reglamento* of the *Ley de Obras Publicas y Servicios Relacionados con las Mismas* (Law of Public Works and Services)²⁴ allows for efficient planning by providing information that enables bidders to prepare annual programs and budgets. It also includes a description of documents that need to be part of the technical and economic offers preventing officials from requesting unrelated documents. It further simplifies registration of bidders by merely demanding a letter and photocopies with relevant data to demonstrate their legal status - only winners have to present original documents. Finally, it ensures transparency by inviting all interested parties as observers in public bids. A major achievement was the consolidation of different laws, *reglamentos* (regulations), *acuerdos*, and *circulares*,²⁵ regulating governmental contracts into eighteen laws. This eliminated upwards of 1,250 scattered laws and provisions that were sometimes contradictory and always hard to find.

The goal of the process is to develop a greater trust in government. This is an ambitious goal and one that has not been met yet. While there is a general distrust of authority everywhere, in Mexico's case, the system seems to imply a distrust of almost everybody.

There is a focus on making the rules more clear as well as on making any payment involved more secure and transparent. The reforms try to instill something of a free market approach into governmental procedures. By making the process more transparent, it is possible to observe how governmental procurement is actually operating.

Amongst the most recent legal provisions is the *Ley Federal de Responsabilidades Administrativas de Servidores Públicos*,²⁶ or Federal Act of Administrative Responsibilities of Public Officials, which was published in the *Diario Oficial de la Federación* on March 13, 2002. Also, the *Ley Federal de Transparencia y Acceso a la Informacion Publica Gubernamental*,²⁷ or Federal Law

23. *Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*, published in *DOF* on January 4, 1999. The *Reglamento de la Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*, was published in *DOF* on August 20, 2001.

24. The *Ley de Obras Publicas y Servicios Relacionados con las Mismas* was published in *DOF* on January 4, 1999. See <http://www.cddhcu.gob.mx/leyinfo/56/> (visited Feb. 12, 2003). Its *Reglamento* was published in *DOF* on August 20, 2001.

25. *Acuerdos* and *circulares* are administrative decisions by higher officials of the administration (normally the President and its Secretaries heads of Ministries) binding on lower officials. They generally stipulate procedures and mechanisms and delegate some authorities.

26. *Supra* note 15. See <http://www.cddhcu.gob.mx/leyinfo/pdf/240.pdf>

27. *Supra* note 11. See <http://www.cddhcu.gob.mx/leyinfo/pdf/244.pdf>

of Transparency and Access to Governmental Public Information, was a very big step in Mexico. Another important development was the establishment on November 27, 2001, of the so-called "Truth Commission" (a Special Prosecutor) to investigate the 1968 student massacre in Mexico City.²⁸

Furthermore, there is right now a draft bill to amend the National Property Act, *proyecto de reforma de la Ley de Bienes Nacionales*,²⁹ in order to try to have better economic development, administration of national property and transparency at the same time. Another recent development is the establishment of *Codigos de Conducta* (Codes of Ethical Conduct) for public officials.³⁰

SOCIETY

SECODAM has repositioned its perspectives under the shared responsibility premise in the fight against corruption. Hence, instead of considering change solely within the administration, it tried to create changes at a societal level.

In a way, SECODAM went "social." Traditionally dedicated to auditing public officials, SECODAM now works closely with society and actively promotes self-regulation. Among other things, it created *La Unidad de Vinculación para la Transparencia* (UVT),³¹ the Transparency Network Unit, to work on directly changing behavior in society. UVT works with six key audiences involving them (shared responsibility) in the construction of a culture of integrity and transparency and allows a better relationship between government and businesses, NGOs, organizations, and public individuals in general by trying to develop better communication and relationship links.³² Additionally, SECODAM created a

28. On October 2, 1968, approximately 5,000 students and workers rallied in Mexico City's *Plaza de las Tres Culturas*, demanding democratic reforms. Presumably (for nobody really knows yet) under orders from the President, the Minister of the Interior, or the Head of the Department for the Federal District, crossfire occurred between military and police and members of the "*Batallón Olimpia*" which resulted in a massive assault on the protestors and spraying the crowd with machine gun fire. The indiscriminate shooting left hundreds dead. Hundreds more were arrested and taken away — many of whom have yet to be accounted. In November 2000, under the insistence of the nation, President Vicente Fox announced the creation of a "Transparency Commission" to delve into various unsolved state crimes including the killing and disappearance of the students. President Fox, via an *Acuerdo* published in *DOF* on November 27, 2001, established the *Fiscalía Especial para la Atención de Hechos probablemente Constitutivos de Delitos Federales cometidos Directa o Indirectamente por Servidores Públicos en contra de Personas Vinculadas con Movimientos Sociales y Políticos del Pasado* (Special Prosecutor for Acts that probably constitute federal crimes committed directly or indirectly by public officials against persons linked with social and political movements in the past). On January 4, 2002, Attorney General Macedo named Ignacio Carrillo-Prieto as the Special Prosecutor. Procuraduría General de la República, *Designa el Procurador General de la República al doctor Ignacio Carrillo Prieto, Fiscal Especial para la atención de hechos probablemente constitutivos de delitos federales cometidos directa o indirectamente por servidores públicos en contra de personas vinculadas con movimientos sociales y políticos del pasado*, PRESS BULLETIN 008/2002. For additional information on the massacre, see <http://www.wsws.org/news/1998/oct/1998/mex-006.shtml/>; for more information on the truth commission, see <http://www.hrcr.org/hottopics/mexico.html>.

29. *Ley General de Bienes Nacionales*, published in the *DOF* on January 8, 1982. The latest reform was enacted on December 31, 2001. See <http://www.cddhcu.gob.mx/levinfo/pdf/135.pdf>.

30. For general information on what a code of ethics for public officials must include, see <http://www.secodam.gob.mx/doctos/pi.pdf> (visited March 28, 2003). One example is the code of ethical conduct for public officials in SECODAM, <http://www.secodam.gob.mx/doctos/ccs.pdf>.

31. See SECODAM website, <http://www.secodam.gob.mx> (visited Feb. 10, 2003) [hereinafter SECODAM website].

32. The six key audiences UVT works with are: business, unions, NGO's, religious organizations, media, and schools and universities (including teachers and students from elementary up to university levels).

website where it posts information on government activities.³³ SECODAM already exposed overspending in the Presidential offices in what was called “*toalla-gate*” (towel-gate). Based on published figures, it was evident that towels acquired for the Presidency had been purchased at exorbitant prices, up to \$5,000 each. Maybe they were great for drying, but that was definitely very expensive and unnecessary.

SECODAM also incorporated schools and universities into the program against corruption and executed agreements with several of them, including the Universidad Iberoamericana³⁴ (UIA), the Universidad Nacional Autonoma de Mexico³⁵ (UNAM), and the Instituto Tecnologico de Estudios Superiores de Monterrey³⁶ (ITESM), to help develop parts of this transparency movement and increase social involvement by improving awareness and sensitizing social actors. Additionally, SECODAM has been working with the National Association of Universities and Higher Learning Institutions,³⁷ and professional organizations, including the Mexican Bar Association³⁸ to create codes of conduct and manuals on how to develop, design, draft and apply codes of conduct in institutions and businesses. Collaboration with society has also entailed training for compliance, sharing “best practices,” and preparing educational publications such as *Transparent Companies: How to Build Them*, *Ethics is Good Business*, and *Integrity Programs: The Role of the Code of Conduct*. Essentially, the effort has been to learn how to instill into public and private institutions not only how to do things without corruption, but how to extricate it from all procedures. Overall, SECODAM is raising the awareness of the problem of corruption and the efforts to combat it. Special efforts are designed to create early awareness in children. For this purpose, a children’s web-page was created.³⁹ It has a presence in elementary schools and museums and links to existing pages. Additionally, grandparents also participate through the Institute for Senior Citizens as story tellers.⁴⁰ The *La Fuerza de la Transparencia* (Roots for Transparency) foundation is a supplementary important development. It is a nationwide effort oriented to create awareness, practice, and education for children. This focus on children would presumably help ensure fewer problems in the future by instilling ethical values early in their lives.

The Mexican Government has started working with the media on several issues oriented to further open and maintain transparent communication with the press. While governments may never be completely open,⁴¹ the effort is aimed at

33. See SECODAM website *supra* note 31.

34. UIA committed itself to form an interdisciplinary working group to design and develop a training program oriented for public officials in order to promote a culture of service, honesty, accountability and transparency. See generally <http://www.uia.mx> and SECODAM website, *supra* note 31.

35. See generally <http://www.unam.mx> and SECODAM website, *supra* note 31.

36. See generally <http://www.itesm.mx> and SECODAM website, *supra* note 31.

37. *Asociacion Nacional de Universidades e Instituciones de Educacion Superior* (ANUIES). See <http://www.anui.es.mx> (visited March 30, 2003). Cooperation with ANUIES includes a seminar on practical ethics in 134 Mexican learning institutions with 12 case studies, reading materials and training for teachers.

38. Including an Ethics Committee, public censure of unethical practices, and a graduate course in ethics. See <http://www.brma.org.mx> (visited March 29, 2003).

39. See <http://www.00corrupcion.gob.mx/>.

40. See www.insen.gob.mx (website under development as of March 28, 2003).

41. Governmental information is public as a general principle, article 2 LF-Transparencia, *supra* note 11. However, information may be reserved or confidential if it may affect national security, international negotiations, financial, economic and monetary stability, or if it may endanger lives, articles 13 and 14, LF-Transparencia, *supra* note 11. This situation is similar to the Freedom of Information Act (FOIA) 5 USC §552.

increasing the public's access to available information. This includes communicating openly, training for ethical responsibilities, promoting adoption of codes of conduct, fostering investigative reporting, encouraging national and international experts to publish articles, and even launching electronic "chats" with experts and public officials. In fact within the Presidency's website, a person can even chat with President Fox.⁴²

An important tool when fighting corruption is the establishment of clear benchmarks. These allow the government, and the public, to adequately evaluate the authorities' efforts in the fight against corruption.⁴³ It is easy to say that something is the best policy or the best thing to do right now, but the government must know if its actions are really achieving results and have some instrument that effectively measures the results obtained. Therefore, the government developed the *Encuesta Nacional de Corrupcion y Buen Gobierno* (Good Government Index),⁴⁴ related to the Transparency International, Mexico Chapter.⁴⁵ In spite of the fact that sometimes SECODAM and Transparency International have had institutional problems, several benchmarks, indices, and goals now exist with which to measure successes or failures. Among them, we can mention the Business Perception of Government Corruption Index⁴⁶ developed by Tech de Monterrey (ITESM) and the Corruption in Federal Ministries and Agencies Index developed by UNAM.⁴⁷ These efforts also include promoting transparency in companies by working with business associations, including the Chamber of the Radio and Television Industry (CIRT), the Confederation of Industrial Chambers of the United Mexican States (CONCAMIN), the National Chamber of the Transformation Industry (CANACINTRA), the Employers Confederation of the Mexican Republic (COPARMEX), and the Confederation of National Chambers of Commerce, Services, and Tourism (CONCANACO).⁴⁸

In 2001, there was a big campaign called "*Ya No Más Mordidas*" ("No More Bribes"), and the logo was incorporated into several products in Mexico. For example, it was used on milk cartons, potato chip bags, bank statements and with telephone companies. Airlines also incorporated the logo in their documentation. Just about every company had this logo on their pamphlets and web sites. It proved to be a very valuable instrument to convey to society the idea of transparency and

42. See <http://www.presidencia.gob.mx>.

43. In the U.S.-Mexico cooperation in the fight against drug-trafficking, both governments established the Performances Measurements of Effectiveness (PME's) of the Bilateral Strategy Against Drugs. PME's are designed to figure out if actions carried out by both governments are working well or not, and to change course where needed. See White House Office for the National Drug Control Policy (ONDCP) and Mexican Secretariat of Foreign Affairs, U.S./MEXICO BI-NATIONAL COOPERATION AGAINST ILLICIT DRUGS. MAIN RESULTS AND PERFORMANCE MEASUREMENTS OF EFFECTIVENESS, November 2000.

44. See <http://www.secodam.gob.mx/doctos/indices/encuestaTM.pdf> (visited March 29, 2003).

45. See <http://www.transparenciamexicana.org.mx> (visited March 29, 2003).

46. See <http://www.secodam.gob.mx/doctos/indices/indicetec.pdf> (visited March 29, 2003).

47. See *supra* notes 36 and 35, respectively.

48. Generally see SECODAM website, *supra* note 31, <http://www.secodam.gob.mx/index1.html>, and the corresponding websites for the mentioned industrial organizations: CIRT: www.cirt.com.mx; CONCAMIN: www.concamin.org.mx; CANACINTRA: www.canacindra.org.mx; COPARMEX: www.coparmex.org.mx; CONCANACO: www.concanaco.com.mx (visited March 29, 2003). Some examples are: with CONCAMIN, the establishment of an Ethics Committee, the promotion of codes of conduct, and even the certification of transparent companies; with COPARMEX, the promotion of codes of conduct among its members, and regional conferences and seminars on ethics as good business and on integrity programs (codes of conduct).

the fight against corruption. The logo was changed in 2002 to “*Por Un México Integro, Ya No Más Mordidas*,” (see illustration). The change in the logo responded to an important concept: instead of “Let’s not take any more bites from the apple” we must adopt the philosophy of “Better yet, let’s have an integral apple, and keep the apple intact, as a whole.” So, as we can see in the illustration, if the apple is kept intact, there is no more “bite” into it - no more bribes, *no más mordidas*. With the circle keeping Mexico integral, it is also trying to reinforce the idea of not taking any more bites, and keeping the thing as it is, as complete as possible. By really making an effort to keep our values, Mexico can stay as it is and as it should be: intact.



Accordingly, Mexico has needed to start at a very basic level. Corruption in Mexico has existed for a very long time. In colonial times, there was a saying: “*Hágase pero no se cumpla.*” The use of this phrase is generally ascribed to the Colonial Viceroy. The translation is, “Let it be done, but don’t carry it out,” or in other words, the law and rules are there and we should comply with them, but do not worry if they are not carried out. This mentality has pervasively and stealthily invaded the consciousness of Mexico. That is why every time a policeman stops someone and says, “*Joven, ¿le puedo ayudar?*” or “Sir, can I help you?” the average perception is that a bribe is expected in order for the policeman to help the possible infractor.

Hence, there is much distrust. The only way to stop it is to understand that every act we do in Mexico has consequences, and everyone must do their share to prevent and correct corruption. This must be inculcated in the children, in ourselves, in the whole of the social fabric. Codes of conduct must be created and implemented along with ethical courses for public officials.

Mexico is working internationally to combat corruption as well. Primarily, Mexico is executing multilateral conventions and researching the best practices. This entails adapting, adopting, and sharing Mexico’s best practice and informing

the domestic and international community on what Mexico is doing to fight corruption, as well as signing bilateral technical cooperation agreements. Currently, Mexico has bilateral agreements with France, Argentina, Ecuador, Costa Rica, Honduras and Peru.⁴⁹

Mexico has adopted multilateral conventions, such as the Organization for Economic Cooperation and Development's (OECD)⁵⁰ and others. Mexico has also been working with international organizations such as the OECD⁵¹ and the Organization of American States.⁵² Mexico signed the OECD Convention in 1997,⁵³ which required a reform of the Federal Criminal Code, and resulted in Article 222-bis: Bribery of Foreign Public Servants.⁵⁴ Thus, Mexico is not only trying to take care of corruption at home, but also trying to prevent corruption beyond its borders. This is a very important initiative by itself. The law basically says that whoever promotes or offers, through him or through somebody else, money, an expense, or a gift of some sort, whether goods or property, to a foreign official, as a request to carry out some function related to his or her job, will be penalized.⁵⁵

49. Agreements have referred to civil service institutions, anticorruption tools, mechanisms for exchange of information

50. See OECD Anti-Bribery Convention, effective 15 February 1999, <http://www.oecd.org> (visited Feb. 12, 2003).

51. Including a conference to educate/motivate big business and multinationals on adoption of Convention, and providing tools for small and medium companies to adopt the Convention and face unfair competition.

52. See OAS Inter-American Convention Against Corruption, Effective 6 March 1997, ratified by Mexico 6 Feb 1997, <http://www.oas.org> (visited Feb. 12, 2003).

53. OECD Convention. Mexico signed the Convention on December 17, 1997. During phase one, Mexico was closely monitored to determine the adequacy of its implementing legislation, which came into force on May 18, 1999, including reforms to the Federal Criminal Code. Article 222 – Bis, now typifies the crime of bribery of foreign public officials in international transactions. Mexico's ratification instrument was deposited on May 27, 1999, and the Convention came into force on July 26, 1999. During phase two, a reviewing implementation process will be implemented during 2003 or 2004.

54. Mexican Federal Criminal Code, Article 222-bis, <http://www.oecd.org/pdf/M00024000/M00024324.pdf> (visited Feb. 13, 2003). See <http://www.cddhcu.gob.mx/leyinfo/>.

55. "ARTICULO 222 bis- Cohecho a servidores públicos extranjeros

Se impondrán las penas previstas en el artículo anterior al que con el propósito de obtener o retener para sí o para otra persona ventajas indebidas en el desarrollo o conducción de transacciones comerciales internacionales, ofrezca, prometa o dé, por sí o por interpósita persona, dinero o cualquiera otra dádiva, ya sea en bienes o servicios:

I. A un servidor público extranjero para que gestione o se abstenga de gestionar la tramitación o resolución de asuntos relacionados con las funciones inherentes a su empleo, cargo o comisión;

II. A un servidor público extranjero para llevar a cabo la tramitación o resolución de cualquier asunto que se encuentre fuera del ámbito de las funciones inherentes a su empleo, cargo o comisión, o

III. A cualquier persona para que acuda ante un servidor público extranjero y le requiera o le proponga llevar a cabo la tramitación o resolución de cualquier asunto relacionado con las funciones inherentes al empleo, cargo o comisión de este último.

Para los efectos de este artículo se entiende por servidor público extranjero, toda persona que ostente u ocupe un

cargo público considerado así por la ley respectiva, en los órganos legislativo, ejecutivo o judicial de un Estado extranjero, incluyendo las agencias o empresas autónomas, independientes o de participación estatal, en cualquier orden o nivel de gobierno, así como cualquier organismo u organización pública internacionales.

Cuando alguno de los delitos comprendidos en este artículo se cometa en los supuestos a que se refiere el artículo 11 de este Código, el juez impondrá a la persona moral hasta quinientos días multa y podrá decretar su suspensión o disolución, tomando en consideración el grado de conocimiento de los órganos de administración respecto del cohecho en la transacción internacional y el daño causado o el beneficio obtenido por la persona moral." Id.

Thus, the government is trying to simplify the rules and has enacted new legislation. It has modernized procedures. However, the most difficult part will be to change civil society.

RESULTS

The aforementioned laws and initiatives have shown results. Sanctions have been applied. During 2000, more than 5,000 officials were sanctioned.⁵⁶ In 2002, more than 4,000 public officials were sanctioned with a total of 849 economic sanctions, or fines, amounting to 200 million pesos,⁵⁷ or approximately two million dollars.⁵⁸ There were also 118 criminal procedures against public officials, with charges ranging from illicit enrichment and abuse of public authority to obstruction of justice and other various types of criminal conduct.⁵⁹ Further, a total of 71 years in prison have been imposed as of this time.⁶⁰

Sanctions have not only been applied to public officials for their inappropriate conduct, but within the public procurement sphere, also to governmental agencies, public or quasi-public corporations, and contractors. Notary publics⁶¹ have also been sanctioned. A total of 69 different people and corporations were sanctioned between January and August of 2002.⁶²

Corruption is a very alarming problem in Mexico City and the rest of the country. It is a long-term problem, and, thus, requires a long-term solution. I personally believe that while progress is slowly but steadily being achieved, more substantial and palpable results will take at least one generation to take hold. That is because I am convinced that it has to be a relentless and continuous effort that is able to change core values in order to firmly establish a culture of transparency and flat-out rejection of corruption. Morals must be reinforced and anticorruption values must be further instilled in children. Hopefully, the programs will also have an effect on teenagers all the way through middle-aged people. Of course, changing people who are already entrenched in a corrupt system may not work. In that case, hopefully the corruption will fade out with the older generations.⁶³ Unfortunately, right now we see a raging fight in the general population in an apparently false dichotomy: on the one hand, the proper application of law and public officials and society being honest

56. A total of 5,326 public officials with a total of 6,480 economic sanctions, representing \$777'662,000 pesos in economic sanctions. SECODAM, PRIMER INFORME DE LABORES, September 1, 2001, p. 117. <http://www.secodam.gob.mx/doctos/informe.pdf> (visited March 30, 2003).

57. SECODAM, SEGUNDO INFORME DE LABORES, September 1, 2002, p. 98. <http://www.secodam.gob.mx/doctos/informe02/informe02.pdf> (visited March 30, 2003).

58. The exchange rate has been roughly ten Mexican pesos for one U.S. dollar. On March 28, 2003, the exchange rate was USD 1.00 = MNS\$ 10.84. <http://www.banxico.org.mx> (visited March 28, 2003).

59. Including fraud and bribery.

60. SECODAM, SEGUNDO INFORME DE LABORES, September 1, 2002, p. 45. <http://www.secodam.gob.mx/doctos/informe02/informe02.pdf> (visited March 30, 2003).

61. In Mexico, a notary public is a highly trained lawyer and is able to perform all sorts of legal work, such as *drafting legal documents and appearing in court*. A notary public has "public faith", i.e., his statements are considered fact determining of situations.

62. SECODAM, SEGUNDO INFORME DE LABORES, September 1, 2002, p. 95. <http://www.secodam.gob.mx/doctos/informe02/informe02.pdf> (visited March 30, 2003).

63. This is not to mean that older generations are more corrupt than younger ones. In fact, the contrary case may be true. The statement tries to convey the idea that whomever is safely ensconced amidst corrupt practices will eventually fade out by social pressures, and eventually by way of natural life events.

within the rule of law; and on the other, the inconveniences that come from following the laws and rules whereas before everyone would do as they pleased. This, however, is a false position. Applying and respecting the law is, in the long run, more convenient. When everybody complies with it, all members of society will have a legal certainty about what takes place in Mexico. It is a matter of daily action and betterment of the human resources in Mexico. These struggles are of the essence to have a better Mexico.

In conclusion, Mexico now has in place a more focused set of governmental policies of social involvement against corruption. However, the main fight against governmental corruption is enclosed within the government itself. Society must be incorporated because it is a social problem in which both the government and the members of society participate.