

**De:** Frank Evelio ARTEAGA [mailto:[frank.e.arteaga@gmail.com](mailto:frank.e.arteaga@gmail.com)]

**Enviado el:** jueves, 16 de diciembre de 2010 16:31

**Para:** Miguel Tapia - Defensor del Pueblo SCZ; Hernan, Cabrera

**CC:** Marcelo Ernesto Ferreyra

**Asunto:** VOTACIÓN DE BOLIVIA EN LA ONU EL 20 DE DICIEMBRE PARA PROTEGER A LAS PERSONAS CON DIVERSA ORIENTACIÓN SEXUAL CONTRA EJECUCIONES EXTRALEGALES R.No. A/C.3/65/L.65

Bolivia, 15 de Diciembre del 2010

**Señores**

**Estado Plurinacional de Bolivia**

**Atn.: Cancillería del Estado Plurinacional de Bolivia**

**Delegación del Estado Plurinacional de Bolivia ante la ONU**

**Presente.-**

**REF.: VOTACIÓN DE BOLIVIA EN LA ONU EL 20 DE DICIEMBRE PARA PROTEGER A LAS PERSONAS CON DIVERSA ORIENTACIÓN SEXUAL CONTRA EJECUCIONES EXTRALEGALES R.No. A/C.3/65/L.65**

Estimados señores (as):

El próximo lunes **20 de diciembre** la Asamblea General de las Naciones Unidas (ONU) votará sobre si debe incluir o no una protección para las personas con diversa **orientación sexual** en una **Resolución sobre ejecuciones extralegales y otras matanzas ilegales**.

A lo largo de los últimos 10 años, dicha resolución ha instado a los Estados a *"investigar oportunamente y a profundidad todos los asesinatos, incluidos... todos los asesinatos cometidos por cualquier razón discriminatoria, entre ellas, la **orientación sexual** de una persona"*. Es la única resolución de la ONU que ha incluido alguna vez referencia explícita a la **orientación sexual**.

El mes pasado, **algunos Estados propusieron una enmienda a esta importante resolución para eliminar la referencia a la orientación sexual**. Lo peligroso es que dicha enmienda fue aprobada. Setenta y nueve Estados votaron a favor de eliminar la referencia a la **orientación sexual**; 70 votaron para que se conservara; 43 Estados se abstuvieron o no votaron.

Cabe señalar que en esa votación, realizada el 16 de noviembre de 2010, **el delegado de Bolivia se ausentó en primera instancia y posteriormente votó A FAVOR de la Enmienda**. Esta actuación del Estado Plurinacional de Bolivia es absolutamente **VERGONZOSA** puesto que no se reconoce que **aún se MATA Y ASESINA a personas por su orientación sexual e identidad de género**.

El Estado Plurinacional de Bolivia no debe ser cómplice de las muertes de bolivianos (as) gays, bisexuales, lesbianas y travestis.

Sin embargo, este lunes **20 de diciembre** el Estado Plurinacional de Bolivia tendrá una última oportunidad de votar para que se incluya la referencia a la **orientación sexual** – y con suerte ampliarla para incluir también a la **identidad de género** – cuando la **Resolución** se presente ante la Asamblea General de la ONU.

**Concretamente exigimos que el Estado Plurinacional de Bolivia apoye y vote para que la Resolución inste a los Estados a proteger a las personas lesbianas, gays, bisexuales y transgénero contra asesinatos ilegales.**

**Solicitamos una respuesta específica a nuestra petición.**

Formamos parte de una organización que constantemente monitorea y está pendiente de todas las actuaciones internacionales del Gobierno Boliviano.

Sin otro particular, y esperando una respuesta urgente y precisa, nos despedimos atentamente.

----- Frank Evelio  
ARTEAGA F. Coordinador General - MANODIVERSA Sec.Nacional - Comité de  
Acc.Universal para GBT y HSH Consultor en Gestión y Administración de Proyectos  
Cel (591 70204158) Skype: frankevelioarteaga Web:  
[www.manodiversa.supersitio.net](http://www.manodiversa.supersitio.net) Dirección: Calle 24 de Septiembre Edif. El Dorado  
Of.18 Santa Cruz de la Sierra - Bolivia. -----  
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## **TANGGOL BAYI**

***Organization of Women Human Rights Defenders in the Philippines***

National Office: #1 Maaralin cor. Matatag Streets, Brgy. Central District,  
Diliman, Quezon City 1101 Philippines E-mail: [tanggolbai@gmail.com](mailto:tanggolbai@gmail.com)

Telefax: +632 4342837

20 December 2010

**HONORABLE ALBERTO G. ROMULO  
SECRETARY  
DEPARTMENT OF FOREIGN AFFAIRS  
MANILA, PHILIPPINES**

Dear Secretary Romulo:

Greetings!

I am writing in behalf of Tanggol Bayi, the women human rights defenders programme of Karapatan Alliance for the Advancement of Human Rights in the Philippines. We are expressing our deep concern over the vote in the Third Committee of the United Nations General Assembly to remove a reference to sexual orientation from a resolution on extrajudicial, summary or arbitrary executions. For the past ten years, the resolution has included sexual orientation in the list of discriminatory grounds on which killings are often based.

Women human rights defenders in the Philippines led by Tanggol Bayi believe that such actions render the rights violations against lesbians, gays, bisexuals and transgenders non-existent and invisible. It sends a dangerous message that hate crimes, killings and torture of LGBTs are acceptable and legitimate. It absolves States of their responsibility in protecting all persons regardless of their sexual orientation and gender identity. In the Philippines, many rights violations, hate crimes and discriminatory acts against LGBTs continue and remain undocumented, according to Phil. LGBT organizations. Anti-discrimination legislative measures are yet to be acted upon in the Philippine Congress.

We therefore encourage representatives of the Philippine government to act and vote to support the resolution to protect LGBTs from extrajudicial killings. We believe that the

resolution serves as an affirmation of the need to protect all persons from violations of their fundamental human rights, including persons on the basis of their sexual orientation and gender identity. Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to read 'cpalabay', written in a cursive, flowing style.

Cristina Palabay

Convenor, Tanggol Bayi

Focal Person and Member, Asia Pacific Forum on Women, Law and Development



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Telefax: +632 4342837

20 December 2010

**H.E. (Mr.) Libran N. Cabactulan**

**Philippine Permanent Representative to the United Nations**

**Philippine Mission to the United Nations**

Dear Sir:

Greetings!

I am writing in behalf of Tanggol Bayi, the women human rights defenders programme of Karapatan Alliance for the Advancement of Human Rights in the Philippines. We are expressing our deep concern over the vote in the Third Committee of the United Nations General Assembly to remove a reference to sexual orientation from a resolution on extrajudicial, summary or arbitrary executions. For the past ten years, the resolution has included sexual orientation in the list of discriminatory grounds on which killings are often based.

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20 December 2010

**H.E. (Mr.) Evan P. Garcia**

**Ambassador and Permanent Representative**

**Philippine Mission to the United Nations and other International Organizations**

Dear Sir:

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**Jamaica Forum for Lesbians, All-Sexuals & Gays**

**P.O. Box 1152, Kingston 8, Jamaica**

**(876) 978-8988**

**admin@jflag.org**

**www.jflag.org**

**OPEN LETTER**

December 16, 2010

Hon. Bruce Golding  
Prime Minister  
Office of the Prime Minister  
1 Devon Road  
Kingston 10

Dear Hon. Bruce Golding,

This coming Monday, December 20, the United Nations General Assembly will vote on whether to continue including protection for lesbian, gay, bisexual and transgender (LGBT) people in a crucial resolution which condemns extrajudicial executions and other unlawful killings.

For the past 10 years, this resolution has urged states “to investigate promptly and thoroughly all killings, including [...] all killings committed for any discriminatory reason, including sexual orientation.” It is the first UN resolution to include an explicit reference to sexual orientation, and accords with the UN Human Rights Committee ruling in the 1994 case of *Toonen v. Australia* that discrimination on the grounds of sexual orientation breaches international human rights law.

Regrettably, on November 16, 2010, Jamaica voted with a number of states to remove the reference to sexual orientation from this 10 year old resolution. J-FLAG is especially concerned about Jamaica’s negative vote given the fact that more than thirty Jamaicans have been murdered since 1997 on the basis of their sexual orientation, including Ashawn “Charm” Williams who was murdered on Half Way Tree Road on December 3, 2010.

States will have an opportunity to restore the reference to sexual orientation when the resolution comes up before the UN General Assembly on Monday, December 20.

In your correspondence to J-FLAG on June 2, 2008 you stated that violence against gays and lesbians should be “be condemned, discouraged, investigated, prosecuted and punished with vigour and determination.” As well, at the United Nations Universal Periodic Review session on November 8, 2010, the Head of the Jamaican Delegation, State Minister in the Ministry of Foreign Affairs, Senator Marlene Malahoo-Forte said that Jamaica has a policy for the protection of persons based on their sexual orientation.

Further, since 2008 the Jamaican government has supported the unanimous adoption of three Resolutions of the Organization of American States entitled Human Rights, Sexual Orientation and Gender Identity which condemn violence against persons based on their sexual orientation.

J-FLAG therefore urges the Jamaican government to demonstrate its commitment and vote for the restoration of sexual orientation in this resolution as this will be in accord with the country’s stated position of protecting persons based on their sexual orientation.

Respectfully,



Dane Lewis  
Executive Director

cc. Hon. Dr. Kenneth Baugh, Minister of Foreign Affairs & Foreign Trade  
Senator Marlene Malahoo Forte, Minister of State, Ministry of Foreign Affairs &  
Foreign Trade  
His Excellency Mr. Raymond Wolfe, Ambassador Extraordinary and Plenipotentiary,  
Permanent Representative of Jamaica to the United Nations



## **The Government of Saint Lucia should vote to restore the reference to sexual orientation in the UN resolution on unlawful killings**

Dear Prime Minister,

This coming Monday, December 20, 2010 the United Nations General Assembly will vote on whether to include protection for lesbian, gay, bisexual and transgender people in a crucial resolution on extra-judicial executions and other unlawful killings.

For the past 10 years, this resolution has urged states "to investigate promptly and thoroughly all killings, including... all killings committed for any discriminatory reason, including sexual orientation." It is the only UN resolution to ever include an explicit reference to sexual orientation. Just last month, Saint Lucia unfortunately voted with a number of states to remove the reference to sexual orientation from this important resolution.

States will have the opportunity to restore the reference to sexual orientation and hopefully extend it to also include gender identity – when the resolution comes up before the UN General Assembly on Monday, December 20, 2010. Definitions of these terms set out in the *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation or gender identity* have been endorsed by UN treaty bodies, UN agencies, and regional courts.

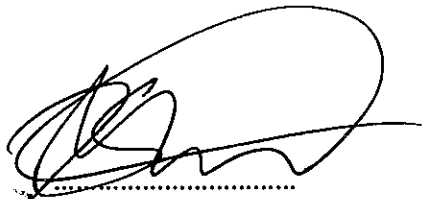
United & Strong and AIDS Action Foundation calls on the Government of Saint Lucia to change its vote and to reverse the removal of sexual orientation from the resolution. This resolution seeks to bring attention to the most serious human rights violation, the loss of the right to life. The Special Rapporteur on extra-judicial executions has constantly underlined that people are subject to extra-judicial executions because of their actual or presumed sexual orientation or gender identity.

On International Human Rights Day, 2010, UN Secretary General Ban Ki Moon addressed a UN side event: 'Ending Violence and Criminal Sanctions on the Basis of Sexual Orientation and Gender Identity.' The Secretary General in his remarks noted that "When individuals are attacked [or] abused ... because of their sexual orientation, we must speak out... It is not called the 'Partial' Declaration of Human Rights. It is not the 'Sometimes' Declaration of Human Rights.

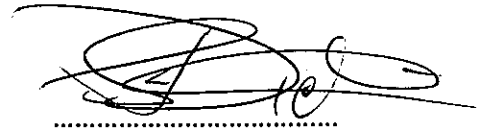
Voting against this resolution goes against our country's principles to protect the rights of all citizens. In the 2010 Budget Address "by" the Honourable Prime Minister of Saint Lucia gave the following guarantee: **"We must stand against stigma and discrimination in all its forms. The Government will engage in legislative reform to guarantee non discrimination against persons on the basis of health, gender, disability and sexual orientation."** (Page 39)

Further, since 2008 the Saint Lucian government has supported the unanimous adoption of three Resolutions of the Organization of American States entitled Human Rights, Sexual Orientation and Gender Identity which condemn violence against persons based on their sexual orientation.

We call on the Government of Saint Lucia to do as it has done in the past, and to ensure that regardless of what the perceptions of gay, lesbian, bisexual or transgender persons are, that the government will not endorse the torture or killing of people because of their sexual orientation or gender identity. To fail to do so is to reverse the progress Saint Lucia has made locally, regionally and internationally in advancing human rights.



Kenita Placide  
Co Chair  
United & Strong Inc.



Joan Didier  
Executives Director  
AIDS Action Foundation

Cc: *Honourable Minister Rufus Bousquet*  
*Minister of External Affairs*

*Honourable Minister Dr Keith Mondesir*  
*Minister of Health*

*Ambassador His Excellency Dr Keith St Aimee*  
*Permanent Mission of Saint Lucia to United Nations*

*Dr June Soomer*  
*Ambassador to CARICOM and OAS*

*Dr Micheal Louis*  
*Embassy of Saint Lucia to the United States and OAS*



## เครือข่ายความหลากหลายทางเพศ และ โครงการจัดตั้งมูลนิธิเพื่อสิทธิความหลากหลายทางเพศ



### วอนรัฐบาลไทยคืนชีวิตให้ผู้มีความหลากหลายทางเพศทั่วโลก

ในวันจันทร์ที่ 20 ธันวาคมที่จะถึงนี้ ที่ประชุมสมัชชาใหญ่สหประชาชาติมีกำหนดที่จะลงคะแนนเสียงเพื่อรับรองมติประณามการฆ่ากันอย่างไร้เหตุผล ด้วยความเกลียดชังจากสาเหตุต่างๆ ไม่ว่าจะเป็นความเกลียดชังด้านเชื้อชาติ ศาสนา ความคิดเห็นการเมืองที่แตกต่าง ฯลฯ<sup>1</sup> แต่ในขณะนี้ ก็ยังมีคนอีกกลุ่มหนึ่งที่ถูกละเลยให้สูญหายไปจากการรับรู้ นั่นคือ คนกลุ่มความหลากหลายทางเพศ ไม่ว่าจะเป็นหญิงรักหญิง ชายรักชาย กะเทย ทอม ดี แม้ว่าในมติจะเคยให้ความคุ้มครองมาตลอดเวลานับสิบปี

โดยเมื่อเดือนที่แล้ว (16 พฤศจิกายน 2553) ได้มีการลงคะแนนเสียงระดับคณะกรรมการเพื่อยกเลิกความคุ้มครองต่อผู้มีความหลากหลายทางเพศ ผลปรากฏว่ามีประเทศที่ลงคะแนนเสียงยินยอมให้มีการเอาชีวิตรื้อถอนกลุ่มนี้ได้เป็นจำนวน 79 ประเทศ ในขณะที่อีก 70 ประเทศลงคะแนนเสียงคัดค้าน ผลการลงคะแนนนี้ทำให้ผู้มีความหลากหลายทางเพศไม่ได้รับความคุ้มครองในระดับสหประชาชาติอีกต่อไป



ตัวแทนของประเทศไทยในสหประชาชาติงดออกเสียงในการลงคะแนนครั้งนี้ที่ผ่านมา นั่นหมายความว่า รัฐบาลไทยยอมรับได้หากมีใครถูกฆ่าด้วยเหตุผลเพียงเพราะว่าเป็นกะเทย เกย์ เลสเบี้ยน หรือทอมดี ตัวอย่างของการเอาชีวิตรื้อถอนนี้ได้แก่ การแขวนคอประจานวัยรุ่นสองคนชาวอิหร่านที่ถูกประหารชีวิตจากข้อกล่าวหาว่าเป็นชายรักเพศเดียวกัน

โครงการจัดตั้งมูลนิธิเพื่อสิทธิความหลากหลายทางเพศ , เครือข่ายความหลากหลายทางเพศ ร่วมกับองค์กรภาคี ขอเรียกร้องให้รัฐบาลไทยเปลี่ยนท่าที ด้วยการลงคะแนนเสียงสนับสนุนให้

สหประชาชาติประณามการเอาชีวิตรื้อถอนอย่างไร้เหตุผลในลักษณะนี้ในวันจันทร์ที่ 20 ธันวาคม เพื่อเป็นการคืนสิทธิในการมีชีวิตให้กับผู้มีความหลากหลายทางเพศทั่วโลก

จึงขอเชิญท่านสื่อมวลชนร่วมเป็นสักขีพยานในการอ่านจดหมายเปิดผนึกต่อนายกรัฐมนตรี ที่ห้อง **Ballroom A ชั้น 7 โรงแรม The Westin Grande (แยกโศก ถ.สุขุมวิท ติดกับ BTS โศก หรือ MRT สุขุมวิท) ในวันศุกร์ที่ 17 ธันวาคมนี้ เวลา 12.00 น.**

ต้องการข้อมูลเพิ่มเติม กรุณาติดต่อ โครงการจัดตั้งมูลนิธิเพื่อสิทธิความหลากหลายทางเพศ อัญชนา 086 994 9525 หรือ ไพศาล 081 634 3450

<sup>1</sup> UN Resolution on Extrajudicial, Summary or Arbitrary Executions

หรือ มติสหประชาชาติว่าด้วยการประหารชีวิต นอกกระบวนการยุติธรรม โดยเร่งรัด หรือตามอำเภอใจ

# จดหมายเปิดผนึกถึงนายกรัฐมนตรี



เครือข่ายความหลากหลายทางเพศ

159 อาคารเดอะบิช เรซิดेंट ชั้น 8 ซ.โชคชัยร่วมมิตร (ถ.รัชดาภิเษก 19)

ถ.วิภาวดีรังสิต ดินแดง กทม. 10320

โครงการจัดตั้งมูลนิธิเพื่อสิทธิความหลากหลายทางเพศ

4 ซ. เพชรเกษม 24 ถ.เพชรเกษม แขวง/เขตภาษีเจริญ กทม. 10160

วันที่ 17 ธันวาคม พ.ศ. 2553

เรื่อง ขอเรียกร้องให้รัฐบาลไทยสนับสนุนการเพิ่มคำว่า วิถีทางเพศและอัตลักษณ์ทางเพศ (sexual orientation and gender identity) เข้าไปในมติสหประชาชาติว่าด้วยการประหัตประหาร นอกกระบวนการยุติธรรม โดยเร่งรัด หรือตามอำเภอใจ

เรียน ฯพณฯ ท่านนายกรัฐมนตรี

เนื่องด้วย ในที่ประชุมสมัชชาใหญ่องค์การสหประชาชาติเมื่อวันที่ 16 พฤศจิกายน พ.ศ.2553 ได้มีการลงคะแนนในคณะกรรมการชุดที่สามแห่งสหประชาชาติ เพื่อถอดคำว่า วิถีทางเพศ (sexual orientation) ออกจากมติสหประชาชาติว่าด้วยการประหัตประหาร นอกกระบวนการยุติธรรม โดยเร่งรัด หรือตามอำเภอใจ (UN Resolution on Extrajudicial, Summary or Arbitrary Executions) โดยที่ตัวแทนของประเทศไทยงดออกเสียง ทำให้กลุ่มบุคคลที่มีความหลากหลายทางเพศไม่อยู่ในกลุ่มผู้ที่ได้รับความคุ้มครองจากการละเมิดสิทธิมนุษยชนขั้นร้ายแรงลักษณะนี้อีกต่อไป

อย่างไรก็ดี ต่อมาได้มีความพยายามในระดับระหว่างประเทศที่จะให้มีการเพิ่มคำว่า วิถีทางเพศและอัตลักษณ์ทางเพศ (sexual orientation and gender identity) เข้าไปในมติดังกล่าวในที่ประชุมสมัชชาใหญ่สหประชาชาติในวันที่ 20 ธันวาคมที่จะถึงนี้

ทั้งนี้ในรัฐธรรมนูญแห่งราชอาณาจักรไทย พุทธศักราช 2550 มีการลงบันทึกเจตนารมณ์เอาไว้เกี่ยวกับมาตรา 30 วรรค 3 ว่าการเลือกปฏิบัติเพราะเหตุแห่งเพศจะกระทำมิได้ โดยได้อธิบายคำว่าเพศไว้ว่า “ยังหมายรวมถึงความแตกต่างของบุคคลที่มีอัตลักษณ์ทางเพศ (sexual identity) หรือเพศสภาพ (Gender) หรือความหลากหลายทางเพศ (Sexual diversity) แตกต่างจากเพศที่ผู้นั้นถือกำเนิดอยู่ด้วย” นอกจากนี้ในมาตรา 82 มีการกำหนดให้รัฐต้องส่งเสริมสัมพันธไมตรีและความร่วมมือกับนานาประเทศ และพึงถือหลักในการปฏิบัติต่อกันอย่างเสมอภาค ตลอดจนต้องปฏิบัติตามสนธิสัญญาด้านสิทธิมนุษยชนที่ประเทศไทยเป็นภาคี รวมทั้งตามพันธกรณีที่ได้กระทำไว้กับนานาประเทศและองค์การระหว่างประเทศ

เครือข่ายความหลากหลายทางเพศ โครงการจัดตั้งมูลนิธิเพื่อสิทธิความหลากหลายทางเพศ และองค์กรภาคีดังรายชื่อที่ปรากฏตอนท้ายนี้ จึงขอเรียกร้องให้รัฐบาลไทยโดยกระทรวงการต่างประเทศ ลงคะแนนเสียงสนับสนุนการเพิ่มคำว่า วิธีทางเพศและอัตลักษณ์ทางเพศ (sexual orientation and gender identity) เข้าไปในมติดังกล่าว เพื่อให้สอดคล้องกับพันธกิจภายในประเทศตามรัฐธรรมนูญแห่งราชอาณาจักรไทย และพันธกิจด้านการต่างประเทศตามที่ได้ลงนามไว้ในตราสารระหว่างประเทศต่างๆ และแสดงเจตนารมณ์ของรัฐบาลไทยในการเคารพต่อศักดิ์ศรีความเป็นมนุษย์และสิทธิมนุษยชนอันเท่าเทียมกัน

(กิตตินันท์ ธรรมรัช)

(อัญญา สุวรรณานนท์)

นายกสมาคมฟ้าสีรุ้งแห่งประเทศไทย

กรรมการ โครงการจัดตั้ง

ในนามเครือข่ายความหลากหลายทางเพศ มูลนิธิเพื่อสิทธิความหลากหลายทางเพศ

### รายชื่อองค์กรและบุคคลภาคประชาสังคมที่ร่วมลงชื่อ (ล่าสุด ณ วันที่ 17 ธันวาคม 2553 เวลา 12.00 น.)

- เครือข่ายความหลากหลายทางเพศ
- สมาคมฟ้าสีรุ้งแห่งประเทศไทย
- โครงการจัดตั้งมูลนิธิเพื่อสิทธิความหลากหลายทางเพศ
- มูลนิธิธีรนาถ กาญจนอักษร
- มูลนิธิศูนย์คุ้มครองสิทธิด้านเอดส์
- คณะกรรมการองค์การพัฒนาเอกชนด้านเอดส์
- เครือข่ายเพื่อนกะเทยไทย
- กลุ่มสะพาน
- โครงการเพื่อนชายรุ่นใหม่ใส่ใจสุขภาพ
- โครงการจัดตั้งมูลนิธิอัญจารี
- มูลนิธิหนังไทย
- กองทุนสนับสนุนและปกป้องสิทธิผู้ความหลากหลายทางเพศ
- กลุ่มกัลยาสมิธ
- กลุ่มผู้หญิงเพื่อสันติภาพและความยุติธรรม
- มูลนิธิพัฒนาเครือข่ายเอดส์ (เอดส์เน็ต สำนักงานภาคเหนือ)
- มูลนิธิเพื่อนพนักงานบริการ (สวิง)
- องค์การบางกอกเรนโบว์
- กลุ่มสายรุ้งราชบุรี
- เดอะพอส โฮมเซ็นเตอร์
- เอ็มเฟรน
- อันดามันส์ พาวเวอร์
- แพทย์หญิงเพชรศรี ศิรินิรันดร์
- และรายชื่อระหว่างรวบรวม [www.ipetitions.com/petition/thailandsogivote/signatures](http://www.ipetitions.com/petition/thailandsogivote/signatures)

**AN URGENT LETTER OF APPEAL TO THE GOVERNMENT OF THE PHILIPPINES TO SUPPORT A  
UNITED NATIONS RESOLUTION PROTECTING LESBIANS, GAYS, BISEXUALS, AND  
TRANSGENDERS FROM EXTRAJUDICIAL EXECUTIONS AND UNLAWFUL KILLINGS**

**H.E. PRESIDENT BENIGNO S. AQUINO III**

Malacañang Palace  
Manila, NCR

Dear President Benigno Aquino III:

This Monday, December 20, 2010, the United Nations General Assembly is set to vote on an initiative to protect lesbians, gays, bisexuals and transgenders (LGBTs) from extrajudicial executions and other unlawful killings through a UN resolution on extrajudicial, summary and arbitrary executions.

The resolution, for the past ten years, had included equal protection for LGBTs , specifically by urging States "to investigate promptly and thoroughly all killings, including... all killings committed for any discriminatory reason, including sexual orientation". However, last month, several States pushed to remove this reference to sexual orientation to exclude LGBTs from the measure. To the dismay of the international human rights community and various LGBT groups here in the Philippines, the amendment was approved. Seventy-nine States voted to remove the reference to sexual orientation, while seventy voted to retain it, and forty-three States abstained.

The Philippines, despite the country's commitment to various international human rights instruments and the clear human rights mandate provided by the 1987 Constitution, abstained in this vote.

During the UN General Assembly Side-Event on Ending Violence and Criminal Sanctions on the Basis of Sexual Orientation and Gender Identity held on December 10, 2010 and attended by no less than UN Secretary General Ban Ki Moon, Ambassador Libran Nuevas Cabactulan, head of the Permanent Mission of the Philippines to the United Nations, read a statement on constitutional and legal mandates in the Philippines that reflect on discrimination on the basis of sexual orientation and gender identity. Ambassador Cabactulan, however, made no commitment to actively support the promotion of equal rights in the country's agenda.

We believe that this has to change. Since the dismantling of the Marcos dictatorship, the Philippines has consistently stood up for democracy and human rights. Our constitution embodies our deep respect for human dignity, and such recognition should be rightly extended to LGBTs, who face abuse, discrimination, persecution, and death because of their sexual




orientation and gender identity. Furthermore, with the continuing rise in labor migration in the Philippines, Filipinos abroad, which include LGBTs, need international instruments such as the Resolution on Extrajudicial, Summary or Arbitrary Executions, to protect them from human rights abuses.

**We therefore urge you to inform the Permanent Mission of the Philippines to the United Nations to vote in favor of the above resolution and to support other international measures pending before the UN that accord, affirm and promote equal rights and dignity for lesbians, gays, bisexuals and transgenders.** As President, you have been an ardent supporter of human rights and has been an ally of women's rights. Your support for this initiative would send a strong message to the international community about your administration's firm commitment to the universality of human rights.

Your prompt response to this appeal would be greatly appreciated, especially in light of the forthcoming vote on December 20, 2010. Mabuhay, at maraming salamat Pangulong Noynoy Aquino!

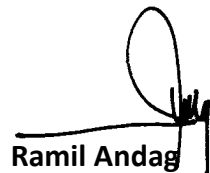
Signed,

  
**Risa Hontiveros**  
Former Akbayan Representative

  
**Hon. Kaka Bag-ao**  
Akbayan Representative

  
**Perci Cendana**  
Akbayan Chair

  
**Jonas Bagas**  
Akbayan Gay and Lesbian Collective /  
TLF Share Collective

  
**Ramil Andag**  
Babaylanes Inc.

**Anastacio Marasigan**  
TLF Share

CC: **HON. JULIA ANDREA ABAD**  
Chief of Staff  
Presidential Management Staff

**H.E. AMBASSADOR LIBRAN NUEVAS CABACTULAN**  
Permanent Mission of the Philippines to the United Nations

**H.E. Libran Nuevas Cabactulan**

*Ambassador and Permanent Representative*

*Permanent Mission of the Philippines to the United Nations*

*Tel: (212) 764-1300 | Fax: (212) 840-8602 |*

*E-mail: [newyork.pm@dfa.gov.ph](mailto:newyork.pm@dfa.gov.ph), [newyorkpm@gmail.com](mailto:newyorkpm@gmail.com)*

Dear Madam,

Good day! I would like to urge your good office to vote in favour of the UN General Assembly Resolution calling for the inclusion of sexual orientation and gender identity as one of the protected categories on the issue of extra-judicial killings. Voting in favour of this resolution is an affirmation of the Philippine government's commitment to international human rights principles particularly non-discrimination and the right to life.

Voting against the resolution or abstaining from it, the same way it has done in the past, is a blatant disrespect and non-recognition of the rights of gay, lesbian, bisexual and transgender (LGBT) Filipinos living in our country or those working in other countries, particularly those with governments that criminalize homosexuality. Moreover, voting against the resolution or abstaining from it is a glaring warning to every LGBT Filipino that our government only cares for overseas Filipinos who have committed acts that are criminalized in Philippines rather than upholding international human rights principles.

Respectfully yours,

Ryan V. Silverio

9 Gladiola Street,

Roxas District,

Quezon City

19 December 2010

H. E. Mr. Libran N. Cabactulan  
Ambassador Extraordinary and Plenipotentiary  
Permanent Mission of the Republic of the Philippines to the United Nations  
556 5th Avenue  
New York, NY

Dear Ambassador Cabactulan:

I am writing to you as a constituent and a Filipino psychologist regarding the inclusion of the category *sexual orientation* in the Resolution on Extrajudicial Executions (EJE). More specifically I am writing to urge you to vote RETAIN sexual orientation in this key resolution.

The EJE resolution is a critical policy initiative to bring international attention to the most serious human rights violations resulting in the violent loss of life. These violations often target particular vulnerable social groups – including sexual-minority citizens who are lesbian, gay, bisexual, or transgender (LGBT), or those presumed to be.

As you remarked in a statement at the General Assembly side event on ending violence based sexual orientation (Friday 10 December 2010), our own government, through the Supreme Court, has begun to recognize and act on the problem of discrimination and violence based on sexual orientation. A number of empirical studies in psychology have shown that such policy initiatives help to create a public environment that affirms human dignity and positively impacts on the mental health and well-being of LGBT citizens and their families.

Thus in keeping with the spirit of your previous statement, I urge you to vote to keep sexual orientation in the resolution. If you or your staff would like additional information regarding the impact of policy on LGBT mental health and well-being, please contact me directly. I look forward to your positive action on this matter.

Yours truly,

Eric Julian Manalastas  
Assistant Professor  
University of the Philippines Diliman

Certified Specialist in Social Psychology  
Psychological Association of the Philippines



18 December 2010

**HON. ALBERTO G. ROMULO**  
**Secretary, Department of Foreign Affairs**  
**REPUBLIC OF THE PHILIPPINES**

**H.E. (Mr.) Libran N. Cabactulan**  
Philippine Permanent Representative to the UN

To His Excellencies Sec. Romulo and Ambassador Cabactulan:

Greetings of peace!

The Metropolitan Community Church Quezon City is an ecumenical Christian community with special ministry for gays, lesbians, bisexuals and transgenders (GLBT). We join in the increasing calls of various groups for the Philippine government to support language in the resolution calling on States to include "sexual orientation," and if we may add, also "gender identity" in order to protect Filipino GLBT people from extrajudicial or unlawful killings and investigate such incidences.

GLBTs are a marginalized sector; this is clearly acknowledged by Ambassador Cabactulan. Yet this acknowledgement is not accompanied by protections that would keep us safe from harm, discrimination, stigmatization and harassment. For many of us, the lack of protection has resulted in death, many of which remain unsolved. We too are victims of extrajudicial executions and we now come to you for protection.

We believe that the present Philippine government is an active partner of civil society in promoting and defending human rights, but such efforts should also recognize that even Filipino GLBT people are also victimized by unlawful killings simply because of their sexual orientation, and even gender identity, and it is the legal and moral responsibility of the Philippine government to come to their aid.

We humbly ask for your deep consideration and to take action in behalf of Filipino gender minorities in supporting the said resolution that will come up before the UN General Assembly on Monday, the 20th December.

In the spirit of Christmas, we hope you consider our small letter of request.

In God's love, we remain.

Sincerely,

Rev. Ceejay G. Agbayani Jr., MDiv  
Moderator and Pastor,  
MCCQC

## **Calling on Philippine Government to Vote for Retaining Sexual Orientation in the Resolution to Stop Extra Judicial Killings**

As state party to many international human rights instruments and conventions, the Philippine government is duty bound to fulfill its obligation to respect, promote and fulfill human rights of all Filipino citizens, which include lesbian, gay, bisexual and transgender (LGBT) persons.

The Philippine Constitution states that, “it is the prime duty of the Government to serve and protect the People” (Article 2, section 4). The Constitution firmly establishes that “the State values the dignity of every human person and guarantees full respect for human rights” (Article 2, section 11). Further in the bill of rights it is provided that, “no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws” (Article 3, Section 1).

The Filipino lesbian, gay, bisexual and transgender (LGBT) persons and families continue to suffer various forms of discrimination on the basis of sexual orientation and gender identity (SOGI). These seriously infringe on many rights and freedoms, such as the right to equal opportunities in work, access to and ownership of resources to public participation. That they have increasingly figured in extrajudicial killings raises grave concern over the very security of their persons, which is inextricably linked to their SOGI.

The lack of legal protections and state interventions further heightens the vulnerability of the Filipino LGBT to human rights violations – especially to extrajudicial executions (EJE). Not only is the government failing in its obligation to put in place effective mechanisms to respond to unlawful killings and extrajudicial executions. More fundamentally, it is grossly wanting in failing to provide in law explicit provisions prohibiting discrimination and human rights violations for the LGBT.

We call for a government that is just, humane and proactive. We call on the State to be true to its mandate to protect and serve its people. It is the duty of the State to protect, promote and equally regard the human rights of the LGBT community. The LGBT should not be excluded – and denied of – the right to equal protection under the law. The Philippine government, especially with a President at its helm that has avowed the promotion and protection of human rights, should stand by the retention of Sexual Orientation as a category in the resolution to stop extra judicial killings.

- **The Women’s Legal and Human Rights Bureau (WLB)**



**RAINBOW RIGHTS PROJECT (R-RIGHTS), INC.**  
Unit F14 SJC II Bldg., Masigla St. cor. Maginoo St.  
Brgy. Central, Diliman, Quezon City 1101 Philippines  
r\_rightsproject@yahoo.com

18 December 2010

**H.E. President BENIGNO C. AQUINO III**  
**REPUBLIC OF THE PHILIPPINES**

**HON. ALBERTO G. ROMULO**  
**Secretary, Department of Foreign Affairs**

**H.E. (Mr.) Libran N. Cabactulan**  
**Philippine Permanent Representative to the UN**

Dear Sirs,

We, the members and allies of Rainbow Rights Project, Inc., as concerned members and advocates of the Filipino lesbian, gay, bisexual, and transgender (LGBT) community, urge you to support the protection of LGBT people by voting for the restoration of the reference to sexual orientation in the UN resolution on extrajudicial executions and other unlawful killings on Monday, 20 December 2010, and to consider adding a reference to gender identity as well.

For ten years, this resolution has urged states to "*to investigate promptly and thoroughly all killings, including... all killings committed for any discriminatory reason, including sexual orientation*". Last month, we saw the amendment of this resolution which removed the reference to sexual orientation. Seventy-nine states voted to remove the reference, seventy opposed this removal, and forty-three states abstained. To our disappointment, the Philippines was one of the forty-three that abstained.

Please consider the following points:

1. While the Supreme Court ruled in April that the LGBT party, Ang Ladlad, could participate as a political party in the May 2010 elections, upholding the equal

protection clause and recognizing that it represents a marginalized sector, there remains to be no declared state policy protecting Filipino LGBTs as a sector against violence, discrimination, harassment, and stigmatization.

2. In 2010, there were 11 documented cases of gender-motivated killings of LGBTs in the Philippines. But because of the non-existence of anti-hate crime laws, there are more that remain undocumented.
3. For over 12 years, we have been lobbying for the passage of the anti-discrimination bill which penalizes discrimination based on sexual orientation and gender identity to no avail. Even the UN Human Rights Committee has called our attention to this. Without this bill being passed into law, many LGBTs are denied employment, education, housing, and equal opportunities in civil society.

Please also consider our international commitments and obligations:

1. International Covenant on Civil and Political Rights (signed by the Philippines in 1966, ratified in 1986 without reservation)

Article 26

All persons are **equal** before the law and are entitled without any discrimination to the **equal protection of the law**. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (emphasis supplied)

2. Concluding Observations of the Human Rights Committee on States Parties Reports under the International Covenant on Civil and Political Rights (Philippines 2003: second and third periodic report)

**“The Committee urges the State party to take the necessary steps to adopt legislation explicitly prohibiting discrimination**, in accordance with articles 3 and 26 of the Covenant. The Committee notes that legislation related to **sexual orientation** is currently being discussed in Congress and urges the State party, in this context, to pursue its efforts to counter all forms of discrimination. The State party is further invited to strengthen human rights education to forestall manifestations of intolerance and de facto discrimination.” (emphasis supplied)

3. Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (signed by the Philippines in 1980, ratified in 1981)

“**Article 2.** States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

“(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

xxx

“(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;” xxx (emphasis supplied)

4. Republic Act No. 9710, the Magna Carta of Women (2009)

“All individuals are equal as human beings by virtue of the inherent dignity of each human person. No one, therefore, should suffer discrimination on the basis of ethnicity, gender, age, language, sexual orientation, race, color, religion, political, or other opinion, national, social, or geographical origin, disability, property, birth, or other status as established by human rights standards.”(emphasis supplied)

5. Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW): General Recommendation No. 28 (Forty-seventh Session, October 22, 2010)

“The Committee also adopted a detailed general recommendation on Article 2 of the Convention in which it reaffirmed that discrimination of women based on sex and gender was inextricably linked with other factors that affected women, such as race, ethnicity, religion or belief, sexual orientation and gender identity. The Committee further emphasized that States parties were obligated to proclaim their total opposition to all forms of discrimination against women and that they should pursue their policies in this regard by all appropriate means and without delay. Where a State party was facing resource constraints or



other obstacles, it had to seek international cooperation to overcome such difficulties. The Committee finally repeated its call on States parties to consider withdrawing reservations to the Convention, in particular those relating to article 2, as soon as possible." (emphasis supplied)

Please allow us to remind you on the state of extralegal killings in the Philippines:

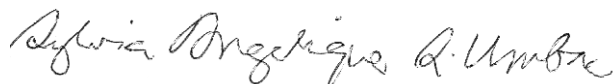
In his 2008 Report, Prof. Philip Alston, UN Special Rapporteur on Extrajudicial Killings recognized the widespread killings of activists in the Philippines. This was confirmed in Atty. Al Parreno's Report on Extrajudicial Killings (2000-2010), which shows that most victims are members or officers of activist groups, killed everywhere in the country. There is also dismal result in the judicial process, with statistically only 1.05% conviction. In the President's State of the Nation Address in 2010, he condemned extrajudicial killings, saying, "*Pananagutin natin ang mga mamamatay-tao.*" (We will make the murderers pay).

These facts, these statistics also include LGBTs. We are also targets; our murders are also unsolved. Please do consider that LGBTs are victims, too and their murderers also have to pay.

In light of the outright human rights violations based on sexual orientation and gender identity in the Philippines, to allow the removal of sexual orientation in the UN resolution on extrajudicial executions and killings to remain would be a serious detriment to our country and other countries where LGBTs are similarly unprotected by law.

On Monday, 20 December 2010, we urge the President to direct H.E. (Mr.) Libran N. Cabactulan, Philippine Permanent Representative to the UN on behalf of the Republic, to support the vote to restore sexual orientation as a basis of extrajudicial executions and unlawful killings at the United Nations General Assembly.

Sincerely,

A handwritten signature in cursive script, appearing to read "Angie Umbac".

**Ms. Angie Umbac**

Rainbow Rights Project Inc.



## LADLAD PARTYLIST

www.ANGLADLAD.org THE POLITICAL PARTY OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER FILIPINOS

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### **LADLAD's Official Statement to the United Nations on the Special Panel on Ending Violence and Criminal Sanctions against LGBTs**

December 20, 2010

Ang Ladlad LGBT Partylist (LADLAD) commends the Philippines' Permanent Mission to the United Nations representative, Ambassador Libran Nuevas Cabactulan for making a statement at the Special Panel on Ending Violence and Criminal Sanctions against LGBTs last December 10, 2010. In citing the Philippine Supreme Court's April 2010 decision on Ang Ladlad's case vs. the COMELEC, Ambassador Cabactulan shared what the Highest Court in the land upheld as mandated in our Constitution, that we are all entitled to equal protection of the laws, including LGBTs.

But while the Supreme Court ruled that using moralistic and homophobic arguments to disqualify a truly marginalized sector like the LGBT Community from participating in the Party List system for sectoral representation in Congress was a grave injustice, ANGLADLAD believes the Philippine Government has yet to adopt a clear human rights framework that is inclusive of sexual minorities and explicitly addresses human rights violations on the basis of sexual orientation and gender identity (SOGI).

We remember that at the vote for amending the UN Resolution on Summary Executions and Arbitrary Killings a few weeks ago, the Philippines was one of the countries which "abstained". The resulting 79-70 vote managed to remove a "10-year old provision" stating that no one should be summarily executed or arbitrarily killed because of one's sexual orientation or gender identity. Such representation by the Philippines then was a big disappointment for the whole Filipino LGBT Community who know all too well the discrimination and violence one can be subjected to, including the risk of being killed in a hate crime.

LADLAD appreciates the clear move of the Philippine diplomatic missions to participate in UN panels on special human rights concerns. But we strongly enjoin the Philippine Government to finally have a national policy for protecting the rights of Filipino LGBTs and to pass appropriate legislations that will address our unique concerns. In fact, with the Philippines' reputation of abiding by international human rights standards and complying with our obligations under human rights conventions, adopting such a national policy tackling sexual orientation and gender identity would not be contrary to any international human rights principle or our Constitution.

LADLAD only asks that the Philippine Government finally acknowledges the existence of the Filipino LGBT Community and that as sexual minorities, they have human rights entitled to State protection. During his campaign for the Presidency, PNoy was one of the candidates to openly declare that LGBTs have human rights too and should not be discriminated against. With President Aquino's ascension to the country's highest leadership, LADLAD now calls on this promise to be fulfilled through all branches of government.

17 December 2010

Ministry of Foreign Affairs  
Singapore  
Attn: Foreign Minister George Yeo

Re: UNGA Resolution on Extrajudicial Killings

Dear Sir,

The International Gay & Lesbian Human Rights Commission (IGLHRC) informs me that on Monday 20 December the UNGA will vote on whether to include protection for LGBT people in a resolution on extrajudicial executions and other unlawful killings. I am also made aware that Singapore has abstained on this issue previously. Such a voting record both puzzles and disappoints me.

As a gay activist from the LGBT advocacy group People Like Us, I am aware of the government's rather amorphous stand on the rights of Singapore's LGBT community in the face of demands by anti-gay forces. As much as I dislike that, I appreciate that LGBT people do not face life threatening situations here and neither would the Singapore government countenance it. However when it is a matter of extrajudicial executions, I would expect the Singapore position not to be so morally evasive. Therefore my fellow gay activists and I urge the Singapore government to change its abstention on Monday to one that extends protection to LGBT people in countries where their lives are threatened.

I understand realpolitik enough to know that voting at the UN may have to be a balance of ethical considerations against other political interests. Where this resolution is concerned, I do not see how Singapore's interests can be threatened in any way by voting to protect LGBT people.

In the event that Singapore continues to abstain on this issue, I would appreciate if your Ministry can let me know the reasons for that policy decision.

Thank you.

Yours Sincerely

Russell Heng Hiang Khng  
People Like Us

Cc Grace Poore, IGLHRC

c/o Zackie Achmat, Damian Jacobs, Fatima Hassan, Catherine Pretorius and Axolile Notywala

Coalition to End Discrimination

6<sup>th</sup> Floor Mercantile Buildings

63 Hout Street

Cape Town

8001

President Jacob Zuma

Minister Maite Nkoana-Mashabane

Minister Jeff Radebe

Deputy Ministers International Relations and Co-operation

Deputy Minister of Justice

Dr. Ayanda Ntsaluba Director –General DIRCO

Dear President Zuma, Minister Nkoane-Mashabane, Minister Jeff Radebe and Deputy-Ministers

**REVERSE SOUTH AFRICA'S UNCONSTITUTIONAL COMMITTEE VOTE AND CO-SPONSOR AN AMENDMENT ON SEXUAL ORIENTATION AND EXTRAJUDICIAL, SUMMARY AND ARBITRARY EXECUTIONS AT THE UNITED NATIONS GENERAL ASSEMBLY ON MONDAY 20 DECEMBER 2010**

1. As a range of civil society, faith-based, community organisations and individuals we write to you with a sense of extreme urgency. Some of our organisations are united in the Coalition to End Discrimination (a coalition against all forms of discrimination including on the basis of sexual orientation and gender identity) and we collaborate with the Joint Working Group an organisation of lesbian, gay, bisexual, transgender and intersex organisations.
2. In November the United Nations General Assembly's Third Committee on Extrajudicial, Summary, and Arbitrary Executions voted by 79 votes to 70 in favour of an amendment removing "sexual orientation" from a resolution condemning the extrajudicial killing of vulnerable people around the world. The resolution urges States to protect the right to life of all people, including by calling on states to investigate killings based on discriminatory grounds. For the past 10 years, the resolution has included sexual orientation in the list of discriminatory grounds on which killings are often based.
3. South Africa voted in favour of the amendment. We can now reverse that vote because we have learnt that the United States with the support of Brazil and other countries will be offering an amendment to the resolution to ask for the explicit inclusion of lesbians, gay men, bisexuals, transgender and intersex individuals.

4. The November amendment in committee aggravates an already difficult environment for gay, lesbian, bisexual, and transgender and intersex (LGBTi) people and their defenders, who live in continual fear of violent attack and experience discrimination throughout Africa and many other parts of the world. It strips one of the world's most vulnerable minorities of an important part of their protection under international law, and ignores the overwhelming evidence that people are routinely killed around the world because of their actual or perceived sexual orientation.
5. The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has highlighted documented cases of extrajudicial killings on the grounds of sexual orientation including individuals facing the death penalty for consensual sex with persons of the same sex, individuals tortured to death by State actors because of their actual or perceived sexual orientation; paramilitary groups killing individuals because of their actual or perceived sexual orientation as part of "social cleansing" campaigns; individuals murdered by police officers with impunity because of their actual or perceived sexual orientation; and States failing to investigate hate crimes and killings of persons because of their actual or perceived sexual orientation.<sup>1</sup>
6. There is no plausible justification for South Africa's vote.
7. Our representatives at the UN argued that a formal process to define sexual orientation and its parameters under human rights law was needed to prevent future division on the issue.<sup>2</sup> They argued that the concept of 'sexual orientation' was vague and had no legal foundation in international human rights instruments.
8. This argument has no basis in fact or in law. Our Constitutional Court relied on a range of jurisdictions in developing the concept sexual orientation. In the first case before that Court on sexual orientation on the decriminalisation of consensual sex between partners of the same sex in different jurisdictions and regional courts such as the then Justice Ackermann quoted the Irish case *Norris*<sup>3</sup> and argued:

The European Court of Human Rights [ECHR] has correctly, in my view, recognised the often serious psychological harm for gays which results from such discriminatory provisions:

"[o]ne of the effects of criminal sanctions against homosexual acts is to reinforce the misapprehension and general prejudice of the public and increase the

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<sup>1</sup> <http://www.awid.org/eng/Women-in-Action/Announcements2/Governments-Remove-Sexual-Orientation-from-UN-Resolution-Condemning-Extrajudicial-Summary-or-Arbitrary-Executions>

<sup>2</sup> <http://www.un.org/News/Press/docs/2010/gashc3997.doc.htm>: "South Africa voted based on its belief in the principle of non-discrimination on any grounds, including sexual orientation. South Africa was conscious of the fact that there was no international agreement regarding the definition of sexual orientation, and believed that there needed to be a formal process on the issue. South Africa believed that they should define sexual orientation and establish parameters under human rights law. Until there was such a discussion, there would be division, which had characterized the issue over past years."

<sup>3</sup> *Norris v Republic of Ireland* (1991) 13 EHRR 186 at 192 para 21 quoting with approval the finding of an Irish judge.

anxiety and guilt feelings of homosexuals leading, on occasions, to depression and the serious consequences which can follow . . .”<sup>4</sup>

9. The Constitutional Court further argued:

[40] In 1967 in England and Wales, and in 1980 in Scotland, sodomy between consenting adult males in private was decriminalised. However, in Northern Ireland the criminal law relating to sodomy remained unchanged. In 1981, in *Dudgeon v United Kingdom*, the European Court of Human Rights held that the sodomy laws of Northern Ireland was in breach of the article 8(2) privacy provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the European Convention”) to the extent that they criminalised sodomy between adult consenting males in private. In 1982 Northern Ireland amended its laws accordingly. The same conclusion was reached in 1988 in *Norris v Ireland*. It took Ireland nearly five years to comply with *Norris* but it eventually did so in 1993.<sup>5</sup>

10. In India, the Delhi High Court considered the fact that, the Indian Constitution adopted more than fifty years ago, did not contain an explicit provision on sexual orientation equality. Delhi Chief Justice, Ajit Prakash Shah and Justice S. Muralidhar held:

In the present case, the two constitutional rights relied upon i.e. 'right to personal liberty' and 'right to equality' are fundamental human rights which belong to individuals simply by virtue of their humanity, independent of any utilitarian consideration. A Bill of Rights does not 'confer' fundamental human rights. It confirms their existence and accords them protection. (Paragraph 123)

“The criminalisation of homosexuality condemns in perpetuity a sizable section of society and forces them to live their lives in the shadow of harassment, exploitation, humiliation, cruel and degrading treatment at the hands of the law enforcement machinery. (Paragraph 52)

The Constitution of India recognizes, protects and celebrates diversity. To stigmatise or to criminalise homosexuals only on account of their sexual orientation would be against the constitutional morality. (paragraph 80)<sup>6</sup>

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<sup>4</sup> *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* 1999 (1) SA 6 (CC)

<sup>5</sup> *NCGLE & Another v Minister of Justice & Others* at paragraph 40 footnotes omitted.

<sup>6</sup>

See *The Naz Foundation v. Government of NCT of Delhi and Others* Judgment of the Delhi High Court – 2<sup>nd</sup> July 2009

11. The argument that there is no internationally recognised definition is therefore untenable and unsustainable in law and in fact.
12. South Africa's vote and the stated justification for it are inconsistent with the South African Constitution, South African legislation and numerous judgments of South African Courts. We hope that the government will recognise that the vote is inconsistent with our Constitution and will be prepared to reconsider its position.

### ***The vote is inconsistent with the Constitution***

13. The South African Constitution is supreme, and all law and conduct inconsistent with it is invalid.<sup>7</sup> The government's exercise of its discretion to conduct foreign policy is subject to the Constitution and susceptible to judicial review.<sup>8</sup> Even the exercise of Executive powers, the Constitutional Court has held, must comply with the requirements of rationality and legality. Where the exercise of such powers is irrational or unlawful, courts will be prepared to declare it invalid and set it aside as they have done in the past.<sup>9</sup> Moreover, the Bill of Rights imposes a positive obligation on the state to "protect, promote and fulfil the rights in the Bill of Rights".<sup>10</sup>
14. It is clear that South Africa's vote was inconsistent with the provisions of our Constitution. The South African Bill of Rights explicitly and proudly prohibits unfair discrimination, both by the state and by private persons, on the ground of sexual orientation.<sup>11</sup> South Africa is founded on the values of "[h]uman dignity, the achievement of equality and the advancement of human rights and freedoms."<sup>12</sup>
15. The South African Constitution also enshrines the right to life<sup>13</sup> and the right not to be treated or punished in a cruel, inhuman or degrading way.<sup>14</sup> In the *Mohamed* case, the Constitutional Court has held that measures by the state which fail to respect the rights to life and dignity will be declared

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<sup>7</sup> Section 2 of the Constitution.

<sup>8</sup> There is no absolute rule of non-justiciability in respect of the conduct of foreign relations. In *Kolbatshenko v King* 2001 (4) SA 336 (C), the Western Cape High Court found that courts will be unlikely to adopt a hands-off approach where a discretion has been exercised which directly affects the rights or interests of an individual applicant.

<sup>9</sup> See *Albutt v Centre For The Study Of Violence And Reconciliation, And Others* 2010 (3) SA 293 (CC) at para 49; *Affordable Medicines Trust and Others v Minister of Health and Others* 2006 (3) SA 247 (CC) (2005 (6) BCLR 529 at para 49; *Pharmaceutical Manufacturers Association of SA and Another: In re Ex parte President of the Republic of South Africa and Others* 2000 (2) SA 674 (CC) at para 20; *President of the Republic of South Africa and Others v South African Rugby Football Union and Others (SARFU)* 2000 (1) SA 1 (CC); at para 38; and *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 (CC) at para 32.

<sup>10</sup> Section 7(2) of the Bill of Rights.

<sup>11</sup> Section 9(3)-(4) of the Bill of Rights.

<sup>12</sup> Section 1(a) of the Constitution.

<sup>13</sup> Section 11 of the Bill of Rights.

<sup>14</sup> Section 12(1)(d) of the Bill of Rights.

invalid and set aside.<sup>15</sup> It found that there is a “commitment implicit in the Constitution that South Africa will not be party to the imposition of cruel, inhuman or degrading punishment.”<sup>16</sup> The Court declared that the handing over of Mohamed to the United States in the absence of an undertaking that he would not face the death penalty, infringed his rights to life, dignity and freedom from cruel and unusual punishment and was invalid. Our vote to remove sexual orientation from the UN resolution implicates and infringes the very same rights.

16. The vote to remove protection from arbitrary execution from LGBTI people in international law is an affront to the dignity and equality of LGBTI South Africans, and is deeply at odds with the values of the South African constitutional order.

***The Government’s explanation is irrational and unsustainable***

17. The argument that the concept of “sexual orientation” is too vague to do service in international law is demonstrably irrational and unsustainable.
18. This is demonstrated by the fact that sexual orientation appears in our own Constitution as one of the grounds on which discrimination is prohibited. Similarly, the concept of “sexual orientation” has been included by Parliament in 16 pieces of legislation.<sup>17</sup> These include recently enacted pieces of legislation such as the Films and Publications Amendment Act 3 of 2009, which was signed into law by the President earlier this year.
19. The concept has also formed the basis of numerous judgments of the Constitutional Court, and has presented no interpretive difficulties for our progressive and humane constitutional jurisprudence. In fact South Africa has built an internationally admired anti-discrimination jurisprudence drawing directly upon the concept of sexual orientation.<sup>18</sup>

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<sup>15</sup> *Mohamed and Another v President of the Republic of South Africa and Others (Society for the Abolition of the Death Penalty in South Africa and Another Intervening)* 2001 (3) SA 893 (CC) at para 52.

<sup>16</sup> Mohamed at para 58.

<sup>17</sup> For example: Electronic Communications and Transactions Act 25 of 2002, Promotion of Access to Information Act 2 of 2000; Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000; Electoral Commission Act 51 of 1996; Promotion of National Unity and Reconciliation Act 34 of 1995; Employment of Educators Act 76 of 1998; Medical Schemes Act 131 of 1998; Labour Relations Act 66 of 1995; Employment Equity Act 55 of 1998; Refugees Act 130 of 1998; Civil Union Act 17 of 2006; Home Loan and Mortgage Disclosure Act 63 of 2000; Communal Property Associations Act 28 of 1996; Rental Housing Act 50 of 1999; and Defence Act 42 of 2002.

<sup>18</sup> See *Geldenhuys v National Director of Public Prosecution and Others* 2009 (2) SA 310 (CC); *Minister of Home Affairs v Fourie (Doctors For Life International And Others, Amici Curiae); Lesbian and Gay Equality Project and Others v Minister of Home Affairs* 2006 (1) SA 524 (CC); *Du Toit and Another v Minister of Welfare and Population Development and Others (Lesbian and Gay Equality Project as Amicus Curiae)* 2003 (2) SA 198 (CC); *Satchwell v President of the Republic of South Africa and Another* 2003 (4) SA 266 (CC); *J and Another v Director General, Department Of Home Affairs, and Others* 2003 (5) SA 621 (CC); *Hoffmann v South African Airways* 2001 (1) SA 1 (CC); *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1 (CC); and *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* 1999 (1) SA 6 (CC).



20. We also wish to bring to your attention that on 26<sup>th</sup> July 2010 the Department of International Relations and Cooperation's Human Rights and Humanitarian Affairs Directorate met with the Lesbian and Gay Equality Project (LGEP), the Congress of South African Trade Unions (COSATU), the South African Human Rights Commission, the Commission for Gender Equality, the Treatment Action Campaign (TAC), the Triangle Project, Section 27, and the LGBTI Joint Working Group. The meeting was requested by these organisations following several positions taken by the South African government at UN fora on the issue of sexual orientation. At this meeting, the DIRCO committed government to the following:

- 20.1. The South African government will endeavour to explain to civil society and the international community at large, the rationale behind its voting patterns on contentious human rights resolutions;
- 20.2. The approach of the South African government is not to trade off human rights in preference for other interests as South African foreign policy seeks to uphold international human rights law;
- 20.3. Civil society organisations should formally request the President to adopt a policy framework on the implications of sexual orientation, human rights and equality for South African foreign policy;
- 20.4. DIRCO agreed to consult with its Branch on Diplomatic Training, Research and Development to consider the feasibility of inviting representatives of Chapter Nine Institutions to participate in training programmes, consistent with their Constitutional mandates, and in this process to interface with the Department's Diplomats including Heads of Missions prior to their deployment abroad; and
- 20.5. DIRCO will undertake special efforts to liaise and cooperate with South African and international civil society in order to advance principles of equality, human rights and the right to development.

The 16<sup>th</sup> November 2010 vote goes against the spirit and letter of this July 2010 meeting.

***An opportunity to make amends***

- 21. South Africa now has the opportunity to correct its vote. The United States has announced that it will re-introduce an amendment in the General Assembly to prohibit the violent targeting of people based on their sexual orientation.<sup>19</sup> We call on South Africa to vote in favour of this amendment, and to bring its powers of persuasion to bear on other SADC and African countries to do the same.
- 22. We call on South Africa to co-sponsor the US amendment, in this way sending a clear message that South Africa stands for the protection of the most vulnerable.

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<sup>19</sup> <http://usun.state.gov/briefing/statements/2010/152649.htm>

23. We call on the South African government to vote in accordance with the spirit, purport and objects of our Bill of Rights. We call on our government to honour former President Mandela's pledge that "human rights will be the light that guides our foreign affairs".<sup>20</sup>
24. In the event that South Africa votes against or abstains or is absent during the vote on inclusion of "lesbian, gay, bisexual, transgender and intersex people or sexual "orientation" in the resolution on Extrajudicial, Summary, and Arbitrary Executions, we request that the Government of the Republic of South Africa provides us with formal reasons for such conduct.
25. We are calling on people who support freedom, equality, dignity and privacy for all in Africa, Asia, the Caribbean, Europe, Latin America and North America to support our requests to you.
26. South Africa has the opportunity to restore its reputation as a defender of human rights and equality in the international sphere, to make amends to LGBTI South Africans for its initial vote, and to re-assert its moral claim to being a regional leader on human rights issues. We must not let it pass us by.

Yours faithfully

Damian Jacobs

Professor Quarraisha Abdool-Karim,	Zackie Achmat,	Andrew Ardington,
Professor Saleem Badat,	Sheila Barsel,	Jonathan Berger,
Nigel Campbell,	Reverend Dr. Scott Carper,	Viven Cohen,
Alastair Constance,	Vusikela Dubula,	Yoliswa Dwane,
Ross Engers,	Professor Paula Ensor,	Nick Ferreira,
Louis Fourie,	Nathan Geffen,	Sally Gross,
Advocate Adila Hassim,	Doron Isaacs,	Mazibuko Jara,
William Kerfoot,	Lungi Langa,	Jack Lewis,
Daniel Linde,	Professor Leslie London,	Jochen Lucksheiter,
Vanessa Ludwig,	Takalani Madzhadzi,	Mandla Majola,
Professor Loyiso Nongxa	Keletso Makofane,	Lukanyo Mangona,
Phumi Mtetwa,	Julia Nicol,	Axolile Notywala,
Angy Peter,	Catherine Pretorius,	Gavin Silber,
Faizel Slamang,	Professor Derek Swartz,	Professor Carole Vance,
Cati Vawda,	Nadeem Vawda,	Professor Yousuf Vawda,
Dalli Weyers,	Jody Michell Wishnia.	

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<sup>20</sup> <http://www.economist.com/node/17259138>

**Organisations:**

1. Action Aid International South Africa
2. Activate Wits
3. Art for Humanity
4. Article Showcase
5. Black Sash
6. Centre for Rural Legal studies
7. Children's Rights Centre
8. Community Media Trust
9. Community Media Trust
10. Durban Lesbian & Gay Community Health Centre, KZN
11. Engender
12. Equal Education
13. Ethical Currency
14. GALA
15. Gay & Lesbian Network
16. Gay Christian Community
17. Gordon Art
18. Higher Education Association of South Africa (HESA)
19. Incudisa, UCT
20. Intersex South Africa
21. JAW
22. Knysna animal welfare
23. Leeuwkop Cottage
24. Lesbigoay
25. Loudenuf
26. Matsontso Mathebula
27. Mhlathuze LGBTI Community Health Center, KZN
28. Mnambithi LGBTI Community Health Center, KZN
29. Mpumalanga Versatile society-Igbt
30. Nelson Mandela Metropolitan University (NMMU)
31. OUT
32. Out @Kovsies
33. Out African Magazine
34. OUT Rhodes
35. Pambazuka News
36. Pauline Mitchell Property Management
37. People's Health Movement
38. People'S Health Movement SA-Right to Health Campaign
39. POUT
40. RainbowUCT
41. Rhodes University
42. Scalabrini Centre Cape Town
43. School of Public Health and Family Medicine, UCT
44. Simply said and Done
45. Social Justice Coalition
46. Southern Africa Centre for Survivors of Torture
47. Southern Africa HIV Clinicians Society Exco
48. Sustainability Action Movement
49. The Centre for Human Rights (UP)
50. The Keiskamma Trust
51. The Ubuntu Centre
52. Treatment Action Campaign (TAC)
53. Up &Out
54. University of Witwatersrand
55. Women's Legal Centre



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16 Dec 2010

Ministry of Foreign Affairs  
Tanglin,  
Singapore 248 163  
[mfa@mfa.gov.sg](mailto:mfa@mfa.gov.sg)

ATTENTION: Mr George Yeo, Minister for Foreign Affairs

Dear Sir,

**UNITED NATIONS GENERAL ASSEMBLY RESOLUTIONS ON EXTRA-JUDICIAL KILLINGS**

I write to inform the Ministry of my disappointment as a Singaporean on Singapore's position in November 2010, in abstaining from opposing the amendment to remove sexual orientation from the resolution on extrajudicial, summary and arbitrary executions. I believe the LGBTI community within Singapore would like to be reassured that this is not the government's attitude on how its LGBTI citizens can be treated within Singapore or when travelling, for pleasure or for work.

This is the first time in 10 years that certain states (mainly Islamic and African countries) have been able to swing the votes. The removal of reference to "sexual orientation" in the resolution was jointly proposed by the Arab Group and the Organisation of Islamic Conference (Morocco) and African Group (Mali) gives the message that executions can be carried out extrajudicially, summarily or arbitrarily against a person based on his actual or perceived sexual orientation.

I would like to say that it is not only a case of human rights; it is also a case against humanity and the rule of law. It is a case against the basic value that societies should be built on respect for the law. Most of all, it is a case of whether we are able to show compassion.

This is because the resolution condemns extrajudicial, summary and arbitrary executions. The amendment gives despots and bigots the excuse to torture and kill people for their actual or perceived sexual orientations. Further extrajudicial and arbitrary executions are often carried out with torture and other inhuman acts. The right against torture is an absolute right, internationally.

As a Singaporean, I would like to remind the Ministry that its position has ramifications on the degree of protection a Singapore citizen receives when travelling.

The resolution in the Third Committee of the United Nations General Assembly removed the reference to “sexual orientation” on 16 November 2010, on a narrow vote of 79 against 70, with 17 abstentions. I am aware that there will be a motion to vote on the same issue again on 20 December 2010. I strongly urge that Singapore vote to protect people, regardless of their sexual orientation, from extrajudicial, summary and arbitrary persecutions, torture and killings, just like we would regardless of their race, language or religion.

Yours faithfully,

George Hwang

George Hwang  
52 Kent Road  
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Email: [georgebhwang@yahoo.com](mailto:georgebhwang@yahoo.com)

16 Dec 2010

Ms Grace Poore  
International Gay and Lesbian Human Rights Commission  
80 Maiden Lane, Suite 1505  
New York, NY 10038  
Phone: 212.430.6054  
Fax: 212.430.6060  
Email: [iglhrc@iglhrc.org](mailto:iglhrc@iglhrc.org)

Dear Ms Poore,

**UNITED NATIONS GENERAL ASSEMBLY RESOLUTIONS ON EXTRA-JUDICIAL KILLINGS**

Thank you for informing me on the captioned matter. It is sad day for human rights when a small proportion of people in the world, who think that a fellow human being with different sexual orientation should not be protected from extrajudicial, summary or arbitrary executions; and are able to swing the votes.

I have written to our Minister of Foreign Affairs, Mr George Yeo, copied to our Ambassador for our Permanent Mission to the UN in NYC, Mr Vanu Gopala Menon, on my disappointment that we have abstained from standing on the right side of history. Please find enclosed my letter, for your information only (Kindly refrain from using the contents for press releases without first consulting me.).

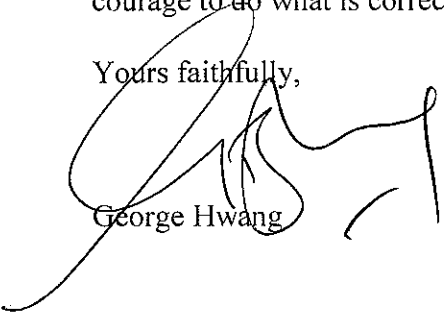
I should think that Singapore's foreign mission consider its citizens worth being protected against extrajudicial and arbitrary killings when travelling, especially, for work; for their real or perceived sexual orientation.

As you are aware, I am one of the 2 petitioners for the repeal of section 377A, Penal Code in October 2007. Our Prime Minister in Parliament has spoken very logically and compassionately about how LGBTI people should be treated in Singapore. The matter pertains to extrajudicial killings, which is also an infringement of the rule of law. Therefore, I am sure that the abstention is because our mission did not have adequate time to consider the matter seriously.

As a Singaporean, I rest confident that my country after due consideration will have the courage to do what is correct, for its own citizens, if not for that of others.

Yours faithfully,

George Hwang

A large, stylized handwritten signature in black ink, appearing to be 'G. Hwang', is written over the printed name 'George Hwang'.



George Hwang  
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16 Dec 2010

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NOT FOR PRESS  
RELEASES

ATTENTION: Mr George Yeo, Minister for Foreign Affairs

Dear Sir,

**UNITED NATIONS GENERAL ASSEMBLY RESOLUTIONS ON EXTRA-JUDICIAL KILLINGS**

I write to express my disappointment as a Singaporean on her position taken on 16 November 2010, in the Third Committee of the United Nations General Assembly, when it abstained from opposing the amendment to remove “sexual orientation” from the resolution on extrajudicial, summary and arbitrary executions. The removal sends the wrong signal on Singapore’s position with regards to LGBTIs, as summarized by the Prime Minister in October 2007, during the Parliamentary debate on the repeal of section 377A, Penal Code.

The International Gay Lesbian and Human Rights Commission have alerted me to the fact that on 20<sup>th</sup> December 2010, the issue will be reintroduced at the United Nations General Assembly. I strongly urge that Singapore vote to ensure that sexual orientation be expressly included as a ground for protection against extrajudicial, summary and arbitrary killings. The reasons are:

1. Extrajudicial, summary and arbitrary killings are often euphemisms for murder and persecutions. We are not debating on “soft” topics such as same sex marriage. This is a clear case of “right and wrong”.
2. By abstaining, Singapore may loose its “moral-suasion” when rendering assistance to its citizens and their family members who are unwittingly persecuted, when travelling, for work or leisure, for their sexual orientation, whether actual or perceived.

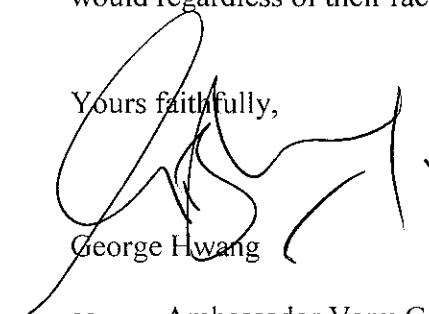
3. Persecutions on grounds of sexual orientation have been consistently condemned by international leaders. They include Nobel Peace Prize winner, Archbishop Emeritus Desmond Tutu, and most recently, on 10 December 2010, by UN Secretary General Ban Ki-moon.

16 November 2010 is the first time in 10 years that certain states (mainly Islamic and African countries) have been able to swing the votes. The removal of reference to "sexual orientation" in the resolution was jointly proposed by the Arab Group and the Organisation of Islamic Conference (Morocco) and African Group (Benin). Singapore must not sit on the fence where the case is not only one on human rights; it is also a case against humanity and the rule of law. It is a case against our basic values that societies should be built mutual respect, understanding, tolerance and compassion.

As a Singaporean, I would like to remind the Ministry that its position internationally has ramifications at home and the degree of protection a Singapore citizen receives when travelling.

The resolution in the Third Committee of the United Nations General Assembly removed the reference to "sexual orientation" on 16 November 2010, on a narrow vote of 79 against 70, with 17 abstentions. On 20 December 2010, please exercise Singapore's vote courageously so that people, regardless of their sexual orientation, receive protection from extrajudicial, summary and arbitrary persecutions, torture and killings, just like we would regardless of their race, language or religion.

Yours faithfully,



George Hwang

cc. Ambassador Vanu Gopala Menon,  
Singapore Permanent Mission to the United Nations  
New York, USA  
[singpm\\_nyc@sgmfa.gov.sg](mailto:singpm_nyc@sgmfa.gov.sg)