

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

## **Mexico**

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As in previous years, the legal developments in Mexico during 2017 have followed the theme of reform. Following the election of Mexico's first independent candidates in various public offices, public participation in political decisions has reached unprecedented levels. In particular, through the introduction of a new anti-corruption system and several bills to reduce the public funding for political parties, Mexico has adopted measures to counter the effects of two of its greatest evils—corruption and bureaucracy. Moreover, by taking a defensive stance against the planting of GMO crops and by regulating the preservation of its cultural legacy, Mexico has responded to urgent matters in favor of the most vulnerable sectors of its population. Mexico is also keeping up with the challenges of global innovation and competition, as evidenced by its efforts to incorporate legislation regulating cryptocurrencies and by the development of ethics in the legal profession through bar associations.

### **I. Constitutional Reform**

#### **A. RISKS & OPPORTUNITIES FOR U.S. AND MEXICAN ANTI-CORRUPTION ENFORCEMENT IN UNCERTAIN TIMES\***

Since its enactment in 1977, the Foreign Corrupt Practices Act (FCPA) has become a cornerstone of U.S. anti-corruption enforcement and has sparked international efforts to combat corruption. Today, Mexico and forty-five other jurisdictions around the world implement comprehensive domestic anti-corruption regimes.<sup>1</sup>

Of the 484 FCPA-related enforcement actions ever brought by the U.S. Securities and Exchange Commission (SEC) and the Department of Justice (DOJ), forty-four (or approximately 11% of the total cases) have involved

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1. *Global Overview of Anti-Corruption Laws 2017*, GLOBAL COMPLIANCE NEWS (2016), <https://globalcompliancenews.com/anti-corruption/anti-corruption-laws-around-the-world/>.

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bribes paid in Mexico, including thirty during the Obama administration.<sup>2</sup> FCPA enforcement efforts peaked under the Obama administration, which saw 299 FCPA-related actions, more than all prior administrations combined.<sup>3</sup>

Although proponents of a robust FCPA enforcement scheme have expressed concern that the new Trump administration would deemphasize anti-corruption enforcement,<sup>4</sup> in April 2017, Attorney General Jeff Sessions announced the U.S. government's commitment to "strongly enforc[ing] the FCPA and other anti-corruption laws."<sup>5</sup> That sentiment is shared by Mexican authorities. On June 1, 2017, Mexico's Economy Minister Ildefonso Guajardo "explicitly welcomed" some U.S. objectives for renegotiation of the NAFTA trade deal, "including plans to enshrine anti-corruption provisions in NAFTA."<sup>6</sup>

Mexico's new National Anti-Corruption System, or "SNA" by its Spanish acronym,<sup>7</sup> came into full effect in July 2017. The SNA coordinates federal and local anti-corruption efforts, establishes an anti-corruption legal framework, and creates a federal anti-corruption tribunal and an independent anti-corruption prosecutor's office.<sup>8</sup>

Both individuals and companies face potentially high sanctions for violations of the SNA, including fines, debarment from public procurement, damages, dissolution, and/or prison. Corporations may reduce sanctions, however, by implementing internal compliance programs and codes, audit

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2. These statistics are developed from the SEC and DOJ source material along with the Stanford Law School FCPA Clearinghouse. See Foreign Corrupt Practices Act (FCPA), Chronological List, DEPT OF JUSTICE; SEC. & EXCHANGE COMM'N, SEC ENFORCEMENT ACTIONS: FCPA CASES. See also *Key Statistics from 1977 to Present*, <http://fcpa.stanford.edu/statistics-keys.html>.

3. The Obama administration cases are counted as all cases filed between January 1, 2009 and January 18, 2017. The Trump administration cases are counted as all cases filed between January 19, 2017 and the present. See *Key Statistics from 1977 to Present*, *supra* note 2.

4. Samuel Rubinfeld, *Some Experts FCPA Enforcement Drop Under Trump*, WALL ST. J. (Nov. 11, 2016), <https://blogs.wsj.com/riskandcompliance/2016/11/11/some-experts-predict-fcpa-enforcement-drop-under-trump/>. See also Gabe Friedman, *Will the Trump Administration Soften FCPA Enforcement?*, BLOOMBERG LAW (June 11, 2017), <https://bol.bna.com/will-the-trump-administration-soften-fcpa-enforcement/>.

5. Jeff Sessions, Att'y Gen. U.S. Dep't of Justice, Remarks at Ethics and Compliance Initiative Annual Conference (Apr. 24, 2017), available at <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-ethics-and-compliance-initiative-annual>.

6. *Mexico Minister Queries U.S. Talk on Cutting NAFTA Trade Deficits*, REUTERS, June 18, 2017, <https://www.reuters.com/article/us-usa-trade-nafta-mexico/mexico-minister-queries-u-s-talk-on-cutting-nafta-trade-deficits-idUSKBN1A31ED>.

7. Jonathan Adams & Christian Leo, *New Mexican Anti-Corruption Law Enters Into Force July 19, 2017*, GLOBAL COMPLIANCE NEWS, (July 19, 2017, 8:11 AM), <https://globalcompliancenews.com/new-mexican-anti-corruption-law-20170713/>.

8. See *id.*

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systems, whistleblower procedures, training, and cooperation with authorities.<sup>9</sup>

The SNA is in the early stages of application, and its effectiveness in practice remains to be seen. Still, there are signs of progress. Public reaction has been positive and political commentators have praised the SNA.<sup>10</sup> Nevertheless, challenges remain. The SNA's budget is not yet adequate to support such an ambitious undertaking.<sup>11</sup> Key appointments for the SNA have lagged: specialized anti-corruption judges have not been confirmed, and the anti-corruption prosecutor's office is mired in partisan controversy.<sup>12</sup>

The SNA's first real case may be one involving the construction of the Cuernavaca-Acapulco highway, where earlier this year a sinkhole appeared, taking two lives. According to reports, the highway's construction suffered from corruption at all levels, and the SNA's audit institution has already uncovered approximately \$15 million in unjustified payments.<sup>13</sup> Although the full results of this investigation are yet to be seen, the case will certainly be a test for the SNA's commitment and effectiveness.

**B. ANALYSIS OF THE IMPLICATIONS TO MEXICO'S POLITICAL PARTIES' BUDGET UNDER THE "NO VOTE, NO MONEY" (*SIN VOTO NO HAY DINERO*) ACT\***

On April 6, 2017, the local Congress passed a bill amending the state Constitution. The bill became an act with unanimity of votes in favor.<sup>14</sup>

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9. See *Sistema Nacional Anticorrupción (SNA)*, GOB.MX, <https://www.gob.mx/sfp/acciones-y-programas/sistema-nacional-anticorrupcion-64289?idiom=ES> (last visited Apr. 5, 2018).

10. Javier Risco, *The 'trap' that never existed*, EL FINANCIERO (July 3, 2017), <http://www.elfinanciero.com.mx/opinion/javier-risco/la-trampa-que-nunca-existio>.

11. *Arrancará Sistema Nacional Anticorrupción con 214 mdp de Presupuesto*, SDP NOTICIAS (June 26, 2017), <https://www.sdpnoticias.com/nacional/2017/06/26/arrancara-sistema-nacional-anticorrupcion-con-214-mdp-de-presupuesto>. See also Hector Molina & Jorge Monroy, *Plantean Presupuesto Transversal para el SNA*, EL ECONOMISTA 12 (Sept. 12, 2017), <http://eleconomista.com.mx/sociedad/2017/09/12/plantean-presupuesto-transversal-sna>.

12. Enrique Cardenas, *¿Por qué no se ha nombrado al fiscal anticorrupción?*, EL FINANCIERO (Aug. 17, 2017), <http://www.elfinanciero.com.mx/opinion/por-que-no-se-ha-nombrado-al-fiscal-anticorrupcion.html>. See also Armando Ríos Piter, *Fiscal Anticorrupción en Julio*, EXCELSIOR (July 3, 2017), <http://www.excelsior.com.mx/opinion/armando-rios-piter/2017/07/03/1173327>.

13. *Hay Siete Investigaciones Iniciadas por Socavón en el Paso Expres: Comité del SNA2*, PROCESO (Sept. 6, 2017), <http://www.proceso.com.mx/501966/siete-investigaciones-iniciadas-socavon-en-paso-expres-comite-del-sna>. See also *SNA Investigará Irregularidades que Derivaron en el Socavón del Paso Expres*, NOTICIEROS TELEvisa (Sept. 5, 2017), <http://noticieros.televisa.com/ultimas-noticias/nacional/2017-09-05/sna-investigara-irregularidades-que-derivaron-socavon-paso-expres/>.

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14. See Gobierno de Jalisco, Poder Legislativo, Secretaría del Congreso, *Dictamen de Acuerdo Legislativo suscrito por la comisión de Puntos Constitucionales, Estudios Legislativos y Reglamentos que declara aprobada la Minuta de Decreto 26373/LXI/17 que reforma los artículos 6, 12, 13, 18, 70, 73, 74, 75 de la Constitución Política de Estado de Jalisco, en materia electoral*, CONGRESOWEB (June 6,

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Based on the initiative of Jalisco's first independent deputy, Pedro Kumamoto, the amendment seeks to modify the formula traditionally used to calculate the public funding of political parties.<sup>15</sup> The so-called "No Vote, No Money" Act (SVNHD Act) is an exceptionally ambitious project, and it has been introduced at local congresses nationwide as well as at the Federal Congress.

The SVNHD Act serves relevant socio-political and legal purposes. In Mexico, political parties are constitutionally awarded public funding,<sup>16</sup> which means that part of the nation's resources are destined to sponsor the parties' ordinary activities. This public funding comes from two sources, as both the states and the federal government reserve part of their respective budgets for this purpose.

The SVNHD Act modifies the formula used to calculate the public funding of political parties, by substituting the factor. That is, instead of multiplying the total amount of registered voters, it multiplies the number of validly-submitted votes in the previous election by the 65% of the current Measurement and Update Unit. Therefore, in order to increase their publicly-funded budgets, political parties must now try harder to earn the votes of the common citizen.

The original intent of the SVNHD Act was to evaluate the viability of modifying the formula found in Article 41 of the federal Constitution through actions at a local level. This situation led to much debate regarding the scope of the so-called "legislative auto configuration"<sup>17</sup> of the states, and to questions regarding the constitutionality of the Act. Three political parties<sup>18</sup> filed a constitutional appeal, challenging the Act.<sup>19</sup>

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2017), <http://congresoweb.congresoajal.gob.mx:8012/agendakioskos/documentos/sistemaintegral/estados/72951.pdf>.

15. *See id.*

16. Constitución Política de los Estados Unidos Mexicanos, CPEUM, art. 41, Diario Oficial de la Federación [DOF] 02-05-1917, últimas reformas DOF 09-15-2017 (Mex.), formato PDF, [http://www.diputados.gob.mx/LeyesBiblio/pdf/1\\_150917.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/1_150917.pdf) (consultada el 29 de enero de 2018).

17. The legislative auto configuration means the freedom of each State to legislate by themselves and through their own State's Congress. This concept encompasses the creation of law with diverse legal/political content while remaining consistent with the Constitution and the Rule of Law. *See* Fernando Silva García and Alfredo Villeda, *Libertad de configuración legislativa e irretroactividad de las leyes*, LA BIBLIOTECA JURIDICA VIRTUAL (2001), <https://revistas-colaboracion.juridicas.unam.mx/index.php/judicatura/article/viewFile/31970/28961>.

18. Unconstitutionality Action number 38/2017 and its accumulated procedures number 39/2017 and 60/2017, filed by the political parties "Verde Ecologista de México", "Nueva Alianza" y "Morena". Sentencia dictada por el Tribunal Pleno de la Suprema Corte de Justicia de la Nación en la Acción de Inconstitucionalidad 38/2017 y sus acumuladas 39/2017 y 60/2017, Diario Oficial de la Federación [DOF] 15-12-2017, (Mex.), formata PDF, [http://dof.gob.mx/nota\\_to\\_doc.php?codnota=5507989](http://dof.gob.mx/nota_to_doc.php?codnota=5507989).

19. Unconstitutionality Action is a *judicial review* mechanism. The Supreme Court of Justice, through the Unconstitutionality Action, has the power to declare laws, reforms or international treaties unconstitutional. *See id.*

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During an August 28, 2017 session, Mexico's Supreme Court decided the constitutionality of the local act. Justice Jorge Mario Pardo Rebollado proved to be sympathetic to the plaintiffs' arguments.<sup>20</sup> Nevertheless, by a vote of seven to four, the Court held that the amendment to Jalisco's Constitution was constitutional.<sup>21</sup> The ruling officially legitimized local initiatives as a method of modifying public funding of political parties.<sup>22</sup>

State congresses have the ability to present initiatives at the federal Congress,<sup>23</sup> and on January 10, 2017, the Jalisco State Congress pushed the SVNHD initiative at the federal level through a legislative agreement.<sup>24</sup> Currently, the federal bill is at a peculiar procedural stage, because the Commission for Constitutional Considerations (*Comisión de Puntos Constitucionales*) has not yet studied the substance of the case.<sup>25</sup>

To clarify the procedural stages and to comprehend the legal and social implications of the various SVNHD bills, various points must be emphasized. The first is the timeline for the bills' introduction at local and federal congresses. Because the Commission for Constitutional Considerations had yet to deliberate over the bill at the federal level, it was introduced at Jalisco's Congress in the meantime. Once the bill was passed into law in Jalisco, it was appealed, and the Supreme Court ruled in favor of the defendant. To date, twenty-seven states have introduced similar bills in their local congresses.<sup>26</sup>

## II. Mexico's Supreme Court of Justice

### A. MEXICAN COURTS ARE BIGGER THAN AGRICULTURAL GIANT, MONSANTO\*

In a critical case, the first chamber of the Mexican Supreme Court of Justice of the Nation (SCJN) rejected an appeal by Monsanto regarding the

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20. *See id.*

21. *See id.*

22. *See* Suprema Corte de Justicia de la Nación [SCJN], Poder Judicial de la Federación, Sesión Pública Núm. 78 Ordinaria, Página 51-52, (Mex.), formato PDF, <https://www.scjn.gob.mx/sites/default/files/actas-sesiones-publicas/documento/2017-08-31/78.pdf> (consultada el 28 de enero de 2018).

23. Constitución Política de los Estados Unidos Mexicanos CPEUM, artículo 71, fr. III. Diario Oficial de la Federación [DOF] 02-05-1917, últimas reformas DOF 09-15-2017, formato PDF, [http://www.diputados.gob.mx/LeyesBiblio/pdf/1\\_150917.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/1_150917.pdf)(consultada el 28 de enero de 2018).

24. *See generally*, Diego Badillo, *En Mexico, sin voto no hay dinero: Pedro Kumamoto*, EL ECONOMISTA (Sept. 9. 2017), <https://www.economista.com.mx/politica/En-Mexico-sin-voto-no-hay-dinero-Pedro-Kumamoto-20170909-0010.html>.

25. Reglamento de la Cámara de Diputados [RCD], Iniciativas Presentadas en la LXIII Legislatura Turnadas a Comisión, formata HTML, [http://sitl.diputados.gob.mx/LXIII\\_leg/iniciativaslxiil.php?comt=47&tipo\\_turnot=1&edot=P](http://sitl.diputados.gob.mx/LXIII_leg/iniciativaslxiil.php?comt=47&tipo_turnot=1&edot=P) (consultada el 28 de enero de 2018).

26. Adriana Luna, *Quiere Kumamoto 'Sin voto no hay dinero' en todo el país*, EXCELSIOR (Aug. 28, 2017), <http://www.excelsior.com.mx/nacional/2017/08/28/1184658>.

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issuance of commercial permits for sowing of genetically-modified organism (GMO)—or transgenic—maize.<sup>27</sup> Rejecting the appeal means that the lower court's ban on GMO corn stays intact.

The appeal stemmed from a September 2013 precautionary measure<sup>28</sup> banning GMO maize plantings, which had considered the risk of environmental damage and included a declaration that the benefits of GMO maize remained unproven.<sup>29</sup> This precautionary measure remained in effect, pending demonstrations of safety and economic benefits of GMOs. In January 2017, the Collegial Court was scheduled to rule on whether to continue the precautionary measure, but suspended its ruling because Monsanto submitted a petition to the SCJN.<sup>30</sup>

None of the SCJN justices endorsed Monsanto's request (a requirement to place it on the SCJN docket), thereby returning it to the Collegial Court and effectively upholding the lower court ban on GMO maize. This also allowed the appeals court to verify the suspension of permits for planting of GMO maize and to uphold enforcement of the ban throughout the country.

This decision is significant for many reasons, not the least of which is maintaining the toehold of indigenous and peasant farmers in their fight to protect Mexico's unique status as the center of origin and diversification of maize. The benefits of maintaining Mexico as the center of origin outweigh the benefits associated with free trade and commercialization of GMOs—which come with serious environmental, socioeconomic, and cultural impacts.

Had the court ruled otherwise, it not only would have resulted in destruction of Mexico's unique status as the center of origin for maize (and the fifty-nine varieties of maize that have been preserved and are still available), it would have permitted Monsanto to monopolize planting and growing of the crop. That monopolization would have come with additional adverse consequences such as expense, pollution, food safety, and nutrition issues. The SCJN decision paves the way for the government to fulfill its obligation to provide food security for indigenous and peasant farmers and not cede to the demands of free-trade pragmatism or economic and political expediency. Further, Mexico may now step up as a world leader in guarding the environment and safety for its country and its peoples. Preserving Mexico as the center of origin and maize diversification is a win-win for all.

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27. Victor Fuentes, *Rechazan a Monsanto revisión sobre maíz*, REFORMA (May 11, 2017), <http://www.reforma.com/aplicacioneslibre/articulo/default.aspx?id=1111268&md5=9d08aed6a59192f37483b48abdc5b511&ta=0dfdbac11765226904c16cb9ad1b2efe>.

28. A precautionary measure operates like an injunction in the U.S. Court system.

29. See *Mexican Supreme Court Refuses to Review Monsanto Appeal on GMO Maize Permits*, SUSTAINABLE PULSE (May 12, 2017, 9:33 PM), <https://sustainablepulse.com/2017/05/12/mexican-supreme-court-refuses-to-review-monsanto-appeal-on-gmo-maize-planting/#.WnN9smaZOuU>.

30. See *id.*

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To understand why this seemingly simple decision has such a large ripple effect, it is necessary to examine what would have been the impact had the SJCN decided otherwise. Few people understand that it is not a simple matter of planting a field of GMO maize in one area and planting a field of original native corn in another. Because of the unique and miraculous way in which corn is pollinated, native corn is easily contaminated by pollen from GMO maize through cross-pollination,<sup>31</sup> otherwise known as genetic contamination. Because of this contamination, it is highly likely that, in time, native maize will be overtaken by GMO corn—such as has already happened in the United States.<sup>32</sup>

The unfortunate and eventual result is that anyone who wants to grow corn would have to buy their seed from Monsanto. Monsanto's seed is patented,<sup>33</sup> and the U.S. Supreme Court has held that a farmer who buys patented seeds may not reproduce them through planting and harvesting without the patent holder's permission.<sup>34</sup> Monsanto, an aggressive litigator, has sued farmers for seed piracy.<sup>35</sup> This could put an end to the current practice of saving and sharing corn seed from year-to-year.

Because Monsanto owns the corn seed it sells, it controls the price. It also can increase price, which it does with regularity.<sup>36</sup> Seeds have become the most expensive component of farming; corn seed prices in the U.S. have quadrupled in the last two decades, while corn prices have fallen.<sup>37</sup> In addition, farmers who buy GMO seeds from Monsanto sign contracts that dictate how their crop is grown—including what chemicals to buy. These arrangements would give Monsanto control over production of Mexico's staple and heritage crop. Most indigenous and rural people would be priced out of being able to grow their own corn under this scenario.

Other problems include the environmental impact of the chemicals applied to the food, the health impacts of those chemicals, and the very real

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31. Most sweet corn is in pollination mode for about 10 days. Here's how it works: a pollen grain falls on a sticky strand of silk and imbeds itself. For the next 12 to 24 hours, the pollen grows a tube down the length of the silk to a waiting ovary. If all goes well, a corn kernel is born. Excellent pollination produces ears that are filled with wall-to-wall kernels; poor pollination leads to ears with lots of missing kernels. See Barbara Pleasant, "The Sex Life of Sweet Corn", GROW VEG (Aug. 14, 2009) <https://www.growveg.com/guides/the-sex-life-of-sweet-corn/>.

32. Industry trade groups acknowledge that cross-pollination, adventitious co-mingling and other "causes" make it virtually impossible to assure that any U.S. origin corn shipment is 100% non-GMO. See *The Truth About non-GMO Food*, FOOD ASSETS, <https://foodassets.com/info/the-truth-about-non-gmo-foods.html> (last visited Jan. 29, 2018).

33. *J.E.M. Ag Supply, Inc. v. Pioneer Hi-bred International, Inc.*, 534 U.S. 124 (2001).

34. *Bowman v. Monsanto*, 569 U.S. 278 (2013).

35. *Seed Giants vs. U.S. Farmers*, CENTER FOR FOOD SAFETY & SAVE OUR SEEDS (2013), <https://www.centerforfoodsafety.org/reports/1770/seed-giants-vs-us-farmers>.

36. William Neuman, *Rapid Rise in Seed Prices Draws U.S. Scrutiny*, NEW YORK TIMES (March 11, 2010) <http://www.nytimes.com/2010/03/12/business/12seed.html>.

37. Jacob Bunge, *As Crop Prices Fall, Farmers Focus on Seeds*, WALL ST. J. (Oct. 16, 2016 10:05 PM), <https://blogs.wsj.com/riskandcompliance/2016/11/11/some-experts-predict-fcpa-enforcement-drop-under-trump/>.

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question of the nutritional value of food grown from GMO seed. The unfortunate thing, as the Collegial Court noted, is that not enough research has been done to determine the short-and long-term effects of cultivating GMO crops. In addition to genetic contamination, there are multiple other problems:

Genetically engineered crops can be classified as a “living pollution” because they can reproduce themselves. Once a GE crop exists in the environment, its pollen—containing unique combinations of genetic traits whose long-term effects have not been studied—can be passed on, causing contamination in other plants from the same species. These newly contaminated plants can then reproduce the pollution, and so on. Bumblebees, monarch butterflies and many other insects do not know the borders of a conventional farm that grows [GMO] crops from the borders of an organic farm, other conventional farms or a wild field. These insects take pollen from sources and will pollinate plants indiscriminately. [. . .] Scientists who genetically alter organisms have barely studied what effects this random genetic disruption can have on the new organism.<sup>38</sup>

These undesirable effects are in addition to the multitude of other environmental disasters caused by cultivation of GMO crops.<sup>39</sup> One of the side effects of planting GMO crops is that in response to the use of the required herbicide, nature creates herbicide-resistant weeds.<sup>40</sup> This requires the development and application of new technology, such as the herbicide “dicamba” and the accompanying dicamba-resistant GMO seeds, recently introduced by Monsanto.

In the United States, dicamba technology was released without adequate study of environmental impacts. It is estimated that 3.1 million acres of crops have been damaged by dicamba drift. The U.S. Environmental Protection Agency listed the product as a “Restricted Use Product” after more than 2,700 formal dicamba-related complaints were filed in twenty-three states during the 2017 production season.<sup>41</sup>

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38. S'RA DeSANTIS, CONTROL THROUGH CONTAMINATION: US FORCING GMO CORN AND FREE TRADE ON MEXICO AND CENTRAL AMERICA 6 (Brian Tokar et. al. June 2003), *available at* [https://www.iatp.org/files/Control\\_Through\\_Contamination.pdf](https://www.iatp.org/files/Control_Through_Contamination.pdf).

39. In the U.S. approximately 80% of all crops are genetically modified. According to the USDA, agriculture accounts for approximately 80% of the Nation's consumptive water use and over 90% in many Western States. The Gulf of Mexico dead zone is one of the largest in the world and is caused by nutrient enrichment from the Mississippi River, particularly nitrogen and phosphorous primarily from the agricultural industry. *See id.*

40. Critics say genetically modified com plantings will contaminate age-old native varieties and that toxins designed to protect the GMO grain against pests may be linked to elevated insect mortality. *See id.*

41. *See Registration of Dicamba for Use on Genetically Engineered Crops*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/ingredients-used-pesticide-products/registration-dicamba-use-genetically-engineered-crops> (last visited January 30, 2018).

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In addition, both the nutritional value and safety of GMO foods is questionable, according to non-industry sources.<sup>42</sup> A recent article, entitled “The Great Nutrient Collapse,”<sup>43</sup> outlines factors that have led to the decline in the nutritional value of food, including the increase in atmospheric CO<sub>2</sub> and the change in agricultural practices opting for higher yield at the expense of nutritional value. The article cites a 2004 landmark study of fruits and vegetables, which found that everything from protein to calcium, iron, and vitamin C had declined significantly across most garden crops between 1950 and 1999.<sup>44</sup> The researchers concluded this was due to changes in cultivated varieties, “in which there may be trade-offs between yield and nutrient content.”<sup>45</sup> The article also discusses current research estimating that the increase in CO<sub>2</sub> results in increased plant photosynthesis, suggested by some as a good thing.<sup>46</sup> But, this increase also leads plants “to pack in more carbohydrates like glucose at the expense of other nutrients that we depend on, like protein, iron and zinc.”<sup>47</sup> The problem is that plants are a crucial source of protein for people in the developing world. As a result, the study suggests, approximately 150 million people could be at risk of protein deficiency by 2050.

On November 23, 2017, *Reforma* reported that Mexico’s agriculture sanitation authority (*Servicio Nacional de Sanidad, Inocuidad y Calidad Agroalimentaria* or SENASICA by its acronym in Spanish) revoked Monsanto’s permit to commercialize GMO soy in seven Mexican states.<sup>48</sup> According to the report, citing a SENASICA document, the permit was revoked after authorities detected Monsanto’s GMO soybeans in unauthorized areas.<sup>49</sup> The permit revocation applies to the states of Tamaulipas, San Luis Potosi, Veracruz, Chiapas, Campeche, Yucatan, and Quintana Roo.

Presumably, this revocation also impacts the administrative lawsuit brought by Mexican beekeepers to prevent Monsanto from planting GMO

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42. Consider also that no one knows or has seriously studied the impact of feeding GMO crops to animals—although there have been reports of pigs fed GMO corn exhibiting signs of pregnancy. See DESANTIS, *supra* note, 38 at 7.

43. Helena Bottemiller Evich, *The Great Nutrient Collapse*, POLITICO (Sept. 13, 2017, 05:03 AM), <https://www.politico.com/agenda/story/2017/09/13/food-nutrients-carbon-dioxide-000511>.

44. *See id.*

45. Donald R. Davis et al., *Changes in USDA Food Composition Data for 43 Garden Crops, 1950 to 1999*, 23 J. Am. Coll. Nutrition 669, 669-82 (2004), available at <http://saveoursoils.com/userfiles/downloads/1351255687-Changes%20in%20USDA%20food%20composition%20data%20for%2043%20garden%20crops,%201950-1999.pdf>.

46. *See* Evich, *supra* note 43.

47. Chance Seales, *Why Our Food Has Fewer Nutrients Than Ever Before*, NEWSY, (Dec. 29, 2017), <https://www.newsy.com/stories/why-our-food-has-fewer-nutrients-than-ever-before/>.

48. Press Release, Servicio Nacional de Sanidad, Inocuidad y Calidad Agroalimentaria, *Revoca SENASICA permiso de soya genéticamente modificada* (Nov. 24, 2017), available at <https://www.gob.mx/senasica/prensa/revoca-senasica-permiso-de-soya-geneticamente-modificada-136249>.

49. *Id.*

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soybeans. Originally, Monsanto received a permit to plant their GMO seeds (MON-04032-6) in a large area of land, despite protests organized by thousands of beekeepers, citizens, major environmental groups, the National Institute of Ecology, and Mayan farmers. Nevertheless, district judges overturned the Monsanto honey production in the state of Campeche and in the Yucatan peninsula. The judges in Campeche and Yucatan held that the communities should be consulted and prohibited Monsanto from selling its seeds until a decision had been reached.<sup>50</sup> These cases were appealed by the Public Prosecutor's Office in Campeche and by Monsanto and the Department of Agriculture, Livestock, Rural Development, Fishery and Food (SAGARPA) in Yucatan. The circuit courts that heard the appeals sent them to the SJCN through a writ of certiorari, which ruled in favor of the communities on November 4, 2015.<sup>51</sup>

In addition to the many problems with GMO corn mentioned in this article, Mexico is widely viewed as the cradle of corn evolution.<sup>52</sup> Regardless, Monsanto has persisted in its relentless pursuit of dominating corn in Mexico.

Due process in Mexico is a tangled and lengthy juridical process and Monsanto has exploited the 'amparo' rights clause of the Mexican Constitution to prolong and intensify its attacks on Indigenous and peasant farmers. These are the farmers who sustain the living seed libraries of the vital Mesoamerican Vavilov center of Origin and Diversification of corn among more than three dozen other native crops that literally feed the world.<sup>53</sup>

With the current "pragmatic" political and economic forces, Mexico may have to accept the inevitability of a world governed by GMO food and its unknown implications, it is remarkable that the court exercised its independence and correctly decided that adverse effects of GMO maize should be explored. Although it has been known since 2003 that GMO corn

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50. Gabriela Guzmán Pérez, *El caso de la soya transgénica y la producción apícola en comunidades mayas. Una aproximación a través de las sentencias del asunto*, UNAM (Aug. 30, 2016), <https://revistas.juridicas.unam.mx/index.php/hechos-y-derechos/article/view/10617/12784>.

51. The *amparos* in review with file numbers 241/2015, 270/2015 and 410/2015 derive from the *amparo* number 753/2012, filed by the communities Pac-Chen and Cancabchen, and were heard by justice Fernando Franco González; the *amparos* in review with file numbers 498/2015, 499/2015 y 500/2015, derive from the *amparo* number 762/2012, filed by five Mayan beekeeper communities in the state of Campeche, and were heard by justice Eduardo Medina Mora; and the *amparo* in review with file number 198/2015, derived from the *amparo* number 286/2012, filed by Mayan beekeeper communities in the state of Yucatán, and was heard by justice Margarita Luna Ramos. *See id.*

52. [Botanists] discovered that all maize was genetically most similar to a teosinte type from the tropical Central Balsas River Valley of southern Mexico, suggesting that this was the cradle of maize evolution. Sean B. Carroll, *Tracking the Ancestry of Corn Back 10,000 Years*, N.Y. TIMES (May 24, 2010), <http://www.nytimes.com/2010/05/25/science/25creature.html>.

53. Devin G. Peña, *Mexican Supreme Court Upholds Lower Court Ban on Transgenic Corn*, BLOGSPOT (May 12, 2017) <https://ejfood.blogspot.com/2017/05/monsanto-in-mexico-breaking-news.html>.

exported to Mexico had contaminated indigenous corn in Oaxaca,<sup>54</sup> it is not too late to stop further genetic contamination. The SJCN made the correct decision in returning the matter to the Collegial Court. The Collegial Court was correct in extending a temporary ban on GMO corn and, in fact, should make it permanent.

This also provides an open invitation to the government of Mexico to work with indigenous and peasant farmers to preserve Mexico's heritage, environment, and the economic and physical health of its people. In a demonstration of how a true democracy functions, the Mexican courts have exercised the independence of the judiciary; the government ought to follow. As an emerging world economic force, this is the perfect opportunity for Mexico to jump off of the GMO treadmill and lead us toward a healthier, more sustainable food supply for all. It is not too late.

### III. Legislative Innovation

#### A. ADDRESSING VIRTUAL CURRENCIES IN MEXICO\*

Technological advances have always had a great impact in the way society has developed. Today, technology is altering the way that consumers pay for goods and services. Virtual or cryptocurrencies, such as Bitcoin, Litecoin, Peercoin, Dogecoin, Namecoin, and Quark, among others, represent a new means by which a wide range of transactions can quickly and efficiently take place.<sup>55</sup> These digital currencies are created and possessed electronically,<sup>56</sup> but they are not centrally controlled. This lack of central control creates new ways for parties to hide their financial transactions.

Due to the social and economic implications that virtual currencies have in the market (especially in the financial sector), the Mexican government, through the Department of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*), has sought to regulate crypto currencies in order to "protect" vulnerable users.<sup>57</sup> The Ministry of Finance estimates that there are currently 160 entities involved in technological-financial operations

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54. "[T]he North American Free Trade Agreement (NAFTA) has allowed the United States to dump millions of tons of corn onto Mexico." According to this author, this significant amount of corn exported to Mexico has contaminated indigenous corn in Oaxaca with DNA from GMOs. Thus, the marriage of freed trade and GMOs created the ugly offspring of genetic pollution of corn in Mexico's center of origin. Other reports of contamination have been made since 2003. See DESANTIS *supra* note 38, at 9.

\* This section is authored by Diego Alejandro López Ramírez, a law school graduate from Universidad Panamericana Campus Guadalajara, Diego currently holds an associate attorney position at Gómez Arnaiz Abogados, in Guadalajara, Mexico.

55. *No solo Bitcoin: cuáles son las otras monedas digitales*, BBC MUNDO (January 22, 2014) [http://www.bbc.com/mundo/noticias/2014/01/140122\\_tecnologia\\_monedas\\_digitales](http://www.bbc.com/mundo/noticias/2014/01/140122_tecnologia_monedas_digitales).

56. Noel Acheson, *What is Bitcoin?*, Coindesk (Jan. 26, 2018), <http://www.coindesk.com/information/what-is-bitcoin/>.

57. Leticia Hernández, *Ley Fintech llegará hasta Septiembre: SHCP*, EL FINANCIERO (May 16, 2017), <http://www.elfinanciero.com.mx/economia/ley-fintech-llegara-hasta-septiembre-shcp.html>.

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which have loaned over one billion Mexican pesos (approximately 57 million USD) and which have over 540 thousand active users.<sup>58</sup>

Virtual currencies have proven that they can function adequately without the intervention of the state. Moreover, the use of Blockchain technology<sup>59</sup> offers users an improved security system that is essentially un-hackable, as well as a secure and efficient payment method.

The preliminary draft for Mexico's Fintech Law tries to integrate e-companies and operations into Mexico's formal financial sector by compelling them to acquire an authorization from the National Banking and Stock Commission (*Comisión Nacional Bancaria y de Valores*) to be able to operate legally, and therefore subject to the supervision of Mexican banking authorities and Central Bank.<sup>60</sup> E-companies will also be required to publish and submit all relevant information regarding their operations to the Mexican government.

Under Mexico's Monetary Law (*Ley Monetaria de los Estados Unidos Mexicanos*), the only legal currency is the one issued by Mexico's Central Bank.<sup>61</sup> This means that privately-issued virtual currencies will have to be classified under local financial laws to determine their legal nature. These three elements — integration into the financial sector, information submission, and classification of assets — will provide Mexican authorities a better ground to subject virtual operations and assets to taxation.

Virtual currencies currently pose two relevant legal issues—over-regulation and under-regulation. As a member of the international community, one of the most important commitments Mexico has with respect to financial industry is the prevention of money laundering.<sup>62</sup> Virtual currencies allow payment schemes for deep-web criminals in transactions involving drugs, illegal weapons, and nuclear materials, among many others. Since 2014, it is estimated that these illegal activities amount to 80,000 transactions, and up to 8 billion USD per day.<sup>63</sup> The Mexican government's efforts to regulate virtual currencies will shed light onto these operations, and will aid in minimizing their use in illegal transactions.

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58. Jorge Schaar. *México necesita una ley fintech 'a la medida*. DELOITTE (2017) <https://www2.deloitte.com/mx/es/pages/dnoticias/articles/ley-fintech-en-mexico.html>.

59. A software platform where virtual assets are registered and exchanged. See BLOCKCHAIN, <https://www.blockchain.com> (last visited Jan. 30, 2018).

60. *Ley Fintech buscará integrar criptomonedas a sistema financiero*, FORBES MÉXICO (May 16, 2017, 4:13PM), <https://www.forbes.com.mx/ley-fintech-buscar-integrar-criptomonedas-sistema/>.

61. Ley Monetaria de los Estados Unidos Mexicanos [LM], art. 2. Diario Oficial de la Federación [DOF] 06-27-1931, últimas reformas DOF 01-20-2017 (Mex.), formata PDF, <http://www.diputados.gob.mx/LeyesBiblio/pdf/152.pdf> (consultada el 30 enero de 2018).

62. UN OFFICE ON DRUGS AND CRIME, *UNDOC on money laundering and countering the financing of terrorism*, UNDOC, <http://www.unodc.org/unodc/en/money-laundering/index.html> (last visited Jan. 31, 2018).

63. *Virtual Currencies: Out of the deep web, into the light*, PRICE WATERHOUSE COOPERS (March 2014), [https://www.pwc.com/im/en/publications/assets/banking/pwc\\_virtual\\_currencies\\_risk\\_opportunities.pdf](https://www.pwc.com/im/en/publications/assets/banking/pwc_virtual_currencies_risk_opportunities.pdf).

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On the other hand, over-regulation might discourage innovation,<sup>64</sup> and could also potentially violate human rights if e-companies involved in the issuance of virtual currencies do not voluntarily comply with local regulations. In such scenario, the enforcement of the law would have to be done through more coercive methods, such as the use of a “cyber force” to hack individual users and e-companies in order to obtain information, which risks claims of breach of privacy,<sup>65</sup> and can be interpreted as a violation to the sovereignty of foreign jurisdictions.

In any event, Mexico is making great strides in balancing the need for regulation in this sector and, as technology continues to grow, Mexico will most certainly grow along with it.

**B. GENERAL OVERVIEW OF MEXICO’S NEW GENERAL CULTURE  
AND CULTURAL RIGHTS LAW (*LEY GENERAL DE CULTURA  
Y DERECHOS CULTURALES*)\***

Mexico’s new General Culture and Cultural Rights Law (also known as LGCDC, by its acronym in Spanish) was approved by its Federal Chamber of Deputies on April 28, 2017, with a majority of 366 votes in favor and two against, and entered into force on June 20, 2017.<sup>66</sup> The new law is the first of its kind in the history of Mexico, and is an essential step for one of the world’s most culturally rich countries.<sup>67</sup> The purpose of the LGCDC is two-fold. On one hand, it legally recognizes Mexico’s culture as part of its people’s heritage and, on the other, it recognizes its people’s right to access and enjoy this legacy. Through its forty-two articles, the new law sets forth the regulations for the constitutional Articles 4 and 73, fraction XXIX-N, which include the recognition and the mechanisms to guarantee the protection of cultural rights, the preservation of Mexico’s cultural

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64. Dong He, et al., *Virtual Currencies and Beyond: Initial Considerations* 6 (IMF Staff Discussion Note 16/03), available at <https://www.imf.org/external/pubs/ft/sdn/2016/sdn1603.pdf>.

65. JOSHUA BARON ET AL., NATIONAL SECURITY IMPLICATIONS OF VIRTUAL CURRENCIES, EXAMINING THE POTENTIAL FOR NON-STATE ACTOR DEPLOYMENT 42-44 (Rand Corp., 2015) available at [http://www.rand.org/content/dam/rand/pubs/research\\_reports/RR1200/RR1231/RAND\\_RR1231.pdf](http://www.rand.org/content/dam/rand/pubs/research_reports/RR1200/RR1231/RAND_RR1231.pdf).

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66. Ley General de Cultura [LGCDC], Diario Oficial de la Federación [DOF] 19-05-2017, últimas reformas DOF 19-06-2017 (Mex.), formata PDF, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGCDC\\_190617.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGCDC_190617.pdf) (consultada el 31 de enero de 2018).

67. On 2014, Mexico was ranked number 5 out of the 10 most culturally rich countries on a list prepared by the Huffington Post. The research was based on the expertise of the International Centre for the Study of the Preservation and Restoration of Cultural Property and the International Council on Monuments. *The World’s Most Culturally Rich Countries*, HUFFPOST (June 3, 2014, 12:23 PM), [https://www.huffingtonpost.com/the-active-times/the-worlds-most-cultural\\_b\\_5438473.html](https://www.huffingtonpost.com/the-active-times/the-worlds-most-cultural_b_5438473.html).

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patrimony, and the programs under which all the levels of government must engage to educate and stimulate civic participation.

The spirit of the LGCDC is brilliantly captured in its Article 3, which states:

All the cultural expressions referred to by the LGCDC are material and immaterial, past and present, elements inherent to the history, art, traditions, practices and knowledge that identify the groups, people, and communities that form the Mexican nation, which they individually or collectively recognize as their own, due to the value and meaning that such expressions contribute to their identity, formation, integrity, and cultural dignity, and in which they have the right to access, participate, practice, and enjoy in an active and creative manner.<sup>68</sup>

Among the cultural rights that the LGCDC recognizes include: the right of Mexico's inhabitants to access their own culture and others that have flourished in Mexico's territory, the right to choose freely their own "cultural identity," the right to be part of one or many cultural communities, and the right to enjoy the cultural expressions they choose.<sup>69</sup> It is important to note that the LGCDC refers directly to Mexico's inhabitants and not to its "citizens" as the holders of the abovementioned rights.<sup>70</sup> This phrasing may be understood as a non-exclusive invitation to everyone who wishes to be part of the country's culture.

The LGCDC also provides an operational framework under which, in cooperation with the private and public sectors,<sup>71</sup> the Department of Culture (*Secretaría de Cultura*) must seek to provide sustainability, inclusion, and unity to public policy on the matter.<sup>72</sup>

As explained by María Cristina García Cepeda, head of Mexico's Department of Culture, the "culture bonds" program is an initiative that will be conducted on the most vulnerable sectors of Mexico's population through the implementation of four different strategies: (1) *Culture in your Community*, which will focus on people without ordinary access to culture due to their geographic location or economic circumstances; (2) *Culture at your Reach*, which will include discounts and other benefits sponsored by the private sector; (3) *National Culture*, which will seek to encourage affirmative action and participation from the states; and (4) *Mexico is Culture*, a web tool

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68. Ley General de Cultura y Derechos Culturales [LGCDC], artículo 3, Diario Oficial de la Federación [DOF] 19-06-2017 (Mex.), formata PDF, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGCDC\\_190617.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGCDC_190617.pdf) (consultada el 31 de enero de 2018).

69. *Id.* at art. 11.

70. *See id.*

71. *Id.* at art.4

72. *Id.* at art. 13

designed to serve as a database of the cultural benefits offered by the three branches of government and the private sector.<sup>73</sup>

So far, there is still much ambiguity surrounding the scope and implications of the new law. Since it was first introduced, the LGCDC has been the object of much criticism. In particular, specialists have expressed skepticism towards the actual viability of the “culture bonds,” as described in Article 8, and have urged authorities to adopt more plausible measures to truly improve Mexican’s access to culture.<sup>74</sup> Nevertheless, the LGCDC is far from being a complete work; its own text provides an additional period of 180 calendar days for the federal Executive branch to enact the necessary rules and regulations to complement its provisions.<sup>75</sup> It is yet to be analyzed if, once enacted, the complementary provisions effectively assist the accomplishment of the LGCDC’s goals.<sup>76</sup> Despite the deficiencies of its content, however, the LGCDC is a modest attempt that must be celebrated for the fact that it gives Mexico a concrete legal structure that will surely contribute to bringing its inhabitants closer to their cultural legacy.<sup>77</sup>

#### **IV. Professional Ethics**

##### **A. THE NEW CODE OF ETHICS OF THE MEXICAN BAR ASSOCIATION (*BARRA MEXICANA, COLEGIO DE ABOGADOS*)\***

Legal ethics are comprised of principles, obligations, and values that legal professionals must possess in the exercise of their profession. Unfortunately, practicing attorneys who violate their professional ethics are rarely sanctioned. While attorneys, trustees, and litigants may be prosecuted when they perform in an illicit manner,<sup>78</sup> these sanctions are rarely applied. Indeed, because Mexican lawyers are not required to be members of bar associations, there are few sanctions that may be enforced against unethical lawyers.<sup>79</sup> Moreover, lawyers are not required to receive continuing legal education on legal ethics or professional responsibility, and are not subject

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73. Sonia Sierra, *Vales de Cultura, una política pública: García Cepeda*, EL UNIVERSAL (Aug. 17, 2017 12:21AM), <http://www.eluniversal.com.mx/cultura/letras/vales-de-cultura-una-politica-publica-garcia-cepeda>.

74. Luis Carlos Sánchez, *Ley General de Cultura; Pantallas o Vales de Cultura*, EXCELSIOR (Aug. 15, 2017 5:45AM) <http://www.excelsior.com.mx/expresiones/2017/08/15/1181679>.

75. Ley General de Cultura y Derechos Culturales [LGCDC], artículo Tercero Transitorio, Diario Oficial de la Federación [DOF] 19-05-2017, últimas reformas DOF 19-06-2017 (Mex.), formata PDF, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGCDC\\_190617.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGCDC_190617.pdf) (consultada el 31 de enero de 2018).

76. *See id.*

77. *See id.*

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78. Código Penal Federal [CPF], art. 231-233, Diario Oficial de la Federación [DOF] 14-08-1993, última reforma publicada DOF 17-11-2017 (Mex.), formata PDF, [http://www.diputados.gob.mx/LeyesBiblio/pdf/9\\_171117.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/9_171117.pdf) (consultada el 31 de enero de 2018).

79. *See id.*

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to any kind of examination.<sup>80</sup> Thus, with a low level of required education regarding professional ethics, this task falls to bar associations of voluntary membership. Yet, given the renewed efforts by society to eradicate corruption in both the public and private sectors, the issue of legal ethics is imperative to Mexico's governance.

The Mexican Bar Association (*Barra Mexicana, Colegio de Abogados* or BMA) is one of the most prestigious and well-known bar associations. It seeks to encourage and improve professionalism within the legal community by promoting mandatory membership, as well as legal reform. In February 2017, the BMA published a new Professional Ethics Code (*Código de Ética Profesional* or CPE), replacing the existing 1948 Code of Ethics.<sup>81</sup> The CPE aims to provide guidance to BMA members regarding how to conduct themselves in various possible ethical dilemmas.<sup>82</sup> The goal of the CEP is to prevent and penalize unethical behavior, by laying out nine ethical principles that should guide attorneys in all aspects of their professional responsibilities: dignity, justice, respect, honesty, loyalty, diligence, good faith, freedom, and independence.<sup>83</sup> With thirty-six articles divided into eight chapters, the new code of ethics widely enlarges the 1948 version.

The first chapter of the CPE establishes the general rules. The second chapter governs relationships between attorneys and judges, authorities, arbitrators, and mediators. The third chapter is comprised of rules governing attorney-client relationships. The fourth chapter governs an attorney's relationship with third parties. The fifth chapter relates to the attorney-client privilege. The sixth chapter deals with fees and expenses. Chapter Seven discusses advertising and unfair practices. Lastly, the eighth chapter discusses the application of the code. Among the most important changes in relation to the previous code is the role of attorneys in alternative dispute resolution systems, beyond traditional litigation. While the new CPE is far from being considered perfect, it is certainly a step in the correct direction, as it helps get Mexican attorneys to voluntarily comply with standardized guidelines. Moreover, the new code of ethics is an opportunity to promote and uphold legal ethics as a common practice within the Mexican legal community.

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80. *Id.*

81. See Barra Mexicana, *Código de Ética Profesional* 3 (2017), <http://www.bma.org.mx/assets/proyecto-codigo-de-etica.pdf>.

82. *Id.*

83. *Id.*