

Thirty Successful Experiences of Redistribution, Reduction,
Recognition, Remuneration and Representation in Care Work

Constitutionalization process of the right to care in Mexico



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Country and/or location of implementation: Mexico

Instances responsible for its implementation: In process of approval by the national legislature.

In Mexico, several legislative proposals have been put forward to amend the Federal Constitution to include care as a human right in its different dimensions: the right to care, the right to be cared for, and the right to take care of oneself (self-care). Considering only the LXIV Legislature (2018–2021), there are two projects in the Mexican Senate and five in the Lower House of Representatives.

At the federal level, during the first two years of the LXIV Legislature, eight bills on the right to care were submitted to the Senate and the House of Representatives, one of which was rejected pursuant to Article 89, paragraph 2, section III of the Rules of Procedure of the House of Representatives, because it was not ruled on within the period in which it was submitted. Two of the remaining seven initiatives were introduced in the Senate and are still pending approval from the Constitutional Matters Commission and the II Legislative Studies Commission. In the House of Representatives, five initiatives with draft decrees were presented and were turned over to the Constitutional Matters Commission for analysis and ruling. Among the central points of the legislative initiatives with draft decrees, two stand out:

- Proposed amendments to Article 4 of the Mexican Constitution (CPEUM in Spanish) in order to establish the right to care and to be cared for.
- Proposed amendments to Article 73 of the Mexican Constitution to empower Congress to issue a general law on the right to care and the creation of a National Care System (Sistema Nacional de Cuidados, SNC in Spanish) (Kánter Coronel, 2020, p. 13).

Overall, the two initiatives submitted to the Senate are pending approval, while the five initiatives submitted to the House of Representatives were decided on jointly, and approved with 329 votes in favor on Wednesday, November 18, 2020, and were sent to the Senate for debate and potential approval. The bill approved by the House of Representatives reads as follows:

Sole Article. The ninth paragraph is amended and a last paragraph is added to Article 4, and a section XXX-A is added to Article 73 of the Mexican Political Constitution, to read as follows:

Article 4. [...]

In all decisions and actions of the State, the principle of the best interests of the child shall be ensured and complied with, fully guaranteeing their rights. Children have the right to have their needs for food, health, education, and healthy recreation met, as well as to services for the attention, care, and integral development in childhood, in terms of the provisions of the General Law for the Provision of Services for the Attention, Care, and Integral Development of Children. This principle shall guide the design, execution, follow-up, and evaluation of public policies directed to children. [...]

All people have the right to dignified care that sustains their lives and provides them with the material and symbolic elements to live in society throughout their lives, as well as to care. The State shall guarantee the right to dignified care based on the principle of co-responsibility between women and men, families, the community, the market, and the State itself in caregiving activities, as well as the freedom of individuals to decide whether or not to undertake the obligation to care for those who require it, and the right to decide the distribution of their own time according to their needs and interests. To guarantee the right to dignified care, the national care system will be implemented, which shall include its economic, social, political, cultural, and bio-psychosocial dimensions, as well as public policies and services based on a universal design, reasonable adjustments, accessibility, relevance, sufficiency, and quality. The law shall provide for the involvement of the Federation, Federal Entities, Municipalities, and territorial demarcations of Mexico City in the national care system. Priority in said system shall be assigned to children, adolescents, the elderly, those who live in conditions of extreme poverty, those who require care due to illness or disability, and those who carry out care activities for the aforementioned without any remuneration. (Draft Bill amending Articles 4 and 73 of the Mexican Political Constitution, regarding the National Care System, November 18, 2020).

Therefore, this constitutional amendment initiative:

- Recognizes the right of all people to dignified care that sustains their lives and provides them with the material and symbolic elements to live in society throughout their lives, as well as to care.

- Establishes the power of the State to guarantee the right to dignified care based on the principle of co-responsibility between women and men, families, the community, the market, and the State itself in caregiving activities.
- Guarantees the freedom of individuals to decide whether or not to undertake the obligation to care for those who require it.
- Recognizes the right to decide the distribution of one's own time according to one's needs and interests.
- Considers that in order to guarantee the right to dignified care, the national care system shall be implemented, which includes its economic, social, political, cultural, and bio-psychosocial dimensions, as well as public policies and services based on a universal design, reasonable adjustments, accessibility, adequacy, sufficiency, and quality.
- Empowers the National Congress to enact the general law on care, which sets out, among other issues, the terms of cooperation between the Federation, the states, and the municipalities in the national care system. (Kánter Coronel, 2020, p. 24).

On November 18, the House of Representatives unanimously approved an amendment to Article 4 of the Mexican Political Constitution that recognizes the right to dignified care, to one's own time, and to the creation of a National Care System. This amendment was promoted through the collective effort of caregivers, civil society organizations, and legislators, and is currently being reviewed by the Senate. (Garfías & Vasil'eva, 2020, p. 30).

The initiative approved by the House of Representatives was submitted on November 26, 2020 to the Senate, which referred it to the Constitutional Matters (First Commission), Gender Equality (United Commissions), and Second Legislative Studies (United Commissions) commissions. The initiative has remained unchanged since then (Mexican Senate, 2020).

At least two types of challenges can be identified in this process: Firstly, its approval by the Senate. So far, the initiative has not moved forward in the Senate since it was received on November 26, 2020 (Mexican Senate, 2020). It is important to note that the Belisario Domínguez Institute under the Senate published the study "Unpaid Care Work and Legislative Proposals on the Right to Decent Care" in December 2020, which could be interpreted as a sign that this issue is on the Senate's agenda (Kánter Coronel, 2020).

Secondly, the challenge posed by financing constitutes a serious obstacle to the good performance and sustainability of a potential national care

system. Despite the fact that the approval in the House of Representatives includes the creation of the National Care System, the modification of paragraph C section V was also approved, so that compliance with this initiative does not generate any organic structure or additional economic commitments; therefore, existing institutions would have to be tapped: "It is not a matter of creating an institutional apparatus or scaffolding, but of articulating what already exists" (*Expert opinions for discussion. From the Constitutional Matters Commission, with draft Decree by which Articles 4 and 73 of the Mexican Political Constitution are amended and added, regarding the National Care System, 2020, p. 47*).

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