



PROFILE

Victor Madrigal-Borloz — The making of a militant conscience

*Lawyer and human rights activist, Victor Madrigal-Borloz has been appointed UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. He spoke to **JOHN HAMPSHIRE** about his new mandate.*

In 1987, events half a world apart marked key milestones for two Costa Rica citizens. The Central American nation's president, Óscar Arias, won the Nobel Peace Prize; and a Costa Rican exchange student completed his secondary education with a Victorian Certificate of Education from what was then Doncaster High School in Melbourne.

Arias couldn't know that his achievement would help inspire the young Victor Madrigal-Borloz to a life of speaking out for the world's victims of human rights abuses and discrimination, but it did. And in January this year, Madrigal-Borloz took up his crucial role as the United Nations' Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity.

While Arias planted the seed, Madrigal-Borloz's commitment to human rights was nurtured and brought to fruition when he studied law at the University of Costa Rica in the nation's capital, San José, where he was born. Before graduating with honours he became fascinated with international students and their issues during "moot courts" – where students take all the roles of participants in real legal proceedings. "They inspired me to follow up into international law and to believe that it's a great area of law, because it establishes a set of rules that allow countries and people to live in peace," Madrigal-Borloz said from his office as secretary-general of the International Rehabilitation Council for Torture Victims (IRCT) in Copenhagen, where he now lives.

"And the connection with human rights, which of course is an area within international law, came because the Inter-American Court of Human Rights is in Costa Rica. So it was a natural kind of connection to make. It was, and still is, probably the major institution of international law in Costa Rica.

"There was also a practical connection: the court has a library that was and continues to be the best international law library in Central America, so it made sense that I would do my research there as a student."

Of course, a Costa Rican born in 1969 did not have to look far to find oppression and civil turmoil, with Nicaragua to the north and Panama to the south. The 1960s and 70s saw the violent overthrow of the oppressive Somoza regime in Nicaragua by the Sandinistas, among whom was the key figure of Daniel Ortega. Once a hero to many Nicaraguans, he was first elected president in 1984. After several turbulent decades he was elected president again in 2006 and has, ironically, since become what many now see as an equally oppressive leader. In Panama, political turmoil was personified by the dictatorship of Manuel Noriega from 1983 until his overthrow by a US military invasion in 1989.

As Madrigal-Borloz wryly noted: "When you grow up in Central America in the 1970s and 80s, you grow up being a witness to what happens when rules are not respected and when international human rights law is not respected."

Such dreadful abuses of human rights might seem an overwhelming challenge to a young lawyer, but in 1995 when the newly graduated Madrigal-Borloz became a trials clerk at the Inter-American Court he quickly found a focus.

"When you work on the serious cases before Inter-American Court, what you are is the recipient of the sacrifice and the work of many people and organisations. First of all the victims, and second those organisation like STARTTS that are not only doing advocacy, but are the ones providing support to the victims.

"So you stand in awe not only of the situations and the depravity of the violations of human rights, but also of the enormous amount of work that it takes to get [those victims and organisations] there. Your job is to make sure that you are as respectful as possible of what you have in front of you, while at the same time dealing with the legal process. It becomes a very technical exercise, but with an awareness of the enormous human drama behind it."

Far from being dismayed by the size of the global human rights challenge, Madrigal-Borloz sees significant progress being made within his lifetime.

"I'll give you two examples, the first in relation to torture victims. We have witnessed the change from where they have been seen as either recipients of charity or deserving of pity, to agents in their own rehabilitation and justice – from where victimisation or the notion of being a victim of torture has gone from a very negative connotation of somebody who seeks compromise to somebody who's seeking justice. That's very encouraging to me.

"The other one is, of course, in relation to LGBTQI issues. During our lifetime we have seen an enormous change in social laws and the way societies understand the rights of lesbians, gays, trans, and bisexual persons. I'm very lucky that in the two areas that I work, I can see changes that are very, very specific."

Madrigal-Borloz began working specifically on LGBTQI rights rather late in his career when, in 2009, the Inter-American Commission on Human Rights (a body of the Organization of American States) was tasked by the OAS to concern itself with the issue: "It was really just a coincidence that I was at the time in charge of the commission's political affairs and had to take it forward, advising technically on the creation of its LGBTQI unit.



“I developed quite an interest on the issue pretty much immediately, because it’s fascinating.”

Again, Madrigal-Borloz found that the way to navigate the extraordinary complexities of LGBTI issues around the world was to focus on the legal divide confronting the most deeply affected.

“The criteria through which you can address that divide quite easily is the idea of criminalisation: 72 countries still maintain criminalisation for same-sex relations, 10 of them with the death penalty. Of the remaining 62, penalties range from two months to 25 years in jail.

“Now, with those 72 countries, it basically means that more than three billion people live in countries where they’re facing criminalisation for same-sex relations. Three billion people – almost half the world’s population.”

Perhaps surprisingly for an internationalist such as Madrigal-Borloz, he believes firmly that the impetus for the type of social change that will defeat human rights abuses must come from the lower echelons of society as much as from the national government level.

“Change is really only sustainable when it percolates to the most local level. Eleanor Roosevelt used to say that human rights exist in the everyday life and in everyday places. The idea is that human rights are best understood when you look at your everyday life and see a life free of discrimination and violence.

“But of course there needs to be an understanding that in order for that to happen and in order for it to be sustainable, there needs to be work at all levels of the equation. And the global work that creates that understanding is where I am acting in my role.”

It would be a mistake to think that all UN nations welcome this level of scrutiny of their human rights record in general and on LGBTIQ issues in particular, Madrigal-Borloz says.

“I can tell you that the creation of the mandate I have as Independent Expert on Protection was extremely controversial. It was opposed in a very determined way

by a group of countries that were of the opinion that there was no reason to create such a mandate.

“Of course, in the end there was a majority of states that acknowledged that violence and discrimination on the basis of sexual orientation and gender identity is a major concern and needs to be addressed, but there was a significant group of states that was not at all in favour of it and was very much hoping that the mandate would not be created.”

It’s not hard to see why Madrigal-Borloz’s key targets were outlined in his first report as Independent Expert released in June this year (http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/38/43), but the point that has garnered most attention is its condemnation of so-called conversion therapy: “Considering the pain and suffering caused and the implicit discriminatory purpose and intent of these acts, they may constitute torture or other cruel, inhuman or degrading treatment or punishment” by states that permit or even encourage these practices.

In this context, decriminalisation is an incredibly important agenda at the global level, Madrigal-Borloz says. “It’s necessary to ensure the global understanding of the importance of creating a world where nobody thinks that they’re a criminal because of who they are.

“Second, it’s vital to bring visibility to the violence and discrimination perpetrated against lesbians, gays, bisexual and trans persons so that no state can say that there is not such a thing as gay and lesbian persons – a well-established discourse in certain areas of the world where it’s imagined that the concept of sexual orientation and gender identities are a Western construct.”

Vital issues, indeed. To the extent that the formative year the young Madrigal-Borloz spent among “extremely friendly” Australians – and which he describes as “an awakening to life and friendships” that he retains to this day – helped form such a towering social conscience, it must be counted one of the nation’s outstanding successes.

