

# Mexico: A Moment of Opportunity

## Increasing Transparency and Accountability in the Extractive Industries

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### Summary

Mexico's extractive industry plays a significant role both domestically and internationally. The oil and mining sectors have accounted for an average of about 12 percent of the country's gross domestic product (GDP) over the past decade. Oil revenue represents a third of public sector income, and 25 percent of the country is currently being exploited or explored by private mining companies. Mexico contributes approximately 2.4 percent of total world mining production. Petróleos Mexicanos (Pemex), the country's major state-owned oil company, ranks fourth globally in oil production.

During the past 10 years, Mexico has undertaken several reforms that have allowed it to increase transparency and accountability in the extractive industries. However, there is room for improvement, especially in the mining sector, which is being developed by private companies.

Comprehensive, timely and detailed information about the country's oil and mining industries is a fundamental factor in holding companies and the government accountable. This document proposes several strategies to strengthen and create transparency and accountability mechanisms in oil and mining, and it identifies specific opportunities and possible champions to promote them.

The first is to advocate for the inclusion of transparency in the mining sector and the adoption of the Extraction Industries Transparency Initiative (EITI) into the Mexican government's commitments to the Open Government Partnership (OGP). The second is to advocate broadening the spectrum of the discussion about transparency in extractive industries during the G20 meeting.

An opportunity exists to promote a transparency agenda among civil society organizations (CSOs). Due to the complexity of Mexico's extractive sectors, collaboration between CSOs interested in reform will be critical. One important way to improve their effectiveness would be to create a coalition of CSOs with diverse agendas, structured in such a way as to encourage collaboration and contributions from each according to their expertise.

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<sup>1</sup> Emerging economies are playing an increasing role in oil, gas and mining globally. This paper is one of a series commissioned by the Transparency and Accountability Initiative (T/AI) and the Revenue Watch Institute (RWI) to explore trends and promising strategies for dialogue at the national and international level. The series covers Brazil, China, India, Mexico, the Philippines, Russia and South Africa. The views expressed are those of the authors and are not necessarily those of T/AI and RWI.

## ABOUT THE AUTHOR

**Rocio Moreno** has more than eight years of experience in promoting transparency and accountability mechanisms in the extractive industries, and holds a B.A. in Economics.

The **Revenue Watch Institute** promotes the effective, transparent and accountable management of oil, gas and mineral resources for the public good. Through capacity building, technical assistance, research, funding and advocacy, we help countries to realize the development benefits of their natural resource wealth.

The **Transparency and Accountability Initiative** aims to expand the impact and scale of funding and activity in the transparency and accountability field, as well as explore applications of this work in new areas.

One roadblock to such collaboration may be the lack of information on how common aims might be jointly achieved. This could be overcome in part by illustrating how broad transparency helps individual organizations achieve their own specific agendas. For example, debate over the environmental impact of extractive industries usually occurs locally and within communities and thus fails to transcend to the national level. Many organizations working on these issues are grassroots and have a limited reach.

Mexico held presidential elections in the summer of 2012. In December, Enrique Peña Nieto was named the 57th president of Mexico. Nieto's election, along with the September elections of the legislature, present both opportunities and challenges for Mexico. Current strategies will have to be revised and new champions identified. Nevertheless, several ongoing international initiatives and key opportunities related to transparency combine to make this a moment of opportunity.

## ACRONYMS

ASF	Supreme Audit Institution
BRICS	Brazil, India, Russia, China and South Africa
CICC	OEA's Inter-American Anticorruption Convention
CNH	National Hydrocarbons Commission
CRE	Regulatory Energy Commission
EITI	Extractive Industry Transparency Initiative
GRI	Global Reporting Initiative
IFAI	Federal Transparency and Access to Information Institute
IMCO	Instituto Mexicano para la Competitividad
IRS	social responsibility report
OEA	Organization of the American States
OGP	Open Government Partnership
OIC	Internal Organs of Control
PEMEX	Petróleos Mexicanos
SE	Ministry of Economy
SEMARNAT	Ministry of Environment and Natural Resources
SENER	Ministry of Energy
SRE	Ministry of Foreign Affairs
UNCAC	UN Anticorruption Convention

## Country overview

For the past 10 years, oil and mining have accounted for approximately 12 percent of Mexico's GDP. Petróleos Mexicanos (Pemex) is a state-owned company with the exclusive and sole right to exploit hydrocarbons in Mexico.<sup>2</sup> In the case of the mining sector, the situation is very different because structural reforms opened the sector to private investment and deregulation 30 years ago. Since then, the industry has been in the hands of private companies.

Due to these major structural differences between the industries, not only in terms of their administration but also with regard to their roles in the economy and in public finances, one must understand the details of each to create specific advocacy strategies and begin defining priorities for promoting transparency and accountability.

**Mining**

Mexico is located in a volcanic region rich in minerals. For the past 10 years, the mining sector

<sup>2</sup> Artículo 27, Constitución Política de los Estados Unidos Mexicanos, 25, . <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>

has contributed, on average, 5 percent of the GDP. Approximately 300 foreign mining companies are established in Mexico. Out of these, 74.9 percent are Canadian, 15.1 percent are American, and the remaining 10 percent are from Australia, the United Kingdom, China, India, Italy and other countries.

Since 2000, the pace at which mining claims are awarded has increased significantly. During President Calderon's administration, the industry has taken off. The number of concessions awarded in the first three years of his presidential term (2006-2009) equaled the total of those granted during the presidency of Vicente Fox (2001-2006). At present, the government has awarded 25,149 concession titles, covering 25.5 million hectares.<sup>3</sup>

This increase in exploration activities is directly related to changes to the mining law of the 1990s that allowed foreign investment.<sup>4</sup> This resulted in the discovery of new deposits now being developed. Additionally, the increase in commodity prices in recent years has also had a direct impact in the sector: exploration has become more economically feasible.

Even so, it is unclear what incentives the Mexican government has to continue promoting activity in this area. The very nature of the activity generates conflict with the communities where the mines are located, and the government's economic benefits are scant. This has led us to believe that the sector must be a key piece in the government's overall strategy to promote "development."

However, this strategy is not widely accepted among the citizens and civil society organizations, for two main reasons. First are the social and environmental impacts of mining. There are 5,992 mines scattered throughout the country, and most mining towns are located in desert areas where rural poverty or extreme poverty conditions exist.<sup>5</sup> Despite important benefits for communities in the form of investment in local infrastructure, mining also produces significant environmental, social and economic problems that are left unattended.

Second, the current mining fiscal regime provides scant resources to public finances. Those payments do not begin to compensate for the negative externalities produced by this sector. The relative share of the mining sector in the economy has not increased during the past 10 years, and the amount of resources the public sector receives is scant. The reason is that hardly any fees or royalties are levied on the exploitation of mineral resources.<sup>6</sup> The only right that companies have to pay for is a rental fee for the amount of land exploited, about 5 pesos per hectare, or less than \$0.50. Therefore, the increase in territorial concessions, which is significant, provides less than 1 percent of the total revenues obtained by the federal government.

### Oil and Gas

Mexico's relationship with oil has been of great importance at various moments of the country's history. Oil continues to play a central role in the country's economy, politics and society.

Hydrocarbons are subject to state control through Pemex. The company is the sole producer of oil, natural gas and refined products in Mexico and represents one of the most important sources of

3 Sistema Integral sobre Economía de Minerales, <http://portaljsp.sgm.gob.mx/SINEM/>.

4 R. González, *Acaparada, la riqueza minera*, La Jornada (November 14, 2011) <http://www.jornada.unam.mx/2011/11/14/min-riqueza.html>

5 Sistema Integral sobre Economía de Minerales, <http://portaljsp.sgm.gob.mx/SINEM/AcercaSINEM.htm>

6 "Impuesto en el Sector Minero. Un análisis teórico-práctico," Centro de Estudios de Finanzas Públicas, H. Cámara de Diputados, 2008 <http://www.cefp.gob.mx/intr/edocumentos/pdf/cefp/2008/cefp1092008.pdf>

revenue for the government and the country. Pemex manages all phases of production, from exploration and extraction to refining, storage, distribution and sales. Globally, Pemex ranks fourth in oil production, 17th in proven reserves of crude oil, and 33rd in natural gas reserves.

Pemex's sales are worth \$85 billion a year and contribute an average 7.2 percent of the country's GDP.<sup>7</sup> Yet oil production has been declining over the past six years due to the deterioration of the country's most important maritime deposit, Cantarell. In 2004, Pemex reached its peak of production at 3.4 million barrels of crude per day. Since then, oil production has fallen 25 percent. Pemex is currently producing 2.56 million barrels of crude daily. In addition, proven hydrocarbon reserves have also declined, from 19 billion barrels to 14 billion.<sup>8</sup> The production of natural gas, however, has reached an average of 7,031 million cubic feet per day, compared with the 6,919 million produced in 2008.

Over the past two decades, Mexico's public finances have depended heavily on oil revenues. On average, a third of public revenue comes from the extraction and sales of hydrocarbons. This dependency steered Pemex to a financial and operational deterioration because the state-owned company's fiscal regime allowed it to keep less than one-third of the revenue. This has limited the amount of resources available for reinvestment.

Pemex has a history of corruption allegations, and it is not known for making robust strategic decisions. In addition, many Mexicans believe that the government gives out false information about the company because officials wish to privatize the sector and allegedly intend to use poor results to justify the move. To rebut these rumors, the government provides large amounts of information on the financial and operational situation of Pemex. However, it hasn't been enough to increase public trust. It doesn't help that there is still reticence among Pemex officials to actually comply with the full disclosure principle stated in the Federal Transparency and Access to Information Law.

In addition to the key problematic areas that the oil sector is currently facing, there are other issues that normally don't attract much attention but are very important: the economic, social and environmental impacts caused by the industry. A great percentage of the people who live in oil producing states—Campeche, Veracruz, Tabasco, Tamaulipas, Chiapas, Oaxaca, Guanajuato, Hidalgo and Nuevo Leon—is affected by extraction activity. The policies implemented to address these issues are poor and uncoordinated among all levels of government. The situation is very similar to the one observed in the mining sector; there are no effective mechanisms to prevent, mitigate and compensate for the impact caused by the industry. Currently, Pemex allocates scant economic resources to local communities to compensate for damage.<sup>9</sup> There are no effective transparency and accountability mechanisms allowing citizens to know beforehand when a project is under way, when Pemex allocates economic resources to the communities, or what type of mitigation policies are being implemented.

In sum, the government has enormous incentives to increase oil reserves and production to avoid a financial crisis. This critical situation becomes more complex because the process of finding

7 "Reporte de resultados de Petróleos Mexicanos," Organismos Subsidiarios y Compañías Subsidiarias, (September 30, 2011): 12, Pemex [http://www.ri.pemex.com/files/content/Reporte\\_3T11\\_e.pdf](http://www.ri.pemex.com/files/content/Reporte_3T11_e.pdf)

8 G. Gil and S. Valdivia, *La crisis del petróleo en México*, Foro consultivo y Tecnológico, A.C., Primera Edición (2008) [http://www.foroconsultivo.org.mx/libros\\_editados/petroleo.pdf](http://www.foroconsultivo.org.mx/libros_editados/petroleo.pdf)

9 K. Pirker et al., *El acceso a la información para la contraloría social. El caso de las donaciones y donativos de Pemex a Tabasco*, Fundar A.C., (2006) <http://www.fundar.org.mx/mexico/wp-content/uploads/publicaciones/pemexALL.pdf>

oil does not necessarily account for the needs and well-being of the local communities where the projects are being developed. Additionally, the lack of information citizens have about policies that directly impact them complicates the situation even more. Furthermore, legislators are also in need of accurate and timely information that would allow them to oversee the sector more efficiently.

According to current estimates, if Mexico maintains the same oil production at a constant 2.576 million barrels per day (or 940.24 million of barrels per year), the amount of proven reserves will be used up in about 11.1 years. While Mexico is an oil-rich country, it currently imports 50 percent of the gasoline the country demands. This is because refinery investment has not been a priority for many years. It is estimated that the demand for gasoline will grow at an average rate of 4 percent by 2015, and currently oil production is declining by 5 percent per year.

Meanwhile, natural gas production has grown at an average annual rate of 9.1 percent over the past six years. Furthermore, the total remaining reserves of natural gas have increased over the past decade at an average rate of 1.2 percent per year.

It is estimated that in upcoming years, the domestic demand for natural gas will increase by 2.4 percent per year, shifting from 7,377 mmcf in 2009 to 10,779 mmcf in 2025, especially as an input for the generation of electricity and for the oil industry. To comply with the demand, Pemex Gas is planning to increase the production in 4.3 percent per year. It is estimated that this industry will play a larger role in the next decade, mainly as a supplier of energy.

Pemex is the only company authorized to extract, exploit and produce hydrocarbons in Mexico. However international companies have been providing services to Pemex for several years. The most heavily used foreign private companies working in the country are Schlumberger, Halliburton and Weatherford; they have a significant portion of the awarded contracts.

### Engagement on transparency and accountability

Transparency, accountability and greater oversight have become central themes of the debate on state reform in Mexico and are seen as universal principles with the potential to strengthen and renew public institutions.

During the past 10 years, Mexico has undertaken major changes to advance transparency and accountability. This trend began in 2001 with the creation of the Supreme Audit Institution (Auditoría Superior de la Federación).<sup>10</sup> In 2002, the Federal Transparency and Access to Public Information Law was approved, and the Federal Access to Information Institute<sup>11</sup> (IFAI) was established as an oversight and autonomous body that would ensure policy transparency and the right to access information.<sup>12</sup> These laws also established the same legislative and institutional framework in each state. In 2007, the country went a step further by establishing Article 6 of the Mexican Constitution, which institutionalizes the right to information as a fundamental right.

Despite these major developments, transparency and access to information policies have found severe limitations as a result of bureaucratic inertia and initiatives that promote opacity.

10 Auditoría Superior de la Federación, <http://www.asf.gob.mx>

11 Instituto Federal de Acceso a la Información, <http://www.ifai.gob.mx/>

12 Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, <http://www.diputados.gob.mx/LeyesBiblio/pdf/244.pdf>

### Oil and Gas

Pemex has adopted greater transparency mechanisms than many of its peers in the oil and gas sector. According to the Revenue Watch Index, Mexico ranked fourth among 41 countries in terms of industry transparency.<sup>13</sup> Mexico obtained this position largely because Pemex, as a state-owned company, is obliged to comply with the Federal Law of Transparency and Access to Public Information, and with various other lines of discipline and control, such as the Security Exchange Commission's requirements. Pemex also participates in the National Accountability, Transparency and Fighting Corruption Program, and in Mexico's Management Improvement Program, which have promoted the creation of mechanisms to reduce corruption within the company.

In recent years, several changes have been implemented to increase levels of transparency and accountability at Pemex, an effort aided by Mexico's 2008 Energy Reform, which introduced several initiatives to advance these aims. First, the Transparency and Accountability Committee and the Audit and Performance Assessment Committees were created. Both are internal oversight committees that monitor Pemex's board of directors. Second, a special commissioner was established and charged with reporting on the accuracy, sufficiency and reasonableness of the information provided by the governing body of the company. Third, the National Hydrocarbons Commission (CNH) was created as a regulatory body to act as a counterweight mechanism to decisions taken inside of the company. As a result of these changes, the amount of information regarding decision-making, oil projects and other key areas of Pemex's operations has increased substantially.

In addition, Pemex has adopted international transparency and accountability best practices. An example of this is the social responsibility report (IRS), which is periodically issued by the company and aligned with its business plan. Furthermore, it also complies with the indicators of the Global Reporting Initiative (GRI-G3.1), the Global Compact principles and the Extractive Industries Transparency Initiative (EITI).<sup>14</sup>

Mexico has not joined EITI, though Pemex is a member of the EITI board. When EITI was created, the Mexican government was invited by the World Bank to join but declined, arguing that state-owned companies already provided information that went beyond the minimum transparency requirements of the initiative. Mexico argued that Pemex's participation on the board was a good substitute for membership. However, Pemex has been a largely inactive member. This is one example of how Mexico participates in transparency efforts in a very superficial way to continue maintaining good international recognition.

Other key external oversight mechanisms that help increase transparency and reduce spaces for corruption are the Internal Organs of Control (OIC) and the Supreme Audit Institution (ASF). Both bodies are in charge of tracking the government's activities and dismantling networks of corruption. In recent years, they have conducted numerous audits and made recommendations for the disqualification, suspension and impositions of penalties on public officials for either corruption or failing in their administrative responsibilities. The audit reports from both bodies are public.

Despite these numerous advances, Pemex still needs to report more openly about many facets of its operations. For example, it could disclose real production per oil field, company white books,

<sup>13</sup> Revenue Watch Index, <http://www.revenuewatch.org/rwindex2010/index.html>.

<sup>14</sup> Informe de Responsabilidad Social 2010, 5, Pemex, [http://www.pemex.com/informes/pdfs/descargas/pemex\\_irs\\_completo\\_2011.pdf](http://www.pemex.com/informes/pdfs/descargas/pemex_irs_completo_2011.pdf)

the actual level of industrial safety (including and especially a record of accidents at the regional level), and information on its economic grants to local governments. Additionally, Pemex has not been able to find an adequate channel of communication with the citizens to inform them about the company's operations. The company's union is also extremely opaque, which undermines the credibility of the company.

Some key information is required of Pemex by Article 7 of Mexico's Federal Law of Transparency and Access to Public Information. This provision establishes that Pemex and its subsidiary bodies have to publish information in an IFAI portal on transparency obligations, a database that increases the provision of basic information provided to citizens on Pemex's finances and revenues.

Requests for information can also be launched independently. In 2010, 631,715 requests were made to Pemex. According to the IFAI, Pemex and its subsidiary bodies responded by reserving 42,233 files and declassifying 36,702 dossiers.<sup>15</sup> The amount of information redacted demonstrates there is still space for improvement. This point is especially important because corruption within Pemex has not decreased substantially as a result of greater access to information. IFAI continues to be a key ally in promoting of transparency and obtaining access to information, but even it cannot shine a light on all aspects of Pemex's operations (for example, the company's union).

The National Hydrocarbon Commission, which has the sole purpose of increasing transparency within Pemex, is obliged to publish the state-owned company's contracts. The commission has just begun to create the database. This opens up an opportunity to collaborate closely with the commission to improve the portal, especially since the commission is looking to create alliances with civil society organizations to promote a collaborative transparency agenda.

Additionally, the federal government has commissioned an assessment from OECD related to Pemex's procurement contracts. This is an agenda that various CSOs have been promoting for several years, but only recently through its OGP commitments did the government decide to advance transparency in this area. The Ministry of Energy will begin to implement the study's recommendations in 2012 in order to align their process with international best practices. This opens an opportunity to participate in the implementation of these mechanisms, and also in terms of promoting further changes that could strengthen transparency and put Mexico in the lead.

### **Mining**

It is difficult to access information about Mexico's mining sector. Perceived levels of transparency are extremely low. Transparency, accountability and oversight mechanisms in Mexico's mining sector are extremely weak, especially as compared with the oil sector, in which plenty of strong institutions are involved in governance and monitoring activities.

There are at least three possible opportunities for promoting the creation of new transparency and accountability mechanisms in the mining sector, all of which relate to complementary international initiatives. Given the challenges facing domestic CSOs working to shine light on Mexico's mining sector, international strategies are critical to advancing reform.

First, Mexico could join EITI, which, according to inside information, the president is evaluating as an option. While Mexico's transparency standards lag EITI requirements, there seems to

<sup>15</sup> "Memoria de Labores 2010, Transparencia y rendición de cuentas," Pemex <http://www.pemex.com/files/content/9.%20Transparencia%20y%20Rendicion%20de%20Cuentas.pdf>

be some positive agreement in government that the initiative could be beneficial. Second, a more robust discussion on the need for transparency, particularly in the mining sector, could be emphasized through international relationships. And third, Mexico could commit to major mining reforms through its participation in OGP.

### Key issues of debate

#### Oil and Gas

Currently, the central debate around oil and gas in Mexico is focused on the role Pemex should play as a lever for development: should Pemex continue financing the public sector's income, or should it be allowed to base its decisions on how the company can best compete in a global market? This policy discussion has been interpreted as a referendum on the potential privatization of the company.

Mexican public finances depend heavily on oil revenue, with receipts contributing a third of public sector revenues. Due to this context of dependency and to the recent dramatic fall in Mexico's oil production, the government has sought various schemes to reverse this trend.

Polarization and firm ideologies regarding the oil sector have limited the debate and the actions that could be implemented to remedy the industry's situation. But there is little willingness on either side to compromise and discuss the current extraction model. This is especially important because all stakeholders agree on the opportunity for reform.

With this in mind, the government's policies remain focused on the relentless pursuit of oil reserves. This focus will necessarily open up a new debate on social and environmental impact.

#### Mining

The debate over Mexico's mining sector centers on whether mining should be considered a cornerstone of development. The number of mining concessions granted has grown exponentially in the past 10 years. But this policy has not been widely discussed among stakeholders. In fact, the topic has not acquired the necessary traction to place it on the national agenda. This has limited the participation and creation of oversight mechanisms.

Five years ago, mining industry operations attracted a lot of attention due to labor rights violations, especially in terms of the security conditions in the mines. The labor rights issue attracted a great deal of political capital due to the catastrophe in Pasta de Conchos, where 65 miners were killed.<sup>16</sup> This accident triggered various clashes between business mining groups, such as Grupo Mexico and Industrias Peñoles, and the mining union. Additionally, million-dollar losses have been estimated due to the lack of capacities to resolve conflicts. Beyond that, authorities have not been able to demonstrate a real interest to regulate the sector to prevent another mishap.

This unfortunate event, however, also prompted a debate over violations of the right to consultation, the complexity of mining industry operations and the environmental impact of mining. Open-pit mining in particular is starting to get attention as mining companies acquire concessions without the required environmental permits—evidence of rampant corruption in the sector.

<sup>16</sup> Auerbach, C., Rodríguez, C., *Mina 8, Unidad Pasta de Conchos: Múltiples violaciones a los derechos humanos laborales*, Centro de Acción y Reflexión y Acción Laboral (CEREAL), [http://www.sjsocial.org/crt/articulos/758\\_auerbach.htm](http://www.sjsocial.org/crt/articulos/758_auerbach.htm)

## Key players

### Government

The governmental structure overseeing the oil sector is robust. Within the executive branch, there are five bodies that conduct, regulate or monitor the industry.

According to government documents, the **Ministry of Energy (SENER)** is the head of the sector and is responsible for regulating the oil and gas.<sup>17</sup> In particular, SENER has the role of monitoring, implementing and providing the appropriate regulatory guidelines and laying out the focus of energy policy. Although this role was defined solely for SENER, in reality, the Ministry of Finance plays a big part in orchestrating and directing national energy policy because public finances depend on oil revenue. The Minister of Finance is a member of Pemex's governing board.

SENER has two decentralized bodies that play direct, important roles within the oil sector. First, the **National Hydrocarbon Commission (CNH)** aims to play the role of an authoritative body with technical autonomy in terms of regulation, supervision and evaluation of exploration and exploitation of hydrocarbons.<sup>18</sup>

When CNH was created, it was believed that it would work as a technical advisory body for the Ministry of Energy. However, CNH actually operates as a counterweight mechanism to the decisions made by the board of Pemex. A key player and possible ally to promote transparency within the sector is CNH's president, Juan Carlos Zepeda Molina. When interviewed, he seemed very enthusiastic about the idea of working closely with civil society to strengthen transparency and accountability mechanisms. Additionally, since its creation, CNH has proven its commitment to this agenda by providing substantial and strategic information on Pemex to the public.

The second body is the **Regulatory Energy Commission (CRE)**, a decentralized regulatory body that focuses on two key energy sources: natural gas and electricity.<sup>19</sup> CRE's main role is to ensure that Pemex provides open, effective access to create competitive conditions in the market and also to eliminate discrimination in access to pipelines. The commission not only regulates Pemex, but also other private carriers linked to electricity-generation projects.

According to reforms established by the Law of Petróleos Mexicanos in 2008, the company's **board of directors** should be formed by 15 members, including six representatives from the state who are appointed by the executive branch.

The **Secretary of Energy, Finance, Head of the Presidential Office, Undersecretary of Hydrocarbons** of SENER and the Undersecretary of Revenue are all part of the company's governing body. The type of representatives that the executive chose to be part of the board is another example of the main focus of the sector's policy: to increase reserves and resources. There is no representation from the Ministry of Environment or from Social Development, despite the critical role both play in overseeing the industry.

<sup>17</sup> Secretaría de Energía, <http://www.energia.gob.mx/>

<sup>18</sup> Comisión Nacional de Hidrocarburos, <http://www.cnh.gob.mx/>

<sup>19</sup> Comisión Reguladora de Energía, <http://www.cre.gob.mx/>

Thanks to 2008 reforms, **four independent professional advisors** were included as part of Pemex's governing body. Their main purpose is to provide technical knowledge, capacities and skills to strengthen the decision-making capacity of the members of the board. When the advisors were chosen, stakeholders believed that the decision had been made based on political interests. However, the advisors have done an excellent job in terms of functioning as a counterweight mechanism within the council.

In terms of promoting a transparency agenda, two out of the four advisors could easily become champions: Fluvio Ruiz Alarcón and José Fortunato Álvarez. Rogelio Gasca Neri, who is another advisor and is the coordinator of the Transparency Committee within Pemex, could become an effective ally.

Regarding the mining sector, the **Ministry of Economy (SE)** is the main entity responsible for promoting and regulating the sector through the **General Coordination of Mines**.<sup>20</sup> The actions they promote are mainly focused on stimulating investment. As noted above, the ministry has been very closed in terms of providing information about the mining sector, and there is no other body in charge of promoting the development model that could be held accountable.

The ministry's lack of openness limits the space for conducting a thorough, objective assessment of the sector and of the ministry itself. So, despite its importance as a key target for any transparency and accountability advocacy strategy, it is extremely difficult to determine how best to approach it. However, the Office of the President may provide an avenue into the ministry, a strategy that has proven successful in the past. It would also be desirable to get the current head of Mining Coordination within the Ministry of Economy, on board since the position has the requisite authority to promote change within the sector.

The **Ministry of Employment and Social Security** monitors labor conditions in the sector, especially with regard to safety and hygiene.<sup>21</sup> This institution follows up on complaints made by workers. Despite those powers, it does little to promote respect for labor rights. When the Pasta de Conchos incident occurred, the ministry was severely criticized because it didn't provide the means necessary to rescue the trapped miners. Furthermore, the mining company responsible was not sanctioned.

Finally, a ministry that should play an active role in both the oil and mining sectors is the **Ministry of Environment and Natural Resources (SEMARNAT)**.<sup>22</sup> Part of its mandate is to monitor company compliance with environmental standards. However, this is a task it does not currently perform. In the past administration, this ministry was part of the governing body of Pemex. Currently, as stated above, only the ministries directly related to income and production are part of the company's governing council. In the mining industry as well, SEMARNAT has not had a leading role. In the case of the San Xavier mine when the court ordered the suspension of activities for violating environmental standards, SEMARNAT carried out inspections and gave San Xavier a stellar review. Because of this, the company was awarded a new concession.

#### **Companies**

In the oil sector, the only company authorized to explore and exploit hydrocarbons is Pemex. It is a state monopoly in the production of crude oil.

20 Secretaría de Economía, <http://www.economia.gob.mx/>

21 Secretaría de Trabajo y Previsión Social, <http://www.stps.gob.mx/bp/index.html>

22 Secretaría de Medio Ambiente y Recursos Naturales, <http://www.semarnat.gob.mx/Pages/Inicio.aspx>

Within Pemex, the main allies and possible champions of greater transparency are two professional advisors: Fluvio Ruiz Alarcón and José Fortunato Álvarez. The former director of Pemex, Reyes Heróles, promoted strengthening transparency mechanisms within the company. Pemex's current director, Juan José Suárez Coppel, has not put transparency on his agenda.

Only one mining company operating in Mexico has publicly committed to transparency and accountability: GoldCorp. The company is a member of EITI and discloses information regarding the payments it makes to the countries where it operates. Additionally, it has its own corporate social responsibility and human rights policy, which make it a possible champion. It is important to mention that civil society organizations have mentioned that in GoldCorp's case the rhetoric is not necessarily the practice, but the company has made efforts in the past couple of years to make changes to the way it operates.

#### **Civil Society—Activities/Engagement, International and Local**

Mexico has around 20,000 civil society organizations, and several of them are working on issues directly related to the extractive industries. However, they differ in objectives and activities.

Most organizations working on extractive issues are specifically focused on promoting change in public policy. Some of them, such as the Center of Research for Development (CIDAC) and the Mexican Institute for Competitiveness IMCO, do this by promoting competition in the extractive industries to produce essential inputs for other economic sectors. They also work to strengthen regulatory bodies. Others, such as Fundar, Transparencia Mexicana and Asociación Ecológica Santo Tomás, promote transparency to improve the conditions of competition, to advance the right to information or to evaluate the decision-making process that takes place within industry. There are specific movements and organizations dedicated to oil, including Grupo Ingenieros Constitución del 17, UNTCIP and Movimiento Nacional en Defensa del Petróleo. Their activities are centered on monitoring reforms and initiatives to be sure none seek to increase the private sector's participation. Additionally, they promote specific changes in the operation and management of Pemex. These types of organizations tend to work with the opposition parties, especially left-wing ones, because they have a common agenda and it gives them a national presence.

There is also another group of organizations that monitors labor rights, including Cereal, Centro ProDH, Codehutab and plenty of others that are focused on promoting awareness of the environmental impact of extractive industry. Some of these organizations promote a nonexploitation model, while others promote the creation of mitigation and compensation policies. Usually, the impact agenda is linked to consultation rights, which are extremely popular among human rights organizations. Some of the organizations working in this specific agenda are Greenpeace, Cemda, Tlachinollan and Asociación Civil Tiji Tlan Wila. It is important to note that the agenda of environmental impact is a debate that usually occurs locally and within communities, and thus fails to transcend to the level of national debate. Additionally, many organizations working on these issues are grassroots and have a limited reach.

As for international organizations, most are focused on the promotion of renewable energies and public policies that mitigate the environmental impact of the extractive industries. International organizations have a lot of traction and tend to team up with national and local organizations. This gives them a large presence and the ability to access government spaces faster. International

angles generate real pressure on government.

The diversity and disparate agendas on extractive sector issues among Mexican CSOs makes it difficult to create a national network with one main agenda, a potential way to strengthen CSO power overall and increase the possibility of reform. CSOs seem to agree on the need to strengthen transparency and accountability mechanisms, but one roadblock to such collaboration may be a lack of access to information on how common aims might be achieved jointly. An opportunity exists to promote a common agenda focused specifically on transparency. Encouraging this effort would require sensitizing organizations on how broad transparency goals might help them achieve their own specific agendas.

#### **Other Important Actors**

The legislature is a key element not only because it is responsible for creating and passing legislation, but also because it helps oversee the executive. With Mexico's recent transition to democracy in the context of a multiparty congress, it has become crucial to continue strengthening the checks and balances system in place. In this sense, legislators are keen to oversee the executive, but need access to more information. Congress is thus a key ally to push for transparency.

According to the Constitution, all executive branch agencies are under the control of the House of Representatives and the Senate; this includes the oil and mining sector, though oversight of the mining sector is more limited because of the participation of the private companies. One of the mechanisms that Congress has to oversee the executive is through the Supreme Audit Institution (SAI), which it can task with conducting audits of industry. Additionally, Congress can create inquiry commissions and ad hoc committees in order to scrutinize a specific case. These options create several opportunities to push for transparency and accountability. For example CSOs can work closely with legislators when inquiries are launched on extractives and supply information directly to SAI.

Finally, a key actor and one of the greatest champions when promoting transparency is the Federal Access to Information Institute (IFAI). Three IFAI commissioners stand out for their persistent work with the transparency and accountability agenda: Jacqueline Peschard, Maria Marvan and Jose Angel Trinidad. Additionally, these three have been strategic allies for civil society organizations when trying to strengthen transparency mechanisms.

#### **Key entry points**

The National Hydrocarbon Commission (CNH) has recently begun putting together a contracts database. Since CNH has shown interest in promoting transparency and also in collaborating with civil society organizations, there is a clear opportunity to collaborate closely with the commission to elaborate this portal.

The federal government has also commissioned OECD to do an assessment of Pemex's procurement contracts. The study's recommendations will be implemented during the upcoming year, creating an opportunity to for collaboration with CSOs in the implementation of these mechanisms.

In mining, the possibility of Mexico joining EITI and the inclusion of transparency discussions in the agenda into upcoming G20 meetings may prove the best opportunities for intervention. The upcoming presidential elections, along with international pressure, have raised the stakes

for Mexico to act. The president is reportedly evaluating the adoption of EITI, in recognition of the benefits it might carry for the mining sector. Mexico's adoption of EITI might provide strong motivation for the participation of other Latin American countries in the initiative.

Because of the elections, the timeline for promoting these aims under the current administration may be short. For this reason, it is important to continue pressuring the country not only domestically but also internationally. As seen, international pressure has proven to be very effective in encouraging domestic Mexican reforms.

Mexican CSOs need to continue providing information to the government about the importance of promoting transparency and accountability. This information should be focused on Mexico's best practices in the field and on how other countries could benefit from the experience, rather than on existing deficiencies in Mexico's practices. It is important to create a balance between wanting the government to strengthen transparency and accountability mechanisms, and also encouraging it to lead by touting the positive steps it has made. If civil society takes a stance that is overly critical, the government may not have an incentive to try to take the lead internationally.

Finally, due to the complexity of Mexico's extractive sectors, and its governance of the mining sector in particular, collaboration between CSOs interested in reform will be critical. For this reason, it would be desirable to create a coalition between different civil society organizations with diverse agendas, structured in such a way to encourage collaboration and contributions from all of individual expertise.

### Engaging in the International Debate

Mexico participates actively in international and regional forums as both a member of several international and regional organizations and as a signatory to numerous international treaties. Mexico is a founding member of the United Nations<sup>23</sup> and an active member of the Organization of the American States<sup>24</sup> (OEA in Spanish). It was the first Latin American country to become a member of OECD.

In the past decade, Mexico has been fighting to eradicate corruption. It signed the OEA's Inter-American Anticorruption Convention (CICC) and the UN's Anticorruption Convention (UNCAC). It was due to these international commitments that in 2010, the executive sent a bill to the Senate to approve the Federal Anticorruption Law for Public Contracts, which has the main purpose of sanctioning national or international people or companies that have been involved in any irregular conduct with public entities in Mexico or in other countries during a procurement processes.<sup>25</sup> This is a major breakthrough in terms of strengthening control and accountability mechanisms, and it will surely have a direct effect on Pemex, which has been known for numerous corruption scandals. While the law could still be improved, it is a good starting point in terms of promoting transparent regimes.

OEA is also drafting and promoting a transparency model law as part of the Inter-American Human Rights Convention's right to access information.<sup>26</sup> Due to Mexico's successful experience with the Federal Transparency and Access to Information Law and IFAI, the institute is participat-

23 Sistema de las Naciones Unidas en Mexico, [http://www.onu.org.mx/inicio\\_ONU\\_Mexico.html](http://www.onu.org.mx/inicio_ONU_Mexico.html)

24 Organización de los Estados Americanos, <http://www.oas.org/es/>

25 *Compromisos del Gobierno Federal en la Alianza para el Gobierno Abierto*, Secretaría de la Función Pública, <http://gobiernosabiertos.politicadigital.com.mx/pdf/04%20Joel%20Salas.pdf>

26 Organization of the American States (OAS), Department of International Law, [http://www.oas.org/dil/access\\_to\\_information.htm](http://www.oas.org/dil/access_to_information.htm).

ing in the process. There may be an opportunity to advocate during the elaboration of the model law, so as to include specific principles of transparency and accountability on extractive industries. Additionally, the initiative would be regional and would include several countries that are rich in natural resources and could benefit from the creation of transparency mechanisms.

As mentioned before, since 1994 Mexico has been a member of OECD, an organization whose main purpose is to support the economic development of the member countries through cooperation and the exchange of successful international experiences.<sup>27</sup> Being a member raised the bar for Mexico by putting indirect pressure on the government to improve not only in terms of economic growth, but also in the public administration's performance indicators—which include transparency and accountability. It is important to mention that during the past five years, the government has commissioned several assessments to OECD, some which have been related to the oil sector. An important recommendation that came out of these studies is the implementation of a new online mechanism that will provide information on the contract bidding process and also on procurement for the energy sector.

Mexico's opportunity to host the next G20 meeting in June 2012 is an important moment for the country: it represents a chance to bring the concerns of underdeveloped countries to the table, influence the agenda of the meeting, and expand the G20's vision of development. During this time, Mexico will have the opportunity to significantly influence the agenda of the meeting. Due to the current international economic situation in the European Union and United States, economic growth, macroeconomic stabilization and employment will surely be the main topics, just as they were in Cannes. Other concepts, however, will be discussed within thematic subgroups.

Transparency in extractive industries was also a topic addressed by the anticorruption and development subgroups during Cannes and, according to the Ministry of Foreign Affairs (SRE), it will endure at Mexico's G20. However, it is important to take into consideration that due to international economic turmoil, transparency will be touched upon likely in very general terms. With this in mind, one of the main challenges in affecting Mexico's G20 agenda will be to continuously think about how to increase the political cost and the value of a topic like transparency. In other words, how can we link transparency to the current or upcoming economic crisis or to any other situation that might seem more important? Mexico is still keen to continue its anticorruption agenda because it aligns perfectly with the government's current vision of a "transparent government." This provides an open window to continue advocating with the government that transparency in extractives should be a priority.

Mexico was one of the first eight countries to commit to OGP largely because it allowed the government to consolidate ongoing efforts to improve access to information, the fight against corruption, and promoting open government. Some Mexican OGP commitments are activities the government is already working on with OECD, such as establishing a database on procurement.

OGP creates an opportunity to promote the expansion of Mexico's commitments and include more advances in extractive industries transparency, especially because the government has been consulting CSOs. For example, Transparencia Mexicana has used this window to push EITI as part

27 Organisation for Economic Co-operation and Development (OECD), [http://www.oecd.org/home/0,2987,en\\_2649\\_201185\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/home/0,2987,en_2649_201185_1_1_1_1_1,00.html).

of the government's OGP commitments, and is searching for other organizations such as Fundar to collaborate in this strategy. In addition, Fundar is analyzing the government's commitments and making specific requests in terms of unpacking the information that the government will be publishing. The fact that IFAI is the liaison to OGP for Mexico provides another opportunity to advocate increased requirements for transparency.

### Conclusion

Mexico's oil and mining sectors are highly significant sources of economic development for the country with profound impact on the daily lives of the nation's people. It is therefore crucial to have timely, comprehensive information that allows citizens to hold the government and companies accountable. Transparency is not only useful to strengthen oversight. It is also a useful mechanism to evaluate the government's extractive development model.

During the past 10 years, Mexico has undertaken several reforms that have advanced transparency and accountability. However, there is still room for improvement—especially regarding extractive industries. The upcoming year will bring several exciting national and international opportunities that could help push the envelope. The Mexican government is working on several mechanisms that will help improve transparency in contracts, procurement, the contract bidding process, etc. These commitments have been included as part of OGP's action plan, which creates an opportunity for civil society to issue key recommendations on the type of information that should be published, and also to broaden the spectrum of Mexico's OGP commitments to the mining sector. Mining is not included in the current national action plan.

Mexico will lead and participate in several international mechanisms that will allow it not only to continue consolidating its international role but also to continue advancing the transparency and accountability agenda in extractive industries. Mexico will host the upcoming G20 meeting in June, and it will attend the Rio+20 meeting. The G20's anticorruption and sustainable development working groups have already included transparency and accountability as part of their agendas; however, it would be desirable to broaden the spectrum of discussion to go beyond EITI.

Mexico's 2012 presidential elections in July 2012. The potential for political transitions will always be a feature of the Mexican landscape. For this reason, a shift in governing party may create new opportunities as new faces join the government, but strategies for intervention will need to be revised and new champions identified. For this reason, it is important to create strong liaisons with the entities that will stay within government regardless of any transition, such as IFAI.



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