



2007 TI Progress Report on OECD Convention Enforcement

Questionnaire for TI National Chapters in OECD Signatory States

22.1.07

Questionnaire for: MEXICO

Date: March 23, 2007

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?

Yes No _____

If yes, please specify what kind of access is provided? If no, in what way is the access inadequate?

Access is provided as stipulated in the Federal Law for Transparency and Access to Governmental Public Information (*Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*). In addition, a response was provided in writing by the Ministry of Public Administration (*Secretaría de la Función Pública, SFP*) as part of the exercise to interview relevant government officials.

Total number of cases: 0 (2 cases if we assume Mexican government's position)

For each case please list if possible the following:

- (1) Name of case, including principal parties (Please indicate if major multinationals involved)
- (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.

Domestic Bribery (prior to 2006)

(1) Alstom T & D, S. de C.V. (now known as Areva) and Alstom International

(2) The investigation of the case was initiated March 7, 2001

(3) In 1999, two high-ranking Mexican officials from Light and Force of the Center (*Luz y Fuerza del Centro*) were allegedly bribed by a French company in order to obtain a contract.

(4) The Government Procurements, Leases and Services Law (*Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público*) and Public Works and Related Services Law (*Ley de Obras Públicas y Servicios Relacionados con las Mismas*) specify penalties for bidders, suppliers and contractors that range from economic sanctions to temporary disqualification from partaking in public licitations involving federal agencies or state agencies when federal funds are involved.

In the prosecution of this case, the SFP sought to fine Areva and Alstom International \$341,100,000 Mexican pesos (roughly \$31,000,000 USD) each and bar them from participating in public tender procedures for two years.

(5)

In the case against Areva:

In July 2004, Areva was penalized with a two-year disqualification from public tender procedures. Areva challenged the ruling and the charges were dropped due to a technicality in its favour. Following that, the SFP presented new charges against Areva and the case has still not reached a resolution.

In the case against Alstom International:

In July 2004, Alstom International was penalized with a two-year disqualification from public tender procedures. Not being in conformity with the ruling, Alstom International filed an appeal on August 28, 2006, whose ruling is pending.

PLEASE NOTE: We would like to list separately the total number of cases brought since January 2006 and the number of cases since 1999. Thus it is important for you to list the date of filing of the case.

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. The list should cover as far as possible all investigations 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: _____

Total number of known investigations: 1 (3 investigations if we assume Mexican government's position)

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

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

Prior to 2006:

- (If we assume Mexican government's position, refer to cases of Areva and Alstom International above)
- As was stated in Mexico's 2004 Phase 2 Progress Report, the OECD reported the timid initiation of an investigation in 2001 by Mexican authorities when a Nicaraguan newspaper declared that a Mexican company was under investigation by Nicaraguan government officials for having bribed former Nicaraguan President, Alemán. The Mexican authorities contacted their Nicaraguan counterparts, who denied the allegations. The investigation was subsequently called off.

PLEASE NOTE: We would like to list separately the total number of investigations started since January 2006 and the total number of investigations since 1999. Thus it is important for you to list the date of when the investigation started.

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.

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 search of three national daily newspapers (Reforma, El Universal, La Jornada) and a web search on Google News have yielded no instances of serious allegations.

D. Political control over enforcement actions/ Independence of prosecutors

Are you aware of any instances where an investigation or prosecution has been terminated by political decision-makers?

No

Do you believe that such action violates Article 5 of the OECD Convention?

II. Actions to Promote Enforcement

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:

In August 2004, the Federal Attorney General's Office (*Procuraduría General de la República*, PGR) established the Special Prosecutor's Office for Combating Corruption in the Federal Public Service (*Fiscalía Especial para el Combate a la Corrupción en el Servicio Público Federal*). As set forth in its founding decree A/107/04, the Specialized Prosecutor's Office is appointed to "investigate and prosecute crimes related to acts of corruption in the federal public service, which translate into or have as an objective, a benefit or undue advantage for its author or another; as well as those related to the bribery of foreign public officials, as established in article 222 Bis of the Federal Penal Code".

Although the express mandate of the Special Prosecutor's Office is tied to foreign bribery enforcement, the Ministry of Public Administration (SFP) and Internal Organs of Control (*Órganos Internos de Control*, OIC) in all departments and agencies of the Federal Public Administration also participate in investigating and prosecuting cases of foreign bribery.

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::

The official position of the Mexican government is that reciprocity agreements with foreign governments cover the investigation and prosecution of foreign bribery cases outside of Mexico's jurisdiction. Governmental recourses applied towards the enforcement of cases of domestic bribery are not funnelled exclusively to one centralized office, but rather distributed among a variety of entities that consider such cases.

The head of the Special Prosecutor's Office, Veronica Corona notified us that the Special Prosecutor's Office for Combating Corruption in the Federal Public Service is attached to the Specialized Unit for Crimes Committed by Public Servants and against the Administration of Justice (*Unidad Especializada en Investigación de Delitos Cometidos por Servidores Públicos y Contra la Administración de Justicia*), for which reason it does not have its own budget or structure. According to the report entitled, "Federal Budget and Expenditures for the 2007 Fiscal Year" (*Presupuesto de Egresos de la Federación para el Ejercicio Fiscal 2007*), the Specialized Unit will have a budget of \$33,584,191 Mexican pesos (roughly \$3,050,000 USD).

In addition, the SFP and OIC are charged with investigating and sanctioning administrative violations, including bribery. The "Federal Budget and Expenditures for the 2007 Fiscal Year" report shows that \$430,477,718 Mexican pesos (roughly \$39,000,000 USD) are destined towards the SFP's anti-corruption efforts.

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 SFP and OIC receive complaints of wrongdoing committed by federal public servants for any illicit act, including bribery of foreign public servants.

The SFP has made a variety of channels available through which complaints can be filed -- in person (at any office of the SFP or OIC), by telephone (using the Telephone Assistance System for Citizens (*Sistema de Atención Telefónica para la Ciudadanía*, SACTEL), a 24-hour, 365-day a year hotline, providing a local number, and toll-free numbers for national and international calls), electronically (by fax or via internet), by post (to the offices indicated by the SFP) and in mailboxes (installed in the departments and agencies of the Federal Public Administration).

General complaints of criminal wrongdoing -- implicating public servants as well as non-public servants -- can be filed verbally or in writing at the PGR's office or at any of its local branches. The PGR's webpage (www.pgr.gob.mx) allows users to file complaints online, by filling out an electronic form or sending a complaint via email to a designated address. The website also includes related information for a 24-hour local and toll-free hotline.

It is worth nothing that, the SFP and OIC are required by law to forward any complaints implying criminal responsibility to the office of the PGR.

Are you aware of any foreign bribery cases or investigations that have been brought as a result of complaints made to government offices?

No

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:

The current legal framework, as well as bills and formal recommendations for the introduction of legal measures regarding the protection of whistleblowers clearly illustrate that this issue is installed on the legal agenda of the legislative and executive branches. However, with the exception of organized crime, to date no current law contemplates or provides provisions for the protection of whistleblowers in criminal proceedings. The government has of yet to establish a system similar to that conceived by the Federal Law against Organized Crime to guarantee the protection of whistleblowers in cases of bribery, in addition to any offences considered under the conceptual umbrella of acts of corruption (fraud, illegal enrichment, influence peddling etc.).

Please list written sources:

1. *Constitución Política de los Estados Unidos Mexicanos* (Federal Constitution)
2. *Código Federal de Procedimientos Penales* (Federal Criminal Procedure Code)
3. *Ley Orgánica de la Procuraduría General de la República* (Fundamental Law of the Attorney General of the Republic)
4. *Ley Federal de Justicia Administrativa de la Función Pública* (Federal Law of Administrative Justice in the Public Administration)
5. *Ley Federal contra la Delincuencia Organizada* (Federal Law against Organized Crime)
6. Mexico – Phase 2 Questionnaires for the Follow-up Mechanism on the Implementation of the Inter-American Convention against Corruption of the Organization of American States (Mexican government and civil society)

Please list government authorities or other persons consulted:

1. Paulina Grobet Vallarta, Head of the Transparency Liaison Unit of the Ministry of Public Administration
2. Mariana Michel Calderón, Assistant Director of International Relations of the Ministry of Public Administration's Transparency Liaison Unit

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 still appears to be no significant evidence of progress in implementing corporate whistleblower protection measures to protect employees from being fired or from other forms of reprisal for reporting transnational bribery.

Are you aware of any foreign bribery cases or investigations that have been brought as a result of whistle blowing by persons in the public or private sector?

No

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 government's efforts have continued satisfactorily this past year in promoting awareness of the Convention's guidelines. As was highlighted in the 2006 post-phase II OECD evaluation and based on OECD working group's recommendations from 2005, the government's awareness-raising efforts have primarily focused on four distinct audiences: 1) Mexican companies that invest and export abroad; 2) agencies and other governmental bodies most likely to come into contact with companies engaging in business abroad; 3) lower levels of the administration, states and municipalities; and 4) the accounting, auditing and legal professions. In collaboration with these target audiences, the Mexican government has undertaken a variety of activities, ranging from organizing and participating in conferences, meetings and presentations to distributing educational material on the Convention and helping conduct related studies.

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:

Mexico has made no normative modifications regarding its accounting and auditing requirements in compliance with the Convention, consistently citing that current provisions in its Tax Code, Criminal Code, Criminal Procedure Code as well as in the Mexican Institute of Public Accountants' (*Instituto Mexicano de Contadores Públicos, IMCP*) Code of Ethics (Articles 3.04 and 5.03) adequately address practices for concealing bribery – both domestic and foreign. It is also worth noting that the IMCP's Auditing Standards and Procedures Commission has issued a number of bulletins in the past years, classifiable as auditing standards within the profession, closely related to the guidelines of the OECD's Anti-bribery Convention (e.g. #s 3020, 3070, 3110, 3130 and 6080). However, in the Post-Phase 2 OECD Evaluation – 2006, an important point was raised about a deficiency in the current legislation that could very well hinder those most likely to come into contact with such violations from reporting them. Given the fact that accountants are professionally bound to confidentiality, the often-invoked article 116 of the Criminal Procedure Code, which obliges citizens to report cases of criminal wrongdoing to the authorities, will have little value in this situation until the law, the professional norm or both are modified to allow accountants to breach confidentiality in specific circumstances.

Are you aware of any cases or investigations brought for violation of these requirements? If already mentioned above under I. A and B. please indicate.

No

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):

A thorough search of several of the country's largest and most influential corporate alliances produced no evidence of any significant recent advances in anti-bribery corporate compliance programs. While some companies make reference to illicit payments in general terms -- such as money laundering in banking and financial institutions -- few if any satisfactorily cover the offence of transnational bribery.

In recent years, there appears to have been a gradual shift in private sector consciousness towards espousing "best practices" and outwardly rejecting corrupt practices; however to date these promising efforts have seemingly never acquired the momentum necessary to translate into more far-reaching reforms in the private sector ethos.

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:

- _____
- _____

Despite the fact that there are no significant inadequacies in the legal framework, recognized sources of public opinion have suggested important administrative deficiencies. According to a recent article, in the past six years on average only two of every 100 public servants of the PGR accused of corruption (abuse of authority, bribery, etc.) have been sentenced. This low conviction rate in the PGR has been attributed by the media to defects in the current judicial system, being inefficient and overly-bureaucratized, and to the fact the PGR itself investigates internal corruption, which can lead to impunity. This criticism may not be universally applicable to the Federal Public Administration; nevertheless it is a clear indicator of challenges for bribery enforcement. Please see, *Terminan sin sentencia acusaciones en la PGR, Periódico Reforma* (Dec. 11, 2006).

In addition, as was highlighted in the 2006 Progress Report, the Mexican legal system hamstrings proactive criminal investigations; without the filing of a formal complaint, the *Ministerio Público* or Prosecutor cannot initiate an investigation or bring charges. Please see, *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. Transparency is still an issue in criminal proceedings in general. Lack of transparency in investigating and prosecuting corruption affects 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 procedure would elevate the quality of evidence and send a stronger signal to the society at large about the way the government enforces anticorruption standards and laws. At the moment, a switch to such a criminal procedure is high on the legislative agenda.
2. The government should strongly consider how legislative reforms facilitating proactive criminal investigations could aid on the anti-corruption front without the Constitutional requirement of a formal complaint becoming an obstacle or negative incentive in such investigations.
3. In order to improve transparency and social monitoring, the government should make available an integrated database of all foreign companies bidding for government contracts in Mexico and allow interested users to identify companies' country of origin. This would send a strong signal to foreign companies that their actions are not only under review by law enforcement bodies, but also by public scrutiny to help ensure that bidding processes are held to a high standard of integrity and are subject to Mexico's laws.
4. 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 resources in the anticorruption fight.
5. Extending witness and whistleblower protection programs to corruption-related offences, as well as appropriate support to judges and prosecutors involved in difficult corruption cases, is integral in creating a more favourable environment for reporting such crimes.

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> | <u>No change</u> | <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> | <u>No change</u> | <i>Increasing enforcement</i> |

Report prepared by :

_____ (signature)

Name of respondent:

Transparencia Mexicana

Affiliation:

Transparencia Mexicana

Professional experience:

1. Eduardo Bohórquez, Executive Director of Transparencia Mexicana participated in the revision of the OECD's Anti-Bribery Convention;
2. Jeremy Biddle, Project Consultant with Transparencia Mexicana regarding conventions, co-authored the phase-2 civil society report for the Follow-up Mechanism on the Implementation of the Inter-American Convention against Corruption of the Organization of American States; and
3. Amine Islas, Project Consultant with Transparencia Mexicana regarding conventions, co-authored the phase-2 civil society report for the Follow-up Mechanism on the Implementation of the Inter-American Convention against Corruption of the Organization of American States.

Appendix

List of persons consulted (with affiliation) :

1. Paulina Grobet Vallarta, Head of the Transparency Liaison Unit (*Unidad de Vinculación para la Transparencia*) of the Ministry of Public Administration
2. Mariana Michel Calderón, Assistant Director of International Relations of the Ministry of Public Administration's Transparency Liaison Unit
3. María Estela Verónica Corona Arbola, Head of the Special Prosecutor's Office for Combating Corruption in the Federal Public Service
4. Alejandro Posadas, Professor in Law, CIDE Law School

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

Reports:

1. Mexico – Phase 1 and 2 OECD Reports
2. Mexico – Post-Phase 2 OECD Evaluation – 2005
3. Mexico – Post-Phase 2 OECD Evaluation – 2006
4. Mexico – TI Progress Reports on Enforcement of the OECD Convention 2004 and 2006
5. Mexico – Phase 2 Questionnaires for the Follow-up Mechanism on the Implementation of the Inter-American Convention against Corruption of the Organization of American States (Mexican government and civil society)

Legal texts:

1. *Constitución Política de los Estados Unidos Mexicanos* (Federal Constitution)
2. *Código Federal de Procedimientos Penales* (Federal Criminal Procedure Code)
3. *Código Penal Federal* (Federal Criminal Code)
4. *Código Fiscal de la Federación* (Federal Tax Code)
5. *Ley Federal contra la Delincuencia Organizada* (Federal Law against Organized Crime)
6. *Ley Federal de Justicia Administrativa de la Función Pública* (Federal Law of Administrative Justice in the Public Administration)
7. *Presupuesto de Egresos de la Federación para el Ejercicio Fiscal 2007* (Federal Budget and Expenditures for the 2007 Fiscal Year)
8. *Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental* (Federal Law for Transparency and Access to Governmental Public Information)
9. *Convención de Lucha contra la Corrupción de Servidores Públicos Extranjeros en las Transacciones Comerciales Internacionales* (Convention on Combating Bribery of Foreign Public Officials in International Business Transactions)
10. *Ley Orgánica de la Procuraduría General de la República* (PGR) (Fundamental Law of the Attorney General of the Republic)
11. *Ley de Obras Públicas y Servicios Relacionados con las Mismas* (Public Works and Related Services Law)
12. *Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público* (Government Procurements, Leases and Services Law)
13. *Reglamento de la Ley Orgánica de la PGR* (Regulations for the Fundamental Law of the PGR)
14. *Acuerdo número A/107/04 del Procurador General de la República, por el que se crea la Fiscalía Especial para el Combate a la Corrupción en el Servicio Público Federal* (Decree that establishes the Special Prosecutor's Office for Combating Corruption in the Federal Public Service)
15. *Acuerdo número A/151/04 del Procurador General de la República, por el se adscriben la Fiscalía Especial para el Combate a la Corrupción en el Servicio Público Federal y la Fiscalía Especial para el Combate a la Corrupción en la Institución* (Decree that appoints the Special Prosecutor's Office for Combating Corruption in the Federal Public Service and the Special Prosecutor's Office for Combating Corruption in the Institution)

News Report Searches:

www.eluniversal.com.mx
www.reforma.com
www.jornada.unam.mx
<http://news.google.com.mx>

Websites:

www.tm.org.mx/convenciones
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