

## BACKGROUND:

# THE YOGYAKARTA PRINCIPLES - AN OVERVIEW

The Yogyakarta Principles address a broad range of international human rights standards and their application to issues of sexual orientation and gender identity. This Overview provides a short outline of the Principles, and some examples of their application.

**Please refer to the Principles themselves for a detailed awareness of the text.**

**Preamble:** The Preamble acknowledges human rights violations based on sexual orientation and gender identity, establishes the relevant legal framework, and provides definitions of key terms.

**Rights to Universal Enjoyment of Human Rights, Non-Discrimination and Recognition before the Law:** Principles 1 to 3 set out the principles of the universality of human rights and their application to all persons without discrimination, as well as the right of all people to recognition before the law.

**Example:**

- Laws criminalising homosexuality violate the international right to non-discrimination (decision of the UN Human Rights Committee).

**Rights to Human and Personal Security:** Principles 4 to 11 address fundamental rights to life, freedom from violence and torture, privacy, access to justice and freedom from arbitrary detention.

**Examples:**

- The death penalty continues to be applied for consensual adult sexual activity between persons of the same sex, despite UN resolutions emphasising that the death penalty may not be imposed for “sexual relations between consenting adults.”
- Eleven men were arrested in a gay bar and held in custody for over a year. The UN Working Group on Arbitrary Detention concluded that the men were detained in violation of international law, noting with concern that “one of the prisoners died as a result of his arbitrary detention”.

**Economic, Social and Cultural Rights:** Principles 12 to 18 set out the importance of non-discrimination in the enjoyment of economic, social and cultural rights, including employment, accommodation, social security, education and health.

**Examples:**

- Lesbian and transgender women are at increased risk of discrimination, homelessness and violence (report of UN Special Rapporteur on adequate housing).
- Girls who display same-sex affection face discrimination and expulsion from educational institutions (report of UN Special Rapporteur on the right to education).
- The UN High Commissioner for Human Rights has expressed concern about laws which “prohibit gender reassignment surgery for transsexuals or require intersex persons to undergo such surgery against their will”.

**Rights to Expression, Opinion and Association:** Principles 19 to 21 emphasise the importance of the freedom to express oneself, one’s identity and one’s sexuality, without State interference based on sexual orientation or gender identity, including the rights to participate peaceably in public assemblies and events and otherwise associate in community with others.

**Example:**

- A peaceful gathering to promote equality on the grounds of sexual orientation and gender identity was banned by authorities, and participants were harassed and intimidated by police and extremist nationalists shouting slogans such as “Let’s get the fags” and “We’ll do to you what Hitler did with Jews” (report of the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia & related intolerance).

**Freedom of Movement and Asylum:** Principles 22 and 23 highlight the rights of persons to seek asylum from persecution based on sexual orientation or gender identity.

**Example:**

- Refugee protection should be accorded to persons facing a well-founded fear of persecution based on sexual orientation (Guidelines of the United Nations High Commissioner for Refugees).

**Rights of Participation in Cultural and Family Life:** Principles 24 to 26 address the rights of persons to participate in family life, public affairs and the cultural life of their community, without discrimination based on sexual orientation or gender identity.

**Example:**

- States have an obligation not to discriminate between different-sex and same-sex relationships in allocating partnership benefits such as survivors' pensions (decision of the UN Human Rights Committee).

**Rights of Human Rights Defenders:** Principle 27 recognises the right to defend and promote human rights without discrimination based on sexual orientation and gender identity, and the obligation of States to ensure the protection of human rights defenders working in these areas.

**Example:**

- Human rights defenders working on sexual orientation and gender identity issues in countries and regions around the world "have been threatened, had their houses and offices raided, they have been attacked, tortured, sexually abused, tormented by regular death threats and even killed. A major concern in this regard is an almost complete lack of seriousness with which such cases are treated by the concerned authorities." (report of the Special Representative of the UN Secretary-General on Human Rights Defenders).

**Rights of Redress and Accountability:** Principles 28 and 29 affirm the importance of holding rights violators accountable, and ensuring appropriate redress for those who face rights violations.

**Example:**

- The UN High Commissioner for Human Rights has expressed concern about "impunity for crimes of violence against LGBT persons" and "the responsibility of the State to extend effective protection." The High Commissioner notes that "excluding LGBT individuals from these protections clearly violates international human rights law as well as the common standards of humanity that define us all."

**Additional Recommendations:** The Principles set out 16 additional recommendations to national human rights institutions, professional bodies, funders, NGOs, the High Commissioner for Human Rights, UN agencies, treaty bodies, Special Procedures, and others.

**Example:**

- The Principles conclude by recognising the responsibility of a range of actors to promote and protect human rights and to integrate these standards into their work. A joint statement delivered at the UN Human Rights Council by 54 States from four of the five UN regions on 1 December 2006, for example, urges the Human Rights Council to "pay due attention to human rights violations based on sexual orientation and gender identity" and commends the work of civil society in this area, and calls upon "all Special Procedures and treaty bodies to continue to integrate consideration of human rights violations based on sexual orientation and gender identity within their relevant mandates." As this statement recognises, and the Yogyakarta Principles affirm, effective human rights protection truly is the responsibility of all.

## BACKGROUND:

# ABOUT THE YOGYAKARTA PRINCIPLES

This document provides brief background information to the Yogyakarta Principles.

**Please refer to the Principles themselves for a detailed awareness of the text.**

### **Q. What are the Yogyakarta Principles?**

The Yogyakarta Principles are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity. The Principles affirm binding international legal standards with which all States must comply. They promise a different future where all people born free and equal in dignity and rights can fulfil that precious birthright.

### **Q. Why are they needed**

Human rights violations targeted toward persons because of their actual or perceived sexual orientation or gender identity constitute an entrenched global pattern of serious concern. They include extra-judicial killings, torture and ill-treatment, sexual assault and rape, invasions of privacy, arbitrary detention, denial of employment and education opportunities, and serious discrimination in relation to the enjoyment of other human rights.

Key human rights mechanisms of the United Nations have affirmed States' obligation to ensure effective protection of all persons from discrimination based on sexual orientation or gender identity. However, the international response has been fragmented and inconsistent, creating the need for a consistent understanding of the comprehensive regime of international human rights law and its application to issues of sexual orientation and gender identity. The Yogyakarta Principles do this.

### **Q. How did the Principles come about?**

The Principles were developed and unanimously adopted by a distinguished group of human rights experts, from diverse regions and backgrounds, including judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, members of treaty bodies, NGOs and others. The Rapporteur of the process, Professor Michael O'Flaherty, has made immense contributions to the drafting and revision of the Yogyakarta Principles.

A key event in the development of the Principles was an international seminar of many of these legal experts that took place in Yogyakarta, Indonesia at Gadjah Mada University from 6 to 9 November 2006. That seminar clarified the nature, scope and implementation of States' human rights obligations in relation to sexual orientation and gender identity under existing human rights treaties and law.

### **Q. What do they cover?**

The Yogyakarta Principles address the broad range of human rights standards and their application to issues of sexual orientation and gender identity.

These include extrajudicial executions, violence and torture, access to justice, privacy, non-discrimination, rights to freedom of expression and assembly, employment, health, education, immigration and refugee issues, public participation, and a variety of other rights.

### **Q. How can these rights be implemented?**

The Principles affirm the primary obligation of States to implement human rights. Each Principle is accompanied by detailed recommendations to States. The Principles also emphasise, however, that all actors have responsibilities to promote and protect human rights. Additional recommendations are therefore addressed to the UN human rights system, national human rights institutions, the media, non-governmental organisations, and others.