

**Remarks by Stephen Lewis, Co-Director of AIDS-Free World delivered at
the Commonwealth People's Forum on the eve of the
Commonwealth Heads of Government Meeting (CHOGM)**

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This is a moment of truth for the Commonwealth. The anti-homosexuality Private Member's Bill introduced into the parliament of Uganda, and now proceeding through the normal legislative process, puts the Commonwealth's legitimacy and integrity to the test.

In a fashion unmistakable in both clarity and intent, the putative legislation declares war on homosexuality. There are deeply offensive sodomy laws and homophobic statutes on the books of many other Commonwealth countries, particularly here in the Caribbean. But nothing is as stark, punitive and redolent of hate as the Bill in Uganda; nothing comes close to such an omnibus violation of the human rights of sexual minorities. For some time now, Uganda has had offensive anti-homosexual legislation on the books, but this variant, this inflammatory redesign makes of the law a veritable charter of malice.

What is truly staggering about all of this is that not a peep of skepticism or incredulity has come from President Museveni. And President Museveni is chairing the Commonwealth Heads of Government summit. In so doing, he makes a mockery of Commonwealth principles.

One must remember that the last meeting of CHOGM was held in Uganda in 2007, and issued what is called the "Munyonyo Statement of Respect and Understanding". It asserted that the Commonwealth "is a body well-placed to affirm the fundamental truth that diversity is one of humanity's greatest strengths". It went on to say that "accepting diversity, respecting the dignity of all human beings, and understanding the richness of our multiple identities have always been fundamental to the Commonwealth's principles and approach ...". President Museveni signed the document. How in the world does he reconcile the affirmation then with the defamation now?

It is noteworthy that much of the strongest opposition to the Bill is coming from the courageous Lesbian, Gay, Bisexual, and Transgender activists on the ground. LGBT activism always commands admiration, but in this instance especially so, because their very lives hang in the balance.

The proposed legislation actually mandates the death penalty for any HIV positive gay man who has sex with another man or any HIV-positive lesbian who has sex with another woman. But because it's often hard to believe the sheer malignancy of language, let me quote directly from the Bill itself. Section 2 of the Bill is titled, "The offence of homosexuality". It reads as follows: Clause "(1) A person commits the offence of homosexuality if --- (a) he penetrates the anus or mouth of another person of the same sex with his penis or any other sexual contraption; (b) he or she uses any object or sexual contraption to penetrate or stimulate the sexual organ of a person of the same sex; (c) he or she touches another person with the intention of committing the act of homosexuality."

Clause "(2) A person who commits an offence under this section shall be liable on conviction to imprisonment for life".

Where does the death penalty enter this twisted world of sexual paranoia? Let me quote the applicable section and sub-section. Section 3 of the Bill is titled, "Aggravated homosexuality". It reads in part: "A person commits the offence of aggravated homosexuality where the ... offender is a person living with HIV". "A person who commits the offence of aggravated homosexuality shall be liable on conviction to suffer death". And just in case there's any conjecture, we have this finale:

“Where a person is charged with the offence under this section, that person shall undergo a medical examination to ascertain his or her HIV status”.

From whence do such sentiments arise? What dark corner of the soul is at work? The entire bill confounds rationality.

In fact, the legislation has a powerfully Orwellian flavor. Section 14 has the title “Failure to disclose the offence”. It requires everyone in the entire society to report on any evidence of homosexuality and to do so within twenty-four hours. If it weren’t so extreme, so menacing, so lunatic, it would be the stuff of theatrical parody. Parents, teachers, doctors, entrepreneurs, preachers, landlords, community health workers, members of the media, civil society activists, anyone who can identify a homosexual, gay or lesbian, or has reason to believe that homosexuality is lurking, must report to the authorities or face a fine, or jail term of three to ten years, or both. Can you imagine a father or a mother turning in a son or daughter? Can you imagine a teacher ratting on a student? Can you imagine a physician who’s taken a Hippocratic oath to tend to the sick betraying that trust because of a patient’s sexual orientation? But that’s exactly what this law requires.

I’ve truly never seen its like before. Please forgive the harsh language, but this intended anti-homosexual statute has the taste of fascism.

And yet, that’s only the half of it. What is put at terrible risk here --- beyond the threat of the death penalty for HIV-positive homosexuals --- is the entire apparatus of AIDS treatment, prevention and care.

It’s profoundly ironic that the country that’s seen as emblematic of success in fighting the pandemic is now contemplating such a decisive step backwards. The effect of this legislation will inevitably be to demonize homosexuality even further, to intensify stigma, to drive gay men and women underground, to terrify them in their everyday lives, to diminish dramatically the prospect of counseling and testing to establish HIV status, to make it virtually impossible to reach homosexuals with the knowledge and education and condoms that prevent the spread of AIDS.

It’s equally ironic that this retreat into the dark ages of the virus comes at precisely the moment when the world understands the overwhelming importance of dealing with high risk groups, be they sex workers, or injecting drug users or men who have sex with men. Indeed, in Uganda itself, as recently as last year, the Uganda AIDS Commission, in conjunction with UNAIDS, called for a review of legal obstacles to the inclusion of most-at-risk populations, including MSM, in the response to the pandemic. That review built logically on the introduction, by the Ministry of Health in 2008, of the “Most At Risk Populations’ Initiative” (MARPI) formulated to target specific groups, including homosexuals.

The new legislation thus eviscerates existing public policy. Is no one in the political apparatus of Uganda alert to the destructiveness of it all? I am reminded of the remarkably sensible words of Michael Kirby, former justice of the High Court of Australia: “... the fact remains that the current approaches, particularly in Commonwealth countries in Africa, Asia and the Caribbean, place an impediment in the way of tackling this major epidemic. Criminalize people and you cannot reach out to their minds and effectively influence their conduct ... that message is now one of great importance for the Commonwealth of Nations where AIDS is definitely a priority issue.”

Indeed, there’s a very real crisis of conscience in the offing. Both the Presidential HIV/AIDS Initiative in the United States --- PEPFAR as it’s known --- and the Global Fund to Fight AIDS, Tuberculosis and Malaria, have invested huge sums in Uganda to subdue the pandemic. Last year from PEPFAR alone, the amount was \$283 million, and the Global Fund has a five-year commitment of another \$250 million. But both those organizations premise their support in part on dealing with high-risk groups. What are they to do? This is no trifling matter. Members of Congress have already written to the Secretary of State raising the dilemma of having PEPFAR’s work on the ground in Uganda so dramatically compromised. More, under the recent revisions to PEPFAR, the

United States must now negotiate “Partnership Framework Agreements” with recipient countries, and part of the agreement hinges on addressing target groups, including men who have sex with men. How in the world is that to be negotiated in the face of the anti-homosexuality bill?

Moreover, under President Obama, American policy is clearly shifting. This is a very good thing. Under the previous administration, the United States, through PEPFAR, forced countries like Uganda into compliance with awful policies involving, for example, sex workers and abstinence...; the United States used money, and withheld money, to serve a right-wing agenda. In a sense, Obama is now involved in an act of redemption.

Just last March, the US administration declared its support for a UN declaration on sexual orientation and gender identity. The declaration is strong: it calls on all countries to decriminalize consensual homosexual conduct, and it condemns violence, discrimination, exclusion and stigmatization based on sexual orientation and gender identity. It also condemns killings and executions, arbitrary arrest and deprivation of economic, social and cultural rights on those same grounds. The declaration is seen as a great victory for LGBT human rights. It has the support of 67 member states. I note, with consternation, that Mauritius is the only African Commonwealth country to have signed, and I note, with profound dismay, that not a single Commonwealth country in the Caribbean has signaled support.

President Obama, on the other hand, is firmly on record for the protection of gay and lesbian rights, and Hilary Clinton has said “...human rights is and always will be one of the pillars of our foreign policy. In particular, persecution and discrimination against gays and lesbians is something we take very seriously”. Dr. Eric Goosby, who heads PEPFAR, is even more firmly on the record: “I look forward to working with field and headquarters staff, Congress and others in the Administration to ensure that PEPFAR effectively targets the most-at-risk and vulnerable populations --- including LGBT populations --- with culturally appropriate prevention, care and treatment interventions”.

The Government of Uganda and PEPFAR are on a collision course. President Museveni had best wake up and smell the dollars.

I would never wish to counsel financial penalties, but it’s a real conundrum. Worse, the employees of the non-governmental community-based organizations that receive the money would be subject to risk of imprisonment if they continued to work with homosexuals. I was struck by a letter written to the American Ambassador in Uganda, from a group of Foundations that do HIV/AIDS programming in the country, asking him to “take appropriately stern action to oppose the bill ...” They were agitated and vehement in their condemnation of the Bill, noting that it put their local and international employees and consultants at risk of criminal charges. They felt, in fact, that the Bill has already applied a chill to human rights and civil liberties in Uganda and is an unrelievedly nasty piece of work. They observed, somewhat sardonically, that the Ambassador has diplomatic immunity, but their collective staff in the projects they funded have no such protection.

And the complications abound.

The new Executive Director of UNAIDS (and ironically, a former UNICEF Representative in Uganda who knows Museveni well) has staked a good part of his growing reputation on deploring homophobic legislation, valiantly fighting for the human rights of the gay community and speaking unequivocally about his revulsion at punitive anti-homosexual behavior. As a matter of fact, Michel Sidibe is on record in a way that speaks directly to the import of the Ugandan Bill. He is reliably reported to have said (and it certainly rings true): “It pains me that 80 countries have laws which criminalize same-sex sex, and it outrages me that seven countries can invoke the death sentence for homosexual practice”.

Well, now it verges on eight countries, and the death sentence is directly linked with HIV-positive gay men. So what, I ask, does Michel Sidibe do now? Does he communicate that outrage directly and publically to President Museveni? Does he enlist the intervention of the UN Secretary-

General? Does he write to the Secretary-General of the Commonwealth and ask that Uganda be suspended in the event that the legislation passes in its present form? What counsel does he give to the Global Fund and PEPFAR? These are not idle questions: the Executive Director of UNAIDS is an influential figure who cannot allow his outrage to be but sound and fury ending in capitulation.

Furthermore, what's going on with the legislation is not simply confined to the egregious sections that I've quoted. There are several additional odious sections; the erosion of human rights has few limits. One other clause of the Bill purports to extend the arm of the state into the bedrooms of the world. Using what is called "extraterritoriality", the legislation decrees that any Ugandan engaging in homosexual acts outside of Uganda is equally culpable, and will be arrested and charged accordingly. Thus, homosexuality joins terrorism and treason in the pantheon of extraterritorial jurisdiction to be exercised by Uganda. How this would be enforced is not immediately apparent, and of course the clause is ridiculous, but the ridiculous has a habit of becoming national jurisprudence if it's driven by hatred.

The evidence of just how foolhardy and crazed the legislation is, lies in its most extreme feature: the Bill asserts that where any of its provisions is in conflict with any international human rights instrument that *Uganda* has ratified, the content of the Bill will prevail over international law. This is palpable nonsense, and simply not possible. But it is a fascinating glimpse into the twisted cerebral calculus that fashioned the legislation.

Naturally, the protagonists of the legislation are mounting arguments in its defense. The arguments are unsustainable.

We are reminded that this is a Private Member's Bill, and the Government is simply following legislative practice in allowing it to be debated. That's just a clever ruse. I sat in a Commonwealth parliament for more than fifteen years, and where a Private Member's Bill threatens to dominate public debate and the parliamentary session, the government always makes clear where it stands. In this instance, the defenders point out that President Museveni has not yet spoken. He has found time, since the Bill was tabled on October 14th last, to make some disparaging remarks about homosexuals at a recent youth event in Kampala, but it's true that he hasn't yet definitively pronounced on the Bill itself. But ominously, one of his senior cabinet ministers has: Mr. James Nsaba Buturo, Minister of Ethics and Integrity heralded the legislation with apparent enthusiasm. InterPress News quotes him as saying "It is with joy we see that everyone is interested in what Uganda is doing, and it is an opportunity for Uganda to provide leadership where it matters most. So we are here to see a piece of legislation that will not only define what the country stands for, but actually provide leadership around the world."

He could better be called the Minister of Fear and Loathing.

I know that the views I am expressing on behalf of the organization I represent, AIDS-Free World, will seem tough and harsh to some. But let me tell you what we feel.

We don't think that this piece of legislation deserves a careful parsing of its clauses, invoking all of the international human rights instruments that Uganda has endorsed, from the Universal Declaration of Human Rights to the Covenant on Civil and Political Rights, attempting to show where the Bill is in conflict with human rights principles. That just gives far too much credibility to the proposed legislation. On its face, without more than a simple glance at the substance, the Bill is revealed as an unbridled attack on the human rights of sexual minorities. There is no overall clause worthy of retention. There are phrases here or there (like the prohibition of sex with a minor) that any sentient human being can agree with. But the Bill cannot possibly be salvaged. It must be expunged in total from the parliamentary record. And for those who believe in conspiracy theories, let me say that the fundamentalist hand of the religious right in the United States is not difficult to discern.

Nor do we think that we need treat this issue with respect. We don't believe that we have to 'respectfully submit' our arguments to anyone, or seek to 'respectfully influence' the powers-that-be. There are some moments in life where defining issues are indelibly joined. I remember sitting behind my then Canadian Prime Minister, Brian Mulroney, at the Commonwealth meeting in Vancouver in 1987. The issue was apartheid. The contest was between Margaret Thatcher and Mulroney, and Mulroney let her have it. There was no respectful pretense. He didn't parse the pass laws, he didn't invoke the clauses of international covenants, he just lacerated Prime Minister Thatcher for defending apartheid, and he decried it for what it was: a totalitarian regime rooted in racism and the savage decimation of human rights. It's worth noting that he was joined by Sir Shridath Ramphal, then the Secretary-General of the Commonwealth, who was slightly more restrained but unmistakable of tone and purpose. That was a time when the Commonwealth stood for something.

The analogy with apartheid is not a stretch. In 1998, the Constitutional Court of South Africa ruled on a case involving the National Coalition for Gay and Lesbian Equality. The court held that "the constitutional protection of dignity requires us to acknowledge the value and worth of all individuals as members of our society." The court then concluded with the words, "Just as apartheid legislation rendered the lives of couples of different racial groups perpetually at risk, the sodomy offence builds insecurity and vulnerability into the daily lives of gay men. There can be no doubt that the existence of a law which punishes a form of sexual expression for gay men degrades and devalues gay men in our broader society. As such it is a palpable invasion of their dignity and a breach of the Constitution."

It's no accident that the recent judgment of the High Court of Delhi in India in July of this year similarly struck down a provision of the Indian Penal Code that criminalized consensual same sex conduct, finding that it was a violation of the right to live in privacy and dignity, which privacy and dignity were constitutionally protected.

In other words, on every conceivable front the anti-homosexuality legislation has not a statutory leg to stand on.

Yet President Museveni is permitting it to proceed. And at the meeting of Heads of the Commonwealth, he will, sadly enough, find a throaty gaggle of like-minded colleagues.

It would not surprise us if the Prime Minister of Jamaica were particularly thrilled. Jamaica is, as everyone knows, a hot-bed of homophobia, more pronounced than anywhere else in the Caribbean. And while Jamaica would never introduce a bill akin to that of Uganda, the political leadership in general, and the Prime Minister in particular are willing to sustain a rabidly hostile environment for all lesbian, gay, bisexual and transgendered people. I visited Jamaica not so long ago for the precise purpose of examining the relationship between the criminalization of homosexuality on the one hand and HIV/AIDS on the other. The connection is indisputable. I met with several of the sexual minority groups, and the stories of hatred and beatings and harassment and prejudice make the blood run cold.

And so the situation becomes a breeding ground for AIDS. Let it be understood: it's not homosexuality that spreads AIDS; it's the culture that brutalizes gay men and forces them underground that spreads AIDS. The prevalence rate in the general population of Jamaica is barely 1.5%. The prevalence rate amongst the community of MSM is over 31%. The HIV-positive gay men become what UNAIDS calls the classic bridging population ... to show that they're 'real' men and protect themselves from the wrath of society, they marry or take women as lovers so that their acquired heterosexuality is firmly on display. And then the women get infected. The cloistered gay sexual behavior, driven by fear and the sodomy laws, keeps them away from testing and health care and education that would diminish HIV infection. It's a crazy equation. But the Prime Minister of Jamaica pays no heed. One can almost imagine President Museveni and Prime Minister Golding cozying up together around the Commonwealth table as they share dismissive

laughter about the woes of the gay community, while simultaneously signing the latest Commonwealth declaration on universal human rights.

The trouble is: it's no laughing matter. Of the 53 countries in the Commonwealth, 40 have sodomy laws. A majority of states in the Commonwealth Caribbean have a sodomy law: it's a sure recipe for the gradual, ineluctable spread of the virus. In a recent report on AIDS, UNAIDS points out that whereas " ... HIV prevalence is less than 1% among the general population of most countries in the region, it may be between 5 and 20 times higher among men who have sex with men." In its Epidemic Update for 2009, issued just today, UNAIDS re-emphasizes the alarming rates of transmission amongst the MSM populations in the Caribbean. By way of direct comparison with the Caribbean, every single country in Latin America has removed punitive legislation directed at homosexuals, making the prevention and treatment of AIDS vastly more accessible.

Africa is another throw-back. We've finally reached the point where the epidemiologists are chronicling the spread of AIDS within the homosexual population of the continent. Until now, the subject was taboo ... the possibility of gayness was rejected out of hand. But UNAIDS provides this disturbing quote: "A recent literature review of HIV infection among men who have sex with men in Africa identified 19 surveys published through May 2009 from 13 countries, in addition to several unpublished works, highlighting the expansion of available data. For each country, the HIV prevalence among men who have sex with men was higher than among the adult male population." In today's newly-released Epidemic Update for 2009 to which I've referred, UNAIDS, for the first time ever, devotes a lengthy section to the increasing evidence of elevated transmission of the virus amongst the MSM population.

In this context, it's positively criminal to table a parliamentary bill like that of Uganda. It's one thing to talk about the promotion of the 'traditional family' as the author of the Bill does ad nauseam; it's quite another thing to incite the promotion of disease and murder. Gays and lesbians don't challenge traditional families; their private sexual practices don't invade the sanctity of family life. The accusation is a vile canard. People who plead the supremacy of family values over other human values have one of two motives: either they're biblical fundamentalists whose religiosity has gone haywire, or they're so steeped in irrational fear of different sexual orientation that human rights have no meaning.

Ultimately, the Commonwealth has a severe crisis on its hands. It may seem a fortuitous distraction to focus on the financial downturn and climate change. To be sure, they're both important. But roiling just beneath the surface of calm deliberation is this immense civil libertarian struggle. We know we'll win the struggle. It's just a matter of time. It always is. But in the process, intense pain will be felt, lives will be ruined, people will die. That's what is too much to bear. A terrible price is always paid on the incremental road to social justice ... in this case, an entire community held to the ransom of predatory fear.

President Museveni is no fool. He'll figure a way out before fatal damage is done to his reputation. But if we want that to come sooner than later, the Commonwealth must put Uganda's anti-homosexuality law on its agenda. Someone has to raise it; perhaps Prime Minister Gordon Brown. It should be collectively agreed that if the law passes, Uganda will be suspended from the Commonwealth. The credibility of the Commonwealth is hanging by a spider's thread. The member states take it less and less seriously. Climate change will be resolved at Copenhagen next month or Bonn or Mexico City in 2010; nothing will be resolved here at Port of Spain. The financial crisis will be dealt with by the G8 and G20 in Canada in 2010; nothing will be resolved here at Port of Spain. If the once-upon-a-time civilized values of the post-colonial Commonwealth are to be restored, then the monstrous war on homosexuality is the place to start the restoration.

Uganda makes a perfect beginning.

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