Chapter 5
Same-Sex Couples Before Courts in Mexico, Central and South America

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Abstract Latin American Countries have been historically influenced by Catholic European Countries, such as Spain and Portugal. This influence has resulted in a deeply-rooted traditional culture that has shaped most civil institutions, including marriage and civil unions, and the way they are perceived. As a result, relationships between people of the same sex have usually been prohibited and, at times, criminalized. A process of change, however, has been at work in some parts of Latin America since 2001, and national courts (especially supreme or constitutional courts) have played a major role in the legal, social and constitutional recognition of the rights of same-sex couples. This chapter aims to examine how the main jurisdictions in México, Central and South America have been influenced by this unprecedented trend, which has been accompanied by the legal recognition of other important social rights, such as pension, social security, health care, inheritance and property rights. In Latin America, homosexuals are gradually being granted rights equal to those enjoyed by heterosexuals, and this change is in line with the universal recognition of human rights for all, regardless of sexual orientation or any other social and personal circumstances.

5.1 Introduction

Marriage and civil unions have always been regulated by social and religious principles, which, in their turn, have influenced the law in most Countries in the Americas, especially in Central and South America. The close connection between the Church and the law has had an impact on civil institutions, especially in conservative Catholic Countries such as the former Spanish colonies.

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As a consequence, same-sex civil unions have been the subject of a legal, constitutional, political, social, and moral debate in Central and South America, as they were in European Countries in the second half of the twentieth century and the beginning of the twenty-first century. Constitutional judges have played a major role in the recognition of most of the rights now enjoyed by gay people in Mexico, Central and South America, such as the right of a couple to unite their lives, regardless of gender.

This chapter will try to provide an overview of the situation in each country, focusing on the legislation of Mexico, Central and South America and the case law developed by their respective courts. More specifically, it will examine the legal and constitutional grounds for gay marriage, civil unions and related rights, as well as the role of the courts in consolidating the social rights of sexual minorities, including civil unions, marriage and adoption rights. The direct consequences of the major legal and constitutional decisions on gay marriage in the most representative Countries will also be discussed.

The geographic scope of this study will not include Latin American Caribbean Countries due to the early development of their legislation in this field, which however does not exclude the possibility that they may, in the future, be influenced by the significant changes that are now taking place in neighbouring Countries.

This chapter does not intend to explain or illustrate the political aspects of the regulation of same-sex couples. Nor does it aim to be a detailed study on the legal *status* of civil unions and their history, even though those factors will be taken into account to pursue the specific purpose of our discussion. In accordance with that purpose, special attention will be paid to key judgments that are closely related to the progressive recognition of same-sex couples at the national level, as well as to the developments towards the establishment of same-sex marriage. Some of these judgments are real landmarks, and we will examine the legal arguments put forward by the courts. Most of the grounds for legitimizing the rights of same-sex couples have been discussed by important authors and the media in order to inform society of these rulings and create awareness on the issue. We will try to examine the different Countries based on their constitutional relevance.

5.2 The Situation of Same-Sex Couples in Latin America

Needless to say, same-sex couples have always existed. Until the end of the twentieth century, however, there was no intention to recognise them legally. The region of Latin America includes a large number of Countries that have a strong conservative Catholic tradition, which is easily explained by their historical background. For this reason, many social and political forces are opposed to the recognition of homosexuals and their right to free sexual orientation, which leads to a slower development of the legislation on same-sex couples. Judges are sometimes strongly influenced by this conservative trend, which hinders the progress of

human rights in general, with the result that the rights of homosexuals as a traditionally vulnerable group are notoriously violated.

If Mexico and Argentina have somewhat led the way in regulating same-sex marriage, the approach to the status and rights of same-sex couples is extremely varied in Central and South America, reflecting different degrees of openness or conservatism on the part of the courts. At present, the constitutional judges of the Countries in question are extremely protective as regards the interpretation of legal and constitutional provisions.

Parliamentary debate has been underway in Latin American nations since 2001, leading to the legalization and regulation of same-sex couples, either in terms of marriage or civil partnership. Parliamentary initiatives are often in response to very controversial judgments delivered by the highest national courts (i.e., supreme and constitutional courts), which shows that judges usually have a continuing dialogue with the legislators to ensure that democratic States protect human rights of all. This is a worldwide trend[1] that has been particularly felt in Latin American Countries after Argentina legalized same-sex marriage in 2010.[2] Following a legal and constitutional struggle before national courts,[3] some governments have already passed legislation allowing same-sex couples to marry and adopt children. This is the case not only of Argentina, but also Mexico, even though the law applies only in Mexico City. In 2010 Argentina became the first Latin American country to legalize same-sex marriage all over its territory. On 13 April 2013, Uruguay became the second nation in the region to recognize same sex marriage. Other Countries—including Chile, Costa Rica, Peru and Colombia—have drafted specific legislation on this matter. These draft laws provide for same-sex couples in different ways, from the recognition of civil unions to the granting of certain rights, but do not define such unions as marriage. Some Countries have introduced special legislation, while others have simply amended the Civil Code so as to extend access to marriage to same-sex couples.

Some Countries, such as Brazil, legally recognize informal cohabitation or unions between people of the same sex. Others, however, have a more conservative approach and tend to avoid gay marriage at all costs: Art. 63 of the 2009 Bolivian Constitution, for instance, strongly confirms the traditional understanding of marriage as heterosexual. The cultural and economic development of Central American Countries is directly proportional to the tolerance of society towards same-sex couples, as is the case in Peru and Nicaragua. Homosexuality was a crime under the former text of Art. 204 of the Penal Code of Nicaragua, but it is no longer illegal under the new Criminal Code (March 2008). At the time of this writing, the

[1] Waaldijk (2011).

[2] Rodríguez et al. (2010).

[3] Bustillos (2011), pp. 1033–1034.

Constitution of Peru defines marriage as the exclusive relationship between a man and a woman, and does not permit unions or marriages between same-sex partners.[4]

Allowing the registration of same-sex unions with the civil authorities was the first step in the long road to equality for homosexuals, a step taken first in Buenos Aires, Argentina, in 2003, and later in Rio Grande do Sul, Brazil, in 2004. These registered unions, however, did not provide sufficient rights and maintained a clear distinction between same-sex couples and people eligible for marriage. This distinction perpetuated the unequal treatment of homosexuals.

In other Countries, not only same-sex civil unions and marriage, but also other important social rights—including pension, social security and other rights—have been recognized through judicial decisions. This recognition has been achieved indirectly, that is, through the extensive and broad interpretation of anti-discrimination clauses. From this point of view, Colombia has the one of the most advanced constitutional courts. Other Countries, such as Mexico[5] and Ecuador,[6] have amended their constitutions so as to literally expand the scope of anti-discrimination clauses.

The understanding of discrimination has changed nowadays and some Countries have passed legislation to avoid it, not only as regards single individuals but also the community. In Venezuela, for example, a draft law on gender equity and equality is under discussion, whereas in Chile two bills on same-sex civil unions are now at the House of Representatives. The first of these bills concerns the creation of the *Acuerdo de Vida en Pareja* (Life Partnership Agreement), aimed at protecting the property rights of same-sex couples; the second concerns the Civil Union Pact, which has the same purpose. On the other hand, Paraguay's 1992 Constitution[7] is very strict on the formation of marriage and *de facto* unions, which are not allowed for same-sex partners; accordingly, unions or marriage between people of the same sex are not permitted under general law.

Latin American Countries share the same cultural and political ideology and identity with regard to the concept of the family as the foundation of society. Recent years, however, have seen a significant development in the region with respect to conservative notions of the family, the couple, marriage and other relationships. This trend is reflected in the fact that the State has been moving in a more progressive direction, trying to protect different family structures based on affective relationships, freedom and personality development. This transformation has been certainly strengthened by the courts. With their extensive interpretation of notions such as family, equality, and prohibition of discrimination, they have often torn down barriers and promoted equal rights for same-sex couples.

[4] A first draft law on same-sex civil unions was submitted in 1993. In 2011, due to the presidential election campaign, another draft law on equal civil marriage for same-sex couples was proposed.

[5] Art. 1 (2011), on the prohibition of discrimination based on sexual orientation.

[6] Art. 37 (1998 and 2008), on the definition and protection of the family.

[7] Art. 51 and 52.

5.3 Mexico

5.3.1 General Overview

Nothing in the Mexican Constitution expressly prohibits same-sex marriage or civil unions. Art. 4, for example, does not define the family as composed of a man and a woman, but only states that the law (in a broad sense) regulates and protects the organization and development of the family, affirming the principle of equality of men and women before the law. In addition, Art. 1 as amended on 10 June 2011 explicitly prohibits all forms of discrimination, including discrimination based on sexual orientation.[8] These two provisions would be enough to protect the rights of same-sex couples, such as the right to marry and form a family, at the constitutional level.

In Mexico, constitutional reforms have been strengthened by other social, economic and political circumstances. The concept of 'family', for example, has changed dramatically, due to the openness to diversity on the part of society and the law. This openness has made it possible to recognize different categories of family types beyond the traditional family composed of a man and a woman, whose main purpose is procreation. Several studies have emphasized the existence of different family structures, as noted in the 2012 Annual Report of the CONAPRED.[9] No longer "an idealized institution (father, mother and children)" defined by social norms and state laws, the family has thus become "a network of relationships defined by what the person or people decide".[10]

5.3.2 Mexico City

5.3.2.1 Civil Unions: The 'Law for Coexistence Partnerships'

The first law legalizing same-sex civil unions was called *Ley de Sociedades de Convivencia* (Law for Coexistence Partnerships). Initially presented as a bill in 2000, it was repeatedly opposed and intensely debated. However, it was finally passed by the Mexico City Legislative Assembly on 9 December 2006 and entered into force in March 2007.

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[8] Bustillos (2011), p. 1035.

[9] The CONAPRED, or *Consejo Nacional para Prevenir la Discriminación National* (Anti-Discrimination Council), is a State Agency created in Mexico in 2003 to prevent discrimination. It receives and resolves complaints of discrimination, including racial, ethnic, religious, and sexual orientation discrimination. For more information, visit www.conapred.org.mx. The report is available at http://www.conapred.org.mx/index.php?contenido=noticias&id=3021&id_opcion=108&op=214.

[10] Rafael De La Madrid (2012), p. 39.

The Law for Coexistence Partnerships allowed certain rights similar to those arising from marriage, such as social, property and inheritance rights. Art. 1 states that the law is of public order and social interest, and that its provisions govern relationships based on coexistence partnerships. These are defined as bilateral legal acts between two adults of opposite or same sex with full legal capacity, whereby they establish a common home, commit to a permanent relationship and undertake to look after each other.

5.3.2.2 Same-Sex Marriage: The 2009 Reform

The definition of marriage adopted in Mexico City until 2009—namely, the free union of a man and a woman[11]—expressly excluded same-sex couples.

On 29 December 2009, however, the Legislative Assembly approved a reform of the Civil Code of Mexico City allowing same-sex couples to marry,[12] a reform promoted by the Party of the Democratic Revolution (PRD). The amended legislation, which entered into force in March 2010, grants homosexual couples also the same adoption rights as heterosexual couples. More specifically, the amendment to Art. 146 of the Civil Code states that:

> Marriage is the free union of two persons in the community of life, in which both owe each other respect, equality and mutual support. Marriage must be celebrated before the Civil Registry and according to the formalities set out in this Code.

The reform has made it necessary for the Supreme Court to develop new criteria to address the subject. With regard to the question of adoption rights, which has been especially problematic, the Supreme Court has made no distinction between homosexual and heterosexual couples and has argued that adoption—whether by same-sex or opposite-sex couples—is not automatic, since the interests of the child must always prevail.[13]

5.3.2.3 Same-Sex Marriage: Court Decisions

Before the approval of the Law for Coexistence Partnerships (2007), there were no jurisdictional issues that may allow us to speak of a judicial intervention in the battle for the rights of same-sex couples. Indeed, the legal debate started after the law allowing same-sex couples to marry and adopt children took effect. In 2010, five states with conservative governments—namely, Morelos, Guanajuato, Tlaxcala, Sonora, Baja California and Jalisco—brought constitutional proceedings in which they challenged the amendments to Art. 146 of the Civil Code and Art.

[11] See the previous text of Art. 146 of the Civil Code.

[12] The draft was passed with 39 votes in favour, 20 against, and 5 abstentions.

[13] Suprema Corte de Justicia de la Nación, *Acción de Inconstitucionalidad 2/2010*, 16 August 2010.

391 of the Code of Civil Procedure (which grant same-sex couples access to marriage and adoption rights), invoking the principle of the child's best and that of equality. The Supreme Court rejected their claims as manifestly inadmissible and lacking legitimate interest.[14]

On 27 January 2010, another constitutional action was brought against the Mexican legislative reform allowing same-sex marriage,[15] this time by the *Procuraduría General de la República* (Attorney General's Office) on behalf of the Government. The Court ruled by a 8-2 vote that the amendments in question were not unconstitutional.[16]

The *Procuraduría General* claimed that the new articles of the Civil Code were contrary to Art. 4 (on the family) and 16 (motivation and principle of legality) of the national Constitution.

First of all, the Attorney General's Office maintained that the local legislator had no reason for introducing the bill and amending the current legislation, since the rights of same-sex couples were already protected under the *Ley de sociedades de convivencia*: hence, the Congress had failed to comply with the principles of reasonability and proportionality. The *Procuraduría General* also submitted that the amendments were not consistent with Art. 16(1) of the Universal Declaration of Human Rights, since that provision only prohibits limitations to the right to marry that are due to race, nationality or religion—and not to sexual orientation.

Secondly, the Attorney General's Office emphasized that the founding fathers of the Constitution had had an "ideal model of family" in mind, i.e., a family composed of a father, mother, and their children, with procreation as its main goal (Art. 4). Hence, the amended Art. violated the Constitution because in that they permitted changes to this family model. In sum, according to the Attorney General, the different treatment of gay and heterosexual marriage was just a question of 'appropriateness' of the law to the specific case.

The Court held that the protection of the family is a duty of the State, and that the concept of 'family' must include the variety of family structures existing in society; therefore, same-sex marriage is not contrary to Art. 4 of the Constitution.[17] According to the Court, natural procreation is no longer essential to the idea of marriage, since nowadays families are based first and foremost on affection, mutual care and commitment. This argument was supported by numerous sociological studies carried out by prestigious research institutions in Mexico.

In addition, the Court found same-sex marriage constitutional on grounds of the right to human dignity and the right to the free development of personality enshrined in Art. 1 of the Constitution (prohibition of discrimination). In the eyes of the Court, the State must protect not only the individual rights of homosexuals,

[14] Suprema Corte de justicia de la Nación, Controversia constitucional 13/2010, 23rd January 2010.

[15] Bustillos (2011) p. 1041.

[16] *Supra*, note 14.

[17] *Ibidem*.

but also their right to marry a same-sex partner. Pursuant to Art. 121. IV of the Constitution, the Court also ruled that all of the Mexican states must recognize the validity of same-sex marriages entered into in Mexico City, regardless of whether the formation of gay marriages is allowed only in that district. Finally, the Court concluded that there was no reason to preclude homosexual couples from enjoying the right to adopt, since heterosexual couples who cannot or do not wish to procreate have the right to do so and, according to professionals, children do not suffer any psychological or social disadvantage as the result of being raised by same-sex parents.

Since Mexico has federalist government system, there is a great variety of local laws, which could lead to inconsistencies in the regulation of marriage and civil unions. Nevertheless, the Court has ruled that all Mexican states are obliged to recognize marriages contracted in Mexico City, regardless of their internal legislation.[18] This means that, even though the formation of same-sex marriage or other forms of civil unions is not allowed in individual states, gay marriages celebrated in Mexico City will be fully valid in the states that have not passed legislation on the subject. As a consequence, problems may arise when there is a contradiction between laws, for example if same-sex marriage is prohibited by a state law or local constitution but permitted in Mexico City. In that event, the issue will be resolved by the Supreme Court, which will have to reaffirm its earlier conclusions and the prohibition against discrimination.

5.3.2.4 Social Security and Social Rights for Same-Sex Couples

Same-sex couples have faced many difficulties with regards to social security. From a legal point of view, the first marriage contracted in Mexico under the new Mexico City law (4 March 2010) is particularly worthy of notice. In this case, one of the partners requested to nominate her spouse as the beneficiary of certain social security benefits. The Mexican Social Security Institute (IMSS), however, refused said benefits to the couple on 2 August 2010, based on a strict and reductive interpretation of the applicable law (the IMSS Act), which provides that an applicant can only nominate as a beneficiary a person of the opposite sex. Given this sexual orientation discrimination, the couple filed an *amparo* (action for protection of fundamental rights), which was eventually ruled on by the Supreme Court on 9 November 2010. The competent court for the case—the IV Federal District Court for Labour Matters (Mexico City)—was then asked to obtain the registry of beneficiaries from the Social Security Institute.

Following the decision of the Supreme Court in case No. 590/2011-3, also the Institute for Social Security and Services for State Workers (*Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado*, or ISSSTE) had to recognize

[18] *Ibidem*.

the rights of a same-sex couple.[19] In this case, registration with the Institute, and thus the granting of health care and social security benefits, occurred after the CONAPRED issued its Resolution No. 2/2011, according to which discrimination based on sexual preference is contrary also to Art. 1 of the Constitution. This Resolution is aimed at recognizing and guaranteeing the right to social security benefits for same-sex couples, based on the duty to protect the family in its broadest sense. It was issued in response to a number of complaints brought against the IMSS and ISSSTE for discrimination against homosexual couples married or registered in Mexico City (where same-sex unions are legal) and for the refusal to register a member's same-sex partner as a beneficiary. The first-instance administrative courts had denied benefits to same-sex partners based on a strict interpretation of the law, thereby violating the right of civil partners to receive social security benefits and have their union recognized.[20] These are all examples of the problems same-sex couples may face even when their relationship is recognized as equivalent to marriage for all legal purposes.

The decisions and actions of the institutions that protect equality have triggered legislative safeguards. In particular, on 30 April 2012 the House of Representatives approved a bill to amend the ISSSTE and IMSS rules and regulations,[21] so as to grant all same-sex couples in a civil partnership, marriage or domestic partnership the same access to social security as heterosexual couples.

5.3.3 Mexican Federal States

Mexican states have had an ambivalent approach to same-sex civil unions. In this regard, the first observation to be made is that the Capital and each of the 31 states have the legislative power to regulate marriage as they think fit and, if necessary, to alter their domestic laws, including their local Constitution.

Until 31 December 2012, 19 states defined marriage in their civil codes as a relationship between one man and one woman,[22] while 11 states did not define marriage or civil partnership in those terms.[23] This second group of states, however, seem to take it for granted that a marriage or civil partnership is the union between a man and a woman, since 'husband' and 'wife' are recurring terms in their civil codes. Quintana Roo is the only state where ordinary civil law uses gender-neutral

[19] IV District Labour Court, *amparo* No. 590/2011-3.

[20] CONAPRED Resolution No. 2/2011 of 6 July 2011.

[21] The draft was approved with 252 votes in favour, 80 against and 15 abstentions.

[22] States of Aguascalientes, Baja California, Baja California Sur, Chihuahua, Estado de México, Hidalgo, Jalisco, Michoacán, Morelos, Nuevo León, Nayarit, Oaxaca, Puebla, Querétaro, San Luis Potosí, Sonora, Veracruz, Zacatecas and Yucatán.

[23] States of Campeche, Chiapas, Coahuila, Colima, Durango, Guanajuato, Guerrero, Sinaloa, Tabasco, Tamaulipas and Tlaxcala.

terms when defining or regulating marriage. Art. 602*bis* of the Civil Code, for instance, provides that the "family is a permanent, social institution composed of a group of people joined together by the legal bond of marriage".

Following the introduction of the Mexico City law and the increasing public demand for the recognition of the rights of sexual minorities, gays, lesbians and transsexuals, several State Congresses have considered draft legislation allowing same-sex unions. These bills are at different stages of the legislative process.

In Yucatán, for instance, a bill called "Marriage for All" was presented in November 2012 on the initiative of the parliamentary group of the PRD (the same party that had submitted the bill on same-sex marriage passed in Mexico City). It aims to afford same-sex couples the same right to marry as heterosexual couples. Some local Congresses have been considering for several years the possibility of introducing legislation on same-sex civil unions. In the State of Puebla, the issue has been under discussion since 7 December 2006, while in the State of Sonora a draft law to allow same-sex marriage was presented in January 2010. In other States, such as Tabasco (Southern Mexico), the main political parties (including the Institutional Revolutionary Party, also known as PRI or PRD) support the introduction of legislation on the subject, even though no bill has been discussed. In Tamaulipas, a draft Law for Coexistence Partnerships has been submitted to protect the rights of same-sex civil partners. In Quintana Roo, same-sex marriage became legal in January 2012 without any legislative reform, since the law of that state does not define marriage as the union of one man and one woman.[24] Other states are following in the footsteps of Mexico City: in 2007, for example, Coahuila allowed 'civil solidarity', that is, the registration of both opposite and same-sex partnerships.

In this perspective, the state of Oaxaca is an exception. Art. 143 of the local Civil Code expressly defines marriage as the union between one man and one woman whose purpose is procreation: "Marriage is a civil contract between one man and one woman, whereby they are united in order to perpetuate the species and support each other for life."

On 5 December 2012, however, the Supreme Court of Justice, after long judicial proceedings started in August 2011,[25] declared Art. 143 unconstitutional on grounds of discrimination and, therefore, authorized same-sex marriage directly, that is, without any legislative reform being needed.[26] This judgment is the first of its kind in the country. It sets a precedent for the other states and, therefore, encourages them to file applications for *amparo* before the Supreme Court against any legislation excluding same-sex couples from marriage.

[24] See Anderson-Minshall (2012).

[25] Second District Court of Oaxaca, Section II, *Mesa* III-A, Writ of Amparo No. 1143/2011.

[26] Supreme Court Decision of 5 December 2012, cases 457/2012, 567/2012 and 581/2012. The Court exercised its 'power of attraction' (i.e., legal authority to bring important cases under its jurisdiction).

Same-sex marriages are still prohibited in Oaxaca, and the Supreme Court is currently examining another case of sexual orientation discrimination. On 27 February 2013, the First Chamber of the Court decided unanimously to bring under its jurisdiction an *amparo* case concerning Art. 143 of Oaxaca's Civil Code and potential discrimination based on sexual orientation.[27] This time, the Court will have to decide whether Art. 143, which defines marriage as the union between a man and a woman, is in itself discriminatory—and not whether a law implementing Art. 143 is contrary to constitutionally protected equality rights. In this sense, the Court may eventually decide on a new legal concept in Mexican law: that of 'legitimate interest', introduced in the 2011 constitutional reforms to the *amparo* system.

With regard to the recognition of same-sex civil unions, the adoption of legislative and jurisprudential measures has not been unambiguous in Mexican states. Not all measures are aimed at recognizing these unions, and some states have used their legislative power to prevent the introduction of gay marriage. Baja California (Northern Mexico), for instance, has amended its Constitution to reaffirm a conservative position on family and marriage. Moreover, its Civil Code excludes same-sex couples from marriage, since it defines that institution as the union between one man and one woman.

Finally, it should be emphasized that, even if individual states (except the Federal District) do not allow same-sex couples to register their unions, marriage or adoption rights granted by the laws of Mexico City or another State will be valid, by order of the Supreme Court, also in the other Mexican States. This follows from Art. 121 of the Federal Constitution of Mexico, which states that: "Complete faith and credence shall be given in each State of the Federation to the public acts, registries, and judicial proceedings of all the others."

This does not mean that if same-sex unions, marriages or adoption rights are legal in Mexico City or another State they will be automatically legal in other States, but that they must be recognized in accordance with Art. 121.[28] Therefore, same-sex couples cannot ask state or federal courts to be allowed to marry based on a law of another State, since para. 1 of Art. 121 provides that "[t]he laws of a State shall have effect only within its own territory and consequently are not binding outside of that State".

In any case, the legislative sovereignty of each State must be considered within the context of the Federal Constitution as amended in 2011, whose Art. 1 and 4 establish the duty of the State to protect the family, and to do so without discrimination. In conclusion, due to the differences between Mexican states as regards the (judicial or legal) situation of same-sex couples and their adoption rights, each case is determined individually. We must wait and see if Mexico will introduce a federal law to address the issue, and how that law will protect the rights of sexual minorities.

[27] Case 387/2012, Appellate Court for Civil and Administrative Matters, 13th Circuit.

[28] See Art. 121(4) of the Federal Constitution.

5.4 Central America

5.4.1 Guatemala

Due to the historical influence of Spain, Guatemala is a conservative Catholic country. For this reason, marriage, civil partnerships and any other form of union between people of the same sex have not been taken into consideration in ordinary laws or in the Constitution. In Guatemala, as in most Central and South American Countries, marriage is defined as the union of a man and a woman.

Art. 47 of the 1993 Constitution, which concerns social rights, specifically protects the institution of the family, but it does not define marriage as the relationship between a man and a woman. Art. 48 protects *de facto* unions without defining them, while Art. 54 guarantees adoption rights without specifically excluding same-sex couples. This does not imply that gay marriage, civil unions and/or adoption by same-sex couples are permitted; at the same time, however, it means that they are not explicitly prohibited. As a consequence, the recognition of civil unions, marriage, and adoption rights depends on the legislators.

In this regard, Art. 78 of the Civil Code states that: "Marriage is a social institution whereby a man and a woman are legally united, with the intention of permanence and with the purpose of living together, procreating, nourishing and educating their children, and helping each other."

At least three distinctive features emerge from this definition: the union is between a man and woman only; it is intended to be permanent; and it has the purpose of procreating. In Guatemala, as also in other Countries of the region, marriages between people of the same sex may be (or seem to be) authorized by the case law, and this possibility is based on the constitutional principle of equality enshrined in the Constitution (Art. 4).

5.4.2 Costa Rica

Same-sex civil unions or marriages are not legal in Costa Rica.

As in most Latin American Countries, the legislation on marriage and civil unions covers heterosexual relationships only. According to Art. 11 of the Family Code, the objectives of marriage include cohabitation, cooperation and mutual assistance. Moreover, Art. 14(6) of the same Code expressly states that marriage between people of the same sex is legally impossible. Finally, Art. 242 provides that only *de facto* unions between a man and a woman who have legal capacity to marry are comparable to marriage. This definition of marriage and its purposes, as well as the explicit exclusion of same-sex couples from *de facto* unions, have led to a number of interesting court decisions.

5.4.2.1 Court Decisions

In Costa Rica, the battle for the right of gay people to register their civil unions or marriages has been fought in the courts.

A first action for judicial review was brought before the Constitutional Chamber of the Supreme Court on 29 July 2003. The main pleas put forward in the application concerned: sexual orientation discrimination, arising from the fact that Art. 14(6) of the Family Code expressly prohibits same-sex marriage; and a breach of the principle of autonomy enshrined in Art. 28 of the Constitution. The case was referred to the Supreme Court by a Family Court, according to which it raised constitutional issues.

The Supreme Court thus had the opportunity to rule for the first time on same-sex marriage. It delivered its judgment in 2006, ruling by a 3-2 vote that Art. 14 (6) of the Family Code was not unconstitutional, on the grounds that it did not infringe the principle of equality (Art. 33 of the Constitution) or that of autonomy.[29] The Court held that homosexual relationships could not be treated as equal to heterosexual relationships, and that there was no breach of the principle of freedom enshrined in Art. 28 of the Constitution. In order to support its position, the Court provided an interpretation of Art. 17 of the American Convention on Human Rights, which recognizes the right of men and women to marry and raise a family.[30] The judges maintained that if the Convention had wanted to include gay marriage, it would have used the term 'person', as it did in other provisions,[31] and that the same held true for Art. 23 of the International Covenant on Civil and Political Rights.[32] Without denying a certain inequality of treatment with regard to access to marriage, the Court ruled that it was up to the ordinary legislator to solve the problem of possible discrimination. Rather than declaring the challenged provision unconstitutional, the Court recognized that there is a difference in the treatment of heterosexuals and homosexuals, which must be resolved exclusively by the Legislature. The Court did not recognize that same-sex marriages or civil unions should be legally regulated, but simply maintained that the Legislature should remedy any inappropriate regulation, or lack of regulation (i.e., a legislative gap). This statement of the Court is a plea to the Legislature to regulate unions or, at least, establish legal measures to reduce or eliminate differences and discrimination between heterosexual and homosexual couples. As of April 2013, in Costa Rica there is no legislation addressing this issue.

On the other hand, the existing legislation on civil unions has been the subject of judicial discussion. A constitutional complaint against Art. 242 of the Family Code, which only recognises heterosexual relationships, was filed in 2003.[33] The main

[29] Constitutional Chamber of the Supreme Court, Judgment No. 7262-06, Action for Judicial Review (*Acción de inconstitucionalidad*) No. 8127-03.

[30] See also the Chapter by Magi in this volume.

[31] Art. 2, 3, 5, 8 and 10 of the Declaration.

[32] See the Chapter by Paladini in this volume.

[33] Avalos (2012).

ground of the complaint was the indirect exclusion of same-sex couples from the right to form a family and to receive health, pension and other social benefits derived from civil unions. The Constitutional Court rejected the complaint[34] and did not address the merits because of a procedural default, since there was no case pending before a lower court that required a judgment on the merits.

On 16 May 2011, two marriage applications were filed with the civil courts, one of which by a gay couple. This application was rejected by the Second Family Court of San Jose based on Art. 14 of the Family Code, which expressly precludes same-sex couples from marrying.

Another landmark case concerning the rights of same-sex couples is the constitutional objection filed on February 2008 against Decree No. 33876-J on Technical Regulations of the National Penitentiary System, whose Art. 66 defines 'conjugal visit' as "the right of the detainee to private contact with another person of their choice that is of the opposite sex". In other words, conjugal visits are permitted only in the case of an opposite-sex relationship, which constitutes discrimination against same-sex relationships.

The case went to the Constitutional Chamber of the Supreme Court through an action for judicial review that had been preceded by an injunction. On 13 October 2011, the Court ruled by a 4-3 vote that the expression 'that is of the opposite sex' was unconstitutional, insofar as it violated the principle of equality, the prohibition of discrimination and the principle of human dignity.[35] The Court also added that the contested legislation violated the right to privacy and sexuality, since it made an arbitrary and unreasonable distinction between homosexuals and heterosexuals. The decision of the Supreme Court retroactively overturned the previous judgment on the case, protecting the rights acquired in good faith. This is the first and only ruling in Costa Rica that has been in favour of same-sex couples.

5.4.2.2 Electoral and Constitutional Battle Over the Bill on Same-Sex Civil Unions

Two important bills presented on 27 September 2006 are currently under discussion: the draft law on "civil unions for same-sex couples"[36] and that on same-sex "coexistence partnerships". Even though the bills have polarized public opinion, there is consistent support for the introduction of same-sex civil unions.[37]

Since their submission, these draft laws have met some opposition in the courts. More specifically, on 26 June 2008 a group opposed to same-sex unions requested the *Tribunal Supremo de Elecciones* (or TSE, the Costa Rican electoral authority)

[34] Constitutional Chamber of the Supreme Court, Judgment No. 2009-8909.

[35] Constitutional Chamber of the Supreme Court, Case No. 13800-11.

[36] Bill No. 16390 (Official Gazette No. 214, 8 November 2006), examined by the Special Commission for Human Rights.

[37] González Suarez (2009).

permission to collect the signatures required by law to authorize a referendum on the bill on civil unions for same-sex couples. On 1 July of the same year another group made the same request, and the two applications were considered jointly. The TSE eventually authorized the collection of signatures and asked the public whether they agreed or disagreed with the bill.[38] By doing so, it was essentially fulfilling procedural requirements.[39] In the meantime, numerous individuals and organizations with a legitimate interest initiated an *amparo* proceeding, requesting the Supreme Court to review the legality of the proposed referendum. On 10 August 2010, the Supreme Court ruled that said referendum was unconstitutional, on the grounds that allowing a non-gay majority to decide on the rights of a minority group, such as homosexuals, would expose the latter to the risk of discrimination and violate the principle of human dignity.[40] Therefore, the Supreme Court not only annulled the decision of the TSE authorizing the collection of signatures, but also made it clear that the organization of a referendum on this subject, including the collection of signatures, was to be avoided by all means. Indeed, the Court ruled that any entity engaging in such activities would be liable to imprisonment from 3 months to 2 years. Despite this legal battle, the bill on civil unions for same-sex couples has not been stopped. On the other hand, the draft law on coexistence partnership was criticised by the Special Committee for Human Rights in its opinion of 6 June 2012.

Finally, we should mention another action for judicial review. Submitted in 2010, it challenged the refusal to grant social security benefits to same-sex couples. In particular, the claimants alleged that Art. 10 of the Regulation of the *Caja Costarricense de Seguro Social* (CCSS, Costa Rican Social Security Fund) was unconstitutional, on the ground that it breached the principle of equality (under Art. 10 CCSS, only opposite-sex couples can register with the Fund). The Supreme Court rendered its judgment on 2 May 2012, concluding that the refusal to grant same-sex couples the same social security benefits as those enjoyed by heterosexual couples did not breach the principle of equality. This decision continues the trend started with judgment No. 7262-06 of 2006, which excluded same-sex couples from marriage.

5.4.3 El Salvador

The Constitution of El Salvador does not expressly prohibit marriage between people of the same sex. However, its Art. 32 states that:

[38] *Supremo Tribunal de Elecciones*, application No. 195-E-2008, decision No. 3401-E9-2008.

[39] Art. 6 of the Costa Rican law on referendums.

[40] Constitutional Chamber of the Supreme Court, application No. 10-008331-0007-CO, decision No. 2010013313.

> The family is the fundamental basis of society and shall be protected by the State, which shall dictate the necessary legislation and create the appropriate organizations and services for its integration and wellbeing, as well as its social, cultural, and economic development. The legal foundation of the family is marriage and rests on the juridical equality of the spouses. The State shall encourage marriage; but the lack thereof shall not affect the enjoyment of the rights established in favour of the family.

And Art. 33 provides that:

> The law shall regulate the personal and patrimonial relations of spouses amongst themselves, and between themselves and their children, establishing the rights and reciprocal duties on an equitable basis; and shall create the necessary institutions to guarantee its applicability. Likewise it shall regulate the family relations resulting from the stable union of a man and a woman.

It should be noted, moreover, that a draft to amend Art. 33 of the Constitution, submitted to the Congress in 2005, proposes to add the expression *así nacidos* (born as such) after "a man and a woman". Besides, according to Art. 11 of the Family Code, marriage is:

> the legal union of a man and a woman, in order to establish a full and permanent life together.

Quite clearly, the above legal provisions categorically exclude the possibility of same-sex marriage. Any discussion of openness to same-sex marriage or civil unions in El Salvador must take this fact into account.

In 2012, the legal *status* of marriage and civil unions between people of the same sex was the subject of a constitutional debate, especially as regards the possibility of treating these unions as being, in certain circumstances, equal to heterosexual marriage and unions. As mentioned above, a proposal to amend the Constitution so as to protect the institution of marriage as understood by the conservative Catholic tradition—that is, as the union of 'a man and a woman born as such'—was presented in 2005. The surrounding debate was, and still is, intensely political.

The conservative proponents of the amendment, which is meant to expressly prohibit same-sex marriage, have already managed to have it discussed and voted once, even though unsuccessfully (based on the number of members of the Congress, at least 56 votes are required). It was first discussed in the legislature for the years 2007–2009. In order to take effect, it required adoption by a majority vote of the next legislature (2009–2012), but eventually it was not approved. However, it can still be considered in 2012–2015 and, if approved, ratified in 2015–2018.

The proposed amendment is also intended to prevent same-sex couples from adopting children and marriages contracted in other states from being recognized in El Salvador. From a constitutional perspective, it goes much further than a ban on same-sex marriage or a restriction on the rights of discriminated minorities. In fact, it is aimed at strengthening the traditional concept of the family as the cornerstone of the state and society.

5.5 South America

5.5.1 Colombia

5.5.1.1 Constitutional Framework and Court Decisions

Colombia has legalised civil unions only for heterosexual couples. According to Art. 113 of the Civil Code, marriage is "a solemn contract whereby a man and a woman unite in order to live together, procreate and help each other". The current legislation is thus quite clear about marriage. In recent years, however, a number of judicial decisions, especially by the Constitutional Court,—have changed the actual situation.

With respect to domestic partnerships, Law No. 54 of 1990 states that:

> for legal purposes, a domestic partnership is a stable union between an unmarried man and an unmarried woman who form a permanent household together. Likewise, for legal purposes, the man and woman who form part of a domestic partnership are defined as permanent companions.[41]

The Constitutional Court reviewed this law in Case No. 098/96, concluding that giving special protection to heterosexual couples did not constitute discrimination against same-sex couples.[42] According the Court, a distinction between heterosexual and homosexual couples was indeed justified, for the following reason:

> Insofar as they represent a form of family, heterosexual domestic partnerships are recognized by the law in order to ensure the "full protection" of the family and, in particular, that "men and women" have equal rights and duties (P.C. arts. 42 and 43), which clearly cannot apply to homosexual couples.[43]

Moreover, the judgment states that, even though the family structure (also in the form of a domestic partnership) does not necessarily include children, it can be reasonably assumed that procreation is one of the traditional purposes of marriage. As a consequence, special protection is further justified by the need to protect the patrimonial rights of children born within heterosexuals unions.

While acknowledging a difference in how same-sex couples were treated, the Court maintained, however, that such difference was not due to the law at issue, which was aimed at preventing the unequal treatment of unmarried opposite-sex

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[41] The original text reads as follows: "para todos los efectos civiles, se denomina unión marital de hecho, la formada entre un hombre y una mujer, que sin estar casados, hacen una comunidad de vida permanente y singular. Igualmente, y para todos los efectos civiles, se denominan compañero y compañera permanente, al hombre y la mujer que forman parte de la unión marital de hecho."

[42] Constitutional Court, C-098/96, 7 March 1996 (No.14).

[43] The original text reads as follows: "Las uniones maritales de hecho de carácter heterosexual, en cuanto conforman familia son tomadas en cuenta por la ley con el objeto de garantizar su "protección integral" y, en especial, que "la mujer y el hombre" tengan iguales derechos y deberes (C.P. arts. 42 y 43), lo que como objeto necesario de protección no se da en las parejas homosexuales."

couples. In short, according to the Court there was a gap in the law with regard to same-sex couples, which did not per se constitute discrimination. The Court observed, however, that this legislative omission must be remedied in the future in order to ensure that homosexuals are protected.

In 2007, the Court adopted a different position when reviewing the constitutionality of Law No. 54 of 1990 as amended by Law No. 979 of 2005.[44] In its judgment, it declared the unconstitutionality of the law in question, concluding that the protection provided by law to heterosexual couples must apply also to homosexual couples.[45]

As regards the protection of patrimonial rights, same-sex partners can decide to legally share their lives and property, so that if one of the partners dies, the surviving partner is entitled to its part of the shared property. In its judgment No. 811/07, the Constitutional Court ruled that same-sex partners, just like heterosexual couples, are entitled to benefit from social security schemes, including survivor's pensions, provided they have lived together in a stable relationship for at least 2 years.[46] Proof of this permanent relationship must be given in the form of a declaration authenticated by a notary.

In its judgment No. 029/2009, the Constitutional Court reaffirmed the jurisprudential line that the Constitution prohibits all forms of discrimination based on sexual orientation.[47] It also held that there are substantial differences between heterosexual and homosexual couples, which justify a different treatment by the legislature. Therefore, any legislative provision reflecting this distinction is not, in itself, unconstitutional. Even though it did not specify what differences in treatment are non-discriminatory, the Court maintained that the Congress has the responsibility to define the necessary measures to give special protection to minority or marginalized groups, such as same-sex couples.

In sum, according to the Court there are differences in the way the law treats same and opposite sex couples amounts to discrimination, but these differences in treatment are constitutionally permissible if, and only if, they obey the principle of sufficient reason. Therefore, one must examine the specific circumstances of each case in order to determine whether the different treatment provided for by a specific provision is discriminatory (and thus contrary to the Constitution), or whether it complies with the democratic principle of equality.

This approach was a very important step towards the recognition of the civil and political rights of same-sex couples, including nationality, residence permits, property protection, and social security benefits.

[44] Constitutional Court, C-075/07, 7 February 2007 (application No. D-6362).

[45] The original text reads as follows: "es contrario a la Constitución que se prevea un régimen legal de protección exclusivamente para las parejas heterosexuales [. . .] en el entendido que el régimen de protección allí previsto también se aplica a las parejas homosexuales."

[46] Constitutional Court, C-811/07, 3 October 2007 (application No. D-6749).

[47] Constitutional Court, C-029/2009, 29 January 2009 (application No. D-7290).

All the legal provisions reviewed by the Court in this decision must henceforth be considered as applying also to same-sex couples, due to the broad interpretation adopted by the Court in order to give these couples equal rights. This change in interpretation means that same-sex couples are granted equal rights as regards the following (1) the real property where a same-sex couple reside can be declared to be the principal "dwelling of the family" and cannot be seized; (2) civil obligation to pay maintenance; (3) legal guardianship; (4) migration rights to acquire Colombian nationality; (5) right to not incriminate the same-sex partner; (6) aggravating circumstances when the victim is the same-sex partner; (7) being included as possible perpetrators of the crimes of embezzlement and squandering of family property, domestic violence and threats to witnesses, when the victim is the same-sex partner; (8) right to justice and reparation for victims of heinous crimes (the definition of 'victim' now includes same-sex couples); (9) right to claim and receive the dead body; (10) right to know the measures taken to search for the missing person; (11) right to family reunification of displaced persons; (12) civil protection measures for victims of heinous crimes; (13) benefits in the retirement and health plans for members of the Armed Forces and National Police; (14) eligibility for government benefits in health and educational programs; (15) eligibility for government benefits for family housing; (16) access to land ownership, also on behalf of both partners; (17) death compensation in case of a traffic accident; (18) being included in conflict-of-interests restrictions for the exercise of public functions and the award of state contracts.[48]

Not only have same-sex couples been granted equal rights as heterosexuals, but several decisions of the Constitutional Court have also established that, like heterosexual spouses, same-sex partners have obligations towards each other, including nourishment, maintenance and other family duties, although these are not fully comparable to the obligations arising from marriage.

In a 2010 judgment concerning economic and survivor's pension rights, the Court specified the extent to which the State grants these rights to same-sex couples.[49] This judgment is particularly important in that it established that, in order to be eligible for survivor's pensions, same-sex partners are not expressly required to produce a notarized statement as proof of the fact that they have lived together for at least 2 years. Moreover, a series of rules of a generally binding nature (*grupo de órdenes con efectos intercomunis*) were applied for the first time in the context of same-sex couples' social rights, thus becoming applicable to all people in the same situation as the claimants in the case. In this way, the Court extended legal protection to same-sex couples and recognised their right to a due process in administrative proceedings. In short, it used the principle of favourable interpretation to ensure the greatest protection for all human beings.

[48] *Ibidem*.

[49] Constitutional Court, T-051/10, 2 February 2010 (file No. T-2.292.035, T-2.299.859, T-2.386.935). On this judgement, see also the Chapter by Paladini in this volume, with specific regard to the case *X. v. Colombia,* decided by the UN Human Rights Committee.

In 2011, the Constitutional Court took three important steps forward in the struggle for the rights of same-sex couples.[50] First of all, it ruled that all civil code provisions relating to inheritance laws applicable to heterosexual domestic partners must apply to same-sex unmarried couples.[51] This was based on a wider interpretation of (rather than on any amendments to) those provisions, which means that the Court did not interfere with the work of lawmakers, who enjoy democratic legitimacy. For the first time, however, the Court urged lawmakers to take action and regulate the *status* of same-sex couples.[52] A few days after this judgment, it issued a special statement asking the Congress to pass legislation on the effects of same-sex unions. In another decision, the Court examined Art. 113 of the Civil Code, which restricts marriage to the union of a man and a woman for the purpose of procreation and forming a family.[53] The Court declared that it could not change the definition of marriage used in the Civil Code, but it did not rule on the merits with regard to procreation as a purpose of marriage, or on the expression 'a man and a woman' in special laws.[54] In addition, once again the Court urged the Congress of the Republic to pass legislation on the rights at issue in the decision, so as to make up for the 'lack of protection' for same-sex couples.[55] This time, the Court also established a deadline (20 June 2013) and ruled that if Congress failed to regulate same-sex unions within that deadline, Colombian homosexual couples would be free to have their partnerships formalized by Colombia's courts or notaries, with full legal effects.

According to another important judgment delivered by the Constitutional Court in 2011, denying a surviving same-sex partner social security benefits because of his or her sexual orientation violates many fundamental rights, including the right to equality, the right to the free development of personality and the rights to social security.[56] This judgment paved the way for the decision in case C-336/2008,[57] which established the right of the surviving same-sex partner to receive pension benefits. As for the issue of adoption, case law on this matter dates back to 2001, when the Constitutional Court categorically stated that same-sex couples did not have the right to adopt children.[58] The Court justified its position on the basis that, since there are differences between heterosexual and homosexual couples, the

[50] Constitutional Court, C-577/11, 26 July 2011 (file nos. D-8367 and D-8376); C-283/11, 13 April 2011 (file No. D-8112); T-716/11, 22 September 2011 (file nos. T-3.086.845 and T-3.093.950).

[51] *Ibidem*, C-283/11.

[52] *Ibidem*, C-577/11.

[53] *Ibidem*.

[54] See Art. 2 of Law No. 294 of 1996 (domestic violence) and Art. 2 of Law No. 1361 of 2009 (protection of the family). Both laws implement Art. 42 of the Constitution (protection of the family), which also defines marriage as the union between a man and a woman.

[55] *Supra*, footnote 48, C-577/11.

[56] Constitutional Court, T-860/2011, 15 November 2011(file No. T-3.130.633).

[57] Constitutional Court, C-336/2008, 16 April 2008 (file No. D-6947).

[58] Constitutional Court, C-814/2001, 2 August 2001 (file No. D-3378).

provisions on adoption contained in the Juvenile Code cannot apply to same-sex couples.[59] The Court noted that there was a gap in the law that could be indirectly discriminatory. However, it held that the legislative omission was not unconstitutional on the ground that the law reflects the demands of society, which in 2001 still conceived of the family as monogamous and heterosexual, in accordance with Art. 42 of the Constitution.

5.5.1.2 Legislative Reactions to the Decisions of the Constitutional Court

Recent years have seen the Legislature trying to meet the demands of the Constitutional Court to regulate same-sex marriage and civil unions.

A bill on same-sex civil unions was presented on 3 August 2011 (No. 47/2011). In its Art. 1, it defines 'Civil Union' as "a legal act, made before a notary, whereby two same-sex partners publicly express their free and informed consent to live together as a couple and support each other permanently."[60]

The following bills on same-sex marriage are currently under discussion in Congress: Bill No. 047 of 2012 ("Law on equal marriage"), together with Bill No. 67 of 2012, and laws nos. 101 and 113 of 2012 instituting same-sex marriage and amending the Civil Code and other provisions.

Bill No. 47 ("Law on equal marriage"), which amends Art. 113 of the Civil Code, must be voted four times in order to take effect. In its Art. 1, it states that the purpose of the proposed law is to legalize same-sex marriage and establish its legal effects in accordance with the principles of human dignity, equality and plurality enshrined in the Political Constitution of Colombia.[61]

Initially approved by a Committee of 15 members by a 10-5 vote, it was rejected by the Colombian Senate in April 2013.

5.5.2 Venezuela

Same-sex marriage and civil unions are not legal in Venezuela. Art. 77 of the 1999 Constitution only allows marriage and civil unions between a man and a woman, and no alternative interpretation of the law is currently being considered.

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[59] See Art. 89 and 90 of Decree No. 2737 of 1989 on the Juvenile Code.

[60] República de Colombia Camara de Representantes (2011).

[61] The original text reads as follows: "La presente ley tiene por objeto reconocer legalmente el matrimonio de las parejas del mismo sexo y determinar sus efectos legales de conformidad con el principio de dignidad humana, igualdad y pluralismo que establece la Constitución Política de Colombia". Congreso de la República de Colombia Senado (2012), available at http://es.scribd.com/doc/111038927/PONENCIA-PRIMER-DEBATE-P-L-47-12.

5.5.3 Ecuador

Like most Latin American Countries, Ecuador has a strong, conservative Catholic tradition. The Third Section of the 2008 Constitution, which concerns the family, is especially noteworthy with regard to same-sex civil unions and marriage. In particular, Art. 37 guarantees the protection of the family, but—unlike the constitutions of other Countries—it does not define 'family' or specify the purpose(s) of its protection or mention the union of a man and a woman. Furthermore, it uses the gender-neutral term 'spouses' when establishing the equality of the members of a couple, thus making it possible to interpret it as referring also to homosexual couples. A reference to gender and procreation, however, is implied in the fact that Art. 37 expressly mentions motherhood. As for civil unions comparable to marriage and allowed by the Constitution, Art. 38 expressly refers only to heterosexual partners.

A number of court cases deserve attention with regard to the recognition of same-sex couples. In June 2010, two women who had formalized their civil union before a notary were refused recognition of their union by a Civil Registry official. After filing a petition for injunction before the competent court, which rejected it, they lodged an appeal before the Provincial Court of Pichincha. The Court authorized registration of their union on the grounds that the State must guarantee the free development of personality, in accordance with its constitutional duty to ensure that all people have equal access to legal protection. This duty also implies that the State must guarantee the right to equality and non-discrimination, including non-discrimination based on sexual orientation.

Unlike civil unions, same-sex marriage is constitutionally banned in Ecuador. However, there is an increasing recognition of the rights of same-sex couples, especially in court decisions. This recognition includes the protection of the economic rights of unmarried couples, regardless of sexual orientation and on the sole condition that the partners have lived together for at least 2 years. Unlike heterosexual couples, however, same-sex partners are not granted adoption rights.

5.5.4 Brazil

Like other Latin American Countries, such as Mexico and Argentina, Brazil has a federal government system that gives individual states considerable legislative autonomy. The issue of same-sex unions and marriages has thus been addressed first at the local level and then at the federal level, mainly through same-sex union litigation and adjudication. The path towards the recognition of homosexual couples' rights has not been an easy one, and legalization has been the result of same-sex couples seeking access to the institutions that regulate domestic cohabitation, such as the *União Estável* (Stable Union). These unions have gradually unleashed an intense debate on the concept of family, especially because there have been cases

of polygamous relationships. The idea of family is now broader and includes gay and lesbian couples, who have contributed to the creation of this type of unions and, thus, to the protection of the economic rights of the family.

Brazilian legislation has always has tried to prevent discrimination based on sexual orientation, and this has paved the way for same-sex partnerships and adoption by gay and lesbian couples. In particular, Art. 226 of the 1988 Constitution establishes that the State must give special protection to the family, which is "the foundation of society". Moreover, para. 3 specifies that the "stable union between a man and a woman" is recognized as a family entity, and that "the law shall facilitate the conversion of such entity into marriage". Even though this early characterization of the family has not made it easy to allow same-sex couples to enter into civil unions or marriages, it has not been a significant obstacle to the recognition of their economic rights. Indeed, there are some grounds for considering the concept of family protected by the Brazilian Constitution as broad enough to include same-sex unions.[62]

The rights of homosexuals have been gradually recognized mainly with the support of the courts, which have interpreted existing legislation so as to achieve full equality for same-sex couples. An important step was taken in 1989, when the *Superior Tribunal de Justiça* (STJ, Superior Court of Justice) recognized same-sex unions as *de facto* partnerships (*sociedade de fato*).[63] The Court ruled that the union between two people of the same-sex constituted a *de facto* partnership, which guaranteed equitable division of property only upon evidence of common economic efforts towards the acquisition of that property. From a legal and constitutional point of view, this notion of same-sex civil partnership has remained virtually unchanged over the years.

The legislative debate on gay rights and homosexual unions started in 1995, when a same-sex civil union bill was presented to the Brazilian Congress.[64] Since then, it has focused especially on the protection of property and inheritance rights. An important step was taken in this regard on 10 February 1998, when the STJ ruled that the legislation did not prevent the judiciary from granting access to property rights to same-sex couples. In this way, the STJ set a precedent for lower courts.

In 2008, the Attorney's Office of the state of Rio de Janeiro brought an action before the Brazilian Supreme Court, claiming that same-sex couples in a stable relationship had the right to register their unions with *cartorios* (public notary offices). A similar action was brought in 2009 by the Attorney General's Office. These lawsuits gave the Court the opportunity to rule that same-sex couples who could prove that they were living in a stable union had the same rights as heterosexual couples.

In 2006, two women living together in a long-term relationship were denied registration of their union, first by a notary office in Rio Grande do Sul and then by a

[62] De Oliveira Nusdeo and De Salles (2009), p. 5.

[63] STJ, Special Appeal No. 648.763—RS (2004/0042337-7), 7 December 2006.

[64] Vianna and Carrara (2013), p. 45.

state court of first instance. The case was then referred to the Superior Court of Justice, which delivered its decision on 25 October 2011. The judges found that homosexuals lacked legal protection[65] and that the Civil Code[66] did not expressly ban same-sex marriage. They also noted that, by virtue of the democratic principle, lawmakers had a duty to remedy the lack of protection for homosexuals. Therefore, the Court ruled that all same-sex couples have the right to marry and adopt children. Although it did not legalize same-sex marriage, the ruling recognized that homosexual couples have the same rights as heterosexual married couples. In this way, the Court confirmed its previous case law, according to which the State must protect all families, whether formed by different- or same-sex couples, in accordance with the constitutional principle of pluralism.

In its ruling of 21 June 2011, the Brazilian Superior Court of Justice declared that nothing in the Constitution expressly prohibited the extension of stable unions to same-sex couples,[67] and that a restrictive interpretation of Art. 226(3) would, therefore, violate the principle of equality and non-discrimination. Confirming its position that homosexuals have the same human dignity as heterosexuals, the Court thus ruled that same-sex couples were legally entitled to civil unions.

As for legislation, many Brazilian states recognized same-sex marriage before it was finally legalised at the federal level in May 2013. Alagoas was the first state to pass legislation on the subject in 2011; Bahia, Piauí, Holy Spirit, Sau Paulo, Brasilia, Sergipe, Federal District, Mato Grosso do Sul and other states followed in 2012. In March 2013, the Department for the Administration of Justice of Ceará issued an administrative order requiring notaries to formalize same-sex unions and/or convert them into marriage,[68] while the state of Paranà ruled that homosexual couples could register their unions with the civil authorities without seeking the approval of a court.[69]

With regard to same-sex adoption, it must be noted that, even though several judges have given favourable rulings in this respect, Brazilian laws do not specifically allow homosexuals to adopt children. Art. 39 of Law No. 8069/90, also known as the Statute on Children and Adolescents, provides that two people who are married or in a stable relationship shall have adoption rights.[70] In both cases, under federal laws these rights are still limited to heterosexual couples. As noted in the literature, this means that same-sex adoption depends on whether the marriage or civil union of the couple who wish to adopt has been recognized by the State. Moreover, since there is no official information on the issue, it is very difficult to provide a comprehensive view of all the cases that have been examined by the

[65] STJ, Special Appeal No. 1.183.378—RS (2010/0036663-8), 25 October 2011.

[66] Art. 1514, 1521, 1523, 1535 and 1565 of the 2002 Civil Code.

[67] STJ, Special Appeal No. 827.962—RS (2006/0057725-5), 21 June 2011.

[68] *Corregedoria Geral de Justiça*, *Provimento* No. 02/2013, 7 March 2013.

[69] *Corregedoria Geral de Justiça*, *Instrução Normativa* (Normative Instruction) No. 2/2013, 26 March 2013.

[70] De Oliveira Nusdeo and De Salles (2009), p. 8.

courts since 2006. In 2008, for example, a woman who was in a stable same-sex relationship lodged an application for adoption with the Youth Court of Porto Alegre, unaware that in Brazil it was possible to apply for joint adoption. This example shows two things: first, homosexuals wish to be granted adoption rights; second, they are unaware that the existing legislation can be interpreted in such a way as to extend those rights to same-sex couples. Another case dates back to 2010, when the Superior Court of Justice, by unanimous vote, allowed two women in a civil partnership to adopt a child. It is important to note that the First Instance Court of Rio Grande Do Sul had already ruled in favour of homosexual couples, but the Attorney General's Office decided to appeal the decision in order to protect the child's best interests. According to the Superior Court, however, it was necessary to take into account also what the child actually wanted.

On 18 December 2012, the Supreme Court decided on another case concerning a same-sex couple wishing to adopt.[71] The Court authorized the adoption on the following grounds: the recognition of full citizenship to homosexuals; the absence of prejudice against them; the clear need to extend adoption rights; the child's best interests; and the irrelevance of sexual orientation for determining the quality of parenting.

Although courts all over the country already permitted same-sex marriage, some still refused to recognize it. For this reason, in May 2013 the *Conselho Nacional de Justiça* (CNJ, National Justice Council), according to its competences and based on previous case law, issued a ruling ordering all civil authorities to perform same-sex marriages and, if so requested by a couple, to convert civil union into marriages.[72] In addition, if a judge or other authority refuses to recognize same-sex marriage, the refusal must be immediately reported to a special judge, who will take all appropriate measures. With this ruling, Brazil became the third country in Latin America to legalize same-sex marriage at the federal level.

A number of bills against discrimination based on sexual orientation are still under discussion in the Brazilian Congress,[73] namely: Bill No. 1151 of 1995, which aims to introduce special contracts for same-sex marriages; Bill No. 2.285/07, on the status of the family; and, finally, Bill No. 67 of 1999, which is intended to amend the constitutional provisions on non-discrimination[74] by adding an explicit reference to sexual orientation.

[71] STJ, Special appela No. 1.281.093—SP (2011/0201685-2), 18 December 2012.

[72] CNJ, Decision No. 174, 14 May 2013.

[73] De Oliveira Nusdeo and De Salles (2009), p. 7.

[74] Art. 3(IV) and art. 7(XXX).

5.5.5 Chile

Art. 102 of the Chilean Civil Code defines marriage as a contract between a man and a woman, thus implicitly excluding same-sex marriage. Several bills on gay marriage and *de facto* unions were introduced on the initiative of activists fighting for the rights of discriminated minorities and for the protection of sexual and reproductive rights. The bills failed to pass due to the opposition of conservatives, who are a majority group in Chile. Moreover, the proposed laws were criticised in a number of studies as potentially violating children's rights and other legal and constitutional principles.[75] The hostility of Chilean society is reflected also in the conservative, reactionary approach of the courts to this issue.

5.5.5.1 The Constitutional Court Rejects Same-Sex Marriage

In 2010, three same-sex couples applied to the Constitutional Court for judicial review, following the decision of the Civil Registry of Santiago de Chile, which had refused to recognize the marriage of two of the couples and to grant the other couple permission to marry.[76] The first two couples had contracted marriage abroad, respectively in Argentina, which legalized same-sex marriage in 2009, and Canada, which legalized it in 2005. The Civil Registry rejected their applications on the grounds that Art. 102 of the Civil Code clearly states that marriage is a solemn contract between a man and a woman. In addition, officials are required to verify that marriages performed abroad are not contrary to Chilean legislation: in order to be valid on the national territory, they must be contracted by a man and a woman (Art. 80 of the Civil Marriage Act).

The main issue to be decided by the Constitutional Court was whether the civil regulation of marriage was contrary to Art. 19(2) of the Constitution, which guarantees the right to equality. However, without addressing the issue, the Court decided (by a 9-1 vote) that Art. 102 of the Civil Code (which defines marriage as a solemn contract between a man and a woman) was not unconstitutional. The ruling of the Court has thus left unresolved a question that will certainly be raised again in the near future. All the same, it made very important points on gay marriage. For example, the only judge who voted against the decision, Vodanovic, maintained that refusing homosexuals access to marriage means denying them human dignity and, therefore, violating a principle enshrined in the Constitution.

Even though the Court did not rule on whether the civil regulation of marriage violated the right to equality enshrined in the Constitution, some observations made by the judges touched on the merits of the case: the argument that it is up to the legislator (rather than the constituent legislator or the Constitutional Court) to

[75] Cf. Universidad Austral (2010), available at http://www.thefamilywatch.org/doc/doc-0142-es.pdf.

[76] Constitutional Court, No. 1881/2010, Judgment of 3 November 2011.

regulate same-sex marriage, and that allowing gay marriage would be contrary to the Constitution. Quite clearly, this position leaves the debate open as to the constitutionality of same-sex marriage.

5.5.5.2 Bills on Same-Sex Couples

A significant step could be taken towards the recognition of same-sex relationships if the bills already submitted to the Congress were approved.

A bill on non-discrimination and same-sex unions was presented to the House of Representatives on 10 July 2003 and filed on 4 August 2009. Another draft law on civil partnership agreements and their patrimonial consequences (*Contrato de Unión civil y sus consecuencias patrimoniales*) has been pending since 19 December 2007, going through several stages. In 2008, yet another bill was introduced to regulate the rights of same-sex couples and the patrimonial consequences of civil unions, while a draft law on 'civil union pacts' presented in 2009 is currently under discussion. A bill on 'Life Partnership Agreements', which would regulate and protect the relationships between unmarried same-sex partners, was introduced in 2010. The proposed law confirms the duty of the State to protect the family, recognizing the variety of family structures in present-day Chilean society, including same-sex couples in a *de facto* relationship (more than 15 % of people over 18 years of age).[77]

5.5.5.3 Lack of Protection at the National Level: The *Atala Riffo* Case

In this important case the claimant was a Chilean judge, Ms. Karen Atala Riffo. In 2002, she and her husband decided to end their marriage through a de facto separation, and established by mutual consent that Ms Atala would maintain the care and custody of their three daughters. However, when Ms Atala's new partner, a woman, began living with her and the three girls, her ex-husband claimed custody alleging that her sexual orientation and her co-habitation with a partner of the same sex would cause harm to their daughters.

On 14 January 2003, the father of the three girls filed a custody suit with the Juvenile Court of Villarrica, which granted him provisional custody of the girls on 2 May 2003, regulating also the mother's visits. The decision was based on Ms Atala's sexual orientation and its possible consequences on her daughters. Maintaining that cohabitation with the mother and her partner was contrary to the best interests of the girls, the Juvenile Court then granted permanent custody to the father. In the final decision on the merits of 29 October 2003, however, the Judge concluded that the respondent's sexual orientation was not an impediment to carrying out responsible motherhood, that homosexuality is not a manifestation of

[77] Lecaros (2012).

a pathological conduct, and that no concrete evidence had shown that the presence of the mother's partner in the home was harmful to the physical and psychological wellbeing of the girls. Custody was thus granted to the mother, and the Juvenile Court ordered that the girls be handed over to their mother. However, the girls' father had already appealed to a higher court, requesting that the case be reviewed on the merits. After granting temporary custody to the father on 24 November 2003, the Court of Appeals of Temuco confirmed the conclusions of the Juvenile Court and granted permanent custody to the mother.

On 5 April 2004, the girls' father filed a remedy of complaint (*recurso de queja*) with the Supreme Court against the Court of Appeals of Temuco. He also requested that the girls remain in his care on a provisional basis, and the Supreme Court granted his request. On 31 May 2004, the Supreme Court rendered its final judgment, deciding on whether denying Ms Atala custody of her daughters because of her stable relationship with another woman amounted to sexual orientation discrimination. In a split 3-2 decision, the Court granted permanent custody to the father.[78]

In 2012 the Inter-American Court of Human Rights, based in Costa Rica, ruled that the State of Chile had violated the American Convention on Human Rights.[79]

5.5.6 Uruguay

Same-sex marriage is not legal in Uruguay, but homosexual couples can enter into civil unions that grant similar property rights. Uruguay is thus the first Latin American country to have legalised same-sex civil unions at the national level.

Due to the lack of specific legislation, a fierce legal battle has been fought in the courts for the recognition of same-sex marriages. On 5 June 2012, the Family Court of Montevideo delivered the first important judgment on the matter (No. 1940/2012). A Uruguayan and a Spanish national who had contracted marriage in Spain in 2010[80] sought a declaratory relief concerning the recognition of their marriage in Uruguay. Due to the lack of legislation at the national level, the Court granted the declaratory judgment pursuant to Art. 11(3) of the General Code of Procedure.[81]

From the point of view of private international law, the Court agreed to the preliminary recognition of a juridical relationship validly established in a foreign State. In that sense, the Court declared that the marriage was valid in Uruguay for all purposes of law, in accordance with Arts. 2 and 7 of the Inter-American Convention on General Rules of Private International Law.[82] This reasoning was

[78] *Supra*, footnote 69.

[79] See the Chapter by Magi in this volume.

[80] Spain legalised same-sex marriage in 2005.

[81] XXVIII Family Court, Montevideo, Decision No. 1940/2012, 5 June 2012.

[82] Held in Montevideo, 8 May 1979.

based also on the right to a due process—in its broadest sense, i.e. including access to justice and effective judicial protection—guaranteed by the American Convention on Human Rights (Art. 8), to which Uruguay has been a party since 1985.

In assessing the validity of the marriage legally contracted abroad, the Court of Montevideo applied national civil laws (there is no *ad hoc* international treaty between Uruguay and Spain). In particular, the Court referred to Art. 2395 of the Civil Code of Uruguay, which provides that the law of the State of celebration governs the legal capacity to marry as well as the formal validity of the marriage. Therefore, it applied both international human rights law and domestic law.

The Court also rejected the argument of the Prosecution that the public policy exception in private international law applied. Indeed, it maintained that the recognition of the marriage contracted in Spain was not in breach of constitutional principles, noting also that the principle of heterosexuality in marriage could no longer be considered a principle of Uruguayan international public policy after the entry into force of Law No. 18.246 (2008) on civil unions and Law No. 18.620 (2009) on gender identity. In the eyes of the Court, and according to legal theory, the concept of international public policy should be restrictive to ensure implementation of and compliance with international law. More specifically, the Court stated same-sex marriage is possible, even though not explicitly allowed, under Uruguayan law, in particular Law No. 18.620 on gender identity (which allows the biological sex of a person to be different from the gender identity as recorded on official documents).

For the above reasons, the Court of Montevideo declared the same-sex marriage contracted in Spain to be valid in Uruguay for all purposes of law. Thus, for the first time in history, a Uruguayan court recognized marriage between two people of the same sex. This judgment extended the possibility for same-sex couples to have their marriages recognized under existing national laws and, at the same time, emphasized the need for specific legislation on the subject.

Court decisions have indeed spurred legislative action. For example, a bill on "equal marriage" has been introduced on the initiative of the Ministry of Education and Culture, in addition to a similar project already in Congress. This bill, which would allow same-sex couples to register their unions as marriages, has been intensely debated. On 26 December 2012, it was passed by the Chamber of Deputies with 81 votes. On 20 March 2013, it was approved by a special Committee of the Senate (Constitution and laws) and then, on 2 April 2013, fully approved by a 23-8 vote. After Argentina, Uruguay is the second country in Latin America to pass a national law on same-sex marriage.

5.5.7 Argentina

5.5.7.1 General Overview

In Argentina, as in most Latin American Countries, the Constitution provides special protection to the family. Art. 14*bis* of the 1994 Constitution mentions the "full protection of the family" and the "protection of the homestead". However, it does not provide a definition of 'family' or expressly exclude same-sex couples. As a result, the issue of whether the rights arising from same-sex civil unions are comparable to those arising from marriage has been debated at the level of laws and judicial decisions.

The first step towards the legal recognition of the rights of same-sex couples dates back to 12 December 2002, when the law on civil unions (Law No. 1004) was passed in Buenos Aires. Under this law, couples of any sexual orientation who have lived together for 2 or more years in Buenos Aires have rights and duties comparable to those of husbands and wives. However, civil partners are not granted adoption rights and certain inheritance rights. Buenos Aires was the first city in Latin America to legalize same-sex civil unions. Other regions or cities that have followed its example include the Provincia de Rio Negro, Carlos Paz and Rio Cuarto.

5.5.7.2 Court Decisions

As in many other Countries, in Argentina the battle for same-sex marriage has been fought in the courts. In this respect, the most interesting decisions have been taken by lower courts, due to the type of judicial review available in those courts. The process leading to the recognition of the right to marry for same-sex couples is reflected in the many cases brought before the national and provincial courts. On 14 February 2007, for instance, two women tried to register their marriage before the Civil Registry. Their application was rejected on the grounds that Art. 172 and 188 of the Civil Code did not allow same-sex marriage, since marriage is permitted only between a man and a woman. The applicants thus initiated *amparo* proceedings (claim for protection of fundamental rights) claiming that their fundamental rights under the 1994 Constitution, in particular the right to equality, had been violated.

5.5.7.3 Court Decisions in Buenos Aires: Constitutional Principles Supporting Same-Sex Marriage

On 10 November 2009, the Administrative Court of the City of Buenos Aires accepted the *amparo* brought by a same-sex couple wishing to marry. They challenged the constitutionality of Art. 172 and 188 of the Civil Code of Buenos

Aires, according to which marriage is the union between a man and a woman.[83] The judge found that the articles in question were unconstitutional in that they violated the right to equality. In a comparative law perspective, the constitutional grounds for this decision are very interesting.

The Court's reasoning was based on the principle of non-discrimination, and the judge also referred to Art. 11 of the Constitution of the City of Buenos Aires, which includes the prohibition of discrimination based on sexual orientation:

> All persons have equal dignity and are equal before the law. The right to be different is recognized and guaranteed, without any sort of discrimination leading to marginalization based on race, ethnicity, gender, sexual orientation, age, religion, ideology, opinion, nationality, physical characteristics, psychophysical, social, or economic condition, or any other circumstances involving difference, exclusion, restriction or impairment. The City of Buenos Aires promotes the removal of any obstacles to freedom, equality, or the full development of the person and encourages the effective participation in the political, economic and social life of the City.

The Court held that, in this case, there was a change in the burden of proof required to defend the constitutionality of a law that creates differences in treatment according to a suspect category such as sexual orientation. The State must prove that there is sufficient reason for such differences; the evidence must be strong enough to rebut any presumption of unconstitutionality with regard to the law creating said differences in treatment. The judge made some interesting points on the applicable standard of review and its impact on the final decision:

> the standard of review that applies to classifications based on sexual orientation means that these categories should not be directed at creating or perpetuating stigma, scorn or legal inferiority for persons belonging to sexual minorities.[84]

The judge also added that any other classifications based on sexual orientation should be directed only at identifying the negative discrimination historically suffered by homosexuals. On these grounds, the Court authorized the same-sex marriage and declared that Art. 172 and 188 of the Civil Code were unconstitutional. Moreover, it ruled that the marriage could be registered with the Civil Registry.

In response to this ruling, an action for the annulment of the permission to celebrate the marriage was filed with the Civil Court of First Instance.[85] On 30 November 2009, the Civil Court issued its decision, granting a special injunctive relief called *medida cautelar innovativa*, i.e., a temporary suspension. The suspension was based on a strict interpretation of the requirements for marriage, including sexual orientation, which was considered essential by the Court to ensure the validity of the marriage. In the decision, it was also observed that the claimants

[83] *Freyre Alejandro v. GCBA* (Art. 14 CCABA), No. 34292, 10 November 2009. See also Cabrales Lucio (2010), pp. 413–414.

[84] *Ibidem*, pp. 413–414.

[85] First Instance Civil Court, Buenos Aires, No. 85, Judgment of 30 November 2009.

intended to use the Court to reform the Civil Code, which is a power resting only with the Congress and political decision-makers.

Finally, although the couple had been granted permission to marry in Buenos Aires, they could not register their marriage there. They had to move to the city of Tierra del Fuego, where it was possible for them to register their marriage. This city thus became the first city in Latin America to register a same-sex marriage of two people of the same-sex. The constitutional and legal grounds used in this case are easily transferable to other cases, as demonstrated by other important rulings concerning on the registration of same-sex marriages with the Civil Registry of Buenos Aires.

5.5.7.4 Legislative Reaction to Judicial Decisions

The court decisions in favour of same-sex marriage led to the introduction of a number of bills to regulate this institution. The first was presented on 30 April 2007, on the initiative of the Argentinian LGBT Federation and two Deputies. In October 2007, the Law on equal marriage went to the Senate, and another bill was submitted on the initiative of the President of the National Institute against Discrimination, Xenophobia and Racism.

In 2010, Argentina became the first country in Latin America to allow same-sex marriage nationwide: the bill on equal marriage was finally approved on 15 July 2010, and Law No. 26618 entered into force on 21 July 2010.

The new law grants same-sex couples the same rights as heterosexual married couples, including adoption rights. Its Art. 2 represents a radical change from the past, as it amends Art. 172 of the Civil Code: that is, the definition of marriage as the union of a man and a woman, which was repeatedly criticised in court decisions. A very problematic issue has thus been resolved, and same-sex couples are no longer excluded from marriage.

References

Anderson-Minshall D (2012) Same-sex marriages legal in Cancun. http://www.advocate.com/news/daily-news/2012/01/01/same-sex-marriages-legal-cancun

Ávalos A (2012) Sala IV estudia acción para legalizar unión de hecho entre personas del mismo sexo. Diario Nación. http://wvw.nacion.com/ln_ee/2009/marzo/24/pais1916544.html

Bustillos J (2011) Derechos humanos y protección constitucional. Breve estudio sobre el matrimonio entre personas del mismo sexo en México en perspectiva comparada. Boletín Mexicano de Derecho Comparado 132:1017–1045

Cabrales Lucio JM (2010) Argentina – Judges contest same sex marriage, Freyre Alejandro contra GCBA sobre amparo (art.14 CCABA), Administrative Court, Buenos Aires, exp 34292/0. Public Law (April):413–414

De Oliveira Nusdeo AM, De Salles CA (2009) Adopción por Homosexuales: El Discurso Jurídico. http://www.law.yale.edu/documents/pdf/Student_Organizations/SELA09_NusdeoSalles_Sp_PV.pdf

República de Colombia Camara de Representantes (2011) Proyecto de Ley Por medio de la cual se regula la Unión Civil entre parejas del mismo sexo y se dictan otras disposiciones

González Suarez M (2009) Proyecto de Ley de Unión Civil entre personas del mismo sexo. Posiciones a favor y en contra. Rev Electrón Estud Escuela Psicología Univ Costa Rica 4(1):11–30, http://dialnet.unirioja.es/servlet/articulo?codigo=3921916

Lecaros M (2012) Efectos de las uniones civiles: un análisis comparado. http://diarioconstitucional.cl/mostrararticulo.php?id=65

Rafael De La Madrid R (2012) Reporte sobre la discriminación en México 2012 proceso civil. http://www.conapred.org.mx/userfiles/files/Reporte_2012_ProcesoCivil.pdf

Rodríguez M, Mariano B, Rea Tizcareño C, Gil Hernández F, Pezoa P, Cisneros R (2010) América Latina. Ecos del matrimonio igualitario. http://www.pidhdd.org/v3/index.php?option=com_content&view=Article&id=1955:amica-latina-ecos-del-matrimonio-igualitario-&catid=1:noticias&Itemid=62

Universidad Austral (2010) Informe de estudios científicos y jurídicos Matrimonio homosexual y adopción por parejas del mismo sexo. http://www.thefamilywatch.org/doc/doc-0142-es.pdf

Vianna A, Carrara S (2013) Sexual politics and sexual rights in Brazil: a case study. In: Parker R, Petchesky R, Sember R (eds) Sexpolitics – reports from the front lines. http://www.sxpolitics.org/frontlines/book/pdf/capitulo1_brazil.pdf

Waaldijk K (2011) Same-sex partnership, international protection. In: Max Planck Encyclopedia of Public International Law. www.mpepil.com