

# United Mexican States

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The Constitution of Mexico -- officially, the United Mexican States -- does not formally set forth any purposes in a lofty preamble. However, the provisions of the Constitution of 1917 clearly reflect major issues and concerns still prevalent in Mexico.<sup>1</sup> One overriding objective was to limit the power of the president as well as the perpetuation of this power through reelection. Decentralization and establishing a federal system were also at the top of the framers' agenda, as Mexico has a long tradition of centralism extending back through the colonial period and into the eras of the Aztec and Mayan civilizations.

In addition, extensive provisions on religion impose a very strict separation of church and state that seeks to reduce and often prohibit the involvement of religious institutions and clergy in government, education, land and property ownership, and other important facets of society. The Constitution, which vests "ownership of the lands and waters within the boundaries of the national territory ... in the Nation," also contains extensive provisions on land titles, acquisition and disposition of land, protections for certain lands, and national control through the federal government of various on-shore and off-shore lands and natural resources. Efforts to cope with official corruption are reflected in seven articles on the responsibilities of public officials (Arts 108-14), and efforts to address poverty are reflected in very extensive provisions on labour and social security (Art. 123).

Thus the Constitution established a federal system based on the principle that substantial powers should reside in a highly secular social-welfare state largely under the purview of a federal government with authority to intervene in such matters as foreign and domestic trade, agriculture, food supplies, labour, health care, education, and energy. This system facilitated the centralization of government in Mexico, and state ownership of land and natural resources fostered a highly nationalized economy. Therefore, during the twentieth century, the story of Mexican federalism was mostly one of centralization, which has been countered only since about 1982 by demands for policies favouring governmental decentralization, political democratization, and economic liberalization.<sup>2</sup>

## HISTORICAL AND CULTURAL CONTEXT OF MEXICO'S CONSTITUTION

Mexico, whose territory comprises 1,967,183 square kilometres, had an estimated population of 103,510,471 in 2004.<sup>3</sup> Spanish is the country's predominant language, but speakers of indigenous languages number about 6,274,418, representing 6.3 percent of the population. Although most Mexicans are of *mestizo* origin (mainly a mix of Spaniards and indigenous peoples), there are 56 ethnic groups, the largest being the Otomí, Mazahua, Mazateco, Nahuatl, Maya, Huasteco, Tarahumara, and Totonaco.<sup>4</sup> The religious orientation of the Mexican populace is as follows: 82.9 percent are Roman Catholics; 4.9 percent are Protestants and Evangelicals; 2.6 percent are other Evangelicals; 1.5 percent are Pentecostals and Neopentecostals; and 8.1 percent claim other affiliations. The gross domestic product per capita in 2003 was estimated at US\$5,701.<sup>5</sup>

Mexico's Constitution, promulgated in 1917, incorporates elements from several federal constitutions that came into effect after the War of Independence (1810-21). The constitutional ideas of the independence movement itself were influenced by the Spanish

Constitution of Cadiz (1812)<sup>6</sup> and by the failed Constitution of 1814, known as the Constitution of Apatzingán. The 1917 Constitution, as well as the federal constitutions that preceded it, also reflected the social transformations and political struggles taking place throughout the nineteenth and early twentieth centuries.

Although Mexico's legal system embodies the tradition of Roman law<sup>7</sup> (in contrast to the common-law tradition in the United States), the Mexican Constitution clearly shows influences of the federal principles adopted in the Constitution of the United States of America. Mexico's Constitution may be relatively young, but its federal principles stem directly from the first federal constitution, which came into effect in 1824. Although Mexico had a centralist constitution from 1836 to 1854, the country's experiences under this constitution triggered a resurgence of federalist ideas, culminating in what was called the Plan of Ayutla (launched in 1854) and the federal Constitution of 1857. This Constitution, which failed to stem centralization, remained in effect until the outcome of the Mexican Revolution led to the 1917 Constitution, which remains in effect today. This Constitution, which has 136 articles, was approved in the City of Querétaro, State of Querétaro, on 31 January 1917 and promulgated on 5 February 1917. The Constitutional Congress that assembled to draft the Constitution of 1917 was convened in Querétaro in deference to the ideal of decentralization and at the urging of one of the principal leaders of the Mexican Revolution, Don Venustiano Carranza, who noted that all previous congresses had been held in Mexico City. Therefore, one can say that federalism has at least circulated in the blood of Mexican society for more than 180 years.

The drafters of Mexico's Constitution had clear federalist and democratic objectives partly because the revolution had begun as a rebellion in several states against the centralized, dictatorial regime of Porfirio Díaz. Originating with the constitutional ideas of the Mexican Revolution (1910-20), one objective was to settle the issue of not allowing the president of the republic to stand for reelection, an issue that had been one of the main causes of the revolution. Thus, as stipulated by the Constitution of 1917, the president can serve only one six-year term. As well, the new federalist regime was organized as "a federal, democratic, representative Republic composed of free and sovereign States in all that concerns their internal government, but united in a Federation established according to the principles of this fundamental law" (Art. 40).<sup>8</sup>

However, under the federal model framed in the Constitution, the legislative and judicial branches of the federal government are essentially subservient to the executive and its overweening powers. Consequently, from 1920 to 1995 the federal system was characterized by a constitutional centralization of powers in the federal government, an arrangement that considerably diminished the decision-making powers of the states and municipalities. This system produced a socio-political phenomenon that characterized Mexico's political life throughout the twentieth century: the powerful presidential system. In addition, a single political party, the *Partido Revolucionario Institucional* (PRI/Institutional Revolutionary Party), maintained nearly monopolistic control over the country's political life. From its founding in 1929 until 1989, the PRI controlled the presidency, the Congress of the Union, the 31 state governments, the Federal District, and most of the nation's 2,448 municipal governments. The PRI lost the presidency for the first time only in 2000, after opposition parties had already gained control of a number of state and municipal governments.

The Constitution of Mexico is divided into two sections. The first, known as the "dogmatic" part, is an extensive list of individual guarantees<sup>9</sup> protecting the right to liberty,

equality, property, lawful procedure, and a fair hearing and defence before a court of law as well as other human rights. The second section is known as the “organic” part. Specifically, it addresses the organization of the federation, the separation of powers (i.e., legislative, executive, and judicial), intergovernmental relations, and the existence of autonomous government agencies,<sup>10</sup> such as the *Banco de México* (Central Bank of Mexico), which, due to their structure, characteristics, and activities, tend to transgress in practice the Constitution’s rigid stipulations regarding the separation of powers -- particularly because they have both independent and multibranch functions.

Customary doctrine holds that individual rights are guaranteed in Articles 1 to 29 of the Constitution and that “organic” matters are treated in Articles 30 to 136. However, this distinction is relative because, throughout the Constitution, there is no distinct separation of the provisions concerning individual rights and those respecting organic matters.

### *The Federation*

Mexico comprises 31 states plus an autonomous Federal District coextensive with Mexico City. The 31 states and the Federal District, which today make up the federation, were not configured in exactly the same way in 1917. During the decades following 1917, the states of Nayarit, Quintana Roo, Baja California, and Baja California Sur were created from areas previously considered federal territories. Admitting new states into the federal union is one of the powers of the Congress of the Union under Article 73, Parts I and II of the Constitution, as is the formation of new states within the boundaries of existing ones, according to the provisions in Part III of Article 73.

The procedures for creating a new state are similar to those for reforming the Constitution. The Constitution requires that (1) a new state have at least 120,000 inhabitants, (2) the opinions of both the executive branch of the federation and the states affected by the creation of the new entity be heard, and (3) the new state have sufficient resources to provide for its political existence. Creating a new state requires the approval of two-thirds of the members present in the federal Chamber of Deputies and in the Senate. A majority of state legislatures must also approve a corresponding decree. However, if the creation of a new state within the boundaries of existing states were proposed by a two-thirds vote of the Congress, the affected states would have to give their consent. If they refused to consent, the new state’s creation would require the approval of two-thirds of the legislatures of all the other unaffected states. It is also within the powers of the federal Congress to render a final ruling concerning the boundaries and areas of the states. The only exception to this arrangement arises when a boundary dispute is contentious in nature, in which case the competent (or jurisdictional) authority is the country’s Supreme Court of Justice.

## **CONSTITUTIONAL PRINCIPLES OF THE FEDERATION**

### *General Focus of the Federal Constitution*

The Constitution initially tended toward a division of powers and functions between the federal and state governments. However, a new design for cooperative, rather than dual, federalism emerged as a result of constitutional reforms (i.e., amendments) made during the following decades -- reforms that established important mechanisms for concurrent federal-state action.<sup>11</sup> This concurrency is expressed by the shared responsibilities of the national and subnational governments in matters involving education, health, the environment, human rights, and fiscal federalism, among others. Nevertheless, the specific distribution

of powers (or competences) among the three orders of government is such that the predominance of the federal government persists, reflecting the existence of a federal but centralized governmental system in Mexico. Although the federal system has succeeded in fostering unity among its diverse constituent polities and communities under a predominant national government, it has done so without adequate recognition of local realities and thus has not fostered balanced and equitable development among the country's regions, states, localities, and classes. In effect, the federal system has weakened the independence of the constituent states and their municipalities while aggravating many regional and socioeconomic inequalities.

The Constitution does not mandate an official language or religion, but statutory legislation recognizes Spanish as the predominant language. With respect to religion, Article 130 of the Constitution guarantees freedom of beliefs, thus making no provision for any official religion. Even though most Mexicans define themselves as Roman Catholic, the Constitution contains no element explicitly influenced by Catholicism. The Constitution of 1917 mandated a strict separation of church and state. However, in 1991 the federal Congress approved a constitutional amendment allowing the recognition of churches by the government, the possession of property by churches (although church buildings remain state property), and the enfranchisement of priests.<sup>12</sup>

Generally, the Mexican federal republic has experienced long periods of highly centralized authority. This has been the case because the victors in the Mexican Revolution were the framers of the 1917 Constitution and because the Constitution was drawn up at a time when participation and support among the citizenry were limited. The Mexican Constitution is an authentic constitution in the sense that it is the result of an internal pact and a constitutional congress; however, it cannot necessarily be regarded as a document that is federal in origin -- that is, as a compact among previously free and independent states that united to build a federation -- because the framers of the Constitution envisioned a single nation from the moment Mexico became independent from Spain. Moreover, based on a conservative thesis that favoured a centralized republic, the centripetal force -- political, economic, and social -- was Mexico City.

#### *Status of the Constituent Political Communities*

As part of its symmetrical federalism, all of Mexico's constituent entities (i.e., states and municipalities)<sup>13</sup> have the same authority, powers, and structure.<sup>14</sup> This design was probably a response to the initial desire that the distinct regions making up the union be of equal strength and be given equal opportunities for development. The Federal District (i.e., Mexico City) is the only special government; like Washington, DC, it is not considered a constituent unit but a product of the federal agreement.

The Constitution provides for, and guarantees, the rights and powers of the constituent states in Article 124, which is called *the residual clause* because it stipulates that any powers the Constitution does not expressly assign to the federation shall reside with the states. As mentioned above, there are provisions in the Constitution both to create and to admit new states to the federal union, but there is no provision for a state's secession from the federation, which is thus considered unlawful.<sup>15</sup>

Theoretically, the states have the power to create their own institutions and governmental procedures with regard to matters affecting their internal governance. However, contradicting this idea of autonomous internal governance, the Constitution determines the fundamental characteristics and requirements of the powers granted to the

states, as well as their basic institutions, including their municipalities. Nevertheless, it is relevant to highlight that some states at least include certain important rights in their own constitutions, such as the state of Oaxaca, which forcefully and in great detail had recognized the rights of indigenous peoples even before the adoption of the federal reform of 2001.<sup>16</sup>

Due to a 1999 reform of Article 115, the Constitution now creates and regulates the existence of municipalities as component parts of the states and, thus, of the federation.<sup>17</sup> This reform was introduced in 1999 on the premise that by including municipalities as an order of government, their existence and powers would no longer depend as much upon the states as upon constitutional standards. In turn, municipalities would be able to oppose any state-initiated reforms intended to change their original structure or powers of government as stipulated in the Constitution. In this sense, the municipalities are not, unlike in the US Constitution, “creatures of the states”; rather, they are “creatures of the Constitution.” This is the case, moreover, given that state constitutions usually stipulate the same basic governmental institutions and procedures as those found in the federal Constitution. Any conflict between a state constitution and the federal Constitution is always resolved in favour of the latter, according to the prevailing principle of the supremacy of the federal Constitution.

The legal status given to municipalities distinguishes Mexico’s Constitution from many other federal constitutions. This legal status assigns municipalities a legal personality, a list of exclusive powers, and the right to challenge other orders of government.<sup>18</sup> These attributes make municipalities an essential part of the states and, consequently, an essential part of the federation.<sup>19</sup>

Since the 1980s, municipal governments have gained more autonomy.<sup>20</sup> Municipalities have been constitutionally guaranteed federal and state fiscal transfers as well as broad spending autonomy, although they are still limited in their power to levy taxes. While the municipalities have been granted authority over real-property taxation as well as the right to collect user charges for the public services they deliver, the state legislatures authorize the rates and charges as well as the levels of municipal indebtedness. However, budgetary approvals for spending levels and for the objects of spending are an autonomous municipal power, subject to the constitutional principle that municipal budgets must be in accordance with the income previously approved by the state Congress (Art. 115, Sec. IV). Consequently, the municipalities cannot spend more than they receive from their various fiscal sources, including from legally acquired debt. In addition, municipalities have exclusive jurisdiction in matters respecting basic public functions and services, such as potable water, sewerage and drainage, cleaning of public places, waste collection and disposal, waste-water treatment, construction of urban infrastructure, urban land-use control and development, markets and supply centres, public safety (i.e., police), and transit. State constitutions can expand these autonomous functions but not limit them.

For their part, the states have wide powers to run their institutions despite possible regulation or overregulation by the federal government under the terms of the federal Constitution. The constitutional limitations to this exercise of federal regulation are enforced by the Supreme Court of Justice of the Nation, which has jurisdiction to settle this type of dispute under Sections I and II of Article 105 of the Constitution.

State constitutions are approved by a state Constituent Congress. State constitutional reform can be achieved through two fundamental procedures. In some states, it occurs through a Permanent Constituent congress according to a special procedure for reforming a



state constitution. This procedure requires that a qualified majority of two-thirds of the members of the state's unicameral Congress vote to reform its constitution. This procedure is used in the state of Yucatan, among others. The second procedure, likewise undertaken by a Permanent Constituent Congress, is in force in the majority of states. In addition to the first procedure's requirements for changing a state constitution, the second procedure also requires the vote of 50 percent plus 1 of the *ayuntamientos* (i.e., municipal councils).<sup>21</sup> This procedure reinforces the principle that municipalities are an integral part of the federation in a way that is closer to the Brazilian than to the American model.

Although state constitutions can create institutions and procedures that are not regulated by the federal Constitution, they usually deal with matters of minor importance, such as simple administrative organization and some alternative legal ways of implementing federal regulations. That is, given the high degree to which state powers and structures are tailored to those contained in the federal Constitution, the state constitutions deal less with fundamentals than they do with issues of minor significance.

Article 2 of the Constitution, which prohibits slavery, was amended in 2001 to impart greater legal status to indigenous peoples, to protect their ways and customs, and to guarantee them access to development. However, the autonomy of indigenous peoples in governmental matters can be expressed only in municipal arenas or through institutions designed by the states in their fields of competence. Particularly, regarding the administration of justice, the application of indigenous customs to legal proceedings requires validation or agreement from the regular agencies or courts of the indigenous group's state government.

### *The Distribution of Powers*

Mexico's Constitution (Art. 124) stipulates that all powers not expressly allocated to the federation are "reserved to the States." In turn, the Constitution guarantees a list of municipal powers in Sections II through V of Article 115 that the states cannot limit. However, frequent amendments to the Constitution over the years have resulted in a long list of powers being shifted to the federation, leaving the states' residual powers much diminished.<sup>22</sup>

The federal government, using formulas of alleged concurrency and cooperation provided for in the Constitution, has intervened in many policy fields that were originally state responsibilities. As a result, the states' autonomy in these fields of concurrency has been weakened and the federation's powers have been expanded. Nevertheless, to ensure equity in the distribution of powers, Article 73 of the Constitution lists both the powers reserved to the states and those concurrent powers shared by the states and the federation with respect to taxation, spending, public debt, social policy, economic development, education, health, the environment, labour relations, trade, human settlements, and public security, among others.

With regard to public security and the prosecution of crime, the statutory catalogue of federal crimes is lengthy. Currently, there is debate about whether it would be preferable for the states to pursue and prosecute criminals concurrently for such offences as drug trafficking. Preventive public security is the concurrent responsibility of the three orders of government, but the fiscal resources for this activity are concentrated in the federal government. Article 97 of the Constitution also grants the federal government the legal authority, known as the *facultad de atracción* (power of attraction), to bring under its own jurisdiction specific matters originally in the states' sphere of competence.

Although the federation wields greater power than do the states with respect to the implementation of constitutional powers, the following constitutional powers are listed in Article 73 as concurrent: taxation, education, health, preventive measures for public security, human settlements, economic and social planning and development, the environment and environmental protection, civil protection against natural disasters, and sports. In most of these matters, mechanisms for intergovernmental coordination, with representation from both the federal and state governments, as well as from municipal governments when appropriate, have been established by federal laws. However, the federation is often dominant, resulting in its subordination of, rather than its coordination with, the constituent states. This is the case, for instance, with the federation's implementation of both the *Sistema Nacional de Coordinación Fiscal* (National System of Fiscal Coordination) and the *Consejo Nacional de Seguridad Pública* (National Council for Public Security).

The constitutional basis for the supremacy of the federal government and for the privileging of the federal Constitution's rules is found in Article 133: The "Constitution, the laws of the Congress of the Union that emanate therefrom, and all treaties" made in accordance with the Constitution "shall be the supreme law of the whole Union." This inclusive article also requires state courts to comply with the Constitution and with federal treaties and laws regardless of any contradictory provisions that might exist in the constitutions or laws of the states. Indeed, the Supreme Court of Justice recently ruled that Mexico's federalist system functions according to a hierarchy of law.<sup>23</sup> The highest level of authority resides in the federal Constitution, followed by international treaties approved by a majority of the Senate, and then by the ordinary laws enacted by the Congress of the Union. This hierarchy gives a treaty greater standing than both the domestic laws of the federation and the laws of the states.

### *Intergovernmental Conflicts of Competence*

The Constitution includes provisions for settling competency conflicts among the three orders of government. Article 105 provides for two methods of governmental litigation: *constitutional controversies* and *actions of unconstitutionality*.<sup>24</sup> In the first instance, litigation can be initiated by any federal, state, or municipal public body to challenge a law, act, or generally observed regulation of another order of government that, in the view of the challenger, violates the Constitution and thus violates a competence constitutionally assigned to the challenging government. Originally, constitutional controversies between orders of government were restricted exclusively to competency conflicts. However, in 1995 an amendment to Article 105 made it possible to initiate litigation respecting a conflict over any matter of constitutionality.

In the second instance (i.e., the case of actions of unconstitutionality), litigation can be initiated to challenge the constitutionality of laws and regulations of general observance, regardless of whether the perceived violation concerns an invasion of a field of competence. However, this right of litigation is intended for use by legislative minorities that disagree with a law approved by the majority of a federal or state legislative body. In this instance, litigation against federal laws or laws of the Federal District passed by the Congress of the Union can go forward with the approval of only 33 percent of the members of either chamber. In the case of challenges to treaties signed by Mexico, litigation can proceed with the approval of only 33 percent of the members of the Senate. Similarly, the approval of 33 percent of the members of either a state legislative body or the Assembly of

Representatives of the Federal District is required in order to challenge a state law or a Federal District law. Finally, the *procurador general de la república* (attorney general of the republic) can independently table an action of unconstitutionality against any federal or state law, any law of the Federal District, and any treaty. Political parties can also initiate an action of unconstitutionality regarding an electoral law that they believe violates the Constitution.

These rights of litigation have been increasingly utilized with the advance of Mexico's democratic reforms and as the political-party system has become more pluralistic in both the federal and state governmental arenas. Mexico's transition into a more democratic polity began in the 1980s and continued up through the achievement, finally, of *political alternance* (political change) with the election of Vincente Fox to the federal presidency in 2000. If the institutions of constitutional controversy and actions of unconstitutionality had existed in previous decades, they would have had little effect because the country was governed by a single, hegemonic party able to control state and municipal governments as well as the Supreme Court.

Moreover, it is remarkable that since the restoration in the 1990s of the freedom and autonomy of the federal judicial branch and its highest agency, the Supreme Court of Justice, there has been a significant increase in the number and frequency of these types of controversies. At the same time, the Supreme Court has acted with greater judicial firmness, effectiveness, and rigor, in contrast to the decades when the judicial branch was subordinated to the enormous power of the president of the republic.<sup>25</sup>

## **FEDERALISM AND THE STRUCTURE AND OPERATION OF GOVERNMENT**

The Constitution of Mexico declares that: "It is the will of the Mexican people to organize themselves into a federal, democratic, representative Republic."<sup>26</sup> Mexico has a presidential system, with the single leader of the federal executive branch being elected by popular vote. Given the Constitution's basis in the fundamental principle of the separation of powers, this person exercises only the executive power. Despite the system of checks and balances implicit in this division of powers and allocation of responsibilities, Article 80 of the Constitution refers to "the supreme executive power of the Union" because the president of the republic is both the head of government and the head of state -- unlike, for example, the executive provision in the German Basic Law, which stipulates one head of State in the person of the *President*, and the head of Government that is a different person than the *President* called *Chancellor*. Mexico's system can perhaps be explained by the history of its evolution from a colony into a nation and, of course, by the influence of the Constitution of the United States of America, which provides effectively for a singular executive.

### *The Allocation of Powers*

The principle of the allocation of powers contained in the Constitution aims to define and limit the role of the president and to distribute, according to areas of expertise, the main governmental responsibilities. In Mexico, aside from the allocation of powers, there is a mechanism for checks and balances that involves what Mexicans call "collaboration between powers," which involves one branch of government participating in, or even integrating with, the activities of another branch of government or of autonomous state agencies. The most common case is the administration of justice in labour disputes, which is overseen by the executive branch instead of the judicial branch.



### *Federal Legislature*

The powers of the federal legislature are divided among the following functions: legislation, control and enforcement, taxation, integration of other public agencies and powers, and matters related to extraordinary functions, such as admitting new states into the union, declaring war, preventing interstate trade restrictions, and granting a leave of absence to the president of the republic as well as designating the president's replacement on an interim, provisional, or substitute basis, to mention only a few.

Obviously, the main duty of the federal legislature is to pass bills. The matters on which it can legislate are included in Article 73 of the Constitution, and are, in general terms: currency, taxation, education, health, sports, weights and measures, natural-disaster response systems, public security, federal crimes, the environment, hydrocarbons, oceans, waters and shorelines, trade, energy, mining, the motion-picture industry, banking, federal justice, public administration, defence, and external relations, to mention only some.

The federal legislative branch is divided into two chambers, the Chamber of Deputies and the Senate, which work together in the process of drawing up legislation by means of *successive debate*<sup>27</sup> on proposals. That is, according to Article 72, a bill must be approved by both the Chamber of Deputies and the Senate. The law-making process can start in either chamber, with the exception of fiscal bills (i.e., taxes and annual budgets of expenditures), which must always start in the lower house (Chamber of Deputies). Each chamber also has some exclusive powers. For example, the Chamber of Deputies approves the federation's budget of expenditures and reviews public accounts (Art. 74); the Senate approves international treaties (Art. 76).<sup>28</sup>

Both chambers clearly represent the Mexican people more than they do the constituent jurisdictions. The Chamber of Deputies consists of 500 members, out of which 300 are elected every three years from districts within the states, the Federal District, and the territories. The other 200 deputies are elected by national partisan lists every three years. Although it has been claimed doctrinally that the members of the Senate represent the constituent states because each state and the Federal District has three senators (who serve six-year terms), there is no constitutional provision expressly stating that senators represent their states per territorial criteria. Also, in the Senate, there is a method for proportional representation of electoral minorities by which 32 of the total of 128 senators are elected through national partisan lists, while the remaining 96 senators are chosen by direct election state by state (3 per state).

State and local legislative bodies cannot veto federal laws and regulations because it is solely in the power of the federal executive to veto bills, with some exceptions. In turn, the federal legislature cannot veto state legislation. However, minorities in both legislatures can contest the constitutionality of federal or state laws before the Supreme Court through an action of unconstitutionality, as mentioned above, based on Section II of Article 105.

The Congress is limited, however, to meeting in ordinary sessions only from 15 February to 31 April and from 1 September to 31 December of each year. As a consequence, the Constitution provides for a Permanent Committee of 37 members composed of 19 deputies and 18 senators appointed by their respective chambers (see Art. 78). This Permanent Committee can give its consent to use of the National Guard; call one or both chambers of the Congress into extraordinary sessions; administer the oath of office for the president, members of the Supreme Court, and magistrates of the Federal District

and territories; refer bills to committees for future action; grant a 30-day leave of absence to the president and appoint an interim president; and grant or deny approval of a wide range of appointments proposed by the president.

### *Federal Executive*

The federal executive branch possesses substantial powers vested in a single individual, named the *Presidente de los Estados Unidos Mexicanos* (President of the United Mexican States), who serves a single six-year term. The president is elected directly by a national popular vote, and there is no provision for a direct, permanent substitute or vice president to replace him; so, if necessary, the Congress of the Union has the power under Articles 84 and 85 to appoint an interim, substitute, or provisional president, as the case may require.

The constituent states are not represented in the national executive branch; however, with regard to the president's public administration duties, there are constitutional provisions (Art. 73; Art. 115, Sec. III; and Art. 116, Sec. VII) for intergovernmental coordination and collaboration, for delegating powers, and for agencies of intergovernmental cooperation in which the states and municipalities effectively participate.

### *Federal Judicial Branch*

The federal judiciary is represented by its highest body, the Supreme Court of Justice, which is composed of 11 ministers, each of whom is selected and appointed by the Senate from a short list of candidates proposed by the president. The ministers serve for 15 years and are entitled to a life pension thereafter. Pursuant to Article 100, the lower-court federal-circuit magistrates and district judges are appointed to six-year terms by the Supreme Court through its Judiciary Council. The powers of the judicial branch are bolstered by the autonomy the judiciary possesses to organize itself in accordance with a law passed by the Congress of the Union.

The federal courts decide all controversies arising from (1) laws or acts (federal, state, or local) that violate individual rights, (2) federal laws or acts that restrict or encroach on the sovereignty of the states, and (3) state laws or acts that “invade the sphere of federal authority” (Art. 103). The Supreme Court has exclusive jurisdiction in all controversies between states, between the powers (i.e., branches) of a state government over the constitutionality of each other's acts, and “between the Federation and one or more States” (Art. 105). The Court also settles “questions of jurisdiction that arise between courts of the Federation, between the latter and State courts, or between the courts of one State and those of another” (Art. 106). The federal courts also have jurisdiction over controversies involving federal law,<sup>29</sup> treaties, admiralty law, and members of the diplomatic and consular corps; controversies in which the federation is a party; and controversies between a state and any residents of another state.

The federal courts' basic duties are to dispense ordinary justice in disputes to which the federation is a party, to act as a tribunal for constitutional control through which the Court can invalidate a law of any order of government, and naturally, to resolve issues of legality and constitutionality through a mechanism called the *juicio de amparo* (writ of relief). The *juicio de amparo* is a broad writ that allows the federal courts to protect any kind of constitutional guarantee, not only liberty or life. Through the use of the *juicio de amparo*, any state or municipal matter becomes a federal matter. The purpose of the writ is to nullify constitutional violations and infringements of individual-rights guarantees caused by the creation and application of regulations by any order of government. The Supreme

Court also has some extraordinary powers, such as investigating serious infringements of individual-rights guarantees or general violations of the public-election laws.<sup>30</sup>

Pursuant to Article 99, election disputes are resolved by a special tribunal, the *Tribunal Electoral del Poder Judicial de la Federación* (TRIFE/Electoral Tribunal of the Judicial Branch of the Federation). This tribunal reports to the Supreme Court but has great autonomy in carrying out its functions. However, many matters of administrative, fiscal, agrarian, and labour justice are handled by autonomous specialized courts dependent on the executive branch, such as the Agrarian Court, the Fiscal and Administrative Courts, and the labour tribunals. The Supreme Court also has jurisdiction over matters of administrative, fiscal, agrarian, and labour justice at their final stage through the *juicio de amparo* mentioned above. Nevertheless, the legislative and executive branches concur in the formation of these specialized courts insofar as the president appoints the magistrates, but according to Article 76, they must have the confirmation of either the Senate or, during recess, the Permanent Committee.

The Constitution does not recognize any other judicial jurisdiction than that of the federal and state courts. The federal courts are accountable to the Supreme Court and are known as *tribunales unitarios y colegiados de circuito* (full-circuit courts) and as *tribunales de primera instancia* (courts of first instance) in the case of first-district courts.

Each state has its own judicial branch consisting of a Superior Justice Tribunal (called the Supreme Tribunal of Justice in a few states), first-instance state courts, and minor courts staffed by judges named by each state's Superior Tribunal. The members of a state's Superior Tribunal are proposed by the state governor and confirmed by the state Congress. Although these superior state courts are the "last word" on criminal and civil matters under state law, their decisions can be reviewed by federal courts via a *juicio de amparo*. A jurisdiction distinct from the courts mentioned may be recognized only in cases involving either indigenous peoples or conventional systems of arbitration, but these procedures must be validated by their respective state courts according to Article 2.

#### *Institutions of the Constituent Units*

The constitutional organization of the constituent units is very similar to the national government's organization (see Title V). This is due to the centralist nature of the Constitution and its excessive regulation of subnational governments. For example, the Constitution limits state governors to a single six-year term. It also declares that "the Congress of the Union and the state legislatures shall immediately enact laws designed to combat alcoholism" (Art. 117, Part IX). Article 115 declares that for "their internal government, the States shall adopt the popular, representative, republican form of government, with the free Municipality as the basis of their territorial division and political and administrative organization." The states' governments are also constitutionally divided into executive, legislative, and judicial branches, and while they have independent courts that embody the state judicial power, the state courts are subject to the criteria of the federal courts through the rulings of the above-mentioned *juicio de amparo*.

It is relevant to mention that this centralist structure did not always exist in Mexico. Although during the twentieth century the states' structures were basically a mirror image of the federal government, with the design of their institutions being subordinated to federal influence, during the nineteenth century the states enjoyed considerably more autonomy, as reflected in their ability to create their own institutions.

The Constitution also prohibits the states from limiting commercial activity and trade with each other; specifically, the right to mobility of labour, capital, goods, and services is guaranteed under the principle of freedom of movement. Thus the constitutional limits on the states include stipulations against (1) making “any alliance, treaty or coalition with another State, or with foreign powers,” (2) coining money, (3) issuing paper money or stamps, (4) taxing persons or goods that are passing through their territory, (5) prohibiting or taxing domestic or foreign goods that are entering or leaving their territory, (6) discriminating against out-of-state goods, (7) “levy[ing] duties on the production, storage, or sale of tobacco in a manner distinct from or with quotas greater than those authorized by the Congress of the Union,” (8) establishing ship tonnage dues or any other port charges, (9) levying imposts or taxes on imports or exports, (10) possessing permanent troops or ships of war, and (11) making war themselves on any foreign power.

#### *Relations among the Constituent States*

Article 120 of the Constitution obligates the governor of each state to publish and enforce federal laws. Article 121 holds that each state must give “complete faith and credence” to the public acts, registries, and judicial proceedings of all the other states.<sup>31</sup> However, the laws of any one state have effect only in its own territory, whereas the rulings pronounced by the courts of one state on property rights and real goods have executive effect in the other states. Additionally, the civil acts -- such as marriage, divorce, birth, adoption, and death certificates -- of one state have validity in the other states, and professional and university degrees issued by the authorities of one state under its laws must be respected in the other states.<sup>32</sup>

In criminal matters, a state may ask for extradition of a criminal from another state as provided for by interstate agreements or with the intervention of the federal government under the *Sistema Nacional de Coordinación en Seguridad Pública* (System for National Coordination of Public Security), which exercises the power of apprehension. However, the alleged criminal is judged by the court of the state where the crime was committed, regardless of the origin of either the criminal or the victim. In the case of disputes between individuals concerning written transactions, the dispute usually comes under the jurisdiction of the state whose laws govern the contract or agreement of reference. In other cases, the competent court is determined by the location where the action occasioning the conflict occurred. However, in all laws for judicial proceedings, there are regulations to rule on which court is competent to hear a particular case.

The constituent units can make agreements among themselves but only on matters strictly within their competence. States also “have the power to fix their respective boundaries among themselves” (Art. 116), although such boundary agreements must be approved by the Congress. With regard to relations between the federal government and the states, formal agencies for coordination and communication are mandated in federal laws and, in some cases, by intergovernmental compacts. However, this type of agency is more often used in concurrent matters.

## **FISCAL AND MONETARY POWERS**

### *Taxation*

The federal, state, and municipal governments all have independent powers to levy taxes. However, some concurrency between the federal and state spheres is recognized by the Supreme Court,<sup>33</sup> which has held that while not all sources of taxation are concurrent, the

main ones (i.e., income, sales, and special taxes on the production of such goods as gasoline, sugar, tobacco, beer, and tequila) are concurrent. Although concurrent taxation exists in general terms, the Constitution also imposes limits on the states' ability to tax foreign trade, hydrocarbons, energy resources, and banking, among others. In some cases, these revenue sources, such as the taxation of electricity and petroleum products, are reserved exclusively for the federal government.

Natural resources are understood to be the property of the whole nation and can be exploited only through federal concessions or authorization. However, a great part of the revenues from natural resources is shared with the state and municipal governments under the National System of Fiscal Coordination.

The tax powers of the three orders of government are limited by the principles of equity and proportionality of taxes and, obviously, the principle of legality -- as provided in Article 31, Part IV, of the Constitution. Such authority is further limited by the requirement that levies must be sufficient enough to finance the public spending expressed in the budget, including the financial burden of servicing legally acquired debt. That is, the budgets of the federal, state, and local governments must be balanced by year's end. The major concurrent revenue sources are collected by the federal government, which, by law, must share these revenues with the states and municipalities. However, some areas of tax-revenue collection are coordinated between the three orders of government -- for example, an income tax for low-income persons, known as the "regime of small taxpayers." According to Article 3B of the Fiscal Coordination Law, this tax is collected by the states and municipalities, which keep the revenues for themselves, although, in some cases, they pay a percentage to the federal government. Nevertheless, the most important taxes are collected by the federation. Real-property taxes (Art. 115, Sec. IV) are collected only by the municipalities, which may, as a means of support, make agreements with their states to have the latter administer the collection of these taxes in exchange for a share of the revenues collected.

One of the problems with the *Sistema Nacional de Coordinación Fiscal* is precisely that the Constitution does not provide for it. This system has resulted from the concurrency recognized by the Supreme Court of Justice. For this reason, the Congress of the Union passed a special law in 1978, called the *Ley de Coordinación Fiscal* (Fiscal Coordination Act), which has no inherent authority because it requires that the states subscribe to it through agreements authorized by the state legislatures. However, since the system was born, every state, including the Federal District, has subscribed to the agreements and kept them in force. In this way, subnational governments suspend their ability to levy certain taxes in exchange for a share of the funds, more or less equal to the revenues they would obtain if they imposed these various taxes themselves. This Fiscal Coordination Act provides the mechanisms and formulas by which the federal government distributes the respective shares owed to the states and municipalities.

It is also important to highlight how taxes are collected by states and municipalities. For example, people who live in one state but work in another state pay taxes on their income in the state where they work or where their employer is located. But, for example, real-property taxes are paid entirely where one's house or property is located.

### *Borrowing*

The three orders of government are permitted to acquire debt, but this must be done through procedures established in federal or state law, as the case may be, and with the approval of



the respective legislature. In the case of municipalities, indebtedness is also approved by the state legislature. State and municipal governments in their turn are limited by the principle that public debt may be incurred only to fund what the Constitution calls productive public investments, namely “the construction of works intended to produce directly an increase in their revenues.”<sup>34</sup> However, this principle is not always followed in practice because borrowing is authorized even to fund deficits in current spending.

In Mexico, the state and local governments cannot incur debt to foreigners or in foreign currency, except through the federal government. In recent years, states and municipalities have been issuing bonds for the first time through the national private stock market, something that had not been done for decades because the sole source of financing was the National Development Bank, private banks, or co-investment with the private sector. Although credits from international banks have been channelled to subnational governments under Section VIII of Article 117, these credits are funnelled first through the National Development Bank.

Furthermore, the federal government has been building a public policy for the reduction of borrowing levels. This policy insists on not financing more than 0.5 percent, in terms of the gross domestic product, of the annual spending budget. There is no constitutional guideline that limits the budgetary debts of the state and local governments or establishes a balance point, but some state legislatures have enacted such guidelines. In addition, the public credit market acts as a constraint because investors are reluctant to grant loans to a government that exceeds manageable levels of debt.

As a result of recurring economic crises, such as the financial crisis of 1995 and excessive borrowing during recent decades, state and local governments have not been able to pay all their debts, and the federal government has implemented diverse support programs for debt restructuring.<sup>35</sup> However, the Constitution does not oblige the federation to take such rescue measures; consequently, any bail-out support is regarded as a temporary, ad hoc public policy.

### *Distribution of Tax Revenues*

The *Sistema Nacional de Coordinación Fiscal*, under which federal resources are distributed to the state and local governments, is not a feature of the Constitution. However, even if this conventional system did not exist, Article 73, Part XXIX, of the Constitution does establish that the federal government shall share with the states, and the states shall share with the municipalities, revenues (in proportions not stated in the Constitution) from the *contribuciones especiales* (i.e., special taxes) that the federal government levies on some of its exclusive sources of revenue, such as electrical energy, tobacco products, gasoline and other products derived from petroleum, matches, maguey and its fermented products, forestry exploitation, and the production and consumption of beer.

In addition to the above mechanisms for distributing tax revenues, the Fiscal Coordination Act was approved in 1978 and came into force in 1980. Since then, changes have been made to increase the amounts and broaden the concepts of federal revenue to be shared with the states and municipalities. Changes have also been made to the formulas determining the share of tax revenue to be received by each state and municipality. Today states and municipalities receive about 26 percent of the *Recaudación Federal Participable* (RFP), or federal tax revenue subject to sharing. Not all federal revenue is subject to sharing, as the RFP represents only 60 percent of the federal government’s total revenue.

From another perspective, an average of 94 percent of all states' revenues came from the federal government in the form of transfers in 2003, while federal transfers to the municipalities represented from 50 percent to 98 percent of all municipal revenues, depending on the size and performance of each municipality. This shows the huge dependence of subnational governments on federal-government revenue transfers.

### *Spending*

Constitutionally, the federal executive branch's spending power is limited to those areas strictly authorized in the federal spending budget, which must be approved by the Chamber of Deputies.<sup>36</sup> Furthermore, many kinds of spending have been predetermined by legal or conventional obligations; thus only 13 percent of the annual federal spending budget is actually available in the programmable budget (*presupuesto programmable*) for use by the executive branch. The programmable budget permits adjustments to the objects and levels of spending (e.g., for new road construction and new equipment), while the remainder of the budget (non-programmable) is already committed, its uses often being designated by law or contracts (e.g., with respect to salaries for preexisting payrolls and financial service on debt). Similarly, neither the executive branch nor the Chamber of Deputies can approve federal spending that is not related to their essential duties; doing so would be unconstitutional.

The state and municipal governments have full autonomy to spend their own revenues, this authority being limited only by the decrees established by state legislatures or municipal councils and, of course, by the requirement that expenditures be related to their essential duties and powers. They are equally free to spend, as their own, their shares of the federal resources transferred through the *participaciones* (revenue shares).

State and municipal governments also have access to other types of transfers, such as *aportaciones federales* (federal contributions). These are grants-in-aid and represent larger amounts than those received through revenue shares of federal taxation, the *participaciones*. Federal contributions account for 34 percent of the RFP<sup>37</sup> compared to 26 percent of the RFP accounted for by the revenue shares. These federal contributions are not established in the Constitution. They are simply a legal mechanism recently added to the Fiscal Coordination Act, but their nature is different from the "revenue shares." The fundamental difference is that the contributions may or may not exist depending on what is decided by the Congress of the Union. Moreover, the state and municipal governments are subject to conditions and requirements established in the same law for expending these federal contributions, unlike the total autonomy with which they expend the "revenue shares."

Finally, the states and municipalities are subject to transfer mechanisms called spending reallocations or subsidy programs. Through these mechanisms, the federal government distributes predetermined resources among state and municipal governments for specific purposes, which are stipulated in intergovernmental agreements.

## **FOREIGN AFFAIRS AND DEFENCE POWERS**

In principle, the Constitution entrusts external relations and defence to the federal government. The federal Congress has the power to legislate on such matters as nationality, foreigners, emigration and immigration, organization of the diplomatic service, and treaties. In the latter case, the *Ley sobre Tratados Internacionales* (International Treaties Act) alone regulates the procedure for creating treaties; however, treaties are

signed only by the federal executive, with their ratification being the prerogative of the Senate. Under Article 89 of the Constitution, however, it is the president of the republic who directs external policy. High-level diplomats are appointed by the federal executive branch with the approval of the Senate.

With respect to defence, the president of the republic is the commander in chief of the armed forces, which include the army, navy, and air force. The president has the power to declare war on behalf of Mexico pursuant to a prior special law approved by the Congress of the Union.

Article 117 of the Constitution prohibits the participation of the states in alliances, treaties, or coalitions with foreign powers. However, Article 119 establishes the obligation of the federal government to protect the states from any invasion or violence emanating from outside the country and, in the case of internal revolt or disturbances, to provide adequate military or police protection when requested by any state legislature or governor.

Despite the above, with regard to foreign relations, the states and the municipalities can make agreements and engage in exchanges with foreign governments or international agencies. This kind of activity is regulated by the *Ley para la Celebración de Tratados* (Treaties Act), which establishes the ability of states, municipalities, and public agencies to make what are called *acuerdos interinstitucionales* (inter-institutional agreements). These agreements must pertain solely to exchanges of technical, educational, cultural, or developmental support, to commercial transactions, to promotion of investments, or to other affairs within the jurisdiction of a state or municipality. These agreements must never have the nature of a law or legal regulation in Mexico. Moreover, under the Treaties Act, prior to the signing of this type of agreement, a *dictamen de no inconveniencia* (ruling of no impropriety) must be obtained from the federal *Secretaría de Relaciones Exteriores* (Secretariat of External Relations). Using this regulatory procedure, state and municipal authorities frequently tour abroad to promote relations with other countries, including establishing representative offices. At all times, however, they are regulated by the principle that none of these relations can compromise the country or its sovereignty.

Under the Constitution, the constituent polities cannot form any type of army. They can establish only police forces that provide public security to their inhabitants or investigate crimes that fall within state jurisdiction. The Constitution does not provide for advisory bodies in which state or local governments are represented in intergovernmental consultation about external relations or defence; however, when dealing with certain international-treaty proposals, the federal government has at times directly consulted with the states and municipalities, depending on the issue.

In Mexico, the North American Free Trade Agreement (NAFTA) has had both favourable and unfavourable impacts on a number of commercial sectors of state and local governments. However, NAFTA has not been a factor in creating or eliminating the powers of the subnational governments because trade matters are under federal jurisdiction (Art. 73, Part X). Mexico's participation in international organizations, as a member or associate, also comes under the powers of the federal executive branch according to the same procedure used for making international treaties.

## CITIZENSHIP

Mexico's Constitution clearly distinguishes the concept of nationality (Art. 30) from the concept of citizenship (Art. 34). Mexican nationals are individuals who were born in the territory of the republic or who were born in a foreign country but are the children either of

a Mexican father or mother born in Mexico or of a naturalized Mexican father or mother. Mexican civilian or military vessels or aircraft are considered to be Mexican territory as well. Foreign nationals who obtain a naturalization card in accordance with the law also have Mexican nationality. Article 31 of the Constitution obligates Mexicans to (1) see that their children or wards under age 15 attend school, (2) receive civic and military instruction on days and hours specified by their *ayuntamientos* (i.e., municipal councils), (3) enlist and serve in the National Guard, and (4) “contribute to the public expenditures of the Federation, and the State and Municipality in which they reside, in the proportional and equitable manner provided by law.”

Apart from Mexican nationality,<sup>38</sup> to be a citizen, an individual must be 18 years of age and have an honest means of earning a living. Citizens have the constitutional rights to vote in elections, to stand for election to any public office or be appointed to any other public employment, to “associate together to discuss the political affairs of the country,” to “bear arms in the Army or National Guard,” and to “exercise in all cases the right of petition” (Art. 35). Citizens are constitutionally obligated to register on the tax lists of their municipalities and electoral poll-books, to enlist in the National Guard, to vote in popular elections, to serve in federal or state elective offices, to “serve in municipal council positions,” and to “fulfill electoral and jury functions.”

The Mexican Constitution, unlike the US Constitution, does not explicitly recognize dual (i.e., federal and state) citizenship. However, in the matter of citizenship, the state constitutions may add requirements for being a citizen of a particular state, especially with respect to the exercise of political rights. For example, in some states, a person must have been born in the state to become its governor. This means that a citizen of any state is a Mexican citizen, but to exercise certain rights or enjoy certain public privileges in a state, there may be additional requirements. This does not mean that there are two types of citizenship in Mexico, only that there are certain circumstances governing the exercise of some rights in the state and municipal spheres.

In other words, Mexican nationality can be acquired through the principles of both *jus soli* and *jus sanguinis*, but the right to citizenship is more strongly linked to *jus soli*, especially with regard to citizenship rights in the subnational spheres.

## **ELECTIONS, VOTING, AND POLITICAL PARTIES**

The Constitution establishes important principles regarding political rights. The executive and legislative authorities in the three orders of government must be elected by free, secret, universal votes. Also, Article 41 defines political parties as institutions of public interest. Only Mexican citizens can vote. They must be 18 years old and of sound mind, and they cannot be serving a sentence for any crime, in which case their rights are suspended. By comparison, the right to vote cannot be denied or suspended for any religious, ethnic, gender, or political reason.

The Constitution created an autonomous public body called the *Instituto Federal Electoral* (IFE/Federal Electoral Institute), in which the Congress of the Union, the national political parties, and citizens participate. The IFE’s operations are regulated by the principles of assurance, legality, independence, impartiality, and objectivity. The special electoral court, the *Tribunal Electoral del Poder Judicial de la Federación*, also rules on electoral matters and citizens’ political rights.

The state governments likewise have autonomous organizations equivalent to the federal IFE that are responsible for organizing elections and for registering state or

municipal candidates, who are elected by popular vote. To this end, the states also have courts of first instance for electoral matters. Dealing with voter registration in subnational governments, official identification documents, and elector credentials can be done autonomously by the states or with the support of the IFE, including the organization of elections through agreements with the IFE.

Although states and municipalities are granted autonomy with respect to elections, legal review of these elections may go to the federal tribunal mentioned above. Through a ruling of constitutional review, the tribunal assures that the democratic principles contained mainly in Article 41 are fully respected by state and local officials.

### **PROTECTION OF INDIVIDUAL AND COLLECTIVE RIGHTS**

The Constitution sets out a series of rights known as *garantías individuales* (individual guarantees) while also listing important collective and social rights. Included in the first category are the rights to equality before the law, equality between men and women, and equality to own property as well as the rights to liberty, freedom of movement, freedom of association, freedom of religious worship, lawful trade, legality, defence before the courts, and a speedy and expeditious delivery of justice. The rights to vote and to stand for election are included in the category of political rights, conditional only upon citizenship criteria and the requirement that one's rights have not been suspended (e.g., subsequent to a criminal conviction).

With respect to social rights, the Constitution protects the rights to employment, education, housing, farming, health care, and a safe environment; children's rights; and the communal rights of indigenous peoples and their communities.

Because international treaties are also part of the Constitution and because Mexico is a signatory of the United Nations Universal Declaration of Human Rights, all the rights established by this declaration must be protected in Mexico. In general, when rights are expressly established in the Constitution as well as in the Universal Declaration of Human Rights, they become mandatory and must be enforced by the state and local governments and, of course, by the federal government.

Indigenous peoples are the only group of ethnically defined individuals granted special status by the Constitution, which guarantees them the right to self-determination in the interest of preserving their culture, religion, and language. Apart from this right, indigenous groups commonly exercise their right to freedom of association through various forms of social organization. Three important examples are labour unions; the *ejido* (common land), which represents a means of organizing agrarian land ownership; and churches or religious associations.

Individual guarantees and human rights apply to any person in Mexico's territory; therefore, enjoyment of these rights does not necessarily require a person to be a citizen or a person of Mexican nationality. However, only Mexican citizens are entitled to certain social and political rights, such as the right to vote, to housing, and to education.

As previously indicated, the states are obliged not only to protect these rights, but also to incorporate them, in some form, into their own constitutions.<sup>39</sup> The fundamental protection of rights is achieved through three mechanisms: jurisdictional protection of persons through the law of *juicio de amparo* (roughly, *habeas corpus* in many such cases); the extended control of the Constitution, which mandates any public authority or power to directly implement the Constitution and the rights that it protects, even when a law contravenes it; and the role of the ombudsman,<sup>40</sup> or human-rights official, who is charged



with vigilantly monitoring the conduct of the authorities but who has the power only to make recommendations based on “*auctoritas*,” the moral and public authority held by the head of the human-rights protection agency.

In Mexico, the federal duty to protect human rights resides with the National Human Rights Commission, as provided by the Constitution (Art. 102, Part B). The states may create similar autonomous bodies functioning in the same manner as the national body in order to make recommendations about the best way to protect human rights and to investigate and remedy violations of these rights.<sup>41</sup> All 31 states and the Federal District now have such a body.

## CHANGES TO THE CONSTITUTION

Over time the Constitution has evolved with respect to many matters, such as human rights and the division of powers, but it has generally retreated from federalism, moving instead toward centralization. For instance, the Constitution was amended 415 times between 1917 and August 2004;<sup>42</sup> Article 73 (federal Congress powers) was amended 47 times, Article 123 (national labour regime) 21 times, and Article 27 (land-property regime) 16 times. Almost half of these reforms were aimed at “strengthening” the federal government and thus, given the nature of Mexico’s presidential system, also at increasing the federal executive power. Although the municipalities have experienced an evolution toward decentralization during the past 20 years,<sup>43</sup> the states, in contrast, have suffered a deep reduction of their autonomy.

The weaknesses of the federal system in Mexico are due not so much to an absence of an appropriate constitutional design as to the historical indifference of presidents, governors, and politicians to observing the federal pact. One consequence of this indifference is that states and municipalities are now fiscally dependent upon the federal government, an arrangement that has rendered nonexistent many aspects of their autonomy. To address this problem, Mexico started a process at the beginning of 2004 called the “National Convention for Public Finance,” which aims to reach a new fiscal pact that will give more powers, resources, and autonomy to states and municipalities.

It is a principle in Mexico that the people shall have the right, at all times, to alter or modify their form of government and that national sovereignty shall be understood as essentially residing in and originating with the people.<sup>44</sup> To this end, the people are represented in the Permanent Constituent Congress (Art. 135), which carries out the procedure for modifying any article of the Constitution. Article 135 establishes that the Constitution may be amended, or added to, by a vote of approval from two-thirds of the members present in each chamber of the Congress of the Union. For this vote to be valid, at least half plus one of the total members of each chamber must be present. The next step is to obtain a “yes” vote from 50 percent plus one of the state legislatures. This is the means for changing any article of the Constitution, without exception.

The dominant political regime in the twentieth century was extremely active in constitutional reform, making exactly 400 amendments between 1917 and the year 2000.<sup>45</sup> Today, the system of checks and balances characterizing Mexico’s democratic transition away from one-party rule means that possibilities for constitutional amendment arise less frequently and that the pace is somewhat slower. Thus only 15 reforms were enacted from late 2000 to August 2004. However, unlike past reforms, which served the purposes of specific public policies or particular styles of government, there are now plans to reform the Constitution with regard to its fundamental institutions. This effort is referred to as the

*Reforma del Estado* (state reform) and has the aim of modernizing the Constitution and its fundamental institutions. This objective has been embraced to such an extent that some sectors are now even proposing that a completely new constitution be written.

In either case, one of the central themes of the *Reforma del Estado* is reform of the federal system. Therefore, different political players have advocated the redesign of the federal agreement along the following lines in order to solve a number of perceived problems:

Limiting, perhaps substantially, the powers of the president of the republic with respect to the counterbalancing powers of the legislative and judicial branches

- 1 Strengthening the notion of Mexico as a federal republic by more clearly specifying the three orders of government: federal, state, and municipal
- 2 Allowing the states and municipalities to recover major and minor taxation powers as sources of revenue
- 3 Increasing the amounts of federal transfers to the states and municipalities
- 4 Redefining federal, state, and municipal responsibilities by listing them in the Constitution, with a residual clause outlining that the responsibilities not provided for and not expressly attributed to the federation or the municipalities are under direct control of the states
- 5 Limiting the system of concurrent actions to what is strictly necessary.

However, at the same time, proponents of these possibilities for redefining Mexico's federal model face opponents who wish only to limit the centralized power of the president of the republic by transferring some executive functions to the federal legislative branch. That is, there are those who think that it is sufficient to remove power from the president but otherwise keep it within the federal purview through the Congress of the Union. Thus over the decades various reforms and initiatives have limited the president's power without necessarily giving more power to the states; instead, the federal government has retained its regulatory, quasi-executive powers in the legislative branch.

The above-mentioned trend is observed in the growing number of proposals to amend Article 73 of the Constitution, each of which has sought to invest more legislative duties in the federal Congress, leaving very few such duties to the state legislatures. This is exemplified in amendments enacted in the early 1990s that made matters of education, health, public security, the environment, sports, and civil protection, in addition to the historically concurrent fiscal powers, shared competences of the federal Congress and the state legislatures.

Mexico is thus debating whether to redefine the list of functions for each order of government with a residual clause in favour of the states, leaving a minor margin for concurrent actions, or to pursue another model that simply limits the federal executive's power but still concentrates great power in the federal legislative branch. This latter option would open the way for more concurrent federal powers and actions, with the almost certain risk that clear differentiations between the functions of federal and state governments would be eroded in the name of concurrency and coordination, which would effectively rebound to the benefit of federal power over the states.

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<sup>1</sup> At the time of this writing, no English translation was available of the complete, fully amended Mexican Constitution. An English translation readily available on the Internet was not complete.

<sup>2</sup> See also David Merchant and Paul Rich, "Prospects for Mexican Federalism: Roots of the Policy Issues," *Policy Studies Journal* 31 (Fall 2003): 661-67; Paz Consuelo Márquez-Padilla and Julián Castro Rea, eds, *El*

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*Nuevo Federalismo en América del Norte* (Mexico City: Centro de Investigaciones sobre América del Norte, Universidad Nacional Autónoma de México, 2000); Peter M. Ward and Victoria E. Rodríguez, with Enrique Cabrero Mendoza, *New Federalism and State Government in Mexico: Bringing the States Back In* (Austin: Lyndon B. Johnson School of Public Affairs, University of Texas at Austin, 1999); Victoria E. Rodríguez, "Recasting Federalism in Mexico," *Publius: The Journal of Federalism* 28 (Winter 1998): 235-54; Alicia Hernández Chávez, ed., *Hacia un nuevo federalismo?* (Mexico City: Fondo de Cultura Económica, El Colegio de México, 1996); and Carlos Fuentes, *A New Time for México* (New York: Farrar, Straus and Giroux, 1996).

<sup>3</sup> Conapo (National Population Council).

<sup>4</sup> Secretaría de Educación (Public Education Secretariat), Mexico.

<sup>5</sup> Banco de México, or Banxico (Mexico's central bank).

<sup>6</sup> Arguably, the Constitution of Cadiz was as much Mexican as it was Spanish because many American deputies contributed to its creation. Among the institutions adopted under this influence was the *Diputaciones Provinciales*, a result of the recommendations of Miguel Ramos Arizpe (Mexican), representative of the *provincias internas de oriente* (western internal provinces). See also Nettie Lee Benson, "Spain's Contribution to Federalism in México," *Essays in Mexican History*, ed. Thomas Cotner and Carlos Castaneda (Austin: Institute of Latin American Studies, University of Texas, 1958), pp. 90-103.

<sup>7</sup> Both federal and state secondary legislation reflect their origins in Roman law (i.e., the code of commerce, which is within the federal government's purview, and the states' civil-rights codes).

<sup>8</sup> This idea came directly from the federal Constitution of 1857.

<sup>9</sup> There was a fundamental change in concepts between the 1857 and 1917 constitutions. The 1857 phrase *derechos del hombre* (rights of man) was changed to *garantías individuales* (individual guarantees) in 1917 precisely to guarantee judicial means of protecting human rights, thanks to the theory of the French intellectual Pierre Claude Francois Daunou (1761-1840), who was very popular in late-nineteenth-century Mexico.

<sup>10</sup> The *órganos autónomos del estado* (autonomous state agencies) are public entities created by the Constitution. Although traditional powers concur in their formation (mainly the executive and legislative branches), the Constitution grants them autonomy to exist and function independently from the executive and legislative branches of the federal government. Thus in Mexico there are such autonomous constitutional agencies as the *Banco de México*, under Article 28 of the Constitution; the *Instituto Federal Electoral* (Federal Electoral Institute); the IFE, under Article 41; and the *Comisión Nacional de Derechos Humanos* (CNDH/National Commission for Human Rights), under Article 102, Part B.

<sup>11</sup> Manuel González Oropeza, *El Federalismo* (Federal District, Mexico: Editorial Porrúa, 1995).

<sup>12</sup> Mexico established diplomatic relations with the Vatican in September 1992.

<sup>13</sup> According to the Supreme Court's recent interpretation of Article 115, "The municipalities are constituents of the States and therefore of the Federation," as pronounced in Constitutional Controversy 6/95 "*Tijuana v. Presidencia de la Republica y otros*," 1995.

<sup>14</sup> The constitutional provisions of the constituent units are regulated primarily by Articles 40, 41, 115, and 116. See also Wayne A. Cornelius, Todd A. Eisenstadt, and Jane Hindley, eds, *Subnational Politics and Democratization in Mexico* (La Jolla: Center for US-Mexican Studies, University of California, San Diego, 1999).

<sup>15</sup> But see, for example, Debora Montesinos, "Northern Bosses Consider Breakaway," *México City Times*, 10 September 1996, p. 1.

<sup>16</sup> On 18 July 2001, final approval was given for constitutional reform of Articles 1, 2, 4, and 115, which include the rights of indigenous peoples and communities, as published in the *Diario Oficial de la Federación* on 14 August 2001.

<sup>17</sup> Juan Marcos Gutiérrez González and Loza Salvador Santana, *Artículo 115 Constitucional: Historia y reformas de 1999* (Mexico: Ed. INDETEC, 2002), pp. 251-60.

<sup>18</sup> See Article 105 and Sections II, III, IV, and V of Article 115 of the Constitution of Mexico.

<sup>19</sup> See also Quintana Roldán Carlos, *Derecho Municipal*, 6th ed. (Federal District, Mexico: Editorial Porrúa, 2002).

<sup>20</sup> As effected in 1983 through reform of Article 115 of the Constitution and in 1991 through another significant reform, mentioned above.

<sup>21</sup> Mexico adopted the Spanish word *ayuntamiento* to designate the corporation that governs a municipality; such corporations are equivalent to municipal councils in other countries. *Ayuntamientos* include a municipal

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president or mayor and a varying number of aldermen or councilors, depending on the municipality's population size.

<sup>22</sup> To this end, during the twentieth century, the dominant political party made a great many reforms to Article 73 of the Constitution, in which the powers of the federal legislative branch are established.

<sup>23</sup> *Jurisprudencia* No. LXXVII/1999, Approved on 28 October 1999, by Mexico's Supreme Court, published in "Semanario Judicial de la Federación y su Gaceta, tomo X, Noviembre 1999."

<sup>24</sup> See Article 105 of the Constitution, which gives rise to a special regulatory law that governs proceedings in these types of cases.

<sup>25</sup> Jorge Vargas, "The Rebirth of the Supreme Court of Mexico: An Appraisal of President Zedillo's Judicial Reform," *American University Journal of International Law and Policy* 11 (Spring 1995): 295-341; Michael Taylor, "Why Do Rule of Law in México? Explaining the Weaknesses of Mexico's Judicial Branch," *New Mexico Law Review* 27 (Winter 1997): 141-66.

<sup>26</sup> See Article 40 of the Constitution.

<sup>27</sup> Bicameral discussion for approval of bills or decrees is provided for in Article 72 of the Constitution.

<sup>28</sup> Compare the United States Constitution, which requires revenue bills to originate in the House of Representatives and treaties to be ratified by the Senate.

<sup>29</sup> However, under Article 104: "Whenever such controversies affect only the interests of private parties, the regular local judges and courts of the States, or the Federal District and Territories may also assume jurisdiction, at the election of the plaintiff."

<sup>30</sup> See Article 97 of the Constitution.

<sup>31</sup> Compare Article IV, Section 1, of the Constitution of the United States of America.

<sup>32</sup> However, in contrast to the United States, where legalization of homosexual marriages in one state might require recognition in other states, Article 4 of the Mexican Constitution stipulates that marriage may occur only between a man and a woman.

<sup>33</sup> The federal Constitution does not provide for delimitation of the federal and state powers to establish taxation but follows a complex system, the basic premises of which are (1) concurrent taxation by the federation and the states in the majority of revenue sources (Arts 73, Part VII, and 124); (2) limitations on the levying powers of the states by expressly and concretely reserving designated matters to the federation (Art. 73, Parts X and XXIX); and (3) express restrictions on the states' levying powers (Arts 117, Parts IV-VII, and 118). 310/953/2°. *Construcciones Alpha, S.A. y coags.* 3 June 1954. 346/954/2°. *Sindicato de Trabajadores de la Concepción Excavación, etc., de la República Mexicana y coags.* 5 July 1954. 2736/953/2°. *Reynaldo Schega y coags. (acumulados).* 27 August 1954, *Jurisprudencia, Quinta Época, Appendix to Volume CXVIII, p. 1026.*

<sup>34</sup> See Article 117 of the Constitution. In other countries, these might be called capital investments.

<sup>35</sup> The most recent support program was implemented in 1995 due to the financial crisis of that year.

<sup>36</sup> The power to approve the spending budget is not bicameral; it is an exclusive power of the Chamber of Deputies under Article 74 of the Constitution.

<sup>37</sup> The *Recaudación Federal Participable* (RFP) is defined in Article 2 of the *Ley de Coordinación Fiscal* (Fiscal Coordination Act) as all federal taxes, less refunds owed to those who paid these taxes, as well as (1) additional taxes and additional or extraordinary rights for petroleum and (2) direct contributions and incentives paid to the subnational governments for their administrative collaboration respecting federal contributions.

<sup>38</sup> Article 37 of the Constitution establishes the possibility of Mexicans having dual nationality once certain requirements of the regulatory law have been fulfilled.

<sup>39</sup> See also Caroline Beer and Neil J. Mitchell, "Democracy and Human Rights in the Mexican States: Elections or Social Capital?" *International Studies Quarterly* 48 (June 2004): 293-312.

<sup>40</sup> The Swedish word *ombudsman* is the generic term used in many countries to refer to the representative, commissioned or mandated by the government, to hear complaints regarding violations of human rights and, with distinct differences in each country, usually to make recommendations to the other authorities on how to proceed.

<sup>41</sup> The first state to have such a body was Guerrero.

<sup>42</sup> Source: *Subdirección de control e información legislativa, Congreso de la Unión.*

<sup>43</sup> Municipal government enhanced its autonomy through the reforms to Article 115 in 1983 and 1999.

<sup>44</sup> See Article 39 of the Constitution.

<sup>45</sup> Source: *Subdirección de control e información legislativa, Congreso de la Unión.*