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The Enforcement of Local Judgments in Mexico: An Analysis of the Quantitative & Qualitative Perceptions of the Judiciary & Legal Profession

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THE ENFORCEMENT OF LOCAL JUDGMENTS IN MEXICO: AN ANALYSIS OF THE QUANTITATIVE & QUALITATIVE PERCEPTIONS OF THE JUDICIARY & LEGAL PROFESSION†

ROBERT M. KOSSICK, JR.* AND
MARCELO BERGMAN**

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I. ISSUE ORIENTATION: THE SIGNIFICANCE OF ENFORCING LOCAL JUDGMENTS

One of the most basic attributes of a functional legal system involves its capacity to secure rapid and comprehensive compliance with validly entered orders and judgments. A high degree of effectiveness in this regard is beneficial insofar as it underscores the power and legitimacy of the State and its constituent branches and institutions, deters future wrongdoing (i.e., by bolstering the elemental concept that wrongdoers will be held accountable for their actions), and protects the rights and interests of those individuals and/or entities that elect to conduct their affairs within the parameters of the law. Legal systems that operate along these lines are, ultimately, self-reinforcing. That is, the more successful a State is at compelling its citizens to comply with the dictates of positive law, the easier it becomes to effectively and cheaply bring enforcement actions against the few individuals that persist in violating same.

Legal systems which are not, alternatively, capable of giving effect to their official pronouncements run the risk of experiencing reduced levels of public confidence in State institutions and actors, forgone productive activity (tied to the expenditure of time required for the pursuit of justice), a diminished willingness on the part of creditors to lend (and then only at rates adjusted for an elevated degree of risk), and, given the high level of attendant legal uncertainty, difficulty in attracting and retaining foreign investment and technology transfers. These outcomes are, in turn, detrimental to the extent that they dilute the legitimacy of formal law, leave individuals inclined to structure their affairs around the government,¹ mitigate against the liberal formation of "arms length" business relationships (i.e., those not premised on the existence of a previously established inter-personal or familial relationship), and adversely impact national development and competitiveness.

II. OBJECTIVES OF THE IFES-CIDE STUDY

Cognizant of the fundamental inter-relationship between the capacity of a nation's legal system to assure compliance with its

1. Peruvian economist Hernando de Soto makes a similar contention when he notes that a reduction in the enforcement capacity of a government will provide individuals with an "incentive to follow their own interests, regardless of any paper constraints." HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL* 170 (2000) (hereinafter "MYSTERY").

orders and decisions, the rule of law, and the joint prospect of democratic governance and sustainable economic growth, the International Foundation for Electoral Systems ("IFES"), acting in conjunction with its Mexican partner, the *Centro de Investigación y Docencia Económicas* ("CIDE"), undertook the present study for the purpose of assessing the effectiveness of the procedures and mechanisms which exist for the enforcement of local civil and commercial judgments in Mexico.² Pursuant to the original research plan, the findings of the present study are to be incorporated into a database, the existence of which will facilitate the realization of cross-cultural comparisons regarding the issue of the enforcement of judgments and the formulation of a future series of judgment enforcement enhancing recommendations.

A. Methodology

The study was carried out in October and November of 2002 and involved the use of both qualitative and quantitative research techniques. With respect to the former technique, a three person IFES-CIDE team of civil and common law trained lawyers conducted fourteen in-depth interviews with a combination of Mexico City based law firms, judicial officials, and non-governmental organizations ("NGOs") during the week of 28 October - 1 November (see Annex I for the names of the parties consulted during this phase of the investigation). These interviews, many of which lasted for several hours, provided the team of investigators with a valuable substantive orientation to the subject of the enforcement of judgments and arbitral awards in Mexico.

The insights and impressions gained through the aforementioned meetings were supplemented by a forty-one question survey encompassing (i) the effectiveness of Mexico's system for enforcing judgments and (ii) the obstacles to enforcement. Using

2. The enforcement of local administrative, criminal, and family court judgments were not considered in this study. Nor did the study take into consideration the enforcement of foreign judgments and arbitral awards. For information on the subject of the enforcement of foreign judgments and arbitral awards in Mexico, see the Association of the Bar of the City of New York's July 2001 *Survey on Foreign Recognition of U.S. Money Judgments* available at http://www.brownwelsh.com/Archive/ABCNY_Study_Enforcing_Judgments.pdf; Jorge Vargas, *Enforcement of Judgments in Mexico: The 1988 Rules of the Federal Code of Civil Procedure*, 14 NW. J. INT'L L. & BUS. 376 (1994); Ryan G. Anderson, *Transnational Litigation Involving Mexican Parties*, 25 ST. MARY'S L.J. 1059 (1994); Lisa C. Thompson, *International Dispute Resolution in the United States and Mexico: A Practical Guide to Terms, Arbitration Clauses, and the Enforcement of Judgments and Arbitral Awards*, 24 SYRACUSE J. INT'L L. & COM. 1 (1997).

a team of seventeen specially trained CIDE interviewers, the close-questioned survey was, in the majority of cases,³ personally administered to a randomly selected set of Mexico City based lawyers (fifty-eight), judges (thirty-two), and court officials (thirty-five). Data collected through these interviews was subsequently coded and entered by CIDE personnel into a SPSS database. The frequencies and cross-tabs pertaining to this database are set forth in Annex II.⁴

B. Study Limitations

The value of the findings presented in this study are tempered by two distinct considerations. The first concerns sample size. While the relatively small number of respondents utilized in the study precludes the articulation of far-reaching conclusions, the sample is large enough to permit the detection of relevant patterns and the making of meaningful observations. Future research carried out in furtherance of this project should prioritize the amplification of the base sample size. The second consideration concerns the utility of these findings in light of Mexico's economic and legal reality. It must, in this connection, be recognized that Mexican lawyers and judges typically work with matters which arise from the experience of individuals and/or entities that are part of the "formal" economy. This situation is significant in that an estimated 55% of Mexico's economically productive population labors in what is commonly referred to as the "informal" economy.⁵ Taking the aforementioned facts under consideration, it must be recognized that this study, to the extent that it does not take into account the extra-legal obligation compliance practices and mechanisms of the informal economy, can only be counted on to provide a partial view of the enforcement aspects of Mexico's larger transactional and commercial reality.

3. The survey was personally administered in 96.8% of cases. It was, for reasons beyond the control of interviewers, self-administered in 3.2% of cases. A personalized form of survey administration was adopted as a means of cutting down on the possibility of an intended respondent (for example, a busy judge) delegating the task of answering the questions to a third party (for example, a clerk).

4. The volume of these materials precludes inclusion for publication. Annex II remains on file with the authors.

5. An estimated 25 million Mexicans make their living in the informal economy. A 1998 INEGI study indicates that up to 12% of Mexico's GDP derives informally conducted economic activity. These figures are expected to increase in response to the currently declining rates of economic growth and formal sector employment. Mario Lopez, *Los Reyes de la Calle*, CAMBIO, Jan. 6, 2002, at 62.

C. *Organization of the Study*

The first part of this paper sets forth a brief overview of the legal framework that exists in Mexico for the enforcement of judgments. The purpose of including such an overview is to provide a general sense of how the judgment enforcement process is supposed to work. The second part of this paper descriptively analyzes the quantitative data derived from the survey, together with information obtained through the qualitative interviews. The primary objective of this part of the work is to empirically identify and understand the disconnects which exist within Mexico between (i) the *de jure* and *de facto* procedures and mechanisms utilized for the enforcement of judgments in the formal sector and (ii) the perceptions of the various actors involved in the formal sector judgment enforcement process. The paper concludes by making a series of recommendations, the adoption of which would strengthen the procedures and mechanisms used for the enforcement of judgments in Mexico.

III. THE LEGAL FRAMEWORK FOR THE ENFORCEMENT OF LOCAL JUDGMENTS IN MEXICO

Mexico's *Código Civil para el Distrito Federal*,⁶ *Código Federal de Procedimientos Civiles*,⁷ and *Código de Comercio*⁸ contain provisions addressing the enforcement of judgments with respect to ordinary and executive proceedings. Although these provisions are not identical, they are, for the purpose of providing this basic overview, sufficiently similar to justify a combined consideration.

A. *Basic Steps Involved in the Enforcement of Local Judgments in Mexico*

The judgment enforcement process begins with the pronouncement of a final sentence,⁹ coupled with the issuance of an "*auto de ejecución*" (i.e., a writ of execution). Debtors are, as a matter of law and public policy, afforded the opportunity for voluntary compliance. Debtors that refuse to act in accordance with a court's judgment will consequently have an amount of property

6. Cód. PROC. CIV. D. F. (Mex. 1928) (hereinafter "C.P.C.D.F.").

7. Cód. FED. PROC. CIV. (Mex. 1943 (hereinafter "C.F.P.C.")).

8. Cód. COM. (Mex. 1889). Lagunae in the *Código de Comercio* and related mercantile laws are filled by the common law associated with Mexico's civil codes.

9. The concept of a final sentence is developed in arts. 426-429 of the C.P.C.D.F. and arts. 354-357 of the C.F.P.C.

embargoed¹⁰ equivalent to the value of the underlying debt and costs.¹¹ Embargoes are carried out by “*actuaries*”¹² backed up by local police, if necessary, and subject to (i) code based debt satisfaction asset orders,¹³ (ii) the debtor’s right to designate, within limits, which goods are to be embargoed,¹⁴ and (iii) certain exempted categories of property.¹⁵ A “*depositario*”¹⁶ may be appointed to safeguard embargoed items/property.

In the course of an ordinary civil or commercial proceeding, the next step in the judgment enforcement process entails the obtainment of an expert’s appraisal of the property. The procedural flow associated with executive civil and commercial proceedings is, it should be noted, slightly different in that it permits a debtor to oppose an embargo on certain code based grounds.¹⁷ Where an attempted opposition to a pending executive embargo proves unsuccessful, the court will proceed to issue an order for the expert determination of the property’s value, along with a “*sentencia de remate*” (i.e., a judicial order of sale by public auction).

Valid notice and registration having, respectively, been given and accomplished, the sale by public auction of a debtor’s property is conducted from the judge’s chambers and under his or her direct supervision. Should the first round of bidding not produce an acceptable purchase offer (two-thirds of the appraised value),¹⁸ the judgment creditor can request the scheduling of up to two additional auctions.

Assuming the ultimate establishment of an acceptable sale price (and the debtor’s continued unwillingness to pay), the Judge will approve the transaction, order the preparation of any documentation necessary for the subsequent transfer of ownership, and assess the expenses and costs of the proceeding. The amount

10. The common law analogue to a civil law “*embargo*” would be a writ of attachment.

11. See C.P.C.D.F., *supra* note 6, art. 534; C.F.P.C., *supra* note 7, art. 401; Cód. Com., *supra* note 8, art. 1392.

12. An “*actuuario*” is the officer and employee of the court responsible for, *inter alia*, executing judgments.

13. See C.P.C.D.F., *supra* note 6, art. 536; C.F.P.C., *supra* note 7, art. 436; Cód. Com., *supra* note 8, art. 1395.

14. See C.P.C.D.F., *supra* note 6, art. 536; C.F.P.C., *supra* note 7, art. 437.

15. See C.P.C.D.F., *supra* note 6, art. 544; C.F.P.C., *supra* note 7, art. 434.

16. A “*depositario*” is a third party that is either appointed or selected to safeguard embargoed property.

17. See C.P.C.D.F., *supra* note 6, art. 453; Cód. Com., *supra* note 8, art. 1403.

18. See C.P.C.D.F., *supra* note 6, arts. 582 and 586.

of time required to complete the judgment enforcement process typically varies in accordance with the nature of (i) the relationship of the parties, (ii) the prior case history, and (iii) the underlying subject matter. This said, however, the C.P.C.D.F. provides a ten-year statute of limitations.¹⁹

IV. PRESENTATION AND DISCUSSION OF QUANTITATIVE AND QUALITATIVE FINDINGS

The analysis of the quantitative and qualitative data collected revolves around two central themes: (i) the effectiveness of Mexico's system for enforcing judgments and (ii) the obstacles which exist to the enforcement of judgments in Mexico. The initial findings with respect to these themes are set forth in the following sections.

A. *The Effectiveness of Mexico's System for Enforcing Judgments*

1. Perceptions Regarding the Effectiveness of the System in Specific Contexts

Mexico's legal system is considered by a majority of respondents (47.1%) to provide an effective means for collecting judicially recognized debts. Within this overall percentage, judges (50.0%) expressed a stronger faith in the effectiveness of Mexico's system for enforcing judicially recognized judgments than attorneys (42.1%).²⁰ In line with this finding, a majority of respondents (60.2%) expressed their experience-borne belief that between 60-90% of judicially recognized debts can be collected through the Mexican legal system.²¹

In spite of the fact that respondent perceptions regarding the effectiveness of Mexico's system for enforcing judgments are generally positive, variability is noted in relation to specific types of cases. For example, the system was viewed as being more effective with respect to the enforcement of judgments against small or medium sized entities (48.8%) as compared to those against large corporations (37.6%).²² Focusing, alternatively, on the individual debtor, survey respondents indicated that Mexico's legal system

19. *Id.* art. 529. Said statute of limitations runs from the moment a judgment becomes final.

20. See Table I.

21. Annex II, *supra* note 4.

22. *Id.*

was more effective in terms of enforcing judgments involving smaller (56.8%) as opposed to larger (39.2%) claims.²³ Regarding the latter type of case, it is not surprising to see perceptions of system effectiveness vary in accordance with the size of the underlying debt owed.

2. Effectiveness Attributed to Different Methods of Enforcing Judgments

The fundamental methods available for and considerations bearing on the enforcement of judgments in Mexico include, *inter alia*, judicial execution, extra-judicial negotiation, the impairment of a debtor's good commercial reputation, and the use of threats and/or violence. When asked to rank these methods and considerations in order of their effectiveness, respondents expressed an overwhelming preference for judicial enforcement (64.0%).²⁴ Consistent with qualitative comments made to the IFES-CIDE team of investigators regarding the diminished significance of conciliation/mediation in the Mexican judgment enforcement process, respondents ranked "negotiation with a debtor" as the second most effective enforcement strategy. In this connection, 43.4% of respondents indicated that between 30-65% of a debt could be recovered by negotiating.²⁵ The tactic considered to be the third most effective means of judgment enforcement involved the impairment of a debtor's commercial reputation. Notwithstanding the relevance of this consideration to corporations anywhere in the world, the necessity of preserving a good commercial reputation takes on an elevated degree of significance in light of the increased importance attributed to the formation and maintenance of family and/or inter-personally based business relationships in Mexico.²⁶ The final judgment enforcement method involves the use of threats and/or violence. While the empirical

23. *Id.*

24. See Table I.

25. Annex II, *supra* note 4.

26. The existence of this phenomenon has been attributed to the low levels of confidence and trust that Latin Americans have in their public institutions and fellow citizens. Marta Lagos, *Public Opinion in New Democracies: Latin America's Smiling Mask*, 8 J. DEMOCRACY 128 (1997); Benito Jimenez, *Desconfian los Mexicanos de Políticos e Instituciones*, REFORMA, Aug. 15, 2002, at 7A. In what constitutes both a manifestation of the widespread regional conviction that "others can not be counted on" and a hedge against having to rely on unreliable and slow judiciaries, businesses in low trust societies (such as Mexico) tend to be centered on family and/or long-standing personal relationships. Ilya Adler, *A Family Affair*, BUS. MEX., Oct. 1998, at 18.

manifestation of this concept is certainly less dramatic than the impression imparted by Mexican judicial and legal professionals during qualitative interviews (such interviews produced, for example, vivid accounts of armed resistance and intervention, politically and/or socially organized opposition,²⁷ retaliatory destruction, etc.), the fact that 22.4% of respondents resorted on either a regular or occasional basis to violent judgment enforcement methods speaks in a troubled way to the perceived shortcomings of the legal system and the lingering willingness of Mexicans – in the absence of any other viable alternative – to take justice into their own hands.²⁸

Where a creditor determines to forego judicial enforcement of a judgment, the primary reasons cited in support of such a decision are (i) the high cost and (ii) the time and delay associated with enforcement proceedings. Regarding the latter point, lawyers (27.6%) are more inclined to perceive the issue of time and delay as constituting a valid justification for not using Mexican courts for the enforcement of judgments than their judicial counterparts (21.9%).²⁹

3. Perceptions Regarding Role Allocation and Mission Compliance

An overwhelming majority of survey respondents indicated that the delineation of institutional roles and responsibilities is not an obstacle to the effective operation of Mexico's judgment enforcement system. This said, however, respondents also indi-

27. The United Nation's Special Rapporteur charged with the responsibility of investigating the themes of independence and impunity with respect to the administration of justice in Mexico picked up on the same basic issue (at the state level), noting in his Mar. 2002 report that "in many civil cases, court judgments remained unenforced due to opposition of either the parties or social organizations." U.N. ESCOR, 58th Sess., Provisional Agenda Item 11(d), at 15, U.N. Doc. E/CN.4/2002/72/Add.1 (2002) (hereinafter "UNSR").

28. This observation calls to mind the way certain Mexican towns and villages have, upon losing faith in the capacity of the judicial system to deliver justice, acted repeatedly to bypass established institutions and procedures and administer their own brand of justice. Servando Torres and Omar Castillo, *Linchan a Dos en Milpa Alta*, REFORMA, Dec. 6, 2002, at 1B (noting that the inhabitants of towns and villages in the vicinity of Mexico City have taken justice into their own hands – sometimes with fatal results – six times over the course of the past three years); Daniel Pensamiento, *Rescatan a Dos "Delincuentes" de Ser Linchados en Chiapas*, REFORMA, Dec. 14, 2002, at 18A (noting way in which a local mob was, at the last minute, prevented from burning and stoning to death two presumed criminals in Chiapas); *Alertan Sobre Riesgo de Ingobernalidad*, REFORMA, Oct. 4, 2002, at 4A.

29. Annex II, *supra* note 4.

cated that not all entities involved in the judgment enforcement process “usually” comply with their obligations. In an observation that tracks comments made by both judges and lawyers during qualitative interviews, 60% of respondents expressed their opinion that meaningful police assistance could not regularly be assured in conjunction with the enforcement of judgments.³⁰

B. Obstacles to the Enforcement of Judgments

1. Legal Obstacles to the Enforcement of Judgments

The primary obstacle of a legal nature to the enforcement of judgments according to 19.2% of respondents involves a debtor’s fraudulent transfer of property. In what constitutes an interesting difference of perspective as between “bench” and “bar” (to the extent that these concepts can be meaningfully used in Mexico), attorneys are more than twice as likely as judges to view the possibility of a fraudulent transfer as a legal obstacle to the judgment enforcement process.³¹

IFES-CIDE investigators learned through qualitative interviews with judges and attorneys that two basic strategies exist in Mexico for attacking fraudulent transfers of property: the “*acción Pauliana*” (Revacatory action) and the initiation of a criminal proceeding. According to these same sources, the latter strategy represents the best chance of undoing a debtor’s fraudulent transfer insofar as the former is rarely used.

Secondary and tertiary obstacles of a legal nature to the enforcement of judgments identified by respondents include the difficulty of (i) providing a debtor with required notifications and (ii) identifying the patrimony of a debtor.

2. The Power of the Court to Supervise and Sanction

While 57.6% of respondents expressed their opinion that Mexican law provides judges with an amount of power sufficient for the purpose of enforcing judgments, 46.4% of the same overall pool of respondents indicated that Mexican courts did not have the

30. This problem is not apparently limited to the issue of the enforcement of judgments. When populist social groups recently invaded the national congress – breaking down the doors that had been barricaded by federal representatives wielding fire extinguishers and parading a horse around the floor of the main legislative chamber – it took police five hours to make the scene (by which time most of the protestors had fled). Daniel Lizarraga, *Atropellan al Congreso*, REFORMA, Dec. 11, 2002, at 1A.

31. See Table I.

legal power required to effectively issue civil or penal sanctions against individuals or entities that acted in disobedience of validly taken decisions.³² Penalties currently imposed by Mexico's courts are not, in the view of the majority of respondents (56.8%), considered to be important compliance incentives.³³

3. Administrative and Procedural Obstacles to the Enforcement of Judgments

The principal administrative and/or procedural obstacle to the enforcement of judgments in Mexico entails, according to 33.9% of survey respondents, the congested nature of court dockets. This perception is entirely in line with statistics compiled by the *Consejo de la Judicatura* (Judiciary Council) and other entities associated with the administration of justice in Mexico. Pursuant to the Supreme Court's 2000 *Informe de Labores* (Labor report), the combined caseload ("*carga de trabajo*")³⁴ of the federal *Tribunales Colegiados de Circuito* (Board of Circuit Committees), *Tribunales Unitarios de Circuito* (Board of Circuit Unitaries), and *Juzgados de Distrito* (District Courts) increased between 1995 and 2000 from 426,012 to 537,330 matters.³⁵ This upswing in court caseloads has occurred in spite of the public policy driven increase in the overall number of federal *Tribunales* (both *Colegiados* and *Unitarios*) and *Juzgados* from 335 in 1998 to 494 in 2002.³⁶

The second most significant administrative and/or procedural obstacle to enforcing judgments in Mexico involves, pursuant to the perception of 18.5% of respondents, the existence of excessive procedural delays. Not surprisingly, attorneys (15.5%) were almost five times more likely than judges (3.2%) to have this per-

32. See Table I.

33. Annex II, *supra* note 4.

34. The *carga de trabajo* includes matters existing at the start of a measuring period plus all new cases presented during the same period.

35. SCJN, *Informe de Labores 2000: Anexo Estadístico*, at <http://www.scjn.gob.mx> (last visited Dec. 12, 2002). The *carga de trabajo* of Mexico's federal courts increased between 2000 and 2001 from 537,200 to 600,487 matters. Victor Fuentes, *Debe Poder Judicial Seguir su Expansión*, REFORMA, Dec. 12, 2002, at 12A.

36: Victor Fuentes, *Debe Poder Judicial Seguir su Expansión*, REFORMA, Dec. 12, 2002, at 12A. The budgetary shortcomings Mexico has experienced over the course of the last years threaten to curb the government's ability to overcome the problems associated with an ever-expanding backlog of cases through the creation of additional courts. SCJN, *Por Limitación Presupuestal, Retardo en la Solución de Casos en Tribunales Federales: Consejero Aragón*, Press Release No. 496, Jan. 25, 2002, at <http://www.scjn.gob.mx> (last visited Dec. 14, 2002). The 2000 budget for Mexico's federal courts (13 billion pesos) constituted approximately 1% of the total federal budget. UNSR, *supra* note 27, at 14.

spective.³⁷ When asked about the average length of time required for the enforcement of a local judgment, 58.9% of respondents provided estimates falling within the range of one to three plus years.³⁸ The reason for these long averages is likely related to the strong (69.4%) respondent perception regarding the availability of mechanisms (popularly referred to as "*chicanas*") that can be used by debtors to prolong the judicial enforcement process.³⁹ This inference is, in turn, corroborated by the abundance of explanations given to the IFES-CIDE team of investigators regarding the willingness of attorneys to use the complex *amparo* as a device for accomplishing both legal and extra-legal objectives. The United Nations Special Rapporteur investigating the issues of judicial independence and impunity in Mexico noted, in a similar vein, the existence of the "impression" that "the *amparo* procedures are often abused."⁴⁰ The availability and use of these procedures, the Special Rapporteur further observed, "leads to long delays in the final resolution of a case, resulting in expense and insecurity for the other party."⁴¹ Other theories that have been advanced in explanation of the generally protracted nature of Mexican legal proceedings can, in part, be traced back to Mexico's Ibero-Romano legal heritage. In the words of a former Mexican Assistant Attorney General:

It is often stated that delay in the administration of justice is equivalent to a denial of justice. If this is so, Mexico is plagued with denials of justice. An excessive formalism in the proceedings, indolence on the part of the judges and judicial officers, and the

37. Annex II, *supra* note 4.

38. See Table I.

39. *Id.*

40. UNSR, *supra* note 27, at 34. The correctness of this observation is, in the eyes of the Special Rapporteur, underscored by the low percentage of *amparos* that are actually upheld. Other investigations have reached the same conclusion. A CIDAC investigation, for example, found that 77% of all *amparo* suits filed in 1992 were dismissed, frequently on a procedural technicality. See Michael C. Taylor, *Why No Rule of Law in Mexico? Explaining the Weakness of Mexico's Judicial Branch*, 27 N.M.L. Rev. 141, 155 (1997).

41. UNSR, *supra* note 27, at 34. The absence of an obligatory code of professional responsibility or ethics effectively frees Mexican attorneys from the prospect of meaningful disciplinary action by a judge as well as the threat of a malpractice suit by a disgruntled client. This practice situation substantially opens the door to the filing of groundless, frivolous, or bad faith pleadings. It is duly noted that Mexico's *Código Penal para el Distrito Federal* does have a title addressing "professional responsibility," the second chapter of which does set forth "*Delitos de Abogados*" (Criminal Offenses Pertaining to Lawyers). Cód. PEN. D.F. (Mex. 1931). These provisions are, in reality, almost never used to shape lawyer conduct, largely due to the elevated difficulty of proving up a criminal allegation.

activities of certain litigious lawyers who are used to taking advantage of the sluggishness in the administration of justice are the main causes of this situation.⁴²

As for those respondents who felt that a Mexican judgment could be enforced within less than one year, judges outnumbered attorneys at a rate of greater than two-to-one. The majority of respondents (41.9%) considered the existence of administrative and/or procedural delays to be a disincentive with respect to the use of the judicial system for the enforcement of judgments.⁴³

4. Political, Cultural and Socio-Economic Obstacles to the Enforcement of Judgments in Mexico

The principal obstacle of a political, cultural, and/or socio-economic nature to the enforcement of judgments in Mexico according to 50.0% of respondents is debtor insolvency.⁴⁴ The basic unwillingness of debtors to voluntarily comply with their obligations represents, in the opinion of 35.5% of respondents, the second most significant obstacle of a political, cultural, and/or socio-economic nature to the enforcement of judgments in Mexico.⁴⁵ These observations are consistent with estimates made to IFES-CIDE investigators during qualitative interviews indicative of a 5-20% rate of good faith judgment compliance by debtors.⁴⁶

5. Bribes and Illegal Payments

Quite surprisingly – especially in light of the abundance of comments made during qualitative interviews to the contrary⁴⁷ – a majority (62.9%) of survey respondents indicated that bribes and illegal payments *do not* constitute an important obstacle to the judgment enforcement process in Mexico.⁴⁸ Focusing, alternatively, on those respondents that did see bribery and illegal payments as constituting an important obstacle, attorneys

42. Rafael Estrada Samano, *Administration of Justice in Mexico: What Does the Future Hold?*, at <http://www.natlaw.com/pubs/usmxlaw/usmjnm4.htm> (last visited Dec. 12, 2002) (hereinafter "*Future*").

43. Annex II, *supra* note 4.

44. See Table I.

45. Annex II, *supra* note 4.

46. *Id.*

47. IFES-CIDE investigators were, for example, told in more than one qualitative interview of the necessity of tipping *actuarios*, notwithstanding the fact that they receive a regular salary from the justice system. In a similar vein, both judges and attorneys noted that police could not be counted on to do their job absent the payment of a supplemental incentive.

48. See Table I.

outweighed judges at a rate of greater than two-to-one. It is probable that this discrepancy in perception as between attorneys and judges reflects a latent sensitivity on the part of the latter deriving from the United Nations Special Rapporteur's observation that:

[T]he establishment of a culture of judicial independence has been slow. Impunity and corruption appear to have continued unabated. Whatever the changes and reforms, they are not seen in reality. Public suspicion, distrust, and want of confidence in the institutions of the administration in general and the administration of justice in particular are still apparent.⁴⁹

The same report goes on to note that despite the fact that an estimated "50 to 70 percent of all judges at the federal level. . . [are] corrupt[,] . . . no federal judge has ever been sanctioned for corruption"⁵⁰

The stages of the judgment enforcement process perceived as being most prone to bribery and/or illegal payments include (i) the notification of the debtor, (ii) the attachment of a debtor's property, and (iii) the sale by public auction of a debtor's property.

6. Informational Obstacles to the Enforcement of Judgments

Survey respondents were generally of the opinion that Mexico's legal system provides adequate mechanisms for the location of a debtor's property (55.6% of respondents were either entirely or partially of this view).⁵¹ More specifically, 51.6% of respondents expressed their belief that Mexico's system for the recording of interests in real property functioned acceptably well for the purpose of identifying and executing on the non-movable patrimony of

49. UNSR, *supra* note 27, at 4.

50. *Id.* at 18. While it might be the case that no federal judge in Mexico has been sanctioned for the specific offense of corruption (likely due to the intrinsic difficulty of successfully proving up same), it has been reported that in 2002 the *Consejo de la Judicatura* (i) received sixty-one administrative complaints and nineteen denouncements and (ii) issued seventy-four administrative sanctions, forty-seven private warnings, three public warnings, fifteen private admonishments, fourteen public admonishments, five suspensions, four destitutions, and two inhabilitations. True to traditional Mexican disclosure practices, the statistics were vague as to whether these actions had been taken against judges (as opposed, for example, to lower functionaries) as well as with respect to the nature of the underlying issue. Abel Barajas, *Ven en la Justicia Factor de Inversión*, REFORMA, Dec. 14, 2002, at 12A (reporting statistics supplied in an interview with the President of Mexico's Supreme Court) (hereinafter "*Inversión*").

51. Annex II, *supra* note 4.

a debtor.⁵² An even larger percentage – 73.4 - of respondents indicated that it was possible to obtain information regarding a debtor's place of work through the public registries.⁵³ These observations are in line with the observation of survey respondents that the registries of real property and *gravámenes* (mortgages, liens, and embargoes) constitute the most reliable and cost effective sources of information regarding the patrimony of debtors.

In the minority of cases that respondents were of the opinion that Mexico's public registries could not be reliably consulted, administrative efficiency and difficulty of access were cited, respectively, as the largest and second largest problems. The pending launch of the *Sistema Integral de Gestion Registral* (hereinafter "SIGER"), a disintermediated, automated, and integrated online public registry system, promises to do much to mitigate the aforementioned issues of operational and information failure.⁵⁴

Finally, it is important to recognize that these observations are only relevant to those situations in which a debtor and his or her property are formally registered in one or more of Mexico's public registries. Again, it must be recalled that the commercial and/or transactional reality of many of Mexico's citizens is grounded firmly in the informal economy. To the extent that the majority of assets associated with the informal economy are (i) governed by extra-legal "rules" and practices and (ii) untitled and/or unregistered,⁵⁵ the above described mechanisms will be ineffectual.

7. Obstacles Associated with the Embargo Process

Most of the steps involved in the embargo process do not, in the opinion of a majority of respondents, pose an obstacle to the enforcement of judgments in Mexico. More specifically, large percentages of respondents indicated that they had not, in their experience, encountered (i) difficulty in securing the services of a reliable *actuario*,⁵⁶ (ii) the deliberate scuttling or devaluation of

52. *Id.*

53. *Id.*

54. SE, *Avances del Programa de Modernización Registral*, at <http://www.secofi-ssci.gob.mx/> (last visited Dec. 15, 2002). This online resource will be akin to the online UCC filing systems maintained by American states (for example, the "SOS Direct," available at <http://www.sos.state.tx.us/corp/sosda.index.shtml>).

55. MYSTERY, *supra* note 1, at 156.

56. Using a scale of 1-5 (where a score of "1" signifies "No Problem" and a score of "5" signifies "Large Problem"), 37.1% and 12.9% of respondents answered, respectively, with a "1" or "2."

embargoed property,⁵⁷ (iii) problems stemming from the non-actualized state of property registries,⁵⁸ (iv) the bad faith manipulation of code based exemptions for the purpose of avoiding an embargo,⁵⁹ or (v) inflation driven decreases in property value occasioned by administrative and/or legal delays in the process.⁶⁰ Those aspects of the embargo process that were, on the other hand, identified as being problematic include the actual localization of a debtor's property,⁶¹ the perceived weakness of the courts in terms of sanctioning bad faith or fraudulent transfers,⁶² and the overall slowness of the embargo process.⁶³

8. Obstacles Associated with the *Remate* Process

Survey respondents expressed a generally favorable view of the *remate* phase of the judgment enforcement process. In this connection, the great majority of respondents indicated that it was not difficult to obtain an "*auto de aprobacion del remate*" (i.e., a court order in support of a sale by public auction),⁶⁴ give the required notice to a debtor,⁶⁵ establish priority amongst the poten-

57. Using a scale of 1-5 (where a score of "1" signifies "No Problem" and a score of "5" signifies "Large Problem"), 25.0%, 21.0%, and 29.0% of respondents answered, respectively, with a "1," "2," or "3."

58. Using a scale of 1-5 (where a score of "1" signifies "No Problem" and a score of "5" signifies "Large Problem"), 20.2% and 20.2% of respondents answered, respectively, with a "1" or "2."

59. Using a scale of 1-5 (where a score of "1" signifies "No Problem" and a score of "5" signifies "Large Problem"), 33.9%, 16.9%, and 26.6% of respondents answered, respectively, with a "1," "2," or "3."

60. Using a scale of 1-5 (where a score of "1" signifies "No Problem" and a score of "5" signifies "Large Problem"), 31.5%, 22.6%, and 25.0% of respondents answered, respectively, with a "1," "2," or "3."

61. Using a scale of 1-5 (where a score of "1" signifies "No Problem" and a score of "5" signifies "Large Problem"), 21.0% and 35.5% of respondents answered, respectively, with a "4" or "5."

62. Using a scale of 1-5 (where a score of "1" signifies "No Problem" and a score of "5" signifies "Large Problem"), 15.3% and 37.1% of respondents answered, respectively, with a "4" or "5."

63. Using a scale of 1-5 (where a score of "1" signifies "No Problem" and a score of "5" signifies "Large Problem"), 14.5% and 18.5% of respondents answered, respectively, with a "4" or "5." Within this overall range of scores, attorneys tended to be more critical than judges, the former group having an average score of 3.28 as compared to the latter's 2.14.

64. Using a scale of 1-5 (where a score of "1" signifies "No Problem" and a score of "5" signifies "Large Problem"), 57.3% and 18.5% of respondents answered, respectively, with a "1" or "2."

65. Using a scale of 1-5 (where a score of "1" signifies "No Problem" and a score of "5" signifies "Large Problem"), 41.1% and 23.4% of respondents answered, respectively, with a "1" or "2."

tially competing claims of creditors,⁶⁶ or secure an expert appraisal of the property in issue.⁶⁷ These positive perceptions were, however, offset, by the large percentages of respondents that expressed concern regarding the overall slowness of the *remate* process⁶⁸ and the low probability of recovering through the sale by public auction of a debtor's property.⁶⁹

V. CONCLUSION

A. *The Existence of a Functional Legal System Premised on the Rule of Law Will Conduce to the Consolidation of Democracy and the Completion of Mexico's Political and Economic Transition*

Mexico today finds itself in one of the most difficult positions it has encountered since the so-called "lost decade" of the 1980s. Over the course of the past five to eight years, economic, political, and social factors such as the slowdown in the global economy, a generally soft international market for oil prices, the emergence of cheaper sources of labor,⁷⁰ declining rates of worker productivity,⁷¹

66. Using a scale of 1-5 (where a score of "1" signifies "No Problem" and a score of "5" signifies "Large Problem"), 64.5% and 10.5% of respondents answered, respectively, with a "1" or "2."

67. Using a scale of 1-5 (where a score of "1" signifies "No Problem" and a score of "5" signifies "Large Problem"), 31.5%, 25.8%, and 23.4% of respondents answered, respectively, with a "1," "2," or "3."

68. Using a scale of 1-5 (where a score of "1" signifies "No Problem" and a score of "5" signifies "Large Problem"), 16.9% and 15.3% of respondents answered, respectively, with a "4" or "5." Within this overall range of scores, attorneys tended to be more skeptical than judges, the former group having an average score of 3.24 as compared to the latter's 1.97.

69. Using a scale of 1-5 (where a score of "1" signifies "No Problem" and a score of "5" signifies "Large Problem"), 14.5% and 25.8% of respondents answered, respectively, with a "4" or "5." Within this overall range of scores, attorneys tended to be more pessimistic than judges, the former group having an average score of 3.31 as compared to the latter's 2.77.

70. *¿México se Desmaquila?*, VERTIGO, Jan. 6, 2002, at 55 (noting reports that many U.S. companies are abandoning their Mexican *maquila* operations in favor of China, where labor rates are as low as \$0.25 per hour); Mathew Gower and Noel Randewich, *Mexico's 50 Most Prestigious Foreign Companies*, BUS. MEX., July 2002, at 43 (stating that "the recent entry of China, with its cheap labor and attractive tax incentives, into the World Trade Organization poses an additional threat to Mexico's investment appeal"); The Economist Intelligence Unit, *Country Briefings: Mexico*, at <http://www.economist.com/countries/Mexico/profile.cfm> (last visited Dec. 20, 2002) (reporting that the hourly cost of labor in Mexico has risen from U.S.\$1.14 in 1998 to U.S.\$1.70 in 2001).

71. Ernesto Sarabia and Lilia Carrillo, *Estanca a México Falta de Reformas*, REFORMA, Apr. 22, 2002, at 1A (noting that the level of worker productivity in Mexico has fallen from 9.9 in 1994 to 0.4 in 2001).

the continued shortage of accessibly priced commercial credit,⁷² the explosion of gang run piracy operations,⁷³ rising levels of criminal⁷⁴ and narcotrafficking activity,⁷⁵ the failure of the government

72. As of 2002, only an estimated 35% of the economically active component of Mexico's population has access to credit. Fernando Pedrero, *Logran Pocos Tener Crédito*, REFORMA, May 3, 2002, at 3A (citing statistics from the *Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financieros*). The only sources of financing available to informally operated micro- and small-size businesses, on the other hand, are the loans sharks of the informal credit market. With interest accruing at up to 20% a day, such loans offer little in terms of a practical financing solution.

73. The protection of intellectual property rights in Mexico continues to be a major problem. Notwithstanding the fact that Mexico was taken off the USTR's Special 301 Watch List in 2000 (and stayed off in 2001), 2002 saw a "significant increase in the level of piracy . . . coupled with a decrease in the level of enforcement. . . ." USTR, 2002 *National Trade Estimate Report on Foreign Trade Barriers*, at <http://www.ustr.gov/reports/ntr/2002/mexico.PDF> (last visited Dec. 20, 2002). In this connection, the IIPA reports that copyright piracy in Mexico increased from U.S.\$469 million in 1998 to in excess of U.S.\$800 million in 2001. IIPA, *IIPA Comments on Special 301 Out-of-Cycle Review on Mexico*, 67 *Fed. Reg.* 63186, at http://www.iipa.com/pdf/2002_Oct30_Mexico_OCR.pdf (last visited Dec. 20, 2002). Speaking, in turn to Mexico's enforcement problem, the IIPA states that "the ratio in Mexico of the number of actual convictions for piracy relative to the number of raids is one of the world's lowest (1.3%)." IIPA, *Mexico Country Report*, at http://www.iipa.com/rbc/1999/rbc_mexico_301_99.html (last visited Dec. 20, 2002). It has been estimated that a reduction in software piracy from Mexico's current rate of 60% to 25% would generate an additional 32,500 jobs and U.S.\$365 million in tax revenue.

74. Pablo Hiriart, *Secuestro: Negocio con Mayor Garantía de Éxito en México*, LA CRONICA DEL HOY, Jan. 7, 2002, at 4 (noting that between 1980 and 1994 the number of "prolonged" kidnappings in Mexico increased from 140 to 300 per year; in contrast, the number of "express" kidnappings committed each year in Mexico has risen to approximately 10,000); Antonio Trejo and Marco Antonio Martinez, *Hay Mas Secuestros de Menores de Edad*, ENFOQUE, Dec. 22, 2002, at 1 (reporting that the number of child kidnappings in Mexico City increased from 41 in 1999 to 101 in 2002); Daniel Millan and Jose Luis Tapia, *Inhiben Secuestros La Inversión, Advierten Embajadores a Creel*, REFORMA, Jan. 8, 2002, at 6A (noting that concern over physical security is adversely impacting foreign investment in Mexico); Hugo de la Torre, *Cambian Residencia por la Inseguridad*, REFORMA, May 21, 2002, at 1A (noting that security concerns are leading many wealthy Mexicans to relocate to the United States); Francisco Gomez, *Ciudad Juarez, Asesinatos de Mujeres: Mas Crímenes e Impunidad*, EL UNIVERSAL, Dec. 3, 2001 (reporting that over 360 female *maquila* laborers have been either killed or disappeared along the border over the last decade); Juan Carlos Cordova, *La Vigilancia del Primer Mundo: Godoy*, UNOMASUNO, Jan. 9, 2002, at 5 (noting Mexico is far from accomplishing the developed nation ratio of 1 policeman for every 200 citizens).

75. Richard Parker, *Mexico's Poor Trading Machetes for AK-47s*, at <http://www.abqjournal.com/news/drugs/1drug5-12.htm> (last visited June 14, 2001); Paige Bierna, *The Next Hot Export: Heroin - Farmers Turn Small Plots of Land Into Subsistence Living with Mexican Black Tar*, U.S./MEX. BUS., Oct. 1998, at 18 (noting that poor farmers frequently find it more profitable to use their land for the cultivation of marijuana or opium as opposed to maize and squash); Tim Coone, *Dirty Laundry*, LATIN TRADE, Sept. 1997, at 56 (noting that as much as 5% of Mexico's GDP derives from illicit activity); BILL WEINBERG, *HOMAGE TO CHIAPAS* 315 (2000) (relating that

to resolve indigenous land claims⁷⁶ and political issues,⁷⁷ and the persistence (if not subtle expansion) of guerilla movements⁷⁸ have combined to eliminate economic growth,⁷⁹ reduce exports,⁸⁰ decimate the tax base and other sources of government revenues,⁸¹

the U.S.\$50 billion-a-year cross-border drug trade far outstrips Mexico's profits from the sale of agricultural commodities or oil).

76. Gretchen Peters, *In Mexico Hostage Crisis, Seeds of Unrest*, at <http://www.csmonitor.com/2002/0715/p01s04-woam.html> (last visited Aug. 15, 2002) (reporting taking of hostages in government-peasant conflict involving expropriation of *ejido* land for construction of new airport); Gretchen Peters, *Mexico's Deadly Fight Over Land*, at <http://www.csmonitor.com/2002/0604/p06s01-woam.html> (last visited Aug. 22, 2002) (reporting 2002 massacre of 26 peasants in Aguas Frías, Oaxaca); Claudio Guerrero, *Detecta CNC 30 Mil Conflictos por Tierras*, REFORMA, June 11, 2002, at 6A; Jesus Guerrero, *Piden Ganadores Permiso para Armarse en Guerrero*, REFORMA, Jan. 6, 2002, at 11A.

77. *Rebel Leader Blames Government for Mexico Massacre*, at <http://www.cnn.com/WORLD/9712/24/mexico.massacre.pm/> (last visited Aug. 19, 2002) (reporting 1998 massacre of forty-five Indians at Acteal, Chiapas); Bill Weinberg, *Fire in the Sierra Madre: Mexico's Other War*, at <http://shadow.autono.net/sin001/mexico.htm> (last visited Aug. 14, 2002) (reporting 1998 massacre of eleven peasants at El Charco, Guerrero); Amnesty International, *Mexico: Human Right Violations Still Continue One Year After Guerrero Massacre*, at <http://web.amnesty.org> (last visited Aug. 21, 2002) (noting 1995 massacre of seventeen peasants in Aguas Blancas, Guerrero); Adan Garcia, *Temen Mas Violencia en Michoacán*, REFORMA, July 3, 2002, at 2A (reporting 2002 massacre of five peasants in Huecatlan, Michoacan).

78. Jorge Torres Jimenez, *La Vida en la Clandestinidad*, CAMBIO, Nov. 25, 2001, at 40; Enrique Moran Monroy, *Guerrilla en el DF*, IMPACTO, Aug. 12, 2001, at 20; Zeferino Garcia Sainz, *El México Bronco: 81 Grupos Armados*, LA EXTRA, Aug. 19-25, 2001, at 1; *Reaparece el EPR en Guerrero*, EL FINANCIERO, Nov. 12, 2001, at 83; Sergio Flores, *Surge en Guerrero Otro Grupo Armado*, REFORMA, May 23, 2002, at 14A; Joshua Paulson, *Rural Rebellion in Southern Mexico*, NACLA REP. AM., Mar.-Apr. 2000, at 26; Linda Robinson and Lucy Conger, *Mexico's New Revolution*, U.S. NEWS & WORLD REP., Aug. 15, 1994, at 40 (noting that the Mexican Attorney general is monitoring guerilla bands in ten states including Guerrero, Hidalgo, Morelos, Michoacan, and Chiapas).

79. Mexico's rate of GDP growth fell from 6.6% in 2000 to -0.3% in 2001. World Bank, *Mexico Data Profile*, at <http://devdata.worldbank.org> (last visited Dec. 20, 2002).

80. The total value of Mexican exports dropped from 166,454.8 (millions of dollars) in 2000 to 119,595.9 (millions of dollars) in 2002. SE, *Exportaciones Totales de México*, at <http://www.economia-snci.gob.mx/nueva-snci/Estadistica/Expmmx.htm> (last visited Dec. 20, 2002).

81. Government revenue flows are adversely effected by (i) Mexico's excessive dependence on the sale of oil, (ii) decreased levels of international tourism, (iii) the exodus of working age citizens to the United States, (iv) high levels of tax evasion, and (v) the SAT's losing tax litigation record. Rosio Vargas and Victor Rodriguez-Padilla, *Mexico's International Oil Diplomacy*, VOICES MEX., Apr.-June 1999, at 59 (noting that PEMEX supplies from 30% to 40% of all tax revenues); SECTUR, *El Turismo en México 2001*, at <http://datatur.sectur.gob.mx/prov/TurMex2001.pdf> (last visited Dec. 20, 2002) (noting that Mexico experienced a 4% decrease in inbound tourism between 2000 and 2001); Mund Americas, *Remittances from Mexicans in the U.S. to Mexico - A Kind of Bank for the Popular Economy*, OPINION REPORT NUMBER 18, SERIES 2, July 2002, at 1 (noting that remittances from Mexicans working abroad amounted to

drive up unemployment rates,⁸² swell the ranks of the informal sector, diminish individual salary and consumer purchasing power,⁸³ accentuate the gap between rich and poor,⁸⁴ spawn record levels of out migration,⁸⁵ undermine the willingness of foreign technology companies to introduce their IP sensitive products into the local market, decrease foreign direct investment,⁸⁶ and lower

U.S.\$10.2 billion in 2001 and are now the third largest source of foreign currency for the national economy); Victor Fuentes, *Reprueba México en Sistema Fiscal*, REFORMA, July 27, 2002, at 1 (noting findings of World Bank study indicating that an estimated 1.9 million Mexicans evade their annual tax obligations); Armando Talamantes, *Pierde Hacienda el 64% de los Juicios en su Contra*, REFORMA, May 16, 2002, at 1A (reporting that as of the first trimester of 2002, the SAT had lost 6,138 out of a total of 9,620 litigated tax controversies).

82. The general rate of open unemployment increased from 2.2 to 2.4 between 2000 and 2001. INEGI, *Tasa General de Desempleo Abierto Anual*, at <http://dgcnesyp.inegi.gob.mx/cgi-win/bdi.exe> (last visited Dec. 20, 2002). Ernesto Sarabia, *Cae 17% Empleo en Maquila*, REFORMA, June 18, 2002, at 1A (citing INEGI statistics that 219,188 maquila sector jobs were lost over the course of the last year).

83. The national Consumer Price Index increased from 100 in 1994 (index base) to 323.8291 in 2000. HUGO ORTIZ DIETZ, MÉXICO: BANCO DE DATOS 2000 L-5 (2000). The price of the basic food basket in Mexico has increased approximately 400% over the last six years Garance Burke, *Here Comes the Tax Man*, MB, Jan.-Feb. 2001, at 14; Cecilia Gonzalez, *Superan Cifras de Pobreza Mediciones Internacionales*, REFORMA, Aug. 15, 2002, at 11A (reporting SEDESOL statistics that 53.7 million Mexicans live in poverty).

84. Enrique Iglesias, *Advantages and Risks of Globalization: The Case of Latin America*, at <http://www.globalpress.org/ingles/Washington/iglesias.html> (last visited July 29, 2002) (pointing out that the phenomenon of globalization has not had "parallel consequences in the distribution of income and in the narrowing of the gap between those at the top and those at the bottom"); Carrie A. Meyer, *Globalization and Inequality in Latin America*, at <http://mason.gmu.edu/~cmeyer/inequality.htm> (last visited July 29, 2002) (noting that all Latin Gini coefficients exceed the global average of 0.4); Miguel Szekely, *Desigualdad*, Nexos, Jan. 2002, at 18 (noting that Mexico's exaggerated levels of income inequality have remained relatively constant since 1992); JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 86 (2002) (noting that the top thirty percent of Mexico's population has benefited from the liberal economic policies of the "Washington Consensus" at the expense of those at the bottom).

85. The estimated number of Mexican citizens living in the United States increased from 7.3 to 13.7 million between 1996 and 2002. CONAPO, *Migración México-Estados Unidos: Presente y Futuro*, at <http://www.conapo.gob.mx/presente/cap06n.htm> (last visited July 3, 2001); Máximo Kuri, *Transforman al Mundo Fenómeno Migratorio*, REFORMA, Aug. 25, 2002, at 28A.

86. ECLAC Report, *Foreign Investment in Latin America and the Caribbean Falls*, at <http://www.eclac.cl> (last visited July 29, 2002) (noting decline in FDI in Latin America from U.S.\$105 billion in 1999 to U.S.\$80 billion in 2001); CNIE, *Informe Estadístico Sobre el Comportamiento de la Inversión Extranjera Directa en México*, at http://www.economia-snci.gob.mx/nueva-snci/Inversi_n/Estad_sticas_inv/02-jun.pdf (last visited Dec. 20, 2002) (reporting dramatic decline in FDI in Mexico for the first half of 2002); Juan Carlos Orozco and Victor Ortiz, *Pierde Atractivo México*, REFORMA, Sept. 24, 2002 (noting that Mexico slipped 17% between 2001 and 2002 in A.T. Kearney's annual Foreign Direct Investment Confidence Index).

Mexico's overall position of global competitiveness.⁸⁷

As the country struggles to take the steps necessary for the consolidation of its nascent democracy, the completion of its protracted process of economic and political transition, and its effective participation in the global economy – namely, the reformation of obsolete legislation and regulations, the realization of structural adjustments, the transformation of the public administration, and, most importantly, the creation of political party transcending “*pactos*” (i.e., pacts)⁸⁸ – the existence of a functional and efficient judicial system premised on a fundamental respect for the rule of law is more important than ever. These contentions are in line with the observations and comments of judicial authorities, legal scholars, and international organizations. Referring, for example, to the correlation between the rule of law and national development, the President of Mexico's Supreme Court recently stated “confidence in the notion of justice, in judges, and in our laws is fundamental to Mexican and foreign investors' continued promotion of the country's economic development and generation of employment.”⁸⁹ U.S. constitutional scholar Lawrence

87. Mexico – along with most other Latin nations – received a low ranking in the World Economic Forum's “Competitiveness Report” due to its “structural weaknesses in areas like rule of law and public institutions, as well as on innovation and absorption of technologies.” Klaus Schwab and Jeffrey D. Sachs, *The Latin American Competitiveness Report 2001-2002*, at <http://www.weforum.org> (last visited Dec. 8, 2001) (Mexico's “competitiveness” ranking was forty-three in a total field of seventy-five nations). In a similar vein, Mexico was ranked forty-one (out of a sample of forty-nine nations) in the IMD's 2002 “Global Competitiveness Report.” This ranking represents an eight-place drop relative to 2000 and puts Mexico behind Chile (twenty) and Brazil (thirty-five). IMD, *IMD World Competitiveness Scorecard 2002*, at <http://www01.imd.ch/documents/wcy/content/pastranking.pdf> (last visited Dec. 20, 2002); Laura Carrillo, *Pide UNCTAD Crear Competitividad*, REFORMA, Apr. 30, 2002, at 1A (noting that absent an increased level of competitiveness, Mexico will be one of the countries most adversely effected by China's entry into the WTO).

88. CESAR CANSINO, *LA TRANSICIÓN MEXICANA: 1997-2000*, 1-246 (2000) (noting that no Latin government has succeeded in accomplishing a significant political and/or economic transition without first having established a formal consensus amongst dominant interest groups); Joel Estudillo Rendon, *Back to the Future: Will the Dark Forces of Mexico's Past Hijack Mexico's Democratic Transition?*, BUS. MEX., Jan. 2002, at 23 (noting that it is “worrisome” that those responsible for Mexico's “political change have not been capable of establishing the basic agreements that would carry through a real transformation of the political regime”); Claudio Guerrero, *Buscan Acuerdo; Luego la Reforma*, REFORMA, Aug. 22, 2002, at 1; Wilbert Torre, *Las Diferencias No Nos Asustan*, REFORMA, May 28, 2002, at 2A (noting that Mexico's transition should be “*pactado*”); Maribel González, *Evitan Dar por Hecho Democracia en México*, REFORMA, Apr. 17, 2002, at 8A (noting Dael Baer's preoccupation with Mexican government's inability to “generate consensus”); Andres Oppenheimer, *México Tiene un Grave Caso de Parálisis Política*, REFORMA, July 23, 2002, at 22A.

89. *Inversion*, *supra* note 50 (quoting Genaro Góngora Pimentel).

Lessig has similarly emphasized the elemental importance of this correlation, noting that "if anything makes an economy work, it is a stable political environment governed by the rule of law."⁹⁰ This perspective is, moreover, shared by the World Bank. "*Unreliable Judiciaries*," a 1999 report prepared by that organization alleges, "hinder development, discourage and distort trade, and foster corruption."⁹¹ Turning, finally, to the inter-relationship between the rule of law and the florescence of democratic institutions and practices, the President of Mexico's Supreme Court has flatly asserted that "there can be no solid democracy in Mexico without a strong and independent federal judicial power."⁹²

Notwithstanding the many observations of a generally positive nature made by respondents with respect to the effectiveness of the procedures and mechanisms available for the enforcement of judgments (summarized in Table 1), Mexico's legal system has yet to become an unqualified source of legal certainty, impartiality, institutional transparency, citizen confidence, and social-governmental stability. As one legal commentator relates in this regard, the "administration and procreation of justice in Mexico, as well as the respect for the rule of law and the observance of human rights, is quite distant from fulfilling the high principles and noble purposes set forth in the Mexican Constitution."⁹³ The detrimental consequences associated with this reality are, in turn, borne out in the findings of surveys⁹⁴ and studies⁹⁵ which reveal that perceptions of judicial corruption and inefficiency are widespread amongst Mexicans.

B. *Specific Recommendations*

Taking the foregoing quantitative data and qualitative information into consideration and, with an eye to facilitating the ongoing process of strengthening Mexico's legal system in general

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

91. John Otis, *The Clamor to Clean Up Latin America's Judiciary is Growing*, at <http://www.latintrade.com/archives/june97/law1.html> (last visited Mar. 4, 1999).

92. Góngora: *Gobernar con Democracia Requiere de un Orden Jurídico Legal y Legítimo*, at <http://vlex.com/mx/actualidad//1004> (last visited June 25, 2001).

93. *Future*, *supra* note 42.

94. U.S. Dep't of State, *Mexico Country Report on Human Rights Practice for 1996*, at <http://www3.itu.ch/missions/us/hrc/mexico.html> (last visited Mar. 4, 1999).

95. Juan Antonio Zuniga, *El Sistema de Seguridad y Justicia, al Servicio de la Delincuencia: SSP*, LA JORNADA, Jan. 11, 2002, at 42 (reporting findings of study conducted by the *Secretaría de Seguridad Pública* characterizing the Mexican judicial system as formalistic, slow, corrupt, free from accountability, and willing to serve the interests of the governing class and organized delinquency).

and judgment enforcement procedures and mechanisms in particular, IFES-CIDE presents the following recommendations:

1. **Make More Effective Use of Negotiation and Mediation:**

Negotiation and mediation⁹⁶ are, as currently practiced in Mexico, relatively unstructured processes conducted, typically, by the judge presiding over a controversy. Mexican negotiation and mediation practices have, historically, known very low success rates. Negotiation and mediation practices which are, alternatively, premised on the use of a third party neutral (i.e., one that is not also the judge assigned to a matter) and structured procedures have proven to be highly effective alternatives to litigation.⁹⁷ The future introduction of an adequate legislative framework⁹⁸ and the adoption of a more standardized and formal approach to negotiation and mediation⁹⁹ will, in all likelihood, permit Mexico's legal system to resolve a greater number of cases more rapidly, thereby contributing to the conservation of scarce judicial resources, freeing up of dockets, and sparing individual parties the time, trouble, and expense of engaging in litigation.

2. **Launch SIGER:**

Mexico's traditional "paper and ink" based registry systems are prone to (i) human error, (ii) information loss, destruction, and manipulation, and (iii) administrative delay. The forthcoming launch of the SIGER will improve the operation of Mexico's registry systems by expediting the process for ascertaining the existence of specific filings (for example, through the conduction of a lien search), facilitating the online registration of liens, reducing the likelihood of fraud and error, and enabling the establishment of an integrated, searchable database of encumbered property. These outcomes will, in turn, likely make it easier for creditors to

96. The term "*conciliación*" is used in Mexico to refer to what a U.S. lawyer would understand to be mediation.

97. Mediation centers in the United States have, for example, reported settlement rates that reach as high as 70% and 80%.

98. In order for mediation to truly become an effective alternative to litigation, Mexico's legislature must address the issues of session confidentiality and the enforceability of mediated settlement agreements.

99. A growing number of Mexican government officials and judges believe that the creation of professionally staffed alternative dispute resolution ("ADR") centers offering, *inter alia*, state of the art (i.e., structured) mediation services will help alleviate the country's docket congestion problems. Clara Ramirez, *Respalda la PGR Mediación Judicial*, REFORMA, May 6, 2002.

carry out embargoes and *remates* and, on another level, provide banks and merchants with the degree of certainty necessary for entering into an increased number of lending or other economic growth inducing transactions with an expanded range of clients and/or partners.

3. Remedy Situations that Give Rise to Delays in the Embargo Process:

The embargo process is, as reflected in the perceptions of survey respondents, subject to substantial delays. These delays can, in the absence of a strong prosecutorial framework and will, be exploited by debtors seeking to fraudulently transfer or otherwise conceal their property. Steps that can be taken to remedy this situation include (i) introducing procedures, mechanisms, and incentives designed to shorten the time frame within which attorneys and actuaries undertake embargoes and (ii) creating and implementing an effective mixture of legislative mechanisms and performance based incentives for the purpose of securing more reliable police assistance.

4. Follow Through on Proposed Program of Amparo Reform:

The *amparo* action has, over time, evolved from being a mechanism used primarily for protecting individual citizens from the unlawful acts and/or conduct of government officials into a significant source of procedural delay and docket congestion. Referring to this transformation, the United Nations Special Rapporteur observed that “the present law regulating the *amparo* dates from 1936 and, in the opinion of many, including the Supreme Court, no longer corresponds to the needs of modern society.”¹⁰⁰

The Mexican Supreme Court prepared and submitted a series of *amparo* related reform proposals to the national congress in 2001. The eventual enactment of these proposals into law would be beneficial insofar as the existence of a simpler and more expeditious *amparo* procedure could simultaneously contribute to the reduction of extant docket congestion and bolster citizen confidence in the government’s capacity to administer justice.

100. UNSR, *supra* note 27, at 38.

5. Make More Effective Use of Power to Investigate and Sanction:

Fraudulent transfers of property, the bad faith use of dilatory tactics, and corruption continue to constitute obstacles to the enforcement of judgments in Mexico. In order to overcome the impediment posed by this reality to the effective operation of the rule of law, Mexico must better develop its underlying willingness and overt power to investigate and sanction irregular or illegal acts and/or conduct. Specific examples of action that can be taken in this connection include (i) making a maximum good faith effort to comply with the reporting and access to information requirements set forth in Mexico's *Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental* (hereinafter "L.F.T.A."),¹⁰¹ thereby providing parties with a viable mechanism for pursuing both institutional and individual accountability, (ii) introducing tougher laws – in conjunction with more efficient and realistic enforcement procedures and mechanisms – as a means of discouraging fraudulent or bad faith property transfers, (iii) establishing a practically conceived, substantively meaningful, and uniform code of ethics and professional responsibility for the benefit of the members of the Mexican legal profession (and their clients), along with a functional enforcement mechanism,¹⁰² and (iv) creating and implementing a practically conceived, substantively meaningful, and uniform code of judicial ethics and conduct, together with a functional enforcement mechanism.¹⁰³

6. Improve Security for At-Risk Judges and Lawyers:

Certain types of cases – for example, those involving narco-trafficking and human rights issues – can entail a high degree of risk (in terms of physical security) for Mexican judges and lawyers.¹⁰⁴ Absent the existence of a reliable system of security, the

101. *Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*, D.O., Jun. 11, 2002 (Mex. 2002).

102. In this regard the United Nations Special Rapporteur's report notes: "There is no code of ethics for lawyers. The various bar associations have their own code of ethics, breach of which may lead to expulsion of the member from the bar association. But that does not preclude the lawyer from continuing to practice. The only way to stop a lawyer from practicing is through the Ministry of Education, which can revoke the license, a complicated procedure which is never implemented." UNSR, *supra* note 27, at 26.

103. The Mexico City office of the National Center for State Courts, a U.S. based organization, is currently working with the *Tribunal Superior de Justicia del Distrito Federal* on such a code.

104. Jose Reveles, *Larga Lista de Ejecuciones de Abogados y Jueces*, EL

making of threats or the use of violence can adversely impact the impartiality and/or vigor with which judges and lawyers carry out their professional functions. Mexico must, going forward, strive to provide the members of the judiciary and legal profession with the security necessary to ensure the exercise of their unfettered professional judgment and determination with respect to the administration and pursuit of justice.

FINANCIERO, Nov. 19, 2001, at 74 (noting assignation of seventy-nine judges and legal professionals in Mexico during the past ten years); Tim Golden, *Mexican Judge is Shot Dead*, at <http://www.latino.com/mexkil.html> (last visited Mar. 4, 1999); Amnesty International USA, *Human Rights Defender Digna Ochoa*, at <http://www.amnestyusa.org/women/defenders/digna.html> (last visited Dec. 20, 2002) (reporting murder of prominent Mexican human rights advocate Digna Ochoa); Francisco Rejendiz and Jose Navarro, *Analiza Gobernación como Proteger a Jueces*, EL HERALDO DE MÉXICO, Nov. 14, 2001, at 1 (identifying connection between the assignation of magistrates and *narcotraficantes*); Ignacio Aczaga, *Seguridad para Magistrados, Exigen a Fox*, EL SOL DE MÉXICO, Nov. 20, 2001, at 2A (noting supreme court's rejection of Colombian-style "*jueces sin rostros*").

TABLE 1
SUMMARY OF KEY FINDINGS

ISSUE	TOTAL PERCENTAGE	SUB- PERCENT OF JUDGES	SUB- PERCENT OF ATTORNEYS
Mexico's legal system usually provides an effective means for recovering judicially recognized debts	47.2%	50.0%	42.1%
Judicial execution is the most effective means of enforcing judgments	64.0%	62.5%	58.6%
The law provides Mexican judges with power sufficient for the purpose of supervising the enforcement of judgments	57.6%	N/A	N/A
The roles and responsibilities of the entities involved in the process of enforcing local judgments in Mexico are clearly defined	70.4%	N/A	N/A
Bribes and illegal payments are not an important obstacle to the enforcement of judgments	62.9%	80.0%	53.6%
Mexico's registry system constitutes an acceptable means of identifying, locating and executing against a debtor's real property	51.6%	N/A	N/A
The principal legal obstacle to the enforcement of local judgments in Mexico is the fraudulent transfer of property	19.2%	12.5%	27.6%
The principal administrative or procedural obstacle to the enforcement of local judgments in Mexico is the congestion of Mexican court dockets	33.9%	38.7%	36.2%
The principal political, cultural, or socio-economic obstacle to the enforcement of local judgments in Mexico is debtor insolvency	50.0%	N/A	N/A
The number one reason not to pursue a judgment enforcement action in Mexico's courts is cost	28.0%	31.3%	32.8%
The Mexican entity which does not usually comply with its official obligations is the police	60.0%	N/A	N/A
Mexico's tribunals do not possess sufficient legal power to issue either civil or criminal sanctions against those parties which do not obey their decisions	46.4%	N/A	N/A

TABLE 1 (CONT'D)			
The average period of time required to enforce a local judgment in Mexico is between one to three years	58.9%	45.2%	74.2%
Mexican law contains mechanisms which can be utilized by debtors to prolong the judgment enforcement process	69.4%	N/A	N/A

ANNEX I

**QUALITATIVE INTERVIEW CONDUCTED IN MEXICO CITY
DURING THE WEEK OF 28 OCTOBER – 1 NOVEMBER 2002**

JUDGES	MAGISTRATES	COURT OFFICIALS	ATTORNEYS	NGOs
Juez Sergio Higuera Mota, Juzgado 4 Civil	Mag. Rafael Avante Martínez, Cuarta Sala Civil	Sec. de Acuerdos Raul Calva Balderrama, Juzgado 21 Civil	Carlos Loperena, Loperena, Lerch y Martin del Campo	Silvia Aguilera Garcia, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos
Juez Fabiola Vargas Villanueva, Juzgado 25 Civil	Mag. Mario Armando Vázquez Galván, Quinta Sala Civil	—	Carlos Garcia and Jorge Leon Orantes, Goodrich, Riquelme y Asociados	—
—	Mag. Miguel Alberto Reyes Anzures, Quinta Sala Civil	—	Ruben Minutti, Esq.	—
—	—	—	Alejandro Ogarrio, Ogarrio y Diaz	—
—	—	—	Marco Tulio Venegas, Von Wobeser y Sierra	—
—	—	—	John Rogers and Adrian Zubikarai, Strasburger & Price	—
—	—	—	Jose Luis Zambrano, Zambrano, Rocha y Espino	—