



Colombia

Country report for use in Canadian refugee claims based on persecution on the basis of sexual orientation or gender identity

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By: Sexual Orientation and Gender Identity Working Group

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I. Introduction

The Colombian Constitutional Court has built up a significant jurisprudence on LGBT rights and has granted extensive rights to same-sex couples. Nevertheless, these legal developments have not been reflected at the political or societal level. Homophobic attitudes remain deeply embedded and discrimination based on sexual orientation persists.

The government has failed to implement Constitutional Court decisions, and members of the LGBT community continue to experience violence and discrimination on a regular basis. “Social cleansing” groups have distributed pamphlets calling for the extermination of certain marginalized groups, including LGBT persons and persons living with HIV/AIDS, leading to violence against these segments of the population.

Members of the LGBT community, especially transgender persons, are frequent victims of police brutality. Human rights violations against LGBT persons are often met with impunity. Cases of police abuse are rarely investigated, and homophobia is often dismissed as a motive in crimes against LGBT persons. The UNHCR has concluded that LGBT individuals and persons with HIV/AIDS in Colombia may be at risk on the basis of their membership in a particular social group.



Colombia is not on Canada's Designated Country of Origin list, which may increase the likelihood that a claimant from Colombia will be successful in their claim for refugee status. However, the majority of Canadian jurisprudence on refugee claims from LGBT Colombians shows that claimants who have not been victims of direct and violent persecution still have difficulty rebutting the presumption of state protection. The more recent jurisprudence from the Colombian Supreme Court, which has increasingly ruled in favour of LGBT rights since 2007, and the passing of an anti-discrimination law in 2011 will likely only increase the difficulty of rebutting this presumption.

II. Legislation

1. *Constitution Política de la Republica de Colombia de 1991*

Online: http://confinder.richmond.edu/admin/docs/colombia_const2.pdf

- **Article 42 defines marriage as a union between a man and a woman.**
- **Article 13 guarantees equality rights, but sexual orientation is not listed as a prohibited ground of discrimination.**
- **Article 13 establishes a positive duty on the state to ensure equality for all individuals and to adopt strategies for the benefit of marginalized groups. The Constitutional Court has held that discrimination on the basis of sexual orientation violates this guarantee.**

Article 13:

All individuals are born free and equal before the law and are entitled to equal protection and treatment by the authorities, and to enjoy the same rights, freedoms, and opportunities without discrimination on the basis of gender, race, national or family origin, language, religion, political opinion, or philosophy.

The state will promote the conditions necessary in order that equality may be real and effective will adopt measures in favour of groups which are discriminated against or marginalized.

The state will especially protect those individuals who on account of their economic, physical, or mental condition are in obviously vulnerable circumstances and will sanction any abuse or ill-treatment perpetrated against them.

Article 42:

The family is the basic nucleus of society. It is formed on the basis of natural or legal ties, by the free decision of a man and woman to contract matrimony or by their responsible resolve to comply with it. . . .



2. *Colombian Criminal Code (Codigo Penal Colombiano)*

Online: <http://www.derechos.org/nizkor/colombia/doc/penal.html> (in Spanish)

- **In 1980, Colombia de-criminalized consensual homosexual activity.**
- **Article 209 of the Criminal Code puts the age of consent at 14 for both homosexual and heterosexual sex.**

3. *Law 1482 (Anti-Discrimination Law), 2011*

Online: <http://wsp.presidencia.gov.co/Normativa/Leyes/Documents/ley148230112011.pdf>
(in Spanish)

- **On November 30, 2011 a new anti-discrimination law was passed**
- **The law criminalizes discrimination based on ethnicity, race, gender, sexual orientation or nationality**
- **Discriminatory acts under this law are punishable by imprisonment**

III. Canadian Jurisprudence

Immigration and Refugee Board of Canada Decisions

1. P.W.Z. (re), [2000] C.R.D.D. No 47

Holding: Claim rejected

- **Claimant has never actually experienced persecution**
- **Claimant is a member of the middle class and is well-educated, and therefore does not face a serious risk of persecution**

The claimant, a lesbian who helped organize the Gay Pride march in Bogota in 1998, sought refugee status on the basis of her sexual orientation. She had never experienced violence, but feared that she would. She feared targeting by skinhead groups, cleansing squads and police. Evidence suggests that homosexuals in Colombia who keep a low profile do not face grave risks but might suffer discrimination by state authorities or the population at large. Serious risks are faced mainly by those engaged in high-profile activism. Openly gay people living in poverty may be targets of cleansing squads. Because the claimant was a member of the middle class and well-educated, the Board found there to be no serious risk of persecution.



2. L.L.R. (re) [1999] C.R.D.D. No. 18

Holding: Claim granted

- **Claimant sexually harassed by her boss when she told him she was a lesbian**
- **Experienced verbal abuse from police officers when she filed a complaint**
- **Claimant arrested while coming home from a gay bar with her partner. They were taken to jail where they were both raped and beaten by police officers**
- **Police officer hinted that a similar incident could reoccur**
- **Based on these facts, claimant had a well-founded fear of persecution**

The claimant was sexually harassed by her boss at work when she told him she was a lesbian. When she complained to police, they were verbally abusive towards her, and photographed and fingerprinted her. The claimant was arrested while coming home from a gay bar with her partner one night. They were taken to jail where both were raped and beaten by four police officers. When the claimant's sister returned to the police station with a lawyer to complain, police denied mistreatment and insisted she had committed a serious crime. An officer hinted to the sister that a similar incident could reoccur. The claimant's partner was unwilling to press charges because she feared the consequences. The Board found her sexual assault to be of the most "egregious kind" and believed she had a well-founded fear of persecution if returned. Granted Convention status.

3. R.N.L (re), [1998] C.R.D.D. No. 297

Holding: Claim rejected

- **While discrimination and homophobia continue to exist in Colombia, there is only a serious risk for "visible homosexuals" and gay activists.**
- **Since the claimant displayed no public manifestations of his homosexuality, he did not face a serious risk.**

The claimant, a Colombian national, sought refugee status on the basis of his sexual orientation. The claimant displayed no public manifestations of his homosexuality in Colombia or Canada. He was allegedly threatened and beaten by police forces. The board denied his claim, reasoning that, although discrimination and homophobia continue to exist in Colombia, there is only a serious risk for visible homosexuals and gay activists. The board pointed to evidence of a thriving but discrete homosexual community and to the availability of services for homosexuals in urban centres.



Federal Court of Canada Decisions

1. Serrano v. Canada (Minister of Citizenship and Immigration), [1999] F.C.J. No. 1203.

Holding: Application denied

- **Since the applicant displayed no public manifestations of his homosexuality, there was no serious risk of persecution.**
- **The applicant delayed in making his refugee claim, which negatively impacted his credibility.**

The applicant sought refugee status on the basis of his sexual orientation. The applicant displayed no public manifestations of his homosexuality in Colombia or Canada. The applicant was allegedly threatened and beaten by police forces. The application was dismissed. The Court reasoned that because the applicant was not visibly homosexual there was no serious risk of persecution. The applicant also delayed in claiming refugee status, which had a negative impact on the credibility of his claim.

2. Cuesta v. Canada (Minister of Citizenship and Immigration), [2005] F.C.J No. 16.

Holding: Application denied

- **The applicant had never experienced persecution himself, but feared that he would if he lived openly as a homosexual man**
- **Evidence suggests the situation for homosexuals is improving in Colombia**
- **The applicant delayed in making his refugee claim**

The applicant sought refugee status on the basis of his sexual orientation. The applicant had never experienced persecution himself, but he now wished to live openly as a homosexual man with his new partner, and therefore feared that he would face persecution. He submitted various pieces of evidence documenting attacks against homosexuals in Colombia. However, other pieces of evidence suggested that the situation for homosexuals is in fact improving in the country. The Court also took into consideration the fact that the applicant had failed to claim refugee status in various countries since his departure from Colombia, and waited 2 months after his arrival in Canada before doing so in this country.



IV. Domestic Jurisprudence

*Constitutional law jurisprudence*¹

1. Ruling C-481, 1998

Online: <http://www.corteconstitucional.gov.co/relatoria/1998/C-481-98.htm> (in Spanish)

Case Summary (English): <http://www.icj.org/sogicasebook/sentencia-c-48198-constitutional-court-of-colombia-9-september-1998/>

- **The Constitutional Court invalidated a law which categorized homosexual activity as a ground of misconduct in the teaching profession.**

2. Ruling C-507, 1999

Online: <http://www.corteconstitucional.gov.co/relatoria/1999/C-507-99.htm> (in Spanish)

Case Summary (English): <http://www.icj.org/sogicasebook/sentencia-c-50799-constitutional-court-of-colombia-14-july-1999/>

- **The Constitutional Court held that the Armed Forces cannot bar gay and lesbian individuals from military service.**

3. Ruling C-075, 2007

Online: <http://www.corteconstitucional.gov.co/relatoria/2007/C-075-07.htm> (in Spanish)

- **The Constitutional Court extended common-law marriage property and inheritance rights to same-sex couples. The Court ruled that Law No. 54 of 1990, which governs the de facto marital union, should apply to both heterosexual and homosexual couples.**
- **See paragraph 596 of Sixth State Party Report under the CCPR in international jurisprudence section below**

4. Ruling C-811, 2007

Online: <http://www.corteconstitucional.gov.co/relatoria/2007/c-811-07.htm> (in Spanish)

- **The Constitutional Court extended social security and health benefits to same-sex civil unions.**
- **See paragraph 597 of Sixth State Party Report under the CCPR in international jurisprudence section below**

¹ For an English summary of legislative changes and Constitutional Court jurisprudence on LGBT rights in Colombia up to 2013, see: <http://www.icj.org/sogi-legislative-database/colombia-sogi-legislation-country-report-2013/>



5. Ruling T-856, 2007
Online: <http://www.corteconstitucional.gov.co/relatoria/2007/T-856-07.htm> (in Spanish)
 - **The Constitutional Court extended health benefits to same-sex couples.**
6. Ruling C-336, 2008
Online: <http://www.corteconstitucional.gov.co/relatoria/2008/C-336-08.htm> (in Spanish)
 - **The Constitutional Court extended pension benefits to same-sex civil unions.**
 - **See paragraph 598 of the Sixth State Party Report under the CCPR in international jurisprudence section below**
7. Ruling C-029, 2009
Online: <http://english.corteconstitucional.gov.co/sentences/C-029-2009.pdf> (Official English abstract) and <http://www.corteconstitucional.gov.co/relatoria/2009/C-029-09.htm> (judgment in Spanish)
 - **The Constitutional Court ruled that same-sex couples must be granted all of the same rights offered to cohabitating opposite-sex couples. These include legal guardianship, migration rights to acquire Colombian nationality, and rights to government benefits in health care, educational programs and family housing.**
8. Ruling C-283, 2011
Online: <http://english.corteconstitucional.gov.co/sentences/c-283-2011.pdf> (Official English abstract) and <http://www.corteconstitucional.gov.co/relatoria/2011/C-283-11.htm> (in Spanish)
 - **The Constitutional Court held that same-sex couples have the right to form a family.**
 - **The Court gave Congress two years to draft legislation enabling same-sex couples to enter into legally-binding relationships with the same legal rights and protections enjoyed by married opposite-sex couples.**
 - ***Note: since the Colombian Congress failed to pass legislation, courts began approving marriages themselves in 2013.**
9. Ruling T-248, 2012
Online: <http://english.corteconstitucional.gov.co/sentences/T-248-2012.pdf> (Official English abstract) and <http://www.corteconstitucional.gov.co/relatoria/2012/t-248-12.htm> (in Spanish)



- **The Constitutional Court held that Decree No. 1571 of 1993, which prohibits the donation of blood by gay men, to be discriminatory**
- **The Court held that discarding a blood donation based on the sexual orientation of the donor and not because of risky sexual behaviour constituted an infringement of the plaintiff's fundamental rights**
- **The Court ordered that the defendant (Higuera Clinical Laboratory) implement a new screening survey that aimed at identifying valid risk factors for blood donation but did not take into account sexual orientation**

10. Ruling T-276, 2012

Online: <http://www.corteconstitucional.gov.co/relatoria/2012/t-276-12.htm> (in Spanish)

- **The Constitutional Court ruled in favour of a gay American citizen seeking custody of his Colombian-born children, whom he had legally adopted. Prior to his departure, he revealed his sexual orientation to an official of Colombia's Family Welfare Institute, and was subsequently blocked from taking his children from the country. The Court upheld his right to due process and family unity.**

11. Ruling SU-617, 2014

Online: <http://english.corteconstitucional.gov.co/sentences/SU-617-2014.pdf> (Official English abstract)

- **The Constitutional Court ruled that a lesbian woman could adopt her long-time partner's daughter.**
- **The ruling does not allow same-sex couples to adopt if neither person is the child's biological parent.**

12. Ruling T-476, 2014

Online: <http://www.corteconstitucional.gov.co/relatoria/2014/T-476-14.htm> (in Spanish)

- **The Constitutional Court recognized the gender identity of transgender women.**
- **The Court ruled that transgender women do not have to comply with the military service required of all Colombian males.**
- **The plaintiff was a transgender woman who had been denied a job in the mayor's office for failing to provide proof of her military service.**
- **She would have been exempt if she had undergone an official sex change, but this can only be legally done after undergoing sex reassignment surgery (an expensive procedure that most trans women do not have access to).**
- **The Court ruled in favour of the plaintiff and ordered the mayor's office to hire her immediately.**



13. Ruling C-071, 2015

English case summary: <http://www.womenslinkworldwide.org/wlw/sitio/caso-interna.php?idcaso=444&idi=en>

- **The Constitutional Court ruled that same-sex couples could only adopt a child when it is the biological offspring of one of the partners.**

Note: this case was not reported online at the time of writing. Please see news report “Colombia grants gay couples adoption rights” in section VIII, below.

V. International Law

UN & Regional Treaties

Treaty	Date of Signature	Date of Ratification
ICCPR	1966	1969
ICCPR – First OP	1966	1969
ICCPR – Second OP	N/A	1997
ICESCR	1966	1969
ICESCR – First OP	N/A	N/A
CAT	1985	1987
CAT – First OP	N/A	N/A
American Convention on Human Rights	1969	1973

Human Rights Committee

1. State party report – “Sixth periodic report: Colombia” (2009)

Online:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=45&DocTypeID=29.

- **The report discusses the decisions of the Constitutional Court granting rights to same-sex couples, outlined above.**

2. Shadow report – *Colombia Diversa*, “Human Rights Situation of the LGBT Population: Shadow Report Submitted to the United Nations Human Rights Committee,” (2010)

Online:

<http://iglhrc.org/sites/iglhrc.org/files/IGLHRC%20Colombia%20Shadow%20Report%20Colombia%202010.pdf>.



- Although the Constitutional Court has developed an extensive jurisprudence on the rights of same-sex couples, discrimination based on sexual orientation persists.
- The government has failed to implement Constitutional Court decisions granting rights to same-sex couples.
- LGBT persons continue to be victims of police brutality. In particular, transgender persons are frequent victims of police abuse. These cases are rarely investigated.
- At least 67 LGBT persons were murdered in 2006-2007 and at least 57 in 2008.
- At least 46 LGBT persons were murdered in the city of Medellin between August 2007 and August 2009.
- LGBT persons in prison suffer physical, psychological and sexual violence, cruel, inhuman and degrading treatment, and repression of sexual identity.
- There is evidence of torture in homicides against gay men, however authorities usually dismiss homophobic violence as a motive.
- There is a high degree of impunity for human rights violations against LGBT persons.
- Radio stations promoting the rights of LGBT persons have experienced threats and intimidation.
- Pamphlets distributed by “social cleansing” groups call for the extermination of marginalized groups, including LGBT persons and persons living with HIV/AIDS.
- Adoption applications have been denied due to the applicant’s sexual orientation.

Committee on Economic, Social and Cultural Rights

1. State party report – “Implementation of the International Covenant on Economic, Social and Cultural Rights. Fifth periodic reports submitted by States parties under articles 16 and 17 of the Covenant: Colombia,” (2009)

Online:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fCOL%2f5&Lang=en

- The report discusses the decisions of the Constitutional Court granting rights to same-sex couples, outlined above.



Committee on Torture

1. State party report – “Consideration of reports submitted by States parties under article 19 of the Convention under the optional reporting procedure: Fifth periodic reports of States parties due in 2013: Colombia,” (2014)

Online:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fCOL%2f5&Lang=en

- Footnote to paragraph 93 mentions that a Draft Prison Code acknowledges “the existence of population groups that are in special situations by reason of their age, sex, sexual orientation or disability which make it necessary to adapt the correctional measures set out in the Code to those situations, as reiterated in the case law of the Constitutional Court.”

Inter-American Court on Human Rights

- No relevant jurisprudence

Inter-American Commission on Human Rights

1. Country report – “Truth, Justice and Reparation – Report on the Situation of Human Rights in Colombia,” (2013)

Online: <http://www.oas.org/en/iachr/reports/pdfs/Colombia-Truth-Justice-Reparation.pdf>

- During the IACHR visit to Colombia, the state acknowledged the historical discrimination of LGBT persons and claimed progress was being made towards raising awareness of this fact
- Civil society organizations stated there were few initiatives on behalf of LGBT since there were no formal laws or policies to protect them, and the Inspector General had requested the annulment of the relevant decisions of the Constitutional Court
- Civil society organizations also reported that the Inspector General has filed legal actions and given legal opinions against LGBT persons in human rights proceedings before the Constitutional Court, and openly opposes LGBT persons
- The IACHR expressed concern on the level of negative discourse by public officials against LGBT persons, which has “the effect of...imperilling them and those who defend their rights, and hindering democratic debate.”
- The report discusses the recent jurisprudence of the Constitutional Court on LGBT rights and their subsequent treatment by public officials
- The IACHR reports it has received “worrisome information” regarding homicides, attacks, threats to life and police abuse against LGBT persons in



the context of the armed conflict in Colombia, and described the phenomenon as “social cleansing”

- The report notes ongoing issues of harassment, mistreatment, and problems in responses to reports and complaints by the National Police
- The IACHR found state responses to violence against LGBT persons to be insufficient in preventing violence and in investigating its occurrence
- The IACHR further noted that the lack of official records and information on LGBT persons, as well as the lack of a public policy towards them, hinder a comprehensive and effective approach to the issues that affect them in Colombia
- Recommendations of the IACHR are listed on pp. 420-421

VI. Government Reports

Canada

1. Immigration and Refugee Board of Canada, “Colombia: Treatment of homosexuals; especially in Bogota and Cali, availability of state protection and support services” (2009)
Online: <http://www.refworld.org/docid/4a7040a8c.html>.

- **67 LGBT persons reported to have been murdered in Colombia in 2006 and 2007.**
- **31 reported cases of police abuse against individuals who visibly showed their sexual orientation.**
- **Unspecific government forces reportedly responsible for social cleansing of homosexuals.**
- **Judicial decisions recognizing LGBT rights have not been followed with equivalent responses in public policies or by government executive.**

2. Immigration and Refugee Board of Canada, Response to Information Request: “Colombia: Instances of ‘social cleansing’ in Bogota and Santiago de Cali, including of sexual minorities, drug addicts and the homeless; the groups that engage in ‘social cleansing,’ including paramilitaries; actions taken by authorities in instances of ‘social cleansing,’ including instances where police took part in ‘social cleansing’” (2013)

Online:

<http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=454614&pls=1>.

- **Social cleansing groups operate in several regions of the country. Among these groups are criminal gangs and other unidentified groups.**
- **Police officers have participated in social cleansing activities.**
- **There were at least 17 instances of pamphlets with death threats being circulated between 2010 and 2011 in the country. These pamphlets**



threatened socially marginalized people, including members of the LGBT community.

3. Immigration and Refugee Board of Canada, "Colombia: Treatment of homosexuals and lesbians and available state protection (2002-2005)" (2005)

Online: <http://www.refworld.org/docid/42df60d320.html>.

- **Increasing visibility of LGBT people in Bogota, despite generally homophobic public attitudes.**
- **Homophobic violence customarily trivialized.**
- **Homosexuals cannot be excluded from serving in the armed forces.**
- **LGBT people reportedly at "high risk" of being targeted by social cleansing campaigns undertaken by paramilitary groups**

United States of America

1. U.S. Department of State, "Country Report on Human Rights Practices for 2013: Colombia" (2014)

Online:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220431#wrapper>.

- **Members of the LGBT community continue to experience violence due to their sexual orientation.**
- **There are frequent cases of police abuse of persons due to their sexual orientation.**
- **There have been threats against human rights defenders working on LGBT rights.**
- **There is a high level of impunity for crimes against members of the LGBT community.**
- **Discrimination in prisons against persons due to their sexual orientation remains a problem.**
- **Transgender individuals face barriers in accessing public services.**

VII. Reports from International Agencies and Non-Governmental Organizations

UNHCR

1. "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia," 2010



Online: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4bfe3d712>.

- **Illegal armed groups and local gangs have called for “social cleansing,” leading to violence against LGBT individuals and persons with HIV/AIDS.**
- **Pamphlets containing death threats and other threats of violence against LGBT individuals are regularly distributed.**
- **The UNHCR concludes that LGBT individuals and persons with HIV/AIDS may be at risk on the basis of their membership in a particular social group.**

CEDAW

1. “From Forced Sterilization to Forced Psychiatry: Report on Violations of the Human Rights of Women with Disabilities and Transgender Persons in Colombia,” 2013

Online: <http://iglhrc.org/sites/iglhrc.org/files/Shadow%20Report%20CEDAW%20-%20English%20FINAL%20.pdf>.

- **Transgender Colombians face discrimination on the basis of their gender identity.**
- **Transgender women are frequent victims of murder, violence, and threats.**
- **Transgendered persons are frequent victims of discrimination by police and private security forces.**
- **In Bogota, 98 percent of transgender persons have been discriminated against; 76 percent have had problems renting housing; 44 percent have been denied health services; 62 percent have had trouble with their neighbours due to their sexual identity; and 83 percent have been discriminated against when accessing education.**
- **Seventy-nine percent of transgender persons have been discriminated against in the workplace and 40 percent are forced to dress and act differently at their workplaces.**
- **Many transgender women are forced into prostitution.**
- **There have been several instances of public officials perpetuating harmful stereotypes about LGBT persons.**

VIII. Newspaper and Media Reports

1. “Teen’s suicide highlights struggle of LGBT Colombians,” Advocate, September 10, 2014
Online: <http://www.advocate.com/world/2014/09/10/teens-suicide-highlights-struggle-lgbt-colombians>



- **A teenage boy committed suicide after his teachers and school administrators allegedly harassed him for being gay.**
 - **The tragedy highlights the broader struggle of the LGBT community in Colombia. Although the Constitutional Court has granted extensive rights to LGBT persons, Colombian society – with 90 percent of the population identifying as Catholic – has lagged behind.**
2. “Colombia grants gay couples adoption rights,” Al Jazeera, August 29, 2014
Online: <http://www.aljazeera.com/news/americas/2014/08/colombia-grants-gay-couples-adoption-rights-201482981229879452.html>.
- **The Constitutional Court ruled that a lesbian woman could adopt her long-time partner’s daughter.**
 - **The ruling does not allow same-sex couples to adopt if neither person is the child’s biological parent.**
 - **However, the ruling could indicate a willingness by the court to extend adoption rights to all same-sex couples.**
3. “LGBT rights defenders receive death threats in northern Colombia,” Colombia Reports, July 29, 2014
Online: <http://colombiareports.co/lgbt-rights-defenders-receive-death-threats-northern-colombia/>
- **Systemic violence against the LGBT population has worsened in recent years.**
 - **The vulnerability of LGBT persons is most severe in Colombia’s Caribbean coastal region. There, LGBT rights defenders have received numerous death threats by illegal armed groups.**
 - **The impunity rate for violence against the LGBT community is alarming – of the 202 violent incidents reported, only seven have made it to court.**
 - **Even in Bogota, where the LGBT community is more visible, approximately 20% of the population believes LGBT persons are “a risk to the community.”**
4. “Judges allow first same-sex marriages in Colombia,” Gay Star News, October 1, 2013
Online: <http://archive.globalgayz.com/south-america/colombia/judges-allow-first-same-sex-marriages-in-colombia/>
- **Two civil court judges have begun marrying same-sex couples in Colombia.**
 - **The Constitutional Court had ordered Congress to act to provide same-sex couples with the same rights by June 20, 2013, or same-sex couples would**



automatically be eligible to apply for civil marriages. With the passing of this deadline, the judges decided they could now legally marry same-sex couples.

5. "Colombia Senate shuts down debate on gay marriage after altercation," On Top Magazine, April 7, 2013
Online: <http://archive.globalgayz.com/south-america/colombia/colombia-senate-shuts-down-debate-on-gay-marriage-after-altercation/>
 - **The Colombian Senate suspended discussion on a gay marriage bill after supporters were assaulted.**
6. "Colombia: Partner of gay Catholic priest wins pension rights," PinkNews, May 11, 2012
Online: <http://archive.globalgayz.com/south-america/colombia/colombia-partner-of-gay-catholic-priest-wins-pension-rights/>
 - **The Constitutional Court granted pension rights to the gay partner of a deceased Catholic priest.**

IX. Scholarship

1. Lina Malagon Penen, "LGBT movement's legal strategies and the Christian social movement reaction in Colombia," Brazilian Journal of Empirical Legal Studies 2(1), 2015 (In Portuguese)
Online: <http://www.reedpesquisa.org/ojs-2.4.3/index.php/reed/article/view/60>

Abstract: Since 2005 several organizations of the Colombian LGBT movement have been implementing a constitutional impact litigation strategy in order to obtain legal equality. The objective of this paper is to show how the case law from the Constitutional Court, in response to this activity, has on the one hand invigorated public participation in the debate about homosexual couples' rights but, on the other hand, produced a democratic deficit. In particular, the paper discusses the strengthening of a religious countermovement willing to use human rights law to defend the status quo. The road to democratization was clouded by intransigent and fundamentalist Catholicism taking over one of the most important authorities of the State, the Office of the Inspector General of Colombia (Procuraduría General de la Nación). This situation has resulted in a powerful public authority committing its resources to the goal of avoiding recognition and protection of homosexual couples rights, despite the fact that its mandate is to defend people's fundamental rights and to punish offenses committed by public officers.



2. Omar G. Encamacion, "Latin America's Gay Rights Revolution," *Journal of Democracy* 22(2), 2011

Online: http://www.plataformademocratica.org/Publicacoes/21740_Cached.pdf

- **In 2008, Colombia's Constitutional Court granted gay couples full rights of insurance, inheritance, immigration and social-security benefits.**
- **Gay activists have begun using new media to create a gay cyberspace. In Colombia, where nearly half the population has internet access, the web is helping gay people feel less isolated.**
- **According to a national survey examining tolerance toward homosexuality, 40-50 percent of Colombians demonstrate a "high tolerance" of homosexuality.**

Abstract: This essay explains the gay-rights revolution in Latin America marked by the legalization of same-sex marriage in Argentina. Among the factors examined are the use of human rights language to end anti-gay discrimination, the employment of the internet to mainstream gay culture, the creation of a gay market to leverage clout for the gay community, and critical alliances with the political establishment. These explanations suggest that the Latin American gay-rights revolution is rooted in political strategizing rather than in social change, which explains the paradoxical trend of rising anti-gay violence in the midst of a gay-rights boom.

3. Cesar Augusto Sanchez Avella, "To march or not to march? That is the question: Legal mobilization in times of turmoil for the LGBT sector in Colombia," *Via Iuris* (10), 2011 (In Spanish)

Online:

http://www.ulibertadores.edu.co:8089/recursos_user/9%20Marchar%20o%20no%20marchar%20esa%20es%20la%20cuesti%F3n%20movilizaci%F3n%20legal%20en%20tiempos%20de%20agitaci%F3n%20para%20los%20sectores%20LGBT%20en%20Colombia.pdf

Abstract: This article comes in the middle of the turbulent situation that the LGBT population in Colombia is going through, which has been historically marginalized and invisibilized. Despite recent legal recognitions obtained by the LGBT people, expressions of violence and hatred against them persist at levels of concern. It is therefore appropriate to reflect about the extent of legal recognition for the LGBT social movement in order to gain visibility, equality, and respect for their diversity. To address this issue is taken as the base the work of Julieta Lemaitre Ripoll, Colombian jurist specialized in legal theory, social movements and feminisms, as she has been probably the only Colombian author who has reflected from the legal field about agreements and disagreements between social movements and the legal system. After going through the statements of Lemaitre, is concluded that despite the attacks and discrimination which LGBT population is still a victim, legal mobilization should not be



abandoned as a strategy for recognition and affirmation

4. Mauricio Albarracin Caballero, "Social movements and the Constitutional Court: Legal recognition of the rights of same-sex couples in Colombia," *International Journal on Human Rights* (7), 2011

Online:

http://heinonline.org/HOL/Page?handle=hein.journals/surij14&div=5&g_sent=1&collection=journals

- **This article analyzes the process used by Colombia Diversa, a prominent LGBT rights organization, in seeking to acquire legal recognition for the rights of same-sex couples.**
- **The paper emphasizes the centrality of rights-based language within the social movement.**

5. Jose Fernando Serrano Amaya, "Challenging or reshaping heteronormativity with public policies? A case study from Bogota, Colombia," *International Development Studies Working Papers* (361), 2011

Online: http://onlinelibrary.wiley.com/doi/10.1111/j.2040-0209.2011.00361_2.x/abstract

- **This paper discusses a public policy scheme introduced by the Mayor of Bogotá in 2007 to promote the rights of the city's LGBT population, and the social movement that led to its enactment**

Abstract: On 28 December 2007 the then Mayor of Bogotá signed a Decree which established the guidelines of the public policy for the full guarantee of the rights of lesbian, gay, bisexual and transgender (LGBT) people in the city. This legal measure was the end point of a long lobbying and advocacy strategy implemented by activists and organisations working on gender and sexual diversity. This Working Paper presents that experience as part of the process in which subordinated social sectors, such as gender diverse and sexually diverse people make themselves political subjects. In spite of the novelty in Colombia and in Latin America of this kind of public policy targeting LGBT people as subjects of rights, it is also an opportunity for normative systems to readjust and to create new ways to normalise people. The promotion of certain queer people as proper citizens, the regulation of ways to interact with the state, the co-option of social mobilisations and the transformation of grassroots organisations into private service providers, are just some of the risks that a scheme like this faces. The author was part of the social mobilisation that motivated this particular public policy scheme in the early 2000s and was involved in its design, planning and initial implementation between 2007 and 2010. This paper is situated in a problematic position between political activism, consultancy work and construction of knowledge based on the practice. It is a contribution to the memory of a rich, and in many ways unique, experience.



6. Julieta Lemaitre Ripoll, "Love in the Time of Cholera: LGBT Rights in Colombia,"
International Journal on Human Rights 73, 2009

Online: <http://www.surjournal.org/eng/conteudos/pdf/11/04.pdf>

- **While the Constitutional Court's jurisprudence has granted extensive rights to LGBT persons, violence and discrimination against the LGBT community persists.**
- **This article explores the efficacy of the law as an instrument of social change.**
- **Sexual orientation case law emerged in the mid-1990s. The early cases were rejected by the Court, which perpetuated homophobic stereotypes.**
- **In the late 1990s, the tide began to turn as the Court issued several rulings rejecting discrimination on the basis of sexual orientation.**
- **Since the mid-2000s, the Constitutional Court has issued a series of rulings granting rights to same-sex couples.**
- **Despite this progress at the legal level, survey data reveals that 77% of LGBT individuals surveyed have suffered some form of discrimination and 70% some form of aggression. Homophobic attitudes remain deeply embedded.**
- **Public displays of affection or sexuality are regularly met with aggression, leading LGBT persons to hide their sexual orientation.**
- **While changes in the law do have positive effects, the law is limited as an instrument of social transformation.**