

# **MEXICO**

*Expert*

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## I. GENERAL QUESTIONS

### 1. How is the federation formally called (regional, federal state, other...)?

The official name of the Mexican State is “Mexican United States”. This expression is used in several articles of our Constitution (among them art. 1<sup>st</sup> and 2<sup>nd</sup>). On the other hand, in article 40 of the General Constitution defines the Mexican State as a federal, democratic and representative Republic (República representativa, democrática y federal).

### 2. Since when has the power been decentralized in your federation? Was the decentralization established in its origins or in a later time?

The federal State was adopted in our country since the origins of our life as an independent nation-State. Therefore, if the independence from Spain was achieved in 1821, it was in 1824 that the first Mexican constitution appeared, which adopted the federal form.

### 3. Has decentralization been formally abandoned or practically inoperative in any historical phase?

In the troubled Mexican XIX century, the question of the federal form was a violent dispute matter. In 1836, for example, a centralist constitution was adopted, which abolished the federal scheme. But, in 1857 federalism came back with the 1857 constitution. The French invasion and Maximilian`s Empire, once again, abolished federalism, which resurged with the restoration of the Republic and the validity of the 1857 constitution, in 1867.

### 4. Which are the deep reasons in the adoption of a politically decentralized system?

During the last stage of the colony, several administrative changes took place, which were the origin of the actual Mexican federative entities. The borbonic reforms of late XVIII century created the intendancies, which responded to an administrative reform, which, through certain decentralization, intended to improve the management of the Spanish colonies in America. Afterwards, under the life of the Cadiz Constitution, the provincial deputations (diputaciones provinciales) were created which also contributed to the formation of a political identity of their own and a sphere of autonomous self-decision taking from the center. When the rupture from Spain came, these local forces were strengthened and demanded the federal form as a condition to remain within the same nation-State.

### 5. Could you point out the main phases of the system and the main characteristics?

- A. Origin stage: from the 1824 constitution. This constitution was valid until 1836, when the “Seven Constitutional Laws”, with centralist tendencies, were issued.
  - a. The 1824 constitution established a federal system based in “States” and “territories” of the federation.
  - b. A specific power distribution formula was not established (like the ones adopted after as we will see).
  - c. Bicameralism was established, with a Chamber of Representatives (Diputados) and one of Senators
  - d. The residence of the federal powers would be defined by the General Congress, established on a district in which Congress would exercise the attributions of legislative power of a State.
  - e. A President of the Mexican United States was foreseen, as holder of the federal executive power; and a federal judicial power was created, composed by a Supreme Court of Justice, circuit courts and district courts.

- B. Consolidation stage: After the anarchy that prevailed during the 40's decade of the XIX century, finally the federal form of State was reestablished with the 1857 constitution. The restoration of the Republic in 1867 kept this constitution valid until 1917. From 1867 several political happenings lead to the dictatorship of general Porfirio Diaz, who remained in power for more than 30 years. Contrasting the federal form stated in the constitution, Diaz exerted power in a centralized and authoritarian way. Likewise, the general constitution was reformed in several occasions, to "federalize" powers that used to belong to the federative entities (ex; industrial property, emigration, immigration, interior commerce, general health),
- The 1857 constitution established a federal system based in "States" and "Territories".
  - A residual power formula was established in favor of the states (Art. 117. The powers that are not expressly given by this Constitution to federal functionaries, are understood as reserved to the States.)
  - Originally, the 1857 constitution didn't establish the Senate. Nevertheless, the second chamber was reestablished with a constitutional reform that came in force in 1874.
  - A "Federal District" was expressly foreseen, which would be the residence of the federal powers. But Congress kept the power to change this residence.
  - A President of the Mexican United States was also foreseen, as head of the federal executive power; and federal judicial power was also created, composed by a Supreme Court of Justice, circuit courts and district courts.
- C. Post revolutionary stage: after the Mexican Revolution (1910-1917) the 1917 constitution was issued, still valid in Mexico until now, with a great number of reforms. This constitution repeats, in a general way, the characteristics of the federal scheme of the 1857 constitution. Likewise, even though the dictatorship of Diaz ended in 1910, a centralized political system surged, in which the President of the Republic had greater powers and influence over local politics, through a binomial Presidency-PRI.
- The 1917 constitution also established a federal system based on "States" and "Territories" and a "Federal District".
  - The residual powers formula in favor of the states was kept ("Art. 124. The powers that are not expressly given by this Constitution to federal functionaries, are understood as reserved to the States.")
  - The bicameral scheme was conserved, with a Chamber of Representative (Diputados) and a Senate.
  - A "Federal District" was expressly foreseen, which would be the residence of the federal powers, and Congress kept the power to change this residence.
  - A President of the Mexican United States was also foreseen, as head of the federal executive power; and federal judicial power was also created, composed by a Supreme Court of Justice, circuit courts and district courts.
  - For the first time in Mexican constitutionalism, a specific constitutional base for municipal organization was established (article 115).
6. **How many territories or main territorial communities compose the federation? Do they all have the same nature (for instance, states) or do they have different nature and position (for example, states, federal capital, colonial lands, communities with a specific regime of autonomy)?**

Today, Mexico has 31 states and one Federal District. All 31 states have the same nature y the same constitutional statute. The Federal District has its own constitutional statute, different to the states`.

7. **Do they have singular features (for historical, linguistic, geographical, political, legal or economical reasons)? Do these singular features have political or legal consequences? In**

**other words, how have the differences between the main territorial communities been approached from the perspective of uniformity/diversity or asymmetry/symmetry?**

Even though the human and physico-geographical elements are not equal in the States of the Mexican federation, until now those differences haven't been considered by Mexican constitutionalism so pronounced to justify differential constitutional treatment. The constitutional statute of all States of the Union is exactly the same.

## **II. CONSTITUTIONAL LAW**

**1. Do you have a written Federal Constitution? What is the procedure for its elaboration, ratification and amendment? To what extent can states participate in the process of elaboration, ratification, or constitutional amendment? Which have been the most important amendments or the main constitutional phases until now?**

Mexico has a written federal constitution. There is no procedure foreseen by the constitution to elaborate and approve a new constitution. But a procedure for amendments and reforms of the constitutions is foreseen. To achieve such addition or reform, the vote of two thirds of the present members in each chamber of the Union Congress and, in addition, the approval of the majority of the States' legislatures. The constitution does not determine who is entitled to present the initiatives to reform the constitution. But, in the practice the rule of article 71 of the constitutions, which refers to legislative procedure, has been applied. According to article 71, it is understood that the President of the Republic, the representatives (diputados), the senators and States' legislatures are entitled to present initiatives of constitutional reform before Congress.

The Mexican constitution of 1917 has experienced more than 400 reforms or additions. This makes it very hard to resume in a few lines, which have been the more important constitutional changes or stages.

**2. Do you have any complementary constitutional federal rules? If so, which are the most important? Are "constitutional conventions", namely, unwritten binding agreements or rules of conduct, recognized in your system? Could you mention the most important?**

The Mexican juridical system has laws that regulate constitutional articles. There are doctrinal disputes over if these laws have a superior hierarchy, or have the same hierarchy that ordinary laws issued by the Congress of the Union, it must be said that formally, the procedure for their discussion and approval by Congress is exactly the same to any other federal law.

The following are considered within these regulatory laws: Regulatory Law of articles 103 and 107 of the Political Constitution of the Mexican United States (Ley de Amparo); Regulatory Law of fraction V of article 76 of the General Constitution of the Republic; Regulatory Law of fraction XIII Bis of Part B of article 124 of the constitution, referring the power of Congress to issue rules to determine the relative value of foreign coin; Regulatory Law of fractions I and II of article 105 of the Constitution; Regulatory Law of article 27 of the constitution regarding petrol; Regulatory Law of article 27 of the constitution regarding nuclear matters; Regulatory Law of article 5<sup>th</sup> of the constitution, regarding professional exercise in the Federal District; Regulatory Law of railroad service.

Besides, the Mexican system does not recognize what in other countries is known as "constitutional conventions".

**3. Are there any written state constitutions? What is the procedure for its elaboration, ratification and amendment? To what extent can the federation intervene in these procedures? Could any federal organism provisionally suspend some of their provisions?**

**Are state constitutions bound by federal rules other than the Federal Constitution? If so, which are they?**

Each State of the Mexican federation has a written constitution. The elaboration, modification or reform procedures are not regulated by the General Constitution, by means of which the regulation of the matter is done by State's constitutions. Generally, it can be affirmed that to reform local constitutions the vote of approval of two thirds of the present members of the corresponding legislature is required.

Regarding the form, the federation has no intervention in the reform or addition procedures of local constitutions. Nevertheless, regarding the form and content the General Constitution establishes several prescriptions, to which states must comply, which can be found in articles 115 and 116 of the constitution. As example, we can mention the obligation of States to adopt a republican, representative and popular government and municipal organization (art. 115). We can also mention the obligation to divide state public power for its exercise in Executive, Legislative and Judicial; the obligatory six year term for governors, with no reelection possibility; the prohibition of immediate reelection of legislators; establishment of relative majority and proportional representation principles to elect the representatives in local legislatures, within many others (art. 116).

If a State approves a reform to the local constitution, which is contrary to those principles and criteria, established in articles 115 and 116 of the General Constitution, there is a way to challenge the unconstitutionality of such reform, through the mechanism of "constitutional controversy". Established in fraction I of article 105 of the General Constitution, the constitutional controversy allow the declaration of the annulment of a reform of a local constitution because it is contrary to the General Constitution. The Nation's Supreme Court of Justice hears and decides on constitutional controversies.

On the other hand, article 76 fraction V of the General Constitution establishes an exclusive power of the Senate to declare, when all constitutional powers of a State have disappeared, it is time to appoint provisional Governors, who must call to elections according to the laws of the State. In such case, the Senate will make the appointment of the Governor from a tern proposed by the President of the Republic with the approval of two thirds of the present members, and during the recesses, by the Permanent Commission of the Union Congress. The final part of fraction V of article 76 establishes that this disposition will rule only in case local constitutions don't foresee another solution.

It is not strange that local constitutions foresee a different solution to that of article 76 fraction V. For example, the Constitution of Veracruz foresees a different procedure in its article 83. The Constitution of Chihuahua does the same in articles 33 to 35 and Campeche does the same in articles 109 to 113.

Finally, we must mention that state constitutions are not subjected to other federal laws, other than the General Constitution.

### **III. CONTENTS OF THE FEDERAL CONSTITUTION**

**1. Does the federal constitution expressly recognize federalism or political decentralization as a constitutional principle or value?**

Yes. Article 40 of the Constitution expresses that the will of the Mexican people is to constitute in a federal, democratic and representative Republic.

**2. Does the federal constitution design a map of the territorial organization? In other words, does the Federal Constitution identify or enumerate the territories and/or the communities that conform the federation?**

Yes. Article 43 of the constitution names the parts that integrate the federation. This article contains a list of the 31 States and the Federal District.

**3. Does the federal constitution enshrine the autonomy of the states? If so, in which way?**

Yes. The mentioned article 40 of the constitution says that the Mexican federal Republic is composed of free and sovereign States in all that concerns their interior regime, but united in a federation established according to the principles established in the General Constitution.

In consonance with the idea that the States are “free and sovereign” regarding their interior regime, article 41 of the constitution indicates that the people exert his sovereignty through the Powers of the Union, in the cases of their competence, and by the States, in what concerns their interior regime, in the terms respectively established by the Federal Constitution and those of the States, which in no case may contravene the stipulations of the Federal Pact.

**4. Does the federal constitution recognize states or main territorial communities the capacity to federate among them? If so, can they establish links or celebrate conventions among them without the participation of the federation?**

States cannot federate among themselves. In fact, fraction I of article 117 of the constitution prohibits States to celebrate alliances, treaties or coalitions with other State (“neither with foreign countries”).

On the other hand, the possibility for States to establish common structures exists without the participation of the Federation, and to celebrate conventions among themselves. Nevertheless, such possibility is more theory than real. During decades, the highly centralized federal system we’ve had, inhibited horizontal relations among the States that could leave the federal government outside. Besides, since the federation accumulates the great majority of the legislating powers in many diverse matters, in practice there are almost no matters for conventions between federative entities that could be celebrated with no federal intervention. Finally, since the financial power belongs overwhelmingly to the federation, it is hard for States to take initiatives through conventions among themselves, which leave the federal government a side (and its financial resources). The exclusion of the federation would mean the lack of resources to take the actions foreseen in the respective convention.

**5. Does the federal constitution fully define the whole system of decentralization, or is this system thought to be developed to a great extent by future federal provisions? If so, which are they?**

In many articles, the General Constitution defines the decentralization regime on a more or less complete form. Article 124 contains the clause of residual powers in favor of the States; article 40 determines that the Mexican State in a federal Republic, based in “free and sovereign” states; article 41 widens this last definition; article 73 defines the powers that of the federal Congress; article 115 establishes the bases of organization that must be followed by local constitutions so as the bases regarding municipal organization; article 116 establishes more organization bases that must be followed by local constitutions; articles 117 and 118 establish prohibitions for States; article 122 establishes the organization rules for the Federal District.

It must be said that besides this constitutional articles that are central to define the decentralization regime of the Mexican federal system, there are other constitutional dispositions that are also relevant to define the system, but it would be prolix to expose them here. I will only mention, on a general form, the existence of constitutional norms that establish the “concurrence” of the federation, states and municipalities regarding certain matters (such as education, health, human settlements, ecologic balance, sport, to mention some of them).

**6. Does the federal constitution allow the exercise of the right to self-determination or the separation of states or other territories?**

The right to self-determination or to the secession of the States is not permitted by the Constitution.

#### IV. INSTITUTIONAL ISSUES

**1. Do states participate in the election, appointment or cessation of the federation's chief? Is there any other relationship between this figure and states or main territorial communities? Which one?**

States do not participate directly in the election or cease of the Head of the Federal State.

On the other hand, the relations between the head of the federal State with the States is one of the powers that the first has as titular of the executive federal power. This leads, for example, to the subscription of tax coordination conventions, coordination conventions regarding health, human settlements, education, etc,

**2. Is there any Senate or second legislative assembly that represents the states? If so, does it exercise its representative role effectively? Why? What functions does the Constitution attribute to this legislative assembly? How are states represented in this chamber? Do they have the same kind of representation on the basis of the number of votes or seats? Does any state have a special position in this chamber (for instance, exclusive initiative or veto prerogatives, etc.)? How representatives are organized in this second chamber, according to their territorial origin or to their political groups?**

In Mexico a Senate exists, that on a traditional manner has been considered as a chamber of State representation of the federal level. Nevertheless, and despite the fact of political rhetoric and part of the doctrine follows this traditional conception, an important sector of the actual constitutional doctrine considers that the essentially “federalist” character of the Senate has been blurred. Many factors have contributed to this: first, the election system of the senators doesn’t involve local legislatures (as it did before); senators are now elected on a universal election and in a direct form. Second, 32 senators are elected through the system of proportional representation, from lists voted in a single plurinominal national circumscription; this senators have no electoral bond to any State. Third, the requisites to become senator are exactly the same for representatives, except for the minimum age (25 years at the day of the election for Senators, 21 for representatives (diputados)).

Regarding the powers of the Senate, we may cite the following:

- A. Participates in the ordinary legislative procedure next to the Chamber of Representatives. A law project becomes law when both chambers approve it. Neither one prevails over the other one.
- B. Senate does not participate in the approval of the Spending Budget of the Federation, but does in the approval of the Income Law.
- C. The approval of two thirds of the members of the Senate who are present (and also of the lower chamber) is necessary for a constitutional reform (besides, the vote of the majority of the local legislatures).
- D. The exclusive powers (not shared with the Chamber of representatives) are:
  - a. Analyze the federal Executive’s foreign policy and ratify the international treaties and diplomatic conventions celebrated by the Union’s Executive.
  - b. Ratify the appointments that the Executive makes of General Attorney of the Republic, general consuls, superior employees of Treasury, cornels and other superior chiefs of the National Army, Navy and Air Force.
  - c. Authorize the Executive to allow the departure of national troops outside the country and the stay of other countries fleets, for more than a month, in Mexican waters.
  - d. Give its consent so the President of the Republic may dispose of the National Guard outside their respective States, fixing the necessary force.

- e. Declare, when all constitutional powers of a State have disappeared, that it is time to appoint a provisional Governor, who will call to elections according to the constitutional laws of the State. The Senate will make the appointment of Governor from a term proposed by the President of the Republic with the approval of two thirds of the present members, and during the recesses, by the Permanent Commission of the Union's Congress.
- f. Erect Resolve the political questions that may arise between the powers of a State when one of them occurs with that fin to the Senate or when derived of such question the constitutional order has been interrupted, mediating an armed conflict.
- g. Erect in sentence Jury to know in political judgment of the faults or omissions committed by public servers.
- h. Designate the Ministers of the Nation's Supreme Court of Justice, from a tern proposed by the President of the Republic, so as granting or denying its approval to their requests for license or renounces.
- i. Appoint and remove the Chief of the Federal District in the cases foreseen by the General Constitution.

128 members compose the Senate. 64 of them are elected in each of the 31 States and in the Federal District (two for each State and two for the F.D.), through a system of relative majority. 32 are elected (one in each State and one in the F.D.) as senators of the "first minority" (the seat corresponds to the party that in the corresponding State obtained the second place in votes). Finally, 32 senators are elected by the proportional representations system, from the lists voted in a single national plurinominal circumscription.

All States have the same representation in number of seats and in vote terms. No State has a special position in this Chamber.

Finally, the representatives of the States are grouped not by their territorial origin but in "parliamentary groups", this means, by their political party identity.

**3. Do states have legislative initiative over federal subject matters? Is their consent required for the enactment of certain federal acts? In other words, do they have a veto? If so, what kind of veto?**

State's legislatures have power to present law initiatives in matters of federal competence, according to article 71 of the constitution. Their consent is not necessary for the approval of federal laws. They don't have the right to veto any federal law.

**4. Is there any neutral judicial court (Constitutional Court, Supreme Court, etc.) that protects the allocation of powers between the federation and the states? Do states participate in the process of designation of its members? How do you assess the influence of this court upon the current system of political decentralization? Broadly speaking, could you tell whether its case law has been most favorable to the interests of the federation or the states? Are there any subject matters or historical phases in which this phenomenon occurred? Can ordinary lower courts interfere in conflicts of powers between the federation and the states?**

The neutral jurisdictional organ that guarantees the distribution of powers between the federation and the States (and the Municipalities) is the Nation's Supreme Court of Justice. The States can't participate in the appointment of the Ministers of the Court (except is we consider that the Senate is a territorial representation instance, which, as pointed above, is a debated subject).

During the stage of the political system that came after the Mexican Revolution, dominated by the binomial President-PRI that stood for at least until the year 2000, we can talk of a certain tendencies of the Supreme Court in favor of the federation. Proof of this is that interpretation of the Court that dated in 1954, which practically gave the federation unlimited tributary powers, when they allowed the

federation to tax any possible base, independently and over the power distribution rule established in article 124 of the constitution, according to which all that is not expressly allocated by the Constitution to federal organs, is competence of the states.

This trend varied towards a more balanced attitude at the beginning of the decade of 1990. In 1991, for example, the Court admitted, against its traditional interpretations, that municipalities were a “power” and as such could exercise the constitutional controversy action against states of the federation for invasion of their competence sphere. In 1994 a constitutional reform took place to reform and strengthen the constitutional defense mechanisms that we call “constitutional controversies”, at the same time important steps were taken towards the strengthening of the Supreme Court as a constitutional court (the number of Ministers was reduced to 11, and a Federal Judicature Council was created).

Today, the Supreme Court is seen as a federal organ with more independence from the influences exerted both by the federal Executive and Legislative Powers, and this perception as an impartial arbiter has made that, more regularly, States and (mostly) municipalities use constitutional controversies

Lower jurisdictional organs can’t intervene in competence conflicts between the Federation and the States. These conflicts are reserved for the constitutional defense instrument called “constitutional controversy”, which is judged by the Plenary of the Nation’s Supreme Court.

**5. Which legal mechanisms do the federation and the states have to protect their powers? Are they recognized only against legislative acts, or against regulations and administrative decisions or omissions as well? Could you tell whether the safeguards and procedural position of the federation and the states are symmetrical? In other words, can the federation challenge state acts before a court? And vice-versa? Has the federation a veto against state legislative acts, regulations or decisions? And the states against the federation? Can a state bring a conflict of powers against another state before a court? In each state, which is the legitimate organism –legislative, executive, etc.- to bring judicial actions to protect state powers? Can local entities or municipalities bring judicial actions to protect their autonomy against federal or state acts or rules? Are there any other institutions or individuals legitimate to challenge federal or state legislative acts, regulations, rules or decisions on the basis of a conflict of powers?**

The mechanism for States to defend their competences are the “constitutional controversies”, established in fraction I of article 105 of the constitution, The action belongs to the constitutional justice system, and heard and resolved in a single instance by the Plenary of the Nation’s Supreme Court of Justice.

In a general way, it can be said, that the constitutional controversy action proceeds against general dispositions (laws and regulations) and against acts of the Federation, States, the Federal District and the municipalities that violate the competence distribution system established by the General Constitution, but not for administrative omissions (the controversy is also possible for controversies between the federal Executive and Legislative; or between the chambers of the Union’s Congress and the federal Executive).

Likewise, in constitutional controversies, the guarantees and process situation of the Federation, States, the Federal District and municipalities are symmetrical, due to their possibility to challenge general dispositions and acts of the others.

On the other hand, the Federation does not dispose of a suspension power or veto of state laws, regulations or acts; the inverse situation is not possible.

Another hypothesis set by fraction I of article 105 of the constitution is the conflict a State may pose against another State before the Supreme Court of Justice, due to a competence conflict (there are other hypothesis, for example, a municipality against the federation of against a State; of the Federal District against the Federation, a State or a Municipality; two different municipalities against each other).

Article 11 of the Law that Regulates fractions I and II of article 105 of the constitution, adopt an open formula relating the process standing within constitutional controversies, by stating that “The plaintiff, the demanded and, in such a case, an interested third party must appear in trial through the functionaries that, in their terms of the ruling norms, are empowered to represent them.” This means that it’s local constitutions and laws who will determine the organs and specifically which functionaries are legitimated to exercise constitutional controversies in defense of the competence sphere of States and Municipalities.

As indicated above, municipalities also have active standing to initiate constitutional controversies, to defend the competence sphere defined in article 115 against federal and state norms and acts.

Finally, according to fractions II and III of article 103 of the constitutions, citizens may challenge authority acts through the amparo trial, either laws regulations or acts, both state and federal, which contravene the constitutional power allocation scheme, if it causes a personal grief.

**6. Who is in charge of the official appointment of the main state authorities (the chief of the state, government, parliament or legislative assembly, judicial power of the state, etc.)? Does the federation intervene in the process of appointment?**

State governors and the Government Chief of the Federal District are elected through universal and direct vote of the electors of the territorial entities. The majority of each of the corresponding legislatures elects the President of local legislatures. Finally, the designation of the presidents of the states` and Federal District superior courts of justice is made through procedures that generally involve a proposal from the governor and the approval of the state legislature.

The Federation does not participate in any of these procedures.

**7. Does the judicial power follow the allocation of powers? In other words, are there federal and state courts with jurisdiction to solve federal and state cases respectively? Regarding state courts, is the appointment of judges, magistrates and administrative staff a state power? Do states enjoy legislative power to regulate these issues? Is there any body of self-government of the judicial power? If so, which is its composition? What functions does it have? Who is responsible for the provision of material resources to the administration of justice (federation or states)? Which are the criteria for the allocation of resources? Can federal courts review state court's decisions? In what circumstances?**

Mexico has a “double jurisdiction” judicial system. In one side we have federal courts, that solve matters of federal jurisdiction and who are in charge of constitutional justice; on the other side we have state courts, which solve matters of state jurisdiction.

The competence conflicts between courts of the same state are solved by the state’s superior court of justice. But the competence conflicts between Federal Courts, among them and with State or Federal District courts; between those of different States, or between State’s and the Federal District, are solved by the Sections of the Nation’s Supreme Court of Justice (there are two Sections), as set by fractions VI and VII of article 21 of the Organic Law of the Judicial Branch of the Federation.

Selection and nomination of judges, magistrates and auxiliary personnel of state courts is exclusive competence of States, according to the rules established in the constitution of each of the States.

Generally, the nomination of the magistrates of the State's Superior Court of Justice depends from the governor who requires from the approval of the legislature. Regarding the nomination of first instance judges, the general trend is the designation by state judicature council. And regarding auxiliary personnel, generally it is the judges who do the corresponding designations. State's legislatures have powers to issue organic laws for their judicial branches, which establish the specific rules to do this kind of designations.

There is self-government organ of the federal judicial branch, named, "Judicature Council". 7 members compose this organ. One of them is the President of the Nation's Supreme Court of Justice (who also presides the Council). Three members are designated by the Plenary of the Supreme Court of Justice, by majority of at least eight votes, between the magistrates of circuit and district courts (all of them are part of federal courts). The Senate and the last one by the President of the Republic designate two members. The functions of the Judicature Council are administrative and disciplinary. It solves on designation, adscription, ratification and removal of circuit magistrates and district judges. Likewise, this organ establishes formation and actualization bases for federal judicial functionaries, and for the development of the judicial career.

In the local level, the trend of local judicature councils is being imposed, with similar functions to the federal council.

The provision of material resources to Federal Justice Administration correspond to the other federal branches, the President of the Republic and Union's Congress, through designing and approving the Federal Spending Budget. Regarding local judicial branches, such provision corresponds to the governor and local legislatures through the state's spending budget.

The criteria for resource allocation for the judicial branches are not fixed. This means, there is no obligation to allocate a determined percentage of the federal or state budget. The allocation depends fully on political negotiation.

State's jurisdictional organs judicial resolutions may be revised by federal judicial organs (specifically by Circuit Collegiate Courts), through the "direct amparo" or "amparo cassation". All the resolutions of the states superior court of justice relating state competence matters, in application of state law (for example, a civil code or a penal code), may be challenged by means of a direct amparo before a Circuit Collegiate Court (which is federal). As a matter of fact, this kind of amparo has become a third instance by which federal courts may revise the decisions of state courts.

**8. Are there others mechanisms for state participation in federal institutions or functions? Do states participate or are represented in relatively autonomous federal organisms, regarding, for instance, citizen's rights or intervention in the economy (independent agencies with regulative, financial and arbitration powers, etc.)?**

States, through their legislatures, may participate in the constitutional reform process. To make a constitutional reform, the vote of two thirds of the present members of each chamber of the Union's Congress is required, plus the approval of the majority of state's legislatures. Other than this intervention there is no other significant participation for States in federal institutions or functions. And there is no recognized participation or presence in federal autonomous organisms, but there is certain participation in consultation organs that have been created to coordinate certain matters, as public safety or civic protection. So, there is a National Public Safety Council and National Civic Protection Council in which state governors participate.

**9. Can states freely convoke a referendum regarding political or legal measures? Are there any constraints? In other words, does the federation have any power over this field?**

Some territorial components have established semi direct democratic mechanisms. This is the case of the Federal District, Aguascalientes, Baja California, Baja California Sur, Colima, Chiapas, Chihuahua, Guerrero, Jalisco, Morelos, Puebla, among others. Generally, the mechanisms that have been established in their constitutions are the plebiscite, the referendum and the popular initiative. There are no Federal restrictions on this subject matter, of course, if these mechanisms remain within the State's competence sphere.

#### **10. Is there any pro-state provision concerning symbolic issues (flags, protocol, languages, etc.)?**

The General Constitution of the Republic does not have any explicit or specific prevision in favor of States regarding flag, anthem, languages, etc.,

### **V. THE ALLOCATION OF POWERS**

#### **1. Is the system of allocation of powers mainly enshrined in the Federal Constitution? Is it secured by the Federal Constitution?**

The power distributions system is principally established in the federal Constitution, and it is guaranteed through constitutional justice instrument called "constitutional controversy" (described above). This instrument is established in general terms in article 105 of the constitution.

#### **2. Which is the basic design of the system (a list of federal powers, a list of state powers, a double list, other solutions)?**

The base of the system comes from article 124 of the constitution, which establishes that: "The powers that are not expressly given by this Constitution to federal functionaries, are understood as reserved to the States". This is a formula of residual powers in favor of the States. Nevertheless, besides this general principle of power distribution, there are other constitutional norms that establish a different distribution regime for certain subject matters.

Seen in an isolated manner, the formula of article 124 establishes a rigid power distribution system. According to that formula, typical in "dual federalism", is seems to configure a system in which it is possible to clearly determine if a power corresponds to the federation or to a federative entity. Such rigidity comes form, as explained by several authors, from use the constitution makes of the adverb "expressly", in virtue of which it must be understood that a power either belongs to the federation or to the federative entities.

Nevertheless, in fact the Mexican system is a lot more complex, due to the establishment by the Constitution of a series of principles that define powers as follows: powers given to the federation<sup>1</sup>; powers given in an explicit or tacit way, to federative entities<sup>2</sup>; powers prohibited to the federation<sup>3</sup>; powers prohibited both absolutely (art. 117) or relatively (art. 118) to federative entities; coincident powers<sup>4</sup>; coexisting powers<sup>5</sup>; aid powers<sup>6</sup>; and finally, powers given by the jurisprudence of the Nation's Supreme Court of Justice.<sup>7</sup>

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<sup>1</sup> Those listed in article 73 of the constitution.

<sup>2</sup> As the express power to regulate family patrimony, established in fraction XVII of article 27; or in a tacit way to give them a Constitution based in article 41 of the constitution.

<sup>3</sup> As that of article 24, prohibiting the issue of laws establishing or prohibiting any religion.

<sup>4</sup> Both the federation and the federative entities may exercise, and may exist in a wide version (when both the federation and the states may regulate the subject matter in equal conditions, as the treatment of infractions of minors, according to paragraph 4 of article 18 of the constitution) or in a restricted way (when either the federation or the states are given powers to establish the bases or criteria for power division, as would be the case of the power given to the Union's Congress to issue laws to unify and coordinate the service of education between the federation, the states and the municipalities, according to fraction VIII of article 3 and fraction XXV of article 73 of the constitution).

In virtue of what has been pointed, we must recognize that Mexico has a complex power distribution system between federation and states, that allows the coordination, the overlapping, the coexistence and coincidence between the two terms of the equation of the federal system. Even though, the matrix of the scheme is still article 124 of the constitution and its residual reserve in favor of the federative entities.

**3. Is there any constitutional provision concerning residual powers, namely, "new" subject matters, not allocated either to the federation or to the states by constitutional law? If so, where are allocated the residual powers (federal or state level)? Is it actually effective? Are there any rules or principles that presume that the power is vested in a certain level of governance?**

As mentioned above, article 124 of the constitution establishes the following rule on residual powers: the powers that are not expressly given to the federation are understood to belong to the States.

Despite this favorable prevision for States, we must mention the fact that the sphere expressly given to the federation is considerably wide. In fact, many "new" powers have been consistently incorporated to the list of powers expressly given to the federation. This list is found, principally, in article 73 of the General Constitution. And this article happens to be the one with more reforms since 1917. At the moment, article 73 has 45 reforms or additions.

**4. Is there any rule that gives preference to federal law in case of conflict with state law? If so, has it been actually applied?**

There is no rule for the prevalence of federal law in case of conflict, as in the Fundamental Law of Bonn. Nevertheless, doctrine and jurisprudence have discussed the point, in relation with article 133 of the constitution, which establishes the hierarchy of norms in the Mexican juridical system. This article indicates that the Constitution, the laws of the Union's Congress that emanate from her and all Treaties that are in accord with the constitution, will be the Supreme Laws of the Union. If we understand that "the laws of the Union's Congress" are federal laws, then we must understand that they also have a supreme character, and that they prevail over state's laws. But if we consider that "the laws of the Union's Congress" are certain laws with constitutional rank, different from ordinary federal laws, the consequence is that the latter and state laws have exactly the same rank and hierarchy, by which a conflict between them can only be understood in terms of a competence conflict between the federation and the states.

Doctrine and jurisprudence are not well defined and have hesitated between these two interpretations.

**5. Are there other general rules? Which are they?**

Besides the mentioned rules in point 2 of this section, there are no other rules regarding the allocation of powers between federation and States.

**6. Does the Constitution allow making more flexible the allocation of powers by mechanisms other than constitutional amendment? In other words, can the federation, by itself, transfer or delegate powers to states? Through which mechanisms? What role did all those mechanisms play on the evolution of the federation? How have the decisions regarding the**

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<sup>5</sup> In which a part of the subject matter corresponds to the federation and the other to the states, as in general roads and highways, which correspond to the federation (art. 73 fraction XVI), which leaves states local roads.

<sup>6</sup> An example could be found in the power of state authorities to aid the federation in religion regulation matters according to article 130 of the constitution before the 1992 reform.

<sup>7</sup> Which has, for example, recognized the existence of "concurrent" powers to tax.

**material, economic and human resources to be transferred as a consequence of a transfer or delegation of powers been taken?**

The Mexican General Constitution allows the “relaxation” of the power distribution system by other ways than constitutional amendment, through the possibility for the Federation to transfer functions to States (and from States to Municipalities), as foreseen in fraction VII of article 116 of the constitution, through agreements. Likewise, fraction III of article 115 establishes the possibility for municipalities to celebrate agreements with the States so they will take temporary care of some of the public services that correspond to the municipalities, or to give or exercise them in coordination by the State and the municipality. The same scheme is established by fraction IV concerning contributions that originally belongs to municipalities.

This kind of agreements are common, for example, for tax matters, in States where the municipalities don't have neither the resources, the technical capability, nor the infrastructure to take care of the collection and administration of their taxes (mainly the tax on property). That is why, through the respective agreement, the municipalities transfer certain powers to the State, such as: a) registry of the contributor list; b) collecting and solving administrative appeals; c) functions of verification of the fulfillment of tax obligations; d) determination and liquidating taxes and rights; e) notifying and collecting; f) assistance to the contributor; g) valuing immovable.

**7. Has any subject matter been fully attributed to just one of the territorial levels of governance –federal or state-?**

There are subject matters wholly given to the federation, as electric and nuclear energy production; hydrocarbons exploitation; mail and telegraph services. Other public services are given exclusively to municipalities, such as water works, drainage, treatment and disposition of waste water; residues cleaning, collecting, transport, treatment and final disposition; markets; grave yards; slaughterhouse; streets, parks and gardens; public safety and municipal transit.

Anything that is not exclusive federal or municipal power is understood that belongs to the States. Nevertheless, there are subject matters in which concurrence has been established between the three levels of government, as we will see.

**8. Is the technique of "shared" powers recognized (both federation and states have legislative powers, although federal law takes precedence over state law in case of conflict)?**

The concurrent powers technique hasn't been recognized in our federal scheme in the same way as it has in the rest of the world's constitutional doctrine and jurisprudence (with the characteristic “displacement phenomenon). Nevertheless, the term “concurrent powers” is used in Mexico to refer to a situation in which the same subject matter is shared by the different levels of government, based in the rules established by a federal law. That is the case, for example, of subject matters like education, health, sport, environment and human settlements. As an example, we can quote the text, of article 73 fraction XXIX-G, who states that the Union's Congress has powers: “To issue laws that establish the concurrence of the Federal Government, of the governments of the states and the municipalities, in the sphere of their respective powers, in matter of environment protection and ecological balance restoration.” Similar redactions can be found for other matters mentioned above, known as “concurrent powers” but without the typical “displacement” of the “concurrent powers” as are understood in other federal States.

**9. Are there any subject matters in which legislative power is exclusively attributed to the federation, while executive power is attributed to the states? If so, is the regulative power regarded as legislative or executive power? Can federal legislation determine state administrative organization and practice?**

In the Mexican federal system there are no matters in which the Federation has only legislating powers and the execution corresponds to the States. Besides, federal legislation can't influence or configure the organization and administrative organization of the States.

**10. Are there any subject matters in which the federation can establish principles or basis for the state legislation? If so, has the federation made an extensive use of this power? Is there any mechanism to correct that situation?**

There are subject matters in which they may set principles, bases and directives for local legislation. This happens in subject matters that are object of "concurrent powers" (as this term is understood in Mexico, as explained in point 8 of this section).

This way, regarding education the Union's Congress has powers to issue laws aimed to distribute the social function of education between the Federation, the States and Municipalities, "to unify and coordinate education in the Republic" (art. 3, fraction VIII of the constitution).

Regarding health, a law of Union's Congress defines the bases and modalities of access to health services and establishes the concurrence of the Federation and the federative entities in general health (art. 4, third paragraph of the constitution).

For human settlements, Union's Congress has powers to "issue laws to establish the concurrence of the Federal Government, the States and the Municipalities, within their respective powers, in human settlements matters." (Article 73, fraction XXIX-C of the constitution).

In environmental matters, Union's Congress has powers: "To issue laws that establish the concurrence of the Federal Government, State and municipal governments, within their respective powers, for environment protection and ecologic balance conservation and restoration."

Regarding civic protection, Union's Congress has powers "To issue laws that establish the bases by which the Federation, States, the Federal District and the municipalities, will coordinate their actions in matter of civic protection". (Article 73, fraction XXIX-I of the Constitution).

In sport, Congress has powers to establish general coordination bases of the concurrent power between the Federation, the States, the Federal District and municipalities (article 73, fraction XXIX—J of the constitution).

**11. Does the federation have an own administrative organization on the state territory? How strong is that administration? In which fields does it act? Can the state administration exercise any federal power delegated by the federation? If so, are state administrative bodies hierarchically dependent of the federal administration? What mechanisms of review are reserved to the federation to secure that states correctly enforce federal law?**

The Federation disposes of an Administration of its own in State's territories. In each of them there is a "Federal Delegation" of each of the existing State Secretariats (federal). The weight of this "Delegations" is considerable in States. This is because of the reach of their attributions, the importance of the powers they exercise and the economic resources they manage.

In a generalization effort, we could say that "Federal Delegations" in the States have the following attributions: coordinate the actions and programs of the corresponding Secretariat in the State; inform of the advances and results of such actions and programs; elaborate diagnostics relating local problems; contribute to the actions the Federal Executive agrees with State's governments for State development; propose, opine and subscribe coordination agreements and conventions between the federations and State governments; grant permissions, licenses, authorizations of diverse type, and

their respective modifications, suspensions, cancellations, revocations or extinctions; organize and maintain registries and catalogues of diverse type.

Besides, State's Administration may exercise federal functions, but not under the form of delegation or commission of the Federation, but through conventions, which is permitted by fraction VII of article 116 of the constitution.

Maybe the most common example of this type of conventions comes in tax matters. This way, "administrative aid conventions" are usually signed between the federation, through the Secretariat of Treasury and Public Credit, and State's Governors, to the effect that the administrative functions of certain federal taxes, are made by the State (the taxes that are usually included in this conventions are the Tax of Revenues and the TVA, even the Special Tax on Production and Services and the Tax on Vehicles). In fact, the collaboration may reach the municipalities, due to a clause that established that the States, with the consent of the Secretariat of Treasury, might exercise the transferred faculties, totally or partially, through the municipalities.

States must exercise these faculties in the terms of federal legislation. Likewise, since this conventions don't mean there is hierarchic dependence of State's organs with the Administration, there is a relation by which they have the following obligations: inform the federation on the probable commission of tax offence; deposit the amount of federal taxes collected during the past month, each month, to the Treasury of the federation; render each month before the Federation, the "Verified Monthly Account of Coordinated Revenues"; and follow federal rules relative to fund concentration and federal property values.

The Secretariat of Treasury has the following attributions: intervene in any moment to verify the fulfillment of State's obligations; formulate law suits for tax offences; process and solve the revocation appeals presented by the contributors against definitive resolutions that determine contributions or accessories; interpose diverse appeals against resolutions that are adverse to fiscal interests (relative to coordinated revenues); and in an important way, exercise Planning powers<sup>8</sup>, Programming<sup>9</sup>, Normative<sup>10</sup> and Evaluation<sup>11</sup> of coordinates revenues.

Federal control is guaranteed; first, by the privation of the economic incentives suffered by the State that does not celebrate the convention or that, once celebrated, does not comply with it. Those incentives consist basically in percentages of the coordinated revenues, so as from the fines contributors commit. Second, conventions always establish that the Federation may take charge in a exclusive way any of the transferred functions through the corresponding convention, when the State does not comply with any of the stated obligations in it (with a previous written notification). Likewise, the State may stop cease to exercise some or several of the transferred attributions, to which they must do a written notification to the Secretariat of Treasury.

## **12. What are the general limits of state powers?**

The general limits for State powers are established in articles 117 and 118 of the General Constitution. Article 117 establishes absolute prohibitions. Among which we can point the prohibition to celebrate alliances, treaties or coalitions with other States of the Union, so as with foreign States. Likewise, States can't mint coin, issue paper money, stamps, stamped paper. Neither can they tax interior

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<sup>8</sup> This means to precise the priorities and objectives in matter of incomes and coordinated activities and establish the policy guidelines and the mechanisms for its execution.

<sup>9</sup> Implicates the definition of the process to determine the goals and control actions the State will do.

<sup>10</sup> Means make and issue dispositions regarding the administration of the coordinated incomes, such as instructive, procedure manuals and the operation, resolutions with general character and criteria.

<sup>11</sup> It is the process through which the Secretariat of Hacienda determines, the advance degree of each of the programs respecting the functions given to the State and its Municipalities, in income and coordinated activities matters.

commerce, or establish interior customs, nor establish fiscal contributions that carry tax or requisite differences by reason of the origin of national or foreign merchandises; and they can't contract direct or indirect obligations or credits with the governments of other nations, with foreign societies of particulars, or which must be paid in foreign coin or beyond national territory.

Article 118 establishes relative prohibitions, this is, activities that can't be made, except they have the consent of the Union's Congress. This kind of prohibitions are: establish taxes on tonnage, or other of ports, or impose contributions or rights on imports and exports; have permanent troops of war ships; make war by themselves to a foreign State.

### **13. In your opinion, what are the most important federal powers?**

First, I would mention tax powers, which give unlimited power for the federation to tax any possible tributary base, which are the axis of the federal financial power (and consequently political).

Second, powers of hydrocarbons, which give the Federation control over a strategic and considerable resource for incomes from petrol exports. We must also include the power in electric energy matters.

Third, Federal powers exercised through Congress legislation in important subject matters as: commerce, financial intermediations and services, work, nuclear energy, general health, federal offences, foreign investment, consumer protection, economic competence regulation, telecommunications, among many others.

### **14. In your opinion, what are the most important state powers?**

I believe the more important state powers are those referring to legislation in civil, civil process, penal and penal process matters.

### **15. Have any of these federal or state powers been extensively interpreted?**

Federal tax powers have been interpreted on a particularly extensive manner. The "unlimited tax power" in favor of the federation (which allows the establishment of taxes on any possible tributary base), is due to the interpretation that the Supreme Court has made of fraction VII of article 73 of the constitution, which states that Union's Congress has powers: "To impose the necessary contributions to cover the Budget". This has been interpreted in a sense that gives Union's Congress powers to impose all the contributions that are necessary to cover the Federal Spending Budget, even those that would be understood as state competence, if we stick to the residual power formula of article 124.

### **16. Does the Constitution provide the transfer of sovereign powers to regional or international organizations? Does it address this issue in the domestic legal system, taking into account the decentralized structure of the federation? Does it give the states the right to ratify international treaties or agreements? If so, in which conditions? How is the international responsibility of the federation addressed?**

The Constitution does not foresee the cession of sovereign powers to international organizations of world or regional ambit. Neither does it give the States the possibility to sign international treaties or agreements, all the opposite, it is expressly forbidden in fraction I of article 117 of the constitution.

Federal entities do not have juridical personality before the international community. Only the federation is and is obligated "outside" through federal organs like the federal executive and the Senate.

## **VI. LOCAL AND MUNICIPAL GOVERNMENT**

**1. Does the Federal Constitution recognize local or municipal autonomy? And the state Constitutions? If so, which term is it used to refer this autonomy? What substantially follows from this constitutional recognition?**

The federal Constitution does recognize municipal autonomy, in its article 115 (the terms used in the article are “Free Municipality”). State Constitutions also recognize municipal autonomy, they refer to this institution as “Free Municipality”, and they organize them under the regime established by the bases of article 115.

The contents that define the autonomy of the “Free Municipality” derive from article 115:

- a. Each Municipality will be governed by a city Council elected by popular direct election, composed by a Municipal President and the number of **regidores** and syndics that the municipal organic law in each state determines.
- b. The powers that the Constitution grants to the municipal government are exercised by the City council in an exclusive way and there will be no intermediate authority between them and the state’s government.
- c. Municipalities are invested with juridical personality and may manage their patrimony according the law.
- d. City council may approve, according the laws issued by the state’s legislatures for municipal matters, the police and government edicts, circulars and administrative dispositions of general observation within their jurisdiction, that organize the municipal public administration, regulate the matters, proceeding, functions and public services within their powers and assure city and neighbor participation.
- e. Municipalities are in charge of the following public functions and services: potable water, drainage, sewer system, treatment and disposition of their residual waters; public illumination; cleaning, collection, transfer, treatment and final disposal of residues; markets and supply centrals; grave yards; slaughterhouse; streets, parks and gardens and its equipment; public safety (under the terms of article 21 of the constitution), municipal preventive police and transit; and others that State legislatures determine according the territorial and socio-economic conditions of the municipalities, so as their administrative and financial capacity.

Likewise, fraction IV of article 115 establishes that municipalities will freely administrate their property, which will be formed from the profits of the goods that belong to them, so as the contributions and other incomes in their favor established by state’s legislatures: they will receive the contributions, including additional rates, that States establish of immovable property, from its fractioning, division, consolidation, translation and improve so as those that have the change of value of immovable as a base; federal participations, which will be covered by the federation to the municipalities according to the bases, amounts and terms determined annually by the State’s legislatures; incomes from giving municipal public services.

On the other hand, Municipalities have powers to formulate, approve and administrate the zoning and planning of municipal urban development; participate in the creation and administration of territorial reserves; participate in the formulation of regional development plans; authorize, control, control land use, within the ambit of their competences, in their territorial jurisdictions, intervene in the regularization of urban land property; grant licenses and permits for constructions; participate in the creation and administration of ecological reserve zones and in the elaboration and application of ecological ordering plans; intervene in the making and application of passenger public transport plans when they affect their territorial jurisdiction; celebrate conventions for the administrations and guard of federal zones.

**2. Are the local representatives democratically elected by the people of the municipality or local entity? If not, which is the method for the election?**

The population of the municipality, through direct popular election, democratically elects the heads of the municipal government. Nevertheless, it must be said that there are constitutions and electoral laws, such as Oaxaca's, that allow that the municipalities composed of indigenous people elect their municipal authorities through their uses and customs.

**3. Are local entities under federal or state control? If so, are these controls limited to issues of legality or do they also cover issues of opportunity? Can municipalities or other local entities challenge federal or state law or other decisions, on the grounds that they violate their autonomy? Before which bodies or courts?**

Mexican Municipalities are subject of several kinds of state controls.

- a. State legislatures, by agreement of two thirds of the members and due to some a relevant cause established in the respective municipal organic law, may suspend the city councils, declare they have disappeared and suspend or revoke the mandate of some of the members, in any case the audience guarantee of the city councils must be respected.
- b. In case the city council disappearance is declared or because of the resignation or absolute absence of its members, if according to the law the installation of the substitutes or the celebration of new elections do not proceed, State's legislature may designate, from the neighbors of the Municipality, the Municipal Councils that will conclude the respective term.
- c. State legislatures have powers to issue municipal organic laws, which, by constitutional prevision will establish:
  - i. The general bases for the municipal public administration and administrative procedure.
  - ii. The cases in which the agreement of two thirds of the members of the city council is required to dictate resolutions that affect municipal immovable patrimony or to celebrate acts or conventions that compromise the Municipality for a period that is larger than the term of the City council.
  - iii. The norms of general application to celebrate different types of conventions with the State (relatives to giving public services and in tributary matters).
  - iv. The procedure and conditions for the state government to assume a municipal function or public service when, the corresponding convention does not exist, the state's legislature considers that the municipality is not capable to exercise or give them; in this case, the previous request of the respective municipality is required, which must be approved by two thirds of its members.
  - v. The dispositions that will apply in those municipalities that don't have the corresponding edicts or regulations.
  - vi. Issue the norms for the procedures for conflict resolution between municipalities and the State government.
- d. State's legislatures have powers to issue the municipal income laws, and to check and control their public accounts.
- e. Even if the municipal preventive police is under the municipal president's command, fraction VII of article 115 establishes that this police will follow the orders transmitted by the State's Governor in those cases he considers as beyond their control or a considerable alteration of the public order, (the same fraction establishes that the Federal Executive has the commandment of the public force in those places where he normally or temporarily reside).

This allows us to say that the control the States exercise over the municipalities is of legality, and not of opportunity.

Mexican municipalities have powers to challenge those laws and acts, either federal or state, that violate their autonomy. This happens through the "constitutional controversy" action, established in

article 10 of the constitution, fraction I. This action is brought up before the Nation's Supreme Court of Justice. Through this action, municipalities may protect their competence sphere, established in article 115.

Article 105 establishes in fraction I the different hypotheses of constitutional controversy. Between these hypotheses, several include municipalities. This way, the Supreme Court may hear of constitutional controversies that arise between; the Federation and a municipality; the Federal District and a municipality; two municipalities of different states; one State and one of its municipalities, on the constitutionality of their acts or general dispositions.

**4. Is the design of the local government (kind of local entities, organization, powers, human resources, etc.) under federal or state power? What local subject matters or functions are allocated to the federation and the states? Can the federation establish direct bilateral relationships with municipalities or other local entities? Can the federation intervene upon their activities by exercising federal powers concerning a particular sector or through its spending power?**

The definition of the municipal regime depends on:

- a. The Constitution (article 115), which establishes the general organization, bases, as mentioned in point 3 of this section.
- b. Organic municipal laws issued by the States' legislatures, which must follow the bases established by article 115 of the constitution, and respect the competence sphere, this article grants to the municipalities.
- c. Police and government edicts, regulations, circulars and general observance administrative dispositions that organize the municipal public administration, regulate the matters, procedures, functions and public services within their competence.

So, we may say that the power to define the municipal regime belongs to the reviser power (poder revisor) of the constitution, to state legislatures and to the municipal City councils themselves.

Except in case the Federal Executive resides normally or transitory in a Municipality (hypothesis in which he will have the command of the corresponding public force in that place), no function or ambit regarding the municipal regime is reserved to the Federation.

Besides, States reserve the legislation powers regarding the municipal regime established in different fractions of article 115, as mentioned in point 3 of this part. Additionally, articles 115 and 116 allow States to celebrate conventions with one or several of its municipalities, so the State's government will provide in a temporary form one or several public services that constitutionally correspond to municipalities.

Likewise, the only case in which the general Constitution foresees the possibility for the Federation to establish bilateral relations with the municipalities, is found in article 115, fraction V, subsection i, that allows the municipalities to celebrate conventions with the federation for the administrations and guard of federal zones.

Finally, it is clear that the federation may condition their activity through the exercise of federal sector powers or from their spending power, due to the importance of federal investment in the development of the different regions of the country.

**5. Are there "city-states" in your system? According to which provision? Is their regime equivalent to the states' one? Apart from these city-states, are there any municipalities with a particular autonomous regime? Which ones? Which is the basis for the recognition of this regime?**

In Mexico, “city-States” (as Hamburg for example) do not exist. Also, there are no municipalities that enjoy a special autonomy regime.

6. **Can states create "intermediate" local entities between municipalities and states? Are there any intermediate local entities in your system? Do they exist only in some states or in the whole territory of the federation? Are states free to establish their territorial limits? What powers do they have? To what extent are they dependent on the states? What is the system for the election or appointment of the chiefs of their governmental bodies? Can the federation intervene in the organization, powers or financing of these intermediate local entities? How? For which purposes?**

States can't create intermediate entities between them and the municipality. Which is explicitly forbidden by article 115, fraction I of the general Constitution.

Besides, the State may not freely establish the territorial limits. Article 45 of the general Constitution established that the States of the Federation maintain the extension and limits they had until the expedition of the 1917 Constitution and clarifies: "... if there is no difficulty in doing so."

Article 47 of the Constitution refers particularly to the territory of the State of Nayarit, by disposing that this State will have de territorial extension and limits of the ancient "Territory of Tepic".

It there were territorial conflicts, a fist way to solve them would be a convention between the States, which in must always be approved by the Union's Congress. If the friendly convention ways does not function, then they could go before the Supreme Court of Justice to get a solution for the conflict.

7. **How are local powers determined? Can local governments provide services or perform federal or state powers? If so, which legal mechanisms coordinate their collaboration (delegation, assignment, etc.)? In which subject matters can this form of collaboration exist? Are local governments obliged to cooperate? Do they have a right to receive financial funds from the federation or the state that asks for the collaboration?**

The concrete powers and competences of municipalities are defined in the Constitution, in article 115, fraction III. Which are composed by functions and services such as:

- a. Potable water, drainage, sewer system, treatment and disposition of their residual waters.
- b. Public illumination.
- c. Cleaning, collecting, transfer, treatment and final disposition of residues.
- d. Markets and supply centrals.
- e. Graveyards.
- f. Slaughterhouse
- g. Streets, parks and gardens and its equipment.
- h. Public safety, within the terms of article 21 of the Constitution; municipal preventive police and transit.
- i. And others local legislatures determine according to the territorial and socio-economic conditions of the Municipalities, so as their administrative and financial capacity.

Likewise, Municipalities may give and exercise federal or state services and functions:

- A. Municipalities may exercise state functions through a legislative decision, based of subsection i) of fraction III of article 115 of the constitution (considering territorial and socio-economic conditions of the Municipalities, so as their administrative and financial capacity, as mentioned in the last point).

- B. Fraction VII of article 116 of the constitution allows the possibility for the Federation and the States to celebrate conventions so States may assume federal functions, execution and operation of works and give public services “when the economic and social development makes it necessary.” Also, States have powers to celebrate conventions with its municipalities, so they may assume giving services or the attention of the functions the Federation has transferred to the States through the mentioned conventions.

The convention mentioned in part B is used for tributary matters. “Administrative Collaboration Conventions” are common in this subject matter.

In the cases mentioned in part A, the exercise of State functions is obligatory for the municipalities, by means of a specific legislative decision.

Regarding the financing of the transferred functions, the rules can be found in the state law, which ordered the transfers towards the municipality, or the convention celebrated with the State.

**8. Do local governments have normative or regulatory power? Which other general powers do they have? What powers are lacking?**

Municipalities have normative powers recognized by fraction II of article 115. According to this norm, the city councils have powers to approve, according to laws in municipal matter issued by State’s legislatures, the police and government edicts, regulations, circulars and administrative dispositions of general observance within their territorial jurisdiction. These norms must establish the organization of the municipal public administration, administrative proceedings, on matters, proceedings, functions and public services of municipal competence.

## **VII. INTERGOVERNMENTAL RELATIONS**

**1. Does a principle of collaboration or constitutional loyalty among the different political and administrative authorities exist in your federation? If so, where is recognized (constitutional law, convention)? Which are its content and what consequences follow from this principle? To what extent is there a hierarchy among the different administrations?**

The Mexican normative order does not have a principle of collaboration of constitutional loyalty as the German *Bundestruue*, or the United States *comity*. Likewise, Mexican federalism, from a formal point of view, does not consider there is a hierarchy between Administrations. Each one has its own competence sphere and in case of conflict, this is not solved through a principle of prevalence of the federal law over state law, but through the principle of competence.

**2. Does the Federal Constitution establish a system of intergovernmental relations between the federation and the states? If so, through which mechanisms? Are these mechanisms established in other constitutional or legislative provisions? To what extent are institutional practices or conventions important on this matter? Generally, which is the importance of intergovernmental relations for the dynamics of the system? To what extent do they allow to make more flexible the formal allocation of powers?**

The federal Constitution does establish an intergovernmental relations system between the Federation and the States. There are two mechanisms that compose this system. One of them is based in the “concurrence of powers” established in several subject matters, through which the federation, the states and the municipalities execute faculties on different parts of the same subject matter, based on a “frame-law” issued by the Union’s Congress. Under this “frame-laws” it is the federation who defines the distribution of powers among the three levels of government. Examples of “concurrence” may be found in subject matters such as: human settlements, health, education, civic protection, environment

and sports. This “concurrency” regime derives directly from several constitutional articles, like 3<sup>rd</sup> fraction VIII, 4<sup>th</sup>, 3<sup>rd</sup> paragraph, and 73 (fractions XXIX-C, XXIX-G, XXIX-I, XXIX-J).

Another mechanism of this intergovernmental system are the conventions that may be made in different matters between the federation and the states, between the federation and municipalities, between states and municipalities, or between municipalities. The possibility to celebrate conventions derives in some cases directly from the Constitution. This way, article 26 of the constitution established a national development planning system, which the Federal Executive may coordinate through the conventions celebrated with state governments. Likewise, article 115 establishes in fraction III that the municipalities may celebrate conventions with the State, in a direct or through specific organisms, so the state takes care in a temporary form of some of the municipal public services or functions. Likewise, subsection a), of fraction IV of article 115 of the constitutions allows municipalities to celebrate conventions so the State will take care of some functions related with the administration of municipal contributions.

Municipalities may celebrate conventions with the federation for the administrations and guard of federal zones (art. 115, fraction. V, subsection i)).

Finally, the Federations and the States may celebrate conventions through which the latter may exercise federal functions, or the execution and operation of works and give public services “when economic and social development make it necessary”; and the States may celebrate conventions with their municipalities so they may assume giving services or the attention of the functions that the Federation had transferred to the States (art. 116, fraction VII).

Besides these constitutional bases establish an intergovernmental relation regime, there are a good number of laws that determine an intergovernmental legal regime. Among them we can mention, first, the frame-laws in the subject matters mentioned above (General Education Law, General Health Law, General Human Settlements Law, General Ecologic Balance and Environment Protection Law, Civic Protection Law, General Sport Law). Second, we can mention the law that derives from article 26 of the constitution, which establishes the bases for the celebration of conventions between the federation and the states in matters of planning (Planning Law). Third, we refer to the law that derives from article 21 of the constitution, regarding the establishment of a national public safety system (General Law that establishes the Coordination Bases of the National Public Safety System). Fourth, we must mention other laws that establish the possibility for the subscription of coordination conventions in several matters, that allow the establishment of a collaboration regime among the three levels of the Mexican federal system: Fiscal Coordination Law, Law for the rural sustainable development, Federal Tourism Law, Federal Housing Law, Federal Law for the encouragement of micro industry and handicrafts activities, Forest Law, General National Goods Law, General Population Law, General Wildlife Law, Law for the coordination of Higher Education, Law for the protection of the rights of girls, boys and teenagers, Law that established the minimum norms for social re adaptation of condemned persons.

Intergovernmental relations have taken major importance in real life practice of Mexican federalism, and have allowed the relaxation in some way of the formal power distribution, that according to article 124 (residual powers in favor of federative entities) is very rigid. Proof of this are the coordination conventions that may be established between the federation and the states in an important number of subject matters, as described above.

Likewise, fraction VII of article 116 of the constitution allows the federation and the states to agree the assumption by states of the exercise of federal functions, as the execution and operation of works and give public services, “when economic and social development make it necessary”. Likewise, this fraction allows States to celebrate conventions with their municipalities so they may assume giving this services or the attention of the federal functions that have been transferred to the states, through the conventions mentioned above.

Most intergovernmental relations have the intervention of the federation, and few or none happen under the form of horizontal relations.

**3. Are there organisms to coordinate the horizontal collaboration among states? Does the federation participate in these organisms? Is an authorization required for their creation? How the states are represented? Are they important for the system?**

Mexican legislation does foresee the constitution of relation organisms or horizontal collaboration between the States, but in the majority of cases the federation participates.

A. Public safety:

In this matter, the law foresees the constitution of the National Public Safety Council, composed by the Public Safety Secretary (who presides it); the governors of the States, the Secretaries of Defense, Navy, Communications and Transports, the Republic's General Attorney, the head of government of the Federal District and the Executive Secretary of the National Public Safety System. This Council is the superior coordination instance of the National Public Safety System. Among its functions we can find the following: establish the lineaments of general policies in public safety; determine the measures for the national system, with other national systems, regional or local; issue bases and rules to make joint operations between federal, local and municipal police corporations. Besides, States must establish local Public Safety Councils and municipalities must establish municipal Public Safety Councils. Likewise, the law foresees the possibility to form regional and intermunicipal organs, for the coordination of policies in public safety matters.

B. Civic protection:

The General Law on Civic Protection foresees the constitution of a National Civic Protection Council, which has consulting character regarding civic protection planning, integrated by the President of the Republic (who presides the Council), by 15 Secretaries of the federal government, by the state's governors and the head of government of the Federal District. This is an organism for consult and federal government action coordination to call to, concert, induce, and integrate activities of the different participants and interested persons in the matter to reach the objectives of the national civic protection system. Likewise, the law foresees the creation of state and municipal councils.

C. Sport

The law foresees the creation of a National Sport Commission, which is a non-centralized organism of the Public Education Secretariat, which coordinates the National Sport System. The Commission is an exclusively federal organism, but the state's sport promotion entities do participate within the Commission. Among the functions of the National Sport System we can find: propose, elaborate and execute the policies aimed to develop sport in the national ambit; support the proceedings for a better coordination in sport matters; make proposals to elaborate a national sport program.

D. Education

The General Education Law foresees periodic meetings called and presided by the Public Education Secretary, to analyze, interchange opinions, formulate recommendations and agree actions for the development of the national education system.

E. Health

The General Health Law established a National Health System, coordinated by the Health Secretariat, which includes, all dependencies and entities of the federal and local public administration that give

health services. The coordination of the National Health System corresponds to the federal government through the Health Secretariat, but the Law empowers the governments of the states to “contribute” within the sphere of their respective competences and in the terms of the coordination agreements celebrated with the Health Secretariat, for the consolidation and function of the system. Likewise, the Law determines that States’ governments must plan, organize and develop within their respective territorial circumscriptions, state health systems, linked programmatically with the National System.

#### F. Fiscal coordination

The Fiscal Coordination Law foresees several organisms in coordination matters, among which stands out the National Reunion of fiscal functionaries.

The National Reunion is composed by the Treasury and Public Credit Secretariat, and by the Treasury head of the states’ governments. The Federal Secretary calls the reunion. And presided by the federal Secretary and the highest rank state functionary in which the reunion takes place. This reunion, ordered by the law, must take place at least once a year. Among its functions stands out the proposal to the Federal Executive, through the Federal Secretary, and to the states governors, through the head of their treasure organ, the measures they consider necessary to actualize or improve the national fiscal coordination system.

#### G. Conurbations

Last, on co urban zone matters, this is, when two or more urban center located in municipal territories that belong to two or more states form or tend to form a demographic continuity, the Federation, the states and the respective Municipalities, within their respective powers, will plan and regulate in a joint and coordinated manner the development of this centers according to the dispositions of the General Human Settlements Law (which is a federal law). Coordination in this subject matter is done through conurbation commissions in which the different involved governments participate, but by means of the law are presided by the representative of the Social Development Secretariat (of the federal government)

In fact, the real weight of this horizontal collaboration instances is minimum, due to its predominantly consult character, and the preponderance of federal authorities in the decision taking processes in the respective matters, propped up by the disproportion of the fiscal strength of the federal government.

#### **4. Which role do local governments play in the system of intergovernmental relations? In which organisms of collaboration do they participate?**

Municipalities play a subordinate role in the intergovernmental relations, regarding their participation in the coordination mechanisms and mentioned national systems. But by means of conventions, municipalities may assume functions, execution and work operation and giving the public service that correspond to the state, as permitted by fraction VII of constitutional article 115.

On the other hand, the constitution allows municipalities to, with the previous agreement of their City councils, coordinate and associate for the more effective giving of the public services or the better exercise of the corresponding functions. In this case and regarding the associations of municipalities of two or more states, they must have the approval or the State’s legislatures. Likewise, when the respective city council considers it necessary, they may celebrate conventions with the State so he, in a direct or through the corresponding organism, takes care in a temporal form of one or several public services, or also to give or exercise in a coordinated manner by the State and the municipality.

In practice, this possibility for municipal associations is not common, except maybe in co urban zones.

- 5. Do different governments or administrations usually participate in organisms or entities with legal entity (public or private: consortiums, associations, foundations, private societies, etc.)? Is this joint collaboration usual for developing public works, managing services, or financing of activities? Which legal regime is applicable?**

Joint participation through entities with juridical personality is not common. It happens through conventions and specifically referring to the management and solution of problems involving conurbations within the larger urban concentrations in the country.

## **VIII.TAXATION**

- 1. What is the level of state autonomy regarding incomes? Can they establish taxes? If so, are there any constraints? In other words, can they make use of the same kind of taxes (official prices, rates, extra charges, etc.) that the federation establishes? Can they use both direct and indirect taxation? Can they establish taxes over subject matters already charged by the federation?**

The principle of residual competence in favor of the States does not rule for financial relations. This is so because of the interpretation the Supreme Court of Justice has given to article 73 fraction VII in such way, that understands that the federation has competence to tax any base that is necessary to cover the federal spending budget (The text of this article established that Congress has powers: “To impose the necessary contributions to cover the Budget”).

Due to this interpretation, the federation may establish not only the taxes expressly attributed by article 73, fraction XXIX of the constitution, but any other necessary tax to cover the Budget.

States, on the other hand, may establish the taxes that are not expressly given to the federation by article 73 fraction XXIX. But, due to the mentioned constitutional interpretations, an overlapping and confusion space between those taxes expressly given to the federation, and those understood as reserved to the States, in virtue of the residual clause of article 124. The result was “fiscal chaos”, which ended with the creation of a National Fiscal Coordination System.

The essence of the Fiscal Coordination System consists in the following: the Federation and the States may subscribe conventions on fiscal coordination, through which the States yield part of their tributary powers to the federation, in exchange of a participation in federal fiscal incomes. Actually all States have signed this kind of conventions, which has made that the two more important taxes (the Tax of Revenues and the TVA), are established and administrated by the Federation (even if it isn't expressly established in article 73 fraction XXIX, which established the list of taxes that correspond to the federation). This situation has given the federation the control of over 80% of the total fiscal incomes generated in the country, which indicates the degree of financial independence of the States and Municipalities face to the federation.

- 2. Can states ask for credit or issue public debit within the state or federation without the authorization of the federation? Can they do this abroad? If the federation has the power to authorize these operations, which are the legal basis that regulate this?**

There an express prohibition for states to contract direct or indirect obligations and loans with the governments of other nations, with foreign societies or particulars, or when they must be paid in foreign currency or outside the national territory.

But both States and Municipalities may contract obligations and credits, but only when they are destined to productive public investments, according to the bases established by their own local legislature in the respective law, and for the concepts and up to the amounts they fix annually in their respective budgets.

In fact, state and municipal governments usually acquire loans from commercial and development (for example, BANOBRAS) banks. Besides, there is evidence that supports that in many occasions, the contracted debt is not used to finance “public productive investments”, but to compensate the lack of incomes.

**3. To what extent are state incomes important in contrast to the transfers that the states receive from the federation? How are these transfers regulated?**

To answer to this question, I had access only to information for the early 1990’s. According to this study of Luis F. Aguilar on Mexican fiscal federalism, in 1991 federal participations were around 50% of the States spending. This means, of each peso spent by the States, 50 cents came from federal participations.<sup>12</sup> Nevertheless, we must consider that this global figure does not reflect the fact that some States have larger incomes of their own due to a bigger tributary effort.

These participations are articulated throughout a series of rules and formulas that integrate the so-called “National Fiscal Coordination System”, which is described in the following number.

**4. Do states participate in federal taxes? If so, in which taxes and to what extent do they participate? When states participate in federal taxes, do they have any kind of normative power (for instance, power to fix deductions, exemptions, discounts, etc.)?**

The base of the National Fiscal Coordination System consists in States accepting to yield part of their tributary powers to the federation, through a Coordination Convention celebrated with the federal government, in exchange of obtaining participation from the federal funds.

The law foresees the constitution of several types of sharable funds. The most important are:

General Participation Fond: composed of 20% of the sharable federal collection. Which is defined as the amount obtained by the federation through all of its taxes, so as the rights on petrol and mining extraction, subtracted with the total of devolutions by the same concepts (the Fiscal Coordination Law is more specific and extends when enouncing a series of federal income sources which are not included in the sharable federal collection).

This General Participation Fond is distributed as follows:

- I. 45.17%, in direct proportion to the number of inhabitants each state has during the referred exercise.
- II. 45.17, in the terms of a coefficient that considers each state’s collect efficiency, rewarding those with bigger collection.
- III. The remaining 9.66%, is distributes in inverse proportion to the participations for inhabitants that each state has, and this are the result of the addition of the participations referred in numbers i y ii in the referred exercise (compensation criteria).

Municipal Promotion Fond: integrated with a fraction of 1% of the sharable fiscal collection, that corresponds to municipalities and is distributed according to the formula of article 2-a, fraction III of the Fiscal Coordination Law. The resources of this fond are not given directly to the municipalities, but to the State’s governments, and they are in charge of the transference to the municipalities.

Besides, the states may include in the coordination conventions celebrated with the federation, the assignation of 100% of the collections obtained for certain specific taxes, such as the federal tax on

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<sup>12</sup> Aguilar Villanueva, Luis F., “El federalismo mexicano: funcionamiento y tareas pendientes”, en Hernández Chávez, Alicia (coord.), *¿Hacia un nuevo federalismo?*, Fondo de Cultura Económica, México, 1997, p. 130.

tenancy or use of vehicles, or the tax on new automobiles (from which at least 20% corresponds to the municipalities of the state, which will be distributed as determined by the respective local legislature).

Likewise, the States may agree, with the federation, the participation in the collection obtained through the special tax of production and services in the percentages and on the goods we will mention: a. 20% of the collection from beer, refreshing drinks, alcohol, fermented alcoholic beverages and alcoholic beverages. b. 8% of the collection for worked tobaccos. This participation will be distributed according to the percentage that the selling of each of the mentioned goods, represents of national selling. Finally, the law established that the municipalities must receive at least 20% of the participation that corresponds to the State.

We must mention that the legal regime of participation in federal incomes does not carry the recognition, in any degree, of a normative power for the states or the municipalities.

**5. Do states receive direct transfers or funds from the federation? What criteria are used to determine the amount of these transfers? Do states participate in the determination of the amount of transfers? If so, through which mechanisms?**

The Fiscal Coordination Law foresees another kind of transferences from the federation to the states, which are diverse type “contributions”, which are defined by article 25 of this law, as “resources that the federation transfers to local public property, of the F[ederal] D[istrict], and in some cases, to the municipalities, conditioning their spending to the achievement or fulfillment of the objectives the law establishes for each kind of contribution...” With this contributions the following funds were created:

- A. Fond of contributions for basic and teacher education;
- B. Fond of contributions for health services;
- C. Fond of contributions for social infrastructure;
- D. Fond of contributions for the strengthening of municipalities and the territorial demarcations of the Federal District;
- E. Fond of multiple contributions;
- F. Fond of contributions for technological and adult education;
- G. Fond of contributions for the public safety of the states and the Federal District.

The criteria to fix the amount of these transferences depend on the fund.

For example, regarding the determination of the annual amount corresponding to the contributions fond for basic education, will take in account the school registry and the personal staff, so as the budgetary resources that, with charge to this fond were transferred to the states the year before, but there in no formula established for the distribution among the states, there is a reunion of education federal and state authorities to analyze the alternatives and proposals on the employment of the resources under the equity criteria.

The amount of the Fond of contributions for health services is determined by considering different factors as the medical infrastructure and staff inventory; the resources that, with charge to the provisions of personal services and operation and investment spending contained in the Spending Budget of the Federation have been transferred to the States during the year before, to cover the spending in personnel, operation and investment. And based in that amount, a formula is applied (art. 31 of the Fiscal Coordination Law) to determine the distribution of resources to the states. The formula considers mortality indexes, marginalization, and population, among others.

The Fond of contributions for social infrastructure in determined annually in the Spending Budget of the Federation with federal resources of an amount equivalent to 2.5% of the federal sharable collection. The Federal Executive, through the Social Development Secretariat, according to a formula that considers extreme poverty criteria, distributes this fund. The idea in that the contributions of this

fond are made according to the proportion that corresponds to each state in the national extreme poverty.

As a general commentary, it can be said that the definition of the amounts of this funds and its distributions, is made according to estimations and formulas established by the Fiscal Coordination Law (federal). Estimations made by the federal authorities, in which local authorities collaborate by handing information and statistical data.

In last instance the Superior Audit of the federation, of the Chamber of Representatives, has powers to control and control that the contributed resources have been destined to the objectives to which they were assigned.

**6. Can the federation intervene in what the transferred funds will be allocated to? If so, in which subject matters? To what extent? Generically or specifically? Can the federation determine their management or procedure? In general, how has the federal spending power determined state powers? What is its percentage with regard to state incomes? How does this system work regarding other federal and state transfers to local governments?**

The State's incomes that come from the participation in the General Participation Fond, the Municipal Promotion Fond and from the participation in certain taxes are not conditioned in their spending. But the incomes that come from the federal contribution funds are.

The conditioning is in some cases generic and in others more concrete. In case of the contribution funds for education and health, it is generic. This means, the law indicates that the resources of those funds must be applied to the education (basic or teacher's) and health sectors, respectively. But in case of, for example, the multiple contributions fond, the resources must be exclusively destined to school breakfasts, food aids and social assistance to those under extreme poorness conditions.

The law indicates that all of these conditioned federal contributions will be administrated and exercised by the state's government and, in determined cases, by the municipalities that receive them, according to their own laws. The law also mentions that municipalities must register them as incomes of their own specifically destined to the established objectives by the respective articles of the law.

Once the states and the municipalities receive the resources, until its total spending, the control and supervision of the management of those resources corresponds, on a fist instance, to local organs of control, but on a second and last instance, to the Superior Audit of the Federation of the Camber of Representatives of the Union's Congress.

It is significant that the amount of federal Contributions Funds to the states (which are conditioned) has been bigger that those coming from the Participations regime. In the Spending Budget of the Federation of year 2001, for example, the Contributions were \$199,578,247,902.00 (Mexican pesos), while Participations were \$194,084,700,000.00 (Mexican pesos).

On the other side, and to observe the degree of dependency of the states in relation to federal incomes, we can analyze two states:

In Queretaro, a relatively developed State, the previsions for year 2003 are the following:

A. Own incomes.....	\$ 377,841,000.00
B. Federal participations.....	\$ 3,555,373,000.00
C. Federal contributions.....	\$ 4,498,409,000.00 <sup>13</sup>

<sup>13</sup> Project for Spending Budget of the State of Queretaro for year 2003.

In Guerrero, a relatively poor State, the corresponding data for the fiscal exercise of year 2002, are the following:

A. Own incomes.....	\$ 616,000,000.00
B. Federal participations.....	\$ 3,744.000.000.00
C. Federal contributions.....	\$ 10,071,000,000.00 <sup>14</sup>

**7. What follows from the principle of "tax solidarity" among states? In other words, what kind of economic contributions do the states make to the federation? How does this system work, on the basis of which criteria?**

The fiscal solidarity principle between States is applied through the National Fiscal Coordination System, within the intermediation of the federal fiscal authorities. This principle manifests through the compensation criteria found in the different formulas that must be applied to define the way the sharable of transferable federal funds are to be distributed between the states, which consider different factors as levels of poorness, marginality and mortality indexes in the different states.

Victoria Rodriguez reports that under the existing distribution formula generated a real increase, 64%, of federal transferences to the four poorest states (Chiapas, Guerrero, Hidalgo y Oaxaca) between 1989 and 1992, meanwhile the rest of the states receive an average increase of 20%. The global effect of the 1990 reform was that the proportion of transferences to the three richest states (Nuevo Leon, Baja California and Federal District), compared to the transferences with those made to the six poorest states, was reduces from 3:1 in 1989 to 2:1 in 1992, which caused certain friction with the richest states in the north and the Secretariat of Treasury, because they felt punished for being more prosperous and more efficient in raising taxes and for contributing more to the federal treasury.<sup>15</sup>

**8. Can the federation unilaterally compensate the debts that states owe to the federation (for example, reducing federal transfers)? If so, in which fields do this power exist? Do states have any safeguards (right of audience, judicial actions, etc.)?**

The participations that correspond to states and municipalities can be retained and affected by the federation, for the payment of financial obligations contracted in favor of the federation, of credit institutions that operate in the country, so for physical or moral persons with Mexican nationality (allowed by article 9 of the Fiscal Coordination Law). We must clarify that this law does not foresee any kind of guarantee for the States in case the federal Executive, through the Secretariat of Treasury en Public Credit, determines the retention and its affectation to the payment of the acquired debts.

The Fiscal Coordination Law does establish the possibility for States to challenge this decision before the Supreme Court of Justice, in those cases in which, previous audience, the Secretariat of Treasury and Public Credit determines the end of the fiscal coordination system, either for non complying with the law or the administrative collaboration conventions. In these cases, the Federal Secretariat may also diminish the participation to the referred state, on an amount equivalent to the incomes he raised in contravention of the fiscal coordination system. Finally, the States may also go before the Supreme Court of Justice, when the Federal Secretariat does not comply with the Fiscal Coordination Law or the corresponding conventions (article 12 of the Fiscal Coordination Law).

**9. Who is in charge of the management, liquidation and collection of taxes? Can local governments collect taxes on behalf or by order of the federation or the state where they are located? To what extent and in which fields is this method used? To what extent is it relevant?**

<sup>14</sup> Income Law of Guerrero, for fiscal Exercise of year 2002.

<sup>15</sup> Rodríguez, Victoria, *La descentralización en México*, Fondo de Cultura Económica, México, 1999, p. 185.

Management, liquidations and collection of federal tributes are made principally through federal organs. The Secretariat of Treasury has a specialized organ named “Tributary Administration Service”, which has national presence, and is the instance in charge of federal collection. On the other side, states have within the structure of their Finances Secretariats, specialized organs for the collection of local tributes. This is the general rule.

The Fiscal Coordination Law allows the states and the federation to subscribe “administrative collaboration conventions” by means of which states may take care of managing, liquidating and collect certain federal tributes. Among them we can find the federal tax on the tenancy or use of vehicles; and the tax on new automobiles. In both cases, those states that celebrate such conventions are entitled to 100% of the collection by those federal taxes, and are obligated to distribute at least 20% of the collection to the municipalities.

Under other rules, they may also have this kind of collaboration conventions for the administration of other taxes, including the Revenue Tax and the TVA.

As mentioned above, “administrative collaboration conventions” are usually signed between the federation, through the Secretariat of Treasury and Public Credit, and the States` governments, to the effect that the functions of administration of certain federal taxes are made by the State. In fact, collaboration may reach the municipalities of the States, because these conventions usually include a clause by which the State, with the consent of the Secretariat of Treasury, may fully or partially exercise the transferred administration faculties through their municipalities.

The State must exercise these faculties in the terms of federal legislation. Likewise, even if the State’s organisms do not depend hierarchically from the Federal Administration, there are certain obligations, such as the following: inform the Federation of the probable commission of tax offences; make monthly deposits in favor of the Treasury of the Federation, of the amount of federal incomes raised during the last month; render, each month before the Federation, the “Monthly Verified Account of Coordinated Incomes”; and follow federal rules regarding fund and federal property value concentration.

The Secretariat of Treasury has the powers that follow: intervene at any moment to verify the fulfillment of State’s obligations; formulate law suits for tax offences; process and resolve the revocation appeals presented by the contributors against definitive resolutions that determine contributions or accessories; interpose different kinds of appeals against resolutions which are contrary to the fiscal interest (regarding coordinated incomes); and in a very important way, exercise the faculties on Planning, Programming, Norm and Evaluation of the coordinated incomes.

The way the Federation assures control is, on one side, through the lack of the economic incentives the State suffers in case they don’t celebrate the convention or once celebrated they don’t comply with it. Those incentives consist basically in percentages of the coordinated incomes, so as the fines in which contributors incur. On the other side, the conventions always establish the faculty of the federation to take in its exclusive charge any of the transferred functions to the State by the respective convention, when the State doesn’t comply any of the obligations established in it (through a written notifications made with anticipation). Likewise, the State may stop exercising one or several of the transferred attributions, for which a written notification shall be made to the Secretariat of Treasury.

On the other hand, the Fiscal Coordination Law admits the possibility that municipalities of the States participate with 80% of the obtained collection from the contributors subject to the “Small Contributor” regime (according to the federal Tax Revenue Law), if they make verification actions aimed to detect and control those who tribute under the mentioned regime. However, in case the municipalities agree the aid of state government to make those verification actions, the collection from those contributors will be divided as follows: Municipalities, 75%; States, 10%; and Federation 15%.

We must consider that the tributary incomes in which State and municipalities administrate continue to be federal taxes. State and municipal authorities are obligated to concentrate those resources in the Treasury Secretariat and periodically inform on the collection; nevertheless, it is possible that the Secretary of Treasury and the respective State agree on a permanent compensation procedure, so the State may retain the part that corresponds to the participations they will receive.

**10. What is the percentage of public spending in which each level of government –federal, state and local- incurs? How would these percentages change excluding the spending on defense, education, health, pensions and administration of justice? How many civil servants or administrative officials have each level of territorial government? Which are the figures excluding the above-mentioned fields?**

The percentage of total public spending that corresponds to the federation, states and municipalities in 1991 was, 86%, 11% y 2% respectively.<sup>16</sup>

**11. To what extent are the relationships between levels of governance regarding the tax system satisfactory? Which elements are more satisfactory? Which elements are less satisfactory? At present, is there any trend that should be noticed?**

States are actually discontents with the existing financial relations system. In daily press we can perceive how do state governors manifest in favor of a reform of the fiscal coordination system of Mexican federalism.

Generally, it is accepted that the existing system has ceased to have merits due to its recent evolution. For example, the raise of federal transferences to the states and municipalities through the funds included in “Branch 33” of the federal spending budget has been seen as a positive point; likewise, the increase of the percentage of the general participation fond (which is now equivalent to 20% of the federal sharable resources) has been approved. Likewise, the end of “fiscal anarchy” is still recognized as a merit of the actual system, even if the price to pay was the acceptance of an increasing centralization.

Nevertheless, there is discontent regarding the general design of the system, which leads to a great centralization of the fiscal resources in the federal government, generating the financial dependencies of the states. It is argued, for example, that states have a very limited legal power to establish their own incomes. It is then considered necessary that states have tributary powers with a significant collection impact (and that those powers must be established in the General Constitution, to give them more certitude). Likewise, some have considered it is necessary to give bigger responsibilities and attributions to the states not only relating the incomes, but also regarding the spending power, diminishing the conditions in the management of an important part of the federal transferences (called federal contributions funds).

On the other hand, public discussion and the generated proposals in this matter both in the federal and state level seem to aim towards a constitutional and legal reform to substitute de fiscal coordination law by a treasury coordination law. This reform aims to organize Mexican public finances from an integral perspective, which includes coordination at the credit and public debt level. The intention is that the federal government intervenes to facilitate state’s access; that states may obtain lower credit rates; that more options to guarantee credits are recognized, and that the municipalities may participate from the benefits of those credits acquired by the federal government.

Finally, a National Treasury Coordination System would look to design the tools to assure the balance between the parties; so as to fix the bases to maintain constant institutional communication with the federal congress, so, when the time comes to legislate in one of the coordinated matters, the Union’s Congress shall do it considering intergovernmental coordination, its antecedents, the existing

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<sup>16</sup> Data were obtained from the work of Luis F. Aguilar, *op. cit.*, p. 131.

programs and collaboration conventions, and the positive and negative consequences that would affect local treasuries.

**12. Can the federation establish the maximum or specified levels of state indebtedness or budgetary deficit? Can the federation establish the maximum wage of public officials (federal, state, local, etc.)?**

The Federation can't fix the concrete maximum levels of debt and budgetary deficit of the states and municipalities. The General Constitution leaves this matter to laws issued by the state's legislatures, by establishing that "The States and Municipalities can't contract obligations or debts unless they are destined to productive public investments, including those contracted by decentralized organisms and public enterprises, according to the bases established by states' legislatures in a law and for the concepts and up to the amounts fixed annually by their respective budgets." (Article 117, fraction VIII of the General Constitution).

On the other hand, neither does the federation fix maximum retribution limits to the personnel who serve the different public entities (Federation, States, Municipalities).

**13. Are there coordination mechanisms among the different levels of governance? If so, are there institutions with a political nature (for instance, an assembly of territorial representation –Senate-, governmental institutions -councils of prime ministers-, etc.)? Are there mechanisms of technical coordination? (i.e., deductions in quotes of subcentral taxes in central taxes, etc.).**

The existing coordination mechanisms between government levels consist in councils or periodic reunions formed or called to this effect, in matters such as public safety, health, sport, education, civic protection and fiscal coordination. Some of them have a politic-institutional character as the Councils; in other cases they do not have that character, as happens with the reunions called by the Health Secretary (see answer to question 3 of section VII on intergovernmental relations).

## **X. LANGUAGES**

**1. Does the Federal Constitution recognize more than one official language in the whole federal territory? If so, which are they? At the federal level, are they officially used on equal basis in the whole territory of the federation by the different authorities? Are they equally used in private? Why? Does the federal Constitution or law establish linguistic citizens' rights or duties?**

The 1917 Mexican constitution doesn't recognize more than one official language. Nevertheless, article two establishes that Mexico is a nation of multicultural composition originally sustained in its indigenous people. Likewise, this article establishes in fraction IV that the indigenous people have right to "Preserve and enrich their languages...".

However this disposition, in the federal level we cannot talk of equal or peer official use of this languages by the different authorities and throughout the whole federal territory; nor of its private use. These are not, at the end, other official languages. Besides, neither the Constitution nor federal legislation establishes linguistic rights or obligations for the citizens.

**2. Beyond recognizing or not more than one official language, does the Federal Constitution recognize the existence of other languages and the need of protecting them as well? Could you tell, approximately, the quantitative importance of these diverse linguistic communities?**

As mentioned above, the federal constitution does recognize the existence of other languages besides Spanish, but not as other official languages. It simply establishes the right of indigenous people to

preserve and enrich their languages; and the duty of federal, state and municipal authorities to favor bilingual and intercultural education within indigenous communities.

In Mexico there are approximately 60 indigenous languages.

- 3. Do state constitutions recognize official languages different from those recognized by the Federal Constitution? If not, are they allowed to do it? Are federal and state official languages on an equal footing? Can states establish linguistic duties to citizens and companies different from those established by the federation? Can states exclusively or mainly use an official language different from the one established by the federation as official?**

State constitutions do not recognize other official languages than Spanish, but some do recognize the existence of other languages (as does article 16 of the Constitutions of the State of Oaxaca, which recognizes the languages of the indigenous people settled within its territory).

There is no norm in the federal constitution referring to an “official language”. But neither does state constitutions establish a “local official language”.

The federal Constitution contain norms that refer to educations, which is considered as a concurrent public service in which the federation, the states and the municipalities, according the power distribution made by the federal legislator through a federal law (General Education Law).

This law establishes, in fraction IV of article 7<sup>th</sup>, the duty of the Mexican State (in all its levels) to: “Promote, trough the teaching of the national language – Spanish-, a common language for all Mexicans, combined with protecting and promoting the development of indigenous languages.” This means that the education authorities of the states and municipalities, as those of the federations, have the duty to promote, through teaching, the national language, which is Spanish.

#### **4. Broadly speaking, which is the linguistic system regarding education?**

We can affirm that the linguistic regime in teaching establishes a national language, but accepts and promotes the existence of other languages (those of indigenous people).

Besides article 7, fraction IV of the General Education Law, there are other norms in this law with a trend to combine the teaching of the national language with those of indigenous people. For example, article 38 of this law establishes that basic education, in its three levels, will have the required adaptations to respond to the linguistic and cultural characteristics of each one of the different indigenous groups of the country. To make this “adaptations”, within the Education Secretary there is a General Directorate of Indigenous Education, who is in charge of proposing pedagogical norms, didactic and auxiliary materials and evaluation instruments for the learning of indigenous education, taking care it has a bilingual-multicultural orientation that insures the integral formation of the students that belong to different ethnic groups, so as to protect and promote the development of their languages, customs, resources and specific forms of organization (article 27 of the interior regulation of the Public Education Secretariat).

The states also have education authorities with functions aimed to make this “adaptations”.

- 5. To what extent are legislation and administrative practice adapted to the multilingual reality of the federation? To what extent are they the origin of conflicts between the different levels of governance or among the population? Are the different languages an important identity symbol of the state?**

Indigenous languages problems in Mexico are related with the cultural separation, with the different Cosmo visions held on one side by the predominant “mixed-race” population, and on the other side indigenous people. All institutional contact points between “mixed-race” and “indigenous” society have communication problems in the best of cases, or prejudices and discrimination, in the worst and more frequent of cases.

Nevertheless, the languages of the ethnic groups don’t confront, if the expression is allowed, one or several States, with other States or with the federation. More often, each State has indigenous peoples languages that resist, face or yield before the “national language”, which is Spanish.

## **X. GLOBAL ASSESSMENT AND ADDITIONAL COMMENTS**

### **1. At present, how is the level of political decentralization generally assessed? What is your assessment?**

I believe the “health level” of political decentralization in Mexico is unsatisfactory, Political centralization begun in our country since the last third of 19<sup>th</sup> century; grew after the Mexican Revolution of 1910 and increasingly consolidated through the 20<sup>th</sup> century. The 1917 constitution was constantly reformed during this last century in those articles that refer to federal powers (article 73 of the Constitution is the one with more reforms), which grew to the degree of including not only a great number of subject matters, those with more importance and impact on national life. It was not until the decade of 1970 that some decentralization measures were taken, but always under the tutelage and guidance of the federation. So, the decentralization that occurred, for example, in health and education, occurred in a form, in the subject matters, and within the times established by the federation.

Regarding fiscal matters, the centralization is as strong as ever. The federation concentrates over 80% of the total fiscal revenues. It is true that the transferences from the federation to the states have been gradually increased since the late 1980’s, but a big number of these transferences (more than 50%, are the called contribution funds) are conditioned resources that the states cannot exercise according to their own criteria and needs.

Mexico is a formally federal State, but in reality very centralized, in which federal entities have a small margin to maneuver. Scheme that reproduces at the state level in the relation with the municipalities (generally big urban municipalities have increased their relative weight and negotiation power within their respective states).

### **2. What are the main historical claims by states? To what extent are they satisfied?**

The principal State demand is the modification of the fiscal coordination system: the centralization of fiscal resources in the federal government; the absence of exclusive and well defined state tributary bases; and the conditioning of an important amount of the federal transferences to the states.

Actually, these demands are not satisfied. To the degree that a group of governors has formed a National Conference of Governors, whose principal purpose has been, until now, to promote a change in the rules of participation of the federal resources to the states (with little success).

### **3. What are the risks and main opportunities for the development and consolidation of the system of political decentralization?**

The principal risks have to do with the possibility that a political decentralization process could lead to loose macroeconomic control by the federal government (as happened recently in Brazil). Others have to do with the design of the formulas that must consider the asymmetry that exists between the estates that compose the Union. Not all states have the same capabilities, resources or infrastructure. Some

times, the differences are huge. That is why; decentralization can't be the same for all, or at the same rhythm. Formulas that consider these disparities have to be found.

The opportunities of decentralization may be identified as an increase in the efficiency and the legitimacy of public action. This is so because decentralization brings decision making closer to the places where problems are located. The deciding authority, may be better informed, and have a better and more complete vision of the problems and possible solutions. Likewise, decentralization may generate more proximity between citizens and decision centers, and bring major control opportunities, guard and citizen influence in the exercise of authority.

**4. What are the main trends of development? Which is the likelihood of them coming true?**

I see a great level of dissatisfaction in national public debate regarding fiscal federalism. Governors, senators, representatives, national political parties, and of course the federal government, all have each time more concrete ideas and proposals regarding the modification of the actual fiscal coordination system. Among this proposals, the one that consists in finishing the unlimited tax power of the federation, to substitute it with a system in which federal and state's tributary bases will be perfectly defined (either in the law or even in the constitution) seems to take shape. This way, for example, the three more important taxes that are the tax on revenues, the TVA and the special tax of productions and services, could remain as exclusive federal taxes, while the rest may be assigned to the states. On the other side, the proposal considers the establishment of more equitable financial relation between states and municipalities.

Likewise, I think that the possibilities of real concretion in the short term are not much. The change in the Mexican political system, derived from lose of the presidency of the Republic by the PRI, has altered the parameters and basic orientations that guided Mexican politics for a long time. In fact, this meant an incapability to reach the necessary agreements to approve the structural reforms the country needs. As example, there is the integral fiscal reform, the electric sector reform, the so-called "State reform", to mention some, which have not advanced. A reform of a magnitude and importance for fiscal federalism would face the same problems of lack of agreements and stagnation.

**5. Generally, would you say that the system is becoming more centralized, decentralized or that it is in a relative equilibrium?**

The Mexican federal system has advanced, in a slow way, towards more decentralization; but a decentralization that has been guided from the center, according to the times, rhythms, forms and the powers established by the federal government. This happened during the times of PRI governments, and this is how a certain balance point was achieved. Nevertheless, the change of political system "liberated" several forces (most of them local) that used to be subject to centralized control mechanisms of the anterior political system, it's probable we are in the presence of the beginning of the rupture of that balance, which will mark a new impulse towards more decentralization. The National Conference of Governors mentioned above is one manifestation of this new decentralizing impulse, which, this time comes from the states, and not as before, from the center.

**6. Would you like to add any additional comment about the political decentralization of the federation that was not mentioned in the Questionnaire? Would you like to make any suggestion about the structure or the contents of it?**

No.

**7. Would you mind listing particularly remarkable literature -on the basis its prestige, depth, clarity, approach-, which allows to achieve a better knowledge of your federal system?**

I would mention the following:

- A. Díaz Cayeros, Alberto y Jaqueline Martínez Uriarte, “Gobierno Local en México. Estudios Comparativos”, *Memoria del seminario del 1º de junio de 1998*, Centro de Investigación para el Desarrollo, A.C., (CIDAC), México, 1999.
- B. Hernández Chávez, Alicia, (coord.), *¿Hacia un nuevo federalismo?*, Fondo de Cultura Económica, México, 1997.
- C. Merino, Mauricio (comp.), *En busca de la democracia municipal. La participación ciudadana en el gobierno local mexicano*, El Colegio de México, México, 1994.
- D. Rodríguez, Victoria, *La descentralización en México*, Fondo de Cultura Económica, México, 1999.
- E. Serna de la Garza, José Ma. (coord.), *Federalismo y regionalismo*, Memoria del VII Congreso Iberoamericano de Derecho Constitucional, UNAM, México, 2002.
- F. Ward, Peter y Rodríguez, Victoria, *New federalism and state government in Mexico: Bringing the States Back In*, LBJ School of Public Affairs, U.S.-Mexico Policy Series, núm. 8, Austin, Texas, 1999.