

The Crusade against Same-Sex Marriage in Colombia

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Abstract

In 2011 the Colombian Constitutional Court laid the groundwork for gay marriage, ruling it unconstitutional to exclude same-sex couples from the benefits of legal marriage. Instead of extending marriage to same-sex couples, however, the Court's decision left it to Congress to pass a law regulating such unions. Sharply divided on the issue, Congress failed to act. The then-Inspector General, a conservative Catholic, launched a wide-ranging legal and moral attack on marriage rights for same-sex couples, an attack which lasted until the Constitutional Court in 2016 expressly authorized these weddings. The attack included not only briefs and legal actions but also disciplinary action against public officials that celebrated same-sex weddings. This article seeks to unpack both the subtle and overt ways in which religious homophobia reflects and is reflected in popular culture and argues for a complex understanding of the relationship between homophobia in popular culture, religious definition of homosexuality as sinful, and the recourse to Constitutional Law by advocates for and against same-sex marriage.

Keywords

Same-sex marriage; LGBT rights; marriage; Colombia.

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San Estanislao de Kostka¹

San Estanislao de Kostka is a small town of approximately 18,000 inhabitants an hour's ride away from the northern Colombian city of Cartagena.² It is so small that locals often refer to it as Northern Arenal after the slightly larger town that lies adjacent. Like Arenal, San Estanislao sits on the edges of northern Colombia's northern flood lands, where the Magdalena River and its tributaries periodically overflow in the rainy season and withdraw to reveal fertile lowlands that have been the object of fierce property struggles over the last one hundred years.

In this small town, Judge Carlos González married same-sex couples who travelled to San Estanislao for this purpose. Between 2013 and 2015 he was one of a handful of judges who dared marry same sex-couples, in a lonely show of resistance to one of the more powerful public institutions in Colombia: the Inspector General. During this period, same-sex marriage was caught in a legal limbo, as the Constitutional Court had deemed it unconstitutional to exclude same-sex couples from the benefits of marriage, but had also said that Congress, not the Court, should regulate these unions (Decision C-577/11). The Court gave Congress until 2013, and for the following two years same-sex marriages were supposedly permitted to exist but had no regulation. During this period, judges and public notaries who allowed and supported same-sex marriages faced the threat of investigation and other legal attacks by the Inspector General's Office.

The Office of the Inspector General's has the constitutional charge of ensuring that public officials abide by their legal and constitutional duties. Centralized in Bogotá, the Office has over 4000 employees located throughout Colombia.³ From 2009 to 2016 it was headed by Alejandro Ordóñez, a fiercely conservative Catholic who used the office to prosecute public officials who carried out policies that stood contrary to his interpretation of the Constitution.⁴ Ordóñez targeted former guerrilla members and alleged guerrilla sympathizers, as well as feminist and pro-gay rights public officials. Once LGBTI rights activists began winning legal cases, Ordóñez aggressively led a wide-ranging legal and moral

¹ The information in this article is based on in depth-interviews of the judge of San Estanislao and two married couples, participant observation during Constitutional cases and parliament debates, participant observation in local courts in Gachetá, Bogotá and San Estanislao during marriage procedures, press review on the news related with marriage equality, archival review of the Constitutional Court, the Colombian Congress, the Inspector General's Office and Colombia Diversa.

² Data available at the San Estanislao webpage: <http://www.sanestanislaobolivar.gov.co/indicadores.shtml#poblacion> Last seen November 18, 2015.

³ Data available at the Inspector General' Office (Procuraduría General de la Nación) webpage: <http://www.procuraduria.gov.co/portal/Objetivos-y-funciones.page> Last seen November 18, 2015.

⁴ Catholic natural law is used to argue against sexual and reproductive right throughout the Americas. See Lemaitre 2012; Bamforth and Richards 2011.

attack on marriage rights for same sex couples. This attack included taking disciplinary action against public officials who, like Carlos González, interpret constitutional rights as allowing same-sex weddings.

Carlos González' location in San Estanislao represents the marginalization of same-sex couples in a context of persecution. San Estanislao is under the purview of the Cartagena jurisdiction, a couple of hours away by car but a world away from the cosmopolitan regional capital. San Estanislao has not always been a secluded destination: the town was strategically located on the road from the inner floodlands to the provincial capital on the Caribbean coast, Cartagena, and on the shore of the Dique Channel, a manmade channel built by the Spanish crown to join swamps and lakes. The Jesuits named the town San Estanislao de Kotska after a Polish martyr, and the town prospered in the late nineteenth century when it was on the path of the railroad.

The decline in railroad travel and the rise of roads that passed the town doomed San Estanislao to its present status as a peasant backwater. When the railroad was eliminated in 1951, the immigrant merchants slowly left town, and the town dwindled in population and vitality, depending increasingly on the economic power of Cartagena. It subsisted in peaceful oblivion, unremarked by the local press, appearing periodically during the rainy seasons when the town floods over, and receiving some attention in 2003 when the regional press briefly mentioned a massacre during the paramilitary expansion in Northern Colombia.⁵

Today the town is described by all as peaceful. Other frequently used words are dusty and forgotten. In that context, when the mayor of San Estanislao heard that the local judge had decided to marry same sex couples, his first reaction was of excitement. That day he burst into the judge's office, a large room shared with two assistants and exclaimed 'Good for you! Maybe this will put San Estanislao on the map!'

Carlos González, Town Judge

The young judge had been recently named as the municipal judge of San Estanislao, meaning he oversaw all cases, criminal, civil or labor. It was a post won in the regional competition for new judges, through his high scores in the judicial exams. For Carlos it meant a huge leap from being a secretary in a court in Cartagena to handling his own post as a judge. In the Colombian system, this also meant he was starting the slow climb up the judicial ladder, which could eventually reach as high as the Supreme Court.

Carlos was thrilled to win the post in San Estanislao, as it meant he would ascend from judicial assistant to full judge.⁶ Winning the contest for town judge was a relief: he was thrilled to go far away from the Cartagena circuit and be the sole judge in Arenal. Soon after he arrived in his small office his excitement

⁵ As described in the town's current development plan the massacre led to the displacement of a sizable number of people. See the development plan at: <http://sanestanislao-bolivar.gov.co/apc-aa-files/36396532363230393766393264643134/plan-desarrollo-2012-2015-unidos-lograremos-mas.pdf> Last seen November 24, 2015.

⁶ Interview with Carlos González in July, 2015 and November, 2014.

was put to the test: it didn't take him long to go through the cases in the court, organize files, and realize most of his time would be spent waiting. His days passed chatting with his two female assistants who were widely versed in local gossip and feeding his social networks, where he maintains a small following of local liberal judges and clerks. San Estanislao seemed to fulfill the promise of the stereotypical small town where nothing happens.

In early October 2013, Carlos read in the news that the Inspector General was harassing judges who tried to marry same-sex couples. He heard news of a protest in the highland town of Gachetá, where townsfolk heard the local judge was marrying same sex couples (El Tiempo 2013). Carlos had seen the Constitutional Court decision, delighted to read that the democratic principle did not allow homosexuals to be relegated to the category of second class citizens, and that therefore they too had the right to form a family and obtain legal recognition as such (Decision C-577/11). He was convinced that a common sense interpretation that took rights seriously had to accept same-sex marriage even without a specific law regulating it so he wrote in his social networks he would marry same-sex couples. The news traveled fast. His heart thumped with excitement but his friends were skeptical: you could lose your job, they warned. The Inspector General will be after you.

Background: Same-Sex Marriage in Colombia

In 2011, in C-577, the Colombian Constitutional Court declared the exclusion of same sex couples from the benefits of legal marriage to be unconstitutional. Instead of creating an alternative through judicial precedent, however, it tasked Congress with passing a law regulating same sex unions. The decision left open the possibility that public officials with the power to marry citizens (judges and public notaries) could proceed to marry same sex couples in the absence of such a law. The decision first recognized same-sex couples as families, changing precedent that had said the only type of family that had constitutional protection was the monogamous, heterosexual family.

The Court also said that the absence of a legal mechanism for same-sex families, specifically a legally sanctioned contract, was unconstitutional. However, the Court also decided that, in deference to the democratic principle of separation of powers, it was Congress and not the Court who should create this contract, be it marriage or a different family-creating legal institution. It gave Congress until June 20, 2013 to create this law, warning that if no such law was passed by that date, same-sex couples could then go to judges and public notaries to '*solemnizar y formalizar su vínculo contractual*' (sign a solemn and formal contract). And while the Court did not use the word marriage, the language it used, especially the reference to a solemn contract that would be formalized before a judge or a public notary, is consistent with the language of marriage under Civil Law.

This decision opened the way for interested parties to lobby Congress. LGBTI activists presented four different bills for the regulation of same-sex families, two advancing marriage and two regulating other types of family-creating contracts. Intense LGBTI lobbying focused on two goals: to block any discriminatory civil union regime from passing, and to advance marriage rights for same-sex

couples. Conservative organizations and the Inspector General also lobbied Congress but focused on blocking any bill from passing.

The clash was apparent on April 24th of that year in front of the seat of Congress, with LGBTI activists filling one side of the Plaza de Bolívar and conservative activists the other side. Demonstrators were awaiting Congress's vote on the last gay marriage bill left standing. While one side displayed colorful rainbow flags and an imposing banner demanding 'egalitarian marriage NOW!' the other side stood firm with banners with the constitutional phrase defining marriage as between 'one man and one woman'. A giant rainbow flag divided both groups and the plaza. While gay activists chaotically played music and dress-up, kissed and chanted, conservative activists stayed orderly and uniform, under a single slogan: one man plus one woman equals marriage (Images at Wradio 2013). The vote was decided in favor of the conservatives, with a majority of 51 to 17 legislators voting to defeat the gay marriage bill.

Once the last bill fell through, activists turned again to the Constitutional Court. The 2011 decision had warned that, should Congress fail to regulate same-sex marital unions, same-sex couples could formalize their unions as 'solemn and formal contracts' before the judges and public notaries. Colombia Diversa, the leading LGBTI rights organization, decided to find judges that would marry same-sex couples, and to develop campaigns around these legal marriages. At the same time, the Inspector General acted to block any marriages. First, he insisted that the 2011 decision could not be applied without another decision from the Court, and that, pending that second decision, judges and public notaries that officiated gay marriages were in fact violating the law. He also publicly threatened those who did so with disciplinary action and asked all regional Inspector General offices to monitor any same-sex couples asking for the equivalent of a marriage license before any judge or public notary. Finally, he ordered his delegates before civil courts to formally object to any demand for a same-sex marriage license. Public notaries, through their professional association the College of Public Notaries, decided they would not register marriages but instead register 'solemn unions', a type of contract with diminished marriage rights for same-sex couples. This left the judges as the last frontier of same-sex marriage activism and set the stage for a fierce legal battle as the Constitutional Court remained silent on the issue.

LGBTI activists soon felt the power of the Inspector General. In June of 2013 several same-sex couples applied for the equivalent of marriage licenses before judges around the country. In Bogotá, every single application was objected to by a representative of the Inspector General, and the marriages were blocked by intense litigation. Colombia Diversa decided to find small towns more removed from the Inspector General's influence in Bogotá, and chose a judge in the small town of Gachetá, Cundinamarca, two hours away from Bogotá, as a test. The marriage was celebrated successfully, and the news came out in the Sunday paper in Bogotá. This led conservative forces in Gachetá to organize a public protest against gay marriages, with one of the banners reading 'this is Gachetá, not Gaychetá'.

The situation has created a paradox for same-sex marriage in Colombia. Marriage is culturally valued for its public character. It is a public act in which a couple declares their bond under the protection of the State and in front of family and friends. In this context, and given the intensity of the Inspector General's prosecution, same sex marriage remained hidden from public view, officiated

by an activist judge before two witnesses and not more than two family members, after a long trip to dusty and forgotten San Estanislao de Kotska. This paradox was the direct result of the power and obsession of the Inspector General, Alejandro Ordóñez.

The Stakes for Marrying Same-Sex Couples

Alejandro Ordóñez's ascent to Inspector General in 2009, and his confirmation by Congress in 2012, were shrouded in rumor about the extent of his extreme conservatism. The national press, especially the liberal press in Bogota, relished in reporting the conservative judges' exploits: he had been involved in book burning in his youth, targeting Marxist and anti-Christian literature (*Revista Semana* 2013); he worshipped the dissident Lefevrist Church, a splinter group that derided the Catholic Church's modernization and still celebrated mass in Latin;⁷ he was a holocaust-denier and an anti-semitic (Blu Radio 2013); he took down the portrait of Francisco Santander (one of the Colombian founding fathers and the founder of the liberal party) when he reached the administrative high court and replaced it with a crucifix (*Revista Semana* 2010). His reputation for being a conservative Catholic was intensely discussed in Congress both times he was elected (2009 and 2012), and his growing influence in this institution has been linked to corruption as opposed to genuine political support (See Quevedo 2015).

Ordóñez's attitude toward homosexuality was particularly noted in these news stories. His undergraduate thesis was an ardent defense of a confessional Catholic state that adopted as its own the content of Catholic natural law (Albarracín 2013). While that could be ascribed to youthful passions, such passions persisted. He was involved in public book burning in 1985, as described above, and in his career as a lawyer and judge, he published several books in the same line of defense of radically conservative Catholicism. In 2003, he published a short book attacking the Constitutional Court's decisions on gay rights titled 'The free development of the animalistic nature' (Ordóñez 2003). In this book, Ordóñez rallied against the constitutional court's development of the constitutional right to free development of personality (a right to autonomy modeled on the German constitutional tradition). Espousing Catholic moral perfectionism, he insisted law could not protect the right to sin, either through homosexual sex or through any other immoral conduct, such as drug use. As a judge, in 2003 he wrote a letter to Congress opposing a bill regulating same-sex unions and using the same argument that freedom cannot be invoked to defend actions against the natural order, natural reason and justice (Colombia Diversa 2013).⁸

Ordóñez' lay Catholic activism is a new phenomenon in Colombia. While the country has been a confessional state through most of its republican existence

⁷ For an extensive articles about Ordóñez and his link to conservative Catholicism, including the dissident branch of Lefevbristes, see Norbey Quevedo, *El misterio de los lefebvristas* [The mystery of Lefe bvre's followers] EL ESPECTADOR, February 20, 2010, available at www.elespectador.com/noticias/investigacion/articulo188861-el-misterio-de-los-lefebvrista.

⁸ He has further explained his opposition to gay rights in Ordóñez 2007.

and the Catholic Church has always maintained a powerful political presence, this influence was limited to the clergy and especially to the National Conference of Bishops. During the last decade, however, the National Conference along with other Catholic leaders such as Jesuit provincials have focused their attention on civil and political rights, paying less attention to issues of sexual morality. For example, a full year elapsed after the Constitutional Court's 2006 decision liberalizing abortion before the Church made a public pronouncement (El Tiempo 2007a,b). This apparent lack of interest on the part of the Church hierarchy starkly contrasts the activism of conservative lay Catholics such as Ordóñez.

Ordóñez staffed the Inspector General's Office with other lay conservative Catholics. Some were linked to the Opus Dei, most notably his delegate for women's rights, Ilva Myriam Hoyos, a long-time professor in Opus Dei's *Universidad de la Sabana*, as well as the vocal former president of the antiabortion NGO *Red Futuro Colombia*. Under their joint leadership, the Inspector General's Office adopted conservative causes, such as a restricted interpretation and application of legal abortion,⁹ and a broad interpretation of conscientious objection, pressuring public health institutions that provided legal abortions with messages insisting they respect a doctor's conscientious objection (El Tiempo 2009). It also consistently and vigorously opposed marriage and adoption rights for same-sex couples. (Procuraduría General de la Nación 2010a,b, 2011a,b,c).

Before the Constitutional Court, Ordóñez consistently opposed the protection of the rights of same-sex couples. For example, he asked the Constitutional Court to take away a pension given to a same-sex partner, and the adoption of a child by a gay man (T-716/11 and T-276/12). He also intervened several times in the high-profile case of the Leiderman Botero family (popularly known as 'the Lesbian Moms case'), asking the court to deny the plaintiff the possibility of adopting her partner's child. Similarly, as Inspector General, Ordóñez has submitted briefs against the constitutionality of same-sex marriage (Procuraduría General de la Nación 2011a,b,c).

His actions are not simply limited to judicial proceedings. After the Constitutional Court in 2011 said the ban on same-sex unions was unconstitutional, the Inspector General publicly stated that the Court was mistaken and that its decision was confusing, contradictory and generally lacking in truth (Ordóñez 2013c). Ordóñez also maintained an active presence in Congress. In April 2013 he spoke in a public debate against gay marriage, claiming he was stigmatized by liberals who liked to speak against him while they 'smoked marijuana and consumed cocaine'. (Ordóñez 2013b). He was also involved in a scandal in the press when a journalist uncovered that the delegate inspector for family, Ilva Myriam Hoyos, led an intense lobby against the same-sex marriage law in Congress (León 2013).

⁹ The Constitutional Court's decision 355 (2006) allows for the liberalization of abortion, that is, the de-criminalization of abortion in case of rape, threat to the health or life of the mother, or serious fetal defect making independent life impossible. For the *Procuraduría*, this does not mean abortion may now be included in national health plans, and in fact it has insisted that health institutions need to ensure counseling for women who ask for legal abortion, as well as doctor and nurse's right to conscientious objection. See *Procuraduría General de la Nación* 2010a,b.

Once judges and public notaries started celebrating same-sex marriages, the Inspector General's Office used its disciplinary power to end this practice. In an interview, Ordóñez threatened them with a disciplinary investigation if they dared marry same-sex couples (Rueda 2013). He also sent a letter to the agency in charge of supervising Public notaries insisting that Notaries cannot perform marriages and that only 'solemn contracts' be made available for same-sex unions (Ordóñez 2013d). Ordóñez sent instructions to all Inspectors' offices around the country a few days before the date after which, according to the terms given by the Constitutional Court, judges would be able to start marrying same-sex couples (Ordóñez 2013e). These instructions included the order to search among the courts in their purview for any requests for same-sex marriage licenses and to object to them using a form that included the phrase that marriages 'might even breach the rights of people in heterosexual unions'. The instructions also included demands for reports on every request for same-sex marriage licenses and authorized all public officials to use conscientious objection to obstruct any marriage by a same-sex couple, even though conscientious objection by public officials is not a legal right, and has in fact been defined by the Constitutional Court as unconstitutional.

The demand for reports was especially effective. They began with weekly reports, requiring a constant monitoring, and later included sensitive information such as the names, addresses, parents' names and names of witnesses of same-sex couples, as well as the content of these requests. After the reports started pouring in, along with the objections, few judges in Colombia dared marry same-sex couples.

Following instructions, judicial inspectors have used different legal resources to obstruct same-sex marriages, going so far as personally visiting judges to convince them to deny the license. In 2014, following a judicial action against the Inspector General's Office, the Constitutional Court examined the Inspector General's actions and decided they constituted a violation of the rights of same-sex couples, as well as a violation of the independence of judges and notaries. According to the Court, the Inspector General could not impose his own views of the way judges and public notaries interpreted the Court's 2011 decision (Corte Constitucional, T-144, 2014).

This insistence by the Inspector General was bound to have an effect on public servants. In spite of Colombia's numerous problems with corruption and violence, it remains a highly institutionalized country, with a strong legalistic tradition, and a formal approach to the law and its interpretation. The Inspector General's Office is widely feared because of its large bureaucracy and its generally unchecked disciplinary power over public officials. Under threat of a disciplinary investigation, public servants tend to follow instructions. Since the beginning of his tenure, Ordóñez has investigated and imposed disciplinary sanctions on an extraordinary number of public officials, including more than a hundred mayors each year, almost half of state governors, and even some high profile Senators, who have lost their positions due to such sanctions. Fear of disciplinary sanctions is so common that the phrase 'síndrome de Procuraduría' (roughly, Inspector General's syndrome) is sometimes used to describe public officials' fear of acting in any way that could be interpreted as a breach of disciplinary law.

In this context, judges who married same-sex couples defied the Inspector General's growing influence. Technically, the Inspector General had no direct supervision over Carlos González, and could only try to stop the weddings with

objections. But even judges who sympathized with Carlos and with LGBT rights did not dare to challenge the political influence of the local delegate of the Inspector General, a conservative lawyer known for his snobbish demeanor, his aristocratic family, and his supposed allegiance to Opus Dei. His liberal friends warned Carlos there could be consequences, and suggested that he, like they, should wait for the Constitutional Court to provide a clear indication about the status of same-sex marriage now that Congress had failed to pass the law. But Carlos thought marrying same sex couples was the right thing to do, both legally and morally.

First Marriage, First Cake

There are two ways to reach San Estanislao. A public bus leaves every two hours from Cartagena, bringing in merchants and public officials who work in San Estanislao and the neighboring towns but live in Cartagena. The hot and crowded buses are often overflowing with merchandise brought to the local markets, its corridors obstructed by crates of food and hastily wrapped cardboard boxes, about which the occasional policemen who also take the bus remain indifferent. The public bus takes the long route to San Estanislao, lurching in starts and stops through one of Cartagena's main arteries, passing through the enormous public market that sometimes overflows on the road and by the numerous construction sites that promise the city a better future and, especially, a better public transport system. This is the bus Carlos takes every day, and it takes him two hours to get to work.

The first couples to get married in San Estanislao took a different road, hiring a private driver from Barranquilla, a large city four hours away by car. They were two lesbian couples, young women and all lawyers, sharing a commitment to activism. They were also terrified of what could happen. The trip was organized by one of them, a woman named Ana, and as they got closer to San Estanislao her main worry was what would happen if they ran across armed actors in that dusty road to some godforsaken town.¹⁰ She had worked in the civil rights arena and knew well the violence unleashed against gays by *de facto* armed groups. She also dreaded the army or any stop by armed men asked where they were going and why. They wore jeans and sneakers, hiding their more elegant marriage clothes in bags, in case they were stopped. But there was no one on the roads and they made it to the town without incident. When they got out of the air-conditioned car, they were struck by the heat, the dust, and proportions of this diminutive town. Ana kept looking nervously around for armed men, protesting crowds, or danger. But the town was still and quiet in the midday heat.

Ana's nervousness was not unjustified – paramilitary presence in the region in the previous decades means that violence is no stranger to the people. San Estanislao is just across the river from San Onofre, the municipality formerly controlled by El Oso, a paramilitary commander well known for his cruelty against women and gays as much as against his enemies (Albarracín 2011; Albarracín

¹⁰ Interview with Ana, Bogotá October 2015.

and Rincón 2013; Grupo de Memoria Histórica 2013). These are the lowlands of the Montes de María, a hilly region that was the location of a fierce war between guerrillas and paramilitaries allied with the Colombian army, a war over land and people that brutally murdered many peasants on the wrong side of the river, the road, and the town. Carlos knows of one such massacre in San Estanislao: it happened long before he arrived, in 2003, linked to a land grab that displaced peasants from the nearby rural areas.

But by the time Ana and Sandra went to San Estanislao to get married, there were no traces of that past. In 2015 San Estanislao was scheduled for the government's land restitution program, which only targets municipalities considered safe for peasants and government officials trying to clean up the paramilitary's trail of violent land grabs (RCN Radio 2015). Those days the biggest threat was the occasional robbery on the buses covering the trip to and from Cartagena.

They had no trouble finding the judicial house, a bright yellow house across the town square from the Church. Carlos greeted them with sweaty palms, because the air conditioner had broken down and because he was nervous. They all took turns changing in the one small bathroom while, in spite of the heat and humidity, the judge put on his black gown. He officiated the wedding with all the same formalities of a heterosexual civil wedding, while the young women exchanged nervous glances. Sandra, Ana's wife, asked her at one point: 'you're sure this is legal'? They exchanged vows and rings in a shorter ceremony than the more emotional celebration shared with friends in Bogotá. The judge had baked a traditional marriage cake, wrapped in aluminum foil, thick and sweet with dried fruit and spices, and they shared it with the other young couple in a brief celebration. Ana did not relax until they were in the car out of the town, out of the deserted dust roads, on the way to the airport to take a plane back to the relative safety of Bogotá.

Amanda and Amparo Take a Cab

Some months later two other couples hired a taxi cab from Cartagena. They were lucky, the driver said, because it had rained, the unpaved section of the road was not as dusty as it usually was, and the day was cooler than usual, typically a humid 90s Fahrenheit. The two couples were dressed for the occasion in matching outfits and matching colors: Amanda and Amparo along with two young female lawyers making a statement of equality as well as of love and commitment. Once in the dusty two-street town, the driver easily found the yellow house with the judge's small office.

Of the three couples the judge married that day, Amanda and Amparo's story especially moved him and further convinced him that he was doing the right thing. Amanda and Amparo had lived together for thirty years. Amparo was dying of cancer and she wanted Amanda to receive the widow's pension for which she would not be eligible otherwise.¹¹ Of course, before she died, she also wanted to be married to the woman who had tended to her through a long battle with cancer and through difficult periods of depression. She wanted her

¹¹ Interview with Amanda, Bogotá, October 2015.

family to call Amanda her wife, after a long struggle of decades to be accepted as a lesbian, a struggle that had begun when Amparo came out in the early 1960s and her family had her committed in an asylum where she was treated with electroshocks to 'cure' her. Marrying was a last act of dignity in a life of struggles for dignity and respect. Her story and her soulful clear blue eyes, which matched Amanda's vivacious, deep black eyes with admiration were a poster story for the right to marriage movement. But now they had to marry in secret, far from their friends in San Estanislao.

The ceremony was moving, both because of Amanda's illness and because of the third couple present, waiting to get married. They were both men, middle-aged, brown, and dressed in matching blue shirts, with their thirteen year-old son grinning and taking pictures throughout the wedding. They were the one public gay couple in San Estanislao and had decided to make their relationship official. The judge wore his black robes and the couples served as each other's witnesses, as they pronounced their vows, exchanged rings, and the boy took pictures. Amparo promised Amanda: 'until death do us part' and the phrase brought back the closeness of that parting. They too shared the judge's home-made marriage cake and Amparo gave the judge a gift: a gold Star of David, which for her represented the search for one's true self. She then gave a short speech praising the judge for his bravery. She died a few months later.

Carlos celebrated more than thirty secret weddings in San Estanislao between 2013 and 2015. Every time he baked a wedding cake for the occasion, although sometimes he told couples that his mother had baked it.

By then everyone in San Estanislao knew what Carlos was doing. The mayor supported him, as did many of the town people who, like the mayor, wanted to see San Estanislao 'on the map', associating the weddings with other signs of modernity, like the promised bridge across the river that next year might finally link San Estanislao to the other side, long connected only by canoes. Others agreed with the town priest, who also paid Carlos a visit, warning about the sinfulness of his conduct. But Carlos generally prevailed, as he did the day he showed the priest to the door with the admonition, that while the Church was the spiritual authority of the town, Carlos represented the civil authority of the State, and they were separate under the Constitution of 1991.

Violence and the Threat of Violence

The 1991 Constitution remains a landmark for the LGBTI rights movement, providing three key tools for it to use. Firstly, it introduced a robust bill of rights, including protections of equality and autonomy. Secondly, it created a special judicial action for the direct protection of rights by any judge, *tutela*, and a Constitutional Court that could revise these actions.¹² Thirdly, it included the separation of Church and State, which opened the way for a more vigorous secularization of debates about sexuality and reproduction. These changes opened the door to litigation for the protection against all forms of discrimination,

¹² Tutela is a fast track procedure demanding a writ for the protection of constitutional rights and allows anyone to ask any judge for orders to protect them against any current constitutional rights violation.

through the fast-track *tutela* procedure as well as to public interest litigation demanding changes to laws and policies that discriminate against homosexuals and transgender people. For the last 25 years LGBTI activists have successfully utilized these tools, particularly human rights litigation before the Constitutional Court, to advance their cause. In over 100 decisions the Court has said sexual orientation and gender identity are protected by the Constitution and that LGBTI people are protected against discrimination in diverse arenas, including schools, places of work, jails, public space, and health care facilities, among others. The Court has also struck down laws that punished homosexuality and has extended the rights enjoyed by heterosexual couples to same-sex couples, including a recent decision on adoption by same-sex couples (Corte Constitucional C-683 2015).

This corpus of legal decisions has not stopped violence against the LGBTI community. In November of 2009, the same year Ordóñez was elected Inspector General, a group of Colombian NGOs held a special session on LGBT rights at the Inter-American Commission of Human Rights.¹³ This might seem surprising, given the Constitutional Court's progressive decisions on LGBT Rights. But the meeting was a response to the still problematic human rights situation, included the many ongoing forms of discrimination, persecution, fear and cases of torture, rape and murder of people for not conforming to the demands of a homophobic society. This situation persists. Colombia Diversa has kept a record of violence against LGBTI people, including not only hate-crimes but also police violence and threats by non-state armed groups. Between 2006 and 2014 it has reported 784 murders and 398 incidents of police violence.¹⁴ In half of the hate murder cases (55.22%) there was little information on the victims. They were mostly homosexual men (52.7%) and trans women (40.45%). Police violence was better identified: 86% of the cases had data on the victims: 56.8% were trans women, 25.3% gay men, 15% lesbians and 2.85% bisexual. The reports are concentrated in the most populated areas of the country (Antioquia, Valle del Cauca y Bogotá). Between 2008 and 2014, Colombia Diversa also reports the murder of 19 LGBTI human rights defenders and community leaders. Most of the violence can be linked to armed actors in Colombia's long-standing internal armed conflict. Currently there are 1299 LGBTI registered victims of armed conflict, reported. The violent acts reported include forced displacement, (72.9%), threats (13.85%), murder (6.3%) and sexual violence (2.07%).¹⁵

Another specific form of violence are murder threats against LGBTI people linked to serial murder practices known as *limpieza social*, literally meaning

¹³ LGBTI rights are relatively new to international law. The United Nation's Human Rights Committee has defended these rights, especially in pension rights for same sex couples in *Young vs Australia* (Communication N° 941/2000), *X vs Colombia*, and the Interamerican Court recently took a very progressive decision in *Karen Attala vs. Chile*. See Human Rights Committee. Communication No 941/2000: Australia. 18/09/2003. CCPR/C/78/D/941/2000. (Jurisprudence). Communication No. 1361/2005: Colombia. 05/14/2007. CCPR/C/89/D/1361/2005. (Jurisprudence). IACourHR *Case of Karen Atala Riffo and daughters v Chile*. Merits, Reparations and Costs. Judgment of 24 February 2012. Series C No. 239. http://www.corteidh.or.cr/docs/casos/articulos/serie_c_239_ing.pdf.

¹⁴ Please note a single incident of police violence might have more than one victim.

¹⁵ Red Nacional de Información, Unidad para la Atención y la Reparación Integral a las Víctimas.

social cleansing. *Limpieza social* practices include both the general murder threats as well as specific acts of violence. Colombia Diversa has kept a record of *limpieza social* threats to LGBTI people since 2010. These threats are usually circulated by unidentified armed actors, and threaten local homosexuals, as well as prostitutes and drug users, with murder if they do not leave the neighborhood. The threats are often leaflets, and seldom investigated by the police. Between 2010 and 2014 Colombia Diversa has identified 61 of these leaflets, most of them in the Northern Coast. Of the threats identified in 2013 and 2014, 23 were attributed to the criminal outfits that emerged in the wake of the paramilitary demobilization of 2006. Several were circulated in zones formerly under the control of paramilitary groups, invoking the terror of paramilitary control (Albarracín 2015).

Threats, intimidation, and armed control over LGBTI people are common among the criminal outfits that replaced the paramilitary armies in the localities they used to control before their demobilization. In the city of Barrancabermeja, for example, there were numerous threats against community organizations, including trade unions, human rights defenders, students, LGBTI and women's NGOs, victim's associations and community development boards (*juntas de acción comunal*). Several of these threats were signed by a so-called Anti-restitution Army¹⁶ and ASOEXMAR – *Asociación de Exterminadores de Maricas*' (that is, 'association for the extermination of fags'). It has been extended to places where these criminal bands have expanded their presence. In January of 2014 in some impoverished localities of Bogotá and the neighboring city of Soacha, other leaflets appeared, likewise signed by the 'Black Eagles' of Bogotá, and aimed at students, arts and youth groups, drug users, leftist activists and LGBTI people. The naming of these groups of people as undesirable and as subject to possible extermination suggests a link between such threats and former paramilitaries, as do recent reports in the media of the expansion of these gangs.

Threats and leaflets create terror not only directly, but through their allusion to a troubled history of paramilitary control in Colombia. In the same flood land region of San Estanislao, right across the river, as well as in the neighboring coastal plains, paramilitary outfits used their weapons to control and terrorize civilian populations. Local homosexuals were the frequent targets of paramilitary violence, through the regular distribution of leaflets, threats and humiliations, to more spectacular steps, such as the mock 'gay' boxing match celebrated in the neighboring municipality of San Onofre. Spectators tell of a public who laughed and mocked them: 'it was like the roman circus' said one participant 'they boxed and everyone else laughed'. An interview with one of the participants of the boxing match describes the naturalized atmosphere of hostility and intimidation against gay men and women:¹⁷

¹⁶ In 2011 Colombia adopted a ground-breaking transitional justice law known as the Victim's Law (Law 1448 of 2011). Following this law and vast institutional reform, the country embarked in the process of restituting land lost to threats and violence. Resistance to land restitution has generated a mysterious and elusive insurgent group that calls itself the Anti-Restitution Army and issues threats similar to those of former paramilitary units.

¹⁷ Interview with John, inhabitant of San Onofre during the years of paramilitary control and participant in the mock boxing match. April 2010.

Question: How did the paramilitary let people know they didn't like gays?

Answer: They used leaflets, handed out leaflets every day. They had lists giving people twenty-four hours to leave.

Question: And the leaflets said it was because they were gay?

Answer: Yes, they said gays, whores, addicts, people who gossiped. They threatened people for anything just to scare them.

Question: How did they refer to gays?

Answer: 'Fags' – They always said: 'those fucking fags'. Real aggressive, if you know what I mean.

Question: Did they ever call you a fag?

Answer: Yes. Sometimes you got somewhere and they would say, so that fucking fag is here. Get lost. I don't like fags – words that hurt you. But you had to leave because they were more and had guns.

A 2011 report by the Historic Memory Commission described the region not only in terms of armed confrontation but also as characterized by the armed regulation of everyday life through forced disciplines and punishment of dissent (Comisión de Memoria Histórica 2011). In San Onofre in particular, the report described how the paramilitary enacted a control of everyday life that reified hierarchies of class, race and gender through everyday disciplining in the hope of creating a social order consistent with their patriarchal and militaristic values. This entailed regulating bodies, spaces and social practices and using symbolic violence. Some examples include a beauty pageant that reputedly entailed the sexual abuse of the girls who participated and the mock boxing match of gay men and women. Describing these events, the Commission's final report noted that around the country, especially in the Caribbean region, the paramilitaries ridiculed and stigmatized gay men and women, degrading their dignity and making homosexuality an object of public scorn in ways intended to normalize hatred and discrimination (Grupo de Memoria Histórica 2013: 147).

Against the background of Colombia's recent civil war, homophobic violence and the stigmatization of homosexuality form an immediate background to the Inspector General's active resistance to the marriage of same-sex couples, casting it in an even more menacing light. And, while at first glance it seems the Inspector General, a devout Catholic, is at the other end of the social spectrum from the paramilitaries that degraded homosexuals in San Onofre, there exist surprising affinities in their ideas of a social order that reproduces traditional hierarchies of race, class and gender. For a Colombian observer it is not surprising to learn that in 1987, when the paramilitary units were first identified, then known as self-defense forces, Alejandro Ordóñez came out in their defense in a local newspaper (Coronell 2015). The horror these self-defense forces, mutated into paramilitary armies, would inflict on the population was still in the distant future.

Conclusion: Gay Marriage before the Constitutional Court in 2015

In 2014 and 2015 Colombia Diversa initiated several cases to protect same-sex couples' right to marriage. One of the cases was a *tutela* on behalf of a same-sex

couple under criminal investigation for marrying as a man and a woman, with the man being a trans woman, born a woman but now legally a man. The judge who married them later found out the husband had been born a woman and asked for a criminal investigation under grounds of perjury. This case was part of a package where Colombia Diversa asked the Constitutional Court for protection against discrimination by judges, public notaries and the Inspector General. The Court has accumulated the complaints in a single case, addressing three major constitutional problems. The first was whether the Inspector General can use *tutela* actions to block same-sex marriages before courts or whether this is a form of discrimination. The second was, given Congress's failure to pass a law regulating same-sex unions, whether judges and public notaries can proceed to celebrate same-sex unions and under what legal institution, be it marriage or an alternative form. The third was whether the same-sex couple in the case described above committed perjury in marriage by not revealing the husband, registered as a man, had been born a woman.

The Constitutional Court opted to hear these cases in July of 2015, calling on thirty experts, activists and same-sex couples to argue both sides of the question (Colombia Diversa, Report on Same-Sex Marriage 2015). People in same-sex relationships told of the difficulties they faced getting married, and of their fears regarding personal security. Addressing the Court, one of the married lesbians explained:

Thank you for letting us be here, without masks and without fear, defending our marriage. We are married...we married out of love, of conviction, we are a same-sex couple and we are convinced we have the same rights as any other couple in the country...We have been subjected to ridicule and persecution... We have been together for 10 years, and tried to get married for the last seven, and when we finally did it, we had to hide to do it, we couldn't choose the date, we couldn't choose the place...we practically had to hide.

Her testimony was followed by that of two men who chose to remain anonymous, saying they kept their identity secret because they 'feared being recognized in the street', where they worked in informal sales: 'We are afraid a few minutes of public visibility will destroy our private life built over twenty-eight years. Even though our families have supported us unconditionally, we are afraid of the discrimination and humiliation of society'. The day-long hearing included representatives of the government, the Inspector General, congressmen and women, international experts, law professors and activists. Outside the hearing, activists demanded the right to marry, and the event was covered not only the mainstream media but also through social media channels, indicating the importance of the hearing.¹⁸ Inside the hearing, judges and the government defended the same-sex marriages they had celebrated, notary public celebrated the 'solemn contract' figure, and the Inspector General's representative defended their interpretation of the law as excluding same-sex marriage.

On April 28, 2016 the Constitutional Court decided on the seven accumulated cases on same-sex marriages. In decision SU-614/16 the Court recognized same-sex couples had a right to marry under the same legal conditions as heterosexual couples. The Court argued, first, that same-sex couples were part of a

¹⁸ The *hashtag* #MatrimonioIgualitario became a *trending topic* in Twitter.

discriminated minority, and that since the majority was reluctant to grant them constitutional rights, it was up to the Court to do so. Second, the Court argued that there had been an evolving judicial protection against sexual discrimination, building on the idea of a living Constitution to justify expanding rights for same-sex couples to include the same rights to a family as heterosexual couples. The decision confirmed that the few judges who, like Carlos, had been celebrating same-sex marriages, had been right all along. Lastly, the Court criticized the Inspector General: it said his Office could not be used to obstruct the rights of same-sex couples and their families, undermining the human rights the Office was charged with protecting. It said *tutela* could not be used to obstruct same sex marriage. Soon after, the highest administrative court, the Consejo de Estado, annulled Ordóñez' second period as Inspector General, due to irregularities in the election process. Without him, the Office abandoned its crusade against same-sex marriage. However, he is gathering a growing following as a political leader for the Colombian right, and is often mentioned as a possible candidate for the 2018 presidential elections.

In the meantime, Carlos González, in an interview given to the leading weekly, *Semana*, told the story of the marriages he has been celebrating in San Estanislao, described by the journalists as 'the only place where gays can get married in Colombia'. (Revista *Semana* 2015). He was soon afterward reported to the judicial authority for marrying people who did not have a San Estanislao residence, and the investigation is ongoing. At the end of the day the mayor got his wish: San Estanislao made its way into the news for something other than its periodic flooding.

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