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Corruption in the Mexican Energy Industry: Recommendations and Proposals

By Gabriel Toledo Guerrero

Abstract

This essay explores the efficiency of Mexico's legal instruments to fight corruption, examining several corruption cases within the state companies Petróleos Mexicanos (Pemex) and the Federal Electricity Commission (CFE). Further, this work also includes an analysis of the public organs in charge of preventing and punishing corruption in the energy industry. Likewise, the roles and responsibilities of the private sector in the fight against corruption will also be considered with the goal of discovering the risks new investors face as well as to find new public-private cooperation schemes to mitigate and prevent the impact of corruption. The present text will also evaluate why corruption legislation in the United Kingdom, the United States, and Canada has seen success, comparing these frameworks to the Federal Anticorruption Law for Public Contracts in Mexico (*Ley Federal Anticorrupción en Contrataciones Públicas de México*). Lastly, using the prior analysis, this paper will issue several public and private policy proposals to ensure that corruption laws are followed while increasing competition within the energy industry.

I. Introduction

In 2011, Petróleos Mexicanos paid \$9 million dollars to transport an oil rig from the Persian Gulf to the Gulf of Mexico. After being investigated by the Chief Audit Office (*Auditoría Superior de la Federación*, ASF), it was discovered that said rig was not equipped with the right tools to carry out the specific tasks Mexico required. Further, the rig was never transported, as it had in fact always been in Mexico. In February of 2013, the ASF asked Pemex to take measures to punish those responsible for the transaction, but Pemex never took action (*Proceso*, 2013).

On December 31, 2013, the Mexican oil exploration company Oceanografía SA de CV approached Banamex, Citigroup's Mexican affiliate, to request a \$585 million dollar loan, using future income from Pemex service contracts as a payment guarantee. On February 11, 2014, Banamex discovered that the Ministry of Public Affairs (SFP) had actually banned Oceanografía from participating in Pemex bids. Indeed, Banamex inadvertently lent money to a client that had no income and could not pay back this colossal loan (*La Jornada*, 2014).

Pemex and Oceanografía are two examples of the corruption permeating Mexico's energy industry. To fight corruption in this sector of the economy, Mexico has implemented constitutional reforms, including the Energy Reform and the National Anticorruption System. In 2012, the Federal Anticorruption Law for Public Contracts, which is comparable to legislation in the United Kingdom, the United States, and Canada, was also passed.

Despite these new reforms, and in contrast to the aforementioned countries, Mexico does not have the mechanisms needed to ensure that laws are upheld or to prevent corrupt practices among public and private parties. Further, Mexico is still lacking policies to promote private-sector participation in the fight against corruption.

This paper will explore the efficiency of Mexico's legal instruments to fight corruption. This analysis will examine several corruption cases within the state companies Petróleos Mexicanos (Pemex) and the Federal Electricity Commission (CFE). Furthermore, this work also includes an analysis of the public organs in charge of preventing and punishing corruption in the energy industry.

Likewise, the roles and responsibilities of the private sector in the fight against corruption will also be considered for the sake of discovering the risks new investors face, as well as to find new public-private cooperation schemes to mitigate and prevent the impact of corruption.

The paper will also evaluate why corruption legislation in the United Kingdom, the United States, and Canada have seen success, comparing these frameworks to the Federal Anticorruption Law for Public Contracts in Mexico (*Ley Federal Anticorrupción en Contrataciones Públicas de México*).

Lastly, using the prior analysis, this paper will issue several public- and private-policy proposals to ensure that corruption laws are followed while increasing competition in the energy industry.

These include:

1. Giving the ASF the power to present civil and criminal charges against the public and private organs responsible for corrupt acts or administrative offenses.
2. Empowering the SFP to collect sanctions.
3. Private-sector investment in investigating and supervising consulting and management firms.
4. Creating corporate lines of internal communication in order to report corruption practices among employees.
5. Private-sector investment in training employees in regards to Mexico's legislative anticorruption framework.
6. Creating a line of direct communication between the energy sector's regulatory commissions and the private sector.

II. Analyzing the Public Organs in Charge of Fighting Corruption in the Energy Industry

Mexico's efforts to reduce corruption have yielded the creation of the National Hydrocarbons Commission (CNH) and the Energy Regulatory Commission (CRE), both of which stemmed from the Energy Reform approved in August of 2014. The CNH and CRE are technically and operationally autonomous and are also managed independently. Their goal is to regulate interactions between state-productive enterprises, such as Pemex and the Federal Electricity Commission (CFE), and private companies. Its responsibilities also include monitoring the participation of private parties in state bids (Muciño, 2014). The founding of the CNH and CRE created a new control system for Pemex with the goal of finding irregular expenditures and potential corruption schemes.

The organs in charge of denouncing and punishing corruption have also been given more power. The National Anticorruption System, which was approved in Congress in May 2015, grants the ASF, the SFP, and the Specialized Prosecutor to Combat Corruption new powers to denounce corrupt practices and make exercising the law more efficient.

Regardless of these measures, an analysis of corruption within the Mexican energy sector would reveal that, even though laws to punish corruption do exist and mechanisms to detect corrupt practices are in effect, the laws are simply not enforced. For example, we will delve into a brief summary of the media company *Reuters'* investigation into corruption in Pemex and will also analyze a report on the CFE issued by the National Institute for Access to Information (INAI).

Corruption at Pemex

From 2003 to 2012, *Reuters* found more than 100 contracts worth approximately \$11.7 billion dollars (8 percent of Pemex's total income for said period), which, according to the ASF, involved irregularities. These irregularities included overvalued contracts, ghost employees, payments for services that were never received, conflicts of interest, and more. From 2008 to 2012, the ASF issued Pemex 274 recommendations to mend these questionable contracts. Pemex replied to 267 of these requests but only accepted three of them.

The contracts under discussion included a 2013 bid contract Pemex awarded to ADT Petroservicios, which the SFP had banned from participating back in 2009. Nonetheless, ADT is still receiving payments for more than \$35 million dollars on Pemex's behalf (Rosenberg and Pell, 2015). This incidence is no isolated case. *Reuters* also discovered that, from 2006 to 2013, 40 companies received approximately \$88 million dollars in Pemex contracts despite the fact that the SFP had banned them from participating in these bids.

Another memorable case involves the Brazilian oil company Unigel. From 2009 to 2011, Lorenzo Aldeco and Manuel Sánchez, two Pemex executives, negotiated a transaction by which Pemex would sell chemicals to Unigel at a special price that would save Unigel \$30 million dollars. This transaction was undertaken without the authorization of Pemex's legal department and regardless of the fact that the SFP had issued a report demanding that the original contract be renegotiated, but Pemex paid no attention. Currently, Aldeco is the head of Unigel's Mexico division, while Sanchez directs Pemex Petroquímica (Pemex's petrochemicals department) (Rosenberg and Pell, 2015).

The *Reuters* investigation showcased the ease with which public officials and private companies can engage in corruption with absolute impunity, even when their misuse of state resources can be proven. Both the Energy Reform and the National Anticorruption System are signs of the Mexican government's commitment to safeguarding the energy sector, but neither of these pieces of legislation include measures to ensure that the law will actually be upheld.

Corruption at the CFE

Pemex is not the only energy-sector company permeated with corruption. According to the INAI, over the last 15 years, more than 40 CFE officials have been fined by the SFP over corrupt practices. These fines add up to more than \$80 million dollars, but appear to be merely symbolic, as only \$830 dollars have been paid to date (Calderón, 2015).

The ASF and SFP

Today, the ASF has the power to order public parties to make reparations for having taken advantage of their position to use state resources for their own benefit. The ASF can also issue recommendations to the Specialized Prosecutor to Combat Corruption and require public officials to make reparations by paying fines for the inadequate use of state resources. However, Pemex

is an autonomous state company, meaning that the ASF cannot enact what the Federal Anticorruption Law for Public Contracts calls an “Administrative Sanction Process,” that is, the issuing of acts or complaints against investigated employees.

Meanwhile, the SFP can fine government employees for administrative offenses. Though the SFP can ban companies from participating in government bids, its powers are actually somewhat limited. The fines the SFP imposed on the CFE were not collected by the SFP, but by the Ministry of Finance and Public Credit (SHCP). As ensuring that fines are actually paid is out of the SFP’s jurisdiction, the latter is not vested with the faculties to supervise how its decisions unfold, which undermines its authority in turn (Jaime, Avendaño and García, 2013).

Evaluating the Energy Reform and the National Anticorruption System

The Energy Reform and the National Anticorruption System have created mechanisms to strengthen transparency and competition within Mexico’s energy sector. Creating the CNH and CRE should help the ASF and SFP detect and prevent new corruption cases within the electricity and hydrocarbons industries. Nonetheless, there are no parameters to guarantee that the law will actually be used against those engaging in corrupt acts. To make sure that the law is kept, the main actors in charge of safeguarding the law need to become involved in the process. Under the current scheme, the ASF can only monitor how corrupt acts develop within Pemex, but cannot prevent them. Meanwhile, the SFP can issue sanctions but cannot ensure that these penalties are carried out.

The cases at Pemex and the CFE are clear examples that corruption can be recognized in Mexico, but still cannot be punished. As such, we need to implement new policies that would extend anticorruption agencies’ faculties so that they can take action against illicit practices.

III. Private Sector Perspectives on Corruption within the Energy Industry

The Energy Reform has opened the door to foreign and national private companies that are interested in benefitting from Mexico's energy resources. Technological and financial contributions from incoming players should allow Mexico to maximize production and bolster the economy. All of this would be possible if Mexico could strengthen the integrity of its institutions.

According to Transparency International's 2014 Corruption Perceptions Index, Mexico holds 103rd place on a scale of 175 countries, being perceived as "highly corrupt." It is worth noting that the energy industry is a major factor behind this perception. The consulting firm PricewaterhouseCoopers conducts an Economic Crime Survey (ECS) every year, evaluating investors' perceptions of several aspects of the Mexican economy. In the 2015 ECS, the energy sector was reported as the second most corrupt sector of the Mexican economy (the first being transportation and logistics). Further, stock embezzlement and bribes are categorized as Mexico's most reported economic crime (Economic Crime Survey 2014).

The opening of the energy sector to private parties provides an opportunity to reflect upon the effects this decision could have on the fight against corruption. Given the history and nature of Mexico's energy sector, uncovering corruption in state companies should come as no surprise. However, these illicit practices also often involve private parties. In the 2015 ECS, 64 percent of surveyed energy companies declared that they had paid bribes during their negotiations in Mexico. The same survey shows that 54.6 percent of corruption cases in the energy sector were discovered through corporate control systems, which shows that private companies and parties play a fundamental role in detecting and preventing corruption.

These data serve to illustrate that the private sector's role in the fight against corruption, as well as the benefits they receive from the status quo, deserve our analysis. The following section will present four cases in which private companies participated in or were victims of corrupt acts within Mexico's energy sector.

Hewlett Packard and Pemex

From 2008 to 2009, the software company Hewlett Packard (HP) negotiated a \$6 million dollar contract with Pemex via the Mexican information-management consulting firm Intellego. As part of the agreement, HP agreed to grant Intellego 25 percent of the profits from the Pemex contract in exchange for the firm's management services. According to HP representatives, the company's Mexican headquarters never conducted an evaluation process to approve the hiring of Intellego, even though this process is required under company policy (TRACE, 2015).

Two years later, Pemex's Organ for Internal Control conducted an investigation and discovered that part of the payments Intellego received were used to bribe Pemex officials. Pemex proceeded to sue HP for violating the Foreign Corrupt Practices Act (FCPA) in a U.S. court.

An investigation conducted by the U.S. Securities and Exchange Commission (SEC) concluded that, through its Mexican headquarters, HP had paid up to \$1 million dollars to the Pemex officials involved in approving the contract. The investigation highlighted the fact that HP never conducted an evaluation before hiring Intellego. In April 2015, the U.S. Department of Justice (DOJ) announced that it had reached an agreement with HP by which the company would pay \$73 million in fines for having bribed Mexican officials (Godoy, 2014).

ABB and the CFE

From 1997 to 2004, the Swiss power company ABB sought out two contracts with the CFE and the former electricity company Luz y Fuerza through ABB's American division, ABB Network Management. These contracts were worth \$81 million dollars. The negotiations were held between ABB's Mexico representative, Fernando Maya Basurto, and the former director of operations at the CFE, Néstor Félix Moreno Díaz.

An investigation conducted by the SFP and SEC revealed that Basurto had been authorized by former ABB Network General Manager Joseph O'Shea to use fake receipts and commission payments for technical maintenance services that had never actually taken place, transferring almost \$2 million dollars to Moreno Díaz. Further, Moreno Díaz received gifts and benefits, including a Ferrari worth \$200,000 dollars (*Reforma*, 2014).

After the SFP and SEC revealed their findings, the company was charged with violating the FCPA in a Texas court. During the trial, Basurto admitted that he had bribed Mexican officials while acting as an ABB representative. ABB was fined \$17 million dollars for violating the FCPA, and Basurto was sentenced to 22 months in jail (Trace, 2015).

Paradigm and Pemex

In 2004, the software company Paradigm, B.V. founded its Mexican unit, Paradigm Mexico, which signed a contract worth \$1.6 million dollars with Pemex. Paradigm Mexico used a private agent who had not signed a services contract and was given the reins to negotiate the company's contract with Pemex.

After Paradigm underwent administrative changes, its Mexican unit was discovered to have spent \$22,000 dollars on entertaining a Pemex official. On top of this, Paradigm had hired this official's brother as a company chauffeur.

Paradigm reported its findings to the DOJ, which reduced its sanctions against the company as a reward. Paradigm was fined \$1 million dollars and agreed to implement new control methods to prevent similar misgivings from happening again (Trace, 2015).

Oceanografía and Banamex

Given that the Oceanografía case was adumbrated in this paper's introduction, we will proceed to examine how the case developed after Oceanografía's fraud against Banamex was discovered.

Once Banamex proved that Oceanografía had reported false income in order to receive a bank loan for \$585 million dollars, the bank launched an internal investigation to find those responsible. Its discoveries culminated with the firing of six employees who were in charge of supervising Oceanografía's accounts. Furthermore, as punishment for not implementing efficient control measures, Mexico's National Banking and Securities Commission (CNBV) fined Banamex \$2 million dollars (Estaño, 2015).

Notably, the SFP had actually banned Oceanografía, the company that perpetrated this fraud, from participating in government bids for 21 months, imposing a \$1.6 million dollar fine in the

process. This sanction was never carried through and was annulled by a federal court in July 2015 (Fuentes, 2015).

The Private Sector's Role in Mexican Energy Sector Corruption

Once again, the prior cases show the undeniable corruption within state companies. However, these cases also show the role the private sector plays in starting and perpetrating corruption. Through these examples, we can appreciate the decisions companies have made to bribe Mexican officials or misuse their resources. Likewise, we can see that these companies had the ability to keep their employees or Mexican affiliates from participating in corrupt acts.

- HP put itself at risk of corruption when it failed to conduct an evaluation process before hiring a firm to negotiate with Pemex. Regardless of company policy, HP Mexico decided to hire Intellego without reviewing the firm's antecedents. If HP Mexico had done so before deciding to hire Intellego, its penalties for violating the FCPA would have been far lower than what the DOJ ultimately imposed, as HP would have been able to argue that it had adhered to control protocol.
- In the ABB case, we can see that General Manager Joseph O'Shea's practices were followed by his subordinate Mexico representative Fernando Basurto. This example suggests that the practices adopted by high-level officials set the pace for the rest of company employees and can end up promoting illegal practices.
- The Paradigm example also shows the risks of hiring third parties without conducting evaluations. Furthermore, the Paradigm case highlights the need for the private sector to periodically conduct internal audits in order to detect vulnerabilities and corruption cases.
- Lastly, Banamex is a clear example of the risks of conducting negotiations without checking references first. In this specific case, Banamex could have prevented Oceanografía's fraud if it had contacted Pemex before granting the loan. The bank's lack of communication with the public sector ended up costing this Mexican affiliate more than \$587 million dollars (including the CNBV's fines). Plus, this example illustrates the Mexican state's inability to implement the law and prevent corrupt actors from reinserting themselves within the Mexican energy sector.

IV. Comparing the Federal Anticorruption Law for Public Contracts with Foreign Legislation

Mexico is not the only country fighting corruption in its energy industry. According to TRACE International's 2015 Global Enforcement Report, 20 percent of globally detected corrupt acts take place in the energy sector (*Oil and Gas Magazine*, 2015). This phenomenon does not imply that all industry companies are endemically corrupt, but it is a sign of the risks of investing in this sector. As is the case of Mexico, many organizations producing energy abroad are partly or completely owned by the state, which often goes hand in hand with the abuse of power.

In response to prevalent corruption in the international market (including the energy industry), many countries have passed anticorruption legislation. The following section will present three pieces of legislation that have had a high impact on their countries as well as on the international community.

The U.S. Foreign Corrupt Practices Act

The Foreign Corrupt Practices Act (FCPA) has become a recognized model for anticorruption legislation. The law was approved by the U.S. Congress in 1977, banning any kind of payment, promise, or offer that can influence any foreign public official who has the total or partial ability to grant a good or service. This legislation also includes sanctions for any person or company exerting willful blindness before corrupt acts (Kaiser, 2013).

The FCPA is upheld by two institutions: the U.S. Department of Justice, which is in charge of processing criminal violations of the law, and the SEC, which is in charge of examining civil and administrative violations of the law (sharing this responsibility with the DOJ) (Kaiser, 2013). Moreover, the FCPA grants the DOJ and SEC the jurisdiction to charge any company whose operations violate the FCPA in the United States or whose corrupt practices have had a substantial effect in the United States.

As a measure to promote the reporting of corrupt practices, the FCPA offers financial rewards to anyone providing evidence of corrupt acts. This program has been highly effective: just 50 days after its implementation, the DOJ and SEC received 340 notifications.

Fines for violating the FCPA go from \$10,000 to \$25 million dollars, with prison sentences of up to 20 years. Furthermore, infringing companies can be banned from participating in government bids and be ordered to implement anticorruption control systems (Kaiser, 2013).

As of 2004, the DOJ and SEC have collected more than \$4.2 billion dollars in fines and sanctions from private sector players charged with violating the FCPA. These violations include the cases of 12 U.S. companies that were charged with bribing Mexican public officials in the energy sector (Alas, Clayton, Jaquez, and Orozco, 2015).

UK Anti-Bribery Act

The Anti-Bribery Act was implemented in the United Kingdom in 2011 and is considered one of the world's strictest pieces of anticorruption legislation, as it not only grants the British authorities extraterritorial jurisdiction, but also punishes corruption in the private sector. The Serious Fraud Office (SFO) investigates and sanctions corruption cases abroad. Sanctions for the Anti-Bribery Act include unlimited fines as well as up to 10 years of prison.

The British legislation also includes compensation for denouncing corrupt practices as well as reduced sanctions for parties who confess to having participated in corrupt acts. Like the FCPA, the Anti-Bribery Act allows the SFO to ban corrupt companies from participating in government bids. Lastly, even though this legislation is relatively young, to date, the SFO has reportedly collected £70 million pounds in fines and sanctions stemming from the Anti-Bribery Act (Kaiser, 2013).

Canada's Corruption of Foreign Public Officials Act

The Canadian Common Law system includes several provisions to sanction officials and citizens participating in corrupt acts. Sections 121, 122, and 123 of Canada's criminal law sanction any payment or offer of value made to Canadian public officials. Moreover, in 1999, Parliament approved the Corruption of Foreign Public Officials Act (CFPOA), which bans Canadian parties from influencing foreign public officials via promises or benefits. Sanctions for violating the CFPOA include fines and prison sentences of up to 14 years.

The Royal Canadian Mounted Police (RCMP) is in charge of enforcing the CFPOA, and the former has established two divisions dedicated to investigating corruption allegations within and outside

of Canada. The RCMP is currently investigating 30 corruption cases. Like the FCPA, Canada's legislation grants the RCMP the authority to judge individuals and corporations, both Canadian and foreign, whose activities substantially affect Canada (Kaiser, 2013).

Mexico's Federal Anticorruption Law for Public Contracts

The Mexican government has followed these countries' example, and the Energy Reform includes regulations to sanction public and private parties participating in corruption in energy-related bids and contracts. These sanctions are specified in the Federal Anticorruption Law for Public Contracts as well as in the Energy Reform's bylaws. This legislation is Mexico's main tool to mitigate corruption, aligning with international efforts to protect the energy sector from corruption.

The Federal Anticorruption Law for Public Contracts is consistent with the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions as well as with the United Nations Convention against Corruption. The law was designed based on the U.S. Foreign Corrupt Practices Act and resembles the UK's Anti-Bribery Act as well as Canada's Corruption of Foreign Public Officials Act in many ways. The following table shows the similarities and differences between the Federal Anticorruption Law for Public Contracts and foreign laws.

Country	United States	Mexico	United Kingdom	Canada
Enactment year	1977	2012	2010	1999
Anticorruption Legislation	Foreign Corrupt Practices Act	Federal Anticorruption Law for Public Contracts	Anti-Bribery Act	Corruption of Foreign Public Officials Act
Punishment for bribing foreign officials	Yes	Yes	Yes	Yes
Punishment for bribing domestic public officials	No	Yes	Yes	Yes
Punishment for active or passive bribes	No	Yes	Yes	No
Punishment for bribing commercial parties	No	No	Yes	No
Punishment for altering registries and accounting books	Yes	No	Yes	Yes
Exception for paying enablers	Yes	No	No	No
Can be applied to corporations	Yes	Yes	Yes	Yes
Criminal or civil liability for natural persons	Yes	Yes	Yes	Yes
Can be applied for using third parties in acts of corruption	Yes	No	Yes	Yes
Corporate sanctions	Yes	Yes	Yes	Yes
Compensations for implementing programs to safeguard the law within companies	Yes	No	Yes	No
Compensation for pleading guilty	Yes	Yes	Yes	Yes

(Table prepared by author by reviewing Kaiser, G. E., 2013 and the 2012 Federal Anticorruption Law for Public Contracts)

As can be observed, the Federal Anticorruption Law for Public Contracts is the most recent of the four pieces included in the table, and its regulations are very similar to its foreign counterparts. In many ways, this Mexican legislation seems even stricter than the FCPA, the Anti-Bribery Act, and the CFPOA, given that it punishes both those who offer bribes and those receiving bribes. The Mexican law also includes provisions for paying enablers: the Federal Anticorruption Law for Public Contracts bans paying public officials for expediting or enabling government processes. Furthermore, it eliminates up to 70 percent of fines for those who confess and admit their guilt.

The law is also specific in regards to which acts can be classified as corrupt. Article 8 outlines the following as corrupt acts:

- I. To promise or offer money or any other means to a third party in any way that influences the design or elaboration of a public call or bid or any other act related to federal public-contract procedures;
- II. Actions that aim to or ultimately obtain benefits or unfair advantages in federal public contracts;
- III. Acts or omissions that aim to or successfully participate in federal public contracts despite the fact that a law or administrative resolution bans this;
- IV. Acts or omissions that aim to or successfully evade requirements or laws established in federal public contracts or that feign to follow said laws;
- V. Interventions in one's own name that benefit the interests of another person or persons who have been banned from participating in federal public contracts with the ultimate aim that said persons gain total or partial benefits from the contract;
- VI. Coercing a public servant or giving, subscribing, granting, destroying, or turning in a document or good with the aim of obtaining a benefit or advantage for oneself or for a third party;
- VII. Using real or fictional influences or economic power over any public servant with the purpose of obtaining a benefit or advantage for oneself or for a third party, whether or not the public servant or servants accept and regardless of the result;
- VIII. Presenting false or altered documents or information with the goal of gaining a benefit or advantage.

(2012 Federal Anticorruption Law for Public Contracts)

In theory, this legislation should bring about reduced corruption, but its regulations are not vested with the authority one would expect. The examples in the first and second part of this paper stand as evidence that Mexico's legal instruments are in fact quite weak. The biggest difference between foreign and national laws does not lie in the legislative text, but in its implementation mechanisms. This fact becomes evident when comparing the Federal Anticorruption Law for Public Contracts, the FCPA, the Anti-Bribery Act, and the CFPOA.

The United States, the United Kingdom, and Canada have empowered their institutions dedicated to fighting corruption, while Mexico has limited the ASF and SFP's capabilities. The success of this foreign legislation is a sign that certain elements within the Mexican government are blocking the proper exercise of the Federal Anticorruption Law for Public Contracts. Despite the fact that the ASF and SFP have been appointed as corruption-fighting bodies, they lack the capabilities to punish corrupt officials and companies.

V. Proposals

Analyzing these public anticorruption bodies' faculties, evaluating the private sector's role in the fight against corruption, and comparing the Federal Anticorruption Law for Public Contracts with foreign legislation has provided enough grounds for the following proposals. These recommendations aim to strengthen Mexican institutions, increase competition in the energy industry, and prevent acts of corruption within the electricity and hydrocarbons industries. Furthermore, these proposals could optimize the Energy Reform and National Anticorruption System's objectives while acknowledging the challenges of Mexico's current reality.

I. Giving the ASF the power to present civil and criminal charges against public and private organs responsible for corrupt acts or administrative offenses

After evaluating the capabilities of the Chief Audit Office (ASF), we recommend strengthening its faculties. The Pemex case examined in Section II illustrates the ASF's role as an external control body that has successfully detected corrupt practices in the past. Nonetheless, while the ASF can detect the breaking of the law, it remains unable to intervene in the sanctioning of state-company employees. Even with the new powers it was granted under the National Anticorruption System, the ASF is a mere observer within the energy industry.

The task of sanctioning has been granted to Pemex's Internal Control Organ. This scheme has been largely ineffective, as Pemex has been unable or unwilling to punish its employees. The ASF needs to have capabilities similar to the United States' SEC or to the United Kingdom's SFO in order to safeguard the goals outlined in the Federal Anticorruption Law for Public Contracts. It needs to implement the sanctions that Pemex's Internal Control Organ has refused to uphold.

As such, we can conclude that expanding the ASF's capabilities so that it can sanction guilty officials regardless of their affiliation to state-productive enterprises is imperative. With this policy, Pemex employees would be subject to the same standards as the rest of Mexican public officials. Furthermore, in cooperation with the CRE and CNH, the ASF could progressively clean up Pemex's staff through sanctions, ultimately reducing company corruption.

II. Empowering the SFP to issue sanctions

Comparing the amount the DOJ and SEC have collected in fines and sanctions against companies infringing upon the FCPA to the amount Mexico's SHCP has collected from fines

against the Federal Electricity Commission would show that the Mexican system is both unable and uninterested in collecting SFP-imposed fines. The above international examples show that anticorruption organs are more effective when their powers are centralized and backed by the law. Thus, we suggest strengthening the SFP's capabilities and granting it the autonomy to collect economic sanctions in order to ultimately make the law more efficient and meet the goals outlined in the National Anticorruption System.

III. Private sector investment in investigating and supervising consulting and management firms

The cases analyzed in Section III of this paper show that the private sector plays a key role in energy-industry corruption. Even though the sources used in this text do not specify whether these private companies were the ones to initially suggest engaging in corruption, it is clear that private sector funds propagate corrupt practices.

HP and Paradigm's interactions with consulting and management firms show the risks of conducting business with unknown partners. Thus, we recommend carrying out background checks for any agency or partner that private companies choose to hire as representatives during negotiations with state enterprises in the energy industry. This proposal is highly relevant given that Mexico is expecting a heavy influx of foreign investment with the Energy Reform.

IV. Creating lines of internal communications within companies in order to denounce corruption practices among employees

According to the 2015 ECS, 54.6 percent of corruption cases in the Mexican energy sector were uncovered by companies' internal control mechanisms, such as personnel rotation, data analysis, internal auditing, etc. Nonetheless, only 16 percent were uncovered through internal commentary or employee complaints.

This data shows the need to promote a corporate culture of reporting corrupt practices. As such, we would suggest establishing communication lines within companies as well as reward systems to provide incentives for anonymous tips on suspicious behavior and corrupt acts among employees. In this way, companies could not only discover their internal vulnerabilities, but also pinpoint those employees with the integrity needed to conduct negotiations in the Mexican energy industry.

Furthermore, it is imperative that any company policy seeking to curb corruption be backed by the company's highest echelons. The ABB case clearly shows how executives shape managers' and employees' behavior.

V. Private sector investment in training employees in regards to Mexico's legislative anticorruption framework

Companies participating in corrupt practices are less competitive given that their getting caught chips away at their credibility before new customers. Furthermore, these sentences involve fines and legal processes that end up costing the company.

To avoid being labeled as corrupt, companies participating in Mexico's energy industry should not only distinguish themselves through the quality of their services, but by their integrity as well. We would recommend implementing training programs in regards to Mexico's legal framework, thus preventing employees from participating in actions that would be considered corrupt or unethical. This measure would not only help employees project a positive image of legality and lawfulness, but would also reduce the risk of employees participating in corrupt acts. By establishing corporate training, companies would gain the tools to back their intent to stop illegal conduct if ever they were accused of infringing the law.

VI. Creating a line of direct communication between the energy sector's regulatory commissions and the private sector

The Oceanografía case shows the ease with which a company associated with the energy sector can engage in financial fraud. Despite the fact that Banamex failed to implement control mechanisms regarding Oceanografía's obsolete receipts, we should emphasize that there were no external controls to warn the bank of the risks of conducting business with Oceanografía. The lack of communication between Pemex and Banamex cost the bank more than \$585 million dollars.

The founding of the CRE and CNH should help financial institutions know more about their clients. However, cooperation between public bodies and the private sector still needs to be strengthened in order to prevent fraud and the misuse of funds.

As such, we propose creating a direct line of communication between financial institutions, the CRE, and the CNH in order to safeguard transparency in energy sector transactions. This

measure will help banks and financial institutions verify the relationship between their clients, the Mexican government, and state enterprises. Furthermore, this proposal would mitigate the risks of corruption in the energy industry.

VI. Conclusion

This paper showcases the challenges the Mexican energy industry faces in terms of corruption. The Energy Reform, the National Anticorruption System, and the Federal Anticorruption Law for Public Contracts were created to mitigate these vulnerabilities. Nonetheless, the first conclusion we can draw from this analysis is that, while these new reforms seek to bolster the integrity of Mexican institutions through transparency and accountability, these mechanisms were not designed to strengthen rule of law.

Even though the Mexican government has taken significant measures to curb corruption, these initiatives fail to ensure the proper exercise of anticorruption laws. As a consequence, the energy sector's vulnerabilities have prevailed and are still a risk to both the Mexican state and the private sector. The ASF's inability to take action after detecting corrupt practices within Pemex is particularly worrisome. Likewise, the SFP's inability to collect fines and sanctions is a sign of just how weak Mexico's anticorruption institutions really are.

The second conclusion we can draw in this paper is that the fight against corruption will never be won unless the private sector is involved as well. The cases analyzed in Section III show that the private sector is prone to participating in energy-industry corruption. This observation is especially significant given that the Energy Reform has opened the doors to private investment, meaning that Mexico needs to take action in order to prevent this new wave of capital from feeding into the energy sector's corruption. These examples are also an indication of the vulnerabilities within companies, as well as of the fact that decision making can ultimately lead to the materialization of corrupt acts.

Thirdly, we can conclude that even though the Federal Anticorruption Law for Public Contracts is similar to the FCPA, Anti-Bribery Act, and CFPOA in many ways, it does not have enough mechanisms to guarantee the same level of success. In fact, the Mexican law is theoretically even stricter than the FCPA, but cannot be adequately exercised without certain elements that would safeguard its proposals.

The aforementioned conclusions show that implementing new public and private policies to strengthen rule of law and promote a culture of legality in the private sector is an imperative matter. With these measures, the Mexican energy sector could become a driver of economic

growth and come to be distinguished for its integrity and competition. To meet these goals, we recommend implementing these proposals, which would bolster the Mexican government's anticorruption efforts while acknowledging the challenges of Mexico's current reality. These proposals are as follows:

1. Giving the ASF the power to present civil and criminal charges against the public and private organs responsible for corrupt acts or administrative offenses.
2. Empowering the SFP to collect sanctions.
3. Private sector investment in investigating and supervising consulting and management firms.
4. Creating corporate lines of internal communication in order to report corruption practices among employees.
5. Private sector investment in training employees in regards to Mexico's legislative anticorruption framework.
6. Creating a line of direct communication between the energy sector's regulatory commissions and the private sector.

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