

Memorandum

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From: David A. Channer, Area Legal Counsel - México
Subject: Religious Mapping Exercise – Mexico
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I.SUMMARY

The purpose of this memorandum is to identify the positions and agencies of the Federal Government of the Republic of Mexico responsible for the enactment and enforcement of diverse judicial laws and rules that regulate religious associations (See Annex 1). Also, the memorandum describes the legislative processes by which legislation that regulates religious matters in the Republic is passed (See Annex 2). A brief description of applicable religious laws and policy is also provided.

II.THE CONSTITUTION

The *Constitution of the United Mexican States* (hereafter “Constitution”) governs matters of personal freedom of belief and public worship, as well as the rights and obligations of groups organized as religious associations. Constitutional provisions are the supreme law of the land and take precedence over all other federal, state and municipal laws. Below is a brief summary of Constitutional principles in the area of religious liberty:

1)No discrimination based on religious beliefs. Paragraph 3 of Article 1 of the Constitution reads: “It is hereby forbidden any discrimination based on ethnic or national origin, gender, age, disabilities, social status, health, religion, opinion, preferences, marital status or any other classification that threatens human dignity and seeks to annul or undermine people’s rights and liberties.”

2)Freedom of belief and worship. Freedom of belief and worship is an individual right guaranteed by the Constitution. Article 24 of the Constitution, paragraphs 1 and 3, state: “Every man is free to profess the religious belief he likes the most and to practice the

ceremonies, devotion or acts of worship, as long as they don't constitute a felony or a fault punishable by law"... "The religious acts of public worship shall be celebrated ordinarily in temples [any authorized place of worship]. Those that are celebrated extraordinarily [outside the authorized place of worship] shall be subject to the law."

3)State secularism. Paragraph 2 of Article 24 of the Constitution, provides that: "Congress shall not dictate laws that establish or forbid any religion."

4)Subject to the law. Paragraph 1 of Article 130 of the Constitution expresses the notion that "Churches and other religious groups shall be subject to the law".

5)Church and State separation. The first two paragraphs of Article 130 of the Constitution, provide this principle: "The historic principle of separation between the State and the church guides the laws included in this Article ..." and "It is the exclusive privilege of the Congress of the Union to legislate in matters of public worship, churches and religious groups..."

6) Proposed Constitutional Amendment. Even though the term "secular" does not explicitly appear in the Constitution, the concept of secularism is clearly expressed in other laws passed by Congress. For example, Paragraph 1, Article 3 of the law titled *Religious Associations and Public Worship Act*, states: "The Mexican State is secular. The State will enforce its authority over all individual or collective manifestations only as it relates to the compliance with the law, preservation of order and public morals and the protection of third parties rights [...] Official identification documents [e.g., similar to U.S. social security cards] shall not include an individual's religious beliefs".

With the purpose of further establishing the secular nature of the Republic of Mexico, on February 11th, 2010, the House of Deputies of the LXI legislature of the Congress of the Union approved a decree modifying Article 40 of the Constitution, pursuant to which an additional descriptive word was added to the Constitutional definition of the Mexican Republic. The modification states that in addition to being "representative, democratic and

federal,” the Republic is also “*secular*.” The decree passed by the House of Deputies is pending approval by the Senate, without a date certain for the initiation of debate on the measure.

III. THE RELIGIOUS ASSOCIATIONS AND PUBLIC WORSHIP ACT

Articles 24 and 130 of the Constitution are the legal grounds for the passage by Congress of the *Religious Associations and Public Worship Act* (the “Act”). The details of the Act are beyond the scope of this religious mapping exercise. However, in brief, the Act has as its primary purpose the regulation of religious activity in Mexico. Pursuant to the Act, religions may (a) apply for and receive official recognition in Mexico, which gives them legal status before the law as a “legal entity;” (b) apply for and receive permission to acquire and dispose of assets that will be used for public worship, i.e., land, buildings, etc.; (c) apply for and receive approval to worship in authorized places; and (d) designate who shall be considered as “ministers” under the law for purposes of internal regulation. The Act imposes numerous restrictions on religion, including an absolute prohibition on engaging in lobbying activities *per se* or speaking out against any currently enacted law or in the ownership of certain mass media.

IV. AGENCIES RESPONSIBLE FOR IMPLEMENTING RELIGIOUS POLICY

Section I of Article 89 of the Constitution provides that the President of the Republic is the head of the Federal Executive Branch and that the President is to: “enact and enforce the laws issued by the Congress of the Union, providing for their rightful observance in the administrative sphere.” To perform this task, the President of the Republic is supported by the Federal Public Administration (Article 90 of the Constitution) which consists of the departments of the Federal Executive Branch. These departments are referred to hereafter as “Secretaries.”

a. The Secretary of Government

The Secretary of Government is given exclusive jurisdiction to regulate the relationship

between the Federal Executive Branch and religious associations. It is charged to monitor Constitutional and other legal compliance by churches, religious groups and associations relating to public worship and other matters undertaken by such groups.

i. Undersecretary of Population, Migration and Religious Affairs

Within the Secretary of Government is found the office of the *Undersecretary of Population, Migration and Religious Affairs*. This office assists the Secretary of Government in its charge to ensure compliance with the law in matters of religion. Its head is appointed by the President of the Republic, although its immediate superior is the “Secretary” of the Secretary of Government, with whom the Undersecretary must advise and agree on matters related to religious policy. The office of Undersecretary also schedules hearings for leaders, legal representatives and ministers from different religious associations in order to attend to their requests. In turn, the Undersecretary of Population, Migration and Religious Affairs is the immediate superior of the *General Director of Religious Association*, as well as the Commissioner responsible for the *National Institute of Migration*.

ii. General Directorate of Religious Associations

The administrative unit integrated with the Undersecretary of Population, Migration and Religious Affairs, is the *General Directorate of Religious Associations*. The head of this Directorate is appointed by the “Secretary” of the Secretary of Government. The General Directorate of Religious Associations is the key department that ensures compliance with the powers granted by law to the President of the Republic in matters of religion. Therefore, in Sections I to XVI of Article 24 of the *Internal Rules of the Secretary of Government*, it is granted the following powers:

1.To assist the Secretary in the regulation of the relationship between the Executive Branch and the religious associations, churches, groups and other religious institutions and organizations.

2.To develop the programs and actions corresponding to the policy of the Federal Executive Branch in matters of religion.

3.To represent and act on behalf of the Federal Executive Branch in its relationships with the associations, churches, groups and other religious institutions.

4.To rule on the applications for incorporation records of churches and religious groups, as well as the entities, divisions and other forms of internal organization in religious associations.

5.To organize and update the records required by the law, as well as to issue the certifications, declarations of compliance and certificates.

6.To process the notices about openings of temples [places of worship], as well as everything related to the appointment, separation or resignation of ministers and representatives of religious associations.

7.To rule on the applications for permits from religious associations, for the broadcasting of extraordinary religious ceremonies through non-printed mass media.

8.To process the notices for the celebration of extraordinary public religious acts of worship outside of temples [places of worship].

9.To assist the agencies and entities of the Federal Public Administration in the regulation of use of nationalized real property and the preservation and protection of those with archeological, artistic or historical value, in use by religious associations, including the processing, assignment and registry of those designated as responsible thereof under the terms of the applicable provisions.

10.To issue an opinion, at the request of the interested religious association, on the entrance and residency of foreign worship ministers [i.e., missionaries].

11.To participate in the forming and enforcement of collaboration or coordination agreements with the federal authorities of the states, municipalities or districts in matters of religious affairs.

12.To substantiate and rule on the settlement process to resolve conflicts between religious associations and, if applicable, to guide and channel those who are part of another authority's jurisdiction.

13.To substantiate and rule on the arbitration procedure to resolve disputes between religious associations.

14.To process complaints for religious intolerance.

15.To coordinate, do, and participate in academic acts to publicize this legislation.

16.To establish collaboration agreements with research, academic, educational and religious institutions.

The Act or regulations thereunder, also identify other duties of the *General Directorate of Religious Associations*, such as, interfacing with other departments on legal affairs or Human Rights.

iii. National Migration Institute (“INAMI”)

INAMI is a decentralized agency that falls under the jurisdiction of the Secretary of Government, and, more particularly, within the oversight of the Undersecretary of Population, Migration and Religious Affairs. Its decisions govern all matters of migration of individuals to Mexico. A religious association, for example, may not send a minister or religious associate of a foreign nationality with the purpose of carrying out activities pertaining to his religious conviction, without (a) the approval of the *General Directorate of Religious Associations* and (b) the approval of the *National Migration Institute*. The first step, or approval of the General Directorate of Religious Associations is a condition precedent to INAMI's approval. INAMI sets or establishes all of the rules regarding the entrance, character, migration status and legal

stay of religious ministers or associates according to the *General Population Act*.

b. The Secretary of Treasury and Public Credit (SHCP)

The Secretary of Treasury and Public Credit is a centralized agency of the Federal Public Administration. It has jurisdiction to collect taxes of all types under the terms of applicable law as well as to monitor and ensure the compliance with fiscal provisions adopted by Congress.

Tax Administration System (SAT)

Within SHCP, there is found the Tax Administration System or SAT. SAT is akin to the Internal Revenue Service within the U.S. Department of Treasury. All religious associations are obligated to register with SAT in order to obtain a Taxpayer ID number or “RFC.” Annually, a department within SAT issues a letter to religious associations that indicates how the association is to be taxed. Although by general rule religious associations are considered to be “not-for-profit legal entities,” and therefore exempt from certain taxes, such as Income Tax, Asset Tax, Corporate Flat Rate Tax, and Value Added Tax, there are many exceptions and a discussion of the tax laws is beyond the scope of this memorandum.

c. The Secretary of Public Function (SFP)

The Secretary of Public Function is a centralized agency within the Federal Public Administration. It is charged with maintaining and preserving the public record of *federal real property*. Prior to 1992, religious associations were not permitted to own real property. In 1992 the Constitution was changed and religions were permitted to purchase and sell real property essential to their religious ends (with advance appropriate approval by the *General Directorate of Religious Associations* (See Section IV, a. ii. *supra*)). At the time the Constitution was changed, however, all real property in use by religious groups for public worship was “nationalized.” Or, in other words, the real property became the property of the Republic of Mexico. Thus, SFP, is charged with the oversight of these nationalized religious properties, of which there are approximately 66,000 in Mexico. The Church has approximately 660 nationalized properties. SFP is charged with maintaining records of this inventory through the *National Institute of Administration and Valuation of National Assets*, a

distinct governmental unit of SFP described below.

National Institute of Administration and Valuation of National Assets (INDAABIN)

Articles 3, 5, 24, 27 and 130 of the Constitution- in force since January 28, 1992 - determine that temples [i.e., buildings of public worship] are considered as national assets. The Secretary of Public Function, through INDAABIN and pursuant to the *National Assets General Act* and implementing regulations, carries out the policy of control and administration of the national real property destined for public worship. The *General Directorate of Federal Real Property*, an administrative unit within INDAABIN, is actually in charge of the nationalization procedure. The process is complicated and time consuming and is required of all religious associations that use nationalized properties. Once completed, however, the process results in the continued and exclusive use of the nationalized property by the religion in whose control the property was found at the time such property was nationalized. As evidence of the right to use such property and upon completion of the nationalization process, the religion is granted a document titled Certificate of Right of Use.

In addition to the nationalization process itself, chapels and temples that have been nationalized are subject to a host of other restrictions (given they are the property of the nation). Thus, before any construction, reconstruction, repair, adaptation, expansion, modification or demolition of such properties can occur, a religious association must ask permission from the *General Directorate of Administration and Works in Federal Real Property*. The foregoing does not apply with respect to federal real property classified as historical or artistic monuments. These are beyond the jurisdiction of other agencies.

d.The Secretary of Social Development (SEDESOL)

The Secretary of Social Development is a centralized agency of the Federal Public Administration and is in charge of formulating, enforcing and evaluating the general policy of social development to combat poverty, and in particular, the regulation of human settlements, urban development and housing. The administrative unit that enforces said power is mentioned briefly below.

Commission for the Regularization of Land Occupancy (CORETT)

CORETT is a public agency within SEDESOL and is in charge of regulating the tenancy of lands known as “*ejidos*.” *Ejidos* are sometimes referred to as “social or communal” lands as they originated when the Federal government granted, by decree, large tracts of lands to groups of peasants who were then living on and working such lands. Via gubernatorial or presidential decree, prior sales by private land companies or individuals of the properties subject to the *ejido* decrees were declared null and void. Title to the land was then vested in the name of the *ejido*.

CORETT intervenes when buildings destined for public worship are built on social properties. These lands often lack legal titles proving legal possession and create legal uncertainty. However such lands are pervasive in Mexico and religious associations, including the Church, are often confronted with having to buy *ejido* land due to limited options. For example, the Church currently has approximately 100 properties that are found on *ejido* land. In the first step of the process the religious association purchases only a “right” to use the land. Later, following the procedures laid down by CORETT, the “right” can be converted to “fee” ownership. Disputes with CORETT often arise in the conversion process, including the requirement to pay large sums of money to the Federal government. Thus, CORETT’s impact on the Church can be significant in certain geographic areas and given the large number of buildings built on *ejido* lands.

e. The Mexican Institute of Social Security (IMSS)

IMSS is an agency within Mexico akin to the Social Security Administration in the U.S. Religious associations, as legal entities under public law, acquire the character of employers and must comply with all employment laws that affect employers generally. Thus, they must register their workers with IMSS and enroll them in the Obligatory Regime of Social Security.

V.

LEGISLATIVE PROCESS

The right to introduce legislation, including laws that affect religious liberty, is found within

the jurisdiction of both the President of the Republic and the deputies and senators of the Congress of the Union. The Mexican Congress is bicameral and consists of two chambers: Senate and House of Deputies. There are 128 seats in the former and 500 seats in the latter. Thus, there are 628 persons, at a minimum, who affect the law of religious liberty in Mexico. Legislative proposals can first commence in either the Senate or the House. However, as noted previously, paragraph two of Article 24 of the Constitution states that: “The Congress cannot dictate laws that establish or forbid any religion.”

Currently, the Institutional Revolutionary Party (PRI) holds a majority in the House of Deputies but not enough to approve constitutional amendments (2/3rds majority). Regarding the Senate, the National Action Party (PAN) has the largest legislative group, although in a situation similar to PRI in the House. PAN does not hold a majority large enough to pass Constitutional amendments.

Regarding the power to initiate laws pertaining to the President of the Republic, it is up to the *Office of Legal Affairs of the Federal Executive Branch*, a centralized agency of the Federal Public Administration, to review and validate legislative proposals that the President of the Republic submits for consideration before the Congress of the Union or one of its Cameras (Section II of Article 43 of the LOAPF).

Once proposed legislation from the President has been found to be valid by the above office, the Secretary of Government, through the *Undersecretary of Legislative Liaison* is charged with the actual submission of the proposed law to Congress. The office interfaces between the Federal Executive Branch and the Federal Legislative Branch (House of Deputies, House of Senators and, while these are in recess, with the Permanent Commission of the Congress of the Union) so that the laws initiated by the President of the Republic are discussed and, if thought appropriate, approved. Also, the *Undersecretary of Legislative Liaison* is in charge of expediting inquiries and proposals directed to the entities forming the Federal Public Administration to ensure they are responded to in a timely manner.

In summary, and as it relates to the two Cameras, the legislative process consists of the following stages which are outlined in Annex 2.

- a) Proposal for a new law originates in one camera
- b) Assigned to commission or committee for discussion and ruling
- c) Sent to full camera and approved in plenary hearing
- d) Turned to the reviewing house (the other camera) for validation.

Once a law has been approved by the original house and endorsed by the reviewing house, the latter passes it to the Federal Executive Branch for:

- e) Vetoing or signing the legislation; and
- f) In the case of the latter, ordering its publication in the Official Gazette of the Federation.

VI. STATE GOVERNMENTS

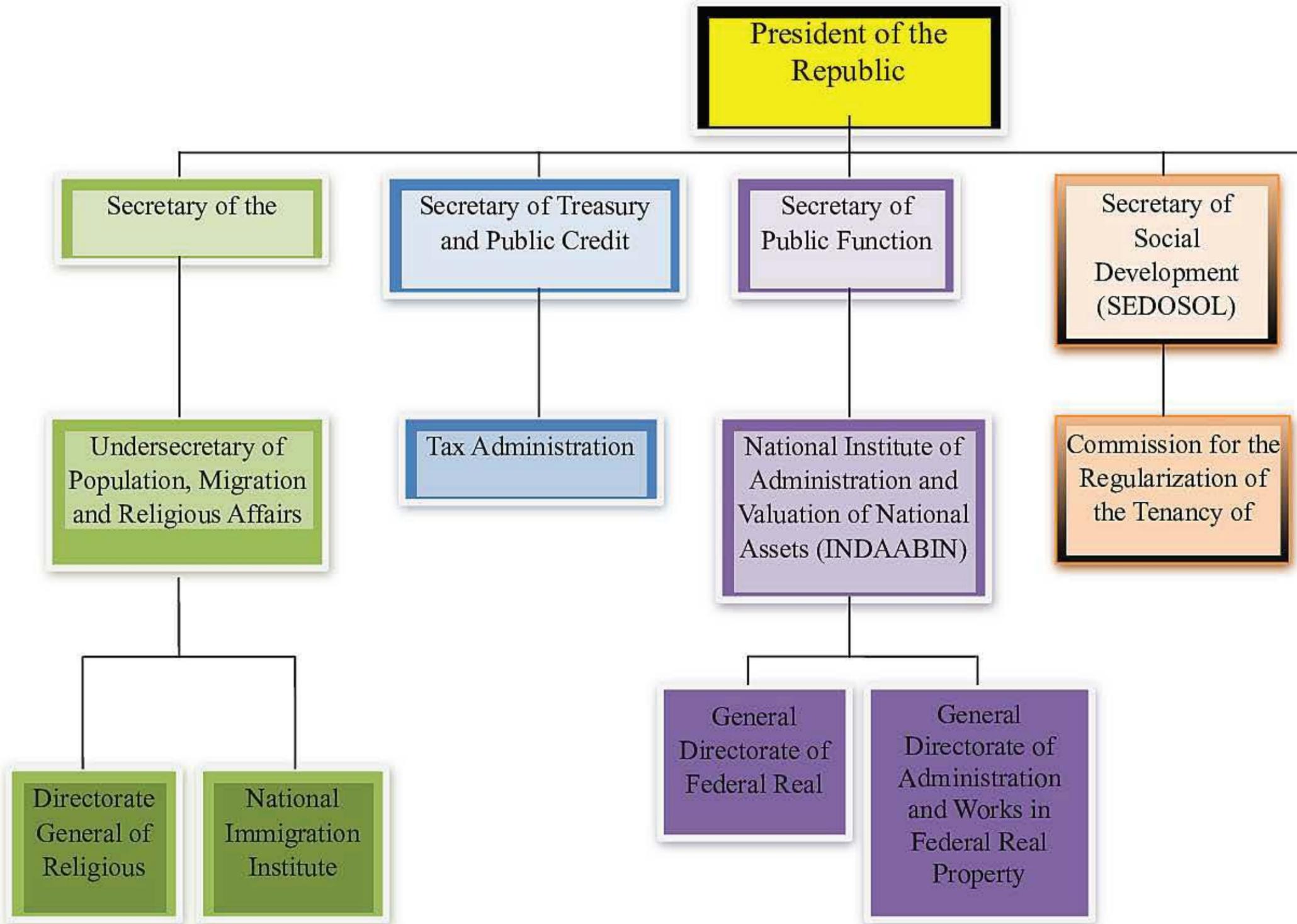
The regulation of religion in Mexico is the province of the Federal government. State or local governments within Mexico are not given the right to directly regulate religious associations. However, they *do* pass laws that may impose taxes on religious property or that may affect fundamental rights or beliefs of a particular religious group, such as, legislation defining marriage, or right to abortion, or no-fault divorce, etc.

VII. ORGANIZATION CHARTS

Organization charts outlining the agencies or positions within the Federal government that affect religious liberty are found at the end hereof. The steps of the legislative process are also outlined in a chart at the end hereof. (See Annex 1 and 2).

Annex 1

Federal Positions or Agencies that Affect Religious Liberty in Mexico



Annex 2

Legislative Process in Mexico



