

SURVEY OF ANTI-CORRUPTION MEASURES IN THE PUBLIC SECTOR IN OECD COUNTRIES: MEXICO

1. What anti-corruption mechanisms exist for the public sector in your country?

a) *Legislation proscribing corrupt activities and establishing sanctions*

- the Constitution,
- the Federal and Local Criminal Codes,
- Law of Acquisitions and Public Works and
- the Federal Law of Responsibilities of Public Servants.

b) *Other anti-corruption regulations or orders*

The Interamerican Convention Against Corruption which, having being ratified by Mexico, is already part of its legal system. The Modernisation Program for Public Administration, 1995-2000, which establishes plans for the dignification, professionalisation and ethics of Public Servants. The Law of State Secretariats, which establishes the competence of the Secretariat of Comptrollership to inspect all public expenditure, to audit, organise and co-ordinate the administrative activities of all entities of the Public Administration for the purpose of detecting and sanctioning illegal acts and, when necessary, to place responsibility on public servants.

c) *Oversight by the legislature or parliament (directly or through scrutiny committees)*

Article 74 of the Mexican Constitution establishes as an exclusive function of the Chamber of Deputies the examination, discussion and yearly approval of the Federal Budget, as well as the revision of the previous yearly public account. The Contaduría Mayor de Hacienda, an organ of the Chamber of Deputies, is in charge of examining public expenditure whenever there is no justification or exactness in expenses.

The Chamber of Deputies may become a Jury to deal with serious violations committed by high public servants against the Constitution or in detriment of the public interest and good management. This, so called “political trial”, is applicable to all public servants whether elected or nominated, (including the President of the Republic, for treason or serious offences against common law), but only in such cases as established by the Constitution and the Federal Law of the Responsibilities of Public Servants, i.e. where there have been offences of a serious nature against the Federation, a State or to society in general, as well as grave omissions or systematic serious violations to the plans, programs and budget of the Federal Public Administration and the laws which rule the management of Federal financial resources. Declarations and resolutions of the Chambers of Deputies and Senators are unassailable.

The same procedure applies to Governors of the States, local Deputies, Magistrates of the Superior Tribunal of Justice of the State and Members of the Councils of the Local Judiciary corps, but the resolution is handled over to the local Chamber of Deputies to proceed.

Under the procedure any citizen, under his responsibility, may denounce a public servant before the Chamber of Deputies for transgressions, with sufficient probatory elements to either establish the existence of the crime or to presume the culpability of the suspect and may be assisted by a special commission appointed for the purpose, when such evidence is in the hands of an authority.

The said Chamber decides upon the merits of the case. If the accusation is sustained, the matter is transferred to the Chamber of Senators which becomes a Tribunal for the case, the procedure in full detail being fixed by the Federal law of Responsibilities of Public Servants. Both Chambers enjoy full independence from the Executive power.

d) *Investigation systems or bodies with powers to investigate corrupt activity*

Besides the foregoing, the Federal *Penal Code* clearly defines the crimes that may be committed by public servants such as:

- undue use of attributions and faculties,
- extortion,
- intimidation,
- abusive exercise of functions,
- traffic of influence,
- bribery,
- embezzlement and
- illicit enrichment.

In these cases, a normal criminal procedure is in order.

The Federal Law of Responsibilities of Public Servants, also establishes administrative responsibilities in cases where the public servant does not fulfil his or her obligation to guarantee legality, honesty, loyalty, impartiality and efficiency during his or her term of employment or commission, plus a full range of specific obligations relating to private conduct vis-à-vis superiors, inferiors and equals and for him or her to refrain from participating in matters in which he or she may have a personal interest, plus a series of other obligations. Administrative responsibility may entail suspension or loss of employment, public or private admonition, economic sanction or temporary incapacity.

The functions of the Secretary of Comptrollership (equivalent to a Ministry in other countries) are basically preventive and are aimed at detecting irregularities in the Federal Public Administration, at fixing norms, policies and specifications regarding the process of tendering for the purchase of goods, rendering of services and participating in public works for the Administration. The Secretariat is also in charge of establishing and applying the rules and procedure so that public petitions may be attended in time and with efficiency.

e) *Supreme financial audit authority*

See the answer to *Question 1(c)* and *(d)*.

f) Ombudsman

Only in regard to the protection of human rights. Against corruption the functions of an ombudsman are within the scope of the Secretariat of Comptrollership and Administrative Development.

g) Bodies to enforce sanctions and prosecute corrupt activity, e.g. specialised prosecutors, investigators, courts, tribunals, etc.

See the answer to *Question 1(c)*.

h) Human resources management procedures intended to prevent corruption

See the answer to *Question 1(d)*.

i) Financial management controls intended to prevent or deter corrupt practices

See the answer to *Question 1(d)*.

j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

See the answer to *Question 1(d)*.

k) Transparency mechanisms e.g. independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity

As regards transparency mechanisms, the means and ways for public scrutiny and detecting potential conflicting interests or corrupt activities have already been explained. With regard to transparency in the tendering process for the government procurement of goods, services and public works, a system of public notice, named COMPRANET, through which bidding by personal, mail or electronic means is available plus the so called “resource of unconformity”, when a bidder considers and demonstrates that his/her interests have been affected by the resolution and therefore is being given the chance to redress the decision.

In addition to the referred procurement system, other systems in operation related to transparency of public actions are:

- The Federal Procedures Register System which provides information to citizens related to all the existing federal procedures, such as requirements, costs, office hours, legal frameworks and addresses and telephones of the public servants responsible for the services.
- The Automated Evaluation System. In this system it is possible to consult the curricula and grades obtained in the specialised courses offered to all public servants of every internal Comptrollership Office at the federal level.

- The Disqualified Public Servants Register System through which all public servants with responsibilities related to human resources and/or comptrollership can verify whether any particular public servant is disqualified to work for the federal government due to a sanction imposed by the Comptrollership Secretariat or by a state comptroller.

See also the answer to *Question 2*.

l) Guidance and training for public officials or politicians (e.g. codes of conduct, ethics awareness training)

The Federal Law of Responsibilities of the Servants, establishes 24 rulings in regard to all public servants, whether nominated or elected. A copy of these obligations is enclosed in the Spanish language. Regular training courses are being given to public officials not only to capacitate them in their field but to instil in them their obligations as such.

m) Other measures intended to control, detect or deter corruption

-

2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

The yearly Declaration of properties and assets, which is compulsory to all public servants, is considered an effective mechanism against corruption. Through it, the detection of illicit enrichment, which is considered a crime by the Mexican penal system is very possible.

Another mechanism of proven efficiency are the Internal Comptrollerships placed in every Federal Government entity, once appointed and held responsible by the Secretariat of Comptrollership and Administrative Development.

3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?

Yes, both mechanisms are formally evaluated. With respect to the first case, the area entrusted with the reception and analysis of the information contained in the declaration of properties and assets is permanently evaluated in terms of the quality of the revisions and resolutions that derive from special or random investigations.

The internal comptrollerships placed in every Federal Government entity are subject to permanent evaluations by the Secretariat of Comptrollership. New information systems are being tested in order to curtail the information required for the evaluators and facilitate the exchange between the internal comptrollerships and the Secretariat. These systems will allow the Secretariat, through the use of performance indicators, to evaluate group and individual performance in terms of the quality, quantity and time in which revisions and resolutions are carried out.

4. What if any new actions against corruption in the public sector is your country currently considering?

Among other actions the Secretariat of Comptrollership is currently implementing a “shoppers” program through which it evaluates both, the conduct of public servants at the public counters and the quality of the services offered. This program has allowed the implementation of changes in procedures and regulations. In some cases legal actions have been carried out against public servants who have misbehaved or acted inefficiently.

The Secretariat is also promoting a deregulatory effort throughout the central government. This process is aimed at cutting back “red tape” and eliminating “bottlenecks”, while clarifying the rights and obligations of public servants and citizens in the remaining procedures.

5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

Two of the main concerns in terms of corruption or misconducts are government procurement and all services in which there is a direct interaction between citizens and public servants. In relation to the first one, the Secretariat has launched a nation-wide electronic system through the Internet, in which all public purchases can be accessed by potential private contractors. Their bids can be made electronically thus eliminating displacement of bidders avoiding direct interactions and allowing greater transparency and audibility. A public register of all transactions is due in the coming months to check the price and conditions agreed upon between the government and contractors. With respect to the latter, actions aimed at providing users with full information of procedures and rights, along with public telephone “hot-lines” through which they can verify, for example the authenticity of sanitary or construction inspections, have been developed and promoted.

UNOFFICIAL TRANSLATION

we need to find out if this can be reproduced in the report

Related to question 'T' of the questionnaire on the existence of a Ombudsman in Mexico, hereby we present the composition, attributions, degree of independence and jurisdiction of the National Commission for Human Rights in Mexico.

STRUCTURE

The Commission is integrated by the following bodies; Presidency, Council, Auditing Unity, Executive Secretariat and the Technical Secretariat (Attached you will find a document containing the National Commission for Human Rights' structure).

ATTRIBUTIONS

Powers of the Commission:

1. To receive complaints on alleged violations to Human Rights
11. To know and investigate by demand or by duty, presumed violations of Human Rights as result of acts, omissions or tolerance by Federal Administrative authorities or by any public servant in case of illicit actions performed by particulars or any other social agent.
111. Formulate public and autonomous non mandatory recommendations, accusations and complaints to the corresponding authorities according to the article 102, section B of the Mexican Constitution.
- IV. To decide and to know, in last appeal, all non-conformities related to the recommendations made by the Human Rights' bodies under article 102, part B of the Mexican Constitution.
- V. To know and resolve, in last appeal, all the non-conformities resulted from omissions perpetrated by the above mentioned Human Rights' bodies.
- VI. To make sure the conciliation between plaintiffs and the authorities and the immediate resolution of the proposed conflict.
- VII. To encourage observance and respect of human rights in the country.
- VIII. To propose to the respective authorities, the necessary changes and modifications to the legislative and regulatory provisions, as well as to the administrative practices to improve human rights protection.
- IX. To promote the study, education and divulgation of Human Rights at national and international levels.
- X. To issue its internal regulations.
- XI. Formulate and carry out preventive programs related to the observance of Human Rights.
- XII. Supervise the observance of Human Rights in the penitentiary system and centres for social adaptation in the country.

XIII. Formulate programs and suggest actions, in co-ordination with the authorities to encourage the fulfilment of the international treaties on Human Rights that Mexico has ratified, within its national territory.

XIV. Propose to the Federal Executive Power the subscription of international agreements on Human Rights.

DEGREE OF INDEPENDENCE

The National Commission for Human Rights is a decentralised and independent body (autonomous), with Juridical personality and own patrimony. Its aims are the protection, promotion, study and divulgation of the Human Rights foreseen by the Mexican Laws.

JURISDICTION

The National Commission for Human Rights has jurisdiction in the Mexican territory, to receive complaints related to alleged violations to the Human Rights, when these violations were perpetrated to federal authorities and public officials excepting the Federal Judicial Power.

The National Commission is not qualified to arbitrate in electoral, labour and jurisdictional issues.