ANTICORRUPTION NATIONAL SYSTEM: Model Whistleblowers direct citizen action against corruption in Mexico

Carlos Medel-Ramírez
Center of Studies on Public Finance and Combat Poverty

Abstract
The phenomenon of corruption is a cancer that affects our country and that it is necessary to eradicate; This dilutes the opportunities for economic and social development, privileging the single conjunction of particular interests, political actors in non-legal agreements for their own benefit, which lead to acts of corruption. Recent studies indicate that the level of corruption present in a political system is directly related to the type of institutional structure that defines it (Boehm and Lambsdorff, 2009), as well as the ineffectiveness of the control organisms (Casar, 2015; Cárdenas, 2010, Rojas, 2010, Carbonell, 2009, Restrepo, 2004), which requires citizen action to combat corruption (Sandoval, 2010, Villanueva, 2006). This work, focuses our attention on the federal public administration, presenting as a proposal to empower the citizen action in the fight against corruption and in the National Anticorruption System; the figure of Whistleblowers or generator of citizen alert, based on two fundamental principles: i) recognizing the citizen's obligation to report acts of corruption and ii) the granting by the authority of witness protection. These two actions will result in two important results: i) Consolidate the citizen's complaint to inform society about acts of corruption and ii) and the exercise of freedom of information so that society is able to be informed about acts of corruption. These actions will allow promoting and consolidating a culture of reporting acts of corruption that may constitute a crime as a fundamental pillar in the National Anticorruption System in Mexico.

Keywords: Anticorruption, Control of corruption, Perception of corruption, Whistleblowers, National Anticorruption System.

Introduction

Corruption in the sphere of public administration at the federal, state and municipal levels is a cancer that flails and affects our country, by diluting the opportunities to achieve a better level of economic and social development; eliminates the possibility of achieving equal opportunities and social justice, by preventing a more equitable distribution of public resources, affecting the scope of social benefits for the population; privileging only the conjunction of particular interests of political actors and non-legal agreements for their own benefit.

Acts of corruption and their cover up promote a lacerating impunity that must be combated. This paper is presented as a proposal to empower citizen action in the fight against corruption and to support a more transparent and efficient operation of the National Anticorruption System, the figure of Whistleblowers or generator of citizen alert, based on two fundamental principles: i) recognizing the citizen's obligation to report acts of corruption; and ii) the granting of witness protection by the authority. These two actions will result in two important results: i) Consolidate the citizen's complaint to inform society about acts of corruption and ii) and the exercise of freedom of information so that society is able to be informed about acts of corruption. These actions will allow promoting and consolidating a culture of reporting acts of corruption that may constitute a crime as a fundamental pillar in the National Anticorruption System in Mexico.

I. Corruption: Dimension and problems

Recent studies (Boehm and Lambsdorff, 2009) indicate that the level of corruption present in a political system is directly related to the type of institutional structure that defines it, as well as to the ineffectiveness of the control organisms (Rojas, 2010; 2009, Restrepo, 2004, López, 2004, Sánchez, 2002), which requires direct citizen action to combat corruption (Sandoval, 2010, Villanueva, 2006). In this order of ideas, the citizen action proposal should be analyzed based on the analysis of three basic concepts: i) Corruption, ii) Acts of corruption and iii) Whistleblower or citizen alert generator, as a direct reporter of acts of corruption .

Definition 1. Corruption.

> "The action or omission of a public servant or of a natural or juridical person of the private sector, that uses and abuses its power to favor particular interests, in exchange for a reward or its promise, thus damaging the public interest and / or that of the private entity in which he works. " [i]

Definition 2. Acts of corruption.

> "They are the actions by which a public servant or a natural or legal person of the private sector, is driven to act in a different way to the normative standards: ethical, legal and system procedures, to favor particular interests in exchange for a reward" [ii]
> or his promise.

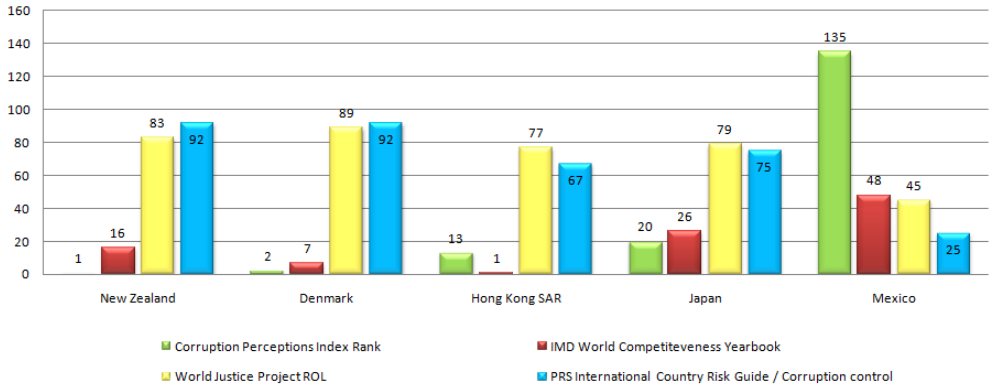
Corruption is experienced, directly, when, as a user of a public or private service, we are confronted with acts of corruption by the public servant or by a natural or juridical person in the private sector. At least two aspects are presented: i) They impede the free enjoyment or normal of a public or private service, since this is conditioned to a restrictive non-legal requirement; or when ii) They favor the free or normal enjoyment of a public or private service, by means of modification, favoring particular interests, by altering the normal market conditions for the provision of the service. Here it is important to ask: How has corruption and acts of corruption affected Mexico?

I.1 Degree of the problem of corruption in Mexico.

I.1.a The international environment.

At the international level, according to the International Corruption Perception Index (CPI Score) 2017, Mexico was ranked 135 out of 180, with a high level of corruption. The problem that corruption generates in the country is manifested in: a) Internally, as a result of a loss of confidence in public institutions, as revealed by the State of Law Index (IED)[iii], since it locates our country with a rating of only 45 points; and b) Externally, it qualifies it with a high degree of volatility expressed in a low rating in the Country Risk Index (IRP) [iv] which granted a high risk country rating of 25; as well as a global competitiveness index (IMD-IC) [v] with a low rating of only 48 points. See Figure 1, below.

Graph 1
New Zeland, Denmark, Japan and Mexico: Comparative Level of IMD World Competiteveness Yearbook, World Justice Project ROL and PRS International Country Risk Guide 2017



Source: Own elaboration based on the information provided by Transparency International. Corruption Perception Index, 2017. Retrieved from: http://www.transparency.org

In contrast, it can be observed that countries such as New Zeland, Denmark or Japan are ranked better as less corrupt countries according to the CPI, while their FDI, IRP and IMD-IC have a high rating.

In the fight against corruption, Mexico has signed and ratified three international treaties:

- The Inter-American Convention against Corruption of the Organization of American States (OAS), signed on March 29, 1996 in Caracas, Venezuela and ratified by the Senate of the Republic on October 30, 1996.
- The Convention to Combat the Bribery of Foreign Public Servants in International Commercial Transactions of the Organization for Economic Cooperation and Development (OECD), signed on December 17, 1997 and ratified by the Senate of the Republic on April 22, 1999.
- The United Nations Convention against Corruption or Mérida Convention, signed on December 9, 2003 and ratified by the Senate of the Republic on April 29, 2004.

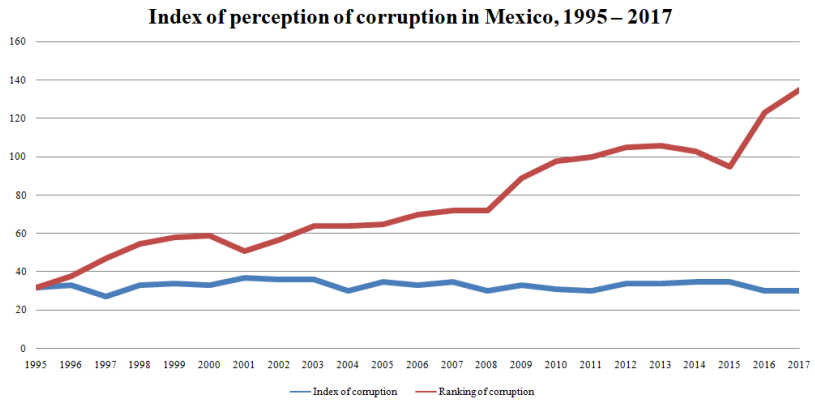
Thus, the intentionality of the Mexican State is to recognize that corruption is a complex, interdependent and multinational phenomenon. The following section presents the problems observed at the national level.

I.1.b The national environment.

According to the National Survey of Quality and Government Impact (ENCIG) in 2013, 68.5% of the population that made at least one procedure personally and had contact with a government employee, 12.1% was a victim of corruption. See Table 1 below.

Table 1 Index of perception of corruption in Mexico, 1995 – 2017

Year	Index of corruption	Ranking of corruption
2017	30	135
2016	30	123
2015	35	95
2014	35	103
2013	34	106
2012	34	105
2011	30	100
2010	31	98
2009	33	89
2008	30	72
2007	35	72
2006	33	70
2005	35	65
2004	30	64
2003	36	64
2002	36	57
2001	37	51
2000	33	59
1999	34	58
1998	33	55
1997	27	47
1996	33	38
1995	32	32



Source: Mexican Transparency. (2018) Corruption perception index, selected years. Retrieved from: http://www.tm.org.mx

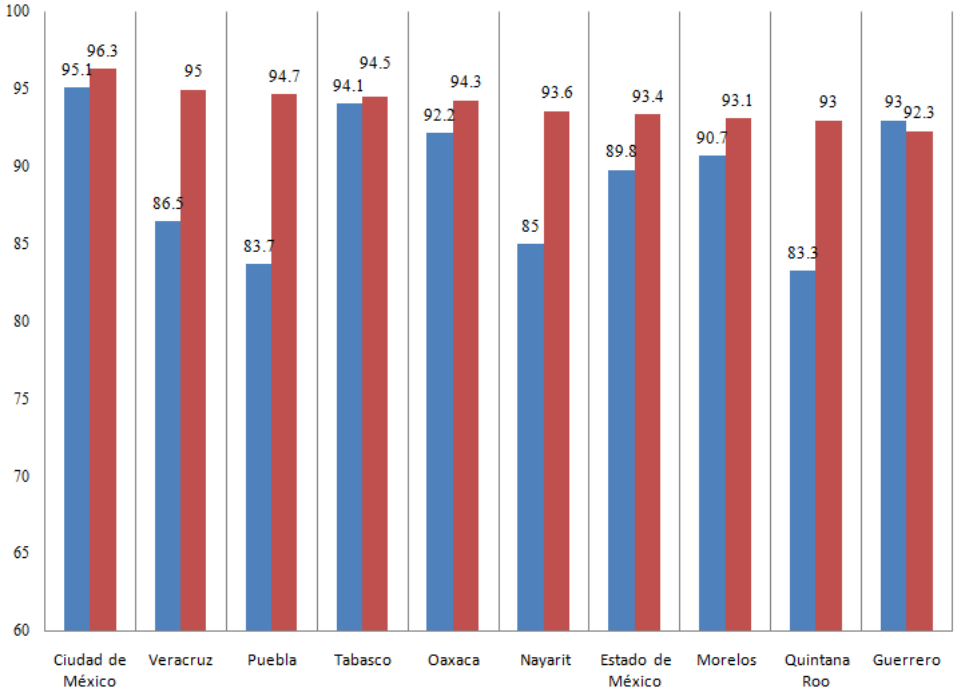
In the years 2016 to 2017, the positioning of Mexico in the world ranking showed its worst moment, placing them in positions 123 and 135 out of 167, with a Corruption Perceptions Index [vi], which fluctuated in that period, in a rating of 30.

I.1.c Degree of transparency

The Federal Law of Transparency and Access to Public Information in Mexico in force since 2002 and with it has obtained 117 points in the Index of the right to information or transparency ranking. This index classifies countries by rating them from 0 to 150, depending on the strength of their legal framework that guarantees the right to information, that is, assesses the legislative framework, but not its practical application.

At the national level, Mexico City, Veracruz and Puebla are the states that occupied the first three places with the highest levels of corruption in federal administrative procedures. See Graph 2.

Graph 2
The 10 Federal Entities of Mexico with the highest perception of the frequency of corruption



Source:
Casar, M.A. (2016) México: Anatomía de la Corrupción. 2 Ed. Instituto Mexicano para Competitividad A.C. CIDE. Retrieved from: https://imco.org.mx/wp-content/uploads/2016/10/2016-Anatomia_Corrupcion_2-Documento.pdf

On the other hand, the State of Veracruz occupied the seventeenth place in 2017, but in the year 2017 it is the second place. One of the reasons that explain the place in the ranking by degree of corruption is related to the effectiveness of the institutions of the federal public administration where the procedures are carried out.

I.1.d Alternative solution: Whistleblowers or citizen alert generator

(Colunga, 2015) points out that there is a clear difference between a Whistleblowers and a simple whistleblower: "... the first has a legitimate interest in publicizing information that is of public interest. On the other hand, the second case, the intentions can derive in another type of personal or group interest with the purpose of making a political pounding or destabilizing, etcetera.[vii] Below is the definition that is used throughout this work.

Definition 3. Whistleblowers (generator of citizen alert).

> "People connected with a public or private entity that report illegal activities (including violations of laws and regulations or direct threats to the public interest, such as fraud, corruption and security violations) to people or entities with the power to take corrective action."[viii]

II. Necessary actions: the obligation to inform and the protection of witnesses

II.1 The obligation to inform

Direct citizen action recognizes: i) every individual may denounce an act of corruption and ii) every individual may be denounced for the performance of an act of corruption. Faced with this dichotomy, the morality and ethics of which it is a witness, whether a public official or not, of an act of corruption has at least two alternatives, to inform in a way, forced an act of corruption of which is a direct witness to the corresponding instances.

II.1.a The reason for the internal complaint

The public administration recognizes that the management of public resources must be public resources with efficiency, effectiveness, economy, transparency and honesty to meet the objectives for which they are intended, operated in a transparent manner and with strict observance of the regulations and procedures of control. However, in (Rojas, 2010, Carbonell, 2009, Restrepo, 2004, López, 2004, Sánchez, 2002) it is described that the ineffectiveness of the control bodies favors the practice of acts of corruption as a result of the violation of the ethical code of conduct of public servants, the violation of rules and procedures, and in its extreme case, the violation of laws and regulations.

The ethical and moral sense of who observes any of the indicated violations, and who makes a complaint within the organization, has the sense of generating preventive and / or corrective actions, in this sense, the internal complaint aims to inform about acts of corruption such, in the following areas: i) In the financial field: such as financial speculation, embezzlement or fraud; ii) In the field of information management: Use of privileged information for personal benefit, or in the case of partial use of the information to obtain a benefit; iii) In the area of administrative management processes: such as bribery, extortion or particular arrangements; and finally iv) In the context of market alterations: the favorable or not modification of prices, tariffs or quotas.

II.1.b The reason for the formal complaint (external)

The complaint is the procedural act by which the authority is made aware of the story of certain facts that may be constitutive of some illicit. With the complaint the investigating authority acquires the obligation to carry out the necessary diligences ex officio, tending to clarify the commission of the unlawful act.

We agree with (Cárdenas, 2010) that a strategy to fight against corruption must be considered as an integral strategy; consequently, it can not be understood only as a democratic advance in the rendering of accounts, transparency, but must permeate in a ethical and moral culture of public officials; of an apparatus of control of the public management and of more energetic measures against acts of corruption that are constitutive of crime; consequently, a new legal culture against corruption and the safeguarding of citizens who make a citizen complaint.

Even though Article 116 of the Code of Criminal Procedure establishes the obligation of every citizen to report an offense in the following terms: "Any person who has knowledge of the commission of an offense that must be persecuted ex officio, is obliged to report it before The Public Ministry and in case of emergency before any officer or police officer. "And on the other hand, in article 117 of the aforementioned code, it indicates the obligation of a public official to inform about the presence of a crime, since it is indicated : "Any person who, in the exercise of public functions, is aware of the probable existence of an offense that must be prosecuted ex officio, is obliged to participate immediately in the Public Prosecutor's Office, transmitting all the information that he / she may have, making available, of course, to the accused, if they have been arrested. "

For its part, in accordance with the provisions of articles 7, 8 sections IV, VI and VII of the Federal Law on Administrative Responsibilities of Public Servants establish the framework for action to which public officials must adhere; and that, in the matter of the denunciation of facts, it has to the arranged in the article 8 fraction XVIII, which indicates: "To report in writing before the Secretariat or the internal comptroller, the acts or omissions that in the exercise of their functions will arrive to warn of any public servant that may constitute administrative responsibility under the terms of the Law and other applicable provisions; ".

II.2 The protection of witnesses

As indicated in the previous section, there are legal precepts that determine the citizen's obligation and the administrative obligation, as a public official, to make a report of criminal acts. However, there is no support that protects witnesses or generators of citizen alert, both in the sphere of physical, labor and legal protection, a situation for which many times the public official does not raise their complaint in the fear of reprisals or for not having the guarantees that provide security. It is here that we consider that a proposal that manages to land a National Anticorruption System must be the one that promotes a culture of transparency and accountability; and in turn promotes the culture of citizen reporting and / or as a public official. This is still a pending task in our country.

II.3 The fundamental objective: the need to inform and / or that society this in possibilities of being informed.

A feature in the Whistleblowers or citizen warning generator, is that they are citizens whose ability to react, in the face of acts of corruption that damage their moral and ethical responsibility, reason why they make complaints at the internal level of the organization: public or private, in order to prevent or correct the actions that generate such acts, the internal complaint is carried out through internal administrative rules and procedures, and if they observe that there is no action for improvement or sanction.

III. Model Whistleblowers: direct citizen action against corruption

As the Special Rapporteurs have repeatedly stated, a person linked to the State, who has a legal obligation to maintain confidentiality over certain information, limits himself to disclosing to the public that which he reasonably considers to be evidence of the commission of human rights violations of Whistleblowers or citizen alert generator, should not be subject to legal, administrative or labor sanctions provided that they have acted in good faith, in accordance with international standards on the matter. [ix]

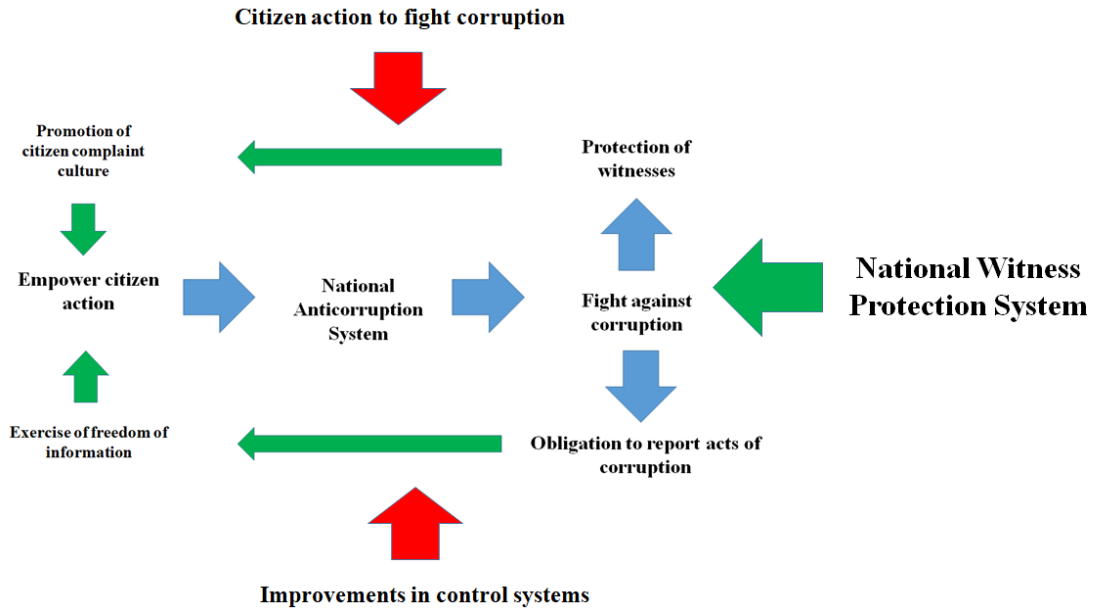
To favor the culture of direct citizen denunciation in order to fight corruption, legal support is necessary, so that the complainants have: i) the necessary protection of physical integrity, ii protection against employment discrimination; and iii) protection and legal certainty of justice action. In this way, the proposed figure is that of a citizen warning generator (Whistleblowers) that finds the necessary guarantees of protection when acting as a witness to acts of corruption and that may be constitutive of a crime.

In this sense, we consider that the proposal of a National Anticorruption System should promote citizen oversight as part of a direct action strategy to prevent or denounce acts of corruption incurred by public officials at the federal, state and municipal levels. Our proposal, from the perspective of direct citizen complaint, is to consolidate the figure of Whistleblowers (generator of citizen alert) as an element to show public and private actors in the execution of agreements that lead to acts of corruption, such as the violation of a law, rule or regulation that may be a threat to the public interest, fraud against health laws, education, social development or security and / or political corruption, among others.

The National Anticorruption System will only be strengthened through the installation of a National Witness Protection System in which citizen action to combat acts of corruption may make it effective to report acts of corruption and have legal, labor, and legal certainty. personal protection as a witness.

On the other hand, the strengthening of control systems and the exercise of freedom of public information that citizens have, will allow a promotion of the culture of citizen reporting, action that supports the empowerment of citizen action by having the the right to be informed about public activities, their actions and their development. See Graphic 3

Graphic 3
Citizen Empowerment Model in the fight against corruption in Mexico. A proposal for citizen action



Source: Own elaboration.

If and only if the conditions for effective protection of witnesses are granted, the exercise of the freedom of citizen information and the exercise of their right to report acts of corruption can support the fight against corruption by empowering citizen action as a citizen alerter in support of the Administrative Control Systems proposed in the National Anticorruption System in Mexico.

As final recommendations, the following actions are assumed for the operation of the National Anticorruption System based on the National System for the Protection of Witnesses that serve as citizen alerters.

- Grant guarantees of the freedom of expression of the complainant of corruption.
- Guarantee confidentiality and, where appropriate, protection of your identity
- Offer and guarantee the continuity of his professional career and his psychological and personal tranquility
- To classify as an administrative or even criminal offense the harassment of the whistleblower, using the concept in a broad sense, to include all possible formal and informal behaviors that may be undertaken to prevent or harm their professional career or even their psychological tranquility or personal

Conclusions

It is necessary that in the National Anticorruption System with the purpose of promoting efficiency, efficiency, economy, transparency and honesty in the management of public resources, it must be public resources and to promote the culture of direct citizen reporting as a strategy to combat corruption in the federal, state and municipal public administration, it is essential to incorporate Whistleblowers legal figure or citizen alert generator, so the proposal must consider the following:

1. That the system, measures or processes to make citizen complaints are easy to understand and access, maintaining the guarantee that internal resolutions will be impartial, objective and timely.
2. That in the public administration protect the whistleblowers or whistleblowers alert generator and prevent retaliation against the legal, labor and physical integrity measures.
3. That there is an adequate witness protection system for the purpose of the reported acts of corruption are subject to criminal proceedings and punishment of the guilty parties.
4. That in the National Anticorruption System the processes for reporting are easy to understand and access to citizens, maintaining a guarantee that the resolutions are in strict adherence to law.

References

1. Banisar David (2006). Whistleblowing. International Standars and Developments. Specialized study for the First International Conference on Corruption and Transparency: Debating Borders between State, Market and Society, Mexico City, March 23-25, 2006.
2. Boehm, Frédéric; Graf Lambsdorff, Johann. (2009). "Corruption and anti-corruption: A neo-institutional perspective". In: Journal of Institutional Economics, vol. 11, no. 21, pp. 45-72. University extership of Colombia. Bogota Colombia. Retrieved from: http: //www.redaly c.org/articulo.oa?id=41911848005 Retrieved on April 14, 2016
3. Carbonell, Miguel. (2009). Transparency, public ethics and fight against corruption. A constitutional look. Retrieved from: http://biblio.juridicas.unam.mx/libros/6/2785/3.pdf Retrieved on April 14, 2016
4. Cárdenas Jaime. (2010). "Tools to face corruption". In: What we all know about corruption and something else. Méndez-Silva Ricardo (Coordinator); http://biblio.juridicas.unam.mx/libros/6/2770/5.pdf
5. Marry María Amparo. Mexico: Anatomy of corruption. CIDE-IMCO, Mexico, 2015. p.10
6. Colunga. Miguel (2015) Is it possible to protect informants in Mexico? In: Forbes: Economy and Finance 15. May .2015 Retrieved into: http://www.forbes.com.mx/es-posible-proteger-a-los-informantes-en-mexico/ Retrieved on April 14, 2016
7. González Llaca Edmundo. (2005). Corruption. Collective pathology National Institute of Public Administration. Mexico DF. p.53 Retrieved from: http://biblio.juridicas.unam.mx/libros/libro.htm?l=1680
8. INEGI. Characteristics of victims of corruption in Mexico. In: Numbers Analysis and statistics documents, Government. 2013. Vol. 1, Núm. 2, April-June 2015. Retrieved from: http://internet.contenidos.inegi.org.mx/contenidos/productos//prod_serv/contenidos/espanol/bvinegi/productos/nueva_estruc/702825078096 .pdf
9. International Country Risk Guide. Retrieved at: https://www.prsgroup.com/about-us/our-two-methodologies/icrg Retrieved on April 14, 2016
10. International Institute for Management Development (IMD-IC). World Competitiveness Retrieved at: http://www.imd.org/wcc/history-of-world-economy-ranking/ Accessed April 14, 2016

11. United Nations. Special Rapporteur of the United Nations (UN) for the Protection and Promotion of the Right to Freedom of Opinion and of Expression Special Rapporteur for Freedom of Expression of the Inter-American Commission of Human Rights of the OAS. Joint declaration on surveillance programs and their impact on freedom of expression. June 21, 2013. Retrieved from: http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=926&lID=2 Retrieved on April 14, 2016.
12. Restrepo Saénz, Elvira María (2004). Corruption in Justice and Corruption of Justice (presentation). In Forum commemorating the World Day against corruption. Cartagena
13. Sandoval Irma Erendida. (2010). Role of internal informers (Whistleblowers) in the fight against corruption. In: What we all know about corruption and something else; Méndez-Silva, Ricardo (Coordinator); 2010. Retrieved from: http://biblio.juridicas.unam.mx/libros/6/2770/9.pdf Consulted on April 14, 2016
14. The World Justice Project (WJP) Rule of Law Index Retrieved from: http://worldjusticeproject.org/ Accessed April 14, 2016
15. International Transparency. Corruption Perceptions Index, 2015. Retrieved at: http://www.transparency.org/cpi2015 Retrieved on April 14, 2016
16. Mexican Transparency (2016) Corruption perception index, selected years. Recovered in: http://www.tm.org.mx/ipc2014/ Accessed on April 14, 2016.
17. Valdés Ugalde Francisco. (2000) The corruption and the transformations of the bourgeoisie in Mexico, 1940-1994. In: Public vices, private virtues: Corruption in Mexico. CIESAS, Mexico. p. 197
18. Villanueva Ernesto. (2006). "The Whistleblowers and the Rule of Law in Mexico. Paper prepared for the First International Conference on Corruption and Transparency: Debating Borders between State, Market and Society, Mexico City, March 23-25, 2006. "In: Documentation and Analysis of Corruption and Transparency Laboratory. Institute of Social Investigations, UNAM. Retrieved from: http://www.corrupcion.unam.mx/documentos/ponencias/villanueva.pdf Consulted on April 14, 2016.

[i] González Llaca Edmundo. (2005). Corrupción. Patología colectiva Instituto Nacional de Administración Pública. México, D.F. p.53 Recuperado de: http://biblio.juridicas.unam.mx/libros/libro.htm?l=1680

[ii] Valdés Ugalde Francisco. (2000) La corrupción y las transformaciones de la burguesía en México, 1940-1994. En: Vicios públicos, virtudes privadas: La corrupción en México. CIESAS, México. p. 197

[iii] This indicator is elaborated from surveys of citizens, experts and leaders. This includes an indicator of the perception of corruption in the executive, legislative, judicial and public security forces. The rating of this indicator attributes values close to (0) as bad and values close to (1) as good. See María Amparo Casar. Mexico: Anatomy of corruption. CIDE-IMCO, Mexico, 2015. p.10

See The World Justice Project (WJP) Rule of Law Index Retrieved from: http://worldjusticeproject.org/ Accessed April 14, 2016

[iv] See International Country Risk Guide. Retrieved at: https://www.prsgroup.com/about-us/our-two-methodologies/icrg Retrieved on April 14, 2016

[v] See International Institute for Management Development (IMD-IC). World Competitiveness Retrieved at: http://www.imd.org/wcc/history-of-world-economy-ranking/ Accessed April 14, 2016

[vi] The Corruption Perceptions Index (CPI) rates the levels of corruption according to citizens, businessmen and analysts. The IPC value shows the following rating interval, for highly corrupt countries, values close to (0) will correspond, while countries with absence of corruption will correspond values close to (100). See Marry María Amparo. Mexico: Anatomy of corruption. Op. Cit. p.10

[vii] See Colunga Miguel (2015) Is it possible to protect informants in Mexico? In: Forbes: Economy and Finance 15. May .2015 Retrieved into: http://www.forbes.com.mx/es-posible-proteger-a-los-informantes-en-mexico/ Retrieved on April 14, 2016

[viii] Banisar David (2006). Whistleblowing. International Standars and Developments. Specialized study for the First International Conference on Corruption and Transparency: Debating Borders between State, Market and Society, Mexico City, March 23-25, 2006.

[ix] See United Nations. Special Rapporteur of the United Nations (UN) for the Protection and Promotion of the Right to Freedom of Opinion and of Expression Special Rapporteur for Freedom of Expression of the Inter-American Commission of Human Rights of the OAS. Joint declaration on surveillance programs and their impact on freedom of expression. June 21, 2013. Retrieved from: http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=926&lID=2 Retrieved on April 14, 2016.

/es/cidh/expresion/showarticle.asp?artID=926&lID=2 Consultado el 14 de abril de 2016.