



2008 TI Progress Report on OECD Convention Enforcement

Questionnaire for TI National Chapters in OECD Signatory States

22.1.08

Questionnaire for: **Mexico**

Date:

I. Current Status of Enforcement

Please note: Foreign bribery cases (and investigations) shall include all cases involving bribery of foreign public officials, criminal and civil, whether brought under laws dealing with corruption, money laundering, tax evasion, fraud, or accounting and disclosure.

A. TOTAL FOREIGN BRIBERY CASES, PENDING AND CONCLUDED: 0 (2 cases if we assume Mexican government's position)

B. PENDING CASES: Pending foreign bribery cases

Please list all pending foreign bribery cases brought since the OECD Convention became effective in your country.

Total number of pending cases: 0

Cases pending brought since 1 January 2007: 0

For each case please list if possible the following:

(1) Name of case, including principal parties

(2) Is this a major case? (See Guidelines for definition) Yes___ No ___

Note: For major cases please provide as much detail as possible to the questions below. Less detail is needed for minor cases.

(3) Is it a criminal or civil case?

(4) Date and court where filed

(5) Current status of case i.e. likely trial date

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

(7) Penalties or other sanctions sought

(8) To your knowledge has a case involving the same facts or defendants been brought in another country? If so where and when?

(9) To your knowledge, is there a pending request or requests for mutual legal assistance lodged with another country?

C. CONCLUDED CASES: Including convictions, settlements, dismissals or other final dispositions of cases

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

Cases concluded since 1 January 2007: 0

For each case please list if possible the following:

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

(2) Is this a major case? (See Guidelines for definition.) Yes ___ No ___

Note: For major cases please provide as much detail as possible to the questions below. Less detail is needed for minor cases.

(3) Date and court where filed

(4) Is it a civil or criminal case? _____

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

(6) Penalties or other sanctions sought

(7) Criminal or civil case

(8) Disposition of case (Please describe form and substance of disposition)

(9) To your knowledge has a case involving the same facts or defendants been brought in another country? If so where and when?

Domestic Bribery prior to 2007

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

(2) Major Case

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

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) Civil Case

(5) 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 tenders involving federal or state agencies when federal funds are involved.

(6) In the prosecution of this case, the SFP sought to fine Areva and Alstom International \$341,100.00 Mexican pesos (roughly \$31,000 USD) each and bar them from participating in public tender procedures for two years.

(7) See (4)

(8) 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. On October 18, 2007, Areva and the SFP reached a plea deal, whereby the sanction was reduced to the above-mentioned fine.

In the case against Alstom International:

In July 2004, Alstom International was penalized with the above-mentioned fine and a two-year disqualification from public tender procedures. Not being in conformity with the ruling, Alstom International subsequently filed a series of appeals. On July 11, 2007, the original sentence was reinstated.

(9) see (3) to (8)

D. 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 you country.

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

Number since 1 January 2007: 0

If information unavailable, please indicate: _____

Prior to 2007:

- **(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.

E. ACCESS TO INFORMATION: Information available about foreign bribery cases

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

Yes No

If yes, please specify what kind of access is provided?

Pursuant to Article 6 of the Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*) and the Federal Law for Transparency and Access to Public Governmental Information (*Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*), the freedom to information is a right guaranteed by the State.

As part of this exercise, information requests were submitted to the Ministry of Public Administration (*Secretaría de la Función Pública, SFP*), the Federal Attorney General's Office (*Procuraduría General de la República, PGR*) and PEMEX (*Petroleros Mexicanos*). The SFP and PGR provided responses in writing. The response from PEMEX is still pending.

F. 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: 1

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

(1) Paradigm Geophysical (USA) and an official of PEMEX Exploration and Production (PEMEX Exploración y Producción, PEP), a subdivision of the Mexican parastatal PEMEX (*Petroleros Mexicanos*)

(2) The U.S. Department of Justice brought charges against Paradigm. The proceedings were resolved in September, 2007 and Paradigm was ordered to pay one million USD in fines. The case was picked up by the Mexican media, where several articles were published in the days following the case's resolution in U.S. courts. Although according to Mexican media accounts, PEMEX allegedly launched an internal investigation into Paradigm, it is not known whether any formal action has been taken against the PEMEX official who was purportedly bribed. Please refer to: *Dejan a Paradigm licitar en PEMEX, Periódico Reforma* (Jan. 23, 2008).

(3) Paradigm Geophysical publicly confessed to bribing an official of PEMEX in 2005 on

several occasions to obtain contracts, an account which, from our research and information request, has yet to be confirmed by PEMEX.

(4) Mexico

II. Actions to Promote Enforcement

A. Organisation of Enforcement

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

Yes No

2. If foreign bribery enforcement is not centralised, 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 (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. 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. All complaints must be followed up with a formal declaration corroborating the allegations.

It is worth noting that the SFP and OIC are required by law to forward any complaints implying criminal responsibility to the office of the PGR.

C. 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.).

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.

D. Statutory and Other Legal Obstacles

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

Yes _____ No

2. If so, please indicate if these include:

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

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. Based on figures released in reports of General Affairs and the Special Prosecutor's Office for Combating Corruption in the PGR (*Visitaduría General y de la Fiscalía Especial para el Combate a la Corrupción de la PGR*), during the current presidential administration, of the more than 2,200 open investigations for alleged corruption within the PGR, only 39 cases have been concluded or even sent to tribunals, representing a meager 1.7%. Please refer to: *Falla lucha contra la corrupción en la PGR, Periódico Universal* (Feb. 12, 2008).

This very same issue was also the subject of an article described in last year's Progress Report, in which the PGR's alarmingly low internal conviction rate for corruption offences was attributed to defects in the country's 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 refer to: *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 hampers proactive criminal investigations; without the filing of a formal complaint, the *Ministerio Público* or Prosecutor cannot initiate an investigation or bring charges. Please refer to: *Condicionan Investigación, Periódico Reforma* (Oct. 22, 2005).

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

E. Political control over enforcement actions/ Independence of prosecutors

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

No.

F. 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. The country's recent switch to an adversarial oral criminal procedure as part of a larger judicial reform package approved in February, 2008 can be a boon in the fight against corruption. This type of legal procedure shows promise to elevate the quality of evidence, confer transparency among all parties involved, and send a stronger signal to the society at large about the way the government enforces anticorruption standards and laws.
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 and auditing requirements 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.

G. Enforcement Trends

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> | No change | <i>Increased Enforcement</i> |

Report prepared by :

_____ (signature)

Name of respondent:

- Eduardo Bohórquez
- Jeremy Biddle

Affiliation:

Transparencia Mexicana, A.C.

Professional experience:

- Eduardo Bohórquez, Executive Director of Transparencia Mexicana participated in the revision of the OECD's Anti-Bribery Convention;
- Jeremy Biddle, Project Consultant with Transparencia Mexicana regarding conventions, co-authored: (1) 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; (2) TI's Progress Report on Enforcement of the OECD Convention 2007 for Mexico; and (3) the civil society entry of Self-Assessment Checklist Report on the United Nation's Convention against Corruption Implementation in Mexico.

Appendix

List of persons consulted (with affiliation) :

- Alejandra Rascón, Independent consultant with seven years practicing government law.

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 11 government and civil society)

