

2786

INTERNATIONAL AIDS CANDLELIGHT
MEMORIAL

TE MARAE TE PAPA, WELLINGTON

17 MAY 2015

SUPPORTING THE FUTURE ON AIDS: TEN
COMMANDMENTS OF TE PAPA

The Hon. Michael Kirby AC CMG

INTERNATIONAL AIDS CANDLELIGHT MEMORIAL

TE MARAE TE PAPA, WELLINGTON

17 MAY 2015

SUPPORTING THE FUTURE ON AIDS: TEN COMMANDMENTS OF TE PAPA*

The Hon. Michael Kirby AC CMG**

HEAVENS' EMBROIDERED CLOTHS

Tena koutou, tena koutou, tena koutou katoa

I am grateful to Body Positive in Wellington for inviting me to this annual remembrance of the fact that we are all living with the AIDS epidemic. We will not forget the names of those who have died. I express special thanks to the Glamaphones and Ti Whanawhana for the marvellous spiritual music that has lifted our thoughts from the events of everyday life. Music, art and poetry can do this for us.

In this Marae, our hearts are lifted with our eyes as we look to the marvellous sculptures that provide the backdrop for this ceremony. I thank the Museum that is our host, for providing the history of the New Zealand AIDS Memorial Quilt. The large panel displayed as we came to this place takes our minds back to the people, families and friends who

* Text for the address at the Annual Candlelight Memorial in Wellington, New Zealand, 17 May 2015.

** Former Justice of the High Court of Australia (1996-2009); Vice-Patron, New Zealand AIDS Foundation; member UNAIDS Reference Group on HIV and Human Rights (2003 -); member UNDP Global Commission on HIV and the Law (2010-12); Member WHO Global Commission on AIDS (1988-92).

were the early casualties of HIV. Jeff Fortune, and his brothers and sisters, named in the panels, are with us today in spirit. The beauty of the quilt signifies our loss.

*Had I the heaven's embroidered cloths,
Enwrought with golden and silver light,
The blue and the dim and the dark cloths
Of night and light and the half light,
I would spread those cloths under your feet:
But I, being poor, have only my dreams;
I have spread my dreams under your feet;
Tread softly because you tread on my dreams¹*

I come with gratitude to this Memorial of suffering. It coincides with another recollection of death and pain in which Australians and New Zealanders were bound together: the sacrifice of Gallipoli on the Dardanelles exactly a hundred years ago. It was there that comradeship and the common pursuit in a difficult struggle were added to geography to bind our two countries together, forever. We have sporting and other rivalries. But, basically, nothing will undo the unique relationship that joins New Zealand and Australia.² So it has also been with our common struggle against AIDS.

Today, 17 May 2015, is the International Day Against all forms of Homophobia and Transphobia (IDAHOT). In faraway Geneva, Michel Sidibé, Executive Director of UNAIDS, declared:

¹ W.B. Yeats, *Collected Poems*, "He wishes for the Cloths of Heaven", Macmillan, Second Ed, London, 81.

² Paul Little, "The Best of Friends", *Herald on Sunday* (New Zealand), 26 April 2015, 14.

“We cannot tolerate picking and choosing rights in a modern society – a society where diversity is celebrated; a society where everyone no matter where they live or whom they love, is able to live in peace and security; a society where everyone can contribute to the health and wellbeing of their community. We can make this society a reality. But we will need global solidarity.”³

In Washington D.C., President Obama issued a declaration:

... To reaffirm that lesbian, gay, bisexual and transgender rights are human rights, to celebrate the dignity of every person and to underscore that all people deserve to live free from fear, violence and discrimination, regardless of who they are or whom they love.”⁴

Even in London, the Commonwealth Secretary-General, Kamallesh Sharma, frequently silent on this issue, declared:

“Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Commonwealth citizens remain victims of stigma and discrimination in many of our communities. Appalling persecutions and violence are suffered merely because of innate sexual orientation and gender identity. Such abuse is unacceptable: it robs millions of our fellow citizens of the right to live lives of dignity, undermining their mental and physical health, and sense of well-being. It leads to social estrangement, ostracism and isolation,

³ M.Sidibé, Message from the UNAIDS Executive Director on the International Day Against Homophobia, Transphobia and Biphobia (IDAHOT), Geneva, 17 May 2015.

⁴ Statement by the President on the International Day Against Homophobia and Transphobia, The White House, Washington, May 16, 2015.

and economic marginalisation. It flies in the face of our core values of equality and non-discrimination. ... '[D]iscrimination has no place in the modern Commonwealth'. ... Let us find ways of working together to strengthen universal rights so that all our citizens are able to enjoy what should be their Commonwealth birthright."⁵

We who gather at this Memorial know of the discrimination and violence talked about. Moreover, we know of the toll that it takes on the global struggle against the spread of HIV and AIDS. Sadly we also know that words come cheap. Resolute action is required to redress homophobia and transphobia and to address effectively the still continuing epidemic of AIDS.

GOOD AND BAD NEWS

The bad news: As we come together for another AIDS Memorial, we realise all too well, that the decades since the advent of HIV and AIDS have been full of bad news, that makes us sorrowful:

- * Although there was a promise, at the beginning of the epidemic, that we would have a cure by now that would rid the body of the those infected of all traces of HIV, the cure is still eluding our best endeavours;
- * We were also told that there would have been a vaccine long since. But despite efforts, on every continent, a vaccine that is safe and effective, continues to escape our ingenuity;

⁵ Statement by the Secretary-General of the Commonwealth of Nations, London, 15 May 2015.

- * Hostility and antipathy are dreadful companions throughout the world for people living with HIV and AIDS. In many cases, those people who are targets are also members of vulnerable minorities: men who have sex with men, gay men, sex-workers, injecting drug users, prisoners, refugees. The dream of an end to such discrimination still seems a long way off. In Australia, a recent report by *Beyond Blue* revealed continuing high levels of homophobia amongst Australia's teenage boys between the ages of 14-17. Amongst them, 38% answered that they would not be happy being friends with a same-sex attracted person; 41% said that lesbian, gay and bisexual people made them feel uncomfortable; 34% did not feel that ending a friendship, if someone were gay, would be discrimination; and 19% saw homosexuality as 'immoral'. These are the young males entering our communities today.⁶ In New Zealand, the noted sports journalist Mark Reason wrote a call for truth and kindness to predominate amongst and towards national sporting teams on sexuality grounds. For his pains, he received hundreds of tweets, 95% of which were negative to his appeal;

- * On the treatment front, there is evidence of a need for many who are in receipt of anti-retroviral therapy, to step up to 'second, third and fourth line' pharmaceuticals which will be prohibitively expensive for people in the poorer countries of the world. Truly, we face the risk of withdrawing treatment from those in need, in

⁶ *Beyond Blue*, results of teen poll on homophobia, April 2015, <http://www.beyondblue.org.au/about-us/news/news/2015/03/30/major-campaign-aims-to-stamp-out-discrimination-against-lgbti-people>

developing countries, because of the unavailability of effective but costly treatment; and

- * Finally, there are some words, usually unspoken, which at this ceremony in Sydney a year ago, John Rule, a leader at APHWA, voiced in his Candlelight Memorial address.⁷ He pointed to the burst of energy that immediately preceded the arrival of AIDS. To the hope of liberation of young people so often repressed and hated for their sexuality. Tragically AIDS carried off so many of that generation. Before effective treatment, they died. They have not grown old with us. We will never know what their contribution would have been towards ongoing reform. But we do know the loss of momentum that our societies have suffered. On this day, we mourn them and we mourn their loss.

The good news: Yet whilst we reflect on the misfortunes of the past 3 decades, we can also remember the good that has occurred:

- * First, the amazing and rapid response of the international community, and the United Nations, following the arrival of AIDS. The advent of Jonathan Mann, to lead the Global Programme on AIDS for the World Health Organisation. The way he insisted, from the very start, that every activity, event and initiative in this epidemic must have full participation and strong voices from people living with HIV and AIDS and those closest to them. No longer spoken of or at. Speaking up and acting up as full participants;

⁷ John Rule, "What Candles May be Held to Speed Them All?", address to AIDS Candlelight Memorial, 18 May 2014, Surry Hills, Sydney (unpublished).

- * Secondly, we can remember the outstanding political response at least in our countries. By Fran Wilde; Venn Young; Neal Blewett; and Peter Baume. At a time of disillusionment with politics, the engagement of all major political parties (symbolised by the contributions to this Memorial occasion) has set the gold standard for putting vital initiatives above party squabbles. This is why it proved possible for you in New Zealand to give a lead to the world, including Australia, by the needle exchange initiative. And by the campaigns for condom use and safer sex in which Dame Margaret Sparrow memorably gave a lead in New Zealand. The result of these initiatives was that the rapid growth of infections declined and plateaued, until recently they have begun to climb again. But at least we now know the strategies that work. We must redouble our energy to revive them;

- * Thirdly, the advent of the AIDS epidemic encouraged global solidarity and community activism like never before. It also encouraged LGBTI citizens individually to cast off the stigma that other (frequently religious) people sought to impose upon them. They came out from hiding their true identity. I know, because this happened to me and my partner Johan. Against the huge burdens of the AIDS affliction, our little 'secret' seemed so trivial and contemptible;

- * Fourthly, in the mid-1990s, antiretroviral therapy (ART) burst upon the scene. How grateful we must be to the scientists who discovered, experimented and then propounded combination therapy that made such a difference. For some, tragically, it came

too late. But many of those living with HIV and AIDS were suddenly rescued from the jaws of death. It was not a cure. Yet it was the next best thing;

- * Fifthly, the realisation of the good fortune of those who received ART mobilised the world into an extraordinary global response. UNAIDS and WHO, together with UNDP, UNICEF and many other United Nations agencies, cooperated to promote the availability of ART worldwide. With the help of PEPFAR and of the Global Fund against AIDS Malaria and Tuberculosis the world provided funds to ensure that 15 million positive people, most of them in poor developing countries, would receive ART. Today, they must be maintained as must a further 15 million who would benefit from such treatment. In a world of conflict and danger, this solidarity has been an inspiration. It must be preserved.

TEN COMMANDMENTS OF TE PAPA

So this brings me to the ten commandments which I propound today. The *Ten Commandments of Te Papa*. They are addressed to the challenge before us to support the future response to HIV and AIDS.

1. *Learn from the past.* First, we must to learn from the past. We must never forget those who died in the early years of AIDS. We must remember their names, as we promised we would do. I remember here and now Daniel, Brett, Peter, Kathleen, Peter, Frank, Fred, Andrew, Stuart, Richard. We must be energised by the memory of their loss and the suffering that they, their lovers and families underwent. Years ago when the AIDS Quilt was first

made, we promised that we would remember them. All too often, we have forgotten. The Quilts have been neatly folded and put away. Those quilts should be on display at all times. Later this year I return to Wellington for inauguration of a museum to remember genocide and the Holocaust. I welcome this. But we should also move to inaugurate, in every country, a national museum to commemorate and remember those who suffered from LGBTIQ hostility and hatred. This is a revolution that we are still living through. We need to record the struggle so as to ensure that it is completed and it is not repeated.

2. *Promote education:* We must pass laws and adopt policies that respond effectively, at the global, national and local levels, to HIV and AIDS. Yet laws and policies alone are not. Essential changes cannot be achieved only by governments. Individuals and the private sector, non-governmental organisations and religious institutions must be part of the change. Every society must promote education: about the truth of HIV/AIDS and about the danger of stigma and discrimination. The recent poll of teenage youth in Australia is a clear lesson of the need for education. Schools, including religious schools, must be part of this educational revolution;
3. *Facilitating the test:* We must also do everything in our power to facilitate and encourage early testing of HIV by all those who may be at risk. Informed consent and counselling is a prerequisite. Mass screening is contrary to human rights. It is uneconomic and ineffective. But we must make getting people to the test easier, cheaper and simpler. Knowing one's HIV status, and

regularly checking it where that is prudent, is essential to getting positive people onto ART. With the help of informed individuals and communities the impediments should be reduced,. In both Australia and New Zealand, there is clear evidence that many vulnerable people at risk, including in the MSM population are unaware that they are, or may be, exposed to HIV;

4. *Treatment as prevention:* As a consequence of more and more rapid access to HIV testing, we must ensure the availability of ART for those who test positive. There is now undisputed evidence the effectiveness of ensuring that positive people have access to ART. The viral level falls. So long as they maintain their regimen, they will not pass the virus onto their sexual and other close partners. This is treatment as prevention. If enough people can be brought into treatment, the critical mass will be achieved that will banish the HIV epidemic from human history;

5. *Avoiding inefficient laws:* It is then necessary to avoid inefficient laws. In many countries, colonial criminalisation of LGBTI persons is still the law.⁸ This is so in 43 of the 53 countries of the Commonwealth of Nations. There must be solidarity to rid the statute books of those laws.⁹ And in countries that have done so, or are considering it, we should discourage the enactment of laws that criminalise the passing of the virus in consensual adult private sexual conduct. Such laws are ineffective and counter-

⁸ UNDP Global Commission on HIV and the Law: *Risks, Rights & Health* UN, New York, July 2012, 44-54.

⁹ Commonwealth of Nations, Eminent Persons Group, *A Commonwealth of the People – Time for Urgent Reform*, London, October 2011, 100-101

productive. Criminal law is an impediment, not an aid to useful HIV strategies;¹⁰

6. *Overcoming the logjam:* In the countries that still have criminal laws against groups vulnerable to HIV (MSM, transgender persons, sex-workers, prisoners) fresh global solidarity must break the logjam that has impeded the repeal of such laws. Instead of repeal, a number of countries have begun to enact new and even more draconian laws against MSM: Uganda, Nigeria, Kenya and the Russian Federation. These laws promote and sustain hostility. They impede access to essential information necessary to bring the HIV epidemic under control;
7. *Promoting solidarity:* We must also promote solidarity between people living with HIV and AIDS nationally and internationally. And encourage energy and cooperation between LGBTI people in our world. The strong initiatives of the United Nations and of leading institutions and countries, must to be redoubled. Even in the face of hostility, these efforts must be pursued. Sadly, the need for reform is often strongest in those countries with large and growing HIV epidemics. They must be encouraged, and helped to address their own problems: stemming in part from ineffective and counterproductive laws, policies and attitudes;
8. *Maintain foreign aid:* In the face of the Global Financial Crisis, the maintenance of the promised subventions to support the Global Fund and multilateral and bilateral support for HIV strategies must be seen as more important than ever. For propounded economic

¹⁰ UNDP Global Commission report, *ibid* 24. United Nations, UNAIDS, *Ending overly broad criminalisation of HIV non-disclosure, exposure and transmission: Critical Scientific, Medical and Legal Considerations*, Geneva, May 2013, 41.

reasons, several wealthy countries have reduced the provision of promised aid. Recent budgetary moves in countries such as Spain and Australia have endangered the effectiveness of regional and national responses to HIV, including the provision of ART to vulnerable groups. Community organisations must insist that wealthier countries, such as New Zealand and Australia, maintain the levels of their foreign assistance. Not only is this the correct policy. It is also in the best interests of the donor countries themselves. In the context of global travel today, containment of an epidemic overseas, like HIV, is not possible. Helping others, helps oneself;

9. *Reforming patent laws:* There is also need for reform of the laws on intellectual property protection (patents) as they affect the cost of pharmaceutical drugs, and specifically ART.¹¹ The need, with passing time, to step the treatment regimen to second, third and fourth line therapies presents the added costs of heavily patented drugs. Here there is seen the clash between universal human right to essential healthcare and the human right of just rewards to scientific inventors. The proposal of the UNDP Global Commission on HIV and the Law must be pursued. All countries with an interest should encourage the United Nations to take, and follow up, these recommendations;
10. *Supporting science:* At the beginning of the HIV epidemic, led by Jonathan Mann and early officials of great ability and foresight, the United Nations adopted a scientific approach to HIV. This must be maintained. It involves replacing mythology and

¹¹ UNDP Global Commission on HIV and the Law, *ibid*, 76-87, 104.

prejudice with truth and science, barbed wire with engagement and outreach. A scientific approach will eventually produce a cure to HIV and a vaccine to permit global prevention. The international community must be prepared to expend sums necessary to develop such therapies without delay. If only a fraction of the sums expended on military and nuclear weaponry were spend on HIV research, we would long since have found a cure and an effective vaccine. Nations must support such research and encourage its energetic undertaking. One day, the dream of a cure and a vaccine will be realised. By the ingenuity of human experimentation, we will then banish HIV and AIDS to a footnote of epidemiological history. But when we do so, our nations must be able to look back with pride, and not shame, at the way we responded when the world was in darkness, before the light came.

Once again, I thank my New Zealand brothers and sisters for inviting me to join in this Memorial. I appreciate their generosity of doing so despite our sporting rivalries and despite the occasional misappropriation of the invention of the ice-cream *Pavlova* and the discovery of *Crowded House*. At the centenary of Gallipoli, this Memorial occasion occurs to remind us of the things we share in common. And the true friendship we have forged and must ever maintain.