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AT THE WORLD BANK

INTERNATIONAL HUMAN RIGHTS LAW AND THE
OPERATIONS OF THE WORLD BANK

WASHINGTON D.C., FEBRUARY 20, 2015

The Hon. Michael Kirby AC CMG

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Personal Reflection and Context

Thank you very much for having me at the World Bank.

I've spent the last week dealing with issues relating to North Korea. I am in Washington for the report of the UN Commission of Inquiry (COI) on North Korea.¹ This has, I think it's fair to say, been the most successful COI in the history of the United Nations.² Partly, that is because we approached the matter in a really unusual and different way. We basically adopted an Anglo-American approach to our inquiry - of public hearings, transparency, engagement with the media and openness.³ I think most people, certainly in this town, think it has been a great success.

We came through the Human Rights Council with a very strong vote, (30:6).⁴ We then went to the General Assembly and again secured a very big vote, (116:20:55).⁵ And we went, ultimately, to the Security Council and had another very big vote there as well, (11:2:2). The two

* Justice of the High Court of Australia (1996-2009); Special Representative of the UN Secretary-General for Human Rights in Cambodia (1993-6); President of the International Commission of Jurists (1995-8); Chair of the UN Human Rights Council's Commission of Inquiry on DPRK (2013-2014).

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that voted against were the Russian Federation and China. That was a procedural vote putting human rights in North Korea on the agenda of the Security Council.⁶ So it is now on their agenda for the next three years. Even then it will continue if one member of the Security Council asks for it to be continued. The only other country in respect of which human rights have made it to the agenda of the Security Council has been Myanmar/ Burma. And lots of other things are happening in the follow up to the report.

I mention those matters so that I can make it plain, at the beginning, that I am not a one dimensional character. None of you is one dimensional. And just so that we can get it right out of the way at the very beginning, in light of issues I intend to address, I am a gay man. As far as I know I have always been gay. I have a partner, Johan van Vloten, from the Netherlands. He's a Netherlands-Australian. He has been with me for forty-six years.⁷ I think I can say that I have had a very successful career in the law, in the judiciary, and most recently in United Nations activities. Before North Korea I was Special Representative for the Secretary General (Boutros Boutros-Ghali), for Human Rights in Cambodia. And I have held many other UN positions concerned with the implementation of international human rights law.⁸

Tomorrow morning I have to rise at 4 a.m. to catch the 6 a.m. flight to New York because they're predicting loads of snow later in the day. I have then to go straight to Geneva in order to take part in a high level panel (which Pascal Lamy and Donald Kaberuka are chairing) on a matter relevant to the World Bank. This concerns, inter alia, the

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countries that fit within the TRIPS Agreement, under the global intellectual property regime, for the purpose of enjoying the exceptions within that regime in times of national health crises.⁹ It will also define “lowest income” and “middle income” countries for international donor support. So it’s very relevant to the HIV epidemic. That will be my task in Geneva on Monday, 23 February 2015.

And then on Wednesday, Thursday and Friday I will be in Bangkok with UNDP at a conference on “Growing up Gay in Asia”. So I’ll be trying to deal with that issue in Bangkok with lots of LGBTI people participating.¹⁰ It’s a real issue, as you would know, and a very difficult one. There is a log jam and nothing much is being done to reform the law and change hostile social attitudes.¹¹ So that brings me to the matter that I was asked to come along and talk about with you.

I am here to say you can be gay, professionally successful and happy. I have been, I think, all of those things. I am very lucky to have a partner who puts up with a person like myself. I can recommend to anybody that they try to find such a person. It is very beneficial for your physical and mental health. I am completely open about my sexuality in Australia. And everywhere else for that matter.

From the time HIV/AIDS came along, I became engaged in that epidemic. Jonathan Mann, a really wonderful international civil servant, who was then the head of GPA (the Global Programme on AIDS at the World Health Organization) came to Australia. He asked me to be a member of the inaugural Global Commission on AIDS of the World

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Health Organization. That involvement was for me a kind of code language for announcing to all and sundry, if they didn't already know my sexual orientation.

Basically I'm fed up about the hypocrisy, the dishonesty, the duplicity that is forced upon people over this topic. It is not good for people. It is not good for their personal lives. It's not good for their health. It's not good for their economic self. It's not good for the economy. It's not good for the HIV epidemic that is still spreading. It has got to change. I take every opportunity I can to make that clear and to explain why that is so.

It's a wonderful thing that so many people are here to discuss the World Bank and human rights. It is also good to see so many who identify themselves as LGBTIQ. And also their heterosexual colleagues and allies, whose support and understanding is vital. We will discuss particularly the Bank's response to the plight of LGBTIQ people in many countries of the world. This issue has a human dimension. But, it also has an economic dimension. When I was young I was not open about my sexual orientation because I thought that would really damage my career. As it certainly would have done at that time. However, things are improving. So it's a great thing that people are here. I don't know the sexual orientation of anyone here. But I imagine that you are supporters of a change in a hypocritical, irrational, often religious-based ignorant putting down of people for something they don't choose, and cannot change. Sexual orientation must just be accepted as part of nature's variations in the human species.

Ten Big Changes Since 1944 Relevant to LGBTIQ

Now, Fabrice Houdart, in the manner of a strict French school master, imposed a duty on me, in the midst of my work this week, which has been so intensive. He asked me to speak on this occasion about the significant changes that have come about in the world in recent decades. The aim is to organize my thoughts and your thoughts around what changes have come about in the world since 1944 when the *Articles of the World Bank*¹² were drafted -- I gather by Lord Keynes. I understand that Keynes personally played a big part in setting them.¹³ The purpose of this analysis is so that we can keep these changes in our minds in order to understand the world of then and the world of the here and now. I have ten significant changes to mention that have happened since 1944. I regard them as specially relevant to why the Bank needs to reconsider its attitude to its *Articles*, so as to acknowledge the part that human rights law should take in today's economic world and in the World Bank's actions, policies and decisions.

1. *The power of science and rationality*

The first great change is science. The science of sexual orientation, and knowledge about it, have developed. It started, I suppose, in earlier centuries. There were certainly a number of scientists in the nineteenth century who began to seek to explain why some people of the same sex were attracted, in their sexual fantasies, desires and actions, to domestic relationships and friendships with their own gender. This was just a variation in nature. But it was probably at about the time of the adoption of the

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World Bank's *Articles* that a very important development happened. It really captured public knowledge and imagination.

Of course, I'm referring to what that famous bee keeper, Dr Alfred Kinsey, was doing at Indiana University. A few years back Indiana University gave me an honorary degree. I served on the Kinsey Governing Board for a number of years. I was very proud to do that because, I suggest, in a way, we are all children of Alfred Kinsey. He was a zoologist, as they used to call them in those days. His special interest was gall wasps. He had millions of specimens of gall wasps. He analyzed gall wasps. And then, suddenly, in the 1940s, maybe it was the late 1930s, he came to the view that he should turn his tremendous intellect, and his great passion and obsession with taxonomy, to human beings.

It's astonishing that it hadn't been done to anything like the same degree earlier, before Kinsey came along. He began to apply all the skills he had derived from gall wasps, looking first at the human male and then the human female. His first study, *The Sexual Behavior of the Human Male*,¹⁴ was reported in 1948. Kinsey was a very typical American because he then took his findings on the road. He went everywhere talking about them and telling everyone about them. Of course, his report then got a lot of attention because, a) it was about sex, and, b) it had this man who was very articulate who could explain it and talk about it, with clarity and passion.

Kinsey's research was supported by Indiana University. This is itself an amazing story. He collected a huge amount of data on the reality of sex, as distinct from what people believed or assumed to be the case. His evidence emerged in thousands of private interviews that he conducted. They showed that about four to five percent of males had a lifelong exclusive orientation towards attraction to their own sex. It didn't seem to matter very much where they lived in the United States or over what time they were studied. A much larger percentage had participated in sexual activity with people of the same sex, to the point of orgasm. That was Kinsey's test. He had this taxonomy in which he classified people according to whether they were one to six. That determined where they went on the Kinsey scale. And, what was astonishing was that it revealed in large incidence of sexual variations, contrary to all beliefs which were, at the time, that "perverts" constituted a tiny, tiny number of willful, horrible people who were defying the course of nature. The criminal laws even talked about "crimes against the order of nature". Yet, in fact it turned out there were a huge number of people who had sexual contact with people of the same sex as *part* of their nature.¹⁵ The harsh laws and social and religious hostility were not stopping this from happening. In particular, Kinsey showed there were some, a sizeable minority, who had this lifelong orientation to their own sex and to none other.

Because Kinsey's research happened in the United States it attracted a huge amount of attention. The report on the human male was published in 1948. The report on the human female was

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published in 1953.¹⁶ Coinciding with these two reports I was then between eight and thirteen years of age. I was growing up in a leafy suburb in faraway Australia. But suddenly there was this story of this man in America who was telling me that I wasn't so peculiar after all. In fact, there was a huge number of people who were like me. There were many who, though not strictly homosexual in their orientation had sexual activity with their own sex at certain points in their lives. So that was the first big thing that happened, relevantly, in the last seventy years since the World Bank's *Articles* were adopted. Kinsey really opened the mind of the world to the facts. Nothing was really quite the same after that.

The interesting thing about Indiana University, where Kinsey did his research, was that it had a notable president at the time, Herman Wells. He was one of the founders of the United States National Committee for UNESCO. He was a big UN person. There was a tremendous effort, as any of you saw the film on Kinsey's life know, to close Kinsey down. This was led by the Cardinal in Indianapolis. But Herman Wells said that if what Dr. Kinsey was doing was research, appropriate to a university, it would be done at Indiana University. So this is another very big American story. He just said we're going ahead. Dr. Wells never married. Dr. Wells had his mother as his official escort to all functions. Dr. Wells was a man who always supported Dr. Kinsey's work through thick and thin. And I think perhaps that Dr. Wells understood how important this research was for the dignity and rights of many - including

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Kinsey's contribution to the integrity. For his own sense of dignity, Indiana University played a great role in gay liberation.

2. *The end of empire and its oppressive values on sexuality*

The second big change that happened was the end of empire. With the end of the Second World War, the colonial empires were on the way out. Despite Mr. Churchill's statement that he didn't become the King's first minister to preside over the end of the British Empire, that's in fact what was happening.¹⁷

It has to be said that in France, long before 1944, the Estates-General in 1793 had excised the sodomy offence from the French criminal law. It had been an offence in royal France. But ahead of their times by a couple of hundred years, the French revolutionaries said that this was unfinished. This was just cruel and ignorant. It therefore went into the dustbin. Such was the state of the law that Napoleon inherited when he encouraged the moves to codification of criminal law. The *French Penal Code* did not restore sodomy to the *Code*. So the *French Penal Code*, which spread throughout the French Empire, and also spread through into Germany and into Scandinavia and into the Netherlands, and into Belgium and down into Spain and into all their empires, did not usually have the sodomy offence. Because it inherited essentially the French code via the Netherlands, Indonesia to this day, does not have a sodomy offence in their national criminal code. As part of the deal with Aceh -- they introduced it in Sha'ria Law in Aceh. But in the rest of Indonesia, it is not part of the present law.

However, the one thing you could be sure of was that, if ever the Union Jack flew in a country, you got the sodomy offence. That included the United States of America. The sodomy crime came with the English language and with the independent judiciary and other fine institutions. The sodomy crime was a particular part of the British heirloom.

By 1945 the imperial, colonial era was moving into its death throes. Accompanying the death throes was an endeavor, in England at first, to face up to what the French had done in 1793. Bills for reform of the law were introduced into the British Parliament. This was done by straight men who were seeking to get rid of these laws. However, there was a lot of opposition from Conservatives who were in government at the time. Sir David Maxwell-Fyfe, the attorney general, said that there was an 'epidemic of sodomy' in Britain. The police had to stamp it out. If you have seen the movie on the life of Alan Turing, you will see what he went through. This was the last gasp of the endeavor to impose these cruel criminal laws on the British people. It was a colonial imposition; yet it is one that remains influential in the English-speaking world to this day.

The last person hanged for sodomy met his fate in England in 1832.¹⁸ The sodomy offences were then still enforced throughout the British Empire, in all the colonies. They all got it. It is still in force today in 42 of the 53 countries of the Commonwealth of Nations. In 2010 I served on a so-called Eminent Persons Group

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on the future of the Commonwealth of Nations.¹⁹ It demonstrated, with UNDP material,²⁰ that if you look at the Caribbean, most countries in the Caribbean that did *not* have British criminal law – for example those that had inherited Spanish or French or Netherlands criminal codes - had much lower rates of infection of HIV than the British colonies; and still do. That evidence and global experience convinced the Eminent Persons Group to recommend that initiatives should be taken quickly by the Commonwealth of Nations to get rid of the sodomy offences throughout the Commonwealth. However, we have struck a log jam where nothing much is being done to achieve reform.

The EPG recommendation was accepted in principle by the CHOGM meeting of Commonwealth Heads of Government in Perth in 2011. It then got into the hands of the “Sir Humphreys” of this world. They said...well, getting rid of ‘discriminatory’ laws, depends on what is ‘discriminatory’. We will judge what is ‘discriminatory’. The result is that, basically, nothing has been, or is being, done to secure reform. And so we have a really big problem in English-speaking countries in getting rid of these criminal laws and getting rid of the attitudes that they reinforce. This is still a problem that remains in front of us.

In 1957 the Wolfenden Royal Commission was set up in England as a result of the pressure that had grown out of Kinsey’s work in the United States. It recommended getting rid of the law in England against gays. That law was ultimately terminated in

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Britain in 1969 by the *Sexual Offences Act*.²¹ However, selling that action throughout the Commonwealth has been a piecemeal and very slow process. All the old dominions of the Commonwealth had got rid of the sodomy offence by the 1980s and 1990s. Yet in the Caribbean, in Africa and in the Asian Commonwealth countries (as we witnessed recently with Anwar Ibrahim's second conviction of sodomy in Malaysia)²² the sodomy offence is still in place.

I told Anwar Ibrahim, when I met him in Brisbane, after he had been cleared of the first conviction, that it should be an important policy of his party to get rid of this law. So long as it remained in force, it would be used to persecute people. It will lead to officials misusing the law to prosecute people. He wouldn't listen. He wasn't interested. He was heading a party that included Islamists. So he felt that he couldn't embrace that idea. The result is that he's been convicted for a second time. He is in prison tonight as we meet here. Anyway, that exception points up another big change. The world began to change its laws. The empires which had sustained the laws were on the way out. However, unfortunately, some of the new countries were not in the mood for changing their laws.

I've visited Jamaica several times to try to persuade them to reform their anti-homosexual laws. I've said to them 'How long do you think the world is going to continue funding your HIV epidemic if you do nothing yourselves about changing your laws which are one of the drivers in the cause of the epidemic?' Getting that

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message through to change their laws on this subject has proved extremely difficult. Rational people have to be more attentive to the lessons from the evidence. Knowledgeable people need to spread and respect the evidence.

3. *The end of racism and legal discrimination*

The third development was the decline of racism and the beginning of the moves towards the international human rights regime that we now know.

It started, on one view, with Eleanor Roosevelt.²³ It started with the *Universal Declaration of Human Rights* 1948²⁴ that I was taught about in 1949 at my primary school. The same principles went into the *International Covenant on Civil and Political Rights* (ICCPR)²⁵ and the *Convention for the Elimination of Racial Discrimination* (CERD).²⁶ It grew in strength with the anti-Apartheid movement -- getting rid of racism in South Africa.

It also grew in strength in my own country, Australia. I remember this because I grew up in 'White Australia'. We had a race-based immigration policy of White Australia. It was supported by most Australians. It was supported on the basis that Australians lived in the Asian milieu. We had to keep our own culture and traditions. The only way we could do that was to keep out large numbers of people of different races and ethnicity. However, over the past fifty years this policy has been fading away. Discrimination on the

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grounds of race is now illegal in Australia. Ultimately, the High Court of Australia, in the *Mabo* decision in 1992,²⁷ held that the refusal to acknowledge the land rights of Aboriginal people could not be part of the common law of Australia because it was contrary to the universal human rights that helped to shape the contemporary common law. That great wave, the first big wave of human rights relevant to racism, hit Australia. It hit the world. It hit the United States. It began the acknowledgment that, just because something is the *law*, it doesn't mean that it's necessarily *just*. We have got to look at law and see whether it accords with the fundamental principles of human rights. This is a universal obligation.

4. *The end of official patriarchy and advent of equal opportunities*

The fourth development is the decline in patriarchy. We haven't really finished that task yet. But it has certainly begun. It has made definite progress.

I am staying in Washington in the *Cosmos Club*. It's a well-known fact that, if you stand in the lobby of the *Cosmos Club* long enough, you are going to meet the most important people. This morning I met there Judge Richard Goldstone, who led the UN's Goldstone Commission on the Occupied Territories. There was also a retired judge from Germany – Judge Dieter Grimm, formerly of the Constitutional Court of Germany, standing there in the *Cosmos Club*. It is still overwhelmingly male. Fine, there are women members now. But there aren't very many. Nor many portraits of women at the *Cosmos Club*.

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Yet, in the wider world, things have definitely changed. Things have got better. Things have improved. (Although I did notice, when I sat down that the front table at this World Bank event in Washington, the front row participants were almost entirely male. I had to ask if some of the chairs should be occupied by women. So basic change is not fully realized). However, things are getting better. And the improvement lays the ground for other changes that need to be made.

5. *The ideal of secular government and the struggle with religion*

The fifth change, I think, is the decline (at least in some countries - in Western countries) - of the unquestioned power of religion, of organized religion, to express authoritative moral principles, binding on society and its members. There are lots of reasons behind this. The declining attendances at churches. The sexual abuse cases. The general doubts that have spread, just as enthusiasm for religion in parts of the Islamic world has risen. It has followed in most Western countries, that the idea that you should just accept a religious “principle” that homosexuality is a sexual disorder or a tendency to evil as one leading Catholic text said of homosexuality -- a “tendency to evil” is now increasingly questioned. Not as many people now just accept that assertion because it’s said by a religious person or body. In the past, religion has been extremely powerful in continuing the promotion of the so-called “unnatural” features of homosexuality. Whereas Kinsey demonstrates that, far from being unnatural, it’s just part of the variations in the human species evident in nature.

6. *The ideal of justice including economic justice*

The sixth big change is global economic development. If we think back to 1944 and 1948 and the great poverty that existed then in so many countries (the great poverty of China, the great poverty of India) we can recognise the changes that have occurred. I don't think we would have been confident in 1944 that these changes would come so quickly. The World Bank has played an honourable and supportive role in securing these changes. In fact, if you think of the three objectives of the United Nations: they were universal peace and security, international human rights and justice. "Justice" was the signature that included economic justice. It was vital and interrelated with the other objectives.

Economic justice really came with the end of empire. The decline of imperial rule stimulated the need to build countries economically. And to secure the full empowerment of the people living in them.

7. *The recognition of LGBTIQ rights in courts and at the UN*

The seventh big change, which grew out of the previous ones, was the growth of international human rights and mechanisms to protect basic rights. The European Court of Human Rights has had a tremendous and honorable story. There were early cases, at the very beginning of the 1950s, where it was held to be unarguable that there were human rights connotations of the laws and policies against homosexuals. At that time, cases were thrown out as not worthy of being considered by the Commission. They therefore never got to the Court.

Fortunately, the tide changed. A lot of credit has to be given to a Northern Irishman. Because my own people come from Northern Ireland, I must mention this: a man who stood up for his rights - Mr. Jeffrey Dudgeon, stood up. It wasn't easy for him. He took his case to the European Court of Human Rights.²⁸ And he won. The principle established in his case was then applied in the case of the Republic of Ireland in the *Norris* case, and in other cases. It then spread into the other regional human rights mechanisms: including the Inter-American Court. Later still the principle spread into the UN mechanisms. These included the UN Human Rights Committee in its decision in *Toonen v Australia*.²⁹

Here I have to tell a story against myself. I was the President of the Court of Appeal in New South Wales when Nick Toonen and his partner Rodney Croome took their case to the committee established by ICCPR. Australia had just signed the *First Optional Protocol*, permitting individual communications. They telephoned me and asked "Will you give us some money? We want to take this matter to Geneva, to the Human Rights Committee.' I said. "But you have never been prosecuted. You're not being persecuted. Everyone is leaving you alone. I don't think there is any way that the United Nations is going to intrude into your case. There is no way that they will accept it. If they did, they will decide it against you. That will be a very bad decision because it will put back the cause for decades. Better to wait for a country and a time, where people are actually being oppressed. Where there's a real live victim." They said, in effect, "Thank you very much. Thank

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you sincerely. We appreciate your advice". They then went straight to Geneva. They won their case before the United Nations Committee on Human Rights.

That decision of the Committee on Human Rights demonstrates how important courage is in this world. How important leadership is. How important are people who will defy arguable caution and who challenge reality. That's what you all have to do with respect to this Bank. You have to accept that exclusion of the relevance of human rights is irrational. It should not be allowed to continue. You must not let it continue. You may fail at first. But it is not acceptable for you to give in. You have to keep insisting that things should be changed. That's what Nick Toonen and Rodney Croome did. All credit to them. Later still their case came to the High Court of Australia. This occurred after I had been elevated to the High Court of Australia. I had to disqualify myself from taking part in the case because I had given them money. I had also spoken to them and supported them. But they ultimately also won in Australia. Just as they did in Geneva. The tide was turning.³⁰

8. Global leadership and LGBTIQ advocacy

The eighth change is global leadership. We will never have had such unanimity among the leaders of the UN on this issue as we have at the moment. We will never get a Secretary-General who is so committed to the cause of equality and non-discrimination as Ban Ki-moon.

In October 2014 I was given an award for the work of the North Korea inquiry. I received it at a UN Foundation dinner in New York. I had a set piece speech talking about the North Korea inquiry and the good things the UN had done. But Samantha Power, the Ambassador of the United States to the United Nations, rose and said (speaking of me) “He’s not only done this on North Korea but he’s also been a leader in LGBT rights throughout Australia. He’s been standing up for this. He’s had a partner for a hundred years. He’s been a great exponent for defending the rights of others. But he also defended his own rights.”

So I took the occasion to speak about this cause. I paid a tribute to Ban Ki-moon for his steadfast, repeated, insistence on non-discrimination against LGBTIQ people.³¹ He lifts his voice at every possible opportunity. In fact, the words that the SG has used are very similar to the words I saw coming from the President of the World Bank, Jim Yong Kim, where he says we must do this:

After all, the bottom line is clear: Eliminating discrimination is not only the right thing to do; it's also critical to ensure that we have sustained, balanced and inclusive economic growth in all societies — whether in developed or developing nations, the North or the South, America or Africa.

That’s what your President said. It is exactly what the Secretary General of the United Nations repeatedly says. The SG usually says it in the context of HIV/AIDS. He says we must not only take this course for public health reasons -- because it makes no sense

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from a public health point of view. But we must do so because it is the right thing to do. Because its required by the human rights principles for which the United Nations stands. Likewise, Helen Clark of UNDP. Similarly, Michel Sidibé of UNAIDS. These leaders who are heading important agencies at the United Nations are now all singing from the same hymn book. They are all saying this repeatedly. So it's very important also to say it at the World Bank. I'll come back to that in a moment. But the international institutions will never have so many of their leaders speaking with such clarity on this topic. It's a very good thing that they do.

9. *Changes in popular culture and its impact on values*

The ninth change involves media and popular culture. Who would have thought that, in the United States of America, after such earlier adverse statutes and cases we would have had the Supreme Court decision in *Lawrence v Texas*? Who would have thought that, in such a short time, so many States -- I think it's up to 34 states now, maybe more -- would have accepted marriage equality? It's amazing. It shows again the power of an idea whose time has come.

That idea hasn't spread throughout the rest of the world yet. It still hasn't reached Australia. It reached New Zealand 2 years ago. There was a wonderful occasion in the New Zealand Parliament when marriage equality was adopted. If you can get it on You Tube it's tremendously moving. When the legal amendment was adopted in New Zealand they sang a well-known Maori song, which is very powerful. The vote was overwhelmingly carried, with

Prime Minister Key, a conservative politician, voting for it. He led many of the conservative members to vote for it.

So popular culture has increasingly changed – certainly in developed countries; but also further afield. If one talks to young people, they just don't understand the opposition. They too have progressed beyond 1793. It's really a very powerful change that is happening. And it is not passing by the developing countries of the world.

I occasionally visit Nigeria. I went there first as a young student in 1963 - leading a student delegation of Australian university students. I keep getting invited back. In 2011, I went to a law school near Abuja. I talked to the young students. And I mentioned this issue of sexuality. I always mention this topic, everywhere. The lecturer said "If you were to say this outside you would get arrested." But I said "I know enough about the *Nigerian Penal Code* to know I would not be arrested." At least at that time this was true. You would not be arrested just for advocating rationality, science and change in the law. He was very upset. But all the young people wanted to have selfies and photographs with me. So I don't think we should assume that, at least young educated people throughout Africa, in Uganda, Kenya and Nigeria, still have the same old ignorant and prejudiced view. The World Bank should be a beacon for the enlightenment.

10. *The role and opportunity of the World Bank in today's world*

Now, tenthly, we come to the World Bank. In the World Bank there should be a change in the old attitudes towards the Bank's

Articles. And I can give you no better reasons for why there should be change than what has already been said by President Jim Yong Kim. Once you have acknowledged that the *Articles* have to be adapted to issues of race and gender, the same consequence is established with respect to sexual orientation and gender identity. It is the same *genus*. People just have to realize that. It may be uncomfortable for some people in some countries. UNAIDS has repeatedly to deal with countries for whom these issues are quite uncomfortable. The annual resolutions of the United Nations on the HIV epidemic have to be negotiated about HIV policies, and strategies. Likewise, with the *Millennium Development Goals* and now the *Sustainable Development Goals*. Change is uncomfortable. But all institutions and people just have to deal with it.

There is a much more fundamental reason why the World Bank has to change. The Bank is not, as such, a UN agency. But in my view it is unacceptable to say that human rights formulated after 1944 are unacceptable because this would wrongly treat the *Articles* of 1944 in a political way. It is quite wrong to say that human rights can be ignored because they are “political”. The Bank as an international corporation. It is a responsible institution, established by law operating in the world that is today shaped and influenced by international law. This includes the international law of human rights. The Bank’s participating states are now UN member countries. They are all clearly bound by international law, as expressed in UN treaties. This is the context for all of the Bank’s operations. It is the context, in today’s world, for interpreting and understanding the Bank’s *Articles*. It is the context

for ascertaining the duties of its directors. The Bank cannot be completely disconnected from everything that has happened in the *law* of the international community since 1944. I'm talking about the law of the global community: international law. I'm not talking about what *should* be. I'm talking about what is in *law*. This is the obligation of every actor in the international community governed by law. Not just United Nations agencies. It's very important that this should be understood within the Bank.

This point has been said before in various ways. James Wolfensohn, when he was President of the Bank, said as much. And recently in that a joint letter of 12 December 2014 that you have probably seen, all of the relevant special rapporteurs and UN human rights mandate holders have said it. They say this is not a matter of *should*. It is a matter of *must*.

The principle at stake in this debate is critical. The Bank is subject to the law. It has to conform to the law. Saying that the Bank should have a 'general regard' for human rights -- is just not good enough. The international community through the United Nations has established international law. That law deals with a basic respect for fundamentals. In fact and law this is what the UN is about. It's mentioned in the very first preambular paragraph to the *UN Charter*. It's not optional, as I see it. Today one has to read other documents of international bodies, such as the Bank's *Articles* in the context of the body of law that has developed since 1944. That means that, the Bank has obligations to take into account. But it also has to observe, all of the developments of international law that I have mentioned in this talk.

Now, I am I'm not a lawyer for the Bank. However, I recently read a very good opinion on the Bank's duties expressed by Roberto Dañino. It's a powerful opinion. It says everything I would want to say. It's so clear that I don't really know why I've been brought along here to add to it. Hopefully, one purpose of bringing me was that ultimately, everyone would get a drink. But also reflect on the changes in the world and in the Bank. I do want to thank you all for coming along. A meeting such as this would probably not have happened twenty years ago. It probably wouldn't have happened even ten years ago. It possibly wouldn't have happened even five years ago. However, it's happening now because people, gay and straight, have had enough. They are not going to tolerate the continuation of irrational policies that are contrary to international law. At least, they are not going to do so in the work place where they serve vital international objectives.

Nor should employees be asked to serve in a very important international institution whose mission is affected by a narrow and excessively conservative reading of its *Articles*, out of the context that has developed since 1944.

Let me therefore conclude. Basically, I just don't see what the legal problem is. And as far as I am concerned the case is over. The issue is decided. In summary, for me the controversy is not a matter of *should*, this is a matter of *must*. Those who say otherwise are attempting to impose their values on the World Bank's *Articles*. The *Articles* are meant to serve the Bank and the international community (until formally charged) for an indefinite

time. Yet they do not stand still. That was neither the intention of the founders. Nor would it have been within their powers to impose such rigidity. That approach would not be suitable or appropriate to the function that the *Articles* were intended to serve. That function is to operate in the here and now. In the context of the world as it is, not the world as it was in 1944. The world of today is shaped and governed by the international law of human rights. This is *law*, not *policy*. It is *must* not *should*. In the case of a legal entity such as the World Bank, conformability with international human rights law is not an option. It is a duty.