

Opinions

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who will effect change in the
south of the Commonwealth?

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Decolonising sexual citizenship: who will effect change in the south of the Commonwealth?

By Colin Robinson

Colin Robinson argues that it is ill-judged to place too much emphasis on law and litigation as a means of advancing sexual autonomy in the Global South of the Commonwealth. The rhetorical handwringing and neo-colonial undertones of western NGOs and campaign groups do nothing to foster southern-based local and sub-regional solutions to the achievement of sexual citizenship and sexual emancipation. If Global North advocates wish to be part of the movement to end 'sexual apartheid', they must resist the temptation to take the reins. They must engage in genuine North-South dialogue and international solidarity. They need to get behind Global South initiatives and push in the directions carved out by southern activists.

It is important to reimagine how the cause of sexual citizenship in the south of the Commonwealth should be advanced.

By the 'South', I refer mainly to the former Empire – the vast majority of Commonwealth nations (outside Australia, Canada, Cyprus, Malta, New Zealand and the UK) that are still developing economies, however large. By sexual citizenship, I mean how autonomy over one's sexuality becomes part of the core promise of dignity guaranteed by states to every human being; how consensual erotic pleasure and relationships and their expression in privacy and in public are protected from violence and the interference of the state and others; and how society and nation recognise that sexuality is a precious part of personhood. And by reimagine, I mean that a lot of noise has been made about sodomy laws, but not a lot of thought and careful deliberation given to these issues.

'Our best chance ever for LGBTI [lesbian, gay, bisexual, transgender, intersexual] rights', one campaigner termed the last Commonwealth Heads Meeting (CHOGM) in Perth. Comments like these serve only to underscore the divergence between the analysis and strategies of the people I work with and those of the controversial activist Peter Tatchell, who uttered them, and whose campaigns, in my opinion, do not work. Nor do public exhortations by some Commonwealth politicians to their peers, such as those by Australia's foreign minister Kevin Rudd, in the run-up to the CHOGM in Australia. These peers include: Kamla Persad Bissessar, the Prime Minister of my native country Trinidad and Tobago and former Chair-in-Office of the Commonwealth, whose party (when last in power in 2000) increased the sentence for buggery to 25 years; her predecessor Yoweri Museveni, President of Uganda, during whose tenure as Commonwealth chair a bill was introduced in the national parliament applying

a death sentence for homosexuality in some instances, and where a polarising witchhunt by media and clerics against homosexuals has dragged on; and president Goodluck Jonathan of Nigeria, the Commonwealth's fourth most populous state, whose Senate, during the most recent CHOGM, was busy considering a bill (which they eventually passed) imposing criminal penalties for participating in same-sex marriage ceremonies and public displays of same-sex affection and outlawing gay organisations and advocacy.

Tatchell and the retired gay Australian judge Michael Kirby have been two of the loudest non-governmental campaigners on this issue: 'It will not happen just because proponents of change feel angry, heap abuse on opponents and jump up and down. Nor will it happen because other countries of the Commonwealth have changed their laws', reasoned Kirby, somewhat to my surprise, in a pre-CHOGM opinion piece about what he indelicately coined 'ending sexual apartheid'.¹

I lost some faith in the effectiveness of Kirby's voice at a UNDP forum in Trinidad and Tobago we both attended months earlier. On that occasion my St. Lucian colleague Marcus Day and I cautioned him along similar lines that such lecturing was ineffective because it was perceived as imperial. His reaction was markedly different from what he says above: he retorted that countries like mine had had 30 years to get rid of our sodomy laws². What he failed to mention was how it compares not too unfavourably with the UK's 25-year journey from the Wolfenden Report³ to the *Dudgeon* European Court case.⁴ As we hadn't abolished them, he said, others were stepping in to do the job.

And the 'new' idea in the North is that the enduring laws in now-independent Commonwealth states, which continue to criminalise sexuality our colonists deemed

'unnatural', are, as Kirby has written,⁵ 'just a dear little legacy of the British Empire ... a very special British problem' that requires, well, British intervention. This is 'new' in the sense of *neocolonial*. The arsenal of silken lawsuits, which represents the Human Dignity Trust's (HDT) solution to the sexual citizenship issue, seems similarly unproductive as a primary approach. 'We will fundraise, and there is something rather charming that you can say to somebody: "If you give us £50,000, I can more or less guarantee that you will have decriminalized homosexuality in Tonga." And actually, you know, that's great', CEO Jonathan Cooper enthused to *The Guardian* on 14 September 2011.⁶

Advocates, including the Commonwealth's Eminent Persons Group (EPG), have trodden the HIV track for decades now in an effort to cut a path through resistance to sexual liberty. Calculating that HIV has achieved mainstream ownership, EPG argued (in their embargoed report to CHOGM on how to save the Commonwealth from irrelevance) that the Heads 'should take steps to encourage the repeal of discriminatory laws' because they 'impede the effective response of Commonwealth countries to the HIV/AIDS epidemic.'⁷ But linking sexual citizenship to disease control is risky, and only goes so far: it is not about building the values needed to sustain our embrace of sexual rights and the dignity of same-sex sexuality.

Threatening to cut off aid, which the UK's Conservative Prime Minister David Cameron appeared to do immediately after CHOGM (but then seemed to want us to think he didn't), might be useful to end a crisis, but it certainly isn't going to foster local ownership of sexual rights either.⁸ In fact, it has done exactly the opposite, with leaders in high-income Commonwealth Caribbean states that receive no General Budget Aid rushing to show off their sovereignty in response to Cameron's remarks.

The HDT believes 'outlawyering' our governments to court victories is the silver bullet, one that can be peddled to a donor for any given country. But even this leaves losers and division in its wake. It has muscled into a carefully planned constitutional suit by local and regional actors in Belize, daringly spun in the media as the Trust's global campaign kick-off. The heavy focus on litigating sodomy laws is in itself questionable, when there are several much more fruitful fronts for policy change and

opportunities for including sexuality in frameworks of gender justice, kinship and humanity.

In short, old Empire solutions won't work in a new Commonwealth. Furthermore, nothing, not even the strongest Charter, will end at a stroke the criminalisation and stigmatisation of same-sex intimacy across so much of the Commonwealth.

So, what *can* work? In my opinion, local and sub-regional solutions, supported by international solidarity, South-South dialogue, and North-South listening.

The Commonwealth boasts about its role in ending apartheid in South Africa. But it didn't do that without respecting the leadership and agency of South African strategists. The first step can only be to support the initiatives of those who are criminalised and are actually doing the hard and long-term work of developing organisations, nurturing communities of resilience, forging alliances, building nations of inclusion and growing cultures of sexual rights. Those of us who live in, understand and engage daily with the states and the localities we wish to change must form the pivot around which any international advocacy strategy or emancipatory movement is built.

Scores of local and national organisations working on sexual citizenship exist across the Commonwealth. Some are feminist groups like Development Alternatives with Women for a New Era (DAWN), some focus specifically on gay, lesbian, bisexual and transgender concerns. Most understand the necessary intersections between sexual citizenship and other justice and gender preoccupations. Some are affiliated into regional networks like African Men for Sexual Health and Rights, the Coalition of African Lesbians, the Pacific Sexuality Diversity Network and the newly revitalised Caribbean Forum for Liberation and Acceptance of Genders and Sexualities, which I co-chair. Some, like India's Alternative Law Forum, the main strategists behind the Section 377 sodomy lawsuit, work broadly on justice and equality. Some like the Caribbean Vulnerable Communities Coalition, founded by Robert Carr, focus on marginalised and vulnerable groups. Others like Fahamu (a movement for social justice in Africa), pioneer the building and organisation of social justice networks. Yet more diverse coalitions engage broadly with sexuality. These

are the people I talk to, admire and learn from across the south of the Commonwealth.

'Gay rights' can be advanced in the South through domestic political advocacy and organisation, just as they were in the North. And the most productive pathways to change may include some in which institutional nonprofits in the North are prohibited or deemed ill-suited to work. In some places there will be participation across sexual orientation in freedom struggles and revolutionary or emancipatory struggles more generally, a core reason South Africa's post-apartheid formal legal systems fundamentally respect sexual diversity.

Contrary to common belief, the Commonwealth meetings have not provided safe or friendly spaces for us. Those working day-to-day to bring about change in the South experienced humiliation and physical assault at the 2007 Commonwealth People's Space in Kampala, with little protection from the Commonwealth's machinery, and we braved discriminatory immigration laws to participate in the Commonwealth People's Forum in Port of Spain two years later, using our bodies and voices to open up space at these meetings for dialogue about sexual citizenship. That is, the Commonwealth did not provide waivers from Trinidad and Tobago's immigration prohibitions on entry by homosexuals, something the Government did for Elton John's visit for a 2007 jazz festival. And in Kampala LGBTI people were not in effect protected from the use of force by the local police to deny them access to the People's Space.⁹ In 2009, some of our allies from the North helped ensure there was representation from LGBTI people from a quarter of Commonwealth nations across three global regions. The civil society dialogues and statements in those meetings made LGBTI issues visible in unprecedented ways. In contrast, at last year's 'best chance ever' opportunity in Perth, we did not fare well in the competition for spaces at the People's Forum, where two out of every five places reportedly went to Australians, and our appeals for special efforts to be made to include us in what was to be an urgent discussion of our liberty were not successful.

But earlier in 2011, Commonwealth Secretary General Kamallesh Sharma, addressing the Law Ministers' July meeting, subtly but powerfully transformed the Commonwealth dialogue on sexual rights. He shifted

its frame simply by asking not whether the remaining 43 member nations of the Commonwealth should follow the example of such states as the Bahamas, India, South Africa and Vanuatu in moving to eliminate punitive laws, but *how*. And he suggested it was a matter of 'finding practical ways forward' that are local and imaginative. Though he was applauded, I am not sure many in the North really listened to his message. He challenged both legislators and jurists to use law in ways that make sense in each member state in order to expand gender justice and sexual citizenship, and to embrace apolitical and measured pathways to such justice, recognising the ways in which contemporary understandings of old laws must change with time. He also framed this goal using Amartya Sen's vision – as that of nations using law to expand the life choices and human capacity of their people. He described the process of forward movement as 'exchanges reinforced with practical action and collaboration'.

It is lovely rhetoric, but it is also how and why change on this issue will happen. The Secretary General's intervention illuminates the possibility of a different and more creative Commonwealth dialogue about sexuality, justice and the law, and a means of moving away from the axis on which much of the debate on sexual orientation leading into the last CHOGM has hinged. I welcome the opening he created and the new direction with its vital focus on *national* solutions.

It is important to remember that the origin of legal frameworks in Global South Commonwealth nations targeting same-sex intimacy was patently part of a colonially imposed agenda of injustice and regulation. But that says nothing about the dismantling of those laws which will not instantly create equality or make stigma disappear. As Grenadian writer Audre Lorde has warned: 'The master's tools will not dismantle the master's house.'

The work in each state will of necessity be unique, with particular challenges, national and local barriers as well as urgencies and openings furnished by the peculiarities arising in each domestic situation. In Trinidad and Tobago, for example, as in many other places, we face the incursion of Global North religious zealots – in our case *because* we are perceived as being very ready to embrace sexual citizenship. The comfort and foreign appeal of fundamentalism, whose goal is to

narrow gender and restrict sexuality, are a balm against powerlessness and alienation in a small, stratified society grappling with uncertainty in a world of violence, climate change and globalisation.

My organisation is trying to build an LGBTI movement here that is strategic and imaginative. Although sodomy laws, even when unenforced, continue to fuel stigma and sanction discrimination, repealing them doesn't repeal the Bible or Qur'an. Polarising national debates over the formal legal status of still-misunderstood and misrepresented sexualities can easily foreclose other gains and opportunities to deepen shared values on non-discrimination, vulnerability and fairness, and expand their application in policy and practice. So we question the value of an automatic focus on sodomy law changes, and have eschewed movement on this, instead encouraging our Government to declare a moratorium on prosecutions, which is already in effect.

Contrary to what we've been told, that discrimination protections for sexual orientation are not something we can achieve before decriminalisation happens, we see the fight for such protections as a political first step, one on which there is wide public consensus and little political risk. We have also focused on the idea of building government capacity on sexual orientation and gender identity issues, working to get other states and donors to offer technical assistance and funding to government to build its competence and conduct research. How we handled the HIV/Aids epidemic holds lessons here. Incentives and capacity are as important as judgments and mandates. We also advocate for state programming that – again building on lessons from dealing with HIV – addresses particular vulnerabilities of sexual minority status, like homelessness and school bullying; and we target the impact of stigma in daily policing on access to justice.

Michael Kirby has asked how we 'move the logjam so that the river of reform will begin to flow'.¹⁰ But who are the 'we' to whom he refers?

Even when well intentioned, the shrillest voices advocating for Global South nations (whether in the Commonwealth or not) to expand justice and equality for their LGBTI citizens have too often been tone deaf. The chorus coming from the powers who gave us the sodomy laws in the first place has shifted to singing morality in a different key, often appealing more to

righteousness than to shared values. And they have outshouted those of us working within our own nations to build ownership for a vision of postcolonial justice, national pride and liberty that includes sexual autonomy.

But that does not mean we fight alone. Our voice needs to be enlarged, our capacity resourced and our leadership respected. Global North advocates wanting the same changes often believe they have the answers but get in the way by taking the reins too often rather than following our lead. It is essential that those who genuinely support our equality listen to us, get behind where we are going, and push in the same directions.

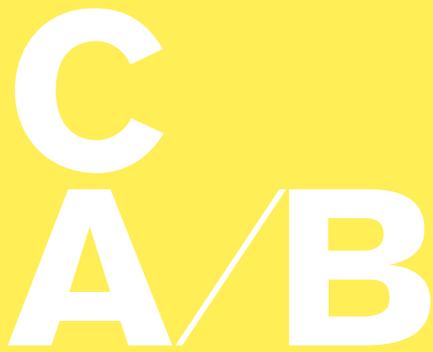
About the author

Colin Robinson is Executive Director of Trinidad and Tobago's Coalition Advocating for Inclusion of Sexual Orientation

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