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**DIVIDED BY MORE THAN A  
COMMON LANGUAGE**

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The Hon. Michael Kirby AC CMG

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Michael Kirby\*

My days in court were easier. At least there, participants generally spoke a common language. Mostly they shared common assumptions. Exchanges followed a generally predictable course. Laws and traditions identified the boundaries for disagreement. Compromise, or at least resolution, was normally achievable. And when it was not, there was a general understanding of the other point of view; sometimes even a grudging respect for it.

In the big world, outside the courtroom, progress is often much more difficult. Sometimes it is nearly impossible. Take three international bodies on which I am serving and events in which I have been engaged over the past year.

One of them is a group advising UNAIDS, the joint UN agency that coordinates the worldwide efforts to reduce the spread of the human immuno-deficiency virus (HIV) that causes AIDS. In early 2010, I went to a conference in the Netherlands with religious leaders from around the world, aimed at promoting dialogue between experts engaged in reducing the incidence of HIV infections. A Catholic archbishop from Africa rubbed shoulders with a Hindu swami from India. A stern Lutheran bishop from Scandinavia swapped stories with the Coptic

Pope. Pentecostals from the Caribbean conversed in a corner with a Buddhist monk, dressed in orange saffron robes, from Cambodia. The Archbishop of Canterbury sent a video message. Mullahs from Iran and Egypt listened quietly to a rabbi from Israel. As the head of UNAIDS (Dr. Michel Sidibé from Mali) opened the proceedings, I was full of hope.

The three days of exchanges were far from useless. Returning to our homes in the four corners of the earth, we took away ideas and memories of human faces to connect to the explanations of where we were all coming from. But the going really got tough towards the end of the meeting when the generalities were dropped. And when we were asked to agree on a statement that urged religious leaders worldwide to become part of the solution to this epidemic, rather than part of the problem.

The AIDS experts demonstrated the urgency of the challenge. Still no cure or vaccine, 25 years into the epidemic. Still 2.6 million people annually becoming infected. Still much the same highly vulnerable groups, specially exposed to infection: sex workers, injecting drug users, vulnerable and disempowered women, prisoners and refugees. And men who have sex with men, the UN formulation for homosexuals, gays. Many of the religious participants could agree on bland generalities and pleasantries. But when I urged the necessity to specifically mention and acknowledge the specially vulnerable groups, there was strong resistance or silence. 'You can't expect me to sign on to that. If I did that, I could not preach when I returned home. I would lose my credentials. It would be shocking to people of my religion', said one irate participant. Even to use the words – even to acknowledge the urgent need for outreach to sex workers, gays and drug users, could

possibly de-legitimise many in the room in the eyes of their co-religionists. Or so they feared. The fact that overcoming stigma is the best way to begin the process of communication and behaviour change, did not matter. It just was not on.

A bishop from Africa took an earlier taxi to Amsterdam airport to avoid the half hour taxi ride with me. The messages I was bringing about gays and sex and death and suffering were either too confronting or too conflicting to be endured. Especially painful is a dialogue that the recipient knows represents the truth, but where it cannot be uttered because it appears to conflict with ancient scriptures. In a room full of gorgeous robes, the problem in many minds and hearts was 'the problem of the text'. When God is believed to be speaking through scripture, no other voice, it seems, can be tolerated.

In January 2011, I attended a meeting in Kuala Lumpur of the 'Eminent Persons Group'. This is a body about the future of the Commonwealth of Nations. It will report for the CHOGM meeting which Australia will host in Perth in October 2011. The group was established at the last CHOGM in Trinidad, to try to breathe new life into the Commonwealth. Before the group was clear evidence that rates of HIV infection in Commonwealth countries run at twice the level of the rest of the world. Why should that be so?

The British gave their Empire many valuable gifts: language, sports, courts, democratic elections and trade. But amongst the gifts was one less lovely. In more than 40 of the 54 nations of the Commonwealth, homosexual activity is illegal, even when conducted in private between consenting adults. The 'white' dominions and a few others have got rid

of these laws, and many of the attitudes they reinforce. But in the 'new' Commonwealth, they remain resolutely in place. Likewise, laws and policies on sex work (prostitution) and harsh laws on drug use. Getting fresh thinking on these topics is very hard.

Recently, Australia tried to put repeal of the colonial laws against gays on the agenda for the Law Ministers who will meet in July 2011, in the run-up to CHOGM. A number of the ministers' officials requested to consult their governments before the item was added to the agenda. Now the Australian Attorney-General, Robert McClelland, has notified that he has been taken the topic off the agenda. There is no consensus, he says, to even have discussion about it.

As we parted from our meeting in Kuala Lumpur, the news broke of the murder in Uganda of David Kisule Kato. He was a gay activist, urging reforming reform of the law in his country. He was killed by hammer blows to the head in a society where the media had named him and other gays under the heading "Hang Them!", Kato's death produced strong statements from the UN Secretary-General, Ban ki-Moon, President Obama, Secretary of State Clinton and other world leaders. The response of the Commonwealth (and of Australia, for that matter) was distinctly muted. Perhaps the call for action on this topic is too upsetting for the listeners. Perhaps the upset might cut across Australia's Security Council campaign?

Then last week, in Bangkok, Thailand, I joined in a unique consultation with participants from all over the Asia-Pacific region. This was held under the auspices of the new Global Commission on HIV and the Law to which I have been appointed. That body has been created by the

United Nations Development Programme (UNDP) to stimulate fresh thinking about law, as it interferes with a successful response to the spread of HIV. This is a worldwide problem. Globally, the big challenges concern the laws on pharmaceutical patents that increase the costs of HIV therapies. But there are also our old friends, the laws on gay sex, drug use and sex work. Upon these, civil society generally says one thing. But the rulers cling to the current laws.

One exception is Fernando Henrique Cardoso, past-President of Brazil. He is the President of the UNDP Commission. Having helped stabilise the economy of Brazil, Cardoso has been leading efforts to ensure access by the poor in Latin America to HIV therapies and the replacement of prohibitionist laws on personal drug use and sex work. Because the British Empire made little impact on South America, virtually none of the countries there ever had criminal prohibitions on gay sex.

I watch ex-President Cardoso at work. A Professor of Sociology and an economist, he tells things as they are. For him, the language of economics is just as important in getting change as the language of human rights. Perhaps, with his credentials, he will find a formula for dialogue with those who resist any change of the present laws, even though they know that change is essential to bring down the levels of HIV infections.

It is not easy to dialogue in Pakistan about blasphemy; in Malaysia about apostasy; in Jamaica and Uganda about homosexuality; in Singapore about political criticism; and in Australia about boat people. But dialogue we must.

Getting dialogue between people who have completely different starting points to their understanding of problems, is a major challenge in today's world. We are thrown together by jumbo jets, the internet, iPads, Twitter and Facebook. But we still have difficulty in talking the same language, especially to our leaders. On the issues of AIDS, those leaders all too often listen to religious prelates in gorgeous attire, who are long on condemnation and short on practical workable solutions.

There is no point in banging the table on these issues. Denouncing those who will not listen to rational arguments rarely makes things any better. People like me have to learn where those who resist fresh thinking are coming from. Finding common language and exploring common ground is the immediate challenge. In the case of AIDS, this involves exploration of the central message of love for one another that exists in all of the world's leading religions. All of them teach the Golden Rule. Many of them play important roles in delivering health care services and education. If they can be won over, even partly, they will be important allies. Yet with funds for the global response to AIDS diminished by the global financial crisis, and 2.6 million people still becoming infected every year, there is no time for delay. The challenge is urgent. That is why effective dialogue across borders and cultures is imperative.

In 2005, La Trobe University in Melbourne established a Centre for Dialogue. Already it has engaged in international exchanges over the common problems presented by global media and technology. It has organised a regional dialogue between leaders of the multiple religions in Australia and its region. Engaging in dialogue with countries and

leaders on the front line of the AIDS epidemic is just one of the many challenges of the world today. I praise the imagination that led to the creation of the Centre for Dialogue at La Trobe. The new technology of the world links our minds. We see and hear the necessary words. But are we understanding what the words say? Do we appreciate the urgency of the ideas they promote? Can we turn communication into genuine dialogue? These are challenges worthy for an Australian university to tackle and to help resolve. And all Australians must join in the dialogue.

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\* *Michael Kirby was a High Court judge (1996-2009). On 21 February 2011, he receives an Honorary Doctorate of the University from La Trobe University, Melbourne.*