

Pillay presents groundbreaking UN study on violence, discrimination against people because of their sexual orientation

Statement by UN High Commissioner for Human Rights Navi Pillay to the Panel on ending violence and discrimination against individuals on the basis of their sexual orientation and gender identity at the Human Rights Council 19th Session Geneva, 7 March 2012

Excellencies,
Distinguished representatives,
Dear colleagues,

I am pleased to present my study on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. In doing so, I am conscious of the divergent view both within and outside the Council on the rights of individuals based on sexual orientation and gender identity. However, I am certain that none among you will be willing to tolerate serious, systematic violations of human rights against them.

The Secretary-General says he didn't grow up talking about these issues. The same may be true for a number of us here today. Like the Secretary-General, we are in the process of educating ourselves. But it is time to acknowledge that, while we have been talking of other things, terrible violence and discrimination has been perpetrated against lesbian, gay, bisexual and transgender (LGBT) people.

This Council stood up for the rights of all when, last June, States from all regions joined together to adopt resolution 17/19 expressing "grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity."

By the same resolution, the Council requested me to prepare a study "to document discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, in all regions of the world", and to examine "how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity."

That study, prepared by my Office, is before you today. The study starts by recalling the principles of universality, equality and non-discrimination, and setting out the applicable international standards and the obligations of States under international human rights law. It then describes some forms of violence including killings, rape, torture and other forms of cruel, inhuman and degrading treatment, as well as provisions for asylum for those fleeing persecution on grounds of sexual orientation and gender identity.

The study considers discriminatory laws particularly with regard to three areas: laws criminalizing same-sex sexual relations between consenting adults, application of the death penalty, and arbitrary arrest and detention. It goes on to describe some discriminatory practices in areas such as employment; health care and education as well as restrictions on freedom of expression, association and assembly; discriminatory practices in the family and community; and the denial of recognition of relationships and related access to State and other benefits. The study also refers to some of the emerging responses recorded at a national level, and offers some conclusions and recommendations.

With regard to its method, the study draws on almost two decades worth of jurisprudence and documented material gathered by United Nations human rights treaty bodies and special rapporteurs. It also integrates findings of regional organizations and data from some national authorities and NGOs.

What emerges from all of the material we gathered is a pattern—a clear pattern of targeted violence and discrimination directed at people because they are, or are perceived to be LGBT. It is a pattern too-long overlooked by many States, and one that this Council has a duty to address.

Let me touch now, briefly, on the three main areas of focus of our study, starting with violence.

The first point to note is that violence against LGBT persons takes place in all regions. Commonly-reported incidents include: targeted killings, violent assaults, and acts of torture, including sexual violence. Official statistics are scarce. Many States lack systems for recording and reporting hate crimes against LGBT people. Others may have systems in place but police officers lack the appropriate training to deal with victims and recognize and properly record the motive for these attacks. We also know that in many cases the victims are reluctant to come forward to report incidents because of lack of trust in law enforcement.

But wherever we have figures, they consistently show startlingly high levels of violence and brutality. This is corroborated by reports of many hundreds of individual incidents brought to the attention of special procedures.

We have reports of gay men attacked by assailants shouting homophobic insults, left for dead in the street. Lesbians subjected to gang rape, sometimes characterized as so-called “corrective rape”. Transgender persons sexually assaulted and stoned to death, their bodies so disfigured as to be rendered virtually unrecognizable. And we have information on abuse carried out in police and prison cells – including cases of a lesbian couple beaten by police officers and sexually assaulted, and a transgender woman, placed in an all-male prison and raped more than 100 times, sometimes with the complicity of prison officials.

When such incidents are targeted, when they are part of a systematic pattern of violence, as they are in this context, then they constitute a grave human rights

challenge to which this Council has a responsibility to respond.

In accordance with resolution 17/19, we also, in our study, address discriminatory laws. An immediate area of concern is laws that criminalize individuals on the basis of their sexual orientation or gender identity. At least 76 countries retain laws that either explicitly criminalize same-sex relations between consenting adults, or contain vague prohibitions that are applied in a discriminatory way to prosecute LGBT people.

These laws are an anachronism, in many cases a relic of colonial rule. As the Human Rights Committee has confirmed repeatedly, they breach international human rights law, violating rights to privacy and to freedom from discrimination. They also cause enormous, unnecessary suffering, reinforce stigma, fuel violence, and undermine efforts to fight the spread of HIV/AIDS.

The study also documents a range of discriminatory practices that affect the ability of individuals to enjoy their human rights in their everyday lives. In the workplace, for example, where employers may fire or refuse to hire or promote someone simply because they are gay or lesbian, and where employee benefits may be subject to discriminatory limitations. In schools, where children as young as eight or nine are subjected to homophobic harassment, intimidation and physical attack. Many of these bullied children become isolated, depressed and drop out of school; some end up committing suicide. And in hospitals and other healthcare facilities, where discriminatory attitudes are also present and where transgender and intersex people are especially poorly served.

States often make it difficult for transgender persons to obtain official papers that reflect their preferred gender – without which, many are forced to live on the margins of society, excluded from employment, healthcare, education and other basic rights.

Even within some families, discrimination runs rife: adolescent children thrown out of home, disowned by their own parents, forced out of school or into psychiatric centres. Girls forced into marriage or pregnancy in an attempt to “cover up” their sexual orientation or, conversely, young women forced to relinquish their children when their sexuality becomes known. Even reports of so-called “honour killings” of gay sons and lesbian daughters.

And when human rights defenders speak out, they too face discriminatory restrictions. NGOs working on LGBT issues have had their offices raided, their licences revoked or refused, requests to hold public meetings and marches rejected.

I know some will resist what we are saying. They may argue that homosexuality and expressions of transgender identity conflict with local cultural or traditional values, or with religious teachings, or that they run counter to public opinion.

We should not dismiss these concerns but listen carefully, focus on the violations, and try to make headway in spite of the difficulties. As always, people are entitled to their opinion. They are free to disapprove of same-sex relationships, for example. They have an absolute right to believe – and to follow in their own lives – whatever religious teachings they choose.

But that is as far as it goes. The balance between tradition and culture, on the one hand, and universal human rights, on the other, must be struck in favour of rights. That much is clear from the Vienna Declaration and Programme of Action, which states, and I quote:

“While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

No personal opinion, no religious belief, no matter how deeply held or widely shared, can ever justify depriving another human being of his or her basic rights. And that is what we are discussing here: depriving certain individuals of their human rights – taking away their right to life and security of person, their rights to privacy, to freedom from arbitrary detention, torture and discrimination, to freedom of expression, association and peaceful assembly.

The study before you includes practical recommendations aimed at bringing national laws and practice into line with international standards, while also tackling discriminatory attitudes at the roots. I will restrict myself here to highlighting three proposals for action.

One is to improve State responses to homophobic and transphobic violence. Wherever such violence takes place, it should be recorded and reported by trained law enforcement officials. All such incidents warrant thorough investigation and action to prosecute and punish those responsible.

Second, States should change discriminatory laws that treat people as criminals on the basis of their sexual orientation or gender identity. In their place, we need new laws that provide adequate legal protection to people at risk of homophobic or transphobic discrimination.

Third, we should recognize that underlying all of this violence and discrimination is prejudice. We know from experience that you don't eliminate prejudice by changing the law alone; you must change people's hearts and minds as well.

Like millions of other South Africans of my generation, I grew up with prejudice around me. I know that it takes time, patience and persuasion to tackle it. But in the end, my life has taught me that ignorance and bigotry are no match for the power of education. Over time, as people start to talk with one another, they will overcome their discomfort. As they start to focus on facts not fear, prejudice will

start to ebb away. States can speed up the process with effective public information campaigns that challenge homophobia and negative stereotypes.

It is not easy but we have done it before. The story of the United Nations is a story of progress in the fight against discrimination. It is a story that is incomplete, as we continue to work to make good on the promise enshrined in our Universal Declaration: a world where “all human beings are born free and equal in dignity and rights.”

Today we all have an opportunity to begin together a new chapter dedicated to ending violence and discrimination against all people, irrespective of their sexual orientation and gender identity. It is an historic moment for this Council and for the United Nations.

Thank you.

ENDS

The report can be accessed at:

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-41_en.pdf

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