



Equal Marriage in Peru: Analysis of the 2023 Constitutional Court Ruling Based on Advisory Opinion OC-24/17 of the Inter-American Court of Human Rights

Luis Barboza-Sanchez, Julie Urtecho-Paz

Abstract: *The 2023 ruling of the Peruvian Constitutional Court, which recognised same-sex marriage, marks a landmark in the consolidation of human rights in the country. Through the application of the conventionality control doctrine and the incorporation of international standards—particularly Advisory Opinion OC-24/17 of the Inter-American Court of Human Rights—the judgment filled a normative gap and set a binding nationwide precedent. This article adopts a qualitative-juridical approach to examine the theoretical foundations of substantive equality, the interplay between domestic and international law, and the legal, social, and political impacts of the decision. A comparative analysis with Argentina, Costa Rica, and Mexico highlights different pathways toward marital equality and identifies the strengths and weaknesses of Peru’s unitary judicial model. The study concludes with legislative, institutional, and cultural proposals to ensure that legal recognition translates into effective inclusion and the comprehensive expansion of rights for LGBTIQ+ persons.*

Keywords: *Equal Marriage, Substantive Equality, Conventionality Control, Human Rights, OC-24/17, Peruvian Constitutional Court.*

Abbreviations:

ECLAC: Economic Commission for Latin America and the Caribbean

ACHR: American Convention on Human Rights

ICCPR: International Covenant on Civil and Political Rights

UDHR: Universal Declaration of Human Rights

I. INTRODUCTION

The advancement of marriage equality has gained prominence in Latin America over the past five years, reflecting an increasing convergence between international human rights standards and societal demands for substantive equality.

In Peru, the 2023 ruling of the Constitutional Court marked a watershed moment by explicitly incorporating the doctrine of conventionality control derived from Advisory Opinion OC-24/17 of the Inter-American Court of Human Rights [1], reaffirming the Peruvian State’s commitment to the principles of dignity and equality enshrined in Article 2 of the Constitution [2] and Article 1.1 of the American Convention on Human Rights (ACHR) [3].

Historically, Argentina pioneered marriage equality in the region with its 2010 legislative reform, followed by Uruguay (2013), Brazil (2013), Colombia (2016), and Costa Rica (2020) [4]. Despite this momentum, Peru remained without either legislative or judicial recognition until 2023, creating a normative vacuum that marginalized same-sex couples’ civil and economic rights. Civil society organisations—most notably the Movimiento Homosexual de Lima—persistently advocated for reform through both congressional bills and strategic litigation, setting the stage for the TC’s intervention [5].

Public opinion trends underscore the significance of this decision. According to the 2024 AmericasBarometer, support for same-sex marriage in Peru increased from 37% in 2021 to 52% in 2024 [6]. The Economic Commission for Latin America and the Caribbean (ECLAC) reports that by mid-2025, more than two-thirds of Latin American countries had recognized same-sex marriage through judicial or legislative means, further illustrating regional normative alignment [7]. Moreover, the latest ILGA World report indicates that legal recognition of same-sex relationships correlates with measurable reductions in discrimination and improved mental health outcomes for LGBTIQ+ populations [8].

This study begins with the question: *To what extent does the 2023 Constitutional Court ruling transcend a mere declaration of rights to become an effective instrument of social transformation in Peru?* Through a critical analysis, it examines the internal coherence of the Court’s reasoning, its alignment with inter-American standards, and the initial institutional and social reactions during the 2020–2025 period. This inquiry is particularly relevant because Peru’s jurisprudential path to recognising marriage equality presents a paradigmatic case of how national courts can catalyse normative change in the absence of specific legislation, thereby shaping both legal doctrine and public policy [9].

A. General Objective

To critically analyze the scope and implications of the 2023 Constitutional Court ruling on marriage equality in Peru from the perspective of Advisory

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Opinion OC-24/17 of the Inter-American Court of Human Rights.

B. Specific Objectives

- i. To describe the legal foundations of the ruling, with special attention to conventionality control and the principle of substantive equality.
- ii. To evaluate the correspondence between the Court's arguments and the guidelines established in OC-24/17.
- iii. To identify the initial implementation challenges at the administrative and social levels.
- iv. To propose recommendations for strengthening the mechanisms that ensure the effectiveness of the judicial decision.

II. THEORETICAL AND NORMATIVE FRAMEWORK

A foundational pillar for understanding marriage equality is the distinction between formal and substantive equality. Formal equality mandates identical treatment under the law, whereas substantive equality, as championed by modern human rights jurisprudence, requires proactive measures to dismantle systemic barriers that perpetuate discrimination [10]. Substantive equality recognizes that identical rules may yield unequal outcomes for historically marginalized groups, such as LGBTIQ+ persons, and thus demands differential accommodations to achieve genuine parity [11]. This concept resonates with Raz's critique of formalism, which underscores that equal legal rules can have disparate social impacts unless tailored to address existing injustices [12].

Closely linked to substantive equality is the doctrine of conventionality control, which obliges domestic courts to interpret national legislation in harmony with international treaties ratified by the State [13]. Originating in Colombian jurisprudence and affirmed by the Inter-American Court of Human Rights, this doctrine empowers judges to set aside domestic norms that are incompatible with international law. It has become indispensable for enforcing the ACHR at the national level [14]. In the Peruvian context, conventional control provides the legal mechanism through which the Constitutional Court aligned its reasoning with Advisory Opinion OC-24/17, thereby embedding inter-American human rights standards directly into domestic constitutional interpretation [15].

The Inter-American human rights system has progressively consolidated marriage equality as a core component of non-discrimination and dignity rights. Advisory Opinion OC-24/17 (2017) unequivocally affirmed the duty of States parties to recognize same-sex unions under Articles 1.1 and 24 of the ACHR [16]. This opinion builds upon earlier jurisprudence—such as *Atala Riffo and Daughters v. Chile*—which recognised sexual orientation as a protected category and demanded affirmative measures for substantive equality [17]. More recently, scholars have highlighted how OC-24/17 catalyzed national reforms: Ceccagno (2022) documents the surge of jurisprudential and legislative actions across Latin America following OC-24/17, noting that over eight countries adopted marriage equality measures between 2018 and 2023 [18].

Beyond the Inter-American system, global human rights doctrines reinforce these principles. The Universal Declaration of Human Rights (UDHR) articulates the right to marry in Article 16, which, when read alongside the International Covenant on Civil and Political Rights (ICCPR), demands substantive protections against discrimination in family life [19]. European standards—particularly the European Court of Human Rights' decision in *Oliari and Others v. Italy*—have similarly emphasized that failure to recognize same-sex unions violates the right to respect for private and family life under Article 8 of the European Convention on Human Rights (ECHR) [20]. These international precedents add normative weight to the Inter-American framework, illustrating a convergent trend toward substantive family rights worldwide.

At the national level, Article 2 of the Peruvian Constitution enshrines equality before the law and expressly prohibits discrimination based on sexual orientation [21]. Complementing this, Peru's ratification of the ACHR binds it to uphold substantive equality requirements. Yet, until 2023, the absence of explicit marriage equality legislation created a normative vacuum that the Constitutional Court ultimately filled through its landmark decision. This judicial intervention reflects Young's concept of "structural injustice," whereby state actors must correct institutional norms that systematically disadvantage specific groups [22].

This framework—substantive equality, conventionality control, and inter-American (and global) jurisprudence—serves as the conceptual and legal bedrock for the ensuing analysis of Peru's 2023 Constitutional Court ruling. It highlights both the transformative potential of integrating global human rights norms into domestic legal orders and the normative challenges of balancing competing social, cultural, and constitutional values in evolving democratic societies.

III. METHODOLOGY

This study adopts a qualitative-juridical approach to examine the 2023 Constitutional Court ruling on marriage equality in Peru, integrating three complementary methods:

A. Doctrinal Analysis

We conducted a detailed examination of primary legal texts, including the Peruvian Constitution (Art. 2), the American Convention on Human Rights (ACHR) (Art. 1.1), and Advisory Opinion OC-24/17 [23]. Doctrinal analysis enables systematic interpretation of normative provisions and their interrelations, revealing how substantive equality and non-discrimination principles underpin the Court's reasoning [24].

B. Jurisprudential Review

Focusing on the Constitutional Court's 2023 decision, this method involved a line-by-line exegesis of the judgment to identify key arguments, use of conventionality control, and referencing of inter-American jurisprudence [25]. Comparative jurisprudence was then applied by contrasting Peru's ruling with landmark cases such as *Obergefell v. Hodges* (U.S.) and *Atala Riffo and Daughters v. Chile* (IACHR),



highlighting convergences and divergences in judicial strategies [26].

C. Comparative and Documentary Research

We reviewed official reports and country-level enactments on marriage equality from Costa Rica, Ecuador, and Mexico (2018–2023) to contextualize Peru's experience within regional trends [27]. Documentary sources included government gazettes, IACHR monitoring reports, and peer-reviewed studies on implementation challenges [28].

i. Source Selection Criteria

- Recency: Only materials published between 2017 and 2025 to ensure relevance to OC-24/17 and subsequent developments [29].
- Authority: Documents issued by recognized bodies (Constitutional Courts, IACHR, UN agencies) or articles in Q1/Q2 journals indexed in Scopus or WoS [30].
- Verifiability: Every source includes a DOI or official URL leading to the original text [31].

ii. Limitations

- Access to Unpublished Decisions: Some lower-court rulings and administrative records remain inaccessible, potentially omitting grassroots implementation data [32].
- Temporal Scope: The focus on developments up to mid-2025 may overlook emerging legislative reforms or societal shifts post-2023 [33].
- Cultural Dimensions: While legal analysis is comprehensive, the study may underrepresent nuanced social attitudes in remote regions [34].

IV. ANALYSIS OF THE 2023 CONSTITUTIONAL COURT RULING

The 2023 decision of the Peruvian Constitutional Court (TC) constitutes a judicial landmark by affirming same-sex marriage through a strategic blend of constitutional interpretation and integration of international human rights standards [23, 24]. The analysis is divided into constitutional reasoning and human-rights alignment.

A. Constitutional Reasoning

i. Human Dignity as Constitutional Bedrock

The TC grounded its decision in Article 2 of the Peruvian Constitution, which protects human dignity and equality before the law [23]. Denying marriage rights to same-sex couples was deemed incompatible with the Constitution's mandate to eliminate all legal categories that perpetuate inferior status [24]. This expanded the interpretation of Article 2 to embrace evolving social realities and international commitments.

ii. Substantive Equality over Formalism

Rejecting a formalistic approach, the Court emphasized that identical legal provisions can perpetuate systemic inequities without corrective measures [25]. Drawing from feminist and critical legal theory, it recognized that neutrality in law often masks entrenched power imbalances [26]. Accordingly, it mandated affirmative state action to restructure civil registry procedures for substantive parity.

iii. Conventionality Control Doctrine

The TC applied conventionality control to ensure domestic norms conform to the ACHR and Advisory Opinion OC-24/17 [23]. Even in the absence of explicit legislation, the Constitution must be read in harmony with inter-American standards, rendering any contrary provisions inapplicable [24].

iv. Dynamic Constitutional Interpretation

Using evolutive interpretation grounded in the Vienna Convention on the Law of Treaties, the TC adapted constitutional norms to current contexts, treating treaty provisions as “living instruments” [25].

B. Human-Rights Alignment

i. Binding Force of Advisory Opinion OC-24/17

The TC directly cited OC-24/17, affirming that states must recognize same-sex unions under Articles 1.1 and 24 of the ACHR [23, 27]. This elevated the Opinion's interpretative authority into a binding domestic standard.

ii. Judicial Role in Social Transformation

The Court portrayed itself as an agent of societal change, acting where legislative inertia prevails [26, 28]. It urged administrative bodies to adopt protocols for non-discriminatory treatment of all couples.

iii. Implementation Mechanisms

Recommendations included RENIEC guidelines to standardize procedures and inter-institutional coordination among the judiciary, Ministry of Justice, and civil society organizations [28].

iv. Limitations of Scope

While significant, the ruling's scope is limited to marriage recognition. Adoption rights, inheritance reforms, and broader anti-discrimination measures remain unresolved, requiring further legislative or judicial action [29, 30].

V. INFLUENCE OF ADVISORY OPINION OC-24/17

Advisory Opinion OC-24/17 has had a transformative impact on marriage equality jurisprudence in Latin America by setting clear obligations for States to recognize same-sex unions [23, 27].

A. Regional Judicial Precedents

- i. Costa Rica: In 2018, the Supreme Court struck down the ban on same-sex marriage, citing OC-24/17 and mandating legislative reform within 18 months [27, 31]. The subsequent enactment of Law No. 9738 (2020) not only legalized same-sex marriage but also amended adoption and inheritance statutes for equal treatment [31].
- ii. Ecuador: The Constitutional Court (2019) relied on OC-24/17 to legalize same-sex marriage, referencing Articles 1.1 and 24 of the ACHR [27, 32]. Administrative reforms followed, reducing marriage registration waiting times and simplifying procedures.
- iii. Mexico: The Supreme Court's jurisprudence (1a./J. 43/2015) incorporated OC-24/17

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to extend protections to same-sex couples [27]. By 2022, 24 of 32 states had amended civil codes, aligning domestic law with inter-American human rights standards [33].

B. Policy and Institutional Impacts

Beyond courts, OC-24/17 influenced policy debates and administrative frameworks. The Inter-American Commission on Human Rights (IACHR) has issued monitoring reports urging compliance, which have resulted in accelerated reforms in Colombia and Uruguay [28, 34]. Early compliance countries demonstrated a 40% higher rate of registry adherence to non-discrimination protocols compared to late adopters [34].

Uruguay's 2013 marriage equality law was updated in 2021 to incorporate OC-24/17 language, standardizing training for municipal officers and notaries [34].

C. Academic and Social Dimensions

Scholarly work highlights that OC-24/17 shifted discourse from formal equality to substantive dignity [26, 35]. Jurisdictions citing OC-24/17 have seen increased litigation opportunities for LGBTIQ+ rights, demonstrating courts' greater willingness to enforce substantive equality claims.

In Peru, RENIEC data indicate that 15% of municipal registries lacked updated same-sex marriage protocols six months after the ruling [28], underscoring the need for training and oversight.

D. Impacts on Fundamental Rights

The 2023 Constitutional Court ruling on same-sex marriage in Peru has generated legal, social, and political effects that extend beyond the immediate recognition of marital rights.

E. Legal Effects

Same-sex couples now enjoy formal recognition of rights such as inheritance, spousal benefits, and social security [27, 28].

The application of the doctrine of conventionality control has made these rights immediately enforceable, compelling civil registries to accept marriage applications without awaiting new legislation [23, 27].

However, adoption rights remain unregulated, requiring further legislative or judicial action [31].

F. Social and Cultural Consequences

The ruling has increased visibility and validation of LGBTIQ+ relationships. Support for marriage equality in Peru rose from 37% in 2021 to 52% in 2024 [29].

Nonetheless, stigma persists, particularly in rural and conservative areas, highlighting the need for targeted education campaigns [28, 35].

G. Political and Institutional Repercussions

The decision has mobilized civil society organizations to push for comprehensive anti-discrimination laws [34].

The IACHR has recommended that Peru extend protections to employment, housing, and healthcare [28].

Despite judicial clarity, some local registries have reported delays, reflecting pockets of bureaucratic resistance [28].

H. Barriers to Full Realization

Reports indicate that 28% of same-sex couples have faced administrative refusals or delays [34].

Bridging this gap between de jure rights and de facto access requires coordinated action among the judiciary, legislature, and civil society [28, 35].

VI. COMPARATIVE DISCUSSION

Peru's judicial pathway to marriage equality offers a distinct model when compared to other Latin American approaches, revealing different strategies and trade-offs in achieving substantive equality.

A. Argentina – Legislative Leadership

In 2010, Argentina enacted the Marriage Equality Law via Congress, incorporating adoption rights and comprehensive anti-discrimination measures in a single legislative package [20, 29].

This unified statutory framework avoided the implementation gaps often seen when rights depend solely on judicial enforcement [27].

B. Costa Rica – Judicial–Legislative Hybrid

In 2018, Costa Rica's Supreme Court, citing OC-24/17, struck down the marriage ban and gave the legislature 18 months to enact reforms [23, 27].

The eventual 2020 law ensured legal clarity and democratic legitimacy, while also amending inheritance and adoption statutes [23].

C. 7Mexico – Decentralized Judicial Mandates

Mexico's Supreme Court declared marriage bans unconstitutional in 2015; however, without a federal statute, implementation was left to state-level courts, resulting in a patchwork of compliance [23, 28].

By 2022, 24 of 32 states had amended their civil codes, mainly in response to successive judicial rulings citing OC-24/17 [23].

D. 7Peru – Unitary Judicial Model

Peru's 2023 Constitutional Court ruling adopted a single, binding judicial decision effective nationwide [27].

This model delivered swift uniformity but risks administrative resistance without legislative reinforcement [28, 34].

The reliance on conventional control as the principal mechanism demonstrates both its strengths—immediacy and cohesion—and its limits when not supported by statutory reforms [23, 27].

VII. CONCLUSIONS AND RECOMMENDATIONS

The 2023 Constitutional Court ruling on marriage equality in Peru is not merely a juridical milestone; it represents a normative redefinition of citizenship that extends the ethical horizon of the Peruvian legal system. By incorporating Advisory Opinion OC-24/17 into domestic constitutional interpretation through the doctrine of conventionality control, the Court enacted a jurisprudential bridge between international human rights law and the lived

realities of historically excluded communities.

However, legal recognition alone does not dismantle the entrenched cultural hierarchies that have long confined LGBTIQ+ persons to the periphery of civic belonging. The decision affirms the indivisibility of dignity and equality, yet its transformative potential hinges on sustained institutional vigilance, legislative completeness, and a conscious societal shift. Without these, the ruling risks becoming a symbolic victory—celebrated in headlines but diluted in daily life.

A. Critical Insights:

- i. Judicial audacity as a catalyst – The Court’s willingness to act in the absence of legislative reform underscores the judiciary’s evolving role as an architect of rights. This sets a precedent not only for marriage equality but also for future adjudication in areas such as adoption, gender identity, and comprehensive anti-discrimination protections.
- ii. The paradox of uniformity – While the decision is binding nationwide, the heterogeneity of local implementation exposes a gap between normative design and administrative reality. True equality demands more than formal compliance; it requires operational empathy from public institutions.
- iii. The unfinished social contract – Marriage equality should not be the terminus of reform but the opening chapter of a broader pact that redefines family, care, and belonging beyond heteronormative frameworks.

B. Recommendations:

- i. Legislative consolidation – Enact a comprehensive equality statute covering marriage, adoption, inheritance, healthcare, and labour protections, with clear sanctions for non-compliance and independent oversight.
- ii. Institutional accountability – Create a multi-sectoral observatory to monitor compliance with the ruling, publish data on registry practices, and offer corrective measures in real time.
- iii. Transformative civic education – Launch a national program, co-designed with civil society, that repositions equality not as a concession to minorities but as the measure of democratic maturity.
- iv. Intersectional policy design – Recognize that discrimination often intersects with factors such as poverty, ethnicity, and geography, demanding context-specific solutions to achieve substantive equality in all regions.

In essence, this ruling is a constitutional promise—a promise that the Peruvian State must now honour not only in the language of law but also in the architecture of its institutions and the conscience of its people.

DECLARATION STATEMENT

After aggregating input from all authors, I must verify the accuracy of the following information as the article's author.

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