

Journal of Gender, Social Policy & the Law

Volume 19 | Issue 1


Article 4

2012

National Report: Colombia

Universidad de los Andes Public Interest Law Group

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Recommended Citation

Universidad de los Andes Public Interest Law Group. "National Report: Colombia." American University Journal of Gender Social Policy and Law 19, no. 1 (2011): 97-112.

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NATIONAL REPORT: COLOMBIA

UNIVERSIDAD DE LOS ANDES PUBLIC INTEREST LAW GROUP*

1. Legal framework

Colombia has a written Constitution which states that Colombia is a social, democratic, participatory, and pluralistic state, subject to the rule of law, and organized as a decentralized unitary republic with autonomous territorial entities (departments, municipalities, and districts), and founded in respect for human dignity.¹ The government is divided into the three traditional branches, according to liberal thought: executive,² judicial³ and legislative.⁴ In addition to these branches of government, there are also supervisory and electoral bodies.⁵ While each of these branches develops different governmental objectives, all of them, according to the Constitution, should work together harmoniously in the achievement of their objectives (CP art. 113). Additionally, the Constitution establishes reciprocal controls between the different branches of government and autonomous bodies through the classic mechanism of checks and balances.

Two aspects of the Colombian legal order should be highlighted for the purpose of this report: first, the clause that establishes the supremacy of the

* <http://gdip.uniandes.edu.co>.

1. Constitution, article 1 (hereinafter CP). This type of organization means that there are two categories of public issues: those issues that the central government as a whole determines irrespective of the interests of each of the country's different territorial areas, and those issues pertaining of each of the state's component parts (in the Colombian case, these units are departments, municipalities, and districts), which can be determined independently by each unit.

2. The executive branch of government at the national level is made up of the President, the Vice President, and the ministers and directors of the country's administrative departments. At the departmental level, it is made up of governors and their cabinet secretaries, while at the municipal or district level, it consists of mayors and their cabinet secretaries.

3. The judicial branch is responsible for the administration of justice and is composed of the High Courts (Supreme Court, Constitutional Court, and State Council), the Supreme Judicial Council, and the Attorney General's Office.

4. The legislative branch is represented by Congress, which consists of two bodies: the House of Representatives and the Senate.

5. Supervisory bodies in Colombia include the Solicitor General's Office, the Ombudsman's Office, the district and municipal-level Ombudsmen, and the Comptroller General's Office. Electoral bodies include the National Electoral Council and the National Civil Registry.

Constitution in the Colombian legal system and, secondly, the broad bill of rights enshrined in the 1991 Constitution. The constitutional supremacy clause establishes one of the fundamental principles of any liberal state, determining that “[t]he Constitution is the supreme law. In any case of incompatibility between the Constitution and any other law or legal norm, the constitutional provisions shall be applied.”

The supremacy of the Constitution within the Colombian legal system has two important consequences for the issues discussed in this report. First, any law enacted by Congress that violates the rights or duties established in the Constitution can be challenged by any citizen through the filing of a constitutional action directly in the Constitutional Court. Such actions seek to protect the coherence of the political and legal system through the withdrawal from the legal order of any law which is deemed to be unconstitutional, or through the modification of such laws such that they comply with constitutional provisions.⁶ Secondly, citizens whose rights are affected by unconstitutional acts carried out by public entities or individuals who provide a public service may file an “acción de tutela” constitutional action (described below) to have their rights protected.

With respect to the broad range of rights enshrined in the 1991 Colombian Constitution, the first aspect that should be noted is their variety; the bill of rights includes a significant number of first, second, and third generation rights. The Constitution contains rights with a clear liberal provenance, such as the right to equality; the right to free development of personality, freedom of conscience and religion, and freedom of opinion and information; and the right to education. It also includes rights which are associated with the socialist political tradition, such as the right to work, health care, and housing. Additionally, it should be noted that these rights are accompanied by effective mechanisms for their protection; in particular, the “acción de tutela” mechanism is a type of claim which can be brought and determined within a short period of time in order to protect the fundamental rights of citizens, and people’s actions may be brought to protect collective rights.

Finally, the Constitution provides for three forms of constitutional amendment: i) through legislation passed by Congress;⁷ ii) through a

6. Article 40(6): “Every citizen has the right to participate in the formation, control, and exercise of government. This right can be exercised through: 6. Bringing public actions in defense of the Constitution and the law.” Furthermore, Article 241 states: “The Constitutional Court is entrusted with maintaining the integrity and supremacy of the Constitution, within the strict and precise terms of this article. To this end, it shall perform the following functions: 5) Decide constitutional claims submitted by citizens against the laws issued by the government based on Articles 150(10) and 341 of the Constitution, based on their material content or procedural errors in their establishment”

7. Congress may modify the Constitution using a mechanism called a legislative

constituent assembly,⁸ and iii) through a referendum approved by Congress and the public.⁹ The constitutionality of these mechanisms for constitutional amendment must be reviewed by the Constitutional Court. According to article 241 of the Constitution, the Court only has jurisdiction to formally examine the procedures through which attempts to amend the Constitution have been conducted.¹⁰ Despite the Constitution's establishment of long and complex procedures in order to discourage its continual reform, since the entry into force of the new Constitution in 1991, it has been amended 28 times through legislative acts.

2. Constitutional regulations applicable to same-sex partnerships

The Colombian Constitution does not expressly grant the right to marry to same-sex couples. In fact, article 42 of the Constitution establishes a concept of family that is in tension with the legal recognition of marriage for such couples. This provision of the Constitution states that “[t]he family

act. Article 375, 1991 Constitution: “The Government, ten members of Congress, twenty percent of all town councilmen or Senators, or citizens numbering at least five percent of the current electoral census may present bills for legislative acts. The bill shall be considered in two ordinary and consecutive sessions. If the bill is approved in the first session by the majority of those present, it shall be published by the government. In the second session, approval shall require a majority vote of the members of each chamber. Only initiatives presented in the first session may be debated in the second session.”

8. Article 376, 1991 Constitution: “By means of a law passed by a majority of the members of both chambers, Congress may provide that the people, by popular vote, may make a decision to convene a Constituent Assembly with the competence, length, and composition determined by the law passed by Congress. It is understood that the Assembly convenes if such is approved by at least one third of the members of the electoral roll. The Assembly members shall be elected by the direct vote of the citizens in an electoral process which may not coincide with another such process. From this vote onward, the ordinary powers of Congress to amend the Constitution shall be suspended for the term specified for the Assembly to complete its functions. The Assembly shall adopt its own rules.”

9. Article 378, 1991 Constitution: “By the initiative of the government or the people, under the terms specified in article 155, Congress may submit a constitutional reform bill to a referendum by means of a law which shall require the approval of the majority of the members of both chambers. Congress will then make the bill into law. The referendum will be presented such that voters can freely choose the topics or items that they vote for, positively or negatively. The adoption of constitutional amendments via referendum requires the affirmative vote of more than half the voters and that their number exceeds a quarter of all citizens who make up the electoral roll.”

10. The Constitutional Court has clarified the concept of “procedural error,” noting that Congress is free to amend the Constitution, but its jurisdiction does not extend to the replacement of the Constitution such that a different and contrary one prevails. Sentence C-551/03. More precisely, the Constitutional Court has noted that “[t]here is a difference, then, between the amendment of the Constitution and its replacement. Indeed, the reform that is incumbent upon Congress may contradict the content of constitutional norms, even drastically, since any reform implies transformation. However, the change should not be so radical as to replace the constitutional model currently in force or lead to the replacement of “a defining axis of the identity of the Constitution,” with another which is “opposite or completely different.” Sentence C-1040/05.

is the fundamental unit of society. It is constituted by natural or legal ties, by the free decision of a *man* or a *woman* to marry, or by the conscious desire to create one.”¹¹

The Constitution does, however, establish a set of fundamental rights, including the right to equality, the right to free development of personality, and the right to live in dignity, which have been systematically interpreted by the Constitutional Court in order to derive the right of same-sex partnerships to be legally recognized as de facto marital unions. This interpretation of the Constitution was articulated by the Court in response to a constitutional case brought by the Public Interest Law Group at the Universidad de los Andes and Colombia Diversa, a non-governmental organization. This lawsuit challenged the constitutionality of Law 54 of 1990, which established that de facto marital unions could only be created by heterosexual couples. This rule stated that continuous and monogamous cohabitation between a man and a woman for a minimum period of two years would grant the partners the benefit of the rights and duties established in Law 54 for partners in de facto marital unions.¹² The complaint filed argued that the exclusion of same-sex couples from coverage under Law 54 violated the rights to live in dignity, to freedom of association, and to equality for same-sex couples.

Echoing the arguments presented by the case, and arguing that the lack of a regime of rights and duties for same-sex couples violated the human dignity, autonomy, and equality of members of these couples, Case C-075/07 declared the law in question conditionally constitutional. In this way, Law 54 was declared constitutional “in the sense that the system of protection contained therein shall also apply to homosexual couples.” From this constitutional ruling onward, same-sex couples in Colombia have the judicially recognized right to create de facto marital unions, which have the same effect in terms of general rights and duties that marriage does between heterosexual couples.

3. Legal statutes

As noted in the previous paragraph, marriage between same-sex couples is not permitted in Colombia. Nevertheless, same-sex couples can have their relationship recognized as a de facto marital union. As indicated in the previous answer, this is a legal status provided for by Law 54 of 1990,

11. Constitution of Colombia, article 42 (emphasis added).

12. Although de facto marital unions are created automatically when the couple meets the requirements established by law (continuous and monogamous cohabitation for a minimum period of two years), it is also possible to establish a de facto marital union in writing before a notary public, through an act of mediation in an official center, or through a court ruling from a family law judge, provided the couple meets the cohabitation requirements (art. 4 Law 54 of 1990).

which was expanded by the ruling C-075/07 such that it applies not only to heterosexual couples, but also same-sex couples.

4. Regulation and Treatment of Same Sex Marriage

As noted earlier (answer #2), same-sex couples in Colombia do not have the right to marry, but they do have the right to form de facto marital unions. These unions provide the same regime of rights and duties for heterosexual and same-sex couples.

There is one important difference, however, between the treatment of heterosexual and same-sex couples: heterosexual couples who are in de facto marital union are eligible to adopt children. Furthermore, if the adoption occurs, the legal system creates civil ties of consanguinity between the adoptive parents and the adopted child, which are the same as those which are created between “natural” parents and children. In contrast, same-sex couples are not even eligible to adopt children.

At present, the Constitutional Court is considering the constitutionality of the rule that grants the right to heterosexual couples to adopt children or adolescents, but excludes same-sex couples from enjoying this right. Although the Court has not yet decided this case, there is a negative precedent that was established in a case similar to that being discussed. In this previous case, the Court considered claims challenging the constitutionality of sections 89 and 90 of Decree 2737 of 1989,¹³ which excluded same-sex couples from the right to adopt. In its 2001 ruling in the C-814 case, the Constitutional Court determined that excluding same-sex couples from the group of people who enjoy this right was not unconstitutional, given that, from its perspective:

adoption is primarily a way to satisfy the prevailing right of a minor to have a family, and the family that the Constitution protects is the heterosexual and monogamous family, as was previously stated. From this point of view, the legislator is not indifferent to the type of family in which he incorporates a minor, having the obligation to provide him one

13. “Article. 89. Those who are eligible to adopt are able persons 25 years of age or older, who are at least 15 years older than the adopted individual and can ensure that they possess the physical, mental, moral, and social fitness necessary to provide an adequate and stable home to the child. These same qualities are required for those who adopt jointly. Adoptive parents who are married and not separated may only adopt with the consent of their spouses, unless the spouse is entirely unfit to grant it. This rule does not apply in terms of age in the event of adoption by the spouse in accordance with Article 91 of this code.”

“Article. 90. Those who may adopt jointly are:

“1. Spouses

“2. Couples made up of a man and a woman who can demonstrate uninterrupted cohabitation for at least three (3) years. This period is counted from point of official separation in the event that one or both of the individuals in the couple was formerly married.”

of the type accepted by the rules above. Therefore, not only did the legislator not commit a discriminatory omission, Congress was unable to authorize adoption by homosexuals, given that the concept of family in the Constitution does not correspond to the life partnership that arises from this type of cohabitation, and the relationships arising from adoption.¹⁴

According to the Court's interpretation, the norm that was challenged was only intended to protect the concept of family established by the Constitution, and thus make it possible for men and women to exercise their right to establish a family through the right to adopt. Therefore, the Court found that the exclusion of same-sex couples (or other unions that might be considered to be families, such as polygamous or polyandrous unions) from this rule was not a violation of the Constitution. For the Court, what the legislature did through Decree 2737 of 1989 was act on the power of legislative discretion in order to limit the freedom of the presiding judge to authorize the adoption of a child or adolescent. In sum, the Constitutional Court states the following regarding the exclusion of same-sex couples from the group of people entitled to adopt:

Apparently, the provisions of the challenged norm would produce a disregard for the principle of equality, if it is only considered in conjunction with Article 13 of the Constitution, which explicitly states that there will be no discrimination on the basis of sex. However, Article 42 of the Constitution protects only one type of family, excluding other forms of emotional cohabitation, and Article 44 states that the rights of children prevail. From which one concludes that the best interest of the child is to be part of the family that the Constitution protects. Clearly there is a conflict between the right to equality and to free development of personality granted to those homosexuals or other individuals living in affective unions which do not constitute families under the Constitution who seek to adopt, and the right of the child to be part of a constitutionally protected family rather than another type of family. However, the tension between these rights is resolved by Article 44 of the Constitution itself, which unequivocally establishes the prevalence of children's rights over those of others. Given that, one can say that the restriction in question emanates from the superior rule itself, and the partially challenged provision finds a constitutional solution. As such, its enforceability shall be declared.¹⁵

If only the precedent established by this Constitutional Court case is taken into account, one would have to say that the result of the case currently being considered by the Court is likely to be contrary to the interests of same-sex couples. However, in order to try to predict the

14. Constitutional Court, Sentence C-814, 2001.

15. *Id.*

Court's decision with precision, later Court decisions which have granted and extended the rights of same-sex couples should also be taken into account, such as cases C-075/07 (described in answer #2), C-811/07, C-336/08, C-798/08, and C-029/09 (described in answer #8).

5. If your country does not have a same-sex marriage regulation. Please specify if your country has some sort of civil union regulation. If so, please specify the statute, its place among the authoritative sources of law, and the conditions for entering into a civil union.

In Colombia, there is no source of law (statutory or judicial) which allows for same-sex couples to be married. However, Law 54 of 1990, which regulates de facto marital unions and the regime of rights and duties which applies to permanent partners, applies to both heterosexual and same-sex couples, according to the decision in C-075/07 (answer #2). Law 54, as amended by Law 979 of 2005, establishes conditions for the recognition of de facto marital unions and for the corresponding regime of rights and duties: monogamous and continuous cohabitation for a minimum period of two years.

Once these conditions are met, couples can announce the existence of a de facto marital union in one of the following ways: i) a public statement before a notary public, by mutual consent of the permanent partners; ii) a mediation act signed by the permanent partners in an official mediation center; or iii) through a judicial decision by a district level family judge, according to the ordinary standard of proof set forth in the Code of Civil Procedure. A de facto marital union, however, is automatically formed if the couple meets the monogamous and continuous cohabitation requirement, whether or not the couple declares a de facto marital union using one of the procedures listed above.

It is important to clarify that Law 54 of 1990, as amended by Law 979 of 2005, is mandatory for all public and private entities in Colombia.

6. If your country has a civil union regulation, please specify if this is open to heterosexual couples or only to same-sex couples.

Both heterosexual and same-sex couples have the right to create de facto marital unions. For more details, see answers #2-5.

7. If the civil union statute is open to heterosexual and same-sex couples, please specify if there is any formal differential treatment between both types of couples within such legal framework.

Colombia has one of the most progressive legal frameworks in Latin America with regard to same-sex couples. Formally, these couples have the same rights as heterosexual couples who are in a legally recognized de

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facto marital union, which include property and other rights and duties, health care, and pensions, among others, with the exception of the right to adopt (answer #4).

8. If your country does not have a specific regulation on same-sex partnerships, please indicate if there are other legal statutes that specifically recognize same sex partners for specific purposes, i.e.: domestic violence act, inheritance rights act, adoption laws, etc.

There are no laws in Colombia that specifically govern matters related to same-sex couples. The granting of rights to such couples in Colombia has been the result of Constitutional Court decisions. The objective of the case challenging Law 54 (mentioned in answer #2) was to have the granting of the right of same-sex couples to form de facto marital unions create a domino effect that would allow the interpretation of all standards related to the rights and responsibilities of heterosexual couples to also be applied to same-sex couples. Law 54 of 1990 was the only legal standard that defined de facto marital unions; therefore, it had become a reference point for all the regulations applicable to couples living in de facto marital unions. The Constitutional Court's decision in C-075/07, however, did not apply its rule in this fashion, restricting the application of its decision to the narrow issue of the definition of de facto marital unions in Law 54 of 1990.

Given the limited effect of the C-075/07 ruling, the legal strategy of the many organizations and universities involved in the issue of rights for same-sex couples has been to file several constitutional cases challenging all the laws which relate to the rights and duties associated with de facto marital unions. The rights that have been recognized in the resulting Constitutional Court decisions include:

Health care (C-811/07):

In this ruling, the Constitutional Court noted that the same doctrinal criteria taken into account in the decision that recognized the homosexual couples' right to form de facto marital unions (C-075/07) were also applicable to the right of the members of same-sex couples to be covered under their partners' health care plans. According to the Court, "the obstacles that exist for same-sex couples to be covered under the social health care system constitute a violation of their right to human dignity, free development of personality (in the sense of sexual self-determination), and a violation of the prohibition against discrimination based on sexual orientation."

Pensions (C-336/08): In this ruling, the Constitutional Court reviewed a constitutional claim challenging Law 100 of 1993 which regulates, amongst other things, the recipients of the survivor's pension. In the ruling,

the Court held that the protections afforded to heterosexual couples with regard to the substitution of pension recipients should also apply to same-sex couples. In this regard, the Court noted that excluding such couples from the law's application constituted:

discriminatory treatment toward homosexual couples which leaves them with a lack of protection in terms of the survivor's pension benefit. In order to remove the above unconstitutional situation, the protection afforded to permanent companions in heterosexual couples should be extended to permanent companions in homosexual couples, as there is no sufficiently reasonable and objective basis to explain the unequal treatment to which people who, in the exercise of their rights to free development of personality and freedom of sexual choice in deciding to form a partnership with a person of the same gender, are subjected.

Child support and alimony (C-798/08):

This ruling stated that the obligation to provide child support and alimony which is established for heterosexual partners in Law 1181 of 2007 (Criminal Code), as part of the de facto marital union regime of rights and duties, was applicable to all permanent companions under this regime, irrespective of their sexual orientation.

Recognition of a large and varied group of rights (C-029/09):

This ruling came out of a constitutional case which challenged 26 laws that unjustifiably differentiated between same-sex couples and heterosexual couples. These rules govern various issues that can be grouped into the following categories: i) civil and political rights; ii) sanctions and contingencies regarding crimes and misdemeanors; iii) rights of victims of heinous crimes; iv) subsidies and social benefits; and v) access to and exercise of public office and eligibility for government contracts. The Court ruled in the following manner on the challenged laws.

Civil statutes regarding the creation of family property that cannot be attached and effects on family housing (art. 4, Law 70 of 1931; arts. 1 and 12, Law 258 of 1996):

The challenged articles address the need to protect couples' property and housing and to allow family property to be withdrawn from the market such that it cannot be attached or used as collateral. The Court stated that these rules apply to same-sex couples who have formed de facto marital unions as well as heterosexual couples.

Child support and alimony (Art. 11, Civil Code):

The plaintiffs argued that same-sex couples were unconstitutionally excluded from the obligation to provide child support and alimony under

the challenged article of the Civil Code. The Court ruled that although the term “spouse” that appears in the challenged article established the obligation of members of heterosexual couples to pay support, this obligation should also apply to members of same-sex couples in de facto marital unions.

Reduction of time requirements for acquisition of citizenship for adoption purposes (art. 5, Law 43 of 1993):

The challenged law establishes a reduced period of residence requirement for a foreigner to achieve Colombian citizenship for the purposes of eligibility as an adoptive parent, provided the foreigner is a permanent partner of a Colombian citizen. The Court stated that the discrimination between same-sex couples and heterosexual couples with regard to the interpretation of “permanent partners” in the law was unjustifiable and unconstitutional.

Residence rights in the Archipelago of San Andrés, Providencia, and Santa Catalina Department (arts. 2, 3, Decree 2762 of 1991):

The challenged rule places restrictions on the right to establish residence in the Archipelago of San Andrés, Providencia and Santa Catalina in order to control the department’s population density. The Decree also establishes exceptions to these restrictions for, among others, individuals who are in a monogamous and continuous union with residents of the archipelago for minimum period of three years. The Court stated that just as members of heterosexual couples, members of same-sex partnerships can arrange for their permanent partners to acquire residency in the department.

Non-incrimination guarantees in criminal, military justice, and disciplinary matters (Articles 8-b, 282, 303, 385, Law 906 of 2004; arts. 222, 431, 495, Law 522 of 1999; art. 71, Law 734 of 2002):

The Court indicated that the rules which provide for exemption from the duty to testify against, report, or file a complaint against a permanent partner in criminal, military justice, and disciplinary proceedings applied equally to same-sex couples and heterosexual couples.

Criminal laws that establish the benefit of dispensing with criminal sanctions not involving incarceration (art. 34, Law 599 of 2000; art. 18, Law 1153 of 2007):

The challenged laws provide for the possibility of dispensing with criminal sanctions not involving incarceration in cases in which the consequences of a crime or violation exclusively affect the defendant’s permanent companion. The Court found that members of heterosexual

couples and same-sex couples should be equally situated with respect to the benefit of exclusion from such criminal sanctions, given that the objective of the rule is to protect the family. According to the Court, the pain suffered by an individual as a consequence of having committed a crime against a permanent partner constitutes punishment in and of itself, which rules out the need for punishment by the government. This justification, based on the special relationship that results from the moral and emotional ties between permanent heterosexual partners, is equally applicable to individuals in same-sex couples.

Criminal laws that establish aggravating circumstances (arts. 104, 170, 179, 188-B, 245, Law 599 of 2000):

The challenged laws establish several aggravating circumstances for crimes, including the case in which the crime is committed against a permanent partner. The Court stated that these aggravating circumstances are directly related to a special relationship of trust, solidarity, and affection that is created within both same-sex couples and heterosexual couples. Therefore, the rules governing this issue should apply to both types of couples.

Law establishing the crime of failure to pay alimony or child support (art. 233, Law 599 of 2000):

The challenged article establishes a two year cohabitation requirement for permanent partners in order for the failure to pay child support or alimony to be applicable. This rule does not apply to married couples. The Court determined that the requirement established by the law in order to make alimony and child support protections, as well as the corresponding criminal sanctions, effective was reasonable and enforceable. The Court also noted that the rule applies equally to same-sex and heterosexual couples.

Criminal law establishing the crimes of embezzlement and squandering of family property (art. 457, Civil Code; art. 236, Law 599 of 2000):

The challenged law establishes greater penalties for those who embezzle or squander the assets they manage as legal guardians due to their status as the permanent partner of an individual who was declared incompetent. The Court ruled that there was no justification for any difference in treatment between heterosexual couples and same-sex couples with respect to this crime, given that the crime and its respective sanction were based on the trust, solidarity, assistance, and support that exist between both permanent heterosexual and same-sex partners.

Criminal laws and crime prevention in the field of domestic violence (art.

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229, *Law 599 of 2000; art. 2, Law 294 of 1996*):

The Court stated that criminal sanctions established in the laws on domestic violence also applied to members of same-sex couples.

Criminal law establishing the crime of threatening a witness (art. 454-A, Law 599 of 2000):

The challenged law provides that one of the acts constituting the crime of threatening a witness is to threaten, using physical or moral violence, the permanent partner of a witness to criminal conduct. The Court ruled that the offense established under the rule also included threats against members of same-sex couples who are permanent partners of witnesses to criminal conduct.

Rights to truth, justice and reparation for victims of heinous crimes (arts. 5, 7, 15, 47, 48, 58, Law 975 of 2005; art. 11, Law 589 of 2000; arts. 14, 15, Law 971 of 2005; art. 2, Law 387 of 1997):

The Court found that the right of partners of victims of heinous crimes to have their status as victims presumed and, therefore, to be exempt from the obligation to prove the damages suffered as a result of the crime committed against their partners, applied to both same-sex and heterosexual couples. The Court also stated that other provisions that grant rights to the family members of victims of heinous crimes also applied to same-sex couples.

Civil measures related to the occurrence of certain heinous crimes (art. 10, Law 589 of 2000; arts. 2, 26, Law 986 of 2005):

The Court stated that civil measures to protect the partner of an individual who was a victim of forced disappearance, kidnapping, or hostage-taking should not exclude members of same-sex couples.

Beneficiaries of police and military health care and pension programs (art. 3, Law 923 of 2004; art. 24, Decree 1795 of 2000):

Basing its argument on legal precedent regarding access to health and pension benefits for members of same-sex couples, the Court noted that the term “permanent partner,” which appears in the rules that define the beneficiaries of health care and pension programs for members of the military and police forces, includes both members of same-sex couples and members of heterosexual couples.

Family subsidies for social services and housing (arts. 1, 27, Law 21 of 1982; art. 7, Law 3 of 1991):

The challenged rules establish the right of a worker’s permanent partner to access family subsidies paid in cash, in kind, or in services to middle and

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lower-income workers, as well as family housing subsidies granted to households that lack sufficient resources to acquire, repair, or obtain title to a home. The Court ruled that members of same-sex couples should not be excluded from the right to access family subsidies in terms of services, projects, and programs or from the right to housing subsidies enjoyed by heterosexual couples.

Means of access to land ownership in rural areas (arts. 61, 62, 80, 159, 161, 172, Law 1152 of 2007):

The Court found that the rules governing members of heterosexual couples in terms of guaranteeing agricultural workers' access to land ownership were aimed at promoting rural development and should also apply to same-sex couples.

Beneficiaries of compensation under the Mandatory Insurance for Traffic Accidents (SOAT) for death due to traffic accidents (art. 244, Law 100 of 1993):

The Court stated that the benefits provided under the challenged law for death due to a traffic accident could be received by the surviving member of a same-sex couple.

Public law rules limiting access to and exercise of public office and eligibility for government contracts (art. 14, Law 190 of 1995; art. 1, Law 1148 of 2007; art. 8, Law 80 of 1993, arts. 40, 84, Law 734 of 2002, arts. 283, 286, Law 5 of 1992):

The Court determined that the laws which establish the system of rules regarding disqualification from and restrictions on access to and exercise of public office and government contracting included members of both same-sex and heterosexual couples.

9. Is your country discussing future regulation on same-sex marriage? If so, please explain the type of regulation being proposed, at what level (constitutional, legislative, administrative, etc.), in what stage the discussion is at present, what are the chances of being passed and when.

There are no bills currently being considered in the Colombian Congress which would recognize same-sex couples' right to marry. Since 1999, five bills have been introduced in Congress which would grant rights to same-sex couples, none of which has gone through the entire legislative process and become law.¹⁶ The last of these bills was Bill of Law 130/Senate 2005,

16. On September 8, 1999, the liberal Senator Margarita Londoño introduced the

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152/House 2006, “By which social protection measures for same-sex couples are announced,” which contained two core rights for same-sex couples: the right to create community property and the right to receive social security benefits. The bill stated, “[I]n the first place, such couples are permitted to create community property under the same conditions and requirements established in the current provisions applicable to permanent partners. Secondly, such couples are allowed access to the social security system under the same conditions established for permanent partners.”¹⁷

Although these bills failed to become law, similar and greater advances to those proposed in the bills have been achieved through jurisprudence, as indicated above.

10. Is your country discussing future regulation on same-sex unions in a format different than marriage? If so, please explain the type of regulation being proposed, at what level (constitutional, legislative, administrative, etc.), in what stage the discussion is at, what are the chances of being passed, and when.

There is no bill currently being considered on this topic.

11. Non-legislative regulations: does your country provide specific benefits/rights to same-sex couples via administrative acts? i.e.: death pension for the surviving partner; hospital visitations or the right to make decisions when one of the partners is incapacitated to make them. Please provide details.

There are no national regulations or administrative acts that specifically grant rights to same-sex couples. At the municipal level, there is only one relevant regulation in Bogotá. This regulation, Decree 063 of 2009, grants same-sex couples the right to housing subsidies provided by the district.

12. Judicial construction of the law: Are there any relevant decisions in your country that had or may have future impact in the legal construction of same-sex marriage or in the legal recognition of same-sex unions/partnerships? Please provide the date and name of the case, and briefly explain the case and its relevancy for this topic.

Most of the legal developments that have taken place regarding the issue

first such bill to the Colombian Congress, titled “The objective of which is to protect and recognize the rights of bisexual and homosexual men and women.” In 2001, Senator Piedad Córdoba introduced Bill No. 85, which would recognize the unions of same-sex couples and their resulting effects in terms of property and other rights and duties. These bills were followed by Bill No. 43 in 2002 and Bill No. 113 in 2004, also introduced by Senator Piedad Córdoba. None of these bills managed to go through the entire legislative process.

17. Presentation of motivation, Bill 130/Senate, 152/House (2006).

of legal recognition of same-sex couples have been conducted by the judicial branch (see answers to questions number 2 and 8 for further explanation on the timing and consequences of the relevant cases).

13. Additional comments: Please feel free to include additional comments on the topic that you consider relevant to the specific situation of your country.

Same-sex couples in Colombia, despite their formal legal equality with heterosexual couples under the de facto marital union regime, face practical difficulties in the effective enjoyment of their rights. The first important difficulty occurs in the registration of same-sex couples before a notary public, which is a prerequisite in order for the majority of their rights to be recognized. Some notaries, for example, do not comply with their obligation to complete the procedures necessary to legally recognize same-sex couples, while others have established different and more demanding procedures which exclusively apply to such couples.

The second major difficulty has to do with the unjustified unequal treatment of same-sex couples by private pension and health care programs. While government health care and pension programs have recognized the rights of same-sex couples, several private health care and pension programs have not recognized the benefits that the members of those same-sex couples which are part of de facto marital unions should receive.

It is also important to note that while same-sex couples in Colombia have increasingly achieved progress legally, there has been a concurrent rise in the legal and political movement that seeks to neutralize these advances. While this movement has not yet achieved any legal victory, the practical effects it has and could have for the effective exercise of the rights granted by the legal system to same-sex couples should not be underestimated.

Finally, it is important not to lose sight of the fact that, despite all the legal advances, the levels of violence against the LGBT community in Colombia are still high. According to figures published by the non-governmental organization Colombia Diversa,¹⁸ eighteen murders of gay men¹⁹ and 67 total murders of LGBT individuals, due to issues relating to their sexual orientation or gender, were reported during the 2006-2007 period. According to Colombia Diversa, “these cases were not isolated; it

18. “Human Rights of Lesbian, Gay, Bisexual, and Transgender Individuals in Colombia 2006-2007,” available at http://www.colombiadiversa.org/index.php?option=com_content&task=view&id=563&Itemid=370.

19. The highest murder rate of gay men, according to information obtained in the above report, was in Bogotá (8), Cali (5), and Medellín (4). The highest number was in Valle del Cauca (7), in different municipalities. *Id.*

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was observed that they had a common context of discrimination by individuals as well as an institutionalized model of discrimination conducted by public institutions' and officials' actions or omissions." The report also notes that the distinctive features of the violation of LGBT rights include signs of extreme violence or cruelty, and that there is a clear and direct relationship between sexual orientation or gender identity of the victim and the violence to which the victim is subjected.