

Human Rights Situation of the LGBT Population

Shadow Report submitted to the United Nations Human Rights Committee

Colombia Diversa

May 2010

With the collaboration of:



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I. INTRODUCTION

The Colombian Constitution and other laws provide a series of judicial and administrative recourses that can be accessed by any Colombian citizen, without any kind of discrimination, when she or he considers that any of her/his rights have been violated. However, in practice, access and effectiveness of those recourses for lesbians, gays, bisexuals and *transgeneristas* (LGBT persons) is limited due to the historical discrimination they have been subjected to. Even though the Constitutional Court has developed an extensive jurisprudence, mostly on the rights of same-sex couples, discrimination based on sexual orientation and gender identity persists.

Indeed, as the current report will make evident, in Colombia the rights of lesbians, gays, bisexuals and *transgeneristas* are not only disrespected but also not guaranteed, because in practice judicial and administrative authorities often prioritize their biased conceptions when enforcing the law and/or ignore the unique needs and rights of this population. So, lesbians, gays, bisexuals and *transgeneristas* see their rights to life, personal integrity, personal freedom and security, freedom of expression and others violated, without the existing recourses for guaranteeing those rights being really effective.

A serious concern is that, in open disregard to its obligations to respect and protect those rights consecrated in Articles 2, 23 and 26 of the International Covenant on Civil and Political Rights, the Colombian State has failed to develop effective actions to implement Constitutional Court decisions granting rights to same-sex couples. Similarly, it is to be highlighted that the Colombian State still refuses to implement the recommendations made by the Committee on Human Rights in the Case X vs. Colombia.

On the other hand, LGBT persons continue to be victims of police abuse that violates their rights to life, personal integrity and due process, without the State adopting effective measures to respect and protect those rights. Even though the Police has issued a Directive

¹ **COLOMBIA DIVERSA** is a non governmental organization working for the rights of lesbians, gays, bisexuals and *transgeneristas* (LGBT persons) in Colombia. Its mission is to promote full inclusion, respect for the integrality of rights, recognition and mobilization of LGBT persons in economic, social, political and cultural spaces, as a contribution to building a democratic, modern and socially fair society.

that protects and respects the rights of the LGBT population, it has not been translated into effective measures and cases of police abuse keep occurring.

Another concern is that LGBT persons' right to life is still being violated without the State having taken effective measures to identify and punish those responsible. One evidence of this is that fact that, to our knowledge, the aggravating factor mentioned in Article 58 of the Penal Code that establishes increased punishment when "commission of the punishable act is inspired by intolerance and discrimination based on the victim's race, ethnicity, ideology, religion, beliefs, sex or sexual orientation, illness or dissability", has not been applied to any of the penal investigations that have taken place on violations of the right to life. It is particularly remarkable that the murders of human rights defenders advocating for the LGBT population are still impune.

Lastly, it is also worth highlighting that the State disregards the rights of children who have grown up in families where both parents are of the same sex, which results in their discriminatory treatment by the State when compared to those children who have grown up in families where parents are of different sexes. It is also a concern that State bodies decline adoption requests only because of the applicant's sexual orientation, ignoring the fact that establishing the legal inadmissibility of an adoption only brings negative consequences that result in disregard for the best interest of the children.

II. ANALYSIS BY RIGHTS

In the next sections we will analyze the human rights situation of LGBT persons in Colombia on the basis of some of the articles from the Covenant on Civil and Political Rights. This report ends with some of the recommendations we consider necessary for effectively respecting and guaranteeing the rights of LGBT persons in Colombia.

Article 3 Equality between men and women

There is little data on the human rights situation of lesbian and bisexual women. This is because of the lack of State information systems using variables linked to sexual orientation and gender identity of the victims; low reporting; lack of follow-up on the cases where abuses are reported; and, the particular situation of discrimination experienced by lesbian women affects their visibility and their capacity to affirm their rights in a direct way. So, the figures on human rights violations are lower for these populations than for gay men and *transgeneristas*. In this sense, the problem of discrimination and violence against lesbian women must be exposed because whenever a woman makes her sexual orientation visible, she is attacked.



On their part, given their greater visibility *travesti* women engaged in prostitution are the main victims of human rights violations, as becomes evident in most of the reported cases of police brutality, prejudiced-based violence, violations committed in prisons and violations of economic, social and cultural rights.

a. Attacks against lesbian women

No homicide against lesbian women was reported in Colombia Diversa's 2006-2007 Report. However, for the year 2008, at least two homicides of lesbian women have been reported by the Medellín Municipal Ombudsman Office. As for other types of attacks against lesbian women, in the period 2006-2007 at least two incidents of verbal abuse against lesbians who had expressed affection for each other in public spaces and one threat from "Skinhead" right wing groups in Bogota were reported.

In the Report mentioned above some cases of police abuse against lesbian women were documented, as well as some cases in which women have seen their right to work violated for being lesbians. Regarding the right to health, it was possible to establish that lesbian women are afraid to acknowledge their sexual orientation before health professionals and administrative staff of insurance health companies. The lack of information resulting from this impedes them from receiving medical care according to their needs. In terms of prison, together with the Senate Human Rights Commission, it was possible to establish that situations in which lesbian women's rights are violated persist in at least three women's prisons around the country.

Something that strikes our attention is the fact that in 2009 threatening leaflets against LGBT persons, including some against a particular lesbian group in the city of Chinú, Córdoba, were circulated in different cities throughout the country. Those responsible for this leaflet call themselves "*Grupo de limpieza de Córdoba y Sucre*" (Cordoba and Sucre Cleaning Group) and recommend to those mentioned in their leaflets to leave the town before a certain deadline "if they don't want to spend December in pain and mourning".² Even though Colombia Diversa requested State intervention to face this situation, there has been no official response to date.

b. Attack against transgenerista women

In Colombia Diversa's 2006-2007 Report the murder of at least 17 *travestis* was reported, showing that the main victims prejudice biased-based violence are *travestis* engaged in prostitution. It was also possible to ascertain that the main victims of police abuse were *travestis* together with others in the community who make their sexual orientation or gender identity visible in public spaces.

² El Meridiano de Córdoba (Newspaper), *Intranquilidad por pasquines*, November 28, 2009 in: <http://elmeridianodecordoba.com.co/archivo/2009/11/28/>

c. The situation of lesbian, bisexual and transgenerista women deprived of their liberty

In prison, lesbians, bisexual women and *travestis* suffer rights violations including their lesbianism being equated with a disciplinary problem; restrictions to conjugal visits in prison by their same-sex partners; control over inmates' affectionate and sexual relationships; prohibition to wear clothes of a sex other than their biological one; degrading and humiliating treatment, such as denying them access to cells or force them to shave their hair. All these violations have been corroborated by the Senate Human Rights Commission.

Article 6

Right to life

In its 2006-2007 Human Rights Report, Colombia Diversa documented the murders of at least 67 LGBT persons³. This information was checked against those provided by the Forensic Medicine body, the Attorney General Office, *Defensoría del Pueblo* (Ombudsman Office), Police Command and local governments in all (State) capitals throughout the country, in their replies to Colombia Diversa's petitions. Even though this figure is not conclusive⁴, it is nevertheless a useful guide to discuss the issue of prejudice-based violence against sexual orientation and gender identity. On the other hand, even though it is not possible to state that all these murders have homophobic or transphobic aims, there is data that allows for the identification of certain patterns among some of them, showing the importance of investigating a likely relationship between those homicides and the victims' sexual orientations and gender identities.

According to the data compiled by Colombia Diversa up to date, at least 57 LGBT persons could have been murdered in 2008, while by September 2009, at least 39 others have been reported for that year. On their part, the Medellín Municipal Ombudsman Office reported that at least 46 LGBT persons could have been murdered in Medellín in between August 2007 and August 2009 (28 persons in 2008 and 18 in 2009)⁵.

Even though it is not possible to argue that the homicides against LGBT people have increased, as the larger figures could also relate to an increase in reporting, the increase in numbers from 2006-2007 to 2008-2009 highlights the need to consolidate an information

³ Colombia Diversa has a database that is fed by information taken from the media, reports from non-governmental organizations advocating for LGBT rights and individual complaints that have come to the knowledge of Colombia Diversa.

⁴ It is very likely that the figures for these kinds of deaths in the country are higher, considering how this information is overlooked by the information systems and the media, as well as the fact that many of these cases are not reported to LGBT organizations.

⁵ Personería de Medellín. Informe parcial sobre la situación de los derechos humanos en Medellín de la población LGBT Agosto 2007 – Agosto 2009, October 26, 2009, pp. 9 y 10

system at the national level that tracks the victims' sexual orientations and gender identities.

Indeed what stands out is the precarious recording of data related to sexual orientation and gender identity in current information systems as well as the inconsistencies in the information available to State institutions whose mandate is to investigate this type of violation. In spite of the efforts made by the Forensic Medicine institution to implement a generic "homosexuals" category that apparently would allow the identification of the victims' sexual orientation, the way in which it has been used conflates sexual orientation with gender identity, overlooking differences that are key to analyze these cases. Also, the *Direcciones Seccionales de Fiscalías* (Attorney Sectional Offices) do not register LGBT persons as victims, considering that it is not possible to ask about their sexual orientation or gender identity because "the latter does not constitute a category to classify persons."⁶

On March 6, 2009, human rights defender Alvaro Miguel Rivera was murdered in his apartment in Cali. According to the preliminary reports, Alvaro Miguel was found gagged and bound, with broken teeth and several injuries on his head and body. Alvaro Miguel Rivera was active in different organizations and projects to promote the rights of LGBT populations (including the drafting of the Colombia Diversa 2005 Report).

Alvaro Miguel Rivera also worked advocating for the rights of those living with HIV and AIDS. In 2001, he had been subjected to threats because of his human rights work and forcibly displaced after denouncing that the *guerrillas* were implementing forced HIV testing.

The Inter-American Commission on Human Rights issued a statement condemning Alvaro Miguel's murder on March 12, 2009, and demanding of the Colombian State an exhaustive investigation and punishment for those found responsible for the murder. In spite of this, the case is still in the investigation stage.

Article 7 Right to personal integrity

In Colombia lesbians, gays, bisexuals and *transgeneristas* have been victims of human rights violations, particularly of their right to personal integrity. Incidents of torture and/or cruel, inhuman or degrading treatment have been reported in the following contexts: a) police brutality; b) prisons and c) homicide cases where victims were gay men, as will be described in the following sections.

a) Violations to personal integrity in contexts of police brutality

⁶ It is worth quoting in full: "While collecting a victim's personal information, our entity is not allowed by the law to ask at any time about their sexual inclination or preference, as these categories are not per se used to classify persons in our contexts. Intimacy is a constitutionally protected right, as it has been affirmed recently". Response by the Antioquia Sectional Direction of Attorney Offices, to the petition submitted by Colombia Diversa. November 26, 2007.



In 2006-2007, Colombia Diversa was able to document cases of police brutality in which LGBT persons were subjected to physical or moral violence, harassment, insults, cruel, inhuman or degrading treatment, humiliating conditions of detention, beatings on their prostheses in the case of trans women, use of firearms for physical aggression, instigation to sexual abuse and forced work as a form of punishment.

The striking aspect here is that it is trans women engaging in prostitution who are the main victims of violations to their personal integrity in contexts of police brutality. Gay men are also victims of abuse, even though in a lower proportion. On some occasions, human rights defenders and witnesses of these abuses were also targeted. This shows that when the LGBT population becomes publicly visible, its vulnerability to police brutality also increases. In spite of the complaints, cases of police abuse that also involved sexual violence continued to take place in 2008 and 2009, as evidenced in the case below.

On October 20, 2009, the Armenia Municipal Ombudsman circulated complaints pointing to police officers who seemed to be sexually harassing travestis engaged in prostitution. According to those complaints, a police officer known as “La Lorena” would put pressure on the travestis to have sex with him in exchange for allowing them to work undisturbed⁷. This is not an isolated case: there have been repeated complaints about police officers demanding sexual favours in exchange for allowing persons engaged in prostitution to work.

b) Violations to personal integrity in prisons

In 2004, the Committee Against Torture recommended to the Colombian State to “Ensure, so as to preclude all instances of torture or cruel, inhuman or degrading treatment, that persons subjected to any form of arrest, detention or imprisonment are treated according to international standards.”⁸ In spite of this recommendation it was ascertained that between 2005 and 2007, LGBT persons in prisons have suffered from conditions of overcrowding and have been victims of physical and psychological violence. In particular, there have been cases of sexual violence, cruel, inhuman or degrading treatment and repression of sexual identity, as behaviours that constitute human rights violations.

c) Hints of torture in homicides against gay men

Between the years 2005 and 2007, Colombia Diversa reported a series of homicides against gay men in which the following common features were identified:

- The apparent motive was theft.
- The victim’s body appears naked, with traces of sexual activity.

⁷ Caracol Radio, news bulletin, October 20, 2009. On file with Colombia Diversa.

⁸ Committee Against Torture, *Conclusions and Recommendations: Colombia*, CAT/C/CR/31/1, February 4, 2004, para. 11.j.



- The victim's profile is that of an older man, with a stable economic status.
- The victim is found in his home.
- The cause of death is mechanical asphyxiation caused by being strangled with a cord
- Traumas and injuries evidence extreme violence during the commission of the homicide

What is striking here is that these features are consistent with those identified in 2005 by a Forensic Medicine expert in homicides of gay men that had occurred in Bogotá.⁹

However, the authorities usually dismiss homophobic violence as a motive, overlooking the evidence pointing to torture before the homicide and adopt a biased attitude when faced with this type of case. In spite of the evidence, investigations start from the hypothesis of a crime of passion or personal revenge, excluding the possibility of a homophobic homicide.

Article 9 Personal Liberty

Since 2005, Colombia Diversa has reported incidents constituting police abuse against LGBT persons, particularly against *travestis* engaged in prostitution. In 2006-2007, Colombia Diversa reported that “in the cases of arrest and attack against *travestis* it has been found that they are taken to isolated places in town; in some cases they are beaten on their prostheses; firearms have been used by the police in physical attacks against them; there has been instigation to sexual abuse and they have been forced to do certain types of work as a form of punishment.” It was also possible to establish that public visibility of the LGBT population renders it more vulnerable to police abuse. The profiles of the victims show that all of them had made their sexual orientation or gender identity visible.

Since 2004, the Colombian Constitutional Court through a writ for the protection of fundamental rights¹⁰, affirmed that in the course of preventive administrative detention, procedures to guarantee the rights of those arrested must be followed. And it added that whenever LGBT persons (and particularly *travestis*) are arrested, the arrest can never be based on their sexual orientation and/or gender identity, and even less on prejudices derived from those features.

In spite of the existence of judicial statements against them, arbitrary detentions of LGBT persons by police officers continue to take place. As evidence, we can present the verdict by a first trial Family Court in the city of Cucuta in June 2009, reiterating the jurisprudence previously mentioned and protecting the rights of *travestis* engaged in prostitution who had complained of physical and verbal abuse during the detention procedures. However, to our knowledge, neither the Cucuta local government, nor the Police have adopted any measures to stop these incidents from recurring.

⁹ Colombia Diversa, *Informe de Derechos Humanos 2005*, Bogotá, 2005, pp. 14 -16 in: <http://www.colombiadiversa.org/dmdocuments/Informe%20DH%20LGBT%20Colombia%20-%202005.pdf>

¹⁰ Constitutional Court Sentence T-301, 2004.



In March 2009, *Santamaría Fundación* and Colombia Diversa met with the Director General of the National Police to discuss the different complaints about police abuse and particularly the situation in Cali.

As a result of this meeting and taking up the proposals presented by both organizations, the Police Director General issued Transitory Directive 058/2009 that sets criteria to guarantee respect and special protection for the LGBT population. After it had been issued, meetings were held in eight cities across the country (Barrancabermeja, Barranquilla, Bucaramanga, Bogota, Cali, Medellin, Pasto and Pereira) for LGBT organizations and activists to expose the situation they were facing vis-a-vis the Police. In some of those cities, follow-up meetings and the drafting of workplans with the Police were agreed upon. It has also come to our knowledge that there is a draft document containing case studies and practical tools to train police officers at the Police Academy and a draft document on internal policies of the National Police, both related to specific procedures for the interactions between the Police and LGBT persons.

On September 9, 2009, Nathalia Diaz Restrepo, a member of the organization *Santamaría Fundación*, was subjected to police abuse in Cali. According to her complaint, when Nathalia was walking around Las Veraneras neighbourhood at night, in the company of Lulu Muñoz, she was approached by police officers identified by the number 241009, who requested to search them. Given the fact that both women were trans, they demanded to be searched by a woman police officer. But the policemen refused and arrested both women for refusal to be searched. While the arrest was proceeding, Nathalia invoked Directive 058 of the National Police, to which one of the officers replied, “We are not disrespecting that fake treaty.” According to the complaint, the detention was not only unjustified but it also did not follow the legal procedures required, such as due registration and allowing those arrested to make a phone call. Nathalia and Lulu also stated that they were verbally attacked by the policemen.¹¹

Likewise, in spite of the Directive 058, there are legal provisions justifying National Police actions that blatantly ignore the rights of the LGBT population. In the Atlantic Department, the *Manual de Convivencia Ciudadana* (Citizens’ Coexistence Manual), ancillary to the National Police Code, states in its Article 66:

“Behaviour by the Gay Community contributing to coexistence. To maintain a healthy coexistence, the gay community should abide by, among others, the following precepts:

- 1. Abstain from adopting provocative or inciting attitudes towards others, that can place their safety and that of their community at risk;*
- 2. Without prejudice to their own cultural values, principles and customs, to adopt attitudes that will allow them to adjust and coexist in society with those who are different from them;*
- 3. Respect the norms of coexistence, neighbourly relationships and tranquillity, as well as their neighbours’ cultural and sexual options different from their own.*

¹¹ Information provided to Colombia Diversa by Santamaría Fundación.



4. Abstain from taking illicit advantage of their condition as a population in situations of vulnerability and avoid exhibitionism;
5. Self-regulate their behaviour following the norms established by this Manual;
6. Abstain from influencing minors in any way, to avoid violating their right to the free development of their personality. (underlined by Colombia Diversa)¹²

Recently, on February 24, 2010, National Police issued Permanent Directive 06, 2010 that modifies Directive 058 in some aspects.

Lack of information systems on police abuse

The lack of information systems related to police abuse cases not only renders those violations against LGBT persons invisible but also impedes the development of strategies and actions to prevent their occurrence and to ensure the full exercise and enjoyment of rights for LGBT persons. Indeed, when the *Sistema de Información Jurídica de la Policía* (Police Juridical Information System, SIJUR) was asked about police abuse records, it replied that from 2003 until November 2007 there were no records of abuses perpetrated against LGBT persons.

Accordingly, in spite of the ongoing complaints about impunity for police abuse cases that Colombian LGBT organizations have been making public since 2005, the situation remains unchanged. Of the 7 petitions submitted in 2009 to the different regional commanders, only 3 have been answered. And of those only one, that of Risaralda, acknowledges the existence of a police abuse case. In contrast to this, the Region 5 Commander, whose jurisdiction includes the city of Cucuta, replies that “In the databases of this Police Region’s units there are no records of complaints related to abuses in which the victims are citizens belonging to the LGBT community.”¹³ However, we have knowledge of at least one case that took place in the city of Cucuta and that was the subject of a writ for the protection of fundamental rights’ sentence by the Fourth Family Court in San Jose de Cucuta, where police abuse against *travestis* engaged in prostitution in that city was exposed and culminated in the tribunal protecting the claimant’s rights on June 24, 2009.¹⁴

On its part, when asked about the number of police abuse cases against LGBT persons in which it had used its *preferente*¹⁵ power, the Attorney General Office replied that “Institutional Information System contained no data with the level of detail requested by

¹² Ordinance 000018, 2004, issuing the Manual de Convivencia y Seguridad Ciudadana del Departamento del Atlántico, as ancillary to the Código Nacional de Policía.

¹³ Response by National Police Commander for Region 5 to the petition submitted by Colombia Diversa, No. 05601 COMAN-REGI 5, September 10, 2009.

¹⁴ San Jose de Cucuta Fourth Family Court, writ for the protection of fundamental rights’ sentence, June 24, 2009.

¹⁵ *Preferente* power is a specific power granted by law to the National Attorney General Office to conduct disciplinary investigations taking on the duties of (Police) internal affairs departments.

you.”¹⁶ That is, that the National Attorney General Office does not have an information system capable of tracking how many investigations are being conducted on violations against LGBT persons.

Article 10

Rights of persons deprived of their liberty

Colombia Diversa researched the situation of LGBT people in prison for the period 2005-2009. A summary of our findings is presented in the following sections:

- LGBT persons in prison are subjected to physical and psychological violence.
- Their situation of vulnerability is deepened and can itself be a cause for violence and discrimination against LGBT persons: the prison collective mind is ruled by bias and by a logic of domination that is *machista* and homophobic.
- In spite of national and international norms, and of jurisprudence on discrimination and the situation of vulnerability faced by LGBT persons in prison, the prison authorities have not taken any effective measures to fully guarantee their rights.
- Behaviours that constitute human rights violations include sexual abuse, cruel, inhuman or degrading treatment, repression of sexual identity and arbitrary restrictions to conjugal visits from their same-sex partner.
- It was also verified that prison norms and practices openly violate the rights of LGBT inmates, particularly in relation to the respect deserved by *travesti* identity in prison facilities.

In 2009, through the Senate Human Rights Commission, Colombia Diversa was able to establish that the situation in maximum security prisons severely restricts the right to free development of one’s personality. In the maximum security prisons of Valledupar, Combita and Acacias, inmates are afraid to express their sexual orientation or gender identity, as they fear they will be discriminated against if they do so.

The response by the Director of the Combita (Boyaca) High Security Prison when a member of the Senate Human Rights Commission asked him about gay men and *travesti* inmates is illustrative in this regard:

*“No, no, no! Here we only have two people with HIV, but there is not a single homosexual here. Here they are all machos, machos, machitos.”*¹⁷

Travesti women who come to these maximum security prisons have their head shaved and their feminine clothes and any accessory that reveals their feminine identity taken away.

¹⁶ Response by the National Attorney General Office to a petition submitted Colombia Diversa, October 23, 2009

¹⁷ Visit to penitentiary and prison facilities undertaken by the Senate Human Rights Commission in March 2009.

Control over behaviours and expressions reaches such a point that those contravening the parameters imposed are excluded from the possibility of redeeming their sentence by working or studying.

All these restrictions render the LGBT population in maximum security prisons invisible. Likewise, abuse perpetrated against these populations and the claims against abuse are ignored or minimized by prison authorities.

a. Conjugal visits by same-sex couples

To enjoy the right to conjugal visits from their partners, LGBT persons face a series of obstacles that heterosexual individuals are spared:

1. **Periodicity.** In most facilities, visits are monthly. LGBT persons can face longer and discriminatory periods between visits, without any justification whatsoever.
2. **Procedures.** Lack of clarity about the procedures for authorization or control over conjugal visits. Different procedures that are discriminatory are imposed on LGBT persons both as visitors and as inmates receiving the visits.
3. **Illegal and arbitrary restrictions to conjugal visits.** Unreasonable criteria that are not stated in the law have been imposed. For instance, the requirement of a civil marriage certificate (a condition making the visit impossible for the LGBT population in case of same-sex visits) or affidavit for *de facto* unions, lab exams, condoms, interview, verification of the visitors' marital status, or assessment by a social worker.

This requirement violates the sexual rights of LGBT persons deprived of their liberty and those of their partners. For instance, in a visit to the women's prison in Cali¹⁸, Colombia Diversa learnt that, according to the Director, the requirements for a conjugal visit included a civil marriage certificate or affidavit, HIV (negative) certificate and a photocopy of the visitors' ID papers. Conjugal visits among inmates in different facilities were not allowed, nor were visits by outsiders when the inmate had a relationship in the facility.

b. Issues specific to different populations

We will briefly reveal a series of problematic situations that the LGBT population has faced in prison contexts. Given that each population faces different situations, it is worth highlighting that the lack of differential measures on the part of the Colombian State has hindered the possibility to take measures to overcome the discrimination faced by these populations.

Travestis

¹⁸ Visit conducted in 2007, See Informe sobre situación de Derechos Humanos de la población LGBT en Colombia 2006-2007.

The main problems faced by *travestis* imprisoned in men's jails are related to the arbitrary limitation of their right to identity¹⁹; physical, verbal and sexual violence; restrictions to conjugal visits; and the degrading treatment by prison authorities during searches. These violations are directly related to their gender identity and to its greater visibility, and are usually based on arguments around "security", "internal regulations" or "protecting moral and good customs". However, the jail authorities have not yet been able to explain how the *travesti* identity per se can constitute a security risk or a disciplinary problem in the facilities.

Moreover, not only do those *travestis* deprived of their liberty see their right to human dignity, physical integrity and free development of their personality violated but so do their partners during conjugal visits. These persons are treated in an undignified way and face arbitrary restrictions to their right to keep company with their partners, relatives and friends who are deprived of their liberty.

Lesbians and bisexuals

In a joint visit by Colombia Diversa and the Senate Human Rights Commission²⁰ to the women's prison "El Buen Pastor" it was established that discrimination on the part of inmates against lesbian women persist, and that the officers from the *Instituto Nacional Penitenciario y Carcelario* (National Prisons Institute, INPEC) have no knowledge of lesbians' human rights.

Through the Senate Human Rights Commission, Colombia Diversa was able to ascertain that in the medium and high security Valledupar prison, in the women's tower, women with masculine identities are not being allowed to receive the clothes they favour to wear. This constitutes an open violation to the right to free development of their personality and imposes a model of femininity that according to the prison authorities is the right one to be followed by the inmates.

Gays and bisexuals

Colombia Diversa and the Senate Human Rights Commission were able to establish that the fear of submitting complaints about abuse experienced by gay and bisexual men in prison is exacerbated by the fear of physical revenge taken against them as a consequence. We documented cases of sexual violence against gay men perpetrated by other inmates at

¹⁹ It is worth mentioning that several writs for the protection of fundamental rights' sentence have stated that obstructing their access to feminine beauty elements and clothes consistent with their identity constitute violations to the right to the free development of their personality.

²⁰ Visit to penitentiary and prison facilities. March, 2009.

the time of their arrival in prison. The guards are unaware of this problem or, when aware, refuse to take action.

Article 14

Due process

Violations of the rights to due process against LGBT persons have been documented particularly in two situations: in homicide-related investigations and in police abuse cases. In the following paragraphs we will briefly analyze both.

a. Impunity in investigations related to homicides of LGBT persons

Colombia Diversa has documented a high degree of impunity that is characteristic of investigations in cases of human rights violations against LGBT. Indeed, most cases of right to life violations against LGBT persons are considered “crimes of passion” by the investigating bodies, dismissing from the very beginning any possible relationship between the crime and the victims’ sexual orientation or gender identity. Indeed, authorities often disregard homophobic violence as a motive and have a biased attitude even before the developments of the case. In spite of the evidence, investigations start from a hypothesis of a crime of passion or personal revenge, excluding the possibility of homophobia as a motive for the homicide.

It is also worth noticing that in none of the investigations undertaken for violations to LGBT persons’ right to life, has the aggravated circumstance contemplated in Article 58 of the Penal Code been applied. It says that “Whenever the punishable behaviour had been motivated by intolerance or discrimination based on race, ethnicity, ideology, religion, beliefs, sex or sexual orientation, or any illness or disability of the victim”, punishment will be increased.

b. Impunity in police abuse cases as an obstacle for the effective enjoyment of rights.

Contrary to the recommendations issued by international protection bodies, police abuses perpetrated against LGBT persons are not investigated or punished by the relevant authorities. For instance, in the Colombia Diversa 2006-2007 Report, at least 31 cases of police abuse were documented but only in 9 of them had investigations being started. It is also a matter of concern that the Police internal affairs bodies, that are in-charge of conducting these investigations, consider the complaints as “rash” or affirm that “there is no merit in beginning an investigation”. What is even more serious, as some activists and control bodies have pointed out, is that the officers encourage those submitting complaints to reconcile or to withdraw their complaints, even though disciplinary processes do not allow for these two options.

On its part, the National Attorney General Office and the Municipal Ombudsman Offices that have the possibility to exercise their *preferente* power and to take over the cases from the internal affairs bodies, have not shown any concrete results in police abuse complaints submitted by LGBT persons. For instance, as a response to a petition in which the Attorney General Office was asked in how many investigations it had exercised its *preferente* power, it was unable to mention a single investigation related to police abuse against LGBT persons²¹.

This is compounded by some practical problems that arise at the time of identifying the perpetrators and collecting evidence, due to the particular circumstances in which the abuses take place: perpetrators do not allow the victims to identify them (i.e. by covering their badges, names or numbers identifying them and/or, when their identification data is on their vests, turn them over²²); many times the abuses evidence such a degree of violence that victims can not recognize their aggressors; on other occasions, those arrested in transitory reclusion centres are not registered, among other circumstances.

Lastly, another situation that raises concerns has to do with cases in which the victims who report incidents are exposed to new threats or attacks: the accused police officers continue to work in the same areas in which the victims' live, and this leads them to stop reporting or to withdraw their complaint for fear of reprisals.

Article 19

Freedom of opinion and expression

Threats to radio stations promoting the human rights of LGBT populations

On April 30, 2009, the radio station promoting inclusion for LGBT people, Radio Diversia, circulated a statement describing how unknown persons broke into their administrative offices and stole two computers, containing a database with information about 150 listeners and other documents with data about its programs and projects.

On May 5, 2009, the same station reported that in the afternoon it had received an email from a group called "*La Organización*" (The Organization) threatening to place a bomb in Radio Diversia if its director, Mr. Carlos José Serrano Cares, did not leave the country within 8 days. In the same email, the group claimed to have stolen the computers and threatened to use the information it contained against the station's personnel.

²¹ Response by the National Attorney General Office to a petition by Colombia Diversa, October 23, 2009.

²² According to repeated complaints by *Fundación Santamaria LGBT* from the city of Cali and by *travesti* women from the city of Medellín in meetings with representatives from the *Federación Nacional de Personeros* (National Federation of Municipal Ombudsman Offices) and Colombia Diversa, in August 2009.



Faced with this situation and in the absence of proper measures to provide protection to Mr. Carlos José Serrano Cares and to Radio Diversia's staff, the former was forced to leave the country and the latter to cease its operations. Five months later, and with Mr. Serrano having already returned to Colombia, no action has been taken to guarantee the station's safety and the State has not shown its support in any strong way. Radio Diversia now continues operating but without a physical space of its own.²³

Moreover, Lulú Radio issued a statement on August 25, 2009, saying that four days earlier *"illegal actors from Medellin city, in a premeditated action, approached some members of our station Lulu Radio, and used threats in an attempt to restrict the journalistic activities of our media outlet as well as our work of making difference clearly visible and for the full recognition of the diversity of sexual orientations and gender identities."*²⁴

On August 24, Medellin Municipal Ombudsman and the National Federation of Municipal Ombudsman Offices, FENALPER, issued a statement expressing their concern about this situation.

In spite of the call issued by the Medellin Municipal Ombudsman for public authorities to clarify the incident, until now Lulu Radio has not been provided with any protection measure suitable to its needs, and no progress has been reported in terms of investigating the incident.

The two attacks in less than a year against radio stations that speak openly about the rights of LGBT populations is a matter for concern. The lack of guarantees for exercising freedom of expression as well as the lack of protective measures for these radio stations necessitate that the Colombian State implements protective measures urgently.

Article 20

Encouraging hatred while inciting discrimination, hostility and violence

²³ The complaints submitted by Mr. Serrano have been taken up by the director of *Centro de Solidaridad de la Federación Internacional de Periodistas* – (International Federation of Journalists' Solidarity Centre, Cesofip) – and the president of *Federación Colombiana de Periodistas* (Colombian Federation of Journalists, FECOLPER) in July 7, 2009. The threats were condemned by the UN OHCHR and by UNAIDS in a statement issued on May 15, 2009 that can be found in the Annex.

²⁴ Statement by Lulu Radio, Medellin, Antioquia. August 25, 2009.



For several years already, threatening leaflets promoted by “social cleansing” groups that include LGBT people among their targets have been circulated in Colombia. This situation has raised the concern of the Committee on Economic, Social and Cultural Rights²⁵ as well as of the Colombia Office of the United Nations’ High Commissioner for Human Rights who has addressed this concern in their yearly reports²⁶

In 2009, the proliferation of threatening leaflets in 24 districts of the country has continued, calling for the extermination of socially marginalized populations, including “homosexuals”.²⁷

Concern about the life and integrity of LGBT persons and persons living with HIV and AIDS in Colombia

Many of the leaflets that have been circulated do not clearly identify the LGBT population as a target but instead make references to persons living with HIV and AIDS. This has led Colombia Diversa to ask how it is possible to identify those living with HIV and AIDS. Three equally worrying possibilities have emerged:

- a. Illegal armed groups have databases to identify those persons living with HIV and AIDS²⁸
- b. They assume that LGB persons are, in every case, HIV positive. In this sense, **those showing affection to someone of their same gender in public space can be easily spotted**²⁹
- c. *Transgeneristas* are associated exclusively with the engagement in prostitution and HIV and AIDS³⁰. In this sense, **the expression of their gender identity by transgenerista persons is likely to provoke threats.**

²⁵ The Committee has referred to “*measures taken by the State party to address the problem of the murders of human rights defenders and the practice of “social cleansing” carried out against, inter alia, street children, the poor, indigenous people, prostitutes and homosexuals?*”²⁵ (underlined by Colombia Diversa) List of issues to be addressed while examining Colombia’s Fourth Periodic Report on the rights E/C.12/Q/COL/2. December 13, 2000.

²⁶ United Nations’ High Commissioner for Human Rights report on Colombia, 2005, Párrafo 86. E/CN.4/2006/9. January 20, 2006.

²⁷ Media statement by the UN Office for Human Rights, *Oficina de la ONU para los Derechos Humanos preocupada por ola de panfletos amenazantes*. Bogota, April 29, 2009. Accessed for the last time on June 5, 2009: www.ohchr.org.co/publico/comunicados/2009/cp0911.pdf

²⁸ In 2001, the LGBT human rights defender Alvaro Miguel Rivera – who was murdered in 2009- denounced that the FARC guerrillas forced the population of Vistahermosa, Caqueta, to undergo HIV tests.

²⁹ This assumption is based on the discrimination and bias historically experienced by LGBT populations in Colombia. This population has often been associated exclusively with HIV and AIDS. In this sense, the work of UN-OHCHR has also aimed at overcoming this type of bias. United Nations High Commissioner for Human Rights’ report on Colombia, para 109. . A/HRC/4/48. March 5, 2007.

³⁰ *Ibid.*



Faced with this situation and these hypotheses, it is a concern that these death threats might already have been carried out; that their perpetrators have remained impune, or simply that in the future they might become effective. The three likely situations are equally worrying, given that the circulation of leaflets against the LGBT population in Colombia tends to grow with time, by presenting the LGBT population as a target for elimination.

Article 23

Protection of the family

By 2005, there was no legal recognition for same-sex couples and thus none of the rights enjoyed by heterosexual couples were granted to them. This serious situation was not solved by any institution of the Colombian State until 2007, when the Colombian Constitutional Court issued the sentences C-075 (2007) and C-81 (2007) recognizing property and health coverage rights for same-sex couples.

But in the last seven years, the Parliament had refused to pass five bills aimed at the recognition of same-sex couples even though they only address property and social security rights.³¹

In May 2007 the United Nations Human Rights Committee issued a decision recommending that the Colombian State not discriminate against a gay man from receiving his deceased partner's pension and also urged the State to take measures to prevent acts of discrimination against same-sex couples in the area of pensions. However, the State has not implemented this decision because it will take no general measure to guarantee equality in terms of pension between heterosexual and same-sex couples, unless the Congress or the Court do it. Also, contradicting what the Committee has mandated, the case in question will not be reopened and no measures will be taken to improve the situation of the affected individual.³²

The then Minister of Internal Affairs and Justice, Mr. Carlos Holguin Sardi, in-charge of promoting the Government's legislative agenda in the Congress, was not in favour of the bills and when one was defeated he stated that, "This bill was innocuous and had no

³¹ In the last several years, the following bills have been introduced: Bill 85 (2001), Bill 43 (2002), Bill 113 (2004) and Bill 130 (2005) in the Senate, and Bill 152 (2006) in the Chamber. All of them have been discarded after being voted against or because they were never discussed.

³² "On August 22, Diana Arenas Pedraza – Economic Security and Pensions' Director with the Social Protection Ministry – and Monica Uribe Botero – Social Security's Economic Regulation with the Treasury Department – issued a negative opinion about compliance with the international decision. According to this document, Mr. X can not complain of discrimination in his case, as there are no laws protecting its petition." The newspaper adds: "At last, Vice-President Santos intervened and tipped the scales towards disobeying the international decision. The reason: compliance would imply creating a legal opening that would precipitate a shower of claims and petitions of the same type, with resultant economic costs for the State". *El Espectador*, "Una pareja gay divide al Gobierno". November 24, 2007. Colombia Diversa was able to confirm the existence of this debate in the Government and of the concepts referred to in the newspaper clip.

priority whatsoever for the Alvaro Uribe administration.”³³ Every time that there has been a process to discuss constitutional protection for same-sex couples through claims submitted to the Treasury Department or the Social Protection Ministry, the National Administration has taken positions against these rights.

It becomes evident then, that the government did not take unequivocal and effective action to guarantee the rights of same-sex couples but rather opposed them in constitutional processes and before international monitoring bodies. The government’s support in Congress was very precarious and did not support the passing of the initiatives. Thus, the government’s conduct is a matter for concern as it seems to follow a strategy to preserve the President’s campaign commitment in the public eye, without producing any legislative change, while its officers hampered the process and created policies against the rights of same-sex couples.

Difficulties in implementing Constitutional Court sentences on same-sex couples’ rights

Through its sentences C-075 (2007), C-811 (2007), C-336 (2008), C-798 (2008) and C-029 (2009) the Constitutional Court has recognized rights for same-sex couples. In spite of the Colombian Constitutional Court’s jurisprudential line in relationship to same-sex couples’ rights, a series of obstacles have arisen that hamper its effective implementation. Colombia Diversa is concerned about a number of situations in which officers have hindered the implementation of these sentences, including the following,

1. Demanding requirements that differ from those asked of heterosexual couples;
2. Ignoring the new decision by the Court (sentence C-029, 2009); and
3. Ignoring the rights recognized by the Constitutional Court to same-sex couples, resulting in inappropriate orientation and advice to those seeking information.

In terms of implementing the decision that provided to same-sex couples the same social security benefits that heterosexual couples were already enjoying, we have found some obstacles originated in how the sentence has been interpreted. Judges still interpret the sentence’s scope in different ways that result in lack of recognition of rights in some cases.

These different interpretations translate into discrimination in terms of same-sex couples’ rights. Colombia Diversa helped three couples to present writs for the protection of the right to pension for surviving same-sex partners.³⁴ This shows that in practice there is no effective enjoyment of those rights recognized by the highest tribunals and they must become enforceable through continuing and exhausting litigation on the part of the affected individuals.

³³ Statements on “W Radio” June 20, 2007.

³⁴ There is a fourth case, in which a different strategy was chosen but the organization has recently also been supporting it. The references for these processes are T-2299859, T-2292035, T-2324790 y T-2386935.

These situations that have arisen domestically had to be taken to international arenas, like the case of Angel Alberto Duque that is being analyzed by the Inter-American Commission on Human Rights. The State has also refused to implement the recommendations issued by the United Nations Human Rights Commission through its Communication 1361/2005 (case X vs. Colombia), in which the Committee considered that the Colombian State had violated Article 26 of the International Covenant on Civil and Political Rights that prohibits discrimination based on sexual orientation by “refusing the petitioner the right to receive a pension after the death of his stable partner, on the basis of his sexual orientation”. However, in spite of the recommendation issued by the Committee on Human Rights, the Colombian State has refused to implement it.

The repeated denial of social security rights to same-sex couples and the lack of strategies to inform people about these rights shows that the autonomy of public officers and justice personnel is seriously affected by the State’s inaction given the evident presence of prejudices that are not challenged in different judicial instances. The disobedience to the Committee on Human Rights’ decisions on same-sex couples’ rights conveys a message that strengthens the biases of judges and lawyers, that in turn affects judicial independence.

As evidenced in the case of the failure to implement the Committee on Human Rights’ recommendations in the case X vs. Colombia and the problems that arose with the implementation of the Constitutional Court’s decisions, the State is not fulfilling its obligation to protect families, including those consisting of same-sex couples.

Article 24

Rights of children

In a particular case in which a lesbian woman requested to adopt her partner’s daughter, the *Instituto Colombiano de Bienestar Familiar* (Colombian Institute of Family Welfare, ICBF), the body overseeing adoption procedures, denied her request without even starting the prescribed administrative procedures, as established by the first and second trial judges who protected the claimants’ right to due process.³⁵ ICBF is the body in-charge of overseeing that children rights are respected and protected. In spite of that, in this case – as the first and second trial judges were able to establish – in following the due procedures to determine if the child’s adoption by her biological mother’s partner, nothing was found that would conflict with the child’s right”. On the contrary, ICBF based its denial exclusively on the claimant’s sexual orientation, ignoring the fact that making the child’s adoption by her biological mother’s partner legally inadmissible only results in negative consequences, as the child’s best interest and her fundamental rights are being disregarded.

³⁵ First trial sentence, First Criminal Court, Rionegro Circuit, November 4, 2009; and second trial sentence, High Court, Antioquia-Sala Legal District for Criminal Court Decisions, January 20, 2010.

In this sense, we need to raise our concerns about the position adopted by the *Procuraduría General de la Nación* (Attorney General Office), that decided on administrative oversight of this case after having issued a negative opinion in a constitutionality process whose aim was to achieve the recognition of the right to adoption for same-sex couples. The Colombian Institute of Family Welfare based its denial in the case under discussion on the Attorney General Office's statements in 2009 about adoption of children by same-sex couples.³⁶

1. The family raised by the same-sex couple is disregarded, even though it will continue to exist in spite of not being recognized as such;
2. The child is denied legal recognition of her growing up in a stable home, full of solidarity, respect and love;
3. The child is denied the possibility of automatically inheriting from her mother's partner if the partner dies;
4. The child is denied the possibility that her mother's partner might give her permission for medical treatment in the event of a medical emergency involving the child;
5. Her non-biological mother is stopped from, or at least hampered in, acting officially in school, whenever needed;
6. The child is deprived of the possibility to remain with her mother's partner in the event of her becoming an orphan;
7. If the couple splits up, the child will lose the right to visitation with her non-biological mother;
8. The child could lose economic support from her non-biological mother if the couple splits up;
9. The child will live a legal and social contradiction between her real life (as the only child of a same-sex family that society recognizes as such) and the lack of legal recognition that places her in the position of a marginalized non-biological daughter, without any legal rights.

On the other hand, ICBF's refusal to grant the adoption of the child to her biological mother's partner, results in differential, unjustified and unreasonable, treatment of the child as compared with children who have grown up in heterosexual families. This implies that the child will be left unprotected not because same-sex couples constitute a risk or hamper her holistic development, but because the State refuses to acknowledge the same-sex family of which she is a member.

Lastly, it is worth highlighting that the *Procuraduría General de la Nación* (Attorney General Office), decided on administrative oversight of this case. However, the arguments invoked by the Office to assume such overseeing also fail to take into account the child's

³⁶ El Mundo Newspaper, *Procuraduría se pronuncia*, Wednesday, November 11, 2009, page A-12 and El Periódico Newspaper, *Aclaran adopción de niño por lesbianas*, November 11, 2009, page 8-A.



rights but are based only and exclusively on the sexual orientation of the person who wanted to adopt her. Also, the Colombian Institute of Family Welfare based its refusal in the case under discussion on the Attorney General Office's statements in 2009 about adoption of children by same-sex couples.³⁷

Articles 2 and 26

Equality before the law and guarantees against discrimination

a. Discrimination in access to and enjoyment of their rights by same-sex couples

In spite of the Committee on Human Rights 2005 decision in the case of Mr. X vs. Colombia³⁸ that dealt with the right to pension for same-sex couples, it was only in 2008 that the Colombian State acknowledged the right to pension for the surviving partner. However, the State continues to show a lack of political will to implement both decisions.

Since 2007, lawyer German Humberto Rincon Perfetti has been reporting that the Committee's decision has not been implemented in Colombia. This situation has also been exposed in the media.³⁹ It is worth highlighting that one of the arguments invoked by the Treasury Department against these decisions is that it could open the possibility for other couples to request their pensions in a retroactive manner, affecting the State finances.

In the case of decision C-336 (2008) issued by the Colombian Constitutional Court, a series of obstacles have arisen in practice for the effective enjoyment of the right to pensions for survivors. Colombia Diversa is currently following three cases that it has brought to the Constitutional Court because the pension funds have denied access to this right by demanding additional and differential requirements for same-sex couples. This not only constitutes contempt of the referred sentence but also of the principles set by the X vs. Colombia case in terms of equality for same-sex couples.

In the case that prompted sentence T-911 (2009), submitted by Colombia Diversa, the claimant was required to provide evidence that was impossible to gather, such as the joint affidavit of the de-facto union (also signed by his deceased partner). Such a requirement was impossible to satisfy, not only because there were no joint affidavits for same-sex couples before 2007 but also because such a document is not mandatory for the enjoyment of rights, as other mechanisms exist and they are available to straight couples. The Court's decision also disregarded the claimant's rights by considering that even though he had lived

³⁷ El Mundo Newspaper, *Procuraduría se pronuncia*, Wednesday, November 11, 2009, page A-12 and El Periódico Newspaper, *Aclaran adopción de niño por lesbianas*, November 11, 2009, page 8-A.

³⁸ On the issue of same-sex couples, the decision of the United Nations Human Rights Committee in the case *X vs. Colombia*, Committee on Human Rights, Communication No. 1361/2005: Colombia, May 14, 2007, . CCPR/C/89/D/1361/2005 In this decision, the Committee stated that Colombia violated Article 26 of the Covenant on Civil and Political Rights by denying the pension of his deceased partner to the survivor in a same-sex relationship.

³⁹ See: <http://www.elspectador.com/impreso/cuadernillo/judicial/articuloimpreso-el-senor-x-perdio-otra-vez> Consulted on June 9, 2010.

for 20 years with his partner, it was impossible for him to retroactively benefit from what was established in C-336, as his partner died before the date of that decision (2008), contradicting the Committee's decision on X vs. Colombia.

As the last point in this section, it is worth highlighting the persistence of discriminatory situations in relationship to the Justice system that the Colombian State has ignored and that social organizations have repeatedly pointed out. Judges and other public officers (such as notaries and local prosecutors⁴⁰) who intervene in procedures related to de-facto unions affidavits, ignore the Constitutional Court jurisprudence and also exhibit serious bias in relation to these unions. These bias interfere with the legal procedure for instance when evidence to determine the existence of a de-facto union is treated differently if the witness is homosexual, by discrediting her/his statement because of her/his sexual orientation or simply valuing the testimonies of straight persons more⁴¹.

b. Lack of Public Policies for LGBT people at the national level

In its report submitted to the Committee on Human Rights, the Colombian State highlights its commitment to implement the National Plan of Action on Human Rights included in the National Development Plan 2002-2006 "Towards a Community-Oriented State", as well as in the National Development Plan 2007-2010 "Community-Oriented State: Development for All." The National Plan of Action contains a specific section devoted to combating discrimination and promoting respect for identities (paras 644-646).

However, we need to clarify that the National Development Plan 2006-2010, "Community-Oriented State: Development for All" does not include the LGBT population, sexual orientation or gender identity as elements needed for developing inclusive public policies to promote and realize human rights, in the chapter called Special Dimensions. Similarly, the execution of the Development Plan for the period 2002-2006 did not include the development of any public policy in favour of the LGBT population at the national level.

The National Planning criteria on the rights of LGBT persons can be summarized as follows: "The National Planning Department considers that the LGBT population benefits from overall public policies, through the guarantee of non-discrimination in access to the State's basic services and it has not taken a position about or submitted to the consideration of CONPES, the definition of a specific policy for this population."⁴² This position

⁴⁰ De facto unions can be register before a notary or in conciliation centres, for instance through a local prosecutor. But there have been several complaints about those officers refusing to register same-sex unions or sharing the wrong information with applicants.

⁴¹ In one of the cases in which Colombia Diversa has intervened, a judge said *What this person [Guillermo Sanchez Prada] says deserves all our credibility, because this person does not make his homosexual condition evident, just like witness Adela Gutierrez Estevez who was known only to the couple and testified before this tribunal, which allows us to realize that there is no solidarity based on a shared condition, if we could call it that, due to the homosexual condition of the other witnesses that have also appeared in this procedure.* Judge Victoria Bolivar Ardilla. Bucaramanga Second Family Court, May 18, 2010.

⁴² Reply to a Petition submitted by Colombia Diversa to the National Planning Department, November 2007.



acknowledges the discrimination and needs of LGBT persons, and constitutes a clear example of a political denial of discrimination. This denial approach leads to the absence of national public policies against discrimination and the absence of effective guarantees for the rights of LGBT persons. As expected, it sets the tone for government policies as a whole.

Colombia Diversa was able to establish that by 2008 the situation in the governments of the provincial capitals includes the following: difficulties in developing a public LGBT policy arguing that minority communities are included in a generic way;⁴³ lack of public policies because “it is a very small community, besides which they have not reported any violations of their rights”;⁴⁴ due to “lack of commitment on the part of the LGBT community”;⁴⁵ or “it is only now that their rights are emerging”.⁴⁶

The Bogota city government is the only one that has a public policy for the local level, while the Medellin and Cali city governments have included some programmes and/or projects specifically devoted to this population in their provincial development plans. However, these advances at the local level are isolated cases and do not respond to a structural government plan included in the 2002-2006 or 2006-2010 Development Plans.

c. Lack of guarantees and violation of the right to equality of lesbian students

In the city of Manizales, two students were denied admission to a school for being lesbians. Manizales 9th Municipal Civil Court issued a writ for the protection of fundamental rights on April 23, 2008, ordering the admission of both students as well as implementing the required measures to allow them to reach the same level as other students in a reasonable period.

However, on Friday, April 25, 2008, the girls were met by about 700 of their peers with signs and speeches rejecting them. *We don't want them, we don't want them! Magola, Magola* (the principal)!⁴⁷ In this way, the Court sentence was disregarded because the school authorities were unable to guarantee effective access to the right to education that had previously been protected by the Justice system.

In this context, the principal and legal representative of Leonardo da Vinci school disregarded the writ, but Manizales 5th Civil District Court upheld the first trial decision on May 30, 2008, and added that a public policy for sexuality education and LGBT persons' rights needed to be implemented.

⁴³ Arauca and Popayan city governments.

⁴⁴ Leticia, Mocoa and Puerto Carreño city governments.

⁴⁵ Sincelejo city government.

⁴⁶ Bucaramanga and Ibagué city governments.

⁴⁷ El Tiempo Newspaper. P.1-5. April 26, 2008.

To date, and given the lack of articulation between the national and local governments and the intervening Courts, this public policy has not been implemented. There has been no will to implement the Court decision, even though discriminatory situations against LGBT students persist, not only in Manizales but also in other cities across the country.

d. Lack of impartiality on the part of the National Attorney General Office

The State report highlights the statements issued by the National Attorney General Office on the issue of recognizing property and social security rights for same-sex partners (para. 651). Even though it is true that the National Attorney General Office issued positive statements in the processes that lead to sentences C-075 (2007) and C-811 (2007), it is worth mentioning that those statements were issued during the tenure of Edgardo Maya Villazon as Attorney General. Unfortunately, since the appointment of his successor, Dr. Alejandro Ordoñez Maldonado, the position of the National Attorney General Office in regards to the recognition of rights for same-sex couples has changed.

Indeed, and even before the appointment of the current Attorney General, Dr. Alejandro Ordoñez Maldonado, civil society organizations and particularly those advocating for sexual and reproductive rights and for the human rights of LGBT persons, pointed out his lack of capacity for a comprehensive defence of human rights, as corresponds to his position.

At that time, civil society's discomfort was based on writings by Dr. Ordoñez Maldonado before assuming his position as Attorney General that were later found to correspond with the actions that the Office has taken⁴⁸. It is a matter of concern that the person who is expected to protect human rights does not consider sexual and reproductive rights as such, and even states that the gender perspective in the analysis of human rights is just a dangerous "gender ideology"⁴⁹ limited to promoting abortion in campaigns that are anti-life and anti-family. It is also worrying that someone who on different occasions has stated that to speak of same-sex couples means to speak of a paraphilia⁵⁰ or an "aberration"⁵¹ is the one called upon to protect human rights.

⁴⁸ El nuevo derecho, el nuevo orden mundial y la revolución cultural. Ediciones Doctrina y Ley. 2007. Hacia el libre desarrollo de nuestra animalidad. Universidad Santo Tomas. 2003. Copies of both books are enclosed.

⁴⁹ Referring to what some people could think, the author says: "Gender ideology is a school of thought that most probably will find an audience in universities of the USA or Europe, and in the head of some hot-headed leaders of the radical feminist movement, but it is very far from our national idiosyncrasy and traditions; we should not be so exaggerated; we have our own judicial and parliamentary institutions that, at the right time, will stop this. Unfortunately, the reality is different. Colombia has ratified several international treaties including such ideology, and particularly, the Convention for the Eradication of All Forms of Discrimination – CEDAW – as well as its Optional Protocol." *Ibid.* P. 97.

⁵⁰ Since 1973, the American Psychiatry Association (APA) has withdrawn homosexuality from the section on sexual deviations in the second edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-II). Also since 1990, the World Health Organization (WHO) excluded homosexuality from the International

The current National Attorney General has made clear his refusal to enter into a wide discussion about the existence of families created by same-sex couples, on the basis of his personal positions publicly expressed before assuming office. In a judicial process dealing with adoption by same-sex couples, the Attorney General submitted an opinion to the Constitutional Court requesting that such adoptions not be allowed as same-sex couples “are not naturally open to the conservation of the human species”⁵², in keeping with the arguments already presented in his books.

Also, the statements by the Attorney General in his official capacity and in the context of the “20 years of the Family Jurisdiction” Forum, held in 2009, clearly show how the biased opinions he had shared in his writings before taking office still persist in his thinking as a protector of citizens’ rights. By refusing to carry out a careful analysis on the right to marriage for same-sex couples, he ceases to protect the interests of a minority. In the event we are referring to, the current Attorney General stated that, “*The Attorney General Office agrees with the Constitutional Court’s thesis in the sense that the family protected by the Political Charter is that which is monogamous and heterosexual...*”⁵³. It is also worth mentioning that the thesis held by the Constitutional Court that the Attorney General invokes is from 2001, when the Constitutional Court had not yet developed its extensive jurisprudence on the rights of same-sex couples. Regardless of the Court’s position, it would be expected that the head of the Attorney General Office conducts, at the very least, a careful analysis of the jurisprudence before issuing interpretative statements on what the Court has said about the monogamous and heterosexual family.

The biased interpretation made by the Attorney on this widely discussed topic, implies his refusal to explore any other juridical option beyond the one he considers is the position of the Constitutional Court. From such a position it is equally possible to conclude that he assumes the impossibility of any different positioning by the Court, which shows the presence of a bias that also has the potential to influence judges and magistrates deciding on these matters.

Statistical Classification of Diseases and Related Health Problems. See *The Sexes an Instant Cure*. Consulted on October 31, 2009: <http://www.time.com/time/magazine/article/0,9171,904053,00.html>

⁵¹ “By pretending to give the status of rights to such paraphilias, that Freud himself called aberrations and others have termed as moral disorders, we are throwing overboard the persistent effort made by civilization during 3,500 years, to attempt to have its basis in the natural order discovered through reason...”

Ordoñez Alejandro. *Ideología de Género: Utopía Trágica o Subversión Cultural*. P.153. 2006.

⁵² “*In this way it could well be affirmed that, in principle, it would be impossible to consider the cohabiting same-sex unions as family, because they are not naturally open to life. It would be a delusion to state that in those unions the criteria of sexual differentiation is not present, because there can be a sexual relationship and even a loving one in same-sex couples, but such relationship is not naturally ordered for the conservation of the human species.*”⁵² National Attorney General Office. Opinion No. 4726, 2009, taken from: http://www.procuraduria.gov.co/html/noticias_2009/noticias_207.htm.

⁵³ Transcription of the presentation by Attorney General Alejandro Ordoñez in the context of the 20 years of the Family Jurisdiction Forum. Newspaper *El Nuevo Siglo*. Sunday, October 4, 2009.



In the context of the same event, another concern is that the Attorney General, leading the entity whose mandate it is to protect human rights, considers the human rights perspective insufficient,⁵⁴ even though it is his office that must apply it. He replaces it by a novel and juridically unknown criteria that he calls “family perspective” that – taking his biases into account – might correspond more to a majority moral position than to a judicious exercise of rights analysis. The insufficiency of the “human rights perspective” pointed out by the Attorney General, overlooks the way in which rights analysis must proceed, based on the Constitution and on the human rights paradigm and not on a particular concept for which multiple interpretations exist, such as that of “family” that the Attorney General recommends.

⁵⁴ *“Finally, I would like to invite the magistrates, judges and other public officers to reflect on the protection deserved by the family as society’s basic unit, because in the same way that the Human Rights perspective has been justly enhanced, the Attorney General Office considers it is high time to give the protection of rights from a family perspective its due weight.” Ibid.*

I. RECOMMENDATIONS

To fulfil its obligations to respect and guarantee those rights recognized in the Covenant on Civil and Political Rights to LGBT persons, the Colombian State should:

1. Consolidate a unified information system that takes into account the human rights situation of lesbian, gay, bisexual and *transgenerista* persons;
2. Implement strategies to overcome impunity in cases of violations to the right to life and of police abuse against LGBT persons;
3. Create a mechanism to review cases of violations of the right to life against LGBT persons, particularly of those in which the victims have been human rights defenders;
4. Implement strategies to sensitize and train judicial personnel in order to identify cases of violations of the right to life that are based on the victim's sexual orientation or gender identity;
5. Make the National Attorney General Office use its *preferente* power in the cases in which police abuse against LGBT persons are reported;
6. Implement National Police Directive 06 (2010) to respect and effectively guarantee the rights of LGBT persons;
7. Develop a national LGBT public policy;
8. Incorporate guidelines for a public policy addressing the LGBT population in Local Development Plans.
9. Abstain from adopting measures that imply setbacks in sexual and reproductive rights, as well as in the recognition of the rights of LGBT persons and same-sex couples, particularly in the case of the National Attorney General Office.
10. Modify the prison system in such a way to fully guarantee the rights of the LGBT population. Also to follow a special protection and differential attention approach in terms of sexual orientation and gender identity as opposed to the current INPEC approach.
11. Take actions to implement, follow-up and circulate Constitutional Court sentences on the rights of same-sex couples.

Questions for the Colombian Delegation:

1. Which actions has the State undertaken to implement the Constitutional Court decisions on same-sex couples' rights?
2. Which actions has the State undertaken to implement international recommendations like those of the Committee on Human Rights in the case X vs. Colombia?
3. In how many homicide cases against LGBT persons has the aggravating factor contemplated in Article 58 of the Penal Code been applied?
4. Which actions has the Colombian State undertaken to overcome impunity in the cases of human rights violations against those human rights defenders advocating for the LGBT population?