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Special Assembly Completes Constitution for Mexico City

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The special assembly assigned to write a new constitution for Mexico City has concluded its work, creating one of the most progressive documents for any state in Mexico. Mexico City changed its status from a federal district to full statehood in January 2016 with a vote in the federal Congress (SourceMex, Jan. 6, 2016, and March 9, 2016). However, the change could not be fully enacted until a special 100-member assembly completed a new governing document. Forty members of the assembly were appointed by the Mexican president, the federal Congress, and the Mexico City mayor, while the other 60 were elected by Mexico City voters in June 2016.

The assembly completed its work by the deadline of Jan. 31, releasing a document on Feb. 5 that spells out a broad range of individual rights for the residents of the newly formed state, commonly known by its acronym, CDMX.

The CDMX Constitution will go into effect on Sept. 17, 2018. It codifies certain elements contained in the legislation approved by Congress in January 2016, including greater autonomy for the chief executive, who will have the rank of governor but the title of chief of government (Jefe de Gobierno), and the power to appoint the city attorney and the chief of police, as well as exercise control over the budget. The federal Congress previously had full control over these matters.

A progressive document

An important provision allows the removal of public officials, including the chief executive, for malfeasance, corruption, or other crimes. Two related provisions eliminate the immunity from prosecution for elected officials and allow political trials for officials. Citizens are also given the right to initiate referenda on important issues.

According to the Constitution, the removal of an elected official can only take place when that official has served at least half of his or her term, which is three years for the executive (currently the mayor) and one-and-half years for the leaders of local entities (borough presidents, who will have the rank of mayor). To demand a revocation, a petition must have the signatures of at least 40% of registered voters.

The Constitution also provides for four types of direct citizen input on important issues, including referenda (which either citizens or the Congress can request), plebiscites (where authorities initiate the consultation), citizen consultations (initiated by citizens), and popular consultations (an issue included in the ballot on an election day). Both the referenda and the citizen consultations require the signature of 0.4% of the voter roll, which is about 35,000 signatures.

The CDMX Constitution also contains provisions that directly benefit the residents of the new state.

At the personal level, it codifies the right to marriage for same-gender couples, allows the use of medical marijuana, and legalizes the right to euthanasia. The right to abortion was also included, but not before a contentious debate that almost left this issue out of the final document, even though current Mexico City law recognizes a woman’s right to terminate a pregnancy (SourceMex,
Oct. 15, 2008, and NotiCen, Feb. 9, 2017). Instead, a provision that protected the right to life was eliminated from the final text. This provision would have conflicted with the sections on abortion and euthanasia.

Mexico City is one of three Mexican jurisdictions that have approved the legal framework to allow gay marriage (SourceMex, Feb. 17, 2010, and March 18, 2015), and the new Constitution mainly incorporates measures already in place.

Mexico City is the only entity in the country where the practice of euthanasia will be allowed. “A patient in a terminal condition and in pain must have the option of bringing their death forward,” said Jesús Ortega, a member of the constituent assembly from the center-left Partido de la Revolución Democrática (PRD).

The assembly attempted to eliminate conflict with federal law on the use of marijuana by specifying that the legalization of pot is for medical or therapeutic purposes. The federal government has not fully legalized marijuana despite a push from President Enrique Peña Nieto to eliminate restrictions on pot entirely (SourceMex, April 27, 2016). However, the Mexican high court (Suprema Corte de Justicia de la Nación, SCJN) has issued two rulings easing some restrictions on marijuana for medicinal purposes and for personal use (SourceMex, Nov. 11, 2015). Furthermore, Congress decriminalized possession of a small amount of drugs in 2009 (SourceMex, Aug. 26, 2009).

The document also contains several important principles, including the right to a living wage, the expansion of freedom of expression (created primarily for journalists), a prohibition of censorship on arts and sciences, decriminalization of social protest (where only physical damage to third parties is sanctioned), and the right to bilingual education (a measure intended specifically, but not exclusively, for students who are originally from indigenous communities).

Another important provision prohibits the privatization of water distribution and garbage collection.

“The CDMX Constitution incorporates important elements that do not exist in the federal Constitution and in the constitutions of the states,” Raúl Rodríguez Cortés wrote in the daily newspaper El Universal.

A broadly cooperative effort

According to Porfirio Muñoz Ledo, one of the coordinators of the assembly, the new Constitution was also created with a long-term vision. “The Constitution also considers long-term planning to create the conditions for a more egalitarian growth of the city,” he said. For example, the document affirms the right to a habitable city, one that guarantees the right of a healthy environment, the protection of animals, the right to move freely, and the creation of public spaces.

Muñoz Ledo said the participants in the assembly now have the task of educating the citizens of the Mexican capital about the rights and privileges contained in the document. “We want every citizen to own the Carta Magna and to know his or her rights and how to attain them.” He pointed out that the document incorporated the point of view of a broad group of participants, including members of the governing Partido Revolucionario Institucional (PRI) and the conservative Partido Acción Nacional (PAN). There were some issues where different sides did not coincide, including lowering
the voting age to 16 and creating a universal floor for rent in the city. Neither of these two issues were incorporated into the Constitution.

Santiago Creel Miranda, a representative from the PAN in the constituent assembly, agreed that participants worked cooperatively and in the end, were able to reconcile a number of proposals, particularly those put forth by Mexico City Mayor Miguel Ángel Mancera and those proposed by the PAN. These ranged from water management to the harmonization of issues related to private and public property, as well as upholding the guarantee of public protest while protecting the rights of property owners.

“Rather than create a Constitution that is oriented toward one ideology, we strived to create a document to serve the residents of CDMX,” Creel Miranda said in an interview with Ivonne Melgar, a columnist for the daily newspaper Excélsior.

“This exercise gave us a great lesson—that we can work in a pluralistic fashion without denouncing our principles,” added Creel Miranda. “Instead, we found areas where we had common ground and where we could take action. Our priority was to work in those areas rather than focus on our differences.”

Similar comments came from other participants, including former presidential candidate Gabriel Quadri de la Torre, an environmental advocate who ran under the banner of the Partido Nueva Alianza (PANAL) in the 2012 election. “We constructed [this document] despite deep discrepancies and seemingly insurmountable positions,” Quadri, a member of the constitutional assembly, wrote in a guest editorial in the daily business newspaper El Economista. “We always worked with a spirit of dedication, tolerance, and intellectual honesty.”

Quadri pointed out, however, that the resulting document was far from perfect.

“We drafted the best Constitution possible, but not necessarily the best Constitution for Mexico City,” Quadri said. “There are contradictions that could create difficulties. They will test the secondary laws and spawn constitutional challenges, many related to the operation of government and the participation of society in governance. We will have to make some repairs. For now, we have solid ground and a common platform to move forward.”

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