

Advancing LGBTQ+ Rights in Mexico: Policy Evolution, Legal Challenges, and Future Directions

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Abstract

LGBTQphobia and discrimination have garnered international attention as lethal threats in numerous countries. Discrimination also adversely impacts marginalized communities, including indigenous peoples, Black populations, women, and children. It is a consequence of their social and political exclusion, which has been the focus of intense political debates, public opinion, and social movement advocacy. Historically discriminated communities continue to have their fundamental rights neglected, while LGBTQ+ communities remain underrepresented in statistics, perpetuating prejudices and obstructing effective policy formulation. Therefore, this paper provides exploratory research analyzing LGBTQ+ policies in Mexico. While previous research on Mexico has provided analysis of specific policy issues such as homophobic exclusion in education, health access, employment, lack of public sector specialized services, and social factors determining exclusion, it lacks a discourse analysis of the national LGBTQ+ laws and policies enacted in Mexico. This paper seeks to answer two key questions: (1) What are the existing LGBTQ+ policies at the national level in Mexico? and (2) What are the discourse, frames, and actors involved in policymaking to protect LGBTQ+ rights in Mexico? These questions will be addressed through a discourse analysis of the policies and laws related to LGBTQ rights in the country. Additionally, institutional reports were consulted to contrast the policy discourse with violence against LGBTQ+ individuals and infer the pattern of policy implementation in the country. This analysis offers recommendations for LGBTQ+ policies to policymakers, activists, and the public.

Keywords: Discrimination, Discourse, Policy Framing, Queer Policy, Latin America.

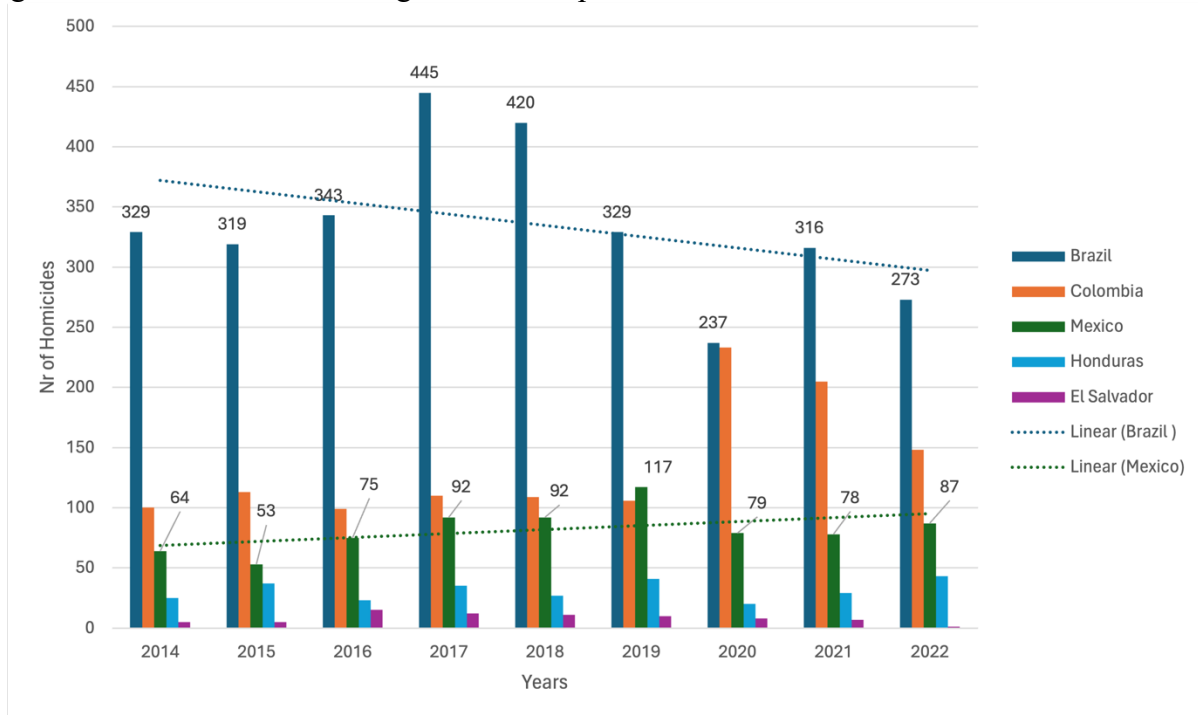
1. INTRODUCTION

In the past two decades, Mexico has increased the number of LGBTQ+ policies, rights, and laws at the national and sub-national levels (López, 2017). This effect is evident in laws and policies enacted and implemented in Mexico City, which has pioneered several human rights and policies for LGBTQ+ people (López Sánchez, 2022). One example is the recognition of same-sex marriage in 2009 in Mexico City (Díez, 2013), while the last state to do the same only did so in 2022. Despite Mexico having several rights, policies, and laws to protect LGBTQ+ lives and rights, the country is considered one of the most violent for LGBTQ+ communities in Latin America, behind Brazil and Colombia (see Fig. 1) (ILGA, 2017; LetraEse Sida Cultura y Vida Cotidiana, 2023; Mendos, 2019).

In 2020, for the first time, the National Institute of Geography and Statistics (INEGI) applied a national survey about sexual diversity and gender (Encuesta Nacional sobre Diversidad Sexual y Género (ENDISEG), 2021) to collect specific information about the LGBTQ+ population in the country. The results show that 5 million people of 15 years of age or older responded to the

survey as they identify with an LGBTQ+ gender identity. It represents 5.1 per cent of the whole population living in Mexico. The survey reveals that most of the self-identification in the surveyed population is bisexual, with 2.3 million self-identifying with this gender (51.7%), followed by gay men, 1.2 million, lesbians 489,835, and 316,258 as transgender or transsexual. This descriptive characterization of the LGBTQ+ population in Mexico can be helpful for public policymaking, which now has a better understanding of the population and could start investigating their particular needs to focus on specific responses to issues such as lesbian and trans women's pregnancy, transgender people's access to the health system, among other issues. However, discrimination in Mexico is growing against LGBTQ+ individuals in states where conservative and more religious backgrounds play a role in society (e.g., Colima, Puebla, Chiapas) (Verduzco & Díaz-Loving, 2010). On the other hand, some states are uprising for LGBTQ+ rights and representation in politics (e.g., CDMX, Estado de México, Querétaro) (Vázquez Parra et al., 2019). Figure 1 shows a comparison of homophobic cases in five selected Latin American countries.

Figure 1. Absolute number of registered homophobic cases in five Latin American countries.



Sources: Data compiled from (Dupuis-Vargas & Restrepo, 2023; Inter-American Commission on Human Rights, 2015; LetraEse Sida Cultura y Vida Cotidiana, 2023; Observatório de Mortes e Violências LGBTI+ no Brasil, 2023; SinViolencia LGBTI, 2023).

Compared to Brazil and Colombia, from what LGBTQ+ organizations could catalogue in terms of LGBTQphobia, Mexico is under-registering the number of violence due to the lack of available information from governmental agencies for data collection. The available information presented in Fig. 1 is based on civil society organizations' compilation of national data. Given such context, this research aims to answer two questions: (1) What are the existing LGBTQ+ policies at the national level in Mexico? and (2) What are the discourse, frames, and actors involved in policymaking to protect LGBTQ+ rights in Mexico?

By analyzing LGBTQ+ policies and programs enacted and implemented in Mexico under the frame of human rights between 2013 and 2024, this research reveals patterns of policy narratives at the national level, impacting the effectiveness of policy implementation to protect LGBTQ+ people's lives. Díez (2010) analyzed the importance of the policy frame in the national anti-homophobia campaign in Mexico, which oscillated between the scientific and legal frames to confront arguments based on morality. The policy entrepreneurs advocating for an anti-homophobia campaign successfully overcame opposition arguments and implemented their policy (p. 33). Building on Díez research, this paper provides a content analysis of 17 documents related to LGBTQ+ rights, which was systematically analyzed, investigating the main aim, the discourse, and the actors involved in policymaking. Like Brazil, there is no specific legislation enacted by Congress to protect LGBTQ+ people in Mexico. However, constitutional protection is in place by the anti-discrimination law. Therefore, the evolution of LGBTQ+ rights in Mexico is demonstrated by analyzing institutional decisions made by the federal executive, legislative, and judiciary.

The remainder of this paper is organized as follows. Section two presents how the LGBTQ+ policies are under a backlash. Section three contextualize LGBTQ+ policies in Mexico. Section four describes the methodological decisions, data collection, and analytical elements used in this research. Section five presents the results of the discourse content analysis of 17 official documents related to LGBTQ+ rights in Mexico. Section six discusses the findings contrasting with previous academic research and institutional reports to assess policy implementation in Mexico. Section seven concludes the paper with some future research agenda.

2. LGBTQ+ POLICIES IN LATIN AMERICA

With the return to democracy in Latin American policymaking in the 1980s, although decision-making remained concentrated in certain powers, it created an opportunity for various policy actors to participate in policymaking (de la Dehesa, 2010; Longaker, 2019). Under dictatorships, repressive policymaking excluded vulnerable communities from having a voice in social and political issues. Despite the opening after authoritarian rule, the dominance of ideas from a strict regime limited substantive civil society inputs on policymaking (Díez, 2010, p. 36). As previous research has shown, social movements have deployed various strategies over the years to overcome such barriers and include underrepresented citizens in the policymaking process (Burstein, 1999; Burstein & Linton, 2002; Haider-Markel, 2007; Haider-Markel & Meier, 1996). In the case of LGBTQ+ policymaking, one of the most effective strategies used by the LGBTQ+ movement to advance the agenda in many countries was litigation strategies (Arguelhes & Ribeiro, 2017; Galego, 2022a; Vanhala, 2009).

As presented by Corrales (2017), LGBTQ+ movements in Latin America have more influence on policymaking under favourable conditions such as “competitive political parties, federalism, and independent and progressive courts” (p. 52), and a critical factor is the role of religion in policy decision-making. The increased presence of Evangelicals and Protestants in Congress reduces LGBTQ+ bill approvals, using the institutional framework as a powerful veto player (Corrales, 2019; Galego, 2022b). The expansion of LGBTQ+ rights in Latin America is evident in many countries legalizing same-sex marriage, recognizing transgender social names and changes of gender identity in documents, and improving health access, particularly for people living with HIV/AIDS and others (Gomez, 2011; Silva-Santisteban et al., 2016). However, the backlash against LGBTQ+ human rights starting in the mid-2010s highlights a new dynamic in policymaking with a more significant presence of religious conservative beliefs and actions within

legislatures, leaving LGBTQ+ citizens unprotected (Galego, 2023; Santos & Melo, 2018). Additionally, 11 UN Member States hold Constitutional protection against discrimination based on sexual orientation; 4 are in Latin America: Mexico, Cuba, Ecuador, and Bolivia. As of 2020, 9 countries in Latin America and the Caribbean criminalize same-sex acts with penalties ranging from 10 to 15 years or life imprisonment – Antigua and Barbuda, 15; Barbados, life; Dominica, 10; Grenada, 10; Guyana, life; Jamaica, 10; Saint Kitts and Nevis, 10; Saint Lucia, 10; Saint Vincent and the Gren., 10 (Mendos et al., 2020).

Another factor in LGBTQ+ policymaking is the assumption from decision-makers that LGBTQ+ communities have similar needs as their heterosexual counterparts (Smith, 2007). The lack of substantive representation of LGBTQ+ individuals in the policymaking leads to merely façade policy formulations and ineffective implementation (Galego, 2023). Therefore, policymakers should be more aware of how policy content, actors, and political situations determine LGBTQ+ policy success. A gay man has different needs than a transgender man, which differs from a lesbian's needs. Therefore, LGBTQ+ policymaking cannot assume the same for each segment of the LGBTQ+ movement. Queering public policy is fundamental to overcoming barriers limiting LGBTQ+ access to the political realm and, consequently, not accessing the policy agenda (Galego, 2024).

Despite the backlash, exclusion from decision-making, and the increase of socio-political barriers for LGBTQ+ individuals, laws and policies were enacted in many Latin American countries in the past two decades (Corrales, 2019). Therefore, it is crucial to analyze critically the discourse in policy content to understand assumptions about policy problems, substantive representation, and consequently, the effectiveness of LGBTQ+ rights policy in the region. Reflecting on LGBTQ+ policymaking in Latin America, policy narratives and discourses will often be influenced by political ideology, the political party in power, and religious conservative traditions (Galego, 2022b; Smith, 2020). So, the LGBTQ+ policymaking process in Latin America often oscillates between making decisions based on the constitution or the bible (Galego, 2022).

In what follows, a contextual overview of the LGBTQ+ policies in Mexico is presented.

3. STATE-OF-THE-ART OF LGBTQ+ POLICIES IN MEXICO

According to Díez (2013), LGBTQ+ policies became a topic in Mexico with the growing incidence of LGBTQ+ activists and movements strategically gaining some influence in politics after 2000, when a more conservative opposition party was elected, the National Action Party (PAN) (Rodríguez & Pansters, 2012). Even though it may sound counterintuitive, such influence is also highlighted by the Organization of American States (OAS) report (Inter-American Commission on Human Rights, 2018). Such a topic is of growing interest to academics, politicians, and practitioners.

Often referred to as one of the most dangerous countries for LGBTQ+ people, Mexico is also one of the most common gay-friendly destinations for tourism (Payne, 2023) or migration (Dávila Valdés & Enseñat Soberanis, 2023). Paradoxically, the historical, social, and political context of Mexico reveals patterns of discrimination in several states by different institutions, and the violation of human rights is evident from the lack of access to public services in the country. To understand some of those patterns, scholars explored several LGBTQ+ issues in Mexico, particularly analyzing some states or cities. By analyzing the gay friendliness of Merida, Acapulco, Mexico City, Guadalajara and Monterrey, scholars highlight patterns of homophobic discrimination based on individuals' skin color, educational background, economic conditions and

country of origin (Dávila Valdés & Enseñat Soberanis, 2023; López Sánchez, 2022; Payne, 2023). Discrimination in Mexico has more dark skin color, especially from indigenous, black or brown, low-income – informal workers, migrants or refugees, and language, usually Latin LGBTQ+ individuals' Spanish speakers are targeted (Comisión Nacional de los Derechos Humanos (CNDH), 2019; Inter-American Commission on Human Rights, 2018). Moreover, gender identity and sexual orientation are considered taboos in several Latin American countries (Corrales, 2015), a legacy of Catholic colonization that remains today. According to Statista (2021), in 2020 Mexico, 72% of its population declared as Catholic, which reveals partially why discrimination against LGBTQ+ people is part of the social behavior in many cities and states (LetraEse Sida Cultura y Vida Cotidiana, 2023).

Among the most significant policy issues analyzed by academics concerning LGBTQ+ public policy in Mexico are mental or physical health, the labor market, and educational issues. These policy issues are presented with a more specific problem affecting LGBTQ+ communities in the country. For example, health is associated with HIV prevention, mental health after suffering discrimination, and issues of inclusion of LGBTQ+ individuals in health system protocols (Alday-Mondaca & Lay-Lisboa, 2021a; Loza et al., 2018; Mendoza-Perez & Ortiz-Hernandez, 2021). Education issues are presented, such as how educational environments can be hostile for LGBTQ+ individuals and inclusion topics (Valderrábano et al., 2021). The labor market mostly presents the growing discrimination of LGBTQ+ people in the working environment or difficulties in finding job opportunities because of their gender identity or sexual orientation (Hernández Limonchi et al., 2023; Reed, 2020; Vélez Bautista & Montoya Casasola, 2022). This initial exploration of LGBTQ+ policies in Mexico already reveals some inconsistencies with the policies and laws created to protect LGBTQ+ rights in the country since the Mexican Constitution in Article 4 states that it is prohibited any discriminatory practice that intends to neglect the rights of equal opportunities based on ethnic origin, nationality, skin color, culture, sex, gender identity, sexual orientation among other types of discrimination (Congreso de los Estados Unidos Mexicanos, 2003). Therefore, policy implementation is not consistent nationwide, leading to high numbers of discrimination, violence, and human rights violations against LGBTQ+ people (Comisión Nacional de los Derechos Humanos (CNDH), 2019; López, 2017).

Given the Mexican political organization as a federal country, state legislatures are relevant actors for LGBTQ+ laws and policies. This is evident since every federal LGBTQ+ policy and right has a precedent from a state decision, with Mexico City pioneering most of them (Gobierno de la Ciudad de México, 2018). But there are still states where LGBTQ+ rights are not recognized. For example, same-sex couple adoption is only available in a few states (López Sánchez, 2022). The following section presents how empirical research was performed to inform this paper's analysis.

4. METHODOLOGY AND ANALYTICAL ELEMENTS

A discourse content analysis (Fairclough & Fairclough, 2012; Gee, 1999; Jorgensen & Philips, 2002) was deployed to assess how policy issues were framed and the actors involved in the proposal and decision for each policy document. The discourse content analysis of the policy narrative will also benefit from some elements of the Narrative Policy Framework (NPF). NPF are usually applied to explore two elements in the policy process: influence and frames (Dunlop & Radaelli, 2018; McBeth et al., 2007; Shanahan et al., 2011). Since NPF requires more data for a full application and this research only analyses documents, combining discourse content analysis

and NPF elements will guide the research by analyzing political actors, institutions, political processes and events, and the context of LGBTQ+ policies in Mexico. Such an analysis will describe each policy document's main aim, actions and decision-makers. Further analysis would require other sources to be consulted through interviews, surveys, or observation to grasp and place the role of each actor influencing LGBTQ+ policymaking in Mexico. However, the discourses framed and actions proposed in the policy documents will be analyzed and contrasted with secondary data from academic literature and institutional reports. Regarding the definition of key analytical elements, I adopt van Dijk's (1997) approach to political discourse as "attached to political *actors* – individuals (politicians, citizens), political institutions and organizations, engaged in political *processes* and *events* [...] and the notion of *context* is essential to the understanding of political discourse" (Fairclough & Fairclough, 2012, p. 18).

In terms of data collection, this research relies on several official documents consulted or retrieved from publicly available online platforms of the Mexican government: the Official Diary of the Federation, the House of Representatives Laws Archive, the Government of Mexico, the National Council of Human Rights (CNDH), the National Institute of Geography and Statistics (INEGI), and the Supreme Court of Justice of the Nation archive. Additional sources were retrieved from international or national organizations such as the Organization of American States (OAS), the International Lesbian and Gay Association (ILGA), Sin Violencia LGBTI, LetraEse, and Fundación Arcoiris. Policy documents analyzed are bill projects, governmental programs, or laws. Additionally, using secondary data from academic literature and institutional reports, policy effectiveness was explored by contrasting what other scholars analyzed and the outcomes presented in the reports. Seeking to explore the narratives in the context of existing LGBTQ+ policies and laws in Mexico, a sequencing of rights was performed to identify the main documents, aims, actors, and narratives used. Based on a similar method already employed in previous research about Brazil (Galego, 2023), the policy content analysis reveals some patterns of the ineffectiveness of the decisions, presenting that the LGBTQ+ policies in Mexico could be described as Potemkin policies.

5. RESULTS

After the restoration of the republic in Mexico in 1867, a new Penal Code was established in the country, which decriminalized consensual same-sex acts. However, other provisions were occasionally used to persecute LGBTQ+ people in the country. A well-known example of that occurred in the so-called "Dance of the 41", when the police raided a men's club in 1901, where some of them were dressed in female clothing. The 41 men were arrested (Barron Gavito, 2010).

Mexico's political history is marked by two dictatorship periods which led to electoral system reforms. Porfirio Diaz's dictatorship was under constant re-election, and the re-election system was banned in Mexico for executive positions. However, a similar situation occurred with a single political party – Institutional Revolutionary Party (PRI) – being re-elected with a different candidate for 70 years. Some scholars described it as a "perfect dictatorship" (Gabriel de Barros Gomes, 2019). During the long government of PRI, the public sector was captured in a system of control, centralization, and lack of freedom (Rodríguez & Pansters, 2012), blocking progress for several policy issues. The consolidation of democracy in Mexico occurred in 2000 when the opposition party – National Action Party (PAN) – replaced the dominating political party. Even though PAN was also a conservative right-wing party, when it took power, some progressive policy agendas such as discrimination, gender identity, sexual orientation, racism, and women's

rights became a priority for the government. Consequently, in 2003, the Federal Act to Prevent and Eliminate Discrimination was approved. It created a protective system to eliminate discrimination based on gender identity and sexual orientation by creating the National Council to Prevent Discrimination (CONAPRED). This decision unfolded the next LGBTQ+ protections enacted in Mexico through executive programs, legislative procedures, or judicial decisions, as is presented in Table 1. The presidential mandates are used in the table to situate decisions in a context and period, as well as who was in power when the decision about a law, policy or legal case was made. It does not necessarily reflect that it was an executive decision in Mexico, even if some of them were supported by the president.

Table 1. Sequence of analyzed documents associated with each decision-maker and contextual elements: presidential mandates, their respective political parties, and ideologies.

Year	Presidents/Political Party & Ideology	Decision-maker	Document
1871	Benito Juárez (Liberal Party*, liberal and conservative)	Mexico City Congress	First Federal Penal Code entered into force in 1872. This Code made no reference to any punishment for consensual same-sex acts between adults.
2003	Vicente Fox Quesada (Institutional Revolutionary Party - PRI, social democracy)	Federal Congress	Article 1(III) of the Federal Act to Prevent and Eliminate Discrimination (2003) lists “sexual preferences” as a protected class. Article 9(IV) prohibits employment discrimination based on the classes enumerated in Article 1(III). Article 149 Ter (2) of the Federal Criminal Code (1931) criminalises employment discrimination based on “sexual preference” and aggravates penalties for employers and public servants. This law applies to employment, goods and services, health, and education. The same year CONAPRED was created.
2006		Federal Congress	Federal Law for Equality between Women and Men
2011	Felipe Calderón Hinojosa (National Action Party - PAN, conservative, Christian democracy and humanism)	Federal Congress	The constitutional prohibition of discrimination based on “sexual preferences” is binding upon states and its local authorities. Several State Constitutions also prohibit such discrimination.
2013		Federal Congress	Constitutional Reforms regarding telecommunication - Pacto por Mexico
2014	Enrique Peña Nieto (Institutional Revolutionary Party - PRI, social democracy)	Federal Congress	In 2014, Article 9(XXVIII) of the Federal Law to Prevent and Eliminate Discrimination (2003) was amended to outlaw promotion of violence. Article 1(III) of this law includes “sexual preferences” as one of the prohibited grounds.
2015		National Council to Prevent Discrimination	Change of the Statute of CONAPRED

2018		Supreme Court of Justice	Amparo 1317/2017 - The Supreme Court of Justice of the Nation recognises that transgender people could change their gender identity in official documents
2018		Supreme Court of Justice	Action of Unconstitutionality 63/2017 in the Federal District - Mexico City
2018		Federal Police/Federal Congress	DOF 2018- Protocol for the Federal Police actuation towards cases involving LGBTTTI people
2021		Supreme Court of Justice	Action of Unconstitutionality 45/2021 - Against the government of the state of Sonora Article 116 BIS, paragraph 1 of the Civil Register Law
2021		Supreme Court of Justice	Action of Unconstitutionality 132/2021 - Against the state of Baja California Sur for limiting to "person with legal age" the possibility to request a new birth certificate
2021	Andrés Manuel López Obrador (National Movement of Regeneration – MORENA, socialism of the 21 st century, left-wing nationalism)	Supreme Court of Justice	Action of Unconstitutionality 73/2021 - Against the state of Puebla for limiting changes in the birth certificate to a person with 18 years of age. Article 875 Ter, fraccion II, of the Civil Code
2022		Supreme Court of Justice	Action of Unconstitutionality 43/2022 and 47/2022 - Against the government of the state of Baja California about Decree Nr 75
2022		Supreme Court of Justice	Action of Unconstitutionality 72/2022 - Against the state of Jalisco for limiting changes in the birth certificate to "person of legal age (18 in Mexico)".
2022		State Congresses	Same-sex legalized in every state of the nation
2024		Federal Congress	Conversation Therapy is Banned

*NOTE: *This party was created in 1822 and dissolved in 1911 after the Revolution.*

Vicente Fox Quesada (2000-2006)

Even though President Vicente Fox was from a conservative party (PAN), and the prospects of LGBTQ+ rights were little or none, it was during his presidential period that fundamental constitutional reforms unevenly impacted positively the LGBTQ+ communities by amending Article 4 of the Federal Constitution to eliminate discrimination based on sexual orientation, gender identity, racial, sex, disability, for any public sector service and the employment in the country. Also, the creation of the National Council to Prevent Discrimination (CONAPRED) highlights a certain institutional commitment to discrimination in general and later to LGBTQ+ issues.

Even though the LGBTQ+ term is not mentioned in this document, the principle for its approval in Congress was Article 1 of the Constitution, which states that rights are equal for everyone independent of their gender identity, sexual orientation, sex, race, and age. So, the prevention of discrimination would consequently include LGBTQ+ people, even without mentioning them explicitly. It can be said that at that time, the needs of LGBTQ+ people and communities were not considered in particular for some laws or policies.

The Federal Law for Equality between Women and Men, approved by the federal Congress, emphasizes women's and men's equality, which opens some critical discussion on why gender

identities or sexual orientations are not mentioned in the law content. Why is Congress not considering the diversity of sexualities in this law? But, similar to other laws, policies and constitutional amendments, nothing mentioned pro or against LGBTQ+ rights virtually opens the precedent that denying the rights for this community is unconstitutional. Despite the critical thinking about such framing in the law, the 2006 legislative decision had a precedent from the legal equality of men and women already included in the Civil Code of 1928 (Vargas, 2004).

Felipe Calderón Hinojosa (2006-2012)

During this period, LGBTQ+ agendas were less promoted. However, the federal Congress decided that discrimination based on “sexual preferences” should be applied at the national level, determining that at the state level, any discrimination on this matter would be prohibited. Therefore, states would have to provide LGBTQ+ citizens protection, create preventive actions, and recognize such discrimination as a policy problem.

Enrique Peña Nieto (2012-2018)

During the return of PRI to the federal executive, the general thinking was that democratic backlash would be installed again, with control and centralization undermining democratic principles. However, institutions and the political participation of civil societies contributed to the continuity of democracy in Mexico (Schmitter et al., 1993). Additionally, during this period, several decisions regarding LGBTQ+ issues and rights were taken by the federal legislative and judiciary. The “Pacto por Mexico” (Pact for Mexico) was a constitutional reform of telecommunication rules for media usage.

The document emphasizes the telecommunications regulations in Mexico to improve people's access to communication vehicles (TV, radio, internet), promote democratic communication, regulate the content presented in the media, and regulate the economic market behind this sector. Collective LGBT groups are mentioned as subscribers to this document as supporters. Also, gender equity is mentioned as one aspect of the law that will improve and generate respect, national integration, and increase plurality and diversity. Gender is also mentioned when declaring the law will eliminate gender stereotypes in commercial advertisements. This would prevent gender violence in TV shows or other programs. However, this document doesn't mention any time issues related to LGBT people.

In 2014, amendments to the Law to Prevent and Eliminate Discrimination outlawed the promotion of violence, including those against “sexual preferences”. In 2015, the autonomous body of management changed the statute of the National Council to Prevent and Eliminate Discrimination (CONAPRED). The changes in the organic statute of CONAPRED to better execute what is mentioned in the Constitutional Reform on Human Rights from 2011. What is interesting about this change in the statute is the actors involved in CONAPRED, naming only governmental actors to compose the organic structure of the Council. In Chapter VI, Article 36 states that the Consultive Assembly can invite Permanent People or for a single time to be in the meeting. However, these invited people can only have a voice and not vote. It will only be consultative participation based on their expertise or work experience relevant to the Assembly debate. In this way, public participation, which would be expected at least from social movement, is not possible. If social movement representatives are not invited as Permanent People, they have no voice inside the Assembly. Therefore, such limitations in the political participation of

discriminated communities in the Council highlight mismatches between policy content and discriminated communities' needs.

Still, the Supreme Court had to decide on two issues during this period. First was in 2018, the recognition of gender identity at the national level, allowing transgender people to change their gender identity in official documents. A decision on a case from the state of Veracruz opened the precedent and led the Court to grant this right since forbidding it was unconstitutional. Also in 2018, the Court decided on a case from the state of Mexico City where the electoral law was discriminatory and promoted political violence against indigenous, women, and LGBTQ+ community's representation in the state congress. Therefore, gender parity was proposed for electoral procedures; excluded communities were added among the gender parity. The proposed Reforms are specifically addressed to Article 4, paragraph C, fraction III of the Code of Institutions and Electoral Procedures of Mexico City. The Court decision on this legal case explicitly refers to LGBTQ+ rights by mentioning several times "LGBTTTI" and the international norms from the UN Human Rights Higher Commissariat proposing countries recognize gender violence also to LGBTQ+ communities and act against it. Since this is an Unconstitutional Act aiming to reform the electoral procedure to include more political representation of excluded groups in the Mexico City Council, LGBTQ+ groups are included and mentioned in the gender violence part of the judge's arguments along with "sexual orientation, gender identity, and body diversity and sexual characteristics".

In the last year of Peña Nieto's government (2018), the federal police created a protocol of actuation in cases involving LGBTQ+ people, which was approved by Congress. This protocol aims to promote equal, dignified, and non-discriminatory treatment by the federal police in cases in which LGBTTTI people are involved as victims or perpetrators. Discrimination is highlighted in the Protocols as verbal explicit language discrimination, most of the time affecting, joking, or depreciating LGBTTTI people based on their sexual orientation or gender identity. The document goes on to Section 3, Article 5, presenting specific orientations in how police officers should actuate with respect and without discrimination because the suspect is an LGBTQ+ individual. Such protocol promotes a humanizing treatment and respect of LGBTTTI people suffering or committing any violent situation.

Andrés Manuel López Obrador (2018-2024)

This government is recognized as the first left wing of Mexico. During López Obrador's presidency, few legislative procedures were proposed or decided for LGBTQ+ rights. However, through the National Council of Human Rights (CNDH), López Obrador's government applied litigation strategies to force state congresses and governments to recognize and protect LGBTQ+ rights at the state level. Several examples are the five legal cases accusing the states of Action of Unconstitutionality for state governors making amendments to the Civil Code of the state, particularly about the age a citizen can require a new birth certificate with their gender identity changed. Such amendments come after the Court's decision in 2018 about recognizing gender identity and the right to change it in official documents. In states like Baja California, Sonora, Baja California Sur, and Jalisco, the amendments were added to the state Civil Code via executive decrees. In the case of Puebla, the Civil Code was always limiting the request for a second birth certificate to people of 18 years of age. The main arguments in the legal cases are about violating several articles in the Constitution, particularly Articles 1 and 4, the American Convention for Human Rights, the International Pact for Civil and Political Rights, and the Convention for

Children Rights. Where the Civil Code of the five mentioned states discriminated against those who do not have 18 years of age yet to request a new birth certificate, ratifying their gender identity, name or sex.

Mexico does not yet have a federal law recognizing same-sex marriage. Given that, in 2010, the Supreme Court of Justice of the Nation ruled that same-sex marriages performed anywhere in the country should be recognized. Furthermore, in June 2015, the Supreme Court of Mexico declared that bans on marriage equality were unconstitutional, and states must recognize the marriage of same-sex couples conducted in other states. However, these decisions did not translate to the legalization of same-sex marriages in the whole country. Rather, same-sex marriages have been celebrated on a case-by-case basis (generally after a judicial decision) in States where legislation still does not provide for such unions. In May 2019, Mexico's foreign affairs secretary announced that all Mexican consulates would allow citizens to marry regardless of gender. In September 2019, the Senate received a draft bill that would provide constitutional endorsement to same-sex marriages. As of December 2020, 19 jurisdictions – state level – have adopted same-sex marriage legislation, meaning that around 50% of the population lived in states where same-sex marriage is legal. It was in 2022 that the last state Congress, in Tamaulipas, approved same-sex marriage; consequently, same-sex marriage became legal in the whole nation despite the lack of a federal law on this matter.

The most recent decision approved by Congress was a bill proposed by MORENA parliamentarians to ban conversation therapy from Mexico. However, this legislative procedure has been ongoing since August 2018, when a bill that would outlaw "conversion therapies" was introduced in the Federal House of Deputies. The proposed legislation would make it a criminal offense to promote, offer, teach, apply, force, or induce to undergo treatment, therapy or any service that seeks to change a person's sexual orientation or gender identity. The bill also establishes aggravated penalties for parents or guardians of persons under eighteen years of age, as well as to those forcing individuals who, for any reason, could not resist or consent to the practice. Finally, the bill adds a specific penalty for licensed health professionals and any person related to the medical practice, consisting of suspension of the professional exercise for three years and a fine. The evolution of this law is marked by several backsets in the legislative procedure. In October 2018, a similar bill was introduced, and it was debated by the Federal Senate in February 2019. As of September 2020, the bill is still pending. As of December 2020, roughly 20.6% of the Mexican population lived in jurisdictions with bans on so-called "conversion therapy" in place. In 2022, the Senate approved a bill draft for this law, but the House of Representatives rejected it. In 2024, the bill was approved by the Senate on April 25.

6. DISCUSSION

The discursive patterns used in the LGBTQ+ policies and laws in Mexico oscillate from not mentioning any measure or program for LGBTQ+ rights or framing human rights for LGBTQ+ citizens as a constitutional principle.

The laws, policies and programs for LGBTQ+ rights analyzed in this research present a common ground of discourse, which is to overcome discrimination for vulnerable communities, particularly for LGBTQ+ communities marginalized from the public service provisions (health, education, employment, housing, and so on) and social and political contexts. Even though Mexico is one of the few holding federal constitutional protection against any discrimination based on gender identity and sexual orientation, the social and political reality of LGBTQ+ individuals may

vary according to city and state (Dávila Valdés & Enseñat Soberanis, 2023; Díez, 2013; López Sánchez, 2022). The increasing numbers of homophobic violence, particularly against transgender people, is alarming, and the LGBTQ+ social movement has been advocating for more protective measures from the federal government. And one of the most expressive strategies deployed by the LGBTQ+ movement to influence public policymaking is the pride parades, which were usually centralized in Mexico City, now has its organization in every capital city of states and major cities like Acapulco, Cancún and Puerto Vallarta, cities also known for a vibrant LGBTQ+ experience (López Sánchez & Rodríguez Domínguez, 2023).

Another aspect often neglected in the policy content for LGBTQ+ protection in Mexico is the consequences of discrimination, such as psychological, mental and physical traumas for the LGBTQ+ victims. Scholars have highlighted the social stigma of LGBTQ+ violence that happens from parenting, public shame, subordination (Alday-Mondaca & Lay-Lisboa, 2021b), intimate partner violence (Swan et al., 2021), narratives of transphobia (Martínez-Guzmán & Johnson, 2021) and labor discrimination and the state of impunity even if the case was denounced to authorities (Mendoza-Perez & Ortiz-Hernandez, 2021; Payne, 2021). Such impunity in cases of homophobia makes LGBTQ+ people avoid registering the violence they suffer.

Moreover, there is a lack of LGBTQ+ representation in the Federal Congress, in this legislature only two federal deputies from MORENA are openly advocating for the LGBTQ+ agenda, the transgenders Salma Luevano and Maria Clemente Garcia. Therefore, the LGBTQ+ agenda is advocated and promoted with the support of left-wing female deputies in the federal Parliament.

As mentioned, Mexico City state and municipality pioneered several laws and policies in Mexico. The “prohibition of conversion therapy” was one of them. The bill was proposed in 2018 by an LGBTQ+ state deputy, Temístocles Villanueva and approved by the Mexico City state Congress in 2020 (Gobierno de la Ciudad de México, 2018). Following that proposal, federal deputies Citlalli Hernández (Morena), Patricia Mercado (Movimiento Ciudadano), and Alejandra Lagunes (Partido Verde) presented a bill to the national Congress, which was recently approved in 2024 (Camara de Diputados, 2024).

Despite legislative and executive decisions regarding LGBTQ+ rights in Mexico, an increasing number of litigation cases were introduced during MORENA’s government following a tendency in the judicialization of social and human rights policies, particularly in Latin America (Galego, 2022b; López Sánchez, 2021). Even though the Courts are becoming a crucial “legislator” for LGBTQ+ rights, such decisions are unsustainable in the long term. Similar to the Brazilian case, the LGBTQ+ social movements are pushing forward their agendas by “venue shopping” different institutions (Galego, 2024) and succeeding in the judiciary. However, judicial decisions are fragile by nature. Court’s decision can be reversed by conservative legislatures taking decisions on the matter and finally legislating on the policy issue. Or, as it happened in the US with abortion law, a more conservative Court composition can reverse its own progressive decisions. Therefore, LGBTQ+ and other vulnerable communities should aim to get laws approved to ensure that there is no backlash on human rights in the long term.

To summarize, the discourse presented in LGBTQ+-related policies in Mexico oscillates between the absence of mention of LGBTQ+ issues and framing them within a human rights context, as per constitutional protection against discrimination based on sexual orientation or gender identity. The primary actors involved in decision-making are governmental institutions, notably the federal executive, legislative, and judiciary branches. Additionally, national

governmental agencies like CNDH, INEGI, and CONAPRED play crucial roles in promoting and implementing LGBTQ+ normative laws and policies to safeguard human rights.

Contextual factors driving the need for more LGBTQ+ policies and rights include the escalating incidents of lethal violence targeting LGBTQ+ individuals. A notable case is the unresolved assassination of the first non-binary federal judge, Jesús Ociel Baena Sauceno, who was found dead in bed with his partner in November 2023. Another factor is the growing number of cities organizing pride parades, which demonstrate support for LGBTQ+ communities. Furthermore, activists and representatives from social movements continue to monitor and denounce discrimination across various sectors, such as health, labor, education, and public services, even with limited participation in the policymaking process for LGBTQ+ policies in Mexico.

7. CONCLUSION

The discourse surrounding LGBTQ+ policies and laws in Mexico fluctuates between addressing gender discrimination broadly and advocating for the defense of human rights for LGBTQ+ individuals. Despite the progress made in LGBTQ+ rights over the past two decades, specific needs for LGBTQ+ people remain a topic of debate within various governmental institutions. With the absence of comprehensive national legislation regarding same-sex marriage, transgender rights, and same-sex couples adoption, state-level congresses and the Supreme Court of the Nation have become pivotal in enacting laws to grant these rights.

This study draws two main conclusions. Firstly, governmental institutions, particularly state legislative bodies and the federal judiciary, play significant roles in shaping LGBTQ+ policies and laws in Mexico. Secondly, there is a noticeable lack of public participation and representation from LGBTQ+ communities in the policymaking process. The LGBTQ+ movement has resorted to contentious strategies such as organizing pride parades, supporting litigation cases, and monitoring instances of homophobia across different states.

Based on these conclusions, several policy recommendations can be proposed:

- Decision-makers involved in LGBTQ+ policy formulation should consider the specific needs of different segments within LGBTQ+ communities.
- Enhancing public participation of LGBTQ+ representatives in all stages of the policymaking process can help prioritize policy content based on the lived experiences of target groups.
- Establishing a system for monitoring homophobic violence, possibly under the responsibility of the National Institute of Geography and Statistics (INEGI), could inform better policymaking.
- Providing specialized training for public servants to better serve vulnerable communities and prevent discriminatory practices is essential.

In conclusion, the imprecise discourse surrounding LGBTQ+ policies in Mexico contributes to flawed policy implementation in addressing discrimination nationwide. This is exacerbated by the lack of public participation from LGBTQ+ representatives in policymaking processes and the absence of comprehensive national legislation and institutional commitment to protecting

LGBTQ+ citizens. Future research could benefit from primary data collection on effective LGBTQ+ policy implementation in Mexico and comparative analysis of policy content and discourse from other Latin American countries to inform strategies for overcoming backlash and advancing LGBTQ+ rights in the region.

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