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INSTITUTION OR NEW HOPE?

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The Commonwealth of Nations is a voluntary association of 53 countries whose links began in history, specifically (in almost all cases) the history of the British Empire. Today, its links rest on values said to be held in common.

Yet despite lauding these common values, increasing numbers of Commonwealth countries engaged officially in, or turned a blind eye to, grave abuses of fundamental human rights. Sadly, in the Commonwealth Secretariat in London, the reaction has not been a strong resolve to insist on forthright adherence to the asserted principles of the Commonwealth. Instead, it has been the embrace of a so-called 'Commonwealth way'. Effectively, this has meant doing nothing substantive when a serious breach of agreed values was alleged. The institutional machinery of the Commonwealth has proved incapable of strong action.

There were increasingly impatient assertions to the effect that the Commonwealth was a weak and insipid body which, when its serious values were challenged, contented itself with platitudes. In October 2010, a memorandum from the Secretary-General Kamalesh Sharma instructed staff not to speak out on human rights.

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A genuine debate began to surface in many Commonwealth countries suggesting, for the first time, that it would be better if the organisation suspended or expelled for a time member countries that were in serious breach of its essential values. Only in this way, would the association retrieve its reputation for a serious commitment to the values nominally espoused. The present Secretary-General does not share that approach. He is committed to ‘the Commonwealth way’ and has alternated between worried media releases, quiet diplomatic dialogue and endemic secrecy.

The Eminent Persons Group (EPG), created in 2010 to propose changes to the Commonwealth swiftly came to the conclusion that there were urgent challenges. Its main danger was not attack from without but indifference and a sense of irrelevance within.

“The Commonwealth must speak with greater unity in the international community in [the] areas of common values. Such commonality will only be attained through a strong Commonwealth – one that is supported and enhanced by the policies and actions of each of its governments, and in which governments work more effectively to reach consensus on global issues. We do not pretend that consensus is possible on every issue. However, we are certain that it is possible on many of them: allowing the Commonwealth to exercise an influence for individual and social betterment, for peace and for security within its member states and in the global community.”

One of the recommendations of the EPG report was for a Charter: a statement of values and aspirations that could convey the ideals and objectives of the association.

During the Perth Commonwealth Heads of Governments Meeting (CHOGM), when the EPG Report came up for consideration, the members of the EPG who were present in Perth were invited to observe the meeting.

The most vital aspects of this proposed Charter were not adopted. Reference in the proposal of the EPG for an “enlarged role [be established] for... the Commonwealth Secretariat for promoting and upholding the Commonwealth’s values” was deleted. Specifically, the agreed Charter did not contain, any reference to a “Commonwealth Commissioner for Democracy, the Rule of Law and Human Rights” that should be appointed to provide “well researched and reliable information” simultaneously to the Secretary-General (SG) and the Chairperson of CMAG on “serious or persistent violations of democracy, the rule of law and human rights in member states”.

A question was directed to the Secretary-General by Prime Minister Stephen Harper of Canada. He asked what the Secretary-General thought of the proposal for a commissioner. To the astonishment of the members of the EPG present, Secretary-General Sharma stated that he could not see any reason for creating the post of Commissioner. He felt that the Secretary-General could adequately fulfil the duties expected of the Commissioner in the EPG Report. But this is not the case. Secretaries-General cannot possibly perform the detailed work of

investigating, evaluating and advocating every challenge to human rights, democracy and the rule of law that crosses their desk.

The Commissioner was to have been the central machinery through which the EPG envisaged the Charter to be carried into effect. It was a vital institutional design to revamp and renew the Commonwealth's institutional arrangements. We hoped that it might stimulate a more effective response to derogations from core values and ensure that the Commonwealth would, in future, be truly a 'values based' organisation, not merely on paper.

Yet again, a Commonwealth CHOGM had ended with a document in bold language expounding values. But with no adequate machinery to ensure that those values would be fulfilled.

Would the Commonwealth fall apart if its voluntary character were put to the test by a vigorous but professional human rights Commissioner? Would such a Commissioner be duplicating the work of the United Nations human rights machinery, which is itself imperfect? Is the most that can be hoped for in the Commonwealth that its Secretary-General whispers friendly advice and conducts 'good offices', with the aspiration of procuring improvement by consensus?

The answers to these questions is uniformly in the negative.

The failure to endorse a Commissioner is particularly regrettable with regards to the lesbian, gay, bisexual and transgender (LGBT) community. Though in preparing the draft of the Commonwealth Charter for the EPG I did not include express reference to sexual orientation or

gender identity - I knew that any such express reference was likely to be disallowed - an important section of the report addressed the intertwined issues of HIV/AIDS and the criminal laws against sexual minorities in Commonwealth countries. And the Charter expressly forbade discrimination.

The issues of HIV and sexuality are intertwined, because evidence gathered by the World Health Organisation (WHO), UNAIDS and United Nations Development Programme (UNDP) clearly demonstrates that identified vulnerable groups are most susceptible to HIV infection. Within the Commonwealth 40 of the 53 member countries retain anti-gay laws in their criminal codes, and so men who have sex with men are especially vulnerable as many will not access adequate health care or HIV education for fear of arrest or persecution. The anti-gay laws themselves were introduced by erstwhile British colonial rulers; the criminalisation of so-called 'unnatural' offences was a particular feature of British colonial rule and its aftermath.

In its report, the EPG invoked the UNDP data that called attention to the fact that the HIV epidemic was a special problem for Commonwealth countries. The EPG recommended that the subject should be placed on the agenda of all relevant Commonwealth meetings. It proposed that the Secretary-General should work with UNAIDS, WHO and UNDP to develop an effective programme and to protect vulnerable Commonwealth countries from the loss of protection by foreign and international aid. No such mission has been instituted.

In other Commonwealth countries, the years since the EPG report have been marked not by reform, as the EPG report recommended, but by the

adoption of further anti-homosexual laws. In Uganda, after a court on 1 August 2014 overturned the *Anti-Homosexuality Act 2014* on procedural grounds, a new *Prohibition of Unnatural Sexual Practices Bill* was introduced to replace the invalidated the Act. In states of Nigeria, new laws have been enacted to prohibit the ‘promotion’ of homosexuality. And violence and persecution against these groups has not abated. In Cameroon, on 19 January 2015, a trans-woman was attacked by 15 people, armed with stones and clubs. [Her story is recorded on the Human Dignity Trust Persecution Alerts](#). It is a melancholy record of oppression and violation of basic human rights in a Commonwealth country.

Perhaps the most virulent opposition to the EPG recommendations on HIV/AIDS and sexuality came from The Gambia. On 9 October 2014, President Yahya Jammeh signed into law an amendment of the *Criminal Code Act 2014* introducing life imprisonment for a broad and vaguely worded offence of ‘aggravated homosexuality’. He described homosexuality as “satanic behaviour”. He said he would “cut off the heads” of LGBT people found in The Gambia and gave a “final ultimatum” to those “vermin” to leave. According to the Human Dignity Trust website, eight people were arrested under the new law after November 2014, including a 17-year-old boy. President Jammeh led The Gambia out of the Commonwealth. But it was not because the organisation was standing up for LGBT rights.

The lesson of this story of efforts to renew the Commonwealth of Nations is of an opportunity lost. When the Commonwealth leaders gather in Malta later this year, they should return to the EPG recommendations that remain unimplemented. Specifically, they should

establish the office of Commissioner for Human Rights to give effectiveness to the Commonwealth Charter. The days of silence in the face of serious or persistent human rights violations must end. We must seize the unmet potential of the Commonwealth to contribute to a better world – including on the rights of its LGBTI citizens.