



## 2006 TI Progress Report on OECD Convention Enforcement

### Questionnaire for TI National Chapters in OECD Signatory States

6.12.05

Questionnaire for: MEXICO

Date: March 2006

#### I. Current Status of Enforcement

##### A. Prosecutions brought for foreign bribery

Please list all cases involving allegations of bribery of foreign public officials brought by prosecutors in your country since the OECD Convention became effective in your country. The list should cover as far as possible all cases relating to bribery of foreign public officials, whether brought under laws dealing with corruption, or under other laws, such as laws dealing with fraud, money laundering, and tax evasion or accounting violations.

If information unavailable, please indicate: \_\_\_\_\_

Is there adequate public access to information about foreign bribery cases? NA

Yes \_\_\_ No \_\_\_

Total number of cases: 0

For each case please list if possible the following:

(1) Name of case, including principal parties

(2) Date and court where filed

(3) Summary of principal charges, including name of the country whose officials were allegedly bribed

(4) Penalties or other sanctions sought

(5) If case concluded, please indicate disposition: conviction, settlement, dismissal or other disposition. If case pending, please indicate current status, including trial or appeal dates if known.

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## **B. Investigations under way**

Please provide available information on government investigations of allegations of bribery of foreign public officials which were commenced since the OECD Convention became effective in your country.

**If information unavailable, please indicate:** \_\_\_\_\_

**Total number of known investigations:**   0  

**For each investigation**, where possible, please list the following:

- (1) Names of parties
- (2) Date when investigation started
- (3) Name of country whose officials were allegedly bribed
- (4) Current status, including likelihood case will be brought

The response provided in writing by the *Secretaría de la Función Pública* (Federal Secretariat for Public Function) (SFP), as part of the exercise to interview relevant government officials confirm that no investigations of allegations of bribery of foreign public official have been commenced since the OECD Convention became effective in Mexico. In fact, very few domestic bribery investigations have been commenced according to the same response of the SFP. I sought to confirm this information with the Federal Special Prosecutor for Crimes Committed by Government Officials, who is in charge of enforcing the foreign bribery provisions, but unfortunately the appointment has not yet been granted at the filing of this report.

## **C. Serious allegations**

Please provide information about serious allegations of foreign bribery or related offences by companies or individuals based in your country, that (a) have been published in reputable international or domestic publications since the OECD Convention became effective in your country, and (b) with respect to which, as far as you know, no investigation or prosecution has been undertaken. *Please take into account information provided in the Volcker Report on the UN Oil for Food Programme with respect to allegations of kickbacks by companies in your country.*

**Total number of serious allegations:**   0  

**For each matter**, where available, please list the following:

- (1) Names of companies and/or individuals involved
- (2) Date of publication:
- (3) Nature of allegations
- (4) Name of country whose officials were allegedly bribed

A thorough news search and the response provided by SFP (Federal Secretariat for Public Function) confirm that no serious allegations of foreign bribery or related offences by companies or individuals based in your country were published in reputable international or domestic publications since the OECD became effective in Mexico.

<b>II. Actions to Promote Enforcement</b>	
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### A. Organization of Enforcement

1. Is there a centralized national office or unit for foreign bribery enforcement?

Yes  No

2. If foreign bribery enforcement is not centralized, what level of coordination and supervision is provided for foreign bribery enforcement?

*Please circle one of the following:*

UNSATISFACTORY

**SATISFACTORY**

Explanation for choice, including any difference from last year:

As explained in last year report, the Federal Attorney General Office established a Special Unit of federal prosecutors and investigators in August 2004 charged with investigating and prosecuting crimes committed by public officials, including domestic and transnational bribery. The bribery of foreign officials is a federal crime and thus with this Special Unit, foreign bribery enforcement is centralized and well coordinated. The office jurisdiction includes all other crimes of corruption committed by federal government officials. Foreign bribery could also come under the jurisdiction of the Special Unit for the Prosecution of Money Laundering where foreign bribery is a predicate offence of money laundering or an additional offence to money laundering.

### B. Available Resources

How would you assess staffing and resources for foreign bribery enforcement?

*Please circle one of the following:*

UNSATISFACTORY

SATISFACTORY

Explanation for choice, including any difference from last year::

According to the Mexico Phase 2 OECD Report and the response by SFP, the Special Unit for Crimes Committed by Government Officials, who is in charge of corruption offences, including foreign bribery, has a staff of 3 prosecutors and 40 agents. According to Mexico Phase 2 OECD Report, the PGR handled 600 cases of government corruption offences in 2003, not one of them domestic or foreign bribery cases. The SFP response states that the Special Unit currently has two domestic bribery cases and has just concluded one more. Though the information could not be confirmed on time with the Head of the Special Unit, the number of domestic bribery investigations, not to mention the zero foreign bribery ones, is quite small. According to the available information the resources would seem appropriate to at least see a more active enforcement role of the foreign bribery provision, or at least of the domestic bribery ones. I believe the creation of the Special Unit is a positive step, but it will require a clear proactive investigative policy to be effective, both in the domestic and the foreign bribery contexts.

### C. Complaint Procedure

How would you assess your government's efforts to provide publicly-known and accessible procedures for reporting foreign bribery allegations, such as hotlines and websites?

*Please circle one of the following:*

UNSATISFACTORY

**SATISFACTORY**

Explanation for choice, including any difference from last year:

The Federal government provides web based accessible procedures for reporting foreign bribery and domestic bribery complaints. The Federal General Attorney Office provides a procedure that is linked directly to the Special Unit for crimes committed by federal government officials. The *Secretaría de la Función Pública*, the Federal Secretariat Regulating Federal Government Officials function hosts a general complaint procedures for all types of wrongdoing allegations involving federal government officials. Both web-based procedures are easily accessible and use friendly formats to submit a complaint that is no time consuming. The web format of the Secretariat does not require personal information to submit a complaint. The Federal Attorney General web format requires only an email address of the complainant. These web based procedures can be found in <http://www.funcionpublica.gob.mx/index1.html> and [www.pgr.gob.mx](http://www.pgr.gob.mx) . The SFP also has a hotline, with a local number, a 1-800 national number, and a 1-888 international number to report and file complaints. The General Attorney Office also has a 1-800 number to report foreign bribery and related offences on an anonymous basis.

## D. Whistleblower Protection

1. How would you assess the level of whistleblower protection in law and in practice in the public sector for foreign bribery complaints?

*Please circle one of the following:*

**UNSATISFACTORY**

SATISFACTORY

Explanation for choice, including any difference from last year:

Except for organized crime, there are no provisions for the treatment and protection of whistleblowers in criminal proceedings. In organized crime, the government has the legal authority and obligation to protect witnesses, judges and prosecutors, and to protect the identity of whistleblowers, as witnesses. These provisions are not applicable to any of the corruption offences under the Federal Criminal Code.

Please list written sources:

Please list government authorities or other persons consulted:

2. How would you assess the level of whistleblower protection in law and in practice in the private sector for foreign bribery complaints?

*Please circle one of the following:*

**UNSATISFACTORY**

SATISFACTORY

Explanation for choice, including any difference from last year:

There is still no evidence of progress in this area, although there is a perception that the private sector is more aware and open to corporate social responsibility issues in general. This may lead in the future to internal compliance programs, including whistleblower protection measures.

### **E. Public Awareness**

How would you assess your government's efforts in the last year to create public awareness that foreign bribery has become a crime?

*Please circle one of the following:*

*UNSATISFACTORY*

**SATISFACTORY**

Explanation for choice, including any difference from last year:

The Federal Government was specially active in media promotion of the UN, OECD, and Inter-American Conventions in 2004. Currently it is not so active, which is understandable. However, the public awareness campaign continues using the PGR and *Secretaría de la Función Pública* web pages, and other links in Federal agencies, as well as a number of conferences and training programs, aimed at the legal profession, business community, and local governments. Public awareness on corruption control and foreign bribery and related offences continues to be a relevant policy in general at *Función Pública*. There is still no targeting of specific sectors. However, given the diversification of demands for public information and the political agenda, I consider the efforts to continue generally a public awareness program is satisfactory.

### **F. Accounting and Auditing Requirements**

How would you assess accounting and auditing requirements intended to prevent practices for hiding foreign bribery (such as the prohibition of off-the-books account or the use of other practices for hiding foreign bribery)?

*Please circle one of the following:*

**UNSATISFACTORY**

*SATISFACTORY*

Explanation for choice, including any difference from last year:

There is no evidence to my knowledge that they had been used in connection with foreign bribery. In fact, there is no evidence that investigations of accounting and auditing obligations under Mexican law had lead to domestic bribery prosecutions. It is important to remember that Mexico made no changes to its laws as a result of the OECD Convention accounting and auditing requirements, and reported that current Fiscal Code regulations covered satisfactorily such obligations

### G. Private Sector Efforts

How would you assess the effectiveness of corporate anti-bribery compliance programmes in your country?

*Please circle one of the following:*

**UNSATISFACTORY**

SATISFACTORY

Explanation for choice, including any difference from last year (at least 1 paragraph):

There is still no evidence of corporate anti-bribery compliance programmes that I am aware of except for banks and other financial institutions in connection with money-laundering provisions. There is evidence of the private sector openness to and interest in general corporate social responsibility issues. The private sector is also more active in promoting a culture of legality and rejection of corruption through the media. This could be the first steps towards the adoption of private sector codes of conduct and compliance programmes. However, until the private sector perceives these programmes as useful to limit exposure to criminal or administrative sanctions, the adoption rate will be minor or they will adopt them only in paper. That exposure message is still not there.

## H. Statutory and Other Legal Obstacles

1. Are there significant inadequacies in the legal framework for foreign bribery prosecutions in your country?

Yes \_\_\_\_\_ No\_\_X\_\_

2. If so, please indicate if these include:

- Inadequate definition of foreign bribery Yes\_\_\_\_\_ No\_\_X\_\_
- Short statutes of limitation: Yes\_\_\_\_\_ No\_\_X\_\_
- Jurisdictional limitations: Yes\_\_\_\_\_ No\_\_X\_\_
- Lack of (criminal) liability for corporations: Yes\_\_\_\_\_ No\_\_X\_\_
- Inadequate sanctions: Yes\_\_\_\_\_ No\_\_X\_\_

3. Please list any additional inadequacies:

- In Mexico, the *Ministerio Público* or Prosecutor cannot bring charges without a formal complaint filed. Although more research is necessary regarding this issue, this limits proactive investigation of corruption. In certain domestic corruption newspaper scandals, government officials have declared not being able to investigate without a formal complaint. See, e.g., *Condicionan Investigación, Periódico Reforma (Oct. 22, 2005)*.
- \_\_\_\_\_

Explanation for choice, including any difference from last year (at least 1 paragraph):

## I. Actions Needed in Your Country

### 1. Your suggestions

Please list, in order of importance, the most important actions the government in your country should take to promote enforcement and compliance. Please consider the actions listed above, but feel free to add other actions.

- 1) There have been important steps taken to combat corruption at the domestic level with the use of better defined criminal policy, especially through the use of a simulated client. It is necessary to continue strengthening a coherent and strategic criminal investigation and enforcement policy and extend it to bribery of foreign officials. This can be pursued through targeting sensitive sectors and monitoring more closely Mexican companies doing business in other countries, in particular in Latin America. In addition, information of the crime of bribery of foreign officials and accounting standards should be placed on relevant government web sites that provide information to businesspeople doing business abroad.
- 2) It is still not clear how prosecutors can make use of the accounting standards provisions to prevent and combat foreign corrupt practices, or domestic ones. This is potentially one of the most useful anticorruption policies to cut and limit the supply side of corruption. It is suggested that producing guidelines for prosecutors on how the accounting provisions can be effectively used is necessary or otherwise make amendments to the law to provide them with more teeth for the anticorruption fight.
- 3) Further research and thought is necessary regarding how proactive investigation can be used in the anticorruption front without the Constitutional requirement of a formal complaint becoming an obstacle or negative incentive to this type of investigation. Otherwise it is necessary to revise this aspect of the criminal procedure.
- 4) Transparency is still an issue in the criminal proceeding in general. Lack of transparency in investigating and prosecuting corruption affects the public opinion on whether the government is really committed to the fight. Although moving to an adversarial oral criminal procedure is a reform that touches on the heart of the whole criminal system, it would be of benefit in the fight against corruption, as this type of procedures elevate the quality of the evidence and send a stronger signal to society at large about the way government enforces anticorruption standards and laws.
- 5) Extending witness and whistleblower protection programs to corruption offences, as well as appropriate support to judges and prosecutors that may be involved in difficult corruption cases. It is necessary also to strengthen the autonomy of the General Attorney Office, and local Attorney General Offices, that are usually placed in difficult positions in the context of strong political competition and corruption media scandals.

## III. Current and Anticipated Level of Enforcement

1. How would you assess the current level of foreign bribery enforcement in your country?

Please circle one of the following:

**UNSATISFACTORY**

SATISFACTORY

2. Did your government's enforcement efforts increase since last year?

Please choose one of the following:

1	2	3
<i>Decreased enforcement</i>	<b>No change</b>	<i>Increased Enforcement</i>

3. How do you expect your government's enforcement of foreign bribery to change in the coming three years?

Please choose one of the following:

1	2	3
<i>Decreasing Enforcement</i>	<b>No change</b>	<i>Increasing enforcement</i>

Report prepared by :

Alejandro Posadas

Name of respondent: Alejandro Posadas

Affiliation: Professor in Law, CIDE Law School

Professional experience: Formerly Lawyer in the Office of the Legal Advisor to the Mexican Foreign Affairs Ministry, and Lawyer at the Trade and Investment Law Firm of Thomas & Partners, advising among other clients, the Office of the Legal Advisor to the Undersecretary of International Commercial Negotiations at the Mexican Secretariat of Foreign Affairs. Currently Professor in Law and Dean of the CIDE Law School, where he has conducted research and published on the international law on corruption.

### Appendix

#### List of persons consulted (with affiliation) :

Response in writing to this Questionnaire by the SFP (attached).

Dr. Javier Laynez, Deputy-Attorney General for International Affairs, PGR

Pending interview with Head of the Special Unit for Crimes committed by Public Officials.

**List of references and sources** used in responding to this questionnaire :

Mexico Phase 1 and 2 OECD Report;

News Reports Search;

Constitución Federal de México (Federal Constitution)

Código Penal Federal (Federal Criminal Code)

Código de Procedimientos Penales (Federal Criminal Procedure Code)

Ley Federal Contra la Delincuencia Organizada (Federal Law Against Organized Crime).

Acuerdo Número A/011/96 del Procurador General de la República por el que se Crea la Fiscalía Especializada para la Atención a Delitos Cometidos por Servidores Públicos de esta Institución (D.O.F. 16 de agosto del 2004) (Decree that establishes the Specialized Unit for Crimes committed by Federal Public Officials).

[www.pgr.gob.mx](http://www.pgr.gob.mx)

[www.funcionpublica.gob.mx](http://www.funcionpublica.gob.mx)

[www.bancomext.gob.mx](http://www.bancomext.gob.mx)

[www.economia.gob.mx](http://www.economia.gob.mx)

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Mexico, Programa Nacional de Seguridad Pública 2001-2006 (14 de enero del 2003).

México, Programa Nacional de Procuración e Impartición de Justicia 1995-2000.

Secretaría de Contraloría y Desarrollo Administrativo, Programa Nacional de Combate a la Corrupción y Fomento a la Transparencia y Desarrollo Administrativo (D.O.F. 22 de abril del 2002).

Alberto Gándara Ruiz Esparza, Sistema de Responsabilidades Administrativas de los Servidores Públicos en México, Propuesta de Nueva Ley (2005).

Diana Herrero Berrondo, La Estrategia de Combate a la Corrupción en México, at

[www.revistaprobidad.info/017014.html](http://www.revistaprobidad.info/017014.html)

José Guadalupe Vargas Hernández, Algunas Apreciaciones en torno a la Corrupción en México, at [www.revistaprobidad.info/017/003.html](http://www.revistaprobidad.info/017/003.html).

Stephen D. Morris, Corruption and the Mexican Political Cultura, Journal of the Southwest (2002).

Transparencia Mexicana, Diagnóstico Institucional del Sistema Federal de Control (SFC);

Arturo del Castillo, Claudia Jiménez y Gabriela I. Montes, La Tipificación de los Delitos de Corrupción en México, Documento de Trabajo CIE/2004/06 (2004).

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