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Sexual Minorities Left Out of Nicaragua’s New Family Code™

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Katiuska Noguera and Isabel Reyes smiled at each other shyly, both misting up a bit as they exchanged vows on a warm, breezy Thursday in the Nicaraguan capital Managua. Onlookers clapped. Someone in the background shouted "beso" just as the couple leaned in for a long kiss. Afterward, the young women posed for photographs. They also spoke to the press. "They say we’re the daughters of the devil, that we’re bad," Reyes told one television reporter. "But I know that this is love. What can be bad about love?"

The emotions Reyes and her partner felt that day in February 2014 were real. So were the flowers, the white balloons, the three-tiered cake, and the bottles of bubbly. But the "wedding," which took place just in front of Nicaragua’s Asamblea Nacional (AN) building, was not—at least not in a legal sense. It was a symbolic act, organized by lesbian, gay, bisexual, and transgender (LGBT) rights groups to protest the exclusion of same-sex couples from the country’s then pending Código de Familia.

Four other LGBT couples also exchanged vows during the ceremony, presided over by an attorney with the Centro Nicaragüense de Derechos Humanos (CENIDH) and overseen by Marvin Mayorga, an activist with the LGBT umbrella group Iniciativa de la Diversidad Sexual. "There are a half million of us who have no protection under the law," Mayorga told Agence France Presse (AFP). "We’re ready to keep demanding [rights] with peaceful, symbolic protests."

Four months later, the AN, the country’s unicameral legislature, gave final approval to the Código de Familia, much to the delight of Catholic and Evangelical church leaders, who were instrumental in making sure the legislation limits marriage and civil-union pacts to heterosexuals only. And five weeks ago, on April 8, the controversial set of norms finally went into effect, snuffing out whatever glimmer of hope Reyes, Noguera, and other LGBT couples may still have had of legalizing their partnerships.

Ley 870, as the code is known, states clearly that only "a man and a woman" can marry or enter into a civil-union pact. As such it also denies LGBT people the right to adopt—something only legally recognized couples, Nicaraguan or foreign, can do. In addition, it blocks them from accessing fertility methods to procreate and could even be used, rights groups warn, to take away custody rights of children they already have.

"We’re forced, legally speaking, to remain single. And single people aren’t allowed to adopt in this country and form a family," Mayorga told the Inter Press Service (IPS) last month. "Families in Nicaragua are diverse, but they’re imposing just one model of family."

Long overdue changes
Observers say there are reasons to applaud the 674-article Código de Familia as well. The legislation, which took several years to complete, was designed to consolidate and update dozens of disparate family-related norms, many dating back to the 1904 Código Civil. Deputy Carlos Emilio López, who helped create the legislation and push it through the AN, says the new rules are far more inclusive.
than their century-old counterparts, which were heavily influenced by conservative Catholicism and favored the rights of male family members over women and children.

Among other things, Ley 870 ups the minimum legal marriage age from 14 to 18, recognizes common-law relationships (between heterosexual couples), better protects seniors from being neglected by their children, and prohibits adults from physically punishing or humiliating children. It also establishes fixed percentage amounts (based on the number of children in a given family) that separated parents must pay in child support, and accelerates the process by which someone can seek legal recourse should their former partner fail to meet those obligations.

"A careful analysis was made so that each member of society, as individuals that form part of families, had clear rights, obligations, and duties in keeping with the country’s Constitution and laws, so that there would be no discrimination against anyone for any reason," the lawmaker, a member of the governing Frente Sandinista de Liberación Nacional (FSLN), told IPS.

**Bucking the trend**

For members of Nicaragua’s LGBT communities, nevertheless, last month’s implementation of the Código de Familia came as a huge disappointment, especially given the recent advances gay rights have made elsewhere in Latin America.

On April 13, just five days after the new Nicaraguan legislation went into effect, Chilean President Michelle Bachelet enacted a law that, starting in October, will allow both heterosexual and same-sex couples to enter into civil-union pacts (NotiSur, Feb. 13, 2015). Colombia and Ecuador also permit same-sex civil unions, while Argentina, Uruguay, and Brazil allow full-fledged marriage between same-sex partners.

Nicaragua’s gays, lesbians, and transsexuals "are an important sector of the population that has begun making their voices heard," Ramón Rodríguez, a human rights academic, told the independent news site Confidencial. "They feel excluded, that they’re the victims of a violation of the principle of universal equality and nondiscrimination."

And yet, as frustrated as they are, Nicaragua’s sexual minorities cannot be entirely surprised by the discriminatory nature of the Código de Familia—in part because of how overtly religious President Daniel Ortega has become in recent years (NotiCen, June 5, 2014) but also because of how deeply ingrained homophobia has been and continues to be in Nicaragua, where until as recently as seven years ago, homosexuality was essentially illegal.

Nicaragua implemented a de facto ban on homosexual relations in 1992 with legislation that made gay sex punishable by up to three years in prison. The law also outlawed sexual relations between unmarried partners. The rules were upheld in 1994 by the Corte Supremo de Justicia (CSJ) and stayed on the books until 2008, when Nicaragua revamped its Código Penal.

"**Heterosexual privilege**"

There have been some advances since then, most notably the designation, in late 2009, of a special ombud for sexual diversity. The position, held by lesbian activist and lawyer María Samira Montiel, serves under the human rights ombud and works directly with people who feel their constitutionally protected rights to equal treatment and nondiscrimination have been impinged on because of their sexual orientation.
But Montiel cannot be everywhere all the time, denouncing every act of discrimination or disparaging remark to which Nicaragua’s sexual minorities are subjected. William Calderón, a young pop singer from the coastal town of San Juan del Sur, says the insults he receives for being openly gay are an almost daily occurrence. "The truth is I feel so really powerless, because I can’t fight with everyone. I can’t take on everyone in the street," he explained in a phone interview with NotiSur. "It’s so hard. There are moments went it just hurts me so much. It makes me cry. It makes me angry. And I wonder: why does this happen to me? But it’s not just me. This happens to a lot of people."

Calderón, 27, has chosen to speak out in the hope that, by bringing some visibility to the issue, he can effect positive change in Nicaragua. He recently shared his experiences in an essay published by Confidencial. But for the sake of his "spiritual and personal peace," he is also tempted to leave the country, to find somewhere else, Spain perhaps, where his homosexuality wouldn’t be met with such hostility or where he could at least walk down the street holding hands with his partner.

"I don’t see public demonstrations of affection among gays or lesbians," said Calderón. "People are afraid to do that, because they’ve had the experience of feeling attacked on different occasions. The truth is that, here in Nicaragua, I can’t hold my partner’s hand or kiss him in public. That’s something that is considered obscene, something perverted. But it shouldn’t be that way. Why is love a heterosexual privilege?

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