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NECESSARY ACTION

A WORLD AIDS DAY REFLECTION 2010

30 November 2010

The Hon. Michael Kirby AC CMG

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### **COMMONWEALTH COUNTRIES HAVE MOST HIV CASES BUT ARE THE MOST RELUCTANT TO TAKE NECESSARY ACTION**

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Commonwealth countries have 60 percent of the worlds AIDS cases although they have only 30 percent of the population. Yet they are amongst the most resistant to moves to remove legal impediments to effective strategies to fight the epidemic.

This is highlighted in a report by John Godwin, a Sydney legal expert on HIV law, on *Enabling Legal Environments for Effective HIV Responses: A Leadership Challenge for the Commonwealth* that we launch in Sydney today. This report has been published for the Commonwealth HIV/AIDS Action Group and the World AIDS Alliance. It is being launched in London on 1 December 2010 (which is World AIDS Day) by Justice A.P. Shah of India. The report is extremely urgent. It presents a huge challenge for the Commonwealth of Nations. It also presents a large challenge for Australia, because Australia will be the host nation of the Commonwealth Heads of Government Meeting (CHOGM) that will take place in Perth, Western Australia, on 28-30 October 2011.

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\* Based on remarks made at the launch at the Sydney Police and Justice Museum on 30 November 2010 of John Godwin's study *Enabling Legal Environments for Effective HIV Responses*, 2010.

There are no more important human rights than the right to life and to access to essential health care. However, the sad fact is that many, probably most, Commonwealth countries are presently resistant to taking the essential steps that will help turn around the AIDS epidemic in the developing world. How can we possibly secure self-empowerment and behaviour modification without removing the laws and stigma against those in society who are most at risk of HIV infection?

## **TWO WORRYING RECENT DEVELOPMENTS**

Two developments have occurred in recent weeks that appear to make the task of securing effective action by Commonwealth countries more difficult.

At the meeting held in London in late October 2010, a proposal to place HIV and law reform on the agenda for a meeting of Commonwealth Law Ministers in Sydney in July 2011, was rejected by senior officials from Commonwealth countries in the first instance. Although they agreed that further in-country consultation would be held and the issue may be re-visited prior to the Law Ministers' Meeting in July 2011, the response of the officials is very worrying. Rejection of the agenda item occurred despite the fact that the idea was advanced by the Law Minister of the host country for the next CHOGM meeting, the Attorney-General of Australia (Mr. Robert McClelland).

Very discouraging news from the point of view of the prospects of securing either advances by way of law reform to assist and promote the Commonwealth's effective response to the HIV/AIDS epidemic, and equally discouraging for the prospects of securing an advance in the recognition of discrimination against sexual minorities in Commonwealth

countries as an aspect of human rights protection for Commonwealth citizens.

In addition to this development a parallel disappointment occurred in New York on 17 November 2010 in the Third Committee of the General Assembly. This has not received much publicity. It needs to be known. It makes depressing reading. In that Committee, a proposal, seemingly uncontroversial, was advanced calling for reaffirmation of the resolution to halt extra-judicial, summary or arbitrary executions and the most serious human rights violations and loss of life on the ground, amongst other, of “sexual orientation and gender identity.

The proposal for the resolution was supported by the Secretary General of the United Nations (Ban Ki-moon) and the High Commissioner for Human Rights (Navi Pillay), as well as the South African Nobel Prize winner Archbishop Desmond Tutu.

However, by 79 votes to 70 (17 abstentions and 26 absent) the Third Committee of the General Assembly resolved to delete the reference to “sexual orientation” from the resolution altogether. Inferentially, they were not concerned about extra-judicial, summary or arbitrary executions on these grounds. Many Commonwealth countries voted for the deletion of “sexual orientation and gender identity” including Bahamas, Bangladesh, Belize, Botswana, Brunei, Cameroon, Ghana, Guyana, Jamaica, Kenya, Lesotho, Madagascar, Malawi, Malaysia, Maldives, Mozambique, Namibia, Nigeria, Rwanda, St. Kitts, St. Lucia, St. Vincent, Sierra Leone, South Africa, Uganda, Tanzania and Zambia. Zimbabwe also so voted. South Africa’s vote was particularly surprising, given the constitutional provisions in that country protecting people

against discrimination on the ground of sexual orientation. Countries abstaining included Barbados, Mauritius, Papua New Guinea, Singapore, Sri Lanka, Trinidad and Tobago, Tuvalu, Vanuatu and [Fiji]. Countries absent included Kiribati, Nauru, Seychelles, Solomon Islands and Tonga.

The Commonwealth countries that voted against the deletion of 'sexual orientation and gender identity' as a basis of reprehensible extra-judicial summary and arbitrary executions were only Australia, Canada, Cyprus, India, Malta, New Zealand, Samoa, and the United Kingdom. Eight countries. These grounds had been in the earlier drafts of the resolution for no less than 10 years. It seems astounding that they should now be taken out. It is greatly worrying that the move to do so was supported by most of the Commonwealth countries.

The Third Committee's amended resolution will be presented to the General Assembly of the United Nations for formal confirmation in the coming weeks with the references to sexual orientation and it is just as well that we in Australia are aware of the contemporaneous developments in both the Commonwealth of Nations and the United Nations. Botswana, a Commonwealth country, will be co-chair of the United Nations General Assembly Special Session Review in 2011 on the global response to HIV/AIDS. Its vote in favour of the deletion of condemnation of extra-judicial, summary or arbitrary executions on the ground of sexual orientation and gender identity is therefore specially concerning. Progress has been made in national attitudes on these subjects when compared to the past. But the progress remains very slow. It appears to need a well crafted stimulus at this time.

Tantrums and banging the table will not secure changes of attitudes. It will fall to Australia, as the host nation of the 2011 CHOGM meeting in Perth, to give real leadership. HIV/AIDS is a specific Commonwealth problem. Already 2.7 million people are dying every year in the world, most of them in Commonwealth countries. Fortunately, this is a subject on which, under successive governments, Australia has always acted in a clear and consistent way. Developed countries of the world cannot be expected to provide ever expanding funds to countries that will not help themselves by taking the essential steps to reduce the stigma and increase knowledge and awareness. This is not a threat. It is a simple statement of fact borne out by the recent failure of the Global Fund replenishment conference to secure the amounts needed for the global HIV response to HIV to be effective.

Although we do not yet have the cure or the lifesaving HIV vaccine, predicted at the beginning of the epidemic in the 1980s, we have undoubtedly made progress since those grim early days when the world began to live with HIV. Progress with the anti-retroviral drugs. Changes in attitudes to gays, sex workers and injecting drug users. Changes in many laws. But more needs to be done, especially in developing countries. And particularly in the countries of the Commonwealth of Nations. Australia's role as chair and host of CHOGM in 2011 presents us with a rare chance to show global leadership. We can base that leadership on our own hard-won experience because, for once, the politicians in Australia were united in doing what was right rather than worrying whether it was popular.

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