

**VICTOR
MADRIGAL-
BORLOZ:**

I was delighted by Camilo's invitation to share with you some thoughts today. And I feel really privileged to be part of the conversation on human rights that is taking part in this alma mater. The Human Rights Program seems to me to be a vibrant and curious place. And I'm not surprised that that is the case. I know Camilo well. I know that that is his spirit. And I also know persons of the caliber of Mark Bromley, who I understand has been a long friend of the program and who has been an instrumental person in the creation of the mandate of the independent expert.

I'm also thrilled to be here for the kickoff of activities this year. I think that this is an occasion to re-examine notions, to perhaps try to take ourselves away from spaces of comfort, ask questions about what we are doing. And therefore, I'm very happy to be placed in such a setting. After 20 years of litigation and of work in civil society, this summer I went back to an academic setting myself.

And I'm thrilled, honestly, to be in places where I can enjoy the privilege of just being able to sit still and think, even if it's only for what it feels like a moment. Because we will blink, and then three years will have gone by. Believe me, I have that experience very many times over.

Now, I'm very lucky, because I have a lot to think about. And I'm thrilled to be speaking to you in my capacity as United Nations Independent Expert. This is one of the most extraordinary developments in international human rights machinery in the last few years, one that I consider to be a global patrimony, this mandate on protection from violence and discrimination based on sexual orientation and gender identity. This was the dream of many human rights defenders the world over. The original coalition to create this mandate was of over 2,000 organizations of civil society spanning over 175 countries.

Now, one would hope that the creation of such a mandate would attest to an international consensus about the indispensable need to enhance effective action to protect people from violence and discrimination. Unfortunately, acts of violence around the world provide us with enough evidence to immediately dispel this notion. You must make no mistake-- a vicious cycle of hatred is being fueled every day in every corner of the world.

Treaty bodies and special procedures at the United Nations started their explicit work on protection from violence and discrimination based on sexual orientation in cases concerning criminalization. The legal theory used in precedents such as *Toonen*, the Australian case, had

privacy as a cornerstone. This is an approach that created some struggle with the world conferences in Cairo and Beijing.

As one scholar from the global south put it to me recently, and this is a quote, "in order to fight violence, women's rights groups have been historically demanding that the state come into the bedroom to achieve the same objective gay rights groups have historically demanded that it stay out." Thus creating a variety of narratives for the last 25 years.

We all know of the historic plea of Beverly Palesa Ditsie in Beijing to, so to speak, remove the brackets around sexual orientation in the Draft Declaration and Platform of Action. Ms. Palesa's powerful call was, in my view, a call for stronger framing within the theory of discrimination, one that would place personal autonomy and dignity at the core of protections from discrimination and violence. This was pitifully disregarded at the time. But it is the path that we have been following for the last 25 years.

Albeit ill-fated, we find an announcement of it in a Brazilian Draft Resolution of 2003 and a very significant milestone of it in the Human Rights Council Resolution 17/19 presented by South Africa in which expressed concern for violence and discrimination on the basis of sexual orientation and gender identity. This last resolution was the ground for two excellent reports of the Office of the High Commissioner for Human Rights in 2011 and 2015. And these reinforcement in the work of the United Nations have also been surrounded by a plethora of declarations and statements of mandate holders and treaty bodies.

In my view, there are strong reasons to consider that the creation of my mandate signals a third stage in this work of sexual orientation and gender identity within the United Nations. Indeed, the mandate has a frame conducive to satisfying the call made by many scholars to link this work within a stronger, more integral, and coherent manner to other constructs and concerns. Indeed, Resolution 32/2 that creates my mandate asks me to address multiple intersecting and aggravated forms of violence and discrimination.

It is clear to me that analyzing root causes requires a multi-dimensional assessment of all factors, including historical, sociocultural, political, and anthropological that have concurred to create an understanding of what is perceived as the norm in relation to gender, sex, and desire in a given place and at a given time. For example, a woman feeling profound emotional, affective, and sexual attraction for other women may choose to identify as bisexual or as a lesbian. But she will also identify with other equally powerful and relevant identities that shape

who she is in the space and time where she lives. The fabric of her lived experience will get woven by the threads of race, ethnicity, religion or belief, health, status, age, and class.

As one stakeholder referred to me once, this is a quote, "we hold many identities in one body," end of quote. Violent actions against the persons will oftentimes result from intersecting factors that create a continuum of violence and a dynamic of disempowerment. This is, of course, the concept of intersectionality. Intersectionality also describes a dynamic process in which unique life experiences occur.

They can vary in relation to time. We will be the first generations to actually have to face dilemmas associated with large numbers of LGBTQ persons who have built free and equal lives and are now retiring into communities that are not prepared or ill-prepared to actually cater for their needs. We will also be the first ones that need to address the medical questions derived from long-term use of hormones and antiretrovirals. Both systematically significant factors within the gay and trans communities.

This Saturday is going to be World Alzheimer's Day. And working on a small essay for the World Report that will be published that day, I came to understand the depth in which being gay, lesbian, bisexual, or trans impacts a person's health. This year, I reported to the General Assembly that while I have received consistent information suggesting that LGBT older persons are under extreme risk created by social exclusion and discrimination, research and data on the root causes of these lived realities-- and most importantly, the dynamics to reverse them-- is extremely scarce.

The little information exists in a handful of countries of the global north. And they paint a deeply worrisome picture. A survey carried out in Britain in 2010 reported that LGB persons, older persons, are less likely to see their biological family frequently. They are also more likely to drink alcohol, take drugs, and have a history of poor mental health, and to have been diagnosed with depression. All of these have been identified as risk factors for cognitive decline and dementia.

The same can be said of HIV/AIDS. It's a predictor of Alzheimer's. And it impacts, of course, as we know, disproportionately the populations of men that have sex with men and trans women.

So of course it becomes extremely relevant to understand the life concerns of LGBT persons in relation to time. But think about it also as intersectionality in relation to space. The experience of violence and discrimination is absolutely different if one lives in a city or if you

live in the rural space.

I have always said that a gay man, a lesbian woman, a trans person from Rio has a lot more in common than a person living in New York than what it can be in the countryside in Brazil. The urban experience has a dynamic of its own. Persons are oftentimes forced to leave their families going into cities. Communities and countries can be expelling them because of phenomena of systemic violence.

And in general, all of these dynamics of space and time actually deeply affect the work that I do and the research that I carry out. My mandate exists in the point of interaction between many of these perspectives. And I recognize the complexity of these existential and political points of departure and the connected dynamics.

At the same time, I am really persuaded that within the tensions existing in the universe lies enormous promise. Because the more you actually interrogate and examine these dynamics, the more you understand that people have innovative, politically aware, and interesting ways of coping and thriving. And my mandate-- actually, my job-- is to ensure that I'm able to understand as much as I can those strategies and try to bring them to relevance and give them visibility.

I believe that you may know that my mandate was created in 2016 in the midst of furious controversy. Regional blocs within the Human Rights Council, namely the Community of Independent States, the Organisation of Islamic Cooperation, and the African Group vociferously claimed that it was a creature of the global north. That it answered to artificial concerns that didn't exist in their countries. And that LGBT persons did not exist in their jurisdictions. A minister of justice of one of those countries went as far to say before the UBR, we have looked for them and we cannot find them.

This creation, they expressed, threatened to create a cultural schism in the Community of Nations. Beneath that argumentation, though, what [INAUDIBLE] was a real powerful and very real concern of theirs, that the mandate was created to promote homosexuality and same sex marriage around the world. I'm not saying a true concern. I'm saying a real concern. I hope that the difference is not something that I'm misexpressing at all.

It took all of the resolve of those thousands of organizations and dozens of supportive states to see my mandate go through. What a privilege, what a responsibility to be the custodian of such an effort and those noble expectations. And along with my predecessor, Professor

[INAUDIBLE] of Thailand, I have been for the last few years striving to live to the promise of that effort.

Now I'm here in the midst of great news. Three years after the creation of the mandate, the mandate was just renewed by the United Nations Human Rights Council. This council from which in a parentheses I say the United Nations withdrew a year ago, lamentably, in my opinion. Now this time, the renewal of the mandate was resounding with countries from all regions of the world voting for its continuity. And despite dissenting views from a dozen states, no discernible regional consensus in opposing it.

It is a triumph of civil society, as human rights defenders from all over the world made relentless efforts to advocate for a sustained and institutionally consolidated voice within the international human rights system and for the states that actually supported these ambitions. Like for the creation of the mandate, activists supported through a campaign. And in this case, it was over 2,312 organizations from 174 states that actually rallied through.

Now, apart from the determination of civil society and receptive states, I believe that the renewal was also facilitated by a sincere conviction that my predecessor and I have held, which is that our business is the business of state responsibility. And that the best way to take care of that business is to work in cooperation with states. The resolution provides clear guidance on a model of active outreach for collaboration conducive to heightened awareness and support to effective state measures.

So whenever I present at the Human Rights Council any of my reports, I always say that my mandate has all open doors, all open windows. That I open all doors, I'll open windows, and that I will raise the roof. And I do like this. And it never works as a joke. Because it's just simply lost on them. I'm glad that it's not lost on you.

But I have to say that I've tried it many times and it doesn't work at the Human Rights Council. But I will continue it. I hope that some of you will be there some time and will help me with it.

Now, the point of the matter is I am very willing to dialogue with anybody that will talk to me. But as you can imagine, one of the big challenges that I have is I need to understand what are the limits of that dialogue, right? Because for example, I am not ready to debate that every person is entitled to human rights and freedoms enshrined in international human rights treaties without distinction that is based on sexual orientation and gender identity.

So if there is a sincere conviction in my interlocutor that sexual orientation and gender identity are factors in which a person can have their human rights curtailed, there is very little that we can talk about. The other point is, for me, any legislation, public policy, or judicial finding that criminalizes same sex relationships or particular gender identities are in and of themselves contrary to international human rights law. And any penalty imposed on the basis of that legislation, that public policy, is per se an act of violation of international human rights law.

And that is also something that I am not able to debate. Because it is in my understanding such a strong finding that I don't believe that it's subject to debate. In other words, I take it as sufficiently proven beyond any reasonable doubt, if that standard is necessary, that no historical, social, cultural, or religious sensitivities can justify criminalization.

Now, this is relevant because as of today, 69 countries maintained criminalization on the basis of sexual orientation, 10 of them with the death penalty, and 22 of them with penalties exceeding 10 years of prison. And in many of those states it's actually the norm that the penalties will be applied, including the death penalty. 25 countries still criminalize forms of lesbianism. And 17 countries criminalize gender identity, in particular, trans identities. So in all of those cases, in my view, this is not subject to discussion. I consider those legislation a violation of international law.

Now, that's where I will not actually have a conversation. But I actually find that there is a notable openness that has been created over the last few years in the international community. And part of what I do constantly whenever I go anywhere-- and I travel constantly for the mandate-- is that I will ensure to have a wide dialogue with all sorts of societal actors. This includes the states in civil society, but it also includes non-traditional human rights interlocutors. So for example, faith-based groups.

And in every country that I have traveled to, I actually have reached out and I have been received by faith-based groups. So I was in dialogue with the patriarchate of the Georgian Orthodox Church, the Ukrainian churches. I have been in dialogue with the mufti of all Muslims of Georgia, with Islamic leaders in Mozambique, with evangelical leaders in Mozambique, and so on and so forth. The point of the matter being it is always important to develop an understanding of what it is that are concerns from these groups and why it may be that they hold different views.

And of course, I know that this is an easy point of departure to take. But it's valuable. Nobody

has ever said to me that they believe in their core that people deserve to be tortured or killed because of who they are who they love. And I think that's an interesting and, of course, useful point of departure.

There is a lot of work to do, of course. And within this frame, what I'm hoping also to do is to give you a glimpse of the report that I will present to the United Nations General Assembly in New York on 24 October and that have just been released. I launched it in Reykjavic in Iceland 10 days ago.

Now, my report shows that in all corners of the world LGBT people continue to remain excluded and marginalized. Violence and discrimination based on sexual orientation and gender identity are perpetrated in a wide variety of public and private settings against LGBT persons. All over the world, political campaigns, parliamentary debates, and public manifestations reveal social prejudice and misconceptions about the very nature and moral character of LGBT persons.

We are also seeing, as Camilo was pointing out, the rise of ultra-conservative and ultra-nationalist groups reclaiming so-called identities at the expense of sexual and gender minorities, challenging advances, and presenting the development of laws and policies inclusive of LGBT people. LGBT issues are often instrumentalized by political and religious leaders as a threat to national cohesion, cultural tradition, in particular, during periods of political and socioeconomic instability. LGBT persons become the, quote unquote, "others," the, quote unquote, "foreigners" whose sole purpose is to undermine the national project from within. All of this impact on the social inclusion of LGBT individuals and negatively affects their access to health care, education, housing, employment, political participation, and personal security, and freedom from violence.

Whenever I go to any country, it's interesting to me to get a feel of how persons characterize the challenges that they face. For example, it was very striking to me that in Ukraine when being in dialogue with lesbian women, they expressed to me that constantly they would be attacked as being unpatriotic. The idea that they would bear no children to increase the Ukrainian population would be an attack on them. The idea that eventually the "Ukrainian race," quote unquote, would disappear because of their fault was actually what was used to accuse them of being bad citizens.

And it is a fact that a lot of these narratives actually go to the core of describing persons as

good or bad citizens. The idea that there is something inherent in the gay, or lesbian, or bisexual, or trans persons that is immoral. That is what is exploited. And so it's interesting to me to actually find out how this gets instrumentalized. And then it becomes important, because I think that this is the way that I can actually work against it.

In reality, my findings come time and time again to a single fact. A number of structural processes have been put in place in societies all around the world to perpetuate the notion that certain genital configurations will determine a certain role in society and guide what you must love, who you must feel attraction to, or who you must desire. This primal ordering system has been instrumentalized through a series of mechanisms that I have come to qualify in my reports as negation and stigma, the latter translated in demonization, criminalization, and pathologization-- sin, crime, and illness. The great proportion of violence and discrimination perpetrated every day around the globe against LGBT people has a connection to one or several of these mechanisms, which have been in operation for centuries and have carved deep grooves in the collective consciousness of peoples everywhere.

At school, LGBT pupils face abuse, including physical violence, social isolation, humiliation, and death threats that result in feelings of unsafety, missed school days, and reduced chances of academic success. Due to such abuse in educational settings, LGBT youth are more likely to commit suicide than others. In the Netherlands, for example, a recent study showed that the risk of suicide was 4.5 times higher amongst LGBT students compared to others.

The response of schools is often poor by intent or by negligence. They are often ill-equipped to address bullying and discrimination and fearful that parents and social groups will attack them if they work on issues related to sexual orientation and gender identity. Recently, I spoke to a minister of education to whom I asked, why don't you have any particular policies in place? And he said, the moment we do that, we will be voted out of government within two weeks.

In the field of employment, LGBT persons also face discrimination and abuse in all regions and in all stages of the employment cycle-- hiring, advancement, training, compensation, and termination, and in the implementation of benefits throughout. As a result, LGBT people are forced to conceal their identity, sexual orientation, and gender identity, which can lead to a considerable anxiety and loss of productivity.

I've also found that LGBT persons face discrimination in access to housing as a result of unfair

treatment by public and private landlords, state agencies, and credit providers who may deny leases and mortgages. I have heard testimonies of same sex couples being harassed by neighbors and evicted from their homes. A survey in Sri Lanka showed, for example, that 24% of LGBT respondents had been unable to rent housing or had been forced to change their domiciles. In addition, exclusion from homes and communities lead to a disproportionate representation of LGBT persons amongst the homeless population.

Where data exists-- and please be mindful that I'm saying this each and every time. Where data exists, it's only in the global north and in a handful of countries in the global north. Where it exists, it suggests that LGBT people are represented in homeless population at least twice as much as the rate of general populations. They face in that situation challenges in accessing shelters and it is three times more likely for an LGBT person to be turned away from a shelter than from a member of the general population.

Gender nonconforming individuals who are in situations of homelessness will face harassment and violence when trying to access public toilets and sanitation facilities. This is not something of which you are not aware, because it's a narrative and a discourse that actually you have had within your midst as well.

LGBT persons also face health disparities. Higher rates of breast and cervical cancer and HIV infection, and of mental health concerns such as anxiety, depression, self-harm, and suicide. Barriers such as criminalization of consensual same sex sexual activity is still a reality in these 69 countries in the world. And the pathologization of LGBT persons too often render health systems unavailable, inaccessible, or unacceptable.

I'll try and give you an example recently from a country in the global north that I visited and where I actually spoke with the director of health services. And he was telling me with absolute candor how he was very upset recently because a young trans man had been consulting with him and had been requesting the application of blockers. And of course, this is a country where trans identities are recognized and where gender transition is actually supported by the government.

But this doctor was actually quite distressed because this person had refused that he was ill. Only after laborious work by this doctor he was finally able to convince this person that he had gender dysphoria. And therefore, he was satisfied, because the gender transition was justified because of a diagnostic.

A lot of my work right now is to promote the idea that it is not necessary to have a diagnostic. Because it is not a condition that is to be considered a pathology. But what was interesting to me is that in this country that had depathologized in its health system formally more than 15 years ago trans identities, it still was deep within the training of this medical officer that the only justification for him to provide the support would be a medical diagnostic.

And so what you learn, what you come to understand, is that these grooves that are carved in societies through people's training, through public policy will remain there for generations. And so the work needs to start now. Because we probably will be dealing with this for the next 50 to 100 years.

Now, the picture that I portray so far is rather bleak. And I understand that. But of course, we all know that immense progress has been achieved in the last decades to deconstruct institutionalized discriminatory systems, myth and stereotypes, and to foster inclusion. 29 countries in the last 20 years have taken steps to decriminalize same sex relationships between consenting adults. More than 50 countries have adopted comprehensive anti-discrimination legislations. Many states have also made important strides with respect to gender recognition and removal of abusive requirements.

Now, certain premises are a common cornerstone in all of these systems. For example, all of these systems have one thing in common. They have come to the realization that persons who are LGBT make a significant contribution to the social fabric.

They also have come to a second realization, which is that their aspiration of being themselves and to find happiness as they are is an expression of the exercise of their human rights. And they have come to a third realization, which is that the satisfaction of their human rights, it's the key to unleashing their full potential to contributing to society. So this is what I call a virtuous cycle.

Social inclusion requires dismantling from that base all legislation criminalizing sexual orientation and gender identity. It also requires urgent measures to dismantle the systems of repression that enforce the idea that diversity in sexual orientation and gender identity is somehow harmful to society, that LGBT people are somehow disordered, and that their identities are criminal. It was somewhat surprising to me, but very telling in terms of social mores, to find out that Virginia's Crime Against Nature statutes criminalizing sodomy between same sex and opposite sex couples, though declared unconstitutional in 2003, was not

repealed until 11 years later in 2014.

I hope that in the ensuing dialogue somebody will tell me whether I'm right in this finding. I did it very, very fast today. So I hope that maybe if that information is not correct, you will tell me. Now, states must also adopt a robust legal framework protecting LGBT individuals from discrimination in all sectors and prevent discrimination in the fields of health, education, employment, housing, poverty, and access to justice, amongst others.

Again, in a finding relating to Virginia, I have been now informed that there is no statewide law protecting LGBT people from discrimination in housing, credit, or any other area with the exception of statewide employment. Interested in dialogue about that as well. Because a systematic approach to social inclusion of LGBT persons and gender diverse persons should be adopted through the comprehensive programs and plans. States should review policies implemented in all sectors, including medical classifications, school curricula, protocols, and procedures, so as to ensure that they adequately reflect the principles of equality and non-discrimination and that they are inclusive of all peoples.

Measures of sensitization and training of state agents and service personnels are indispensable to change the minds and the hearts of service providers, justice sector officers, teachers, judges, and others. But none of these measures actually have any impact if perpetrators of violence and discrimination enjoy impunity for their acts. Access to justice and the provision of effective remedies are an integral part of the process of aiming to dismantle deep-rooted discrimination and historical wrongs.

They are necessary to give LGBT individuals faith in a system that used to oppress them and erase their identity. The state has the primary responsibility in adopting effective measures to combat violence and discrimination. Partnerships play also a vital role. And in my report, as I was mentioning, I highlight the invaluable contribution of civil society organizations in defending human rights. Business also have a role to play in supporting inclusion.

And many have understood that inclusion leads to unleashing full potential of their employees' qualities and also their client base. In addition, traditional community and religious leaders have the power to reflect and shape the culture in which religion is embedded. By taking an affirmative and exemplary attitude embracing diversity and inclusiveness, leaders may have a positive impact on the attitude of their community members.

Finally, measures of commemoration and celebration of human diversity, including through

pride marches, festival, and events that give visibility of diversity, are sending strong messages of inclusion, belonging, and why not love. Now, Camilo was mentioning that today we are at a year where we are celebrating 50 years from the Stonewall riots. Now, in the historical line of LGBT rights in the global north and west, that is an extremely fundamental milestone.

Now, the riots were a very different thing than what pride marches are today. I hope that you're all aware of that. I wasn't alive then. I was very far from being born. Maybe not very far. But having said that, I am sure that it was a very different thing.

And let me give you kind of a notion of historical perspective of how fast and how substantially things can change. Stonewall was initiated as a way to react against police abuse. And as you very well know, some of the literature actually attributes to two trans black women-- well, one black, one brown-- Sylvia Rivera Marcia Johnson, the historical cry of saying, I want my civil rights. This is enough. But of course, that was not a context that was actually celebratory of their identities. And it was not a context that was safe.

[INAUDIBLE] years later, and of course we're seeing marches that are real expression of celebration. But that's not the reality in many countries around the world. This is a matter that is in constant evolution.

So I was in Georgia, not the state, but rather the country of Georgia, in the Caucasus recently. And when I was preparing my visit, I came across all of these statements about how pride was so important to the movement there. And with my bias of a person understanding pride as more of a big party than anything else, I was actually kind of not really understanding what this was.

But when I got there, I came to realize that pride is actually still at the point where it's a very small group of people that, with great bravery, are actually taking up to the streets. And that they are risking their lives to actually do that. And they're doing that to make a point that they can be in the public space. They can occupy the public space.

And the request is to actually be protected in that. And the reality is that the police will not react, and the government will not take measures, and so on and so forth. So a great part of my debate ended up being about pride in Georgia and how it actually changes.

I myself stem from Costa Rica. And in my lifetime, I have seen an enormous change. 10 years

ago, pride was literally a group of 50 people marching through the main street of Costa Rica-- San Jose, my city-- being harassed on both sides of the street, made fun of and screamed at.

Last year, I had the honor of speaking at the Pride march. It was 180,000 persons-- lesbian, gay, bisexual, trans, the parents of all of these persons, allies, friends, five members of the cabinet, members of parliament, and so on and so forth. It was veritable a taking up of the city. And those statements are important.

And so one of my calls to people whenever I speak is that I hope that we always understand the importance of solidarity to peoples everywhere that are actually fighting to gain the same rights that we enjoy in many, many countries in the world. Now, at the beginning of these words, I spoke about how much of a privilege it is to be the custodian of this mandate. The reality, as I just said, is that every day hundreds and thousands of people around the world are killed and beaten and tortured and mistreated because of who they are and who they desire or who they love. Millions are simply excluded without the tools to partake the benefits of a social fabric.

So while wishing you wholeheartedly a successful year, I now would hope that we can start a dialogue, one where I hope to listen and learn, and that you consider making some of the questions that I have brought to you as part of your quest for wisdom this year. Thank you very much.

[APPLAUSE]