

Mexico

Country Conditions Report

Created by the Sexual Orientation and Gender Identity Working Group

International Human Rights Program

University of Toronto

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| I. Introduction |
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Refugee claims made by Mexican citizens in Canada based on LGBTQ+ identification have been largely unsuccessful due to the availability of an Internal Flight Alternative (IFA) within Mexico: the Federal District of Mexico City. Claims based on transgender identity specifically have been successful based on the lesser social acceptance of transgender individuals in Mexican society and evidence that the state is unable to offer sufficient protection to transgender individuals at this time.

Same-sex relationships and homosexual sex are not criminalized under Mexican law. However, there is no federal law legalizing same sex marriage in Mexico. Same sex marriages are legal in Mexico City and the Mexican Supreme Court ruled in 2010 that Mexico City marriages are to be legally recognized throughout the entire country regardless of variations in state laws. 19 additional states (out of 32) have legalized same-sex marriage since that ruling. The Supreme Court ruled in 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.”[[1]](#footnote-0)

There is some protection for LGBTQ+ identifying individuals through anti-discrimination law: there is a prohibition on discrimination in employment based on sexual orientation and a constitutional prohibition of discrimination based on sexual orientation. Moreover, the *Federal Law to Prevent and Eliminate Discrimination* was amended to include homophobia and violence against sexual minorities as discrimination grounds. However, it is important to note that gender identity is not protected. Despite the existence of formal protections around sexual orientation, advocates maintain that these laws have not prevented discrimination and violence.[[2]](#footnote-1) It is not clear that the enactment of these laws has led to an improvement in the treatment of LGBT people or of transgender women in particular.[[3]](#footnote-2)

| II. Legislation |
| --- |

***Anti-Discrimination***

*Federal*

***Political Constitution of the United Mexican States***​, **1917**[[4]](#footnote-3)

* This statute 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.

*Excerpt: Title 1, Chapter 1, Article 1*[[5]](#footnote-4)

“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.

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.

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.”

***Federal Law to Prevent and Eliminate Discrimination***​**, 2003**[[6]](#footnote-5)

* ​Prohibits discrimination on the basis of sexual preference and requires the promotion of equal opportunities and treatment for all persons.

*Excerpt: Chapter 1 Article 1 (III)*​[[7]](#footnote-6)

“Discrimination: For the purposes of this law, discrimination shall be understood as any distinction, exclusion, restriction or preference that, by action or omission, with or without intent, is not objective, rational or proportional and whose purpose or result is to hinder, restrict, prevent, undermine or cancel the recognition, enjoyment or exercise of human rights and freedoms, when based on one or more of the following reasons: ethnic or national origin, the color of skin, culture, sex, gender, age, disabilities, social, economic status, of health or legal, religion, physical appearance, genetic characteristics, situation immigration, pregnancy, language, opinions, sexual preferences, identity or political affiliation, marital status, family status, family responsibilities, language, criminal records or any other reason;

Discrimination will also be understood as homophobia, misogyny, any manifestation of xenophobia, racial segregation, anti-Semitism, as well as racial discrimination and other forms related intolerance.”

*Excerpt: Article 9 (XXVIII)*[[8]](#footnote-7)

“Based on the provisions of article 1 of the Constitution and article 1 of the second paragraph, section III of this Act regards as discrimination, among others…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* i​nclude: denying or limiting information on sexual and reproductive rights (VI), 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.

***Official norm for the provision of human blood and its components for therapeutic ends***​**, 2004**[[9]](#footnote-8)

* This norm 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.

**Federal Penal Code, 1931**[[10]](#footnote-9)

* Criminalizes employment discrimination based on sexual orientation and gender identity and aggravates penalties for employers.

*Excerpt: Article 149ter(2)*[[11]](#footnote-10)

“A penalty of one to three years in prison or 150 to 300 days of community service for reasons of ethnicity, nationality, race, skin color, language, gender, sex, sexual preference, age, marital status, national or social origin, social or economic status, health condition, pregnancy, political opinions or any other violations of human dignity or impairments on rights and freedoms for any of the following behavior:

(I) Deny a person a service or benefit to which he is entitled;

(II) Deny or restrict labor rights, mainly because of gender or pregnancy;

Or (III) Deny or restrict educational rights.”

*Federal District (Mexico City)*

***Civil Code of the Federal District*,** ​**1928**[[12]](#footnote-11)

* P​rotects against discrimination on the basis of sexual orientation, gender identity and gender expression.

*Excerpt: Article 2*[[13]](#footnote-12)

*“*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 colour, 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.”

***Hate Crimes***

*Federal District (Mexico City)*

***Penal Code of the Federal District*,**​ **2002**​[[14]](#footnote-13)

* Criminalizes discrimination on the basis of sexual preference.

*Excerpt: Article 206*[[15]](#footnote-14)

“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.”

***Sexual Activity and Age of Consent***

*Federal*

***Federal Civil Code***​**, 1928**[[16]](#footnote-15)​

* Establishes the age of majority as eighteen for same-sex and opposite-sex sexual activity.

*Excerpt: Article 646*​[[17]](#footnote-16)

“The age of majority begins at 18 years of age.”

***Marriage***

*Federal District (Mexico City)*

***Civil Code of the Federal District*, 1928**[[18]](#footnote-17)

* R​edefines 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.

*Excerpt: Article 146*[[19]](#footnote-18)

“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.”

***Partnership Recognition and Benefits***

*Federal District (Mexico City)*

***Cohabitation Law of the Federal District***​**, 2006**[[20]](#footnote-19)

* Recognizes registered same-sex domestic partnerships and recognizes property and inheritance rights to registered same-sex partners.

*Excerpt: Article 2*[[21]](#footnote-20)

​“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.”

*Federal*

***Federal Law of Social Security***​**, 1995**[[22]](#footnote-21)

* 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.

*Excerpt: Article 5A (XII)*[[23]](#footnote-22)

“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.”

***Access to Reproductive Technology, Adoption and Parenting***

*Federal District (Mexico City)*

***Civil Code of the Federal District, 1928***[[24]](#footnote-23)

* The redefinition of marriage in Article 146 makes it possible for married same-sex partners and cohabitants to adopt children under Article 391.

*Excerpt: Article 391*[[25]](#footnote-24)

"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.

[...]

V. 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.”

***Gender Identity Recognition***

*Note: In Mexico, there are no uniform federal laws regarding name changes and gender marker. Only the Federal District of Mexico City has taken measures to recognize gender identity, allowing trans people to change their name and gender on identity documents.*

*Federal District (Mexico City)*

***Civil Code of the Federal District*,**​ **1928**[[26]](#footnote-25)

* 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.

*Excerpt: Article 135 Bis*[[27]](#footnote-26)

*“*​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.

Gender identity is to be understood as a personal and internal conviction, as each person perceives himself, which may or may not correspond to the sex assigned at birth.

In no case will someone be required to prove any surgical intervention, therapies or other diagnosis and/or procedure for the recognition of gender identity.

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.”

*Excerpt: Article 135 Ter*[[28]](#footnote-27)

*“*​The requirements for a new birth certificate are laid out:

The applicant must be Mexican, over 18 years old and provide the following documents:

I. A filled application;

II. Copy of birth certificate;

III. Original and photocopy of official ID;

IV. Proof of address.”

| III. Canadian Jurisprudence |
| --- |

***Immigration and Refugee Board of Canada Decisions***

The jurisprudence from the ​*Immigration and Refugee Board* ​(IRB) since 2011 has held in all cases that homosexuality is not sufficient grounds for “convention refugee” status. Most cases emphasized that “Internal Flight Alternatives” presented a compelling alternative for applicants who are threatened in their current living environment and note Mexico City’s Federal District as an attractive option due to the greater acceptance of homosexuality and the legality of gay marriage there.

Transgender individuals are distinguished from cis-gendered lesbian, gay, bisexual, and queer individuals on the basis that they face a greater risk of persecution and are less accepted in Mexican society. The lack of progress towards acceptance even in the large cities of Mexico makes an Internal Flight Alternative less compelling. In 2011, a transgender woman was granted refugee status due to Mexico’s inability to provide adequate protection to transgender persons. The situation of transgender people may have improved or changed since 2011, but the courts have not produced much guidance in this area.

The following section summarizes nine cases that exemplify the IRB’s treatment of Mexican refugee and immigration applicants who put forth evidence relating to sexual orientation or gender identity.

**1.** ***X (Re)*,** [**2012 CanLII 99930 (CA IRB)**](https://canlii.ca/t/g62kl)

**Holding:** The claimant has an internal flight alternative available to him in Mexico City, in the Federal District. The claim for refugee protection is therefore rejected.

· The claimant is a gay man from Mexico

· Panel is of the opinion that the claimant will certainly and objectively face unpleasant challenges and even, perhaps, discrimination if he returns to his previous residence in Mexico

· IFA option is given live in one of Mexico’s large cities, sexuality is tolerated

The panel could not conclude that the claimant would be persecuted by reason of his sexual orientation and, furthermore, that he would be subjected to a risk to his life or to a risk of cruel and unusual treatment or punishment. The internal flight alternative provided a safe alternative to immigrating to Canada.

**2.** ***X (Re)*,** [**2012 CanLII 98289 (CA IRB)**](https://canlii.ca/t/g0l11)

**Holding:** The claimant has an internal flight alternative available to him in Mexico City, in the Federal District. The claim for refugee protection is therefore rejected.

* Claimant was subject to attempted murder, extortion on multiple occasions, and was mocked, insulted and ridiculed throughout his life because he is homosexual.
* The internal flight alternative (IFA) is a limit on refugee status that potentially applies when a claimant's risk of persecution is confined to a specific area of a country.
* In certain regions, discrimination persists in the workplace and in society in general.

In Mexico City’s Federal District people can live as homosexuals without any particular problems, since “same-sex unions” are recognized and there are an increasing number of measures that benefit homosexuals, NGOs etc. Therefore, despite experiencing multiple threats related to his homosexuality, the claimant remains eligible for an IFA.

**3.** ***X (Re)*,** [**2012 CanLII 95535 (CA IRB)**](https://canlii.ca/t/fxlxc)

**Holding:** The claim for refugee protection is rejected because the claimant failed to demonstrate on a balance of probabilities that his return to Mexico would personally expose him to threats to his life, or a risk of cruel and unusual treatment or punishment, or a risk of torture as defined in subsection 97(1) of the IRPA.

* The overall situation for homosexuals in Mexico is not ideal, and homophobic behaviour persists, the panel did not find sufficient evidence to conclude that a serious possibility of the claimant being persecuted existed in the event that he returned to Mexico and due to his homosexuality.
* Rasaratnam and Thirunavukkarasu – established two-prong test to determine whether such a possibility existed and to then assess whether it was unreasonable for the claimant to seek refuge there

The panel felt that if the claimant was hesitant about continuing to live in XXXX, fearing that he would see his supposed attacker again, he could have relocated elsewhere in Mexico. The cities of Puerto Vallarta, Guadalajara and the Federal District of Mexico City have been identified as safe locations.

**4.** ***X (Re)*,** [**2012 CanLII 99837 (CA IRB)**](https://canlii.ca/t/g34x8)

**Holding:** The panel is of the opinion that the claimant has not established, on a balance of probabilities, the essential elements of her claim and, therefore, that she has not discharged her burden of demonstrating that she would face a serious possibility of persecution or a probability of being subjected to a risk to her life, to a risk of cruel and unusual treatment or punishment, or to a danger of torture, should she return to her country.

* The claimant, who is 35 years old, alleged that she is a lesbian and that she has been discriminated against all her life because of her sexual orientation.
* The claimant alleged that she heard that [her partner]’s homophobic father had been trying to find them in [their city of residence] and that she and [her partner] moved to the [another] city 2008.
* The claimant alleged that she was in [another city] for work in 2009, when she was forcibly confined and robbed.

The panel was concerned about the evidence that the forcible confinement and robbery was, in reality, related to the claimant’s partner’s father or her sexuality. Further, the panel did not accept the claimant’s testimony that she could not return to Mexico out of fear that she would be discriminated against for her sexual orientation because she could return to another part of Mexico, such as Mexico City.

**5.** ***X (Re)*,** [**2012 CanLII 91398 (CA IRB)**](https://canlii.ca/t/fwdrh)

**Holding:** The Panel determines that the claimants are neither Convention refugees nor persons in need of protection pursuant to section 96 and subsection 97(1) of IRPA. The Refugee Protection Division therefore rejects their claims for refugee protection.

* The principal claimant (PC) and her two minor sons are citizens of Mexico. They claim refugee protection pursuant to section 96 and subsection 97(1) of the Immigration and Refugee Protection Act (IRPA).
* The PC also stated that she was a lesbian who had entered into a homosexual relationship in Mexico and that, as a result, the threat of violence at the hands of her former common law spouse increased.
* Counsel argued that given the PC’s sexual orientation as a lesbian that she faced an increased risk of harm in Mexico.
* Opinion of state protection was influenced by the claimant’s belief that all police in Mexico are corrupt

The Panel finds, on a balance of probabilities, that the PC did not take all reasonable steps to seek state protection in Mexico. The PC’s initial PIF narrative was dated August 6, 2009 and it stated that she and her children were seeking protection on the grounds of having been victims of domestic violence in Mexico at the hands of the father of the minor claimants and the PC’s former common law spouse. Two years later the PC submitted an amended narrative in which she added two new grounds for her claim for refugee protection. The PC stated that she additionally feared her former common law spouse because he was a powerful figure involved in organized crime as a member of the Los Aztecas drug cartel in Mexico. She described in great detail his and his family’s involvement in violence and drug trafficking and having ties to organized crime and she also described the involvement of corrupt police officers. The panel did not find that this testimony was credible on a balance of probabilities.

**6.** ***X (Re)*,** [**2011 CanLII 96969 (CA IRB)**](https://canlii.ca/t/fv1ss)

**Holding:** The claimant is not granted refugee status because tribunal determines that an IFA is a realistic and attainable option, and that the claimant would not be required to encounter a great physical danger or undergo undue hardship in travelling there or staying there.

* Claimant is a lesbian and fears assault from her father for reason of her sexual orientation.
* Claimant was assaulted and threatened with rape by two individuals in 2007. Threatened at work
* The determinative issues are credibility, state protection, and Internal Flight Alternative.

The claimant has not discharged herself of the burden of proof which lays with her to show that she does not have an IFA and did not show efforts to get corroborative evidence of the existence to persons referenced in her testimony. The tribunal concludes that an IFA is a reasonable option in the circumstances of this case. Additionally, there were several credibility issues with the claimant’s testimony.

**7.** ***X (Re)*,** [**2011 CanLII 96303 (CA IRB)**](https://canlii.ca/t/ftnd2)

**Holding:** The Panel finds that the claimants are neither Convention refugees nor persons in need of protection.

* The claimants are 33- and 29-years old, respectively, and former residents of Mexico D.F. They allege to be gay and common-law partners.
* Claimant allege he was beaten and raped in Mexico City, and received threatening messages following the assault referencing his sexuality.
* Upon their return to Mexico in 2010, the claimants allege they saw cars watching them and they received pictures in the mail of their faces smeared with blood and messages on the back that they were dead.
* The claimants did not file any complaint with police as he felt the police was infiltrated by this gang.
* The claimant’s counsel alleged an apprehension of institutional bias on the part of the Board but the Panel rejects this claim.

The Panel finds certain crucial points of the claimants story not credible, and further finds that there is adequate State Protection for them in Mexico. The panel submits evidence of the acceptance of LGBTQ+ individuals in Mexico including: government amended the civil code to include transgender rights, Mexico has been recognized as the second country in Latin America to provide national anti-discrimination protection for lesbians and gays. CONAPRED, a powerful agency, was established to investigate acts of discrimination, to establish policies to prevent discrimination, and to foster compliance with international human rights treaties ratified in Mexico, The Law of Society and Coexistence legalizes same-sex unions in the Federal District, and eventually throughout the nation, and there is an annual Lesbian, Gay, Bisexual and Transgender Pride March usually held in Mexico City. The panel also says that one cannot say that there is a complete breakdown of state protection in Mexico, or that the government is dysfunctional or in disarray and, therefore, it must be assumed that the State is capable of providing adequate protection to its people.

With respect to the question of institutional bias in the board, the evidence fails to show that these allegations meet the test for institutional bias. As stated in Arsenault-Cameron v. Prince Edward Island, in a test of apprehension of bias, “a real likelihood of bias must be demonstrated,” and in Wewaykum that apprehension must rest “on serious grounds, in light of the strong presumption of judicial impartiality.” In Arthur v. Canada, “an allegation of bias cannot be done lightly… cannot rest on mere suspicion, pure conjecture or mere impressions of an applicant… must be supported by material evidence.”

**8.** ***X (Re)*,** [**2011 CanLII 100693 (CA IRB)**](https://canlii.ca/t/g7n3f)

**Holding:** The Panel determines that the claim to be in need of refugee protection pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act (IRPA) cannot be allowed.

* The claimant, 26 years old, a citizen of Mexico fears being murdered by an ex-lover who has repeatedly threatened his life, and may have killed his ex-partner before he left Mexico.
* The panel holds the claimant did not provide “clear and convincing” evidence that the Mexican state cannot or will not protect him and that there were other problems with his testimony.
* The panel relies on Thirunavukkarasu the Court of Appeal established that the onus is on the claimant to demonstrate why, on a balance of probabilities, he faces a serious risk of persecution in a part of the country where there might be an internal flight alternative.
* The claimant stated that, because of his sexual orientation, he faced discrimination in his environment for years.

The panel holds that the Mexican state, “functions normally and is not in a situation of complete breakdown” as the basis of the determination that, “the claimant’s country is presumed to be capable of protecting him, and this requires him to seek this protection before claiming refugee protection elsewhere, in this case, here in Canada.” The panel concluded that the discrimination alleged by the claimant based on his sexual orientation did not amount to persecution. Overall the panel determined that the claimant’s fear has no objective basis and that regardless he can access state protection and an IFA in Mexico.

**9.** ***X (Re)*,** [**2011 CanLII 67655 (CA IRB)**](https://canlii.ca/t/fnlrf)

**Holding:** The panel is also of the opinion that there is a serious possibility that the claimant would be persecuted because of her sexual identity if she had to return to live in Mexico.

* The claimant is a Mexican citizen and a transgender person invoking section 96 and subsection 97(1) of the Immigration and Refugee Protection Act (IRPA).
* While living in the United States prior to claiming refugee status in Canada, the claimant was convicted of trafficking drugs after bringing a toiletry bag onto her school campus in compliance with the request of an ex.
* Section 98 of the IRPA states that a person described in Article 1E or F of the Refugee Convention is not a refugee or a person in need of protection if he has committed a serious non‑political crime outside the country of refuge prior to his admission to that country as a refugee.
* The panel is of the opinion that the claimant should not be excluded under Article 1F(b) of the Convention from the protection granted under section 96 and subsection 97(1) of the IRPA.
* The panel determines Mexico is unable to provide adequate protection to transgender persons.

Looking at the particular circumstances of this case, the panel cannot conclude that there are serious reasons for considering that the claimant committed a serious non‑political crime given the particularly humiliating circumstances of her arrest and the understandability of the reasons she pled guilty although her boyfriend had used her as a “mule”. The claimant claims persecution under section 96 due to harassment, violence, interactions with police officers, and discrimination in finding work which had pushed her into prostitution. The panel observed the documentary evidence that while Mexico is becoming increasingly open toward homosexual individuals, the situation of transgender people remains very problematic, and that the Mexican state is unable to provide adequate protection to transgender persons, even in Mexico City, the usual IFA.

***Federal Court of Canada Decisions***

**1.** ***Andrade v. Canada (Minister of Citizenship & Immigration)*,** [**2011 FC 842**](https://canlii.ca/t/fm90x)

**Holding:** Applicant’s refugee claim was denied based on the finding that he had an IFA in Mexico City. His application for judicial review was dismissed.

* Applicant faced abuse from family because he was a homosexual.
* Applicant's claim for refugee protection was not premised on fear of persecution because of his sexuality outside of his own family.
* Applicant's family was not threat to him in Mexico City.

The applicant did not express fear of persecution in Mexico City based on his sexuality and the board therefore deemed it reasonable to conclude that Mexico City was a viable IFA for the applicant.

# IV. Domestic Jurisprudence

***Mexican Supreme Court Decisions***

1. Second District Court on Gay Marriage – October 2018[[29]](#footnote-28)
   * ​**Mexican court ruled on October 19, 2018 that the federal government must grant a marriage license to a same-sex couple living in the United States.**
   * **The authorities should embrace the decision, which is consistent with Mexico’s obligations under international law and its own stated commitment to the rights of lesbian, gay, bisexual, and transgender (LGBT) people.**
2. Supreme Court on Same-Sex Marriage – June 2015[[30]](#footnote-29)

* **The court ruled in a decision published on June 19 that laws restricting marriage to a man and a woman were unconstitutional.** 
  + **The decision, based on five separate rulings, means gay couples may marry by court injunction in states which have not legalized same-sex unions. Until state legislatures change their statutes, however, the couples must still petition courts on a case by-case basis.**

1. Supreme Court on Adoption by LGBTQ+ Couples – August 2010[[31]](#footnote-30)
   * **Mexico’s Supreme Court upheld a Mexico City law allowing married same-sex couples to adopt children.**

# V. International Law

***UN Treaties*[[32]](#footnote-31)**

| **Treaty** | **Date of Signature** | **Date of Ratification** |
| --- | --- | --- |
| ICCPR | N/A | 1981 |
| ICCPR - First OP | N/A | 2002 |
| ICCPR - Second OP | N/A | 2007 |
| ICESCR | N/A | 1981 |
| ICESCR - OP | N/A | N/A |
| CAT | 1985 | 1986 |
| CAT - First OP | 2003 | 2005 |

***Human Rights Committee***

Concluding Observations on the Sixth Periodic Report, 4 December 2019[[33]](#footnote-32)

* **There is a high level of discrimination and violence motivated by the victim’s sexual orientation and gender identity.**
* **There are reports about invasive medical procedures being performed on intersex children.**

There is discrimination, and a high level of violence, including a large number of homicides, that is motivated by the victim’s sexual orientation and gender identity. No consolidated data on investigations, prosecutions or convictions for these cases is available. There are also reports about irreparable and invasive medical procedures being performed on intersex children.[[34]](#footnote-33)

The State party should increase its efforts to combat stereotypes and prejudice against LGBTQ+ persons and guarantee that acts of discrimination and violence directed against them are prevented. The State should also ensure acts of violence are properly investigated and that victims have safe complaint mechanisms.

***Committee on Economic, Social and Cultural Rights***

Mexico completed its last ICESCR periodic report in 2018. There was no mention of LGBTQ+ issues beyond the Committee recommending that Mexico redouble its efforts to prevent and combat discrimination against LGBTI persons, including by carrying out awareness campaigns.[[35]](#footnote-34)

***Committee Against Torture***

There is legislation establishing the absolute prohibition of torture. The latest state report contains no mention of torture in relation to LGBTQ+ persons.

***Universal Periodic Review by the Human Rights Council***

Mexico’s most recent review was conducted between 2018-2019:

National Report, 23 August 2018[[36]](#footnote-35)

* Mexico formally recognizes discrimination based on sexual identity.
* Mexico recognizes sex changes for the issuance of passports.
* The Attorney General’s Office of Mexico has created a “strategy for dealing with lesbian, gay, bisexual, transgender and intersex persons, which envisages the creation of statistical registers as well as information and awareness-raising campaigns.”
* The Mexican Constitution guarantees “the rights of same-sex couples to marry, adopt, access social security, receive alimony, and enjoy family life.”[[37]](#footnote-36)

Working Group Report, 27 December 2018[[38]](#footnote-37)

Various countries made recommendations to Mexico to improve its record on LGBTQ+ issues. For example, Uruguay suggested that Mexico include the LGBTI population in the 2018-2024 National Development Plan with a view to guaranteeing the full protection of their rights.[[39]](#footnote-38)

***Inter-American Commission on Human Rights***

Mexico Country Report, 2015[[40]](#footnote-39)

* **LGBT persons in Mexico still face high levels of violence.**
* **There have been some improvements in Mexico City, but stereotypes and prejudice persist in many parts of the country.**

In its most recent country report on Mexico, the Commission cited a transgender organization based in Europe for the fact that Mexico has the second highest number

of murders on account of gender identity or expression. It also cited statistics on the high number of murders and violent attacks due to the victim’s LGBT identity.[[41]](#footnote-40)

The situation for LGBT individuals is best in Mexico City. The *Law to Prevent and Eliminate Discrimination of Mexico City* explicitly mentions the terms “sexual preference” and “gender identity.”In March 2015, Mexico City put out a decree that permits the recognition of the identity of transgender persons.

The IACHR urged Mexico to adopt the necessary measures to investigate, punish and repair acts of violence against LGBT persons according to international standards. It also urged Mexico to adopt necessary measures to eradicate social discrimination towards LGBT persons and to prevent violence.[[42]](#footnote-41)

| VI. Government Reports |
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***Canada***

Immigration and Refugee Board of Canada, ​*Mexico: Situation of sexual minorities, including in Mexico City; protection and support services offered by the state and civil society* (16 February 2018)[[43]](#footnote-42)

* ​**Emphasizes that the treatment of sexual minorities varies from state to state in Mexico.**
* ​**Finds that there is no apparent federal law on same-sex marriage in Mexico; regulation is therefore dependent on the state.**
* **There were 202 murders of individuals based on sexual orientation or gender identity in Mexico from January 2014 to December 2016, including 108 transgender women. The murder rate peaked in 2016.**

This report outlines the dramatic discrepancies in the treatment of LGBTQ+ I individuals from state to state in Mexico. The report also indicates that while Mexico has made many federal changes to support its LGBTQ+I population, these legal protections are not always effective at reducing hate and discrimination and can even have the opposite effect. This is evident in Mexico City, which has both the greatest legal protections of LGBTQ+I individuals as well as the highest rate of transgender murders in the country. 76 LGBTQ+I individuals were murdered in Mexico in 2016. Of the 202 murders of LGBTQ+I individuals that occurred between January 2014 and December 2016, 108 were transgender women, 93 were gay men, and one was a lesbian woman.

***United States of America***

US Department of State, *2020 Country Reports on Human Rights Practices: Mexico* (30 March 2021)[[44]](#footnote-43)

* **Despite growing social acceptance and federal laws prohibiting discrimination, discrimination based on sexual orientation and gender identity is prevalent.**

In the first half of the year, the OHCHR reported 25 hate crime homicides committed against LGBTI persons. Civil society groups allege that police routinely subject LGBTI persons to mistreatment while in custody. There are also reports that the government does not always investigate and punish those complicit in abuses, especially outside Mexico City.

| VII. Reports from International Agencies and Non-Governmental Organizations |
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1. Organization for Economic Co-operation and Development, *How Does Mexico Compare?* (2019)[[45]](#footnote-44)

* **In 2017, according to the National Survey on Discrimination, 1.9% of the Mexican population identified as lesbian, gay, or bisexual.**
* **Mexicans scored nearly 5 on the 1 to 10 acceptance of homosexuality scale.**
* **Mexico prohibits discrimination based on sexual orientation in employment.**

1. International Lesbian, Gay, Bisexual, Trans and Intersex Association, ​*State-Sponsored Homophobia 2019*​ (2019)[[46]](#footnote-45)

This report examines homophobia worldwide and includes only one article that discusses Mexico, entitled “Homophobia in Mesoamerica” on page 109.

* **While same sex marriage was legalised in Mexico in 2009, the protections for LGBT individuals vary at the state level.**
* ​**In 2011, Mexico passed an anti-discrimination law, which includes recognition of discrimination on the basis of sexual orientation.**
* **In 2015, Mexico passed the Identity Law, which also focused on preventing and eliminating discrimination.**
* ​**It is the responsibility of the states to adopt and implement the laws passed at the federal level. So far, 11 of the 32 Mexican states have adopted the above legislation, including most recently Chiapas, Puebla, and Baja California.[[47]](#footnote-46)**

1. ​Transgender Law Center & Cornell University Law School LGBT Clinic, ​*Report on Human Rights Conditions of Transgender Women in Mexico* ​(2016)[[48]](#footnote-47)

* **The problems faced by transgender women in Mexico have actually worsened since same-sex marriage was allowed in 2010 (3).**
* ​**Violence against the LGBT community has increased since same-sex marriage was allowed in 2010. This is likely a manifestation of backlash towards progressive changes in the law (4).**
* **There are no federal laws explicitly protecting transgender individuals from discrimination on the basis of their gender identity as opposed to their sexual orientation (10).**
* ​**Mexico has the second-highest index of crimes motivated by transphobia in Latin America, behind Brazil (15).**
* ​**The HIV infection rate of transgender women in Latin America is 35%, the highest of any group.**
* **According to the Citizens’ Commission against Hate Crimes, there are on average three homophobic murders every month in Mexico (26).**

This extensive and in-depth report critically analyzes the condition of transgender women in Mexico. The report highlights transgender women as being particularly at risk of discrimination and serious harm in Mexico, including murder. Transgender individuals are not protected from discrimination on the basis of their gender identity, i.e. their transgender status.[[49]](#footnote-48) Because of this, transgender women often face employment discrimination and are forced to turn to sex work to earn a living.[[50]](#footnote-49)

Although Mexico City is the most LGBTQ+-friendly locale in Mexico, it continues to have the greatest number of “homicides of LGBT people due to homophobia or transphobia.”[[51]](#footnote-50) The report highlights that although news law have added increased legal protections and abilities for LGBTQ+ individuals, these changes have also brought the LGBTQ+ community to the attention of the public, increasing “public misperceptions and false stereotypes” and making LGBTQ+ individuals “more vulnerable to homophobic and transphobic violence.”[[52]](#footnote-51) This is indicated by the fact that in 2011, one year after federal regulations permitting same-sex marriage were passed, “there were more hate crimes against transgender people than in any year in recent history.”[[53]](#footnote-52)

1. Letra S, Center for International Human Rights of Northwestern University School of Law and Heartland Alliance for Human Needs & Human Rights, ​*Human Rights Violations Against Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People in Mexico: A Shadow Report* ​(2014)[[54]](#footnote-53)

* **There were at least 288 homicides of LGBTQ+ individuals in the years 2010-2013, which is likely an understatement of the true number killed due to lack of reporting.[[55]](#footnote-54) This includes homicides of LGBTQ+ human rights defenders. Transgender women face a greater risk of murder. There were at least 126 murders of transgender women between 2010 and 2012.[[56]](#footnote-55)**
* **There remains discrimination in the ability of same sex married couples to access social security benefits, often because of the wording of relevant laws and written policies and the lack of training for governmental staff administering the benefits.[[57]](#footnote-56)**
* **There remains discrimination in the ability of transgender individuals to conform their identity documents to their gender identity.[[58]](#footnote-57)**

This report identifies five main issues for LGBTG+ people in Mexico.

1. Failure to prevent and to appropriately investigate and prosecute killings of LGBTQ+ individuals because of their sexuality, including killings of LGBTQ+ human rights defenders.
2. ​Failure to protect school children from homophobic bullying
3. ​Prohibition of same-sex marriage
4. Discrimination in social security benefits for same-sex married couples
5. ​Failure to allow transgender individuals to conform their identity documents to their gender identity

The report identifies transgender women as being particularly at risk of serious harm, including murder. The report lists the circumstances of the murders of a few of the at least 288 homicides of LGBTQ+ individuals that occurred between 2010 and 2013.[[59]](#footnote-58)

| VIII. Media Reports and Local Expertise |
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1. “‘They Were Abusing Us the Whole Way’: A Tough Path for Gay and Trans Migrants”, Jose A Del Real, *New York Times*, 11 July 2018[[60]](#footnote-59)

* LGBTQ+ El Salvadorian migrants coming to Mexico for help and safety, “desperate to escape an unstable region where they are distinct targets.”
* Mexico is a destination for those fleeing persecution in other Central American states, often as a stop on their way to claim asylum in the United States.
* LGBTQ+ migrants experienced robbery and sexual exploitation while in Mexico.

1. “Mexico Transgender Ruling a Beacon of Change”, N. Ghoshal, *LA Times*, 29 October 2018[[61]](#footnote-60)

A Mexican Supreme Court ruled on October 17 in favour of a transgender person who contended that the municipal Civil Registry had violated their rights in refusing to change their name and gender marker on their birth certificate. In a ruling that was the first of its kind in Mexico, the court said that the person could change their name and gender marker on an official document through a simple administrative process, based solely on their own declaration of their gender identity. This case may have broader implications for transgender people who want to change their name and gender on official documents.

1. “Transwomen in Mexico fight for justice as murders go unpunished”, AP, *NBC News*, 10 September 2019[[62]](#footnote-61)

According to a recent study by the LGBTQ rights group, Letra S., Mexico has become the world's second deadliest country after Brazil for transgender people, with 261 transgender women killed in 2013-2018. Less than 3 percent of the killings of LGBTQ members have resulted in convictions since 2013. Transgender community leaders and activists are largely on their own in pursuing long-denied justice.

1. “'Here, I feel free': Mexico City celebrates role as haven for LGBTQ migrants”, Rebekah F. Ward, *Reuters*, 29 June 2019[[63]](#footnote-62)

Tens of thousands of people paraded through the streets of Mexico City in June 2019 to celebrate the capital’s growing role as a beacon of tolerance for migrants fleeing persecution for their gender and sexuality in Latin America. Mexico City has become a bastion of progressive causes in a country whose border cities have been under increasing scrutiny for their treatment of vulnerable migrants.

| IX. Scholarship |
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1. **Caroline Beer & Victor D Cruz-Aceves, “Extending Rights to Marginalized Minorities: Same-Sex Relationship Recognition in Mexico and the United States,” (2018) 18:1 ​*State Politics & Policy Quarterly* 3**

* Mexico first enacted substantial antidiscrimination legislation in 2003. This is contrasted with the United States which, as of 2017, had no comparable antidiscrimination legislation to protect the LGBTQ+ community.[[64]](#footnote-63)
* The existence of legal protections against discrimination does not mean that such laws are effectively enforced.[[65]](#footnote-64)
* ​The public gay rights movement first emerged in Mexico City in 1978, with the first Gay Pride Parade occurring in Mexico City in 1979.[[66]](#footnote-65)
* Same-sex marriage has been allowed in Mexico since a 2010 ruling by the Mexican Supreme Court. In practice, this is not always enforced at the state level.[[67]](#footnote-66)

1. **​Erica L Ciszek, “Todo Mejora en el Ambiente: An Analysis of Digital LGBT Activism in Mexico,” (2017) 41:4 ​*Journal of Communication Inquiry* 3​13**

* The representation of LGBTQ+ individuals in mainstream media in Mexico is vacuous. LGBTQ+ characters, if included at all, are empty and frequently “disparaged.”[[68]](#footnote-67)
* Identifies a “need for diverse media representations of LGBT perspectives in Mexico that challenge long-standing traditions of religious intolerance and ​*machismo,* masculine-dominated culture.”[[69]](#footnote-68)

1. Immigration and Refugee Board of Canada, *Mexico: Information on the supreme court rulings regarding same-sex marriage, including societal attitudes*, 1 September 2011, online: <https://www.refworld.org/docid/507547e22.html> [↑](#footnote-ref-0)
2. Transgender Law Center & Cornell University Law School LGBT Clinic, ​*Report on Human Rights Conditions of Transgender Women in Mexico* ​(May 2016), p. 10, online: [​https://transgenderlawcenter.org/wp-content/uploads/2016/05/CountryConditionsReport-FINAL.pdf​](about:blank). [↑](#footnote-ref-1)
3. *Ibid*. [↑](#footnote-ref-2)
4. Constitución Política De Los Estados Unidos Mexicanos [*Political Constitution of the United Mexican States]*, revised 2019, online (PDF): <http://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Constitucion_Politica.pdf> [↑](#footnote-ref-3)
5. *Ibid* at c 1, Title 1 Article 1. [↑](#footnote-ref-4)
6. *Ley Federal para Prevenir y Eliminar la Discriminación* [*Federal Law to Prevent and Eliminate Discrimination]*, revised 2018, online (PDF):<http://www.diputados.gob.mx/LeyesBiblio/pdf/262_210618.pdf>. [↑](#footnote-ref-5)
7. *Ibid* at c 1, Article 1.3. [↑](#footnote-ref-6)
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11. *Ibid* at Title 3 bis, c 1, Article 149ter(2). [↑](#footnote-ref-10)
12. *Código Civil Para el Distrito Federal* [*Civil Code of the Federal District*]*,* revised 2015, online (PDF):<http://www.aldf.gob.mx/archivo-c9dc6843e50163a0d2628615e069b140.pdf> [↑](#footnote-ref-11)
13. *Ibid* at Article 2. [↑](#footnote-ref-12)
14. *Código Penal Federal* [*Penal Code of the Federal District*], revised 2016, online (PDF):<http://www.aldf.gob.mx/archivo-d261f65641c3fc71b354aaf862b9953a.pdf> [↑](#footnote-ref-13)
15. *Ibid* at Title 10, c 1, Article 206. [↑](#footnote-ref-14)
16. Código Civil Federal [*Federal Civil Code*], revised 2019, online (PDF):<http://www.diputados.gob.mx/LeyesBiblio/pdf/2_030619.pdf> [↑](#footnote-ref-15)
17. *Ibid* at Title 10, c 2, Article 646 [↑](#footnote-ref-16)
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20. *Ley de Sociedad de Convivencia para el Distrito Federal* [*Cohabitation Law of the Federal District*], 2006, online (PDF)<http://www.aldf.gob.mx/archivo-05b2bbe0d8e3f376fa1f335467aef70c.pdf> [↑](#footnote-ref-19)
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22. *Ley del Seguro Social* [*Federal Law of Social Security*], revised 2019, online (PDF)<http://www.imss.gob.mx/sites/all/statics/pdf/leyes/LSS.pdf> [↑](#footnote-ref-21)
23. *Ibid* at Title 1, c 1, Article 5A.7. [↑](#footnote-ref-22)
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34. *Ibid* at para 12. [↑](#footnote-ref-33)
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65. *Ibid*. [↑](#footnote-ref-64)
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