



MEXICO/MEXICO CITY – SOGI LEGISLATION COUNTRY REPORT
PRODUCED: MARCH 2013

Please note: This document was prepared by law students and highlights publicly-accessible information about legislation available at the time it was prepared. It is not exhaustive, nor is it updated on a regular basis. The information provided here is not a substitute for legal advice or legal assistance, and the International Human Rights program at the University of Toronto Faculty of Law cannot provide such advice or assistance.

Summary

Mexico is a federal republic comprising 31 states and the territory of the Federal District (Mexico City). According to the Constitution the states and the Federal District are free and sovereign entities within the republic. The Federal District laws cited in this report are illustrative, and not necessarily representative of state law across the country.

Federal

Discrimination by both state and private actors on grounds of gender identity and sexual orientation is prohibited by federal statute ([Political Constitution of the United Mexican States; Federal Law to Prevent and Eliminate Discrimination](#)).

On March 6, 2013 the Supreme Court of Justice determined that homophobic expressions such as "maricones" or "puñal" are discriminatory, constitute hate speech, and are not protected by freedom of expression laws. The Supreme Court determined that homophobic expressions constitute discriminatory statements even if they are expressed jokingly, since they can be used to encourage, promote, and justify intolerance against gays (Amparo directo en revision 2806/2012, March 6, 2013, Suprema Corte de Justicia de la Nación).

In 2012, the Federal government eliminated a ban on blood donations from gay and bisexual men ([Official norm for the provision of human blood and its components for therapeutic ends](#), NOM-253-SSA-2012).

Consensual sex between same-sex partners is lawful in Mexico, and the age of consent (18) is the same for same-sex and opposite-sex sexual activity ([Federal Penal Code of Mexico](#), [Federal Civil Code](#)).

Same-sex couples who are married or in civil partnership are granted access to medical and social security benefits ([Federal Law of Social Security](#)).

Federal District (Mexico City)

Discrimination by both state and private actors on grounds of gender identity and sexual orientation is also prohibited by state statute ([Civil Code of the Federal District](#)).

Discrimination on the basis of sexual orientation is criminalized in Mexico City ([Penal Code for the Federal District](#)).

Same-sex couples can enter into marriages or civil partnerships in Mexico City and are afforded the same rights and legal recognitions of married or common law opposite-sex couples respectively, including adoption, pension, and inheritance rights ([Civil Code of the Federal District](#), [Cohabitation Law for the Federal District](#)).

Subject to surgical or medical sex reassignment, individuals are permitted to change the sex recorded on their birth certificates with the approval of a legislative official ([Civil Code of the Federal District](#)).

Legal Provisions

ANTI-DISCRIMINATION

FEDERAL

[Political Constitution of the United Mexican States, 2011](#): Includes sexual orientation as grounds for protection against discrimination and incorporates universal protections against discrimination on the basis of gender and sexual orientation into its domestic law by granting constitutional status to international treaties.

Article 1 - In the United Mexican States, all individuals shall be entitled to the human rights granted by this Constitution and the international treaties signed by the Mexican State, as well as to the guarantees for the protection of these rights. Such human rights shall not be restricted or suspended, except for the cases and under the conditions established by this Constitution itself.

(Added by the decree published on June 10, 2011)

The provisions relating to human rights shall be interpreted according to this Constitution and the international treaties on the subject, working in favor of the protection of people at all times.

(Reformed by the decree published on June 10, 2011)

Any form of discrimination, based on ethnic or national origin, gender, age, disabilities, social status, medical conditions, religious, opinions, sexual orientation, marital status, or any other form, which violates the human dignity or seeks to annul or diminish the rights and freedoms of the people, is prohibited.

English translation:

http://portal.te.gob.mx/sites/default/files/consultas/2012/04/cpeum_ingl_s_reformas_al_30nov_2012_pdf_69279.pdf

Original text:

http://portal.te.gob.mx/sites/default/files/consultas/2012/04/cpeum_ingl_s_reformas_al_30nov_2012_pdf_69279.pdf

Federal Law to Prevent and Eliminate Discrimination, 2003: Prohibits discrimination on the basis of sexual preference and requires the promotion of equal opportunities and treatment for all persons.

Article 4 – “For the purposes of this Law discrimination will be understood as every distinction, exclusion or restriction that based on ethnic or national origin, sex, age, disability, social or economic status, health conditions, pregnancy, language, religion, opinion, sexual preferences, civil status or any other, has the effect of impeding or annulling the recognition or exercise of the rights and equality of all persons.”

Article 9 (XXVIII) defines one form of “discriminatory behaviour” as “promoting or indulging in physical or psychological abuse based on physical appearance, form of dress, talk, mannerisms or for openly acknowledging one's sexual preference.”

Other forms of discriminatory behaviour described in *Article 9* include – among others – impeding access to public or private education; prohibiting free choice of employment; restricting access, permanency or promotion in employment; denying or restricting information on reproductive rights; denying medical services; impeding participation in civil, political or any other kind of organisation; impeding the exercise of property rights; offending, ridiculing or promoting violence through messages and images displayed in communications media; impeding access to social security and its benefits; impeding access to any public service or private institution providing services to the public; limiting freedom of movement; exploiting or treating in an abusive or degrading way; restricting participation in sports, recreation or cultural activities; inciting hatred, violence, rejection, ridicule, defamation, slander, persecution or exclusion.

Original text:

<http://www.diputados.gob.mx/LeyesBiblio/pdf/262.pdf>

Official norm for the provision of human blood and its components for therapeutic ends, NOM-253-SSA-2012: Eliminates a regulation which explicitly banned gay and bisexual men from donating blood and instead screens donors on the basis of sexual history. As a result, HIV and Hepatitis negative gay and bisexual men with safe-sex histories may now donate blood provided they are not sex workers or injecting drug users.

1993 norm: <http://www.salud.gob.mx/unidades/cdi/nom/003ssa23.html>

Amended norm, currently in force:

<http://www.cnts.salud.gob.mx/descargas/PROY A NOM 2-1.pdf>

FEDERAL DISTRICT (MEXICO CITY)

[Civil Code of the Federal District](#), 2008: Protects against discrimination on the basis of sexual orientation, gender identity and gender expression.

Article 2 - Legal capacity is equal for men and women. No person shall for reasons of age, sex, pregnancy, civil status, race, language, religion, ideology, sexual orientation, gender identity, gender role expression, skin color, nationality, origin or social position, job or profession, economic status, physical, health or disability, be denied a service or benefit to which they are entitled or be restricted of the exercise of their rights irrespective of their nature.

Original text:

http://www.icnl.org/research/library/files/Mexico/DF_Codigo_Civil_2011.pdf

HATE CRIMES

FEDERAL DISTRICT (MEXICO CITY)

[Penal Code for the Federal District](#), 2002: Criminalizes discrimination on the basis of sexual preference.

Article 206 - A penalty of one to three years in prison or 25 to 100 days of community service and a fine equal to 50 to 200 days' salary shall be imposed on whomsoever, for reasons of age, sex, civil status, pregnancy, race, ethnic origin, language, religion, ideology, sexual preferences, skin color, nationality, origin or social position, job or profession, economic position, physical characteristics, disability or health status or any other which attempts against human dignity and has as its object nullifying or impairing the rights and freedoms of people:

- I. Provokes or incites hatred or violence;
- II. Denies a person a service or benefit to which they are entitled. For purposes of this sanction, it is considered that every person is entitled to services or benefits that are offered to the general public;
- III. Vexes or excludes any person or group of persons; or
- IV. Denies or restricts labor rights

The public servant who, for the reasons mentioned in the first paragraph of this article, delays or denies a person a process, service or benefit to which they are entitled, will be subjected to an increase of half the penalty provided in the first paragraph of this article, and will be dismissed and disqualified from any office, employment or commission for a period equal to that of the imposed sanction. All those measures for the protection of socially disadvantaged groups shall not be considered discriminatory.

Original text:

<http://docs.mexico.justia.com.s3.amazonaws.com/estatales/distrito-federal/codigo-penal-para-el-distrito-federal.pdf>

SEXUAL ACTIVITY AND AGE OF CONSENT

FEDERAL

Federal Civil Code, 1928: Establishes the age of majority as eighteen for same-sex and opposite-sex sexual activity.

Article 646 – The age of majority begins at 18 years of age.

Original text:

<http://www.diputados.gob.mx/LeyesBiblio/pdf/2.pdf>

MARRIAGE

FEDERAL DISTRICT (MEXICO CITY)

Civil Code of the Federal District, 2010: Redefines marriage (previously defined as a union between a man and a woman) as the union of two persons, providing equal rights and legal recognition of marriage to married same-sex couples, including adoption and inheritance rights.

Article 146 – Marriage is the free union of two people in the community of life, in which both owe each other respect, equality and mutual support. Marriage must be

celebrated before the Judge of the Civil Registry and follow the formalities set out in this code.

Original text:

<http://www.ordenjuridico.gob.mx/Documentos/Estatal/Distrito%20Federal/wo29081.pdf>

Note: On August 10, 2010 the [Mexican Supreme Court upheld the constitutionality](#) of Article 146 of the [Civil Code of the Federal District](#) and ruled that Mexico City marriages are to be legally recognized throughout the entire country regardless of variations in state laws.

PARTNERSHIP RECOGNITION AND BENEFITS

FEDERAL DISTRICT (MEXICO CITY)

[Cohabitation Law for the Federal District, 2006](#): Recognizes registered same-sex domestic partnerships and recognizes property and inheritance rights to registered same-sex partners.

Article 2 – A domestic partnership is a bilateral legal act established when two natural persons of different or the same sex, of age of majority and with full legal capacity, establish a common household, with the intention of permanence and mutual aid.

Article 4 – A domestic partnership is not constituted by persons united in marriage, in concubinage (unregistered cohabitation) and those that remain in a valid domestic partnership.

Original Text:

<http://www.df.gob.mx/index.php/ley-de-sociedad-de-convivencia-para-el-distrito-federal-matrimonio-entre-personas-del-mismo-sexo>

Note: Mexican law distinguishes between the words “Sociedades de Convivencia” and “Concubinatos.” As explained in the Federal District’s official webpage, the difference is that Sociedades de Convivencia are registered unions that require that both partners enter into a “cohabitation” agreement, whereas Concubinatos is a status conferred onto unregistered relationships involving two or more years of uninterrupted cohabitation.

FEDERAL

Federal Law of Social Security, 2012: Describes “beneficiaries” in gender-neutral terms making it possible for same-sex spouses or partners to claim the same social benefits recognitions of as those of married or common law opposite-sex couples.

Article 5A (XII) - Beneficiaries: the spouse of the insured or pensioner and in their absence, the civil partner, as well as the ascendants and descendants of the insured or pensioner which are identified in the Law.

(Beneficiarios: el cónyuge del asegurado o pensionado y a falta de éste, la concubina o el concubinario en su caso, así como los ascendientes y descendientes del asegurado o pensionado señalados en la Ley.)

Original text:

<http://www.diputados.gob.mx/LeyesBiblio/pdf/92.pdf>

ACCESS TO REPRODUCTIVE TECHNOLOGY, ADOPTION AND PARENTING

FEDERAL DISTRICT (MEXICO CITY)

Civil Code of the Federal District, 2010: The redefinition of marriage in Article 146 makes it possible for married same-sex partners and cohabitants to adopt children under Article 391.

Article 391 – Who may adopt:

- I. Spouses, in joint custody, who have at least two years of marriage.
- II. Cohabitants, in joint custody, who have lived together uninterruptedly for at least two years.
- III. Single persons over twenty five years of age.

[...]

- IV. The spouse or common law partner of the child’s parent individually exercising parental authority and demonstrating a seamless coexistence of at least two years.

Spouses and cohabitants can adopt if both agree to consider the adopted as their child, even if only one of the two meets the age requirement referred to in the preceding section, provided that the age difference between either of the adopters and the adopted is at least 17 years.

In all cases both spouses or cohabitants must appear before the judicial body of the adoption process.

Original Text:

<http://www.ordenjuridico.gob.mx/Documentos/Estatal/Distrito%20Federal/w029081.pdf>

Note: The Supreme Court ruled on August 16, 2010 that under the legislation of the Federal District, all married persons "must have the same status as any other couple, regardless of sexual preference or orientation."

<http://www.unhcr.org/refworld/topic,4565c22547,4a30d9792,507547e22,0,,MEX.html>

GENDER IDENTITY RECOGNITION

FEDERAL DISTRICT (MEXICO CITY)

Civil Code of the Federal District, 2008: Defines gender identity independent of sex, outlines psychological, hormonal and surgical sex reassignment procedures, and permits individuals, upon approval by a judge, to change the sex and name recorded in their birth certificates.

Article 135 Bis – They may require a new birth certificate upon sex reassignment, with a note in the original birth certificate notifying the change, those persons which require recognition of their gender identity.

(Pueden pedir el levantamiento de una nueva acta de nacimiento por reasignación de concordancia sexo-genérica, previa la anotación correspondiente en su acta de nacimiento primigenia, las personas que requieran el reconocimiento de su identidad de género.)

Gender identity is to be understood as the personal conviction of belonging to the male or female gender; it is unmodifiable, involuntary and may be different from the person's original sex.

The reassignment for the achievement of sex-gender concordance is a process of professional intervention where a person obtains concordance between their physical aspects and their gender identity which may include part or all of: training in gender role expression, hormone therapy, supportive psychotherapy or the surgical procedures required in the process, and which, by judicial decision, will result in a legal identity of man or woman, accordingly.

Gender role expression will be understood as the set of manifestations related to a person's style of dress, verbal or bodily expressions, and behaviour.

The rights and obligations granted prior to reassignment for the attainment for sex-gender concordance are not modified nor extinguished by the person's new legal identity.

http://www.icnl.org/research/library/files/Mexico/DF_Codigo_Civil_2011.pdf