The approval of the package of widely praised structural reforms has not had the effect that observers and policy makers were expecting. It had been estimated that after approval of the reforms Mexico’s economy would grow by 4.9 percent by 2016, about 1.2 percentage points above the inertial growth projection of 3.7 percent (SHCP 2013). Yet, Mexico grew just above 2 percent in 2016 (Banco de México 2016). The education reform required that all public school teachers be tested to obtain a position, yet in states such as the State of Mexico less than 16 percent of the slots for teachers are subject to testing (Hernández 2016). The Anti-Trust Commission created by the celebrated competition reform remains understaffed and poorly funded, with an annual budget of USD$25 million, about 14 percent of the resources allocated to the U.S. Antitrust Division (USDJ 2016, SHCP 2016). Furthermore, 52.4 percent of Mexico’s labor force is still made up of informal sector workers, more or less the same proportion as in 2012 (54.8 percent) before the labor reform was implemented (ENOE III-2013, III-2016).

The lack of results has been somewhat surprising, given that approval of the structural reforms was taken as an unequivocal sign of fast-moving political and economic development in Mexico. Mexico earned international acclaim for being capable of achieving, in a couple of years, what other Latin American countries had struggled for decades to do: bring together political parties from across the political spectrum to pass deep
structural reforms in several key sectors. The reforms targeted issues such as lack of competition in private enterprise, perverse labor incentives inside the education sector, poor energy infrastructure, widespread informality of labor, monopolistic structures in telecommunications, and inadequate transparency regarding spending at the state level (Banco de México 2015).

In retrospect, the approval of the reforms proved to be an easy step. Turning structural reforms into reality, moving them from paper to implementation, was where the real work lay. An anti-trust agency was created as part of the competition reform but the existence of unwritten privileges for some market players have allowed them to ignore its findings and regulations. A labor reform was approved to better incentivize public teachers, but disagreeing on how to measure performance stopped the reform from being implemented in full. The impact of recently approved reforms in energy and telecommunications will remain incomplete as long as insecurity, extortion, and corruption continue to permeate production processes and competitiveness.

This is not the first time in which magnificent reforms on paper have become diluted policies. By 2016, Mexico was supposed to have finished implementing a historical transformation of its judicial system, shifting trials from inquisitorial to adversarial procedures. This transformation, approved in 2008, was meant to apply, among other innovations, oral trials, mediation, and mechanisms of alternative justice. As of now, implementation is far from a reality since only four out of 32 states were able to fully implement the adversarial judicial system by 2016 (Proyecto Justicia 2016).

Implementation of the judicial reform is particularly worrisome as impunity, corruption, and other rule of law issues have been systematically identified as the main factors that inhibit the implementation of other structural reforms and also inhibit competitiveness and political and economic development in general. About 28 percent of the adult population is the victim of a crime every year in Mexico, and 92.8 percent of those crimes are never reported because of lack of trust in the authorities
That is not surprising given that in states like Sinaloa half of the police force fail integrity tests, and nationwide the figure is 10 percent (SENSP 2016). About 12 percent of Mexicans who had contact with authorities were victims of corruption (ENCIG 2015). In fact, Mexico is ranked in the bottom 10 percent of 138 countries in reliability of police services, business costs required for combatting crime and violence, and ethics and corruption in the Global Competitiveness Index. Furthermore, businesspeople consider corruption the most problematic factor for doing business in Mexico (WEF 2016).

This book explores a new hypothesis as to why the approval of Mexico’s groundbreaking structural reforms has not been able to live up to expectations. We argue that the time in which Mexico’s structural lags could be tempered by improving legislation and creating new laws has come to an end. To turn approved structural reforms into tangible benefits for all Mexicans, the country needs to transition to performing a much more complicated task: implement the rule of law. Making sure that rules apply to all and everybody in the same way, independently of income, power, or status, is the most imperative pending task of Mexico. Without the rule of law, approved reforms are, in the best scenario, good intentions that cannot materialize and, in the worst case, selective weapons for discretionary implementation with political purposes.

Properly implementing the rule of law requires more than just a functional judicial system. It requires cooperation and commitment from all sectors of society, ranging from workers and businesses to local and federal authorities, to end the privileges long cultivated by impunity. Many groups and sectors are capable of holding political and economic power without being subject to the rules that should apply to all Mexicans. These favored groups include co-opted unions with wealthy leaders and public officials who face ineffective transparency or accountability mechanisms; corporations that benefit from monopolistic concessions awarded by government; economic sectors protected from market competition; and upper classes graced with tax loopholes. Pockets of impunity exist around the country, areas where approved reforms face strong resistance that inhibit or restrict their implementation. If reforms are
not accompanied by blind implementation of the rule of law, legislative changes will remain as paper tools without real impact.

This book is organized into two sections. The first section analyzes the concrete obstacles that Mexico faces to implement the rule of law. Each of these obstacles is described in a long chapter and is summarized below. The second section, also summarized later in this introduction, provides a series of short personal reflections from ten leading Mexican and U.S. intellectuals on concrete recommendations for strengthening the rule of law in Mexico. More than just policy analysis, each of these ten pieces was conceived as a personal exercise in which the author uses his or her main area of expertise to propose viable recommendations for implementing the rule of law in Mexico, while at the same time revealing some of the personal motivations that drove the authors to focus on their respective area of interest.

1. Six Concrete Obstacles to Implementing Rule of Law in Mexico

Six main areas must be analyzed in order to understand the critical factors that impact the rule of law in Mexico: corruption, the justice system, electoral dynamics, the business environment, citizens’ values, and the media. In each of these areas, we can find specific reasons why changing the status quo has proven to be so difficult.

First, corruption severely undermines the capacity of the Mexican state to enforce the law and implement significant changes. Corruption permits the existence of organized crime, reduces citizens’ trust in government, compromises the efficiency of public expenditure, and impedes the emergence of a fully competitive business environment. In fact, Mexico’s business environment is plagued by corruption, as 44 percent of firms pay bribes and 63 percent consider corruption as a regular part of doing business (International Transparency 2013).

Second, Mexican judicial institutions are incapable of providing order and security, thus affecting the capacity of the state to implement rules and
sanctions. Almost one-third of adults are victims of crimes each year (ENVIPE 2016). Moreover, three in four victims do not report crimes to authorities, half of them because they do not trust the qualifications of justice institutions (LAPOP 2015). More worrisome, in Mexico, justice is provided unevenly across different groups of people and across different geographical areas, with those who can pay for legal representation or bribes receiving better treatment (Bergman et al. 2014). The vulnerable segments of the population face a brutal justice system than exploits them. Currently, about 30 percent of all prison inmates in Mexico City and the State of Mexico have been solicited for bribes by the police, and half of them argue that they were struck or beaten physically to make a deposition or plead guilty (Bergman et al. 2014).

Third, Mexico remains an authoritarian regime, albeit less visibly so and more fractured than during the 90s, making it difficult to translate changes in federal legislation into meaningful rules at the local level. Political alternation in 2000 did not consolidate a representative and functional democracy that was able to create conditions of prosperity for all Mexicans. On the contrary, the structure of power remained in place, with some being the usual beneficiaries but with more partisan factions. This weak Mexican democracy resulted in the creation of two opposing economies, one that gains the benefits of increases in trade, productivity, and growth, and one that has been excluded from these benefits and remains informal, poor, and poorly integrated into modern sectors.

Fourth, Mexico’s business environment, particularly production processes, competition, and investment, is undermined by the lack of legal order. Insecurity and extortion affect Mexican companies and create inequality by targeting primarily the small and medium firms that do not have access to private security or special treatment. Drug cartels, for example, assault their trucks, intimidate employees, and force businesses to pay periodical “quotas” to be left in peace to “conduct business.” Not only organized crime but also the Mexican state is a constant source of extortion. Municipal building permits are institutionalized forms of extortion created by obscure and exploitative local government officials who create rules and regulations to extract private benefits from non-transpar-
ent public processes. Business owners commonly do not get responses when denouncing extortion because authorities are probably immersed in the same criminal dynamic.

Fifth, surveys of citizens’ values seem to suggest that Mexicans prefer economic gains over respect for the law. If surveys are correct, the values of the average Mexican citizen are making long-term structural change less attractive than short-term extractive policies. Indeed, national surveys show that three times more people prefer the country achieve economic development than have a system of government that fully implements the law. Moreover, only nine percent of Mexicans believe obeying the law is necessary to be a citizen and 30 percent believe breaking the law is required to be successful (Latinobarómetro 2015). Also, close to 50 percent believe people are not equal before the law, and most do not believe that they can easily express their opinions, especially if they are a minority view (Latinobarómetro 2015). Furthermore, Mexicans deeply distrust their government and institutions. In fact, most Mexicans believe whoever gets into politics will become corrupt, only one-fifth trust the police, one-fourth confide in the judiciary system, and half trust the military (LAPOP 2015).

Finally, most Mexican media outlets have long served to legitimize government actions and policies, lacking a necessary critical view that would allow citizens to demand the elimination of impunity for economically and politically powerful sectors. This is because a large percentage of revenues of media comes from government resources. The current federal government has reached historic figures in spending on publicity, with 7.5 billion pesos in 2015 (65 percent more than in 2014) (Animal Político 2016). Moreover, media managers often discourage serious journalistic work and undermine the labor rights of the entire media sector. In fact, wages for journalists are extremely low (47 percent earn no more than two minimum wages) even while Mexico is one of the most dangerous countries for the practice of journalism (Hughes and Márquez 2016). As a result, Mexico is an uninformed country where only 29 percent of the population has bought a newspaper in the last three months, compared to Argentina with 40 percent or China with 52 percent (Parametría 2013).
Recommendations to Implement Rule of Law in Mexico

In order to convert approved reforms from paper to reality, Mexico needs to fully implement the rule of law. There are ten basic requirements for complete implementation of the rule of law, and all are summarized in this section.

1. Empower citizens to monitor the quality of public education. As the director of Mexicanos Primero, one of Mexico’s most important NGOs specialized in education policy, David Calderón points out the right to education is not met in Mexico. Only 36 percent of children who initiate elementary school conclude their studies without delays, 43 percent of students in the last year of mandatory education do not reach the minimum acceptable level in language arts and communication, and 51 percent do not achieve basic math skills (INEE 2016). Even if children’s learning depends on the quality of teachers, Mexico lacks full and complete information on teachers’ qualifications and attendance. Furthermore, the National Teacher’s Union pays illegal rents to co-opt teachers using federal transfers that should only be used for teachers’ salaries.

To implement the rule of law, Mexico needs to support and sustain citizen monitoring such that independent civil society organizations can track the enforcement of the education reform laws and public funds and identify the existence of irregularities. It is also necessary to give families, teachers, and students enough tools to monitor compliance at the level of schools by creating a system for airing complaints and suggestions between them and the authorities. Finally, civic education courses need to change from being classes on the history of national laws to classes that exalt merit and the rejection of corruption.

2. Transform transparency into an effective tool for policy action. As a researcher with IMCO (Mexican Institute of Competitiveness), Alexandra Zapata clarifies Mexico’s improvements in transparency have not led to reduced corruption or better implementation of the law.
Great efforts have been made to improve access to information and transparency in recent years. Indeed, the Data Barometer Global Ranking ranked Mexico as number 16 in transparency compliance worldwide. However, increasing access to information has not resulted in meaningful improvements in accountability. Recent studies have unmasked the public education sector in Mexico, denouncing payments to teachers in classrooms that did not exist, teachers with inexplicably high salaries, and a payroll that includes 1,440 active teachers all born on the same day and over 100 years old (IMCO 2014). However, in the two years since this information was released, the government has only announced payroll cuts of less than one percent. Transparency rankings position Mexico City as the most transparent Mexican state, while corruption rankings say it is the most corrupt state in the country. Sadly, transparency rules in Mexico seem to be providing citizens only with information about what is wrong and making them aware that nothing is being done to change it. Lack of accountability and impunity allow legislators to pass laws they have no intention of following, exhibiting that public officials consider implementation an option rather than a mandate.

To implement the rule of law, Mexico must find ways to transform the knowledge and awareness gained by transparency into real changes that strengthen institutions. It is also necessary to promote mechanisms of participation such that citizens can work with government, through formal structures, to build and strengthen institutions.

3. Create an effective competition policy with no prerogatives and no privileges. As the director of Mexico’s Federal Commission of Competition, Alejandra Palacios, shows, behind much of Mexico’s monopolistic practices and crony capitalism is chronic impunity towards those who violate free market rules. Impunity affects economic activity through alterations in competition such as entry barriers that reduce the number of market participants and inhibit investment, increase transaction costs that imply the use of resources that could be dedicated to more productive activities, and extend privileges to some market players that allow them to ignore regulations.
To implement the rule of law, Mexico must create an effective competition policy to make it harder to avoid regulations, obtain individual privileges, and reduce discretionary areas and corruption opportunities. It is also critical to eliminate businesses’ excessive profits, promote equality, turn consumers into instruments of market discipline and promote innovation or investment in human capital. No other path will lead Mexico to development.

4. Focus on preventing crime rather than on severely punishing it. As the director of Violence and Crime Prevention in Chemonics International, Enrique Betancourt, mentions, despite recent efforts to build policies to reduce violence in Mexico, evidence of impact is limited. A Mexican federal program designed to prevent crime, PRONAPRED, lacked strategic clarity and led to diffuse investments. Crime prevention policy and its implementation are deficient in all levels of Mexican government, especially at the municipal level. Furthermore, even if great steps have been taken to identify and understand the characteristics and triggers of previous waves of violence in Mexico, violence prevention is not retroactive, meaning that providing the policy that was needed years ago has scant effects on violence today.

To implement the rule of law, Mexico must create a national strategy for crime prevention that is capable of targeting critical neighborhoods, active violent groups, and triggers of violence. Such a strategy would need to consider local characteristics and neighborhood-oriented solutions to reduce impunity, social disputes, and recidivism. Mexico must also restructure the penitentiary subsystem and other punishment mechanisms with a focus on reducing recidivism and develop alternative judicial measures for youth so that criminal detention is a last resort. An interesting alternative could be to develop measures for “out of jail” supervision led by neighbors or to implement community courts to help crime victims.

5. Make civil society a whistleblower. As the deputy director general of IMCO, Manuel Molano, acknowledges, civil society has a prominent role to play in promoting the rule of law. Up to now, the
recommendations of civil society for improving the rule of law have not been converted into actionable policies.

To implement the rule of law, Mexico must allow civil society organizations to identify publicly which rules allow impunity and denounce them. Mechanisms must be designed to allow civil society to help citizens who have been wrongly accused by judicial institutions and to propose institutional improvements to reduce impunity.

6. Create a professional Congress that is accountable and transparent. As the director of Integralia consultancy and former president of the Federal Electoral Institute, Luis Carlos Ugalde, mentions, the performance and accountability of Mexican Congress must be improved in order to promote the rule of law. Currently, the Mexican Congress is immune to external control and regularly violates internal rules without facing sanctions. Although some progress has been made to publicize personal information and activities of individual legislators, relevant data such as the functioning of congressional committees and expenditures of parliamentary groups is not available. Moreover, as voters barely follow the work and achievements of their representatives, impunity is common in Congress. For instance, legislative omission happens on a regular basis but sanctions are absent as nobody denounces omission. Furthermore, earmarking (allocation of discretionary resources) is common in Congress, creating opportunities for discretionary allocation of resources for private gain.

To implement the rule of law, Mexico must professionalize its congress. A homogeneous set of indicators should be created for assessing legislative achievement, including activities within committees. Civil society organizations must be encouraged to construct independent indicators for analysis of congressional performance and to use strategic litigation to sanction legislators who violate the law or approve unsatisfactory laws. Also, Mexico must work to professionalize media coverage of Congress by reducing media revenues linked to the government that discourage journalists from producing material that would hold elected authorities accountable. The elimination of earmarking, a reduction of
prerogatives of parliamentary groups, and eradication of all cash-in programs of a discretionary nature would also be helpful measures. Punishing legislative omission through constitutional disputes filed by the executive and implementing clear and standardized regulations for reelection of legislators would be critical for promoting accountability.

7. Drive efficiency in state energy companies. As the senior analyst of Control Risks, Dwight Dyer, remarks, the energy reform is still missing critical elements for promoting the rule of law. Mexico’s energy reform was supposed to transform state-owned oil and electricity monopolies into “productive state enterprises” with the mission of increasing state profits and competing in open markets. However, this has not been accomplished, as both companies still operate under special regimes with federal government officials constantly overshadowing their corporate governance, and Congress and the Finance Ministry controlling their budgets. Moreover, the energy reform did not create energy sector regulators with full political autonomy. Although the new regulators were granted technical competencies, the Energy Ministry shepherds and approves their work, contaminating regulators’ decisions with political criteria. Furthermore, the reform did not protect energy regulators from injunctions (amparo), which means that every decision made by them may be open to judicial review, slowing the consolidation of an efficient regulatory structure.

To implement the rule of law, Mexico must force state-owned energy companies to follow the same rules as private firms by eliminating all political leverage. Also, competent regulatory agencies must be created to ensure that market rules are correctly implemented and allow state oil and energy companies to go public. Private shareholders will trigger administrators to be more transparent and efficient as they represent a credible threat of disinvestment.

8. Provide flexibility to land tenants and guarantee legal certainty for them. As Vice President of INEGI (the National Statistical Institute), Félix Vélez, argues, land tenure in Mexico is challenged by the weakness of the rule of law. Landowners of socially held properties
cannot decide on land use and concessions with as much flexibility as private landowners can. Moreover, Mexico has not been able to attract private capital to socially owned lands because of ignorance of procedures, failure to come to mutually beneficial agreements between **ejidatarios** and corporations, and investors’ distrust (RAN 2015). Furthermore, public policies are lacking that would encourage public/private investing in rural areas (e.g. concession rights for land usage are not accepted by development or commercial banks as loan collateral), and incremental public expenditure in rural areas and constitutional reforms to protect social landowners have not resulted in reduction of rural poverty.

To implement the rule of law, Mexico must broaden the legal capacities for members of **ejidos** and **comunidades** to give them as much flexibility on land use and concessions as private owners. The data of the National Agrarian Registry must be enhanced by including information about the land regime that was transferred/sold and the prices for equivalent plots depending on land regime. Legal certainty for property, the correct exercise of landowner rights, and attraction of investment should be fostered by: (1) addressing pending issues to end the agrarian transition; (2) facilitating procedures for private investment in socially owned lands; (3) building funding strategies for agricultural and forest **ejidos**; and (4) ensuring equitable, legal, and environmentally friendly conditions for all agrarian transactions. Also, Mexico must promote development of agrarian settlements by creating public policies that apply the new Special Concurrent Program approach to integrate programs and subsidies of different government agencies. High value-added firms must be developed in the primary sector that target women and young inhabitants of **ejidos** and **comunidades**, and the Rural Development Act should be reformed to sponsor a new model of economic development that guarantees human, social, and economic rights in **ejidos** and **comunidades**.

9. **Aggressively legislate against the roots of corruption: public contracts, fiscal irresponsibility, and electoral procedures.** As director of Transparencia Mexicana, Eduardo Bohórquez, points out, necessary steps must be taken to strengthen Mexico’s National Anticorruption System in order to guarantee results. As of now,
corruption inhibits economic development and harms Mexico’s international reputation. Moreover, it damages the quality of public services and the implementation of public programs, as it threatens human rights, access to justice, and electoral processes.

To implement the rule of law, Mexico must construct a National Anticorruption System (NAS) that works in an efficient, coherent, and consistent way, not as a combination of many institutions. Mexico must promote a legislative agenda that can threaten the roots of corruption, one that includes the law of procurement, the public works law, the public contracts law, the public property registry law, the fiscal responsibility law, and the codes for electoral procedures and financing. Also, the appointment of NAS directors must be monitored and the creation of a National General Accounting Office should be a priority. Above all, NAS corruption investigations must be complemented with independent and critical media that exhibit corruption cases to all Mexican society. To do this, the independence of media must be assured by regulating government publicity to avoid any attempt to influence media coverage.

10. Provide police forces with the necessary resources, training, and professional standards. As director of Justice in Mexico, David A. Shirk, remarks, police forces have limited skills and training, and most officers ignore the laws and procedures they are supposed to uphold. Mexican police departments tend to be under-equipped, lacking even the most basic facilities and supplies (Justiciobarómetro 2009). Moreover, police salaries and benefits are so low that officials often seek alternative sources of income.

To move towards professional policing, Mexico’s policy makers need to understand that reorganizing police agencies is not enough. Advancing and sustaining an effective police reform is required. Mexican police forces need resources, higher professional standards, better compensation and benefits, and strict surveillance by civil society during the implementation process. Adopting the Civil Police Force that was introduced in Nuevo León by civic leaders and the business community can mean a step forward to achieve a professional model of policing nationwide.
Overall, the main objective of this book is not to merely analyze judicial problems, but to urge change in broader sectors of Mexico’s society. As shown in this introduction, all of the chapters and reflections tell the story of a Mexico where the failure to see the result of structural reforms is intimately connected to the actions of politicians, business groups, civil society, and the press.

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