

Substantial and procedural guarantees of the Sexual Rights of persons with diverse Sexual Orientation held in the La Vega de Sincelejo Prison.

Margarita Jaimes Velásquez¹

Margarita.jaimes@unisucre.edu.co

<https://orcid.org/0000-0002-3209-9135>

University of Sucre
Sincelejo- Colombia

Tania Inés Martínez Medrano.

tania.martinez@unisucre.edu.co

<https://orcid.org/0009-0006-1722-6577>

University of Sucre
Sincelejo- Sucre- Colombia.

Nubia Hernández-Florez

Nubia.hernandezf@cecar.edu.co

<https://orcid.org/0000-0001-8756-1895>

Caribbean University Corporation
Sincelejo- Colombia

Olena Klimenko

eklimenko@iue.edu.co

<https://orcid.org/0000-0002-8411-1263>

Institución Universitaria de Envigado
Envigado-Antioquía

ABSTRACT

Sexual and reproductive rights are also human rights because they respond to a fundamental aspect of the life project, even when people are deprived of their liberty. It is the obligation of the State to guarantee substantial and procedural measures so that persons with diverse sexual orientations deprived of liberty in the La Vega Prison Establishment in Sincelejo can enjoy such rights. In view of the above, the objective was proposed to determine the substantial and procedural guarantees of the sexual rights of persons with diverse sexual orientations detained in the Medium Security Penitentiary and Prison Establishment La Vega in the year 2020. In order to comply with this objective, it was approached from the qualitative research tools. The analysis resulted in the non-compliance with international and national regulations governing the matter, as well as the orders of the Constitutional Court in its rulings on the right to the enjoyment of intimate visits. Such non-compliance is associated with the inconvenient application of procedures that delay the right, as well as the prevention and disclosure measures that should be carried out inside the prison.

Keywords: Sexual rights, due process, people with diverse sexual orientation, duty to guarantee, duty to protect.

¹ Autor Principal

Las garantías sustanciales y procesales de los Derechos Sexuales de las personas con Orientación Sexual diversa reclusos en el Establecimiento Carcelario la Vega de Sincelejo.

RESUMEN

Los derechos sexuales y reproductivos son también derechos humanos porque responden a un aspecto fundamental del proyecto de vida, incluso cuando las personas son privadas de su libertad. Es obligación del Estado garantizar medidas sustanciales y procedimentales para que las personas con diversas orientaciones sexuales privadas de su libertad en el Establecimiento Penitenciario y Carcelario La Vega en Sincelejo puedan disfrutar de tales derechos. En vista de lo anterior, se propuso el objetivo de determinar las garantías sustanciales y procedimentales de los derechos sexuales de las personas con diversas orientaciones sexuales detenidas en el Establecimiento Penitenciario y Carcelario de Seguridad Media La Vega en el año 2020. Para cumplir con este objetivo, se abordó desde las herramientas de investigación cualitativa. El análisis arrojó el incumplimiento de las regulaciones internacionales y nacionales que rigen la materia, así como de las órdenes de la Corte Constitucional en sus fallos sobre el derecho al disfrute de visitas íntimas. Tal incumplimiento está asociado con la aplicación inconveniente de los procedimientos que retrasan el derecho, así como con las medidas de prevención y divulgación que deben llevarse a cabo dentro de la prisión.

Palabras clave: Derechos sexuales, debido proceso, personas con diversas orientaciones sexuales, deber de garantía, deber de protección.

Artículo recibido 25 febrero 2023

Aceptado para publicación: 25 marzo 2023

Introduction

It is important to establish that the discussion on Human Rights is contained in two perspectives, a natural one and a positivist one. Carpizo (2011), affirmed that people possess inalienable and imprescriptible rights by the mere fact of existing, from which derives the obligation for the states to protect and guarantee them (p. 5), considering that their essential nucleus is non-derogable norms or of Ius Cogens, that is to say, of mandatory compliance. In the second perspective, he states that some fall within the positivist conception, where the legal order elevates the individual to a legal category, recognizing him as a subject of rights (p.5).

In the same logic, from the perspective of the universality of Human Rights, all individuals must be subjects of protection and attention, as expressed in the Universal Declaration of Human Rights of the United Nations (1948), when it says that people are beings endowed with dignity, therefore, their rights must be considered as ends in themselves and not as means; therefore, States are required to guarantee the conditions that allow individuals to define and enjoy their life projects with total freedom, even when the person is deprived of liberty due to a sentence issued by a competent judge.

As for the duties of the Colombian State, it is, of course, to guarantee the rights and freedoms of its inhabitants by urging substantive and procedural rules that allow it, as stated in the Political Constitution of Colombia (1991) in Article 15, when it says that all persons have the right to their personal and family privacy and to their good name, and the State must respect them and make them respect them; in this sense, the responsibility of the State to guarantee the freedoms and rights of the community within its territory was elevated to the constitutional order.

The Constitutional Court has said in Ruling T - 266 (2013) that, in the context of deprivation of liberty, the person not only maintains the ownership of his rights -some suspended, others limited or restricted, and others fully exercised or untouchable-. Also, specific and special fundamental legal guarantees arise from imprisonment. Intimate visits, as a fundamental right, in itself considered, is one of them; which indicates that being deprived of liberty, generates the need to establish a series of legal and procedural strategies to guarantee the exercise of fundamental rights.

In this sense, it is reaffirmed that sexual and reproductive rights, being intimately linked to the identity of each person, are human rights, which must be respected and guaranteed without any discrimination whatsoever. These are of vital importance when it comes to people with diverse sexual orientation since the enjoyment and enjoyment does not conform to the predominant heteronormative sexual structure in the current social system. For this reason, the honorable Constitutional Court of Colombia, in its jurisprudence, has reminded the State of its inescapable duty to comply with and enforce the rules regarding the guarantee of the sexual rights of this sector of society.

In this regard, several studies explain the situation of sexual rights of persons with diverse sexual orientations deprived of liberty, for example, the Ombudsman's Office (2009) published the research *Situation of Persons Identified as LGTB Collective Deprived of Liberty in Colombian Prisons*, where it stated "Women have been empowered of their sexual rights, while men do not know their rights in such proportion." (Ombudsman's Office, 2009, p. 26).

Another research, conducted by the organization Colombia Diversa in the year (2016), entitled "Muchas Veces Me Canso De Ser Fuerte" *Ser Lesbian, Gay, Bisexual o Trans en las Cárceles de Colombia (2015-2016)*; describes that in Colombian prisons several modalities of violence are executed against this population such as physical violence, sexual and psychological violence, generally executed by surveillance and custody personnel. It also shows how in some prisons they are extorted to be granted the right to intimate visits, although the report does not explain how much they had to pay, it is clear that the extortion was in the form of money (p. 37). On the other hand, it details the precarious conditions of the place where the intimate encounters took place, explaining that it could be in the cells or improvised shacks in the courtyards in full view of everyone.

The research entitled *Sexual and Reproductive Rights of Women Deprived of Liberty in the Medium Security Penitentiary and Prison Establishment of Sincelejo Sucre* conducted by Velásquez and Paternina (2019) describes how the sexual rights of women deprived of liberty are violated by not guaranteeing the minimum conditions for the enjoyment and enjoyment of intimate visits. They conclude that the Prison Establishment does not provide information on which sexual rights are guaranteed so that they can

exercise them wisely. The only information provided was on pregnancy prevention. Regarding access to intimate visits, this research explains the difficulties experienced due to the lack of physical facilities for such encounters.

From the above, it can be concluded that there is little information on the sexual rights of homosexual men in prisons. The lack of diagnosis on this population sector interferes with the enforceability of its guarantee before the State. Likewise, it is inferred from the survey that intimate visits as a materialization of sexual rights are affected by factors such as the lack or inadequacy of physical infrastructure and the absence of an administrative due process that guarantees the exercise of their rights.

The situation of La Vega Medium Security Penitentiary and Jail in 202

The Penitentiary and Prison Establishment is located in the La Vega neighborhood of the city of Sincelejo, on the old road to Tolú, in Sucre, i.e., on the outskirts of the city. As of June 12, 2020, there was a population of 621 persons deprived of their liberty, of which four (4) were homosexual men and three (3) transgender persons. It should be noted that in this establishment the overcrowding rate is 21.19% (INPEC, 2020, p. 1).

As can be read, 621 sexually active people require that the Prison guarantees them the effective enjoyment of their sexual rights, especially when it comes to people historically stigmatized and violated for their non-hegemonic orientation and gender identity. There is an area for intimate visits according to INPEC's response (2020, p. 1).

Methodology

The objective of this research was to determine the substantive and procedural guarantees of the sexual rights of persons with diverse sexual orientations detained in the Medium Security Penitentiary and Prison Establishment La Vega in the year 2020. To achieve this objective, a qualitative and descriptive study was conducted, using documentary sources, particularly, responses to petition rights, as well as the review of substantive and procedural rules that address the issue. In the same logic of work, the jurisprudence of the Colombian Constitutional Court was reviewed, in which national standards of guarantee for the effective enjoyment of sexual and reproductive rights of persons deprived of liberty in

prisons have been ordered and established. The research included the status of research on the situation of prisons and the sexual rights of persons deprived of liberty.

For the description of the findings, we will first explain the normative framework and the theoretical component that guided the analysis, then we will present the results in terms of sexual rights inside the prison, to later present the analysis in the light of the norms that showed that regulatory norms in prison matters, constitutional precepts and international standards for the protection of this social sector are being violated.

The sources used for this research were a documentary, consisting of responses to petition rights and a review of the substantive and procedural norms and existing jurisprudence on the subject

Sexual Rights

The Cairo Conference (1994) explained that sexual rights are linked to the ability to enjoy a satisfactory sexual life, allowing people to feel complete, creative and tolerant, taking advantage of its benefits individually and socially. From this criterion, the concept of sexual rights is explained as the particular right of women and men to the free, safe, responsible, and satisfactory development of sexual life as a fundamental and priority area of life. "Among the human rights of women is the right to have control over their sexuality. Including their sexual and reproductive health. The right to decide freely without being subject to coercion, discrimination, or violence. Right to equal relations between women and men." (Cairo Conference, 1994, para. 96).

The Beijing Conference (1995) states that women's human rights include having control over their sexuality, including sexual health, without being subjected to coercion, discrimination, and violence. (p. 28) Miller (2002) expressed that the juxtaposition between reproductive rights and sexual rights has inadvertently served to consider sexual rights as a subset of the former. (p. 132)

Grosman and Herrera (2005) add that sexual rights are of a personal and private nature, that parents have the duty and right to advise their children, to train and educate them, based on their convictions, but they cannot prevent them from deciding about them according to their convictions, beliefs, expectations and life projects. (p. 29).

Checa (2005) said that sexual rights are Universal Human Rights based on freedom, dignity, and equality, they are inherent to all human beings. As such they are an inalienable, integral, and indivisible part of them. (p. 12)

Bedoya-Abella (2014), stated that sexual rights are linked to universal rights, they are essential to all human beings, which take into account the biological, psychological, historical-cultural, and ethical parts of the human being (p. 96)

On the other hand, Távora-Orozco (2016), states that sexual rights are part of human rights, and their basis is based on values such as dignity, equality, and freedom. Furthermore, he states that many of the health problems related to sex or sexuality depend on the nature of power relations." (p.34)

The concept of sexual and reproductive rights is based on the definition of Sexual and Reproductive Rights based on the 1994 Population Conference Program of Action. These rights are basic human rights that have been recognized by different international treaties and conventions. The United Nations Population Fund (2019) states that:

“Sexual rights are those that allow us to regulate and have autonomous and responsible control over all matters related to sexuality, without any type of coercion, violence, discrimination, illness, or disease. For women, sexual rights have a special meaning, as they involve the right to be treated as integral persons and not as exclusively reproductive beings, and the right to exercise sexuality in a pleasurable manner without it necessarily leading to pregnancy (United Nations Population Fund, 2019, p. 12)”.

It also states that:

“sexual rights include the right to strengthen autonomy and self-esteem in the exercise of sexuality, the right to explore and enjoy a pleasurable sexual life, the right to choose sexual partners, the right to live sexuality without any kind of violence, the right to decide the union with other people, right to freely express sexual orientation and gender identity, right to protection and prevention of sexually transmitted infections or unwanted pregnancies, right to receive information and access to quality health services on all dimensions of sexuality without

discrimination, right to comprehensive sexuality education throughout life (United Nations Population Fund, 2019, p. 12)”.

Other authors include the right to sexual privacy, which involves the adoption of behavioral decisions made in the realm of intimacy. It allows people to discuss needs or concerns about sexuality making them feel respected and comfortable. Right to the benefits of scientific advancement that allows access to technologies in terms of sexual and reproductive health (Rodriguez, 2016, p. 9).

Then, from the above, it can be concluded that sexual rights apply to all people, regardless of their choice. When talking about people with diverse sexual orientation, homosexual persons are included, which is the one who experiences a deep emotional, affective, and sexual attraction for people of the same sex and the ability to maintain intimate and sexual relationships with these people. The term lesbian is generally used to refer to female homosexuality (UN.2020) and men who have sex with men (MSM) are those who feel erotic or sexual attraction to another man.

Sexual Rights Legislation

International normative framework

That said, this conceptual approach does not close the discussion on the content of such rights and their interrelationship with reproductive rights; therefore, it is important to emphasize that "reproductive rights encompass certain human rights that are already recognized in national laws, in international documents on human rights and other relevant United Nations documents approved by consensus" (Pérez & Noroña, 2002, p. 12).

In other words, it is not possible to establish specific norms that guarantee these rights, so their enforceability is limited to the Universal Declaration of Human Rights (1948), the Proclamation of the International Conference on Human Rights in Teheran (1968), the Covenant on Civil and Political Rights (1966), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Vienna Declaration (1993) and the Cairo Conference (1994).

The protection of human rights of persons deprived of their liberty in prison establishments is the United Nations Standard Minimum Rules for the Treatment of Prisoners, which since 1995 has been developing

policies that provide additional guidance to member states for the treatment of prisoners to protect human rights and respect human dignity. In its first rule, it states that "All prisoners shall be treated with respect due to their inherent dignity and worth as human beings" (UN, 2015, p. 8)

Sexual rights for inmates in Rule 58 states that all inmates have the right to intimate visits "Where conjugal visits are permitted, this right shall be applied without discrimination and female inmates shall be able to exercise it on an equal basis with male inmates. Procedures and premises shall be in place to ensure equal and equitable access and due regard shall be given to safety and dignity" (UN, 2015, p. 22)

In 2007, a step forward was taken with the proposal of an international instrument for the rights of Lesbian, Gay, Transgender, and Intersex persons. This came from within the United Nations System and was called the Principles on the Application of International Human Rights Law concerning Sexual Orientation and Gender Identity. Recognized as the Yogyakarta Principle. This instrument, issued by the Human Rights Council, reaffirms the obligations of States regarding the application of international human rights law regarding sexual orientation and gender identity. From here, a series of recommendations are given to the States and the different social actors, such as; State Institutions, Non-Governmental Organizations, and Media, as well as a series of recommendations from the United Nations System (Casas, & Cabezas 2016, p. 10).

National Regulatory Framework

The Political Constitution (1991) establishes that the authorities are to defend and guarantee the life and honor of persons in Colombian territory (art. 2) and establishes the right to equality as a fundamental principle and right.

All persons are born free and equal before the law, shall receive the same protection and treatment from the authorities, and shall enjoy the same rights, freedoms, and opportunities without any discrimination for reasons of sex, race, national or family origin, language, religion, political or philosophical opinion (Political Constitution, 1991, Art. 13).

In this sense the Constitutional Court, in Ruling C-586 of the year (2016), makes some considerations where the expression, all persons, is clarified, referring to a universal addressee that includes nationals,

foreigners, natural persons, and legal persons. It is not about being equal to others but to be treated all equally before the law. The Court stated,

This is a substantive element of the right to equality since it is not about being equal to another, but to be treated equally, thus imposing the mandate of prohibition of discriminatory treatment, which is the axis of the right to equal interpretation and application of the law. (Constitutional Court, 2016, judgment C-586, p. 27).

It could be concluded from the above then that all persons living in the Colombian territory have equal rights, regardless of the condition in which they are, for example being deprived of liberty in a prison, the rights continue to reach this social group even in the condition in which they are, since penitentiary establishments are not alien to the law, Prisoners are persons who are subject to some limitations as a consequence of the rule of law, but they are members of a society and in that sense continue to be active subjects of law, which establishes a particular universe for the exercise of their fundamental rights, which are inherent to them as persons.

In the Colombian legal system, there is no law describing and containing the sexual rights of the inhabitants of the national territory. The National Government develops norms and instructs on sexual rights and sexual health through public health policies, headed by the Ministry of Health and Social Protection, which by Decree 2968 of 2010, creates the National Intersectoral Commission for the Promotion and Guarantee of Sexual and Reproductive Rights.

Defining sexual and reproductive rights as "...a fundamental part of Human Rights and are developed, both in the Political Constitution of Colombia of 1991, as well as in different Covenants, Conferences, Agreements and International Conventions". (Ministry of Health and Social Protection, 2010, Decree 2968, p. 1).

Constitutional Court and Sexual Rights

The Constitutional Court of Colombia (2003), pronounced explicitly on the Human Rights to the free development of the personality and in it, to the right to intimate visits, sexuality, to the right to privacy, and equality, recalling that the Political Constitution of Colombia in its article 2° conditions its existence

to the duty to guarantee the rights and freedoms of the people, particularly of those who are subject to state authority. Pointing out that,

"...one of the facets in which the right to the free development of the personality is embodied is the sexuality of the human being, which must be seen integrally, taking into account, therefore, the corporal or physical aspect. Sexual intercourse is one of the main manifestations of sexuality. Deprivation of liberty entails a reduction of the field of free development of the personality but does not annul it" Sentence T-499 (2003).

Concerning sexual rights, the Constitutional Court (2009) has established that they are related to Human Rights and the Constitution of 1991, stating that these rights are implicit in the fundamental rights of the Constitution (1991), such as the right to life with dignity, equality, free development of personality, scientific and impartial information and health. (Constitutional Court, 2009, sentence T-732, p. 14).

The Constitutional Court (2009) in sentence T-732 has indicated that sexual rights provide all persons with the authority to decide autonomously whether or not to have sexual relations and with whom. In other words, the field of sexuality must be free from any type of discrimination (p. 14) Reiterating what was expressed, in 2019 the High Constitutional Court in judgment T-156, points out that the rights to free development of personality and sexual freedom play an important role within the sexual rights of individuals, since these rights protect the self-determination of individuals and the very conception of individual freedom. (p. 13).

He further stated that

Sexual freedom protects the possibility of individuals to self-determine their behavior and sexual life. also warned that sexual freedom is derived from the right to free development of personality and is one of the components within the so-called sexual rights (Constitutional Court, 2019, judgment T-156, p. 13).

In judgment SU-096 The Constitutional Court (2018) said that sexual rights are structured in three phases; the first phase is related to the opportunity to have adequate information and education on human

sexuality, the second phase is the possibility of access to sexual health services and the third phase corresponds to the power to have all the education and information of the means of planning and the freedom to choose them. (p. 23).

It can be concluded in this sense that the Constitutional Court has always framed sexual and reproductive rights from the perspective of fundamental rights, which goes beyond, has been the way to generate a fabric of guarantees on these rights for the LGTBI community. Likewise, these pronouncements resulted from the exhaustion of the tutela action, the procedure to seek the recognition or protection of these rights.

National sexual health policy about the exercise of sexual rights.

Sexual rights are integrated into the public health of the State to guarantee the integral well-being of the inhabitants, ranging from physical health to emotional health. The Colombian Government, through the Ministry of Health and Social Protection, develops the promotion and guarantee of sexual rights and sexual health.

In 2003, the Ministry of Health and Social Protection published the National Policy on Sexual and Reproductive Health (PNSSR 2003-2007), to promote the exercise of the sexual rights of the population from a human rights perspective. Its strategies include the promotion of adolescent sexual and reproductive health through information, education, and communication programs, intersectoral and interinstitutional coordination, the strengthening of participation, the strengthening of institutional management, the empowerment of social support networks, and the development of research (Ministry of Health and Social Protection. 2003, PNSSR 2003).

In 2007, Decree 3039 of the Ministry of Health and Social Protection came into force, adopting the National Public Health Plan 2007-2010, to define health policies that guarantee the conditions to improve the health of the population to prolong life and overcome risks through the promotion of healthy conditions and lifestyles.

Then, in 2010, Decree 2968 of the Ministry of Health and Social Protection was issued, creating the National Intersectoral Commission for the Promotion and Guarantee of Sexual and Reproductive Rights,

to harmonize public policies, which formulate and implement the programs and actions in charge of the promotion and guarantee of sexual and reproductive rights

In 2014, the National Policy on Sexuality, Sexual Rights, and Reproductive Rights (2014-2021) was updated, now with a vocation to ensure comprehensive health, sexual health, and reproductive health of people and their understanding as a means to make physical, mental and social well-being possible. This new policy for the promotion and guarantee of sexual rights has as its vision "the recognition and effective realization of sexual rights and reproductive rights as human rights" (Ministerio de Salud y Protección Social, 2014, PNSDSDR 2014-2021).

Among the strategies brought by this new policy is the strengthening of health sector management, sexual rights communication management, and knowledge management. In addition, to overcome the situation of inequity, the work focus is oriented towards the creation of mechanisms so that people, in the exercise of their citizenship, understand the content and scope of their rights, so that they can freely exercise them and demand their materialization from the State services (Ministry of Health and Social Protection, PNSDSDR 2014-2021). From this perspective of work and seeking to implement it quickly, therefore, the exercise of sexual rights designed an operational plan that has within its lines of action the promotion of sexual rights, gender equity, as well as prevention and comprehensive care in sexual health and reproductive health from the rights approach (Ministry of Health and Social Protection, 2014, PNSDSDR 2014-2021).

The obligations of the Colombian State regarding the sexual rights of persons with diverse sexual orientations in prisons.

With the declaration of Human Rights by the UN (1948) and other human rights standards, states acquired the duty to respect and protect the rights recognized in them. Likewise, they reiterate that all persons have the same rights regardless of their condition, as is the case of being deprived of liberty by court order in a penitentiary and prison center or belonging to a diverse population group.

The treatment of the prison population has also been the object of international protection, hence the United Nations Standard Minimum Rules for the Treatment of Prisoners (1955) establish obligations for

member states regarding the treatment of persons deprived of their liberty, in order to protect and guarantee the human rights of persons held in such centers. Among the duties is to respect the dignity of those deprived of liberty, and to ensure access to intimate visits for inmates on an equal basis, in safety and dignity. (UN.2015)

Referring specifically to the sexual rights of persons with diverse sexual orientations deprived of liberty, we find the Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity or better known as the Yogyakarta Principles (2007) issued by, The International Commission of Jurists and the International Service for Human Rights, on behalf of a coalition of human rights organizations, in its ninth principle establishes the right of persons of diverse sexual orientation to be treated with dignity and equality, and that States must ensure that conjugal visits in prisons exist and are granted on equal terms regardless of the sex of their partner.

The Political Constitution of Colombia (1991) includes the provisions of the Declaration of Human Rights in its first articles, such as the right to human dignity, the right to privacy, freedom of personality, access to information, and the right to health. These rights are related to the exercise of sexual rights because everyone has the right to them, even if the person is deprived of liberty.

It is known that the deprivation of liberty does not impair the enjoyment of other inalienable rights of the person, as is the case of sexual rights. The Constitutional Court (2013) in judgment T-372, has specified that this right is restricted as a consequence of confinement, but it cannot be annulled or suspended by prison authorities (p. 5).

The high Constitutional Court (2018) in judgment T-288, reiterates that persons deprived of liberty have the constitutional guarantees of any citizen. Article 5 of the Political Constitution recognizes the primacy of the inalienable rights of the person, without any discrimination whatsoever. (p. 28).

In the same year, sentence T-002 said: "the right to intimate visitation is linked to fundamental guarantees such as the free development of personality, to family unity, to private life and sexuality, which has to be respected, because even though it is a restricted or limited right due to the condition of deprivation of liberty of the person." (Constitutional Court, 2018, judgment T-002, p. 54)

Likewise, through jurisprudence it has said that the State must provide a place with the minimum conditions of dignity for inmates as mentioned in sentence T-815 of the High Constitutional Court (2013) indicated that excluding the components of privacy, security, hygiene, space, access to drinking water, use of condoms and sanitary facilities violates constitutional guarantees, human rights and dignity. (p. 4)

The Congress of the Republic through Law 065 of 1993 issued the Penitentiary Code, modified by Law 1709 of 2014 in it entrusts the National Penitentiary and Prison Institute (INPEC) with the custody of persons deprived of liberty, as well as the administration of penitentiary and prison centers in the country. This code is based on respect for human dignity and Human Rights, which for the case of study include sexual rights; instituting the right to intimate visits in equal conditions for all persons deprived of liberty regardless of their sexual orientation or gender identity specifying that "The intimate visit will be regulated by the general regulations according to principles of hygiene and safety" (Congress of the Republic, 2014, Law 1709, art.112).

The National Penitentiary and Prison Institute (INPEC) created the General Regulations for Prison Establishments through Resolution 6349 of 2016, which sets out the general regulations for these establishments. This reflects the principles of the Code of human rights, establishing in Article 71 that the intimate visit is an inalienable right that may not be limited by disciplinary sanctions.

The Medium Security Penitentiary and Prison Establishment La Vega de Sincelejo in Sucre through Resolution 00522 of 2018 defined its internal regulations collecting the provisions and principles of Resolution 6349 (2016) in which the exercise of human rights and sexual rights is promoted among which the right to intimate visitation or the right to sexual pleasure is counted.

From the above, it can be said that the obligations of the State in the head of the Medium Security Penitentiary and Prison Center La Vega in Sincelejo Sucre, with persons with diverse sexual orientations deprived of liberty held in their yards are related to the exercise of rights without any discrimination. Therefore, it must facilitate intimate visits by providing a safe, private place, with sanitary facilities in optimal hygienic conditions and providing the required condoms in order not to hinder the effective enjoyment of fundamental human rights.

Sexual rights of persons with diverse sexual orientations in the Medium Security Penitentiary and Prison Center La Vega in Sincelejo.

Sexual rights are Human Rights, and for this reason, they must be promoted, protected, and guaranteed for all persons, even in a situation of deprivation of liberty by judicial sanction these cannot be limited, restricted, or violated as they are fundamental and are embodied in the Political Constitution (1991) in order to ensure a dignified life (art.1, 11) in conditions of equality (art. 13, 43) that allows the free development of personality (art.16) (Constitutional Court, sentence T-732, 2009, p. 14).

Regarding the right to the sexual health of inmates with diverse sexual orientations in the Medium Security Prison and Jail Establishment La Vega in Sincelejo, the administration performs screenings for the early detection of sexual diseases and through the Health area attends to the population with HIV. But it fails in the prevention of these diseases since the prison does not provide condoms to inmates with diverse sexual orientations. People must bring them or inmates can acquire them through the commercial project designed for this purpose, i.e., they have to buy them (INPEC.2020). This situation would pose a risk to the health of homosexual inmates and men who have sex with men (MSM) inside the center. This, in addition, violates what the Constitutional Court said in its ruling T-815 of 2013, in that it is the entity that must provide people with this method of protection

Regarding the right to information on the sexual rights of inmates in the La Vega Prison Establishment in Sincelejo, the administration states that each person upon entering as a prisoner receives an induction where they are made aware of their rights and duties in their life of confinement, however, it is not clear how in that talk that touches on so many aspects of coexistence guarantees detailed information on the various components of sexual rights. They also state that through the Area of Attention, Treatment and Human Rights they are given talks about their sexual rights, without explaining how and with what periodicity (INPEC.2020), it is observed that there is no permanent strategy of education and information, for example, informative billboards explaining the access routes to the right to intimate visits, and the content of each of the sexual rights.

According to the Internal Regulations, Resolution 00522 (2018) in the Penitentiary Establishment of Medium Security and Prison La Vega inmates can request the right to intimate visitation prior to a written request submitted to the director of the place. (art.71) all inmates are guaranteed this right without being affected by disciplinary sanctions.

The right to intimate visitation materializes after the approval of the director of the Prison Establishment, through a written request the inmate must ask the director for this right, who has the obligation to respond to the request in a term not exceeding 15 working days and must grant this right at least once a month for the inmate who requests it. (INPEC, 2018, Resolucion00522, art.71)

The La Vega Prison Establishment in Sincelejo has a place to carry out intimate visits, in which the inmate may bring his or her sentimental partner or another person different from this, the Internal Regulations allow proposing the person the inmate decides, that is, inmates may request the right to an intimate visit with a sex worker, through a request addressed and approved by the director (INPEC, 2018, Resolution 00522, art.72).

The inmates have the right to explore and enjoy a pleasurable sexual life in inmate life since the Penitentiary and Prison Establishment La Vega in Sincelejo allows inmates the right to choose the sexual partners of their preference, which protects the autonomy and the right to choose with whom they wish to materialize their right to intimate visits.

For sexual relations between inmates, the Regulation establishes that it will take place on the last Friday of each month, which would be affecting the sexual rights of inmates, since the waiting time to access this right is every month, which means a long period of time for the materialization of their sexual rights. The means to access this right is a request submitted to the director by either of the two inmates, the director is obliged to respond to this request within a period not exceeding 15 working days and to grant the visit between inmates at least once a month, according to Article 65 of the Internal Regulations of the Medium Security Penitentiary and Prison Establishment La Vega in Sincelejo, the director of the Establishment is in charge of approving intimate visits for inmates and their visits and between inmates, previously the

intimate visit was carried out in the cells or dormitories of each pavilion since the place for intimate visits did not exist for (2018), for in the present year La Vega Prison has the area for intimate visits.

And to prevent sexual violence among inmates inside the Prison, the administration carries out different socialization and awareness programs for the population deprived of liberty through the Prison Care and Treatment Area (INPEC, 2020, p. 1).

Regarding the right to sexual pleasure, it is worth remembering that it is fundamental for the well-being of people, and therefore an obligation of the State to guarantee this right, persons deprived of liberty must enjoy this right through Intimate Visits according to the Penitentiary Code in its Article 112, Law 1709 (2014).

The time that inmates of La Vega Prison have for the enjoyment of their right to intimate visits is one hour (INPEC.2020), that is, the inmates have very little time to carry out their couple relationships since 60 minutes are not enough for a homosexual, lesbian or men who have sex with men (MSM) couple to reach their mutual sexual pleasure due to the conditions of sexual diversity of the same relationship, in this sense the time available is very short for the enjoyment of the sexual right. which could be affecting the enjoyment of the sexual rights of inmates with diverse sexual orientation and therefore their human dignity. It should be remembered that sexuality is not merely sexual intercourse; it is also an effective process of verbal communication and sentimental connection that cannot be subject to time pressure.

The site assigned for intimate visits must have the conditions of dignity, privacy, safety, hygiene, space, furniture, access to drinking water, use of condoms, and sanitary facilities as stated by the Constitutional Court in judgment T-815 of 2013, not having a private and intimate site would pose a serious risk for Homosexuals, Lesbians, and MSM since these situations could truncate the materialization and enjoyment of their sexual rights, in addition, that it would put at risk the dignity of this population in front of the majority heterosexual population.

The Internal Regulations of the La Vega Prison Establishment guarantee access to intimate visits for all its inmates (Art.71), with a place that partially guarantees the minimum conditions established by the Constitutional Court to carry out sexual encounters, adjusted to the infrastructure conditions provided by

the place, which presents an overcrowding of 21.29% for June 2020, representing a risk to privacy and intimacy. These situations would represent a violation of the inmates' human rights and therefore of the international treaties ratified by Colombia, the Political Constitution (1991), the jurisprudence of the Constitutional Court, and the laws that protect human rights.

The State has the duty to promote, protect and guarantee their sexual rights regardless of the condition of being deprived of liberty, especially people with diverse sexual orientations since they are generally victims of scourges to their human rights. The Institutionality is in debt with the effective enjoyment of the right to sexual pleasure in prisons since it does not allow a pleasurable enjoyment of this right, to the extent that it has to meet the needs of 621 inmates and operate with overcrowding of 21.29% (INPEC.2020). In addition, the time granted is not sufficient for the enjoyment of sexual pleasure of homosexuals, lesbians, and MSM, as well as depriving access to condoms for these populations, representing a risk to sexual health and human dignity.

Conclusions

From the above, it can be concluded that sexual rights are human rights, which is why the member states of the United Nations have the obligation to promote, protect and guarantee them. They are also universal in that they are based on freedom, dignity, and equality (Checa, 2005, p. 12). As stated above, they are essential for human development and are therefore enforceable by the Colombian State.

As they have a broad content for their enjoyment, all phases must be satisfied, in accordance with the indivisibility of human rights, so that, by not having adequate information and education on the subject and the enjoyment of these rights, the State violates the substantive duty to prevent acts of discrimination and violence inside the La Vega Prison Establishment. It should be noted that such acts may constitute institutional discrimination, which makes the situation of persons with different sexual orientations imprisoned in the Prison more serious.

The effect of overcrowding also affects the physical and psychological safety of homosexuals, who cannot openly express their affectivity. This is another violation of fundamental freedoms, equality, free development of personality, and, fundamentally, the principle of human dignity.

In addition, it is concluded that the deprivation of liberty does not interrupt the enjoyment of sexual rights. As stated by the Constitutional Court (2013), sexual rights are restricted by confinement, but this condition should not facilitate the suspension or annulment of these. They do not distinguish the sexual orientation of persons (Constitutional Court, 2013, sentence T-372, p. 5).

In this sense, it must be specified then that the Persons with Diverse Sexual Orientations who are detained in the country's prisons have the guarantees for the enjoyment of their sexual rights as established by the Constitutional Court throughout its jurisprudence. Prison inmates also have the right to intimate visits, since this right is fundamental and is related to sexual rights.

The State has the obligation to modify its internal procedures in order to allow intimate visits inside prisons without putting homosexual persons at risk. In addition, it must provide the necessary privacy and security in order to avoid acts of sexual violence or attacks against the physical integrity of this social sector. In that order of ideas, it must provide the use of condoms and sanitary facilities in compliance with the orders of the Constitutional Court (2013).

The State has been unable to comply with the implementation of the norm that imposes due process and guarantees the sexual rights of persons deprived of liberty in prisons. This means that persons with diverse sexual orientations suffer violations of their fundamental human rights, as they are unable to fully enjoy and exercise their sexual life inside the La Vega Prison Establishment. This non-compliance with the duty to guarantee an adequate process adjusted to the needs of the population is an affront to the life project and therefore to the human dignity of homosexuals, lesbians, and men who have sex with men (MSM).

In this sense, it was found that the violations are related to the prevention of sexually transmitted diseases since the prison does not provide condoms to inmates with diverse sexual orientations. People must bring them or the inmates can acquire them through the commercial project destined for this purpose, that is to say, they have to buy them, just as the time available to the inmates to carry out their sexual encounter is too short for the pleasurable enjoyment of relations in couples, affecting the right to the pleasure of the

persons, likewise, the waiting time for the materialization of the intimate visits between inmates is very long, since these are carried out every month.

The Colombian State is in debt with the sexual rights of people with diverse sexual orientations imprisoned in the Penitentiary Establishment of Medium Security and Prison La Vega in Sincelejo Sucre, since it has not fulfilled the duty to protect and guarantee the sexual rights of this population, it still needs to guarantee, promote and protect some sexual rights for those deprived of liberty, this population needs special protection for their rights and the Institutionality has the obligation to ensure the materiality of these rights.

Referencias Bibliográficas

Bedoya, C. (2014). Education for Sexuality and Construction of Citizenship. Retrieved from:

<https://www.redalyc.org/pdf/4137/413734078009.pdf>.

Carpizo, J. (2011). Human Rights: Nature, Denomination and Characteristics. Retrieved from:

http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1405-91932011000200001.

Checa, S. (2005) Gender, sexuality and reproductive rights in adolescence. Barcelona, Paidós, 2003. 19-35.

Colombia Diversa, Caribe Afirmativo and Fundación Santa María (2016), Many times I get tired of being strong. Being lesbian, gay, bisexual or transsexual in Colombian prisons 2015-2016. Taken from:

<http://www.colombiadiversa.org/carceles2017/documentos/INFORMECARCELES.pdf>.

Contreras, S. (2013), Positive law and natural law. A reflection from iusnaturalism on the necessity and nature of determination. Retrieved from:

https://www.scielo.br/scielo.php?script=sci_arttext&pid=S0100-512X2013000100003.

Congress of the Republic of Colombia (1991) Political Constitution of Colombia Art 1, 11, 13, 16, 18, 20, 43, 49, 67.

Congress of the Republic of Colombia (1993) Law 65, whereby the Penitentiary and Prison Code is issued August 20, 1993. Official Gazette No. 40999.

Congress of the Republic of Colombia (2014) Law 1709, whereby some articles of Law 65 of 1993 are amended. January 20, 2014. Official Gazette No. 49.039.

Constitutional Court of Colombia (2003). Sentence T-499 (M. P Álvaro Tafur Galvis, June 12, 2003).

Constitutional Court of Colombia (2009). Decision T-732. (M.P. Humberto Antonio Sierra Porto, October 15).

Constitutional Court of Colombia (2013). Decision T-372 (M.P Jorge Iván Palacio Palacio, June 27).

Constitutional Court of Colombia (2013). Decision T-299 (M.P Jorge Iván Palacio Palacio, May 8).

Constitutional Court of Colombia (2013). Decision T-815 (M.P. Alberto Rojas Ríos, November 12).

Constitutional Court of Colombia (2016). Decision C-586 (M.P. Alberto Rojas Ríos, October 26).

Constitutional Court of Colombia (2018). Decision SU-096 (M.P. José Fernando Reyes Cuartas, October 17).

Constitutional Court of Colombia (2018). Decision T-288 (M.P. Carlos Bernal Pulido, July 23).

Constitutional Court of Colombia (2018). Decision T-002 (M.P. José Fernando Reyes Cuartas, January 16).

Constitutional Court of Colombia (2019), Sentence T-156 of 2019 (M.P. Cristina Pardo Schlesinger, April 5).

Fernández, M. EPMSC Sincelejo, National Penitentiary and Prison Institute. Retrieved from:
<http://www.inpec.gov.co/institucion/organizacion/establecimientospenitenciarios/region-al-norte/epmsc-sincelejo>.

Galdós, S. (2013) Cairo Conference and the affirmation of sexual and reproductive rights as a basis for sexual and reproductive health. Peruvian journal of experimental medicine and public health. Retrieved from:
http://www.scielo.org.pe/scielo.php?script=sci_arttext&pid=S1726-46342013000300014

General Assembly of the United Nations (1948). Universal Declaration of Human Rights. Retrieved from: <https://www.un.org/es/universal-declaration-human-rights/>

General Assembly of the United Nations (1966). International Covenant on Civil and Political Rights. Retrieved from: <https://www.ohchr.org/sp/professionalinterest/pages/ccpr.as>

Grosman, C. and Herrera, M. (2005). A Current Focus on the Right of Adolescents to Exercise their Sexual and Reproductive Rights. Encrucijadas Journal. Buenos Aires, University of Buenos Aires. Retrieved from:
www.uba.ar/encrucijadas/nuevo/pdf/encrucijadas39n4.pdf.

Miller, A. (2002). Miller, A. (2002). Demands for sexual rights. In III Seminario Regional Derechos Sexuales, Derechos Reproductivos, Derechos Humanos (pp. 121-140). Lima: Cladem.

Ministry of Health and Social Protection (2003). National Policy on Sexual and Reproductive Health (PNSSR 2003-2007). Retrieved from:
<https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/DE/LIBRO%20POLITICA%20SEXUAL%20SEPT%202010.pdf>.

Ministry of Health and Social Protection (2007). Decree 3039, National Public Health Plan (2007-2010). Retrieved from:

https://www.minsalud.gov.co/Normatividad_Nuevo/DECRETO%203039%20DE%202007.PDF

Ministry of Health and Social Protection (2014). National Policy on Sexuality, Sexual Rights and Reproductive Rights (2014-2021). Retrieved from: <https://www.minsalud.gov.co/sites/rid/Lists/bibliotecadigital/ride/de/libro%20politica%20sexual%20sept%2010.pdf>.

National Penitentiary and Prison Institute of Colombia. INPEC. (2016). Reglamento General de los Establecimientos de Reclusión de Orden Nacional ERON, a Cargo del INPEC. Resolution 6349.

National Penitentiary and Prison Institute of Colombia. INPEC. (2018). Reglamento Interno Establecimiento Penitenciario de Mediana Seguridad y Carcelario de Sincelejo (Internal Regulations of the Penitentiary Establishment of Medium Security and Prison of Sincelejo). Resolution 00522.

National Penitentiary and Prison Institute of Colombia INPEC, response right of petition (2020), 23 April.

National Penitentiary and Prison Institute of Colombia INPEC, response right of petition (2020), June 12.

Ombudsman's Office (2009). Situation of Persons Identified as LGTB Persons Deprived of Liberty in Colombian Prisons. Retrieved from: <https://www.defensoria.gov.co/es/public/Informesdefensoriales/782/Situaci%C3%B3n-de-las-personas-identificadas-como-del-colectivo-LGBT-privadas-de-la-libertad-en-c%C3%A1rceles-de-Colombia-Informes-defensoriales---C%C3%A1rceles.htm>

Paternina, A. y Velásquez, A. (2019). The Sexual and Reproductive Rights of Women Deprived of Liberty in the Medium Security Penitentiary Establishment and Prison of Sincelejo, Sucre. 40-59. Sincelejo, Colombia

Pérez, A. and Noroña (2002). A Reading of Sexual and Reproductive Rights from the Gender Perspective. Retrieved from: <https://www.redalyc.org/pdf/427/42710509.pdf>

Petchesky, R. (1995). Sexual rights, inventing a concept, drawing the map of international practice. Retrieved from: <https://programaddssrr.files.wordpress.com/2013/05/derecho-sexuales-inventando-un-concepto-trazando-el-mapa-de-la-practica-internacional.pdf>

Rodriguez, (2007). The sexual rights of young people in the national and international legal context. Magazine of the Institute of Legal Sciences of Puebla A.C. Mexico.

Távora-Orozco (2016). Contribution of the Peruvian Journal of Gynecology and Obstetrics to the Development of Sexual and Reproductive Rights in Peru. Peruvian Journal of Gynecology and Obstetrics, Peru.62, (1), 31-57.

United Nations (1993), Vienna Conference. Retrieved from: https://www.ohchr.org/Documents/Events/OHCHR20/VDPA_booklet_Spanish.pdf

United Nations (1994), Cairo Conference. Retrieved from: https://www.unfpa.org/sites/default/files/pub-pdf/icpd_spa.pdf

United Nations (1995), Beijing Declaration. Fourth World Conference on Women. Retrieved from

<https://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20S.pdf>

United Nations General Assembly (2015). Standard minimum rules for the treatment of prisoners. Retrieved from: https://www.unodc.org/documents/justice-and-prison-reform/Brochure_on_the_The_UN_Standard_Minimum_the_Nelson_Mandela_Rules-S.pdf

Baena, G. (2017). Metodología de la Investigación, 3ra edición. Tomado de: https://www.academia.edu/40075208/Metodolog%C3%ADa_de_la_investigaci%C3%B3n_Grupo_Editorial_Patria

World Conference on Human Rights (1993) Vienna Declaration and Program of Action.

Retrieved

from:

https://www.ohchr.org/Documents/Events/OHCHR20/VDPA_booklet_Spanish.pdf.