President Proposes Changes to Constitution to Allow Gay Marriage throughout Mexico

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President Enrique Peña Nieto has proposed to send an amendment to the Mexican Constitution that would legalize same-sex marriage throughout the country. Gay marriage is legal in a handful of jurisdictions in Mexico, including Mexico City and six other states.

Peña Nieto’s proposal seeks to add the term “equal marriage” to Article 4 of the Mexican Constitution, allowing all willing and consenting citizens “to marry without being discriminated on the basis of ethnicity, nationality, disability, social condition, religion, gender, or sexual orientation.”

The office of the presidency announced Peña Nieto’s intentions on May 17, the International Day against Homophobia, Transphobia and Biphobia. Organizers chose that date to commemorate the decision to remove homosexuality from the International Classification of Diseases of the World Health Organization (WHO) in 1990.

In addition to amending the Constitution, the president said his administration would review, modify, and if appropriate, abolish all federal, local, and administrative regulations that are discriminatory. Two academic institutions have agreed to collaborate with the government on the review: the Centro de Investigación y Docencia Económicas (Center for Research and Teaching on Economics, CIDE), and the Instituto de Investigaciones Jurídicas (Institute for Judicial Research, IIJ) at Universidad Nacional Autónoma de México (UNAM).

“The message is that the society that we seek has to be one where adult men and women have the liberty to enjoy their sexuality and attraction and the desire towards another person, their sentiments of love and their desires to form a family, free of discrimination and with the support from the law of the land,” columnist Cecilia Soto wrote in the daily newspaper Excélsior.

Peña Nieto’s decision is very much in line with two opinions issued by Mexico’s high court (Suprema Corte de Justicia de la Nación, SCJN) in 2015. In the first instance, the high court published an opinion paper indicating that any definition of marriage as only a union between a man and a woman is discriminatory and in violation of the Mexican Constitution (SourceMex, June 24, 2015).

In a ruling two months later, the high court determined that the state of Campeche had violated the national Constitution when it published a statute that prevented gay couples from adopting children (SourceMex, Aug. 12, 2015).

The actions followed landmark decisions announced by the SCJN in 2010, one reaffirming Mexico City’s right to allow gay marriage and the other upholding the Mexico City government’s right to allow gay and lesbian couples to adopt children (SourceMex, Aug. 25, 2010).

**Mexico City, six states already allow gay marriage**

When the SCJN issued its position paper in 2015, the justices urged states to make changes to their legal codes to allow same-sex unions. Only the Mexican capital and the states of Coahuila, Quintana
Roo, Jalisco, Nayarit, Chihuahua, and Sonora have taken these steps. This means that gay couples must travel to one of those jurisdictions to wed, or file legal challenges on a case-by-case basis to get married.

Still, there is some movement in at least two other states. Local legislators from the center-left Partido de la Revolución Democrática (PRD), which has been at the forefront of the gay marriage issue, recently sponsored initiatives to allow gay marriage in the states of Michoacán and Morelos.

In announcing his intentions to legalize gay marriage through Mexico, Peña Nieto emphasized that his administration intends to fight against discrimination and homophobia. He said he has instructed his Cabinet to create national campaigns against homophobia.

The federal education ministry (Secretaría de Educación Pública, SEP) would be charged with assessing educational plans and creating a space within them to promote respect towards diversity.

The federal health ministry (Secretaría de Salud, SSA) would be given the task of preventing discrimination at all levels of the health care system.

The social security institute (Instituto Mexicano del Seguro Social, IMSS), which manages the country’s medical services, would have to review its bylaws to allow same-sex couple beneficiaries to receive social security services in an efficient manner.

Furthermore, Peña Nieto said the definition of marriage in the federal civil code would be modified, from “a union of one man and one woman” to “a union between two persons.” The new policies against discrimination will also apply to transgender individuals.

According to the president’s directive, federal laws will be modified to enable the minority sector full legal recognition of their gender identity in official identification documents, including passports issued domestically and by embassies and consulates abroad.

Another step proposed by the Peña Nieto government is that Mexico add a specialized group on the rights of lesbian, gay, bisexual, transgender, and intersexual people to its team at the United Nations.

**Transition could be difficult**

Despite the president’s intention to enact far-reaching changes, the transition could be difficult. Human rights activist Gloria Careaga Pérez, who works as a researcher in the gender studies program (Estudios de Género) at UNAM, said Mexico ranks second at the global level in terms of homophobia-related crimes, surpassed only by Brazil.

According to statistics compiled by non-governmental organizations, 1,218 homophobic homicides were committed in Mexico between 1996 and 2015. Those are only the cases that are known to authorities. Representatives of the organizations say only one of three or four attacks that occur is actually reported.

Careaga said that homophobia in Mexico is closely tied to misogyny and machismo, and that all stem from an idealized stereotype of masculinity. “You’re being observed and watched over, and the way you speak, move and express yourself is criticized; it’s an exaggerated social surveillance,” she said.
Still, the Peña Nieto government’s move to legalize same-sex marriage nationwide and implement a set of protections for lesbian, gay, bisexual, and transsexual (LGBT) individuals represents a strong change over the past six years. In 2010, the federal attorney general’s office (Procuraduría General de la República, PGR) was behind an effort to overturn Mexico City’s gay-marriage laws (SourceMex, Feb. 17, 2010). The presidency at that time was in the hands of the more socially conservative Partido Acción Nacional (PAN). The PGR’s efforts gained strong support from the Catholic Church, which has been very vocal in its opposition to gay marriage and other so-called moral issues like abortion and contraception (SourceMex, June 14, 2006, and Oct. 5, 2011).

As expected, the Catholic Church spoke out in opposition to Peña Nieto’s initiatives.

In a press release, the Mexican bishops’ conference (Conferencia del Episcopado Mexicano, CEM) said the “unions between two people of the same gender [cannot] be equated with marriage.” The statement was signed by Cardinal José Francisco Robles Ortega, a spokesperson for the CEM.

However, the bishops emphasized that the rights of homosexuals as individuals must be respected. “Every person, regardless of sexual orientation, is entitled to respect, dignity and compassion,” said the statement. “All types of unjust discrimination should be avoided, especially any form of aggression or violence.”

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