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Challenging Criminalization Globally Using media and legal services for the defense of LGBT rights in Mexico

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I will use these 10 minutes to talk about how prejudice against people's sexual orientation can influence judicial inquiries and rulings made by judges in cases of homicide against homosexuals, and lead to the criminalization of the victims' partners. And to do that I want to share with you a success story of strategic litigation in courts and an effective media strategy.

Óscar Ramírez was 23 when, in 2012, he was sentenced to 27 and a half years in prison after being accused of aggravated homicide against his partner Jacobo, a 56-year old man killed two years before.

It was Oscar who found Jacobo's lifeless body, after which he immediately called police. In the eyes of the police, the mere fact of having an intimate relationship with the victim was enough to turn him into the main suspect. The agents in charge of the investigation did everything at their reach to incriminate Óscar. Driven by their prejudice, they pointed to a series of alleged contradictions in Óscar's witness statement. And without any further evidence incriminating him, Óscar went from witness to alleged perpetrator and was immediately put in custody.

One month later, as a result of the investigation police arrested a young man who confessed to killing Jacobo, whom he met on an online chatroom and with whom he had agreed to have sex in exchange for money. But the deal didn't go through and, instead, the young stranger ended up killing Jacobo at his home and stealing some of his belongings. This killer's behavior is a common MO used by criminals in Mexico who target homosexuals as vulnerable victims to commit crimes. And these criminals are more aware than the police of the vulnerability some homosexuals live in due to social rejection of their sexual orientation.

Despite the arrest of Jacobo's confessed killer, charges were pressed against Oscar under the argument that both young men had colluded to kill Jacobo in retaliation for having deceived them. The two of them were sentenced to 27 and a half years in prison. The judge that ruled against them stated that, given the lack of additional information on the motive to commit the crime, the conclusion was that the crime was committed "in the heat of passion".

The "crime of passion" argument is the typical resort used by the Mexican criminal justice system to stigmatize same-sex relations. In the fields of criminal sciences and criminology,

homosexuality is still considered a disorder. And, based on this biased appreciation, homosexual and lesbian couples are made up of disturbed individuals who are much more passionate than other individuals and, therefore, kill each other with excessive violence.

The idea that homosexuals and lesbians are more passionate due to a personality disorder is so widespread in the criminal justice system that every time a police officer or judge identifies a homicide victim as “homosexual” or “lesbian”, they immediately resort to the “crime of passion” argument without any further evidence. This means they typically try to find the murderer in the victim’s affective and intimate inner circle, and they will make every effort to incriminate him or her. And this is exactly what happened to Óscar.

When our organization contacted Óscar’s mother, an appeals court had already ratified the sentence, and the only option left was requesting an *amparo* (a special injunction) before a federal court. The problem was that our organization doesn’t do strategic litigation.

Let me take a moment to briefly explain the work done by our organization.

When it comes to defending the human rights of LGBT individuals and persons living with HIV, our organization combines media advocacy work, through a specialized news agency, with legal counsel provided through a network of attorneys and community promoters who, in turn, rely on an online platform to provide online and distance human rights support and counseling.

In the case of the so-called “hate crimes”, ours is the only Mexican organization that has set out to keep track, through media monitoring activities, of homicides and femicides motivated by prejudice against sexual orientation and gender expression. Each year, we release an annual report on homicidal violence against LGBT individuals in Mexico. In my country, an average of 6 members of the LGBT community are killed every month for alleged homophobic motives. The figures we present each year are in high demand and are made public by the Mexican press. And we have been quite successful in that regard.

However, we don’t litigate in courts, and that is why, in Óscar’s case, we relied on a strategy that had already worked for us in the past and had led to the rehiring of members of the military who had been fired because they were HIV-positive. Thus, we set out to find a partner with expertise in the area of strategic litigation. And we found a renowned academic institution that has a so-called “Public Interest Law Clinic”.

Together with this partner, we agreed the terms of the *amparo* lawsuit brought on the grounds of due process violations and presumption of innocence, as well as non discrimination for reasons of sexual orientation. We also agreed the date on which we would go public on the media, with the clear objective of exerting pressure on the judges.

In countries where the rule of law is fairly weak and high levels of impunity and corruption in the criminal justice system prevail, such as Mexico, relying on the media to exert pressure is an effective tool.

Thus, we divided the work to be done:

- The Law Clinic prepared and filed the *amparo* lawsuit before a federal court.
- Our organization organized the public denunciation activities through a series of press conferences, media interviews with Óscar's mother and a social media campaign.

The whole process lasted one year. But thanks to this coordinated strategy, Óscar was set free on May 27, 2015. The federal court that ruled on the *amparo* lawsuit ordered Óscar's immediate release due to serious and procedural deficiencies, in addition to the original judges' wrongful appreciations. However, the court dismissed the arguments regarding the discrimination against him on the basis of his sexual orientation. It refused to admit that Óscar was treated differently by the judges who sentenced him by failing to recognize the legitimacy of his spousal relationship with the victim.

We are currently waiting for the Human Rights Commission to resolve on the restitution complaint we filed for the years Óscar spent in prison, and also for the Superior Court of Justice for Mexico City to issue a ruling to guarantee the non repetition of this type of discrimination. We are also expecting a positive resolution in this case, as it will allow us to exert more influence to prevent the criminalization of LGBT individuals in the criminal justice system.

CONCLUSIONS

1. Public attention must be brought to the criminalization of LGBT individuals in criminal justice systems where prosecutors and judges share the same prejudice perpetrators have against homosexuality.
2. It is important to promote the use of strategic litigation to defend the rights of LGBT individuals wrongfully incriminated due to the homophobic prejudice of judges.
3. In those places where deficient criminal justice administration systems exist as a result of impunity and corruption, the media can become a highly effective ally.