

RESEARCH ARTICLE

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FROM POLITICAL SCENARIOS OF RECOGNITION TO  
NON-CONFORMING GENDER IDENTITIES\*

DE ESCENARIOS POLÍTICOS DE RECONOCIMIENTO  
A IDENTIDADES DE GÉNERO NO CONFORMES

DE CENÁRIOS POLÍTICOS DE RECONHECIMENTO  
A IDENTIDADES DE GÊNERO NÃO CONFORMES

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Received: September 26, 2023 – Accepted: January 22, 2024 –

Published: June 29, 2024

DOI: 10.24142/raju.v19n38a11

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\* This article accounts for the project *Mujeres trans: Tránsitos entre ciudadanía liminales y luchas por el reconocimiento* (*Transgender women: Transitions between liminal citizenships and struggles for recognition*), an initiative financed by the Universidad Autónoma Latinoamericana in the modality of doctoral or postdoctoral dissertation.

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## RESUMEN

Examinar las dinámicas jurídicas, políticas y académicas que amparan las vivencias y expresiones de género en Colombia es la apuesta que se persigue con el presente artículo. Así podrán juzgarse las luchas de reconocimiento que Axel Honneth plantea desde la esfera del derecho y la praxis social en su teoría del reconocimiento. Estas luchas se conectan con la inflación normativa que, dentro del ordenamiento jurídico, respalda lo LGBTIQ+, en especial las expresiones identitarias de las personas transgénero (Trans) y las protestas que estas lideran en defensa de su autorreconocimiento. Significativamente, se advierte un tipo de realidad donde prevalecen la discriminación y el daño físico o emocional de las personas transgénero, quienes, a pesar de estar incluidas en el orden legal, están excluidas de las prácticas institucionales a causa de falsas ideologías de reconocimiento.

**Palabras claves:** Identidad de género, personas *trans*, normas de protección, reconocimiento y autonomía.

## Abstract

The aim of this article is to examine legal, political, and academic dynamics that protect gender experiences and expressions in Colombia. This will allow for an examination of the struggles for recognition pointed out by Axel Honneth within the sphere of legal respect and social praxis in his theory of recognition. These struggles are connected to the increasing number of regulations within the legal system that support LGBTIQ+ individuals, particularly transgender (Trans) people's identity expressions and protests in defense of their self-recognition. Significantly, discrimination and physical or emotional harm against transgender people prevail in a reality where, despite being included in the legal order, they are excluded from institutional practices due to disguised ideologies of recognition.

**Keywords:** Gender identity, transgender people, protection regulations, recognition and autonomy.

## Resumo

Examinar as dinâmicas jurídicas, políticas e acadêmicas que amparam as vivências e expressões de gênero na Colômbia é o objetivo perseguido com o presente artigo. Será assim porque ajudará a julgar as lutas de reconhecimento que, desde a esfera do direito e prática social, presente na teoria do reconhecimento de Axel Honneth, conecta-se com a inflação normativa que dentro do ordenamento jurídico respalda o LGBTQI+, em especial, o relacionado com as pessoas trans, suas expressões identitárias e protestos liderados em defesa de seu autoreconhecimento. Significativamente, percebe-se um tipo de realidade onde as condições de discriminação, dano físico ou emocional das pessoas trans prevalecem mesmo sendo incluídas dentro da ordem legal, mas excluídas das práticas institucionais por falsas ideologias de reconhecimento.

**Palavras-chave:** Identidade de gênero, pessoas trans, normas de proteção, reconhecimento e autonomia.

## INTRODUCTION

For years I have had the opportunity to follow closely the work that has been carried out by the main character of this study: Alessandra Monsalve Valencia, a transgender woman and the founder and director of the Arcobaleno Foundation. First, I will discuss the woman who has played a significant role in narratives of gender identity, sexual diversity, and recognition struggles in our family.

Alessandra is a middle-aged Colombian woman born and raised in the city of Manizales. She says that since she was 12, in the midst of her search for the ideal place and people that would favor the shaping of her identity, she faced the besiegement, harassment, and finger-pointing of a sexist and conservative culture. She grew up amidst persecutions, murders, and massacres targeting her diverse, divergent, unequally treated peers. According to her, Manizales witnessed a transition that, looking back, was marked by agreements and disagreements, including stories of rejection, humiliation, and disdain. These experiences normalized discrimination, exile, and even death of bodies stigmatized due to their transgender identity.

Over the years and fueled by her experiences, she has strived to broaden her horizons and do better. Today, she stands as the first transgender woman to graduate from the Universidad de Caldas in 2006. She is a recognized teacher in private high schools across the city of Pereira, in the department of Risaralda, and a liaison for the sexual diversity project of the Office of the Mayor of Pereira in 2019. She was also the first transgender woman nominee for the Mujer Comfamiliar Risaralda award in 2021 and the Mujer Progreso Risaralda award in 2022. Additionally, she served as a spokeswoman for the Committee for Truth and Reconciliation from 2022 to 2023. Her dedicated work with transgender individuals in the region has earned her special and recurring recognition.

Her life experience and journey of transformation and self-improvement were the foundational elements that gave rise to the Arcobaleno Foundation. Thanks to her drive, dedication, love, solidarity, and empathy, she has been able to structure and consolidate this initiative since 2018. She assembled an interdisciplinary team of professionals to assist transgender people in Pereira and Manizales in overcoming the barriers that they encounter, such as exclusion, limited opportunities and resources, discrimination, the impact of armed conflict, harassment, disregard, and physical, psychologi-

cal, and sexual violence. Through folklore and other activities, she has made up a community of visionaries whose common dream is to denaturalize the perception surrounding transgender existence.

She has made it, and, in fact, the following paragraphs account for that. During a series of talks held in October 2021 to mark the third anniversary of the Arcobaleno Foundation, I was entrusted with the task of discussing the legal, political, and academic frameworks safeguarding gender experiences and expressions within the Colombian legal system.

It was an opportunity for me to talk about *recognition*, a topic that I had been contemplating based on the reasoning of German idealism. I was specifically drawing on Fichte's *Foundations of Natural Right, according to the Principles of the Wissenschaftslehre* (1994) and Hegel's dialectics between the master and the slave embodied in *The Phenomenology of Spirit* (2017). In this regard, Hegel emphasizes the need of others' confirmation and recognition of the self as an active, free, and self-aware entity. Then, this perspective gained narrative strength through Axel Honneth's theory of recognition, as it suggests an intersubjective nature of recognition and its integration into the social life of those who have experienced some type of offense or unfair treatment.

Thus, by focusing on a theory inherited from German idealism, I aligned my doctoral path with Alessa's invitation, driven by two reasons. On the one hand, there were the experiences of mistreatment, disregard, marginalization, unequal recognition of rights, and discredit of certain ways of living of the transgender girls and boys of the Arcobaleno Foundation. On the other hand, there were the three forms suggested by the German philosopher and sociologist in *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (1997) as necessary for self-recognition: love, legal respect, and social esteem. Regarding the recognition of the multiple relationships among individuals, Honneth states that *love*, as affective recognition, contributes to individuals being consistent in their capacity to be alone. In other words, it allows them to experience autonomy over their bodies and express their feelings and needs while ensuring their own care and *self-confidence*. Concerning *legal respect* and social praxis, individuals effectively enjoy the same concessions and prerogatives as others do. These aspirations are reinforced by the notion of *self-esteem*, which Honneth associates with the legal materialization of equality. For its part, *social esteem* entails jointly building collective goods, that is, cultural dynamics where different people of society

accept the values, qualities, experiences, expressions, and identities of each other as a warranty of healthy coexistence. Thus, *self-realization* is closely tied to intersubjective recognition.

While all three spheres of recognition are relevant, legal respect stands out as the form most closely linked to the realization of recognition within Colombia's policies for legal equality for transgender people. In the discussion at the foundation, I tried to break down this materialization. I presented not only aspects related to material equality set forth in Article 13 of the Colombian Constitution but also a series of statements issued by the Constitutional Court of Colombia. In doing so, I conveniently informed participants about the framework protecting sexual and gender diversity in the country. Moreover, I took into account international law and academic perspectives—although regrettably not all are in agreement—which shape this deliberation.

It is worth noting that the aforementioned meeting held in 2021 was not the setting for reflecting on the dishonest recognition reported by Honneth. It alludes to recognition granted to significantly functional groups of individuals within the system, with the purpose of dominating or oppressing them. Despite the increasing number of regulations for transgender equality within the Colombian legal system, their implementation remains limited. This limitation is likely due to their ineffectiveness, as they might be instances of dishonest recognition. However, this topic will be addressed in future analyses.

## DISSENTING ECHOES AND NON-CONFORMING IDENTITIES

In 2015, the National Center for Historical Memory (CNMH, as per its acronym in Spanish) published the report *Aniquilar la diferencia: Lesbianas, gays, bisexuales y transgeneristas en el marco del conflicto armado colombiano* (*Annihilating Difference: Lesbians, Gays, Bisexuals, and Transgenders within the Colombian Armed Conflict*). This report shaped our understanding of non-conforming gender identities today. It depicted how lesbians, gays, bisexuals, and transgenders endured distress within the armed confrontations in Colombia. These victims of discrimination and violence, who exist outside heterosexuality, publicly recounted echoes of diverse and complex treatments received due to their self-determination, sexual orientation, or gender identity not aligning with heteronormative and

hegemonic impositions. In doing so, they also popularized a wide range of emerging identities. These experiences, orientations, and identities represent struggles and a vindication of diversity and difference. As stated by the Constitutional Court, their “desires, feelings, and bodies express the right to exist, express, and fulfill themselves as human beings” (Judgment T-033 of 2022), transitioning between gender constructs and moving away from presumptions of fixed identities.

It is a struggle scenario that has legitimized the plurality of gender experiences. This legitimacy entails various aspects such as appearance, behavior, relationships, names, or pronouns of individuals who refuse to identify with the sex assigned to them at birth (Ulises, 2020), or rather of *trans* or *non-cisgender* people—preferred terms at the foundation. They do not recognize themselves as “straight” and challenge heteronormative or hegemonic structures. They emphasize the importance of rights dignifying their existence, including the “free development of personality and the pursuit of an autonomous life project, without barriers impeding the thoughts and desires of beings whose agency differs” (Judgment T-033 of 2022). These are individuals who shape the identity that they display before society.

When they introduce themselves or express their gender identity, they encounter numerous challenges. One challenge that stands out, besides the deeply personal ones, is the task of articulating—or rather denouncing—the partial implementation of policies on recognition of binary or non-binary transgender individuals. According to the transgender girls and boys of the Arcobaleno Foundation, fundamental human rights—those that affirm their dignity and existence—are notably lacking in protection, visibilization, and acknowledgement. This constitutes an undeniable reality.

It is likely an intrinsic reality within our society, stemming from eroded trust and the prevalence of structural violence targeting those who openly show their ways of being and of assuming and living sexuality, gender, and identity. Moreover, their perception of marginalization and profound vulnerability is a consequence of fractures within the Colombian state and its representative institutions. However, it is crucial to remember the Colombian Constitution of 1991 as a key turning point that should be addressed and clarified.

Prior to 1991, vulnerability, invisibilization, and systematic neglect of transgender people within the Colombian state were prevalent. Since 1991, relevant changes have taken place. The Constitutional Court has played a

pivotal role in this regard, as it has issued case-law leading to substantial regulatory reforms. The dynamics of exclusivity and exclusion, along with their associated representations, in a state that conceptualizes the qualities of every citizen to belong to a political community and be entitled to rights, opportunities, duties, and obligations, are gradually reducing transgender reality.

If individuals with a hegemonic cisgender identity took the initiative to recognize sexual orientation and gender identity, they made missteps along the way. They led to discriminatory behaviors and suspicious criteria that infringed on the dignity of individuals with diverse identities who did not conform to the proposed standardization patterns. Consequently, the much-mentioned concept of gender dysphoria—understood as the discomfort caused by the incongruence between sexual characteristics and the gender identity assigned at birth (World Professional Association for Transgender Health, 2017)—was perceived as a disorder. Indeed, this perception of their reality as a psychiatric illness, rooted in hegemonic and heteronormative ideologies, was denounced by transgender people at the time.

It was and continues to be vital to reject the notion of considering transgender identities as psychiatric illnesses or pathologized phenomena. To achieve this, the first step is to highlight the set of judgments issued by the Constitutional Court. Then, it is crucial to recognize that the defining characteristic of transgender individuals is their lack of alignment between the sex assigned to them at birth and their gender identity, which transcends the male-female dichotomy. This gender fluidity does not signify a disorder. As per the Constitutional Court, their appearance should not be forced into biological, social, and cultural categories of femininity or masculinity so that they be accepted or recognized (Judgment T-562 of 2013). Furthermore, in accordance with the court, a *transgender woman* is someone assigned male at birth but identifies as female, while a *transgender man* is someone assigned female at birth but identifies as male. Moreover, a *transgender person*—whether non-binary, gender-fluid, gender-nonconforming or even embracing an expansive and queer identity—is someone who does not fit within gender binarism (Judgment T-033 of 2022).

Once a perspective recognizing gender identity is established, revisiting the idea of gender dysphoria becomes necessary. According to the World Health Organization (WHO), the feeling of being female, male, non-binary, or another gender can cause anxiety, depression, social isolation, low self-esteem, or suicidal thoughts. These issues can be avoided with

the support of a team of health professionals who focus on the individual needs of the transgender person (WHO, 2017). Therefore, gender dysphoria is no longer classified as a pathology or psychiatric disorder, as it was in the WHO International Classification of Diseases from 1992 until 2008. Since 2008, the WHO has shifted towards addressing it in terms of comprehensive support, emphasizing that transgender individuals are not alone. Nevertheless, many view it as another form of standardization and are reluctant to accept the term; Alessandra, for example, finds it pejorative.

The Constitutional Court views the intricate task of theorizing about gender constructions, experiences, and expressions as inherent to states that safeguard the freedom of people to choose their own lifestyles (Judgment T-033 of 2022). This includes a discussion on the richness of the legitimate acronym LGBTIQ+ (lesbian, gay, bisexual, transgender, intersex, queer, and more). Similarly, sexual orientation (sexual, affective, and emotional attraction to another person) and the various manifestations of heterosexuality, homosexuality, bisexuality, and asexuality are terms of great constitutional relevance (Judgment T-068 of 2021).

Theoretical and political insights from the literature allow us to comprehend these orientations and identities. For clarity, I take as a reference the definition suggested in the report of the CNMH (2015, pp. 21-22), judgments issued by the Constitutional Court, and the interview conducted with Alessandra in November 2021.

## DISCOURSES OF RECOGNITION AND STRUGGLING IDENTITIES

In *Aniquilar la diferencia: Lesbianas, gays, bisexuales y transgeneristas en el marco del conflicto armado colombiano*, the CNMH highlights that lesbians are women whose desires and/or affections are directed towards other women; gays are men whose desires and/or affections are directed towards other men; bisexuals are individuals whose desires and/or affections are oriented indistinctly towards men or women; and transgender persons are individuals who transition through gender (CNMH, 2015). Transgender individuals, possessing physical characteristics and genitalia aligned with a particular sex at birth, identify with the gender opposite to that assigned.

It is noteworthy, as Alessandra points out, that the term *trans\**, with an asterisk serves as an umbrella term encompassing various gender iden-

tities and expressions that challenge the male-female binary as the only option (Dadvison, 2007; Becerra, 2010). Thus, trans\* refers to transgender people, transsexual people, drag performers, and cross-dressers. Alessandra clarifies that transgender individuals identify with the sex opposite to their assigned one at birth, sometimes modifying their bodies to align with their gender identity. Transsexuals, in addition to receiving hormone treatment like transgender people, undergo surgery to modify their sexual organs to be in tune with their identity. Cross-dressers adopt clothing and behaviors associated with the opposite gender for entertainment purposes.

Regarding intersex people, they present other realities in which their body varies according to the culturally dominant standards of femininity or masculinity (Cabral & Benzur, 2005). They are far from defining and externalizing singularities of a specific morphology, but rather represent a broad set of bodily variations of femininity and masculinity beyond the cultural notion of hermaphroditism (Cabral & Benzur, 2005). This makes it challenging to assign them a particular sex, according to Alessandra (2021).

The term *queer* underscores the performative nature of language and action. Being queer involves displacing the male-female categories and transgressing them definitively. In its social dimension, being male or female would be condensed to *doing gender*, that is, 'expressing oneself' and 'presenting oneself' as either 'male' or 'female' (Burguete, 2019). This concept is less about sexual orientation and more about living freely without hints of discrimination or representational labels. Documentary film like *Paris is Burning* (Livingston, 1990) and television series like *Pose* (Murphy, Flachuk, & Canals, 2018) illustrate these conflicts.

The plus (+) symbol denotes other divergent genders that are LGBTIQ+ minorities, as Alessandra emphasizes. These include asexual people, who have little interest in sexual activities; demisexual individuals, who prioritize emotional connections over sexual attraction; and pansexual people, who are affectively and sexually attracted to individuals of any gender without them having a specific identification.

The purpose of this discussion is to evidence the conflict that arises from attaching gender to sex at birth, as gender is distinct from biological characteristics (Judgment T-033 of 2022). Linking gender to sex at birth reinforces the perceived balance of a phallogocentric, patriarchal, and cisnormative culture, which, according to Alessandra, is influenced by the hatred for LGBTIQ+ individuals.

## PRAISE FOR A DIFFERENTIAL STATUS

Within any legal framework, citizens are granted a particular status, representing a positive duty that, legally, entails essential rights for fostering a just and democratic society. Given their optional nature, these rights become subjective due to the positive (written) guarantees, which support their immediate recognition and protection, strongly prohibiting their infringement (Ramírez, 2016). Thus, social dynamics undergo a naturalization process in civil and political spheres, with nuances emerging from conceived powers regardless of identity expressions.

From this perspective, the Constitutional Court acknowledges that failing to recognize identity expressions and experiences can lead transgender individuals to apathy and isolation, hindering their ability to engage with and contribute to social dynamics (Judgment T-033 of 2022). This has spurred file lawsuits aimed at ensuring self-determination and material equality of individuals who have been isolated, neglected, marginalized, and discriminated against by that vague notion suggesting that, although all people are equal, some are more deserving than others (Ramírez, 2014).

At this juncture, it can be asserted that hegemonic and heteronormative expressions have prevented transgender individuals from revealing themselves socially. In other words, these expressions have instilled the idea that heterosexuality is the only way to embodying masculinity or femininity, even stigmatizing those deviating from it (CNMH, 2015). The activist movements of the 1980s took the initiative to fight for a type of non-cisgender identity, advocating for the pluralistic and democratic political significance of liberating individuals beyond prevailing ontological definitions of gender and sexual identity.

This initiative has significantly impacted both femininity and masculinity. The Constitutional Court underscores that human dignity should underpin any social and democratic rule of law, especially when protecting diverse gender experiences (Judgment C-336 of 2008). This implies considerations incorporated into the positive and abstention duties of the state, which is tasked with ensuring the *material* conditions (goods enabling people to live according to their possibilities and needs) and *immaterial* conditions (ethical, moral, axiological, cultural, and spiritual requirements reflecting diverse worldviews) to favor individuals' life project.

In alignment with contemporary constitutionalism, case-law issued by the court and the gradual recognition of rights of transgender individuals show the significance of self-determination, human dignity, human diversity, and respect for individual life projects. These principles prioritize our freedom to realize one of the many life options, including the various expressions of gender (Judgment T-314 of 2011). As a fundamental right, it must be safeguarded by all laws and state institutions (Judgment T-062 of 2011). Thus, the materialization of the right to equality, the free development of personality, the non-discrimination based on sexual orientation, and the right to gender identity and expression should, in practice, minimize the possibilities of segregating or unfairly treating those exhibiting diverse, different, divergent identity traits (Judgment T-143 of 2018).

In this regard, the court posits that sex, gender identity, and sexual orientation constitute criteria susceptible to discrimination, especially when historically discriminated groups are involved. Consequently, it reaffirms the materialization of the right to equality, the free development of personality, and the non-discrimination of diverse gender expressions (Judgments C-336 of 2008, T-314 of 2011, T-248 of 2012, and T-476 of 2014). Notably, the “Sergio Urrego” case (Judgment T-478 of 2015) is emblematic, as it analyzes discrimination, harassment, and bullying within an educational setting that tragically led young Sergio to take his own life. Furthermore, the court urges the Ministry of the Interior to enact legislation addressing the reality of gender identity (Judgments T-804 of 2014 and T-099 of 2015). Through Article 130 of Law 1753 of June 9, 2015, the national government mandated the implementation of a national public policy for LGBTI sectors aimed at promoting inclusion and recognizing and guaranteeing the rights of individuals embracing non-conforming gender identities.

The defense of same-sex marriage (Judgment C-577 of 2011) represents another instance of recognition within Colombia’s current legal framework, echoing the sphere of legal respect and social praxis proposed by Honneth. In addressing the right to free development of personality and the right to education for transgender individuals, the Constitutional Court states that educational establishments are responsible for providing support and guidance to students who identify with genders different from those assigned at birth (Judgment T-562 of 2013). Furthermore, Judge Richard S. Ramírez highlights the outstanding obligation of training teaching staff and the importance of implementing policies and strategies with a differential

approach (Judgment T-443 of 2020). This approach ensures education in democratic and pluralistic environments (Judgments T-804 of 2014 and T-478 of 2015), fostering dialogues on diverse ways of living and expressing oneself, which can transform collective perceptions, reduce discrimination, and prevent violence.

Other significant scenarios of recognition arise from the following case-law: Regarding the pension system, same-sex couples secured the right to survivor's pension (Judgment T-357 of 2013, preceded by Judgment C-336 of 2008 and ratified by Judgments T-151, T-327, and T-935 of 2014).

As for comprehensive healthcare and the right to receive the best medical care, the health promotion entity (EPS as per its acronym in Spanish) to which the individual is affiliated are mandated to cover sex reassignment procedures. According to the court, "under the approach of comprehensiveness, ensuring physical or mental well-being, adequate social interaction, and any other element that impacts the quality of life of individuals with diverse identities and in transition is the responsibility of the EPS" (Judgment T-552 of 2013). For the court, when transgender individuals decide to undergo emotional, cognitive, or physical transitions for self-determination, self-definition, and self-fulfillment, the health system must ensure timely and appropriate support without arbitrary limits associated with their diverse identity.

Another landmark judgment of the court concerns the right to sexual privacy for individuals deprived of liberty (Judgment T-372 of 2013). Despite their incarceration, they retain fundamental rights that must be guaranteed by the state (Judgment T-062 of 2012).

Given their assumed gender identity, transgender individuals are not required to provide identity documentation associated with a gender with which they do not identify. For instance, a transgender woman is not obligated to submit proof of military service during a hiring process (Judgment T-476 of 2014), as military service in Colombia has been mandatory only for men.

Transgender individuals have the right to express their gender identity through their chosen name. The name, as an attribute of a citizen's legal personality, contributes to the development of their identity according to their own values, beliefs, and aspirations (Colombian Constitution, Article 16). Therefore, changing their name was, as Alessandra expressed (2021), "eagerly anticipated!" In this sense, the court points out that insisting on previous names and genders of individuals with diverse gender identities can

amount to symbolic violence against them (Judgment T-033 of 2022). This is accentuated when they shape their identity and define life projects that are manifestations of personality and self-recognition when externalized (Judgments C-114 of 2017 and T-086 of 2014).

The Constitutional Court ruled in favor of the adoption of children by couples with diverse sexual orientation. According to the court, parental sexual orientation does not determine their capacity to provide a safe and nurturing environment for a child (Judgment C-683 of 2015).

Furthermore, the court underscores the importance of the conventionality control in effectively implementing the Yogyakarta Principles (Judgment T-363 of 2016). These principles aim to dispense with sex and gender conditions when recognizing the full legal personality of non-binary individuals, including the possibility of reflecting gender identity on birth certificates and identification cards. In the case of Colombia, individuals who do not identify as male or female can choose the non-binary designation—abbreviated as NB—on their personal documents (Judgment T-033 of 2022). This judgment came into effect when the court ordered the Colombian government and the National Registry of Civil Status to include the NB option in the citizen identification system, ultimately enhancing self-esteem through autonomous recognition.

The court also emphasizes the importance of adopting inclusive language and a gender perspective, allowing individuals to be addressed according to their preferences. In the Johnajohn Campo Betancourt case, the court recognized non-binary denominations in professional titles, such as *maestre* (instead of the masculine or feminine forms *maestro* or *maestra* in Spanish) (Judgment T-447 of 2019).

Similarly, the respect for self-recognition of individuals across all facets of their identity, expression, and life is highlighted. In this sense, Judge Ramírez Giraldo's clarification of vote on Judgment T-443 of 2020 shows that gender expressions are fully acknowledged in the realms of dignity, freedom, and autonomy (Judgment T-443 of 2020 and T-192 of 2020).

Thus far, I have presented case-law and institutional efforts accounting for the process of recognition of diverse identities, shaping Colombia's legal landscape in terms of equality and its direct relationship with sex and gender.

Furthermore, since the constitutional reform of 1991, Colombia recognizes a great variety of identities and endeavors to protect them through

differential public policies. These policies address the needs of specific social sectors in overcoming stigmatization, social exclusion, reproach, impoverishment, repression, and systematic aggressions. These barriers have suppressed a wide range of identity constructions, body realities, life experiences, gender constructions, and modes of self-recognition beyond the ordinary.

However, non-governmental organizations and individuals with non-hegemonic sexual orientations or gender identities, as well as cisgender persons, have strongly denounced ineffective gender and sex recognition policies. Despite the existence of such policies, non-cisgender individuals “encounter multiple obstacles hindering the realization of their rights” (Judgment T-068 of 2021). Moreover, these recognition practices, since they are irrational, prevent the materialization of self-recognition. Thus, we face false recognition that reproduces existing relations of domination, ultimately serving the functionality of the system (Honneth, 2006). This undermines the emancipating, egalitarian, and liberating character that the normative arsenal of Colombian should embody.

They insistently remind us that deliberating about human dignity, non-discrimination, inclusion, and equality—both formal and material—compels us to transcend gender stereotypes that condemn the difference of others. These include identities differing from heterosexuality and the gender binary, rejecting heteronormative-hegemonic prototypes and their mechanisms of control and domination (Arcos, Montoya, & Palacios, 2015). Moreover, the legislative framework only articulates pseudo-inclusions veiled under multiculturalism, with glimpses of equity. In addressing the reality of Colombia’s diverse minorities, it fails to transcend the discourse of unfulfilled promises (Hurtado, 2010).

## NORMATIVE CONSTRUCTION AND RECONFIGURATION OF IDENTITY

Up to this point, we have gathered conceptual elements that support the assertion that transgender realities have influenced the Colombian legal system to recognize socially constructed genders and identities characterized by fluid transitions indicative of ongoing change. The legal framework acknowledges “the awareness of one’s *identity*, construction, and reconfiguration within social dynamics” (Judgment T-033 of 2022). These dynamics

recognize the singular voices shaping self-perception, social positioning, and interaction. However, this recognition stems from a reality that is dynamic and evolving, reflecting expressions that change over time and context.

This idea is supported by the report *Personas trans y de género diverso y sus derechos económicos, sociales, culturales y ambientales (Transgender and Gender-Diverse Persons and their Economic, Social, Cultural, and Environmental Rights)* by the Inter-American Commission on Human Rights (IACHR) (2020). For the IACHR, various subcategories exist within the transgender and gender-diverse community. Some individuals identify with a fluid or non-binary gender, diverging from traditional male or female identities. Others identify as agender, feeling no affiliation with any gender. Finally, there are gender-fluid individuals who navigate a world without gender boundaries (IACHR, 2020).

It is noteworthy to highlight the interview conducted with Alessandra Monsalve Valencia in November 2021. She emphasizes that, within the Colombian context, transgender individuals face systematic institutional neglect—unlike gays, lesbians, and bisexuals—despite having some legal protections regarding the recognition of their rights. While the law offers certain protection against heteronormative discrimination, aspects related to their identity seem to lack relevance. Although their voices are heard to some extent, they remain marginalized. Equity, justice, and social security frameworks ostensibly acknowledge their existence and rights, but unfair treatment persists within the state and society at large.

Therefore, it is crucial to acknowledge Colombia's commitment to various international human rights instruments. The Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social, and Cultural Rights (1966)—ratified by Colombia on October 26, 1969—are foundational. Additionally, the Convention on the Elimination of All Forms of Discrimination against Women (1979) includes protection for lesbian, bisexual, and transgender women. The Convention of Belém do Pará (1994) joins efforts to prevent, punish, and eradicate violence against women in the Americas. For its part, the UN Declaration led to the World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance (2001). The Andean Charter (2002) encourages the protection of human rights and condemns any sign of discrimination against individuals with non-hegemonic sexual orientation. Furthermore, the Yogyakarta Principles (2007) provide UN guidelines applicable to Colombian law,

which address gender experiences and expressions and emphasize self-recognition. Finally, we should consider the Declaration on Sexual Orientation and Gender Identity (2008); the eight resolutions from the Organization of American States titled Human Rights, Sexual Orientation, and Gender Identity (2008-2016); and the Advisory Opinion 24 on Gender Identity, Equality, and Non-Discrimination of Same-Sex Couples issued by the Inter-American Court of Human Rights (2017), which recognizes the existence of other gender identities beyond binary patterns.

In fact, according to the IACHR, the Colombian state, following a review of emblematic cases on gender violence, is bound to respond and guarantee that LGBTI<sup>1</sup> individuals can genuinely exercise their right to live free from discrimination and violence (IACHR, press release, 2019). This entails designing and implementing public policies supporting campaigns of inclusion and non-discrimination and legal reforms aligned with IACHR instruments.

Despite achievements in recognizing gender experiences, LGBTIQ+ individuals still face many barriers when achieving material equality and freedom from discrimination. According to the Inter-American Institute of Human Rights (2008), the road to overcoming the obstacles that hinder the effective implementation of the norms—at least those conducive to building a respectful, inclusive, and just society—remains an ongoing challenge.

It is undeniable that the efforts made thus far are monumental for a country like Colombia. Oscar Efrén Guerrero and Helena Alexandra Sutachán (2012, pp. 219-229) emphasize this point in their discussion of acceptance, justice, and inclusion, particularly in addressing LGBT modes of subjectivity. Notably, the authors focus solely on LGBT without mentioning IQ+. From this perspective, they argue that the history of Colombia can be divided into five significant moments within the academic sphere.

The first one responds to the demands of homosexuality. Namely, in the 1990s, the study of homosexuality intersected with feminist movements that were advocating for political transformations that men and women had to assume in the face of a discriminatory and exclusionary society. Issue 6 of the journal *Nómadas* (1997) was a pivotal contribution to elucidate LGBT recognition. This issue consolidated a range of debates from gender pers-

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1 The report does not mention Q+.

pectives, underscoring the imperative to transcend traditional feminine/masculine stereotypes and include other representations, such as homosexuality (Serrano, 1997, p. 220). This tendency is reinforced by José Fernando Serrano's study, which explores the parallels between the homosexual and feminist liberation movements. Both movements challenged heterosexist visions and welcomed new non-heterosexual identities.

The second moment encompasses the audiovisual initiative *Ciclo Rosa* (2001) and the publication *Voces excluidas* (2005). In 2001, the Cinemateca de Bogotá, the Goethe-Institut, the Centro Colombo Americano de Medellín, and the Universidad Javeriana organized the *Ciclo Rosa* as a tribute to the German filmmaker Rosa von Praunheim. This initiative provided a platform for institutional, cultural, and academic reflection on sexual diversity through audiovisual elements. Sexuality, the body, and gender intersected within the realm of cinema, contributing to the notion of a diverse society (Arcadia, June 1, 2022). Vindictory struggles and demands for minority rights converged through practices such as cinema, which possesses significant influence on public opinion due to their convening power and visibility (Guerrero & Sutachán, 2012, p. 223).

In addition, in 2005, the NGO Colombia Diversa published the report *Voces excluidas*. This report serves as an official symbol of the plurality of sexual orientations at that time and, incidentally, introduces the LGBT acronym. Moreover, it sheds light on the invisibility and subjugation of homosexuality. Consequently, the Office of the United Nations High Commissioner for Human Rights alerts the Colombian state about the labels imposed on gender and sexuality. Thus, it recommends actions to mitigate discrimination; physical, sexual, and psychological violence; social isolation; and marginalization faced by the non-heterosexual population (Guerrero & Sutachán, 2012, p. 224).

The third moment, spanning from 2006 to 2007, witnessed the emergence of several publications addressing gender and sexual diversity. They were characterized by a critical and reflexive approach and featured concrete references at the state level (Céspedes & Sarmiento, 2011). Moreover, Mara Viveros Vigoya (2006) considers that the agenda on sexuality and human rights consolidated the following three aspects in our country. Firstly, there were discourses concerning the inclusion/exclusion of sexual diversity and gender identity. Secondly, there was a focus on establishing regulations regarding various manifestations of sexuality. Thirdly, there was an empha-

sis on formulating public policies that integrated social intervention with academia, all within the framework of upholding the fundamental rights of individuals with diverse gender identities.

For its part, issue 24 of the journal *Nómadas* (2006) reinforced gender reflections within the context of neoliberalism in Latin America and the Caribbean. It provided refined analyses of citizenship and its role in designing, executing, and monitoring public policies. The issue also addressed discourses on masculinities, sexuality, gender equity, the body, and discrimination against LGBT individuals. Finally, debates centered on the deconstruction of gender were prominent.

In his work *Otros cuerpos, otras sexualidades (Other Bodies: Other Sexualities)* (2007), José Fernando Serrano Amaya compiles deliberations from the *Ciclo Rosa*. His aim was threefold: (i) to showcase socio-cultural advancements in gender diversity, (ii) to urge institutions to create spaces that help promote respect and recognition of rights for people whose sexual orientation and gender identity distances from dominant perspectives, and (iii) to highlight and combat violence and discrimination against non-cis-gender individuals in Colombia. It is worth noting that Serrano Amaya employs the term “non-heterosexuals,” but it is falling out of use due to its recent derogatory connotation.

Issue 28 of the journal *Estudios Sociales* (2007) features works that critically examine sexualities. According to Katharina Pewny (2007, pp. 96-103), the emergence of queer studies as a research field stands out for its conceptualization of elements proper to the social sciences. Thus, queer studies arise from an epistemology of difference, where the *other* is no longer subordinate to prevailing traditional epistemological parameters. This research field supports new subjectivities and seeks to distance itself from the bureaucratic procedures often associated with public policy initiatives.

Thus, between 2006 and 2007, the struggles for recognition of non-binary subjects, the scenario of vulnerability, the role of the heteronormative state, gender discrimination and advocacy, the remembrance of gender transitions, institutional defense of transgender rights, and the achievements in this regard collectively shaped recognition policies leading into the fourth and fifth stages. Likewise, these factors propelled academic advancements, evident since 2008, which have been dealing with key dialogic intersections, facilitating the conceptual and systematic construction of cultural and political legitimization of the LGBTIQ+ community. This is exemplified in An-

drea García Becerra's thesis *Tacones, siliconas, hormonas y otras críticas al sistema sexo-género: feminismos y experiencias de transexuales y travestis* (*High Heels, Silicones, Hormones, and Other Critiques of the Sex-Gender System: Feminisms and Experiences of Transsexuals and Cross-Dressers*) (2009). Similarly, the formulation and implementation of public policies, case-law, drafting of bills, and legal actions aim at recognizing rights and ensuring that issues concerning the LGBTIQ+ community remain subjects of permanent study and reflection.

A pertinent illustration of this can be found in the report *Ningún ser humano es desechable: limpieza social, derechos humanos y orientación sexual en Colombia* (*No Human Being is Disposable: Social Cleansing, Human Rights, and Sexual Orientation in Colombia*) by the Office of the United Nations High Commissioner for Human Rights (Ordóñez, 1996). The report underscores the extreme vulnerability of transgender communities in terms of personal integrity. It documents instances of torture, excessive use of force, discrimination, mistreatment, and homicides. Most of these contraventions are perpetrated by state agents during law enforcement operations in Bogotá, Medellín, and Cali (Ordóñez, 1996). This led to a crisis of inequality faced by the transgender minority, which not only suffers from state and societal victimization, but also endures the impacts of the armed conflict.

Similarly, the life stories of transgender women forcibly displaced to Bogotá have been documented. This was confirmed by the study *¡A mí me sacaron volada de allá! (I was thrown out from there!)* (Prada, Lozano, & Ortiz, 2012) and the report *Aniquilar la diferencia: Lesbianas, gays, bisexuales y transgeneristas en el marco del conflicto armado colombiano* (CNMH, 2015). Moreover, studies reveal historical ruptures experienced by those who have lived outside cisnormativity. In *Reflexiones sobre el género, el cuerpo y el poder. Cinco voces trans en diálogos con Judith Butler* (*Thoughts on Gender, Body, and Power: Five Transgender Voices Dialoging with Judith Butler*), Sylvia Cristina Prieto Dávila and her team examine the different dimensions of gender transition in the encounter between theory and life experiences (Prieto, 2017). The study's inquiry revolves around the construction of gender identity and corporeality among five transgender individuals residing in Bogotá (Prieto, 2017, p. 13). This underscores the significance of self-recognition efforts and the possibility of transgressing gender norms by placing the construction of identity and corporeality as alternative realities (Prieto, 2017, p. 186).

Up to this point, I have outlined the evolution of both national and international recognition policies, the perspectives of academia, and the constitutional framework. The jurisprudential protection offered by the Colombian Constitutional Court has been particularly noteworthy because “it accounts for a very important transition period in normative and cultural terms” (Judgment T-363 of 2016). However, it is worrying to notice a new form of social control and conformity susceptible to manipulation by an enticing market promising immediate satisfaction of hedonistic desires (Burguete, 2019). This social construct responds to the pressure to conform to identities and the scenarios of unprotection experienced by individuals who succumb to the changing dynamics of the market and systems of domination.

In *Recognition as Ideology* (2006), Axel Honneth examines a type of recognition that is used in a deceitful way to dominate or oppress groups. Honneth suggests that ideological mechanisms are employed to maintain the status quo, shaping actions and behaviors of these groups to serve the interests of the system. In my conversation with Alessandra (2021), we concurred that there is nothing emancipating—much less liberating—in forms of recognition that refuse to enhance personal autonomy. These types of recognition rule out the possibility of unraveling processes that dismantle the discriminatory stereotypes or social prejudices currently faced by transgender individuals. Moreover, when institutions manipulate inclusion for their own purposes, society is left grappling with a historical void, compelling it to reinvent something as obvious as the collective reasons for social life (Monedero, 2009).

Therefore, recognition aimed at perpetuating existing power dynamics between the state and civil society represents a false ideology. Now, the purpose is that the irrationality of such processes dissipates through the realization of autonomy. This is a moral and political challenge that accompanies the idea of recognition, encompassing its legal and symbolic dimensions. On the one hand, the legal dimension correlates directly with formal equality, that is, before the law. On the other hand, the symbolic dimension—rooted in material equality—advocates for special treatment for individuals requiring equal consideration (Hurtado, 2010, pp. 110-115) and empowers the language of recognition of all diverse, divergent, unequally treated individuals. Accordingly, both dimensions contribute to enhancing understanding of the realities surrounding regulations and institutional practices that uplift human dignity through the lens of personal autonomy.

This debate is certainly familiar to people who, due to their inherent differences and concrete relationship with the world, expose the slanders of cisnormativity. Through compelling moral demands, they advocate for spaces free from secrecy and reprisals. Thus, terms such as physical-sexual violence, discrimination, marginalization, and social stigma gain inclusion, from impulses of recognition, validating the experiences of those who have suffered the aggravations of social pathologies in Colombia for decades.

It is transgender individuals who have been deprived of affective recognition. It is them who have been mistreated, excluded, and stripped of their rights. It is them who have endured legal inequalities, humiliations, offenses, torture, and even death for expressing their gender identity. Hence, the recognition granted from the second sphere proposed by Honneth—legal respect and social praxis—enables a dialogue with self-recognition, arising through the granting of specific dynamics in social life. These dynamics should strive to embody the ideal of material equality and inclusion for individuals who are different, who have faced discrimination, abuse, and indignities due to their identity.

It is the historical connection that arises from distinct forms of existence—exemplified by transgender individuals. These forms not only reshape their usual social sphere, their intimate relationships, and the legal framework, but also evidence a reality characterized by ongoing struggles against discrimination and physical or emotional harm. Despite potential inclusion within the legal framework, these struggles persist due to exclusion from institutional practices.

Based on the above, life, along with its expressions and compressions, transgresses codes and strategies of universalization in favor of moral, social, legal, and political claims of individuals who have known feelings of rejection and indignity. At an individual or collective level, exclusion constitutes a clear act of discrimination and leads to the emergence of a lived present. The perspectives offered by this present evidence socio-historical expressions of a specific phenomenon, within which transgender individuals act as such. It is a living horizon that has remained hidden. As Husserl would assert, it prompts one to pay attention to the consciousness of the world to discover another kind of awakened life, which constantly flows and is systematically linked (Husserl, cited by Guerrero, 2019) to the institutional practices in the struggles for recognition.

## FINAL CONSIDERATIONS

Following the guidelines established by the Constitutional Court regarding gender matters, it is imperative to understand that “the discussion extends beyond the sex assigned at birth; it encompasses a complex interrelation between the body and its experiences” (Judgment T-675 of 2017). Identity, emotion, and the understanding of one’s desired gender path through the various manifestations or expressions are not realities to be regulated. It rather pertains to the manner in which individuals express their gender to the world, society, culture, community, and family. It also deals with the way in which individuals interact with their own gender and shape it throughout life, as it is a constantly evolving process.

After listening to the girls and boys of the Arcobaleno Foundation, I reiterate the importance of autonomy, a right that undeniably must be protected. It is a fundamental entitlement that allows individuals to experience freedom, dignity, and self-determination. This right holds even greater significance for individuals belonging to collectives whose identities are stereotyped. A fluid and changeable identity that transcends binary representation extends beyond conventional gender boundaries, giving rise to spaces of unconventional liberty.

Furthermore, direct dedication to diversity, human dignity, democracy, and participation establishes a legacy that will remain latent and will continue to reveal struggles for the recognition of gender experiences and expressions. A vivid example of this commitment is the *Ley Integral Trans* (Integral Trans Law) (2023). Although it is undeniable that instances of gross negligence persist within institutions—with respect to individuals who diverge from cisnormativity—there exists a fragmentation within the legal landscape and the strength to combat the stigmatization of transgender experiences.

Exposure to judgments, questioning, and intrusive inquiries should not be inherent to the human experience. Such scrutiny deprives individuals of their freedom, compelling them to withdraw from certain environments so as to evade explaining intimate aspects of their identity. Otherwise, they risk being falsely recognized or their bodies become commodified—bought, used, and then discarded—due to their vulnerability to exploitation and disposability.

Finally, gender identity is a complex social construct. It stands as a central aspect of individual identity, encapsulating unique human traits. Recognizing it empowers individuals, granting them the voice to articulate their gender identities and experiences free from the constraints of stereotypes and prejudices that have excluded or render their peers invisible in the past.

Based on the analysis presented thus far, I could say that Axel Honneth's sphere of legal respect and social praxis is evident. This concept materializes within the Colombian territory by overcoming the victimizing and polarizing paradigm of gender identity. Colombia progresses towards becoming a more inclusive and discrimination-free society by safeguarding the dignity and integrity of transgender individuals. However, while recognizing the diversity of gender identities marks an important step to foster self-esteem, it remains insufficient because it does not translate into real changes in social policies and practices. In short, it proves deficient and ineffective in confronting this reality.

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