



In collaboration with



Human Rights Situation of Gay, Lesbian, Bisexual and Trans Persons in Mexico

Report submitted to the Committee on Economic, Social and Cultural Rights

62nd Session

September 18 to October 6, 2017

This report is submitted by

- Fundación Arcoíris por el Respeto a la Diversidad Sexual A.C.
- Las Reinas Chulas Cabaret y Derechos Humanos A.C.
- Clóset de Sor Juana A.C.
- Akahatá - equipo de trabajo en sexualidades y géneros
- Heartland Alliance for Human Needs & Human Rights
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Organización Fundación Arcoíris por el Respeto a la Diversidad Sexual A.C.; Heartland Alliance for Human Needs & Human Rights and Akahatá – equipo de trabajo en sexualidades y géneros, Las Reinas Chulas, Cabaret y Derechos Humanos A.C. and Clóset de Sor Juana A.C., are honoured to submit the following issues to the Committee on Economic, Social and Cultural Rights as a contribution to the review of the implementation of the International Covenant on Economic, Social and Cultural Rights by Mexico.

Suggested issues

Right to non-discrimination (Articles 2 and 3)

Right to a family (Article 10)

Right to social security (Article 9)

Right to health (Article 12)

1. One of the main challenges faced by LGBT persons in Mexico in relation to the full exercise of their economic, social and cultural rights is to obtain legal recognition for their different forms of family as well as for the right to same-sex marriage without any discrimination.
2. On May 17, 2014 the Mexican Executive Power issued a Decree declaring “The 17th of May to be commemorated each year as the National Day of Struggle against Homophobia”¹. This replaced a former decree instituting the same date as “Day for Tolerance and Respect towards Individual Preferences”.
3. Besides recognizing the National Day of Struggle against Homophobia, the Decree reaffirms the commitment assumed by the State in the Law Against Discrimination that mandates each of the federal powers – Executive, Legislative and Judicial – as well as those institutions regulated by them or falling under their mandate, to take inclusive measures such as developing policies against homophobia, xenophobia, misogyny and discrimination based on appearance.
4. To commemorate this date, on May 17, 2016 the Mexican President submitted four initiatives “for an inclusive Mexico” to the Parliament: a) an amendment to Article 4 of the Constitution to incorporate into the existing legal framework the criteria already set by the National Supreme Court of Justice that recognized the right to marry without any discrimination as a human right; b) an amendment to the Federal Civil Code to recognize gender identity; c) a proposal to identify all federal, State and municipal norms that could imply any form of discrimination on the basis of the already stated Supreme Court criteria; and d) to join the Core Group on Gay, Lesbian, Bisexual, Transgender and Intersex Rights at the UN.²
5. In November of the same year (2016), the Mexican Parliament through the Constitutional Items Commission, refused to legislate on the constitutional reform that would grant legal recognition to same-sex marriages at the national level, rejecting the Presidential Decree that had established a national strategy to fight homophobia in the country. In this way the Mexican State, from a discriminatory and homophobic position, denies access to marriage and to those economic, social and cultural rights derived from it to lesbian and gay couples.

¹ Decreto Presidencial; Día Nacional de la Lucha contra la Homofobia.

http://www.dof.gob.mx/nota_detalle.php?codigo=5337843&fecha=21/03/2014

² Conmemoración del Día Nacional de Lucha Contra la Homofobia, 2016. <https://www.gob.mx/presidencia/articulos/dia-nacional-de-la-lucha-contra-la-homofobia-31554>

6. In Mexico, the public health system provides basic coverage through social health insurance. Such coverage often fails to attend to the specific needs of LGBT persons who are then forced to resort to private health insurance to obtain proper coverage.
7. In Mexico, when two people marry and one of them has social health insurance, his or her spouse has the right to join the same health coverage system and the couple is registered as such by the system. Many families and a good portion of the Mexican population have access to health care in this fashion. But in the case of lesbian or gay couples, as they have no legal recognition as such nor access to civil marriage in most Mexican States, this right being denied places them in a situation of inequality and greater restrictions in terms of access to health as compared to the rest of the population.

Recommendations

Mexico should:

8. Reopen the debate and the parliamentary process at the national level (Congreso de la Unión) to guarantee recognition and legal status to same-sex marriage in all Mexican States, thus implementing Presidential instructions from May 17, 2017.
9. To carry out and implement a strategy to strengthen and circulate the National Supreme Court verdict which made the recommendation to recognize and grant legal status to civil marriage between persons of the same sex (*matrimonio igualitario*) in all Mexican States.
10. To harmonize the National Health System's institutional policies (IMMS, ISSTE, Pemex, Navy and Military Services) so that those same-sex couples that have married in the States in which they are allowed to do so can access the social insurance of which one of them is the holder, as married partners.

Right to non-discrimination (Article 2.2)

Right to education (Article 13)

11. The right to non-discrimination based on sexual orientation is recognized and protected in the Political Constitution of the United Mexican States³ and also in the Comprehensive Law on Education⁴.
12. Likewise, it is important to mention that in Mexico the right to education is supported by the Comprehensive Law on Education that guarantees access and the right to an education free from stigma, discrimination and violence to every girl, boy, adolescent and young person across the country.
13. In spite of that, on July 15, 2011, a lesbian adolescent was subjected to harassment by authorities and staff of the school she attended because of her sexual orientation, after having

³ Constitución Política de los Estados Unidos Mexicanos: http://www.diputados.gob.mx/LeyesBiblio/pdf/1_240217.pdf

⁴ Ley General de Educación: http://www.dof.gob.mx/nota_detalle.php?codigo=5313841&fecha=11/09/2013

coming out as a lesbian⁵. Due to this situation, she submitted a complaint to the National Council to Prevent Discrimination (CONAPRED) that her rights to non-discrimination, a life free from violence and access to education on conditions of equality had been violated.

14. In May 2016, school authorities denied a primary school child student access to school because of his gender expression. The family also submitted a complaint to CONAPRED, that intervened and managed to assert the child's right to education and repaired the damage caused to him.
15. Between 2015 and 2016, Fundación Arcoíris por el Respeto a la Diversidad Sexual A.C., drafted and conducted a National Survey on School Violence towards LGBT Students in Mexico, based on their Sexual Orientation, Gender Identity and Expression⁶. The survey showed that more than 80% of respondents had been subjected to verbal harassment and more than 30% to physical aggression because of their sexual orientation, gender identity and/or expression. It also revealed that a third of the surveyed students had dropped out of school in the previous year due to the violence and discrimination they suffered on those same grounds.
16. Mexico does not have a Law on Comprehensive Sexuality Education. Such a law is required to introduce a broad and inclusive notion of human sexuality in the school curricula in order to promote, respect and guarantee the human rights of LGBT students.

Recommendations

Mexico should:

17. Implement a national strategy on Non-Discrimination in School and Prevention of Violence and Bullying against LGBT children based on sexual orientation and gender identity. This could include, among other measures, a roundtable at the Federal Public Education Secretariat bringing together all relevant actors in the public and private education systems.
18. To initiate, through the Public Education Secretariat, a review process of school curricula and programmes in order to implement a Comprehensive Sexuality Education approach that includes the notion of sexual diversity.

⁵ <http://elbigdata.mx/diversidad/secundaria-del-df-se-disculpa-con-alumna-lesbiana-discriminada/>

⁶ Encuesta Nacional sobre violencia escolar basada en la Orientación Sexual, Identidad y Expresión de Género hacia estudiantes LGBT en México: <http://www.fundacionarcoiris.org.mx/2a-encuest-violencia-escolar-hacia-estudiantes-lgbt-en-mexico/>