

Human Rights Council 15th Session



Side Event on:

Ending violence and criminal sanctions based on sexual orientation and gender identity

Statement by

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Mr Chairman, □Excellencies,□Ladies and gentlemen,

It is a privilege to join this panel of inspiring individuals and to have an opportunity to speak about violations of human rights based on sexual orientation or gender identity.

This is an important issue that, I know, often sparks lively debate among States. It's also an issue that knows no boundaries. In spite of very significant progress made in a number of States, there is still no region in the world today where people who are gay, lesbian, bisexual, transgender or intersex (LGBTI) can live entirely free from discrimination or from the threat of harassment and physical attack.

But in 78 countries individuals still face criminal sanctions on the basis of their sexual orientation or gender identity. The existence of criminal laws of this kind poses a serious threat to the fundamental rights of LGBTI individuals, exposing them to the risk of arrest, detention and, in some cases, torture and execution. Commonly, criminal sanctions are accompanied by a raft of other discriminatory measures that affect access to a wide range of rights—civil, political, economic, social and cultural. We also know that criminalization perpetuates stigma and contributes to a climate of homophobia, intolerance and violence directed against LGBTI individuals.

Our first task, I believe, is to frame this squarely as a human rights issue and demand that it be tackled as such. As High Commissioner for Human Rights, I have a responsibility to encourage States to promote and protect the human rights of all people without discrimination. Indeed, to believe in human rights is to believe in equality: equal rights for all people, regardless of who they are or where they are from.

The General Assembly, in its resolution 60/251 establishing the Human Rights Council, entrusts the Council to promote “Universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner.”

The language of the Universal Declaration is also very clear in this respect. The preamble refers in its first line to the “inherent dignity” and the “equal and inalienable rights of all members of the human family” as the “foundation of freedom, justice and peace in the world.”

Article 1 of the Declaration states that “All human beings are born free and equal in dignity and rights,” and Article 2 declares that “everyone is entitled to all the rights and freedoms set forth in this Declaration”. □ These words constitute universal norms to which all States have subscribed. I believe they must guide us in all we do in the name of human rights, including in the context of the present discussion of human rights and sexual orientation and gender identity.

If we are all entitled to the full range of human rights and to equal protection of the law then, I believe, it can never be acceptable to deprive certain individuals of their rights, indeed to impose criminal sanctions on those individuals, not because they have inflicted harm on others or pose a threat to the well-being of others, but simply for being who they are, for being born with a particular sexual orientation or gender identity. To do so is deliberately to exclude a whole lot of people from the protection of international human rights law. It is, in short, an affront to the very principles of human rights and non-discrimination.

Redressing this situation is a test of our existing human rights framework and international human rights institutions. The various international treaties and other instruments that offer an evolving patchwork of

protection against violations of human rights do not explicitly refer to violations based on sexual orientation and gender identity, although the inclusiveness of the language on non-discrimination, in the Universal Declaration, and in other treaties, such as the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, provides a good basis for extending protection in this direction. This is important: we should be looking for ways to ensure that everyone enjoys the full protection of international human rights law, not for grounds to justify excluding certain individuals.

The treaty bodies have clearly interpreted the language of these treaties in this spirit. In particular, the Human Rights Committee in a decision dating back to 1994 found that the reference to "sex" in articles 2 and 26 of the International Covenant on Civil and Political Rights should be taken as including sexual orientation. In various General Comments, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have also recognized the applicability of existing human rights law in this context, noting that treaty language prohibiting discrimination on various specific grounds or "any other status" should be interpreted to cover discrimination on grounds of sexual orientation. The Committee on the Elimination of Discrimination against Women, while it has not addressed the issue in a General Comment, has urged the special procedures "to ensure that the rights of lesbians, bisexual and transgendered women are fully protected."

The views of these bodies need to be taken seriously. Members of treaty bodies are human rights experts chosen by States and tasked with providing guidance on the interpretation and application of relevant international human rights instruments. Consequently, the advice of the treaty bodies should guide States in their approach to these matters.

Also of relevance, we have the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity. These principles, which were developed by experts, offer additional guidance on the obligations of States under existing international legal instruments and also contain useful recommendations for implementation at the national level.

In moving forward, the first priority should be, I believe, decriminalization worldwide. For as long as individuals are criminalized purely because of who they are, they will continue to suffer injustice and remain disproportionately vulnerable to other forms of discrimination, persecution and violence.

But as important as decriminalization is, we should remain conscious that it is only a first step. We know from experience in those countries that have already taken the step that greater efforts are needed to counter discrimination and homophobia, including both legislative and educational initiatives. As I have said before: it is not easy for decades of prejudice

and intolerance to disappear by the stroke of the legislators' pen. But change must be started. □Much of what needs to be done will depend of course upon political leadership at the national level and progress in discussions at an inter-governmental level, including at the General Assembly and the Human Rights Council and through various regional organizations.

While this is a cause that demands the commitment of States, others too can play their part—in particular civil society, human rights defenders and faith-based organizations. The UN human rights mechanisms also have a vital role, including the treaty bodies, whose guidance to date has been invaluable, and the special procedures, which have been vigilant in identifying violations and reporting these both at the Council and the General Assembly. The Universal Periodic Review is another useful instrument, offering a chance to expose the impact of current laws and generate recommendations for reform.

My Office stands ready to help at multiple levels—in its support to the various human rights mechanisms and through its own activities.

Whenever and wherever countries are ready to take steps in this direction, OHCHR will be ready to assist as needed, including facilitating the sharing of experience between countries that have implemented reforms and those considering doing so, encouraging the engagement of civil society in debates on the shape and extent of necessary reforms, and providing legislative advice. I am pleased to report that I have recently appointed an expert to advise me and colleagues on this issue, which I hope can help further sharpen our collective focus.

Ladies and gentlemen,□I have seen first hand the terrible price of denying human rights to individuals based on their identity. I believe deeply in the dignity and worth of every human being. As High Commissioner, I am determined to continue to fight against discrimination in all its manifestations; to work to make good on the promise of human rights for all without distinction or prejudice; and to persuade others to commit to the same ideal.

Today, almost 62 years after the Universal Declaration was adopted, it is, thankfully, unthinkable to impose criminal sanctions on individuals simply on the basis of their gender or the colour of their skin.

With all our efforts and those of many others, over time let us look forward to a time when it is equally unthinkable that such sanctions could be imposed on people simply because of their sexual orientation or their gender identity.

Thank you.