

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

## Mexico

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### I. Introduction

2013 will go down in Mexican history books as the year of the *Pacto por Mexico* (Pact for Mexico), an ambitious, far-reaching initiative signed by the leaders of the three main political parties and championed by President Enrique Peña Nieto.<sup>1</sup> The Pact for Mexico, executed on December 2, 2012, the day after Peña Nieto took office, has brought about sweeping constitutional and legislative reforms in less than a year's time—something quite remarkable given the tumultuous national elections of 2012 and a divided Congress.<sup>2</sup> Not since the days in which President Carlos Salinas de Gortari governed the country from 1988 to 1994 has Mexico ushered in such sweeping reforms.<sup>3</sup> Thus far, the Pact for Mexico has brought about constitutional and legislative reforms aimed at (i) breaking Carlos Slim's telecommunications monopoly, (ii) overhauling Mexico's education system to guar-

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1. PACTO POR MÉXICO [PACT FOR MEXICO] (2013), available at <http://pactopormexico.org/PACTO-POR-MEXICO-25.pdf>. For the unofficial English translation, see Nader, Hayaux & Goebel, *Pacto por México* (Pact for Mexico), OPEN TO EXPORT, <http://editorial.opentoexport.com/wp-content/uploads/2013/01/Pacto-por-M%C3%A9xico-English-version-NHG.pdf> (last visited Mar. 24, 2014).

2. Andres Sada, *Explainer: What Is the Pacto por Mexico?*, AMS. SOCIETY/COUNCIL OF THE AMS. (Mar. 11, 2013), <http://www.as-coa.org/articles/explainer-what-pacto-por-m%C3%A9xico>.

3. *Id.*

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antee access to public education from preschool through high school and weaken a national teachers' union that has for so long straight-jacketed Mexico's society and children from reaching higher, (iii) re-writing Mexico's tax code to close tax loopholes and go after tax evaders, and (iv) combating money laundering.<sup>4</sup> In addition, now pending before Congress are constitutional reforms to (i) open up Mexico's state-owned oil and gas and electric power sectors to public-private partnerships and further private participation<sup>5</sup> and (ii) allow foreigners to acquire direct title to residential real estate along Mexico's 6,000 miles of coastline and borders.<sup>6</sup>

While the executive and Congress have been in the spotlight, Mexico's judiciary has continued to emerge as the true third branch of government it was meant to be under a constitution that, in many respects, mirrors the one of its northern neighbor in its text only. Indeed, constitutional reforms and Mexico's new *amparo* law expand the rights of citizens to petition federal courts to enjoin any state action that violates individual liberties and fundamental rights, even if such action is not based on an express constitutional violation.<sup>7</sup> Meanwhile, the Mexican Supreme Court has opined that international human rights law is on an equal plane with the Mexican Constitution and has issued judicial protocol to ensure that judges across the country appropriately apply reforms to Mexican immigration laws aimed at respecting and protecting human rights.

A. PACTO POR MÉXICO

The *Pacto por México* contains ninety-five initiatives that were "agreed upon by the governing Institutional Revolutionary Party (PRI), the National Action Party (PAN), and the Party of the Democratic Revolution (PRD)."<sup>8</sup> The three parties were represented by President Peña Nieto; Interim President of the PRI, Cristina Díaz Salazar; the President of the PAN, Gustavo Madero; and President of the PRD, Jesús Zambrano. The signing ceremony was attended by the governors of all thirty-one states, the head of Mexico City's government, and the presidents of the both houses of Congress. Additionally, the Green Party signed the *Pacto por México* on January 28, 2013.<sup>9</sup>

With widespread governmental and political support, the agreement aims to accomplish reforms that were previously impossible due to "political gridlock since the administration of President Ernesto Zedillo (1994–2000)."<sup>10</sup> José Ángel Gurría, the current head of the Organization for Economic Co-operation and Development, indicated that if the Pact for Mexico reforms pass, then Mexico is capable of seeing the GDP increase by 6 percent.

After the July 2012 presidential and legislative elections, the leaders of the three parties and the elected President began meeting to discuss the next steps in the government's

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4. *Id.*

5. Raul Gallegos, *75 Years Later, Is Mexico Ready for Energy Reform?*, BLOOMBERG (Aug. 15, 2013, 6:19 PM), <http://www.bloomberg.com/news/2013-08-15/75-years-later-is-mexico-ready-for-energy-reform.html>.

6. *Mexico Bill Loosens Restrictions on Foreigners Buying Land*, FOX NEWS LATINO (Apr. 24, 2013), <http://latino.foxnews.com/latino/money/2013/04/24/mexico-loosens-restrictions-on-foreigners-buying-property/>.

7. *New Mexican "Amparo" Law Broadens Constitutional Protection*, BUS. MEX. ONLINE (Apr. 2, 2013), <http://business-mexico-online.com/new-mexican-amparo-law-broadens-constitutional-proteccion/>.

8. Sada, *supra* note 2.

9. *Id.*

10. *Id.*

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agenda. Initially, the meetings took place between only two of the parties at a time, but, by the beginning of October, the three main parties realized that trilateral talks would be much more beneficial.<sup>11</sup>

Next, the home of José Murat, the former PRI governor of Oaxaca, was suggested and accepted “as a clandestine place to conduct trilateral talks.”<sup>12</sup> The future Finance Secretary, Luis Videgaray, and future Interior Secretary, Osorio Chong, represented both the PRI and the presidential transition team at these meetings. Both the current PRD president, Jesús Zambrano, and the former PRD president, Jesús Ortega, represented PRD. Madero and the former Secretary of the Interior, Santiago Creel, represented the PAN party with Murat serving as the host and facilitator.

There were multiple reasons for the three parties’ collaboration on the Pact of Mexico. As for the PRD, the party “wanted to avoid being marginalized by a PAN-PRI alliance built on the ideological convergences of the two parties.”<sup>13</sup> In fact, during the electoral cycle, Peña Nieto and the PAN presidential candidate, Josefina Vázquez Mota, agreed on structural changes. For example, the two agreed on reforms in the areas of energy and education, which were both topics that later appeared in the Pact of Mexico. For the PRD, the party “was able to win incorporation of the expansion of various ‘social rights’ into the pact.”<sup>14</sup> On the other hand, the PAN was faced with the decision of allying with the PRI (as it had in 1988) or with the PRD (as it had in 1996). At the same time, the PRI did not want to spend its first presidency in twelve years in opposition to a united PAN-PRD alliance.

## II. Constitutionalization of International Human Rights Law

Mexico’s Supreme Court of Justice of the Nation resolved at least three points of law with its September 3, 2013 Decision 293/2011, addressing conflicting holdings.<sup>15</sup>

### A. HUMAN RIGHTS FOUNDED ON SOURCES OF INTERNATIONAL LAW HOLD THE SAME CONSTITUTIONAL RANK AS THOSE CONTEMPLATED IN THE CONSTITUTION

This decision crowns the constitutional reform concerning human rights. The human rights recited in the Constitution and in the international treaties to which Mexico is a

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11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. Contradicción de Tesis Suscitada entre el Primer Tribunal Colegiado en Materias Administrativa y de Trabajo del Décimo Primer Circuito y el Séptimo Tribunal Colegiado en Materia Civil del Primer Circuito, Pleno de la Suprema Corte de Justicia [SCJN] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta*, Décima Época, tomo III, Febrero de 2012, 293/2011, Página 2218 (Mex.) [hereinafter Decision 293/2011]. As the resolution is not yet published, this analysis is based on the transcript of the court session, Transcript of Decision 293/2011, available at [https://www.scjn.gob.mx/PLENO/ver\\_taquigraficas/03092013PO.pdf](https://www.scjn.gob.mx/PLENO/ver_taquigraficas/03092013PO.pdf), and on a press release, Press Release, Suprema Corte de la Justicia de la Nación, Contradicción de Tesis 293/2011 (Sept. 3, 2013), available at <http://www2.scjn.gob.mx/red2/comunicados/comunicado.asp?id=2683>.

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party are now considered to be equal in the hierarchy of domestic law.<sup>16</sup> This leveling includes the elevation of the jurisprudence of the Inter-American Court of Human Rights (ICHR) to equal status, as recognized by the Supreme Court in its decision of the matter known as *Varios*, or Decision 912/2010,<sup>17</sup> concerning the ICHR's decision condemning Mexico in the case *Rosendo Radilla Pacheco v. Estados Unidos Mexicanos*.<sup>18</sup>

B. ANY EXPRESS CONSTITUTIONAL RESTRICTION TO THE EXERCISE OF HUMAN RIGHTS MAY NOT BE EXTENDED

With Decision 293/2011, the Supreme Court seeks to resolve the problem of conflicts between constitutional and ordinary human rights laws.<sup>19</sup> Affirming that the restrictions on human rights contemplated by the Constitution will prevail, the case establishes a limited exception to the principal of interpretation *pro persona*.<sup>20</sup> In the event of a conflict, the law most favorable to the person will apply.<sup>21</sup> The decision thereby apparently ends the debate over whether the human rights law that grants the broadest protection must always prevail over the more restrictive one or whether the constitutional provision should prevail even if it is more restrictive relative to the rights recognized by international law.<sup>22</sup> But future decisions are expected because the Supreme Court has established that the jurisprudence of the ICHR is binding,<sup>23</sup> and the ICHR has held that a State party to ICHR bears international responsibility for violation of international human rights law even if its constitution establishes contrary norms.<sup>24</sup>

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16. Press Release, Suprema Corte de la Justicia de la Nación, *supra* note 15.

17. Expediente Varios, Pleno de la Suprema Corte de la Justicia de la Nación [SCJN] [Supreme Court], *Semanario Judicial de la Federación y su Gaceta, Décima Época*, tomo I, Octubre de 2011, 912/2010, Página 313 (Mex.) [hereinafter Decision 912/2010]. For the unofficial English translation, see *Miscellaneous Case 912/2010*, U. OF TEX., [https://www.utexas.edu/law/colloquia/archive/papers-public/2011-2012/03-19-12\\_The%20Rosendo%20Radilla%20Case%20\(2010\).pdf](https://www.utexas.edu/law/colloquia/archive/papers-public/2011-2012/03-19-12_The%20Rosendo%20Radilla%20Case%20(2010).pdf) (last visited Mar. 24, 2014).

18. *Radilla-Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 209 (Nov. 23, 2009), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_209\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_209_ing.pdf).

19. Antonio Vázquez, *The Latest Ruling of the Mexican Supreme Court in Regards to Human Rights*, COELUM, Oct. 15, 2013, at 1.

20. *Id.* at 2.

21. *Id.*

22. *Id.*

23. As explained *infra*, in the same contradiction of thesis 293/2011, the Supreme Court held that all Inter-American Court of Human Rights (ICHR) jurisprudence, including ICHR cases to which Mexico is not a party, bind Mexican judges, provided that they are more favorable. *Id.*

24. See, e.g., case of “The Last Temptation of Christ” (Olmedo-Bustos) v. Chile, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 73, ¶ 72 (Feb. 5, 2001), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_73\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_73_ing.pdf) (holding that “[t]his Court understands that the international responsibility of the State may be engaged by acts or omissions of any power or organ of the State, whatsoever its rank, that violate the American Convention. That is, any act or omission that may be attributed to the State, in violation of the norms of international human rights law engages the international responsibility of the State. In this case, it was engaged because article 19(12) of the Constitution establishes prior censorship of cinematographic films and, therefore, determines the acts of the Executive, the Legislature and the Judiciary”).

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C. ALL ICHR CASE LAW, INCLUDING THOSE CASES IN WHICH MEXICO IS NOT A PARTY, BINDS MEXICAN JUDGES, PROVIDED THAT IT IS MORE FAVORABLE TO THE PERSON

This determination modifies the holding of the aforementioned Decision 912/2010 where the Supreme Court held that ICHR case law is binding on Mexican courts only if Mexico was a party. Under the now-superseded *Varios* logic, the jurisprudential criteria of the cases to which Mexico had not been party were only persuasive—not mandatory—authorities.<sup>25</sup>

### III. *New Ley de Amparo*

The new *Ley de Amparo*, promulgated April 2, 2013, implements the 2011 amendments to articles 103 and 107 of the Constitution and gives life to a new system of *amparo* law.<sup>26</sup> As Eduardo Ferrer MacGregor affirmed, the new writ of *amparo* is protective of human rights and intended to effectively guarantee those fundamental rights consistent with the new paradigm of constitutional human rights.<sup>27</sup> The application of the 2011 amendments to articles 103 and 107 of the Constitution directly impacts the administration of justice in Mexico and the rights of its citizens. These constitutional reforms place the defense of human rights at the center of the constitutional and political order, as the Supreme Court held in *Varios* concerning the application of the ICHR decision that ruled against Mexico in *Radilla Pacheco*.<sup>28</sup> The amendments refer primarily to the writ of *amparo* as an institution protective of fundamental rights, enriched by expanding the availability of the *amparo* proceeding to challenge any general norm that violates human rights recognized in international treaties ratified by Mexico.<sup>29</sup> The reform further contemplates (i) the introduction of mechanisms such as adherence *amparo* and *amparo* founded on individual or collective legitimate interest, (ii) the adoption of new legal concepts concerning the violation of rights by omission (failure of the authority to act) and the declaration of unconstitutionality with general effects, (iii) the creation of full chamber circuit courts, and (iv) a new form of establishing precedent by substitution.<sup>30</sup>

The new *Ley de Amparo* defines various procedures such as (i) the availability of *amparo* to resolve disputes targeting general norms, acts, or omissions that violate human rights recognized by the Constitution or by treaty<sup>31</sup>; (ii) the possibility of incorporating the vic-

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25. Vázquez, *supra* note 19, at 2.

26. Ley de Amparo [LA] [Legal Protection Law], Diario Oficial de la Federación [DO], 2 de Abril de 2013 [hereinafter *Ley de Amparo*].

27. Eduardo Ferrer MacGregor & Rubén Sánchez Gil, Presentación del Libro “El Nuevo Juicio de Amparo. Guía de la Reforma Constitucional y la Nueva Ley de Amparo” [Presentation of the Book “The New Trial of Amparo. Guide for Constitutional Reform and the New Amparo Law”] (2013), available at [http://www.sitios.scjn.gob.mx/reformasconstitucionales/sites/default/files/actividades\\_seguintimiento/AS\\_Libro\\_Ferrer\\_Presentacion\\_Discurso\\_Ministro\\_Aguilar.pdf](http://www.sitios.scjn.gob.mx/reformasconstitucionales/sites/default/files/actividades_seguintimiento/AS_Libro_Ferrer_Presentacion_Discurso_Ministro_Aguilar.pdf) (last visited Mar. 24, 2013).

28. Decision 912/2010.

29. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, arts. 103, 107, Diario Oficial de la Federación [DO], 10 de Junio de 2011.

30. *Id.*

31. Ley de Amparo, art. 1.

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tim or offended party as the subject of the writ of *amparo*<sup>32</sup>; (iii) the ability to challenge acts of private individuals when those acts are performed in a manner equivalent to an act of an authority<sup>33</sup>; and (iv) the new adhesive *amparo* that allows a party with a legal interest to intervene in an *amparo* proceeding challenging that act.<sup>34</sup> In general, the deadlines for filing an *amparo* are again limited to fifteen days, although they are extended in criminal matters to eight years and, for *ejido* and communal matters, to seven years.<sup>35</sup>

The new writ of *amparo* distinguishes the legitimate interest from the legal interest, the former being the right or ability to seek redress in federal court when one considers a diffuse right to be violated and the latter being an interest held in the face of a direct violation of a subjective right and/or a right determined circumstantially.<sup>36</sup>

The new *Ley de Amparo* contemplates the possibility of a “declaration of unconstitutionality” with general effects with respect to the resolution of indirect *amparos* by any of the Supreme Court’s chambers or the plenum of the Supreme Court.<sup>37</sup> Further, whenever a norm is declared unconstitutional on a second consecutive occasion, its issuing authority must be so informed.<sup>38</sup>

In general, the new law incorporates the achievements of the jurisprudential interpretation (court precedents) of its now abrogated predecessor law of January 10, 1936, which means that substantive *amparo* case law under the old law will continue to apply today, to the extent that the legal basis under the *amparo* law for the old ruling was not changed by the new law.<sup>39</sup>

#### **IV. Protocol for Adjudicating Immigration and Refugee Matters**

On September 30, 2013, the Supreme Court issued the Protocol for Judicial Rules Applicable to Immigrants and Persons Subject to International Protection (Protocol).<sup>40</sup> The Protocol was drafted together with the non-governmental organization (NGO) *Sin Fronteras IAP*,<sup>41</sup> as an initiative to educate judges in immigration cases so that they may act

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32. *Id.* art. 5.

33. *Id.* art. 6

34. *Id.* art. 182.

35. The prior *Ley de Amparo* contemplated various time periods but left the deadline for criminal matters undetermined. *Id.* art. 17.

36. *Id.* art. 5.

37. An indirect *amparo* is a suit to enjoin the activity of an individual or body acting under color of law claimed to have violated the plaintiff’s individual rights. A direct *amparo* is an appeal of a decision of a lower court (usually a state supreme court or a federal appellate court), similar to a habeas corpus proceeding but not limited to cases where the appellant is incarcerated or otherwise deprived of his liberty, which may be brought only after all other judicial or administrative remedies have been exhausted.

38. *Ley de Amparo*, art. 231.

39. *See id.* art. 230.

40. SUPREMA CORTE DE JUSTICIA DE LA NACIÓN, PROTOCOLO DE ACTUACIÓN PARA QUIENES IMPARTEN JUSTICIA EN CASOS QUE AFECTEN A PERSONAS MIGRANTES Y SUJETAS DE PROTECCIÓN INTERNACIONAL [PROTOCOL FOR JUDICIAL RULES APPLICABLE TO IMMIGRANTS AND PERSONS SUBJECT TO INTERNATIONAL PROTECTION] (Sept. 2013), available at [http://www.sinfronteras.org.mx/attachments/article/1491/Protocolo\\_Migrantes.pdf](http://www.sinfronteras.org.mx/attachments/article/1491/Protocolo_Migrantes.pdf) [hereinafter The Protocol].

41. *Institución de Asistencia Privada* (IAP) is a non-governmental organization created in 1995 by a group of civic and academic activists. IAP is concerned with reforming the conditions in which international migration and asylum occur. IAP advocates for reforms consistent with the framework of respect for human rights of international migrants, persons requesting asylum, refugees, and their family members. *About Us*, SIN

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in conformity with the constitutional reforms concerning human rights.<sup>42</sup> The Protocol lays out guidelines for judges in local and federal contexts so as to guarantee respect for the human rights of immigrants and other persons subject to international protection. The Protocol reviews the governing principles and includes the principal national and international instruments so that immigrants are assured the maximum protection possible. Although the Protocol is non-binding and seeks simply to facilitate judicial awareness of the norms most broadly protective of immigrants' human rights, it is valuable for judges as well as for NGOs, academic bodies, and other persons defending immigrants and providing them access to justice.<sup>43</sup>

The Protocol clarifies that detention in the context of an administrative proceeding constitutes a deprivation of personal liberty and, therefore, must be exceptional and proportional to the purpose.<sup>44</sup> Moreover, the deprivation of liberty must not be of a punitive nature and must be accomplished over the shortest period possible.<sup>45</sup> The Protocol emphasizes that persons detained in immigration centers must be treated with respect for the dignity inherent in the human being, including furnishing dignified detention conditions, avoiding hazing, ensuring that men and women are separated, guaranteeing the rights to nutrition and health, and providing for recreational activities.<sup>46</sup> The Protocol reaffirms the availability of the writ of *amparo* to enjoin acts that unlawfully deprive immigrants of their right to liberty under international law.<sup>47</sup>

The Protocol consists of ten chapters, covering its justification, the general situation of immigrants and persons subject to international protection, its purpose, the national and international legal framework, general principles, the right to effective access to justice, the general rules of implementation, the specific rules of implementation, and the expectations concerning the application of the Protocol. The Protocol's bibliography contains three annexes. Annex 1 republishes the national and international legal framework applicable to immigrants and other persons subject to international protection; Annex 2 is a directory of international organizations, civil society organizations, and governmental and academic entities concerned with immigration issues; and Annex 3 presents the framework for the principal legal proceedings concerning immigration and asylum.<sup>48</sup>

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FRONTERAS IAP, <http://www.sinfronteras.org.mx/index.php/en/home/28-about/176-about-us> (last visited Mar. 24, 2014).

42. Decreto por el que se Modifica la Denominación del Capítulo I del Título Primero y se Reforman Diversos Artículos de la Constitución Política de los Estados Unidos Mexicanos [Decree that Modifies the Name of Chapter I of the First Title and Reformed Various Articles of the Political Constitution of the United Mexican States] *Diario Oficial de la Federación* [DO], 10 de Junio de 2011, art. 1, available at <http://www2.sejn.gob.mx/red/constitucion/10Junio.html>. In fact, the third paragraph of the first article establishes that "[a]ll authorities, within the scope of its powers, have the obligation to promote, respect, protect, and fulfill human rights in accordance with the principles of universality, interdependence, indivisibility, and escalation." Consequently, the State must prevent, investigate, sanction, and repair violations to human rights, in accordance with applicable law.

43. This Protocol may promote the formulation of jurisprudential criteria with focus on human rights, to consolidate the change from the old paradigm of criminalizing migration, to a new one that recognizes migrating persons as subjects of international protection. See generally *id.*; see also The Protocol, *supra* note 40.

44. The Protocol, *supra* note 40, at 85.

45. Article 21 of Mexico's Constitution establishes thirty-six hours as the maximum term of deprivation, as an administrative sanction, of personal liberty. *Id.* at 85–86.

46. *Id.* at 87–88.

47. *Id.* at 31.

48. See generally *id.*

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**V. Constitutional Federalization of Criminal Procedure, Alternative Dispute Resolution, and Sentences**

The amendments to article 73, section XXI of the Mexican Constitution, published October 8, 2013,<sup>49</sup> show that within the context of the ongoing transition to an adversarial criminal procedure system, Congress desires to adopt laws creating a single criminal procedure framework, alternative dispute resolution (ADR) mechanisms, and sentences that will apply throughout Mexico and that will permit (i) systemization and homogenization of legislative criteria; (ii) adequate conditions for the construction of a coherent, articulated, and integrated criminal policy; (iii) a greater and better coordination among the institutions charged with assuring justice; (iv) greater certainty for those governed concerning the criminal norms to be observed throughout the country; (v) reduced instances of corruption and impunity, and consequently, less legal uncertainty associated with the current dispersion of norms; and (vi) more homogeneous judicial criteria.<sup>50</sup> With respect to ADR and sentencing, the amendments propose to minimize the use of the penal apparatus, introducing sentencing formulas that emphasize prevention over retribution.<sup>51</sup>

The amendments also address federal and state court concurrent jurisdiction questions. Namely, the federal courts and prosecutors will have concurrent jurisdiction over crimes ordinarily subject to state court jurisdiction when the crime is linked to another federal crime, committed against a journalist, or committed against persons or facilities in a way that affects, limits, or diminishes the right to information, freedom of expression, or free press.<sup>52</sup> With respect to federal crimes subject to concurrent state court jurisdiction under the Constitution, the federal laws will establish the conditions in which the state court authorities will be able to hear cases founded on federal law.<sup>53</sup>

The implementation of the adversarial criminal justice system in Mexico requires that the single, uniform system of criminal procedure, ADR, and sentencing take effect by no later than June 18, 2016.<sup>54</sup> But criminal proceedings initiated prior to the entry into force of the criminal procedure legislation will be concluded in conformity with the provisions in force at the commencement of such proceedings.<sup>55</sup>

Moreover, the reform establishes the power of Congress to issue general laws consistent with international fundamental human rights norms concerning the crimes of kidnapping

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49. Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 73, Diario Oficial de la Federación [DO], 8 de Octubre de 2013.

50. Dictamen del Proyecto de Decreto por el que se Reforma la Fracción XXI del Artículo 73 de la Constitución Política de los Estados Unidos Mexicanos [Opinion in the Positive Direction on the Summary Draft Decree on the Reform of Section XXI Article 73 of the Constitution of the United Mexican States, on Criminal Procedural Law Only], *as amended*, Diario Oficial de la Federación [DO], 11 de Septiembre de 2013, at 14.

51. *Id.* at 15.

52. *Id.* at 7.

53. Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 73, Diario Oficial de la Federación [DO], 8 de Octubre de 2013.

54. Decreto por el que se Reforma la Fracción XXI del Artículo 73 de la Constitución Política de los Estados Unidos Mexicanos [Decree Whereby Section XXI of Article 73 of the Political Constitution of the United Mexican States is Reformed] DO, 8 de Octubre de 2013.

55. *Id.*



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and trafficking of persons.<sup>56</sup> The reform establishes that the general laws enacted will address federal versus state court subject matter jurisdiction questions and the forms of coordination among the federation, the states, the federal district, and the municipalities.<sup>57</sup> Lastly, the reform reaffirms the exclusive power of Congress to adopt laws establishing crimes against the nation and their penalties as well as laws concerning organized crime.<sup>58</sup>

## **VI. Constitutional Amendments to the Educational System**

The amendments to articles 3 and 73 of the Constitution, promulgated on February 26, 2013, establish the legal bases for far-reaching changes to the teaching profession, access to supervisory positions in schools, and the structure and implementation of educational policy from preschool through high school. The amendments are designed to serve as the foundation for the development and execution of broad, substantive legal and policy reforms to the Mexican educational system, such as the educational curriculum and the initial and continuing training of teachers.<sup>59</sup>

The reforms, which aim to improve the quality and level of education in the country so as to increase global competitiveness, productivity, and innovation, include the following measures:

- (1) the State's obligation to guarantee the quality of preschool, elementary school, middle school, and high school education (all the elements that form part of the school, such as human resources and the materials used by the school, must meet minimum standards necessary to maximize the students' learning potential);
- (2) the teachers' obligation to pass competency exams as a condition to hires, promotions, tenure, and recognitions (these exams are to be defined and regulated in the *Ley del Servicio Profesional Docente*,<sup>60</sup> which Congress is empowered to enact pursuant to the amended article 73);
- (3) the creation of the *Sistema Nacional de Evaluación Educativa* (National System of Educational Evaluation);
- (4) the reinforcement of the *Instituto Nacional para la Evaluación de la Educación* (National Institute for the Evaluation of Education) by establishing its constitutional autonomy and broadening its powers, including by coordinating the National Sys-

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56. COMISIÓN DE PUNTOS CONSTITUCIONALES, GACETA PARLAMENTARIA NÚMERO 3814-A, DECLARATORIA DE PUBLICIDAD DE DICTÁMENES 54 (July 16, 2013), available at <http://gaceta.diputados.gob.mx/PDF/62/2013/jul/20130716-A.pdf>.

57. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 73, Diario Oficial de la Federación [DO], 8 de Octubre de 2013.

58. *Id.*

59. RUDOLFO RAMÍREZ RAYMUNDO, LA REFORMA CONSTITUCIONAL EN MATERIAL EDUCATIVO: ALCANES Y DESAFÍOS, SÍNTESIS [CONSTITUTIONAL REFORM IN EDUCATION MATTERS: SCOPE & CHALLENGES, SYNTHESIS] 1 (Instituto Belisario Domínguez ed., 2013), available at [http://www.iae.org.mx/documentos2013/La\\_Reforma\\_Constitucional\\_en\\_Materia\\_Educativa-sintesis\(1\).pdf](http://www.iae.org.mx/documentos2013/La_Reforma_Constitucional_en_Materia_Educativa-sintesis(1).pdf).

60. Decreto por el que se Expide la Ley Reglamentaria de la Fracción III del Artículo 3° de la Constitución Política de los Estados Unidos Mexicanos, Ley General del Servicio Profesional Docente [Decree of the Regulatory Law Section III of Article 3 of the Constitution of the United Mexican States, General Teaching Professional Service Act Is Issued], Diario Oficial de la Federación [DO], 11 de Septiembre de 2013, art. 4, § XVII.

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tem of Educational Evaluation and issuing norms to govern the evaluations to be administered by federal and local authorities;

- (5) the legislative power's mandate to ensure the autonomy of school administration, expand the number of full-time schools, reinforce the formative sense of evaluations, establish a national system of information and educational management, and prohibit the consumption of unhealthy foods in schools.<sup>61</sup>

The constitutional amendments require that the legislative power, in addition to issuing the *Ley del Servicio Profesional Docente*, draft or amend the regulation under the *Ley del Instituto Nacional para la Evaluación de la Educación* (Law of the National Institute for the Evaluation of Education) and the *Ley General de Educación* (General Law of Education).<sup>62</sup>

The inclusion of the right to quality education as a duty of the state represents an important advancement for Mexico. The reforms guarantee all citizens access to compulsory public education that each scholastic center offers and imply that access to schooling is a right that may be demanded by law.<sup>63</sup>

Despite the clear intent of the reforms to improve the level of education of Mexico's children, the powerful teachers' union and many teachers have voiced their discontent with the new system of evaluation. Teachers argue that the evaluation requirements and performance standards apply only to teachers and not to administrators and executives at all levels (municipal, state, and federal), nor do they apply to the effectiveness of the policies, the curriculum, the textbooks, the availability of continuing education, or the material conditions in which the teachers and students work and study.<sup>64</sup> In other words, the reforms force teachers to perform effectively to get a promotion but do not apply the same standard to government officials or to the programs and policies they administer.

## VII. Mexico's Anti-Money Laundering Law

On October 17, 2013, the Ministry of Finance published the Federal Law for the Prevention and Identification of Transactions from Illegal Funds, commonly referred to as

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61. RAYMUNDO, *supra* note 59, at 1–2.

62. Decreto por el que se Expide la Ley del Instituto Nacional para la Evaluación de la Educación, es una Ley Reglamentaria de la Fracción IX del Artículo 3º de la Constitución Política de los Estados Unidos Mexicanos, de Observancia General [Decree on the Law of the National Institute for the Evaluation of Education Is Issued, Is a Law Regulating Section IX of Article 3 of the Constitution of the United Mexican States, of General Observance], Diario Oficial de la Federación [DO], 11 de Septiembre de 2013. Decreto por el que se Reforman, Adicionan y Derogan Diversas Disposiciones de la Ley General de Educación [Decree Amending, Supplementing and Repealing Various Provisions of the Education Act], Diario Oficial de la Federación [DO], 11 de Septiembre de 2013.

63. The definition of quality of education, provided in the third paragraph of Article 3 of the Constitution, is the result of the confluence of suitable educational methods and materials, sound school organization, and trained school teachers and school managers for each school. RAYMUNDO, *supra* note 59, at 4.

64. *Id.* at 6; see also León Castant, *Reforma Educativa: Freno al Crecimiento de México* [Education Reform: Curbing Growth of Mexico], SDP NOTICIAS (Aug. 2, 2013, 5:57 AM), <http://www.sdpnoticias.com/columnas/2013/09/02/reforma-educativa-freno-al-crecimiento-de-mexico> (Mr. Castant witnessed the polemic concerning the now-approved *Ley de Servicio Profesional Docente*. The principal argument in favor of it was the need to evaluate not only the teachers, but also the institutions and students. The system that was chosen is a standardized examination or obligatory evaluation, a system to which most Mexicans have been exposed through the application of standardized examinations from elementary schools throughout higher education, such as ENLACE or CENEVAL).

the “Money Laundering Law” (Law).<sup>65</sup> The Law, which aims to combat money laundering in general and to prevent terrorist and drug cartel financing specifically, went into effect on July 17, 2013, while its regulations entered into effect on September 1, 2013.<sup>66</sup>

The Law seeks to identify the clients and users of services related to “vulnerable activities” and to obligate those service providers to keep information related to all clients and users of vulnerable activity services and, in some specific cases, to report such activities to authorities.<sup>67</sup>

Pursuant to article 14 of the Law, the following are considered “vulnerable activities”: (i) gambling, raffles, and lotteries; (ii) issuing credit cards or traveler’s checks; (iii) loan or mortgage brokering; (iv) construction or residential development; (v) rendering real estate services and brokering real estate transactions; (vi) buying, selling, or brokering the sale of gold or other metals, jewels, watches, art, or all types of vehicles (aerial, terrestrial, or maritime); (vii) rendering armored car services; (viii) receiving donations from or for non-profit organizations; (ix) transacting in personal rights over real estate (e.g., leases and timeshares or other fractional interests in property); (x) rendering independent professional services (such as legal, accounting, consultancy, or architectural services); and (xi) rendering customs agent services.<sup>68</sup>

The Law imposes record-keeping and reporting obligations for each “vulnerable activity,” with the scope of obligations depending on the value of the transactions. The Law specifies three types of obligations, (i) identification of the client or user, (ii) notice to authorities, and (iii) limits on cash transactions.<sup>69</sup>

(i) Identification of the Client or User<sup>70</sup>

The service provider must keep a record for at least five years of all clients and may deny the provision of services when the client “refuses to provide information to protect and avoid the destruction of such information.”<sup>71</sup> Additionally, at the request of the authorities, the service provider is required to provide the authorities with information. For example, if a timeshare developer sells a timeshare interest for US \$7,900 or more, “then the timeshare developer is [obligated] to keep the client’s information.”<sup>72</sup>

(ii) Notice to Authorities

“If the amounts related to the ‘vulnerable activity’ surpass the thresholds set forth in the Law, the service provider must report certain information to the Ministry of Finance no later than the [seventeenth] day of the following month,” including the full legal name,

65. Ley Federal Para La Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita [Federal Law on the Prevention and Identification of Operations Illicit Resources], Diario Oficial de la Federación [DO], 17 de Julio de 2013.

66. *Id.*

67. *See id.* art. 18.

68. VON WOBESER & SIERRA, FEDERAL ACT TO PREVENT AND IDENTIFY TRANSACTIONS INVOLVING ILLICIT FUNDS (July 2013), available at <http://www.vonwobeserysierra.com/assets/files/PDF/news/nota-2013-julio-ing.pdf>.

69. ALFREDO SOLÓRZANO, ROSEN LAW, MEXICO’S ANTI-MONEY LAUNDERING LAW (Nov. 6, 2013), available at [http://www.americanbar.org/content/dam/aba/events/international\\_law/2013/11/2nd\\_conference/mexicomoneylaundering.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/events/international_law/2013/11/2nd_conference/mexicomoneylaundering.authcheckdam.pdf).

70. The identification obligation took effect on September 1, 2013. *Id.* at 2.

71. *Id.*

72. *Id.* The law states the penalties in number of daily minimum wages, which is currently MXN \$64.76. *Id.* at 2 n.2.

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address, occupation, date, and place of birth of the client and a general description of the vulnerable activities performed.<sup>73</sup>

(iii) Limits on Cash Transactions

If the dollar value of a “vulnerable activity” transaction is in excess of an amount stated by the Law, then it cannot be paid for with cash. For example, “the purchase or sale of cars, boats, or airplanes for about \$15,300 USD, or real estate transactions for more than \$38,500 USD,” cannot be paid for in cash.<sup>74</sup>

Penalties for failing to comply with the obligations stated in the Law depend on the nature of the breach and range considerably, starting at roughly U.S. \$1,000 and going up to U.S. \$315,000 or 10 percent of the value of the transaction, whichever is greater.<sup>75</sup>

Moreover, authorities may institute criminal proceedings if evidence of an illegal activity or the intentional breach of any of the obligations stated in the Law exists, such as providing false information or documents to the authorities. Criminal penalties range from two to eight years in prison.<sup>76</sup>

The Law imposes even more severe obligations on public notaries and commercial brokers (*corredores publicos*), who are obligated to identify and report, in greater detail, a wide range of duties that pertain to legal and commercial transactions.<sup>77</sup>

The Law also strictly scrutinizes:

1. activities related to the provision of legal or accounting services, requiring the service provider to identify the client when the services involve managing bank accounts or any types of valuables; incorporating or managing companies; or handling the corporate affairs of companies, such as mergers and acquisitions; and
2. the construction or development of homes with the intent to sell, including brokers regarding transactions over U.S. \$38,500.<sup>78</sup>

The Law and its regulations contemplate the creation of a registry of those persons and entities that render vulnerable activities services. Also, in certain industries, the Law allows the reporting obligations to be met by a business association or chamber, provided that the same method is approved by the Ministry of Finance.<sup>79</sup>

**VIII. Mexican Lower House Approves Constitutional Reforms Allowing Direct Foreign Ownership of Residential Property near Mexico’s Beaches and Borders**

“By the end of 2013, the Mexican Senate will [likely] vote on a bill already approved by the Mexican House of Representatives (*Cámara de Diputados*)” to amend article 27 of the

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73. *Id.*

74. *Id.* at 2–3.

75. ALFREDO SOLÓRZANO, ROSEN LAW, MEXICO’S ANTI-MONEY LAUNDERING LAW 3 (Nov. 6, 2013), available at [http://www.americanbar.org/content/dam/aba/events/international\\_law/2013/11/2nd\\_conference/mexicomoneylaundering.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/events/international_law/2013/11/2nd_conference/mexicomoneylaundering.authcheckdam.pdf).

76. *Id.*

77. *Id.*

78. *Id.* at 3–4.

79. *Id.* at 4.

Mexican Constitution<sup>80</sup> to allow “foreigners to own direct, fee simple title to real property near Mexico’s beaches and borders.”<sup>81</sup>

At this time, foreigners who have bought real property, “including residential lots, second homes, and condominiums,” within the restricted zone,<sup>82</sup> “are using banks as trustees that hold title in [the] trust for the benefit of the foreigner; that is, the bank holds legal title to the land, but the foreigner holds beneficial title, including use, enjoyment, and conveyance rights.” This trust (in Spanish, *fideicomiso*) structure results in foreigners having to go through an expensive one to two month closing process to acquire a lot or residence in the restricted zone.<sup>83</sup>

The thrust of the constitutional amendment is to enable foreigners “to purchase direct title to real property in the [r]estricted [z]one” with the requirement that the purchase be solely for residential purposes.<sup>84</sup> The amendment will surely result in a cheaper and faster closing process and will give foreigners the comfort that their property rights are even more secure than under the existing trust structure.

But foreigners who purchase land with an economic, commercial, industrial, or agricultural purpose would still be required to take title via a Mexican trust or a wholly owned Mexican subsidiary, which may be fully owned and managed by foreigners.<sup>85</sup>

If the bill passes the Senate and is then approved by a majority of Mexican state legislatures, it will become law, after which each trustee bank will determine the cost and process for terminating the trusts so that title may be transferred to the individual. Of course, many owners will likely elect to keep their property in the trust until they sell. Some may even elect to keep their trust indefinitely, inasmuch as (i) the trust affords estate-planning benefits (no Mexican will is required to pass property to heirs because the trust accomplishes the same) and (ii) the trust makes it more difficult for creditors to attach the property.<sup>86</sup>

The proposed reform, although aimed at attracting more foreign investment and second home or retirement home buyers, “is also a way to prevent the practice in which

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80. Art. 27, section I of the Constitution currently provides that “[o]nly Mexicans by birth or naturalization and Mexican companies have the right to acquire ownership of lands, waters, and that appurtenant thereto, or to obtain concessions for the exploitation of mines or of waters. The State may grant the same right to foreigners, provided they agree before the Ministry of Foreign Relations to consider themselves as nationals in respect to such property, and to agree not to invoke the protection of their home governments in matters relating thereto; under penalty, in case of noncompliance, of forfeiture to the Nation of the property acquired.” Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 27, Diario Oficial de la Federación [DO], 2 de Diciembre de 2013.

81. Alfredo Solórzano, *Mexican Senate to Vote on a Constitutional Reform to Allow Foreigners to Own Direct Title to Coastal Property*, ROSEN LAW (Nov. 6, 2013), <http://www.rosenlaw.com.mx/publications/whitepapers/amendmentsToConstitutionalArt27AllowingDirectOwnership.html>.

82. “Under no circumstances may foreigners acquire direct ownership of lands or waters within a zone of one hundred kilometers of the border and of fifty kilometers of the sea shores of the country.” This area is commonly referred to as the “restricted zone.” *Id.*

83. The trust is a contract signed between three parties, whereby the seller (*fideicomitente*/trustor) irrevocably transfers title to real property to a Mexican bank (*fiduciario*/trustee) to allow the foreign citizen (*fideicomisario*/beneficiary) to use and enjoy the property and dispose of it if and when desired. *Id.*

84. *Id.* As Alfredo Solórzano explained, “foreigners who currently own land through a trust would be able to terminate their current trust and transfer title to themselves directly.” *Id.*

85. *Id.*

86. *Id.*

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foreigners acquire land intended for residential purposes, but then use it for economic gain.”<sup>87</sup>

**IX. Personal Data Protection Law, Regulations, and Compliance**

On January 17, 2013, the Privacy Notice Guidelines (Guidelines) were published<sup>88</sup> so that companies may draft and provide customers a relatively uniform privacy notice for signature, as required by the Personal Data Protection Law, published in the Official Gazette on July 5, 2010.<sup>89</sup> This law determines the principles of Personal Data Protection (PDP) and states that the *Instituto Federal de Acceso a la Información* (Federal Institute of Information Access or IFAI) shall be the competent authority to implement and oversee the enforcement of the law.<sup>90</sup> The Guidelines further elaborate on the PDP Regulation published December 21, 2011,<sup>91</sup> and the IFAI publication in 2012 of the IFAI published guidelines and manuals.

**X. Tax Reforms**

On October 31, 2013, the National Congress completed “its approval of the reforms to the Federal Tax Code, Customs Law, Tax Coordination Law, General Government Accountability Law, Value-Added Tax Law, Excise Tax Law, Federal Fees Law, Federal Incomes Law, as well as the new Income Tax Law and the repeal of the Business Flat Tax Law and the Cash Deposits Tax Law,” leaving only the publication of the foregoing by the executive branch, in the Federal Official Gazette, still pending.<sup>92</sup>

**A. BUSINESS FLAT TAX LAW**

The Business Flat Tax Law (IETU) was repealed, and transitional provisions were “established to secure the rights and obligations acquired during the effective term of the law.” But under the transitional provisions, “the receivables from activities performed up to December 31, 2013 [but] collected after the law is repealed would continue to have IETU effects.” It is likely that the use of tax credits, “as well as the means through which

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87. *Id.*

88. Lineamientos de Aviso de Privacidad [Guidelines of the Privacy Notice], Diario Oficial de la Federación [DO], 17 de Enero de 2013; *Guía para el Aviso de Privacidad [Guide to Privacy Notice]*, INSTITUTO FED. DE ACESO A LA INFORMACIÓN, [http://inicio.ifai.org.mx/\\_catalogs/masterpage/Guia-para-el-Aviso-de-Privacidad.aspx](http://inicio.ifai.org.mx/_catalogs/masterpage/Guia-para-el-Aviso-de-Privacidad.aspx) (last visited Mar. 24, 2014).

89. Ley Federal de Protección de Datos Personales en Posesión de los Particulares [Federal Law on Personal Data Protection in Individuals Possession], *as amended*, Diario Oficial de la Federación [DO], 5 de Julio de 2010.

90. *Id.* art. 38.

91. Reglamento de la Federal de Protección de Datos Personales en Posesión de los Particulares [Regulation of the Federal Data Protection Act], *as amended*, Diario Oficial de la Federación [DO], 21 de Diciembre de 2011.

92. DELOITTE, TAX REFORMS 2014 APPROVED BY THE NATIONAL CONGRESS 2 (Galaz, Yamazaki, Ruiz Urquiza S.C. ed. 2013), *available at* [http://www.deloitte.com/assets/Dcom-Mexico/Local%20Assets/Documents/TaxAlert09\\_Reform2014.pdf](http://www.deloitte.com/assets/Dcom-Mexico/Local%20Assets/Documents/TaxAlert09_Reform2014.pdf).

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such effects would need to be implemented,” will be further clarified through administrative rules.<sup>93</sup>

**B. TAX POSTBOX**

“An electronic communications system [was] created between the tax authorities and taxpayers, known as a Tax Postbox.” The tax authorities will use the Tax Postbox to make notifications about administrative documents and acts. Taxpayers may use the Tax Postbox to file petitions, requests (including refunds), notices, responses to requests from the authorities, and administrative appeals against. Taxpayers may also obtain consultations about their tax situation. An electronic notice sent by the Tax Administration Service will precede notifications filed through the Tax Postbox.<sup>94</sup>

**C. ELECTRONIC TAX INSPECTION**

“An electronic audit procedure [was] established so that the tax authorities can exercise their official inspections through the tax postbox.” The taxpayer will be required to provide the necessary documentation and information for electronic tax inspections and also respond to official requests.<sup>95</sup>

**D. EXCISE TAX LAW: TAX ON FLAVORED DRINKS**

“[F]lavored drinks, concentrates, powders, syrups, essences, or extracts of flavors which when diluted produce flavored drinks” are now subject to a tax. This tax also applies “to syrups and concentrates for the preparation of flavored drinks [that] are served in open containers, using automated, electrical, or mechanical devices.” Furthermore, the tax is applicable “to all products containing monosaccharide and disaccharide sugars, and the rate will be one Mexican peso for each liter.”<sup>96</sup>

**E. TAX ON NON-BASIC FOODSTUFFS WITH A HIGH CALORIFIC DENSITY**

This so-called “junk food” tax will be levied at the rate of 8 percent and will be applied to “snacks, candies, chocolates, flans, sweets made from fruit and caramels, peanut butter and hazelnut cream, those prepared based on cereals, ice creams, water-based ices, and frozen lollipops,” as defined under the law.<sup>97</sup>

**F. ENVIRONMENTAL TAXES**

New environmental taxes will become enforceable in 2014. The first environmental tax applies to the sale and import of “fossil fuels with specific rates on propane, butane, gasoline and airplane fuel, diesel fuel, other kerosene, diesel, fuel oil, petroleum coke, coking coal, and coal, except for natural gas.” “[N]atural gas is excluded because of its low nega-

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93. *Id.* at 4.

94. *Id.* at 5.

95. *Id.*

96. *Id.*

97. *Id.*

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tive impact on the environment.” The tax is payable “through the payment of carbon credits, which are defined as those authorized in the Kyoto Protocol and supported by the United Nations within the UN Framework Convention on Climate Change.”<sup>98</sup>

The second environmental tax affects the sale and import of pesticides. The tax will span between 6 percent and 9 percent, subject to the pesticide’s degree of toxicity.<sup>99</sup>

### **XI. Proposed Energy Reforms**

In December 2013, President Peña Nieto presented before the Mexican Senate<sup>100</sup> the proposed amendments to articles 27<sup>101</sup> and 28<sup>102</sup> of the Mexican Constitution to open up Mexico’s oil, gas, and electric power sectors to further private participation.

Although only one-page long, if passed, the reforms will be the most significant change in Mexico’s energy sector legal landscape since the 1990s. But the proposed reforms—limited principally to opening the door for private companies to (i) on the oil and gas side, enter into exploration and production profit-sharing agreements with the state-owned oil monopoly PEMEX and to acquire permits for refining, transporting, distributing, storing, and selling hydrocarbons and (ii) on the electricity side, own and directly invest in electric power generation—fall short of what most multinational energy companies wanted, i.e., private oil and gas concessions and/or ownership of the reserves as well as private transmission and distribution of electricity.<sup>103</sup>

It remains to be seen, however, whether these reforms will pass. Significant opposition to these proposals exists from Mexico’s left, which has jealously guarded PEMEX’s state-owned monopoly since President Lázaro Cárdenas expropriated the oil industry in 1938.<sup>104</sup> Thus, although the PRI and PAN have the votes to pass the reforms over the objection of the PRD, if public opposition and potential social unrest builds or if the PRI and PAN fail to agree on the language of the reforms, the proposed energy reform may be shelved, yet again. Ironically, although Mexico has free trade agreements with more countries than any other nation in the world, its oil and gas laws are more restrictive than those of Venezuela, Cuba, Russia, and China.

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98. *Id.*

99. *Id.*

100. See Comité De Garantía de Acceso y Transparencia de la Información [Assurance Committee Access and Transparency of Information], GAZETA DEL SENADO, 1, 5 (Sept. 9, 2013).

101. Article 27 of the Constitution grants the Mexican State exclusive ownership rights to all petroleum found in the Mexican territory, including the continental plateau and including all natural hydrocarbons, which language is untouched by the proposed reforms. Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 27, Diario Oficial de la Federación [DO], 2 de Diciembre de 2013.

102. Article 28 currently reserves to the Mexican State all hydrocarbon and petroleum activity. The proposed amendments reserve only the exploration and extraction activity to the State. *Id.* art. 28.

103. See JED BAILEY, MEXICO’S NATURAL GAS AND ELECTRIC POWER REFORM: FIRST IMPRESSIONS 2 (Dec. 16, 2013), available at [http://energynarrative.com/Mexico\\_Gas\\_and\\_Power\\_Reform.php](http://energynarrative.com/Mexico_Gas_and_Power_Reform.php).

104. See Enrique Krauze, Op-Ed., *Mexico’s Theology of Oil*, N.Y. TIMES (Oct. 31, 2013), <http://www.nytimes.com/2013/11/01/opinion/krauze-mexicos-theology-of-oil.html?pagewanted=all&r=0>.