

**URGENT CALL FOR
SOUTH AFRICAN ENDORSEMENT OF THE
“JOINT STATEMENT ON SEXUAL ORIENTATION AND GENDER IDENTITY”
AT THE UNITED NATIONS HUMAN RIGHTS COUNCIL
BY AFRICAN ORGANISATIONS AND INDIVIDUALS**

Minister Maite Nkoana-Mashabane
Department of International Relations and Cooperation
Private Bag X152
Pretoria
0001
Republic of South Africa

15 March 2011

Dear Honourable Minister Nkoane-Mashabane,

As civil society, faith-based and community organisations and individuals from throughout Africa, we write to urge the government of South Africa to endorse the “Joint Statement on Sexual Orientation and Gender Identity” to be delivered at the United Nations Human Rights Council on 21 March 2011. We remind you that the actions of South Africa carry particular significance for Africans. Our parents and we supported the South African struggle against apartheid. We see South Africa’s constitution as a beacon in the struggles for democracy, racial minorities, gender equality and against religious intolerance throughout the continent. We look to South Africa as an economic and moral leader in support of self-determination internationally. As African human rights defenders, we now urge you in the strongest terms possible to provide crucial regional leadership and affirm that equality and non-discrimination are African values regardless of identity or sexual practice.

The *Bill of Rights* of the *Constitution of Republic of South Africa* states, “The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, **sexual orientation**, age, disability, religion, conscience, belief, culture, language and birth” (emphasis added).¹ There is nothing in the Joint Statement that would contradict the *Bill of Rights* or any other South African law.

The Joint Statement acknowledges continued evidence that LGBT people globally are subjected to killings, rape, torture and criminal sanctions. From our lived experience and extensive documentation, we know that these are daily realities throughout Africa. We have witnessed the recent murder of gay human rights defender David Kato in Uganda,² the prevalence of “corrective” rape in South Africa,³ forced anal exams of gay men amounting to torture by

¹ “Constitution of the Republic of South Africa.” No. 108 of 1996. Available online <<http://www.info.gov.za/documents/constitution/1996/a108-96.pdf>.

² “Brutal Killing of Gay Ugandan Human Rights Defender.” Press Release by Sexual Minorities Uganda (SMUG). 26 January 2011. Available online <http://www.sexualminoritiesuganda.org/index.php?option=com_content&view=article&id=67:press-release-brutal-killing-of-ugandan-gay-human-rights-defender&catid=1:latest-news.>

³ “Horror and Hope.” Jo Caird. Mail & Guardian. 5 October 2010. Available online <<http://mg.co.za/article/2010-10-05-horror-and-hope/>>

authorities in Cameroon,⁴ and criminal sanctions of LGBT practices in at least thirty-eight African countries.⁵ As such, it is incumbent upon governments to avail themselves of all opportunities, including this one, to work to end human rights violations against LGBT people.

The Joint Statement references the invaluable attention UN mechanisms have paid to LGBT human rights violations. UN Secretary General Ban Ki Moon condemned the arbitrary arrest of a couple in Malawi that was perceived to be gay⁶ and has stated, “As men and women of conscience, we reject discrimination in general, and in particular discrimination based on sexual orientation and gender identity.”⁷ The High Commissioner for Human Rights Navanethem Pillay has stated, “It can never be acceptable to deprive certain individuals of their rights...for being who they are, for being born with a particular sexual orientation or gender identity.”⁸ The Human Rights Council has condemned criminal sanctions for same-sex activity in Eritrea⁹ and the Democratic Republic of Congo¹⁰ and also urged the Côte d’Ivoire to take measures to ensure the prohibition of discrimination on the basis of sexual orientation and gender identity.¹¹ As these examples make clear, the UN system regularly recognizes human rights violations based on sexual orientation and gender identity and has been forced to take action in a range of African contexts.

The Joint Statement addresses progress with regard to LGBT human rights by regional human rights monitoring bodies, including by the African Commission on Human and People’s Rights. For instance, the African Commission recently established the *Committee on the Protection of Persons Living with HIV, Those at Risk, and Those Vulnerable to and Affected by HIV*, which explicitly includes “men having sex with men” as among those groups worthy of “special attention.”¹²

Finally, the Joint Statement calls on states to “take steps to end acts of violence, criminal sanctions and related human rights violations committed against individuals because of their sexual orientation or gender identity.” Given South African laws and values, the government should not only endorse the Joint Statement but should actively campaign for its passage.

Yet, rather than endorsing the statement, the South African government is allegedly considering organizing a counter-statement. The South African government’s position that no coherent legal definition of the concept of sexual orientation exists is contradicted by the inclusion of the term

⁴ “Criminalizing Identities: Right Abuses in Cameroon based on Sexual Orientation and Gender Identity.” Report by ADEFHO, Alternatives-Cameroun, Human Rights Watch, and the International Gay and Lesbian Human Rights Commission. November 2010. Available online <<http://www.iglhrc.org/cgi-bin/iowa/article/publications/reportsandpublications/1244.html>>

⁵ “State-Sponsored Homophobia: A World Survey of Laws Prohibiting Same Sex Activity Between Consenting Adults.” Report by ILGA. 2010. Available online <http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2010.pdf>

⁶ “United Nations: Sentence for Malawi Gay Couple Condemned.” Neil MacFarquhar. New York Times. May 24, 2010. Available online <<http://www.nytimes.com/2010/05/25/world/africa/25webbrfs.html?emc=eta1>>

⁷ “Remarks at event on ending violence and criminal sanctions based on sexual orientation and gender identity [as delivered].” UN News Centre. December 10, 2010. Available online <http://www.un.org/apps/news/infocus/speeches/statments_full.asp?statID=1034#>

⁸ “Ending Violence and Criminal Sanction on the Basis of Sexual Orientation and Gender Identity.” Office of the High Commissioner for Human Rights. September 23, 2010. Available online <<http://www.ohchr.org/EN/NewsEvents/Pages/GenderIdentity.aspx>>

⁹ “Report of the Working Group on Universal Periodic Review: Eritrea.” United Nations Human Rights Council. January 4, 2010. Available online <<http://www.ohchr.org/EN/HRBodies/UPR/5CPAGES%5CERSession6.aspx>>

¹⁰ “Report of the Working Group on Universal Periodic Review: Democratic Republic of Congo.” United Nations Human Rights Council. January 4, 2010. Available online <<http://www.ohchr.org/EN/HRBodies/UPR/5CPAGES%5CZRSession6.aspx>>

¹¹ “Report of the Working Group on Universal Periodic Review: Côte d’Ivoire.” United Nations Human Rights Council. January 4, 2010. Available online <<http://www.ohchr.org/EN/HRBodies/UPR/5CPAGES%5CCISession6.aspx>>

¹² ACHPR/Res163(XLVII)2010: Resolution on the Establishment of a Committee on the Protection of the Rights of People Living With HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV. Available online <http://www.achpr.org/english/resolutions/Resolution163_en.htm>

within the constitution of South Africa itself. The term has been applied by UN treaty bodies, regional and national courts, and included in constitutions from all regions of the world. To bring additional clarity to such discussions, definitions of these terms were set out in the *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation or gender identity*, which is an authoritative statement on the application of international law. The *Yogyakarta Principles* have been endorsed by UN agencies, treaty bodies, national courts and by an increasing number of States.¹³

We recognize that the promotion of African values regionally and internationally has great potential for the advancement of human rights for all. We also know that there have always been same-sex practices and gender non-conformity in African communities. Thus, the question before us now is whether we chose prejudice as an African response to these practices. We emphatically say it is not. We believe that homophobia and transphobia are un-African. South Africa's leadership at this time will not only impact deliberations in Geneva but will impact our daily lives throughout Africa.

We urge the government of South Africa to:

- Endorsing fully and completely the Joint Statement on Sexual Orientation and Gender Identity.
- Ceasing any and all activities to oppose the Joint Statement on Sexual Orientation and Gender Identity.
- Recalling Permanent Representative to the United Nations in Geneva, Ambassador JM Matjila.

Sincerely,

[X Y Z]

CC

- President Jacob Gedleyihlekisa Zuma
- Minister Jeffrey Radebe, Ministry of Justice and Constitutional Development
- Deputy Minister Marius Fransman, Deputy Minister of International Relations and Cooperation
- Deputy Minister Andries Nel, Deputy Minister of Justice and Constitutional Development
- Acting Director General, Department of International Relations and Cooperation

¹³ See for instance, "Sexual Orientation and Gender Identity." Asia Pacific Forum. Available online <http://www.asiapacificforum.net/issues/sexual_orientation>.