

An Activist's
Guide to The
Yogyakarta
Principles



YOGYAKARTA,
INDONESIA

In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia to outline a set of international principles relating to sexual orientation and gender identity.

The result is the Yogyakarta Principles: a universal guide to human rights which 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.

An Activist's Guide to
The Yogyakarta Principles on the
Application of International Human
Rights Law in Relation to Sexual
Orientation and Gender Identity



Foreword

We all have the same human rights. Whatever our sexual orientation, gender identity, nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status, we are all equally entitled to our human rights without discrimination. These rights—interrelated, interdependent, and universal—are shared by each one of us.

In November 2006, we were honored to serve as co-chairs of a four-day meeting at Gadjah Mada University in Yogyakarta, Indonesia. That meeting culminated a drafting process among twenty-nine international human rights experts who identified the existing state of international human rights law in relation to issues of sexual orientation and gender identity. The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity are meant to be a coherent and comprehensive articulation of the obligations of states and non-state actors to respect, protect, and fulfill the human rights of all persons regardless of sexual orientation and gender identity.

There is an inconsistency between the rights identified in international human rights documents, such as those in the Yogyakarta Principles, and the rights actually enjoyed by individuals. While international standards may grant us rights, discrimination, stigma, violence, and fear pose real threats to people of diverse sexual orientations and gender identities. Activists, human rights defenders, and individual members of our many communities are the driving force behind closing this gap between our rights and our reality.

This Activist's Guide is a tool for those who are working to create change and build on the momentum that has already begun around the Yogyakarta Principles. In local neighborhoods and international organisations, activists of all sexual orientations and gender identities are a vital part of the international human rights system, serving as monitors, educators, mobilisers, and leaders. This guide is an acknowledgment that individual activists deserve support and recognition for their contribution to the realisation of rights for all of us.

Sonia Onufer Corrêa
Vitit Muntarbhorn

August, 2010

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Sheila Quinn (Ireland), Researcher and Consultant, wrote the final draft of this Guide and served as project manager for the final editing process and the Guide's production.



the fund for global human rights
securing dignity and freedom for people worldwide

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- Brazilian Association of Lesbians, Gays, Bisexuals, Travestis and Transsexuals (ABGLT), Brazil
- Transsexual Organization for Dignity in Diversity (Chile)
- Aizhi Action Project and Chinese Society for the Study of Sexual Minorities (CSSM), China
- Alliance to Respect LGBT Citizenship, Colombia
- Sasod, Guyana
- Naz Foundation and Voices Against 377, India
- Sangama, India
- Meem, Lebanon
- Blue Diamond Society (BDS), Nepal
- Transgender Netwerk Nederland (TNN), The Netherlands
- New Zealand Human Rights Commission, New Zealand
- Campaign Against Homophobia (KPH), Poland
- 07-07-07 Campaign, South Africa
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Purpose and Structure of this Guide

Target Audience

This Guide is targeted primarily to activists working on lesbian, gay, bisexual, transgender and intersex (LGBTI) issues.

Purpose

The Guide is an introduction to the Yogyakarta Principles, to facilitate a deeper understanding of the Principles and to encourage their use and their promotion.

It is hoped the Guide will encourage further exploration of the Yogyakarta Principles, of the international human rights law upon which they are based, of the systems for monitoring progress, and of the implications of using a human rights based approach in activist strategies.

Wider Audience

The Guide is likely to be of interest to others engaged in the promotion of human rights: grassroots human rights defenders, national equality bodies, service providers, academics, lawyers, family and friends of LGBTI people, all manner of NGOs, human rights commissions, and others.

The Structure

There are four sections to the Guide

- 1. The Yogyakarta Principles – Overview and Context** gives an overview of the Principles. It discusses why, how, when, and by whom the Principles came into being. It touches briefly on the international human rights framework, the evolution of the articulation of rights for LGBTI people within that framework, of the contribution of the struggle for sexual health and reproductive rights to the recognition of rights for LGBTI people etc.
- 2. The Yogyakarta Principles Up Close** gives detailed insight into the Principles. This section discusses the Preamble and the Additional Recommendations contained in the Yogyakarta Principles. Its main focus is on delving into the Principles themselves and a number of strategies are employed to do that: summarising in non-legal language; a thematic approach to explore how the Principles deal with such topics as health, treatment by police and courts, children, promoting a human rights culture, etc.; making links to the international law upon which the Principles are based; drawing attention to further resources.
- 3. The Yogyakarta Principles in Action** is a collection of case studies illustrating the impact of the Yogyakarta Principles in a number of different areas: important national legal decisions, policy changes, informing better health service delivery, empowering activists, and so on.

- 4. Applying the Yogyakarta Principles** suggests strategies for further engagement with the Principles. The intention is to stimulate ideas rather than be directive. The idea is to explore how the Yogyakarta Principles can enhance the work of activists and the work of progressing rights for LGBTI people.

A note on language

In the Preamble the drafters of the Yogyakarta Principles draw attention to human rights violations people have experienced “because they are or are perceived to be lesbian, gay, or bisexual, because of their consensual sexual conduct with persons of the same gender, or because they are or are perceived to be transsexual, transgender or intersex or belong to social groups identified in particular societies by sexual orientation or gender identity”.

The Principles themselves include definitions of the terms.

Sexual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

Gender identity is understood to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical, or other means) and other expressions of gender, including dress, speech, and mannerisms.

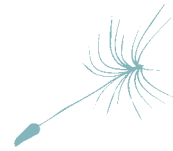
In this Guide, the author speaks of “people of diverse sexual orientations and gender identities” as a way of including all individuals and groups to whom the provisions of international human rights law in relation to sexual orientation and gender identity apply. In speaking about activists generally, the author most commonly speaks of lesbian, gay, bisexual, transsexual, and intersex (or LGBTI) activists, referring to the general goal of activism rather than to the activists’ sexual orientation or gender identity. When referring to communities, the author may refer to LGBTI people or community, even if the particular entity under consideration is a sub-component or a related component of the larger LGBTI movement. Where appropriate, indigenous identities such as hijras, metis, and kothi are referenced, as well as terms such as travesti and third gender. The author recognises the importance and multiplicity of self-identification, both in terms of naming oneself and claiming one’s rights, and hopes that the reader will accept the constraints in relation to being fully inclusive inherent in the writing of this Guide.

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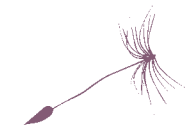
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The Yogyakarta Principles represent an important and exciting new tool for LGBTI activists. The document is the result of a collaborative process with input from activists with expertise in a number of arenas—including at grassroots level, within national and international networks, as human rights defenders and advocates, as academics, writers, theorists, movement builders—and other legal and human rights experts.



The growing confidence and creativity of LGBTI activists over recent decades builds on the courage and perseverance of a long history of activism. Whether battling the legacy of monstrous colonial-era laws, the dominance of oppressive religious strictures, or the limitations of a liberal agenda of tolerance that stops short of human rights, LGBTI activists have demonstrated versatility and adaptability. Developing new partnerships and coalitions, they have led the way with new strategies, and engaged with new institutions to push for legal and substantive change for people of diverse sexual orientations and gender identities. Already LGBTI activists have used the Yogyakarta Principles to significant effect. It is hoped that this Guide will contribute to the further exploration of the Principles and the realisation of their potential.

What are the Yogyakarta Principles?

The Yogyakarta Principles are a set of Principles dealing with international human rights law as it applies to people of diverse sexual orientations and gender identities. Compiled at an experts meeting in Yogyakarta, Indonesia, they set forth the obligations States are required to take to make sure LGBTI people can enjoy their rights on the same basis as

everyone else in society. The Principles do not create any new rights; they are, rather, an articulation of rights already held. The Yogyakarta Principles are based on international human rights law as reflected in international and regional treaties; the jurisprudence of human rights treaty bodies and specialised courts and commissions; authoritative interpretation by the special rapporteurs and working groups of the UN; expert opinion; and State practice.

The Principles seek to be comprehensive in their scope, both in terms of the rights covered by law and also in relation to the actual lived experience of LGBTI people. This was possible because of the combined expertise of the drafters: first-hand experience of the specifics of rights violations as well as intimate knowledge of the evolution of human rights law to address these specifics.

They are significant in that this is the first time that both sets of information are brought together in one document. As such they are a revelation, both to those unfamiliar with human rights law and how far its protections extend, and also to those unfamiliar with the level and nature of rights violations experienced by LGBTI people in many parts of the world.

There are 29 Principles in total:

1. The Right to the Universal Enjoyment of Human Rights
2. The Rights to Equality and Non-Discrimination
3. The Right to Recognition before the Law
4. The Right to Life
5. The Right to Security of the Person
6. The Right to Privacy
7. The Right to Freedom from Arbitrary Deprivation of Liberty
8. The Right to a Fair Trial
9. The Right to Treatment with Humanity while in Detention
10. The Right to Freedom from Torture and Cruel, Inhuman, or Degrading Treatment or Punishment
11. The Right to Protection from all Forms of Exploitation, Sale, and Trafficking of Human Beings
12. The Right to Work
13. The Right to Social Security and to Other Social Protection Measures
14. The Right to an Adequate Standard of Living
15. The Right to Adequate Housing
16. The Right to Education
17. The Right to the Highest Attainable Standard of Health
18. Protection from Medical Abuses
19. The Right to Freedom of Opinion and Expression
20. The Right to Freedom of Peaceful Assembly and Association
21. The Right to Freedom of Thought, Conscience and Religion
22. The Right to Freedom of Movement
23. The Right to Seek Asylum
24. The Right to Found a Family
25. The Right to Participate in Public Life
26. The Right to Participate in Cultural Life
27. The Right to Promote Human Rights
28. The Right to Effective Remedies and Redress
29. Accountability

Why the Yogyakarta Principles?

Significant progress has been made in many parts of the world toward acknowledging LGBTI people as equal members of society. Nevertheless, progress in achieving substantive equality has been slow in coming and remains vulnerable. In many other parts of the world LGBTI people continue to face criminalisation, marginalisation, discrimination, hatred and many, many forms of rights violations.

Within many mainstream societies, the notion of rights for LGBTI people has historically been ignored or treated with derision. Across history and cultures—including pre-colonial societies—diversity and fluidity of gender identity and expression and of sexual orientation were culturally sanctioned and in some instances celebrated. More often, however, there was silence, and people of diverse sexual orientations and gender identities were rendered invisible.

Within the context of claiming rights as equal citizens, the continuum of attitudes towards LGBTI people has ranged from acceptance to mild tolerance to extreme hostility. For the most part, even the tolerant stopped short of allowing for equal recognition within the law. The argument that gay rights meant “special rights” has been used loudly and to significant effect, and has served to lock people into their entrenched positions of ignorance and fear and to impede the work of governments to legislate for equality.

And yet despite these challenges, community activists and their allies have worked tirelessly to address human rights violations based on sexual orientation and gender identity at regional, national, and international levels. The framework of international human rights law has proved a powerful tool to support these efforts. LGBTI people, whose rights were being denied at home, sought and found redress at international level.

The full text of the Yogyakarta Principles—in Arabic, Chinese, English, French, Spanish, and Russian—is available at www.yogyakartaprinciples.org. Also available on this website are:

- Jurisprudential Annotations to the Yogyakarta Principles, compiled in 2007 at University of Nottingham under the direction of Professor Michael O’Flaherty.
- Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles, an article published in the Human Rights Law Review in 2008 by Michael O’Flaherty and John Fisher.

There is also a tracking website (www.ypinaction.org) where you can see how the Principles are being used, view numerous other translations, contribute your own stories, and download a digital version of this Guide.

While independent experts within the international systems reported incidents of discrimination against LGBTI people and urged adherence to obligations, activists were challenging the failure of their States to provide protection, and treaty bodies were expanding the application of law to include LGBTI people. And this work continues and is expanding.

Nevertheless, as the introduction to the Yogyakarta Principles acknowledges, “the international response to human rights violations based on sexual orientation and gender identity has been fragmented and inconsistent.” There needed to be a more widespread knowledge and understanding of the extent to which international human rights law applies to sexual orientation and gender identity.

The Language of Human Rights

Rights holders: Those to whom rights are due, as well as those for whom the provisions of international law were drafted. The term is intended to dignify and embolden people to whom rights and dignity are due, rather than allow them to be characterised as victims in need of charity or special treatment.

Duty-bearers: Refers to the States Parties that are bound by international human rights law to ensure rights holders enjoy the rights due to them. All agencies of the State are duty-bearers.

Treaty, covenant, convention: Synonymous terms referring to instruments of law. The foundation of international human rights law began with the Universal Declaration of Human Rights (UDHR). All of the instruments since then find their basis in the UDHR.

States Parties: Countries that have ratified a treaty.

Signed/ratified: Refers to a State’s status regarding a human rights convention. Signing indicates an intention to ratify. Ratifying means that the State is legally bound by the convention’s provisions.

States obligations: Concrete duties laid out in a treaty for all States Parties.

Clarification of the obligations would assist States to fulfil their duty, the treaty bodies to apply the provisions consistently, and activists to advocate for change.

The International Commission of Jurists and the International Service for Human Rights, on behalf of a coalition of human rights organisations, undertook a project to address this need. The deliberative and drafting process was undertaken by a group of 29 experts—judges, academics, community activists, lawyers, and United Nations representatives—representing 25 countries. Notably, seventeen were women. The result is the *The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*.

Application of the Yogyakarta Principles to women, trans, and intersex people

The Yogyakarta Principles articulate universal rights for all people, but they do not suggest specific standards for particular groups. In the wording of the Principles themselves, the drafters sought to uphold the universal nature of human rights by avoiding wording that would limit rights to particular groups. Thus, instead of speaking about the rights of heterosexuals, homosexuals, lesbians, gay men, bisexuals, or transgender people, each Principle is said to apply to all people regardless of the characteristic of actual or perceived sexual orientation or gender identity. By expressing the rights in this way, the drafters have also sought to avoid the necessity of requiring individuals to absolutely categorise themselves by identity labels that may not be appropriate for all cultural contexts. The notions of sexual orientation and gender identity are fluid. Requiring a person to subscribe to a particular identity group would only perpetuate the oppression that the rights are seeking to combat. None of the rights in the Principles can be considered particular or unique to one group, but rather are enjoyed by all.

For example, the right to treatment with humanity while in detention applies to all people. Particular claims seeking this right may be different when made on behalf of heterosexuals, lesbians, or others, depending on the manner in which the right is violated. One claim may seek training, one may seek a different system of segregation, and another may seek medical care. In whatever way is most relevant, any person of any sexual orientation or gender identity can seek each of the rights listed in the Principles.

Notwithstanding the desire to escape the negative connotations and effects of identity categories, the LGBTI community does organise itself around identity groups, and common patterns of oppression are clear. It may be useful to address the reality of the gap between the universal nature of the rights and the specific ways oppression occurs. For example, it is clear that the rights violations experienced by lesbian women and girls are unique, invoking a different set of rights claims from other groups. Curative rape, the denial of reproductive technologies and services, gender-based violence, and denial of child custody are a few of many types of rights violations experienced distinctly by lesbian and bisexual women and girls.

Many States and societies impose gender and sexual orientation norms on individuals through custom, law, and violence and seek to control how they experience personal relationships and how they identify themselves. The policing of sexuality remains a major force behind continuing gender-based violence and gender inequality.

From the Introduction to *The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*.

The introduction recognises the common roots of gender and sexual orientation oppression, noting the impact of “the policy of sexuality” on gender-based violence and gender inequality. It is up to the advocate, hopefully with examples from this Guide and with reference to the range of specific violations cited by human rights bodies and experts, to review the Principles and create effective arguments for each group.

Transgender, or trans, people are individuals whose gender expression and/or gender identity differs from conventional expectations based on the physical sex they were assigned at birth. Trans is a political umbrella term that is used to describe a wide range of identities, experiences, and people whose appearance seem to conflict with the binary gender norms of society, including transsexuals, transgender, travesti, gender queers, cross dressers, drag queens, drag kings, and many more. It also includes indigenous expressions of gender, such as muxe, hijra, kothi, fa’afafine, and many more, which may be celebrated, accepted, or rejected in their cultural context. Trans people may or may not choose to alter their bodies through clothing, make-up, mannerisms, surgery, or hormone treatment; some who might want to choose the medical route may not have access to or resources for such treatment. Trans people can have any sexual orientation: lesbian, bisexual, gay, or straight.

International human rights law has not dealt with the rights violations of trans people to the same extent as it has with violations on the grounds of sexual

orientation. Within the UN system the Special Procedures of the Human Rights Council have drawn attention to a range of examples of rights violations on the basis of gender identity. The Yogyakarta Principles affirm that all international human rights legal protections apply to transgender people on the basis of the principles of universality and non-discrimination. The drafters sought to enumerate the multiplicity of discriminatory practices experienced by trans people.

Intersex people are another group who face unique patterns of rights violations arising out of their experiences. Intersex is an umbrella term that refers to a variety of biological conditions in which a person is born with reproductive, sexual, or chromosomal structures that do not seem to fit the typical definitions of female or male. According to the Intersex Society of North America (ISNA), medical experts estimate the number of children born with genitalia so ambiguous that a consultation with a specialist in sex differentiation is necessary at between 1 in 1500 to 1 in 2000 births. However, not all intersex conditions are identifiable at birth, or some conditions do not become apparent until puberty, or when seeking fertility treatment, or even at autopsy.

The experience of intersex people perfectly illustrates the point that the definition of what is male and female is entirely constructed by people and is not a biologically-based categorisation. Again, rights-based advocacy must be based on universal rights that are available regardless of how people are categorised. For example, although the

drafters of the Yogyakarta Principles did not specifically address the rights of intersex people, the Principles do identify the right to be free from medical abuses. Advocacy on behalf of intersex people will include seeking specific affirmation of each of the listed rights.

It is worth remarking that the language of the Yogyakarta Principles is, as noted above, deliberately phrased in neutral terms. While it can be argued that such neutral language has the potential to be exclusionary, as in the case of not accounting for the specific experience of women, it does permit an understanding of the applicability of the Principles without reference to a binary gender framework. That is, the neutral language does not presuppose that there are only two sexes/genders: male/female or man/woman. Rather, the language enables the Principles to apply to all people, whether they choose an identity within a binary gender framework or outside it

entirely. Some intersex people choose to identify themselves as neither male nor female. In choosing to employ gender-neutral language, the drafters of the Yogyakarta Principles sought to create a space within which the lived experience of all, including intersex people, can be acknowledged and respected.

The International Human Rights System

The Universal Declaration of Human Rights (UDHR) signaled the beginning of the modern concept and application of human rights. Adopted by the General Assembly of the United Nations in 1948, the UDHR gave expression to those fundamental rights that should be protected and to which everyone everywhere could rightfully hope to attain.

In 1966 two treaties were adopted by the United Nations: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic,

Monitoring International Human Rights Law at the UN

Treaty bodies are committees of independent experts whose role is to monitor a government’s progress in implementing international human rights law. Every three to four years, States Parties submit country reports detailing what they have done to comply with their obligations. NGOs can submit **shadow reports** in which they make their own assessments of their country’s progress. Shadow reports provide a platform for civil society to participate in the monitoring process.

Following the review process, the treaty body addresses its concerns and recommendations to the State party in the form of **concluding observations**. NGOs lobby their government to respond to the concluding observations. Each treaty body also publishes **general comments** on thematic issues or its methods of work, which deepen the interpretation of the law. General comments are based on trends in country reports and individual complaints. They assist states in implementing their treaty obligations but do not impose new obligations.

Social and Cultural Rights (ICESCR). These came into effect in 1976 and became the cornerstone of international human rights law. Since then the scope of the law has continued to expand.

A primary function of the international human rights system is to monitor government compliance with human rights law. As observations, recommendations, and rulings are made by the monitoring and adjudication bodies, a body of jurisprudence has developed that has deepened the interpretation and the application of law. Implementation of the law and compliance with the obligations is slow, and painstakingly so. Nevertheless the international human rights framework has become an important resource for advocacy groups. The language of human rights informs advocacy and action at all levels. Not only have activists helped to shape law at international level, but they have also worked to translate the provisions of the law so as to be meaningful to oppressed and minority groups at home.

The history of human rights is the history of marginalised groups. Women, indigenous people, people from the Global South and East, children, people with disabilities, migrants, and refugees have taken up the language to press their claims and to assert that they are human beings who demand and deserve respect and rights. Their continuing struggles testify to how far the world is from giving a tangible meaning to universality, and reveal that the ideal of universality continues to shape politics, define freedom, and drive change.

International Human Rights Treaties

Name	ACRONYM
International Covenant on Civil and Political Rights	ICCPR
International Covenant on Economic, Social and Cultural Rights	ICESCR
International Convention on the Elimination of All Forms of Racial Discrimination	ICERD
International Convention on the Elimination of All Forms of Discrimination against Women	ICEDAW
International Convention on the Rights of the Child	ICRC
International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	ICAT
International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families	ICMW
International Convention on the Protection of the Rights and Dignity of Persons with Disabilities	ICRPD
International Convention for the Protection of All Persons from Enforced Disappearance	

Human Rights at the Regional Level

The Inter-American Human Rights System

The American Declaration of the Rights and Duties of Man predates the UDHR and marks the beginning of the of Inter-American human rights system. It was adopted by the Organisation of American States (OAS) in Colombia in 1948. The American Convention of Human Rights—adopted in 1969, and entered into force in 1978—is now the cornerstone of the Inter-American Human Rights System. Twenty-five of the 35 countries of the OAS have ratified, and are therefore States Parties to the Convention.

The Inter-American Commission on Human Rights (IACHR) was created in 1959 and formally established in 1960 and is one of two organs charged with promoting and protecting human rights in the region. The other is the Inter-American Court of Human Rights, which held its first hearing in 1979. Individual citizens must report human rights violations and seek a hearing with the Commission. The Court rules on cases submitted to it by either the Commission or a State Party. The Court is, therefore, the last resort within the system. In addition to adjudicating on allegations of human rights violations, the Commission undertakes a number of activities to promote the observance of human rights. This includes country visits and country reports as well as the publication of specially commissioned studies and the organisation of conferences and seminars.

The Commission also recommends the adoption of measures and seeks advice from the Court.

The Commission has recently begun to consider issues relating to sexual orientation. In 1996 Marta Lucia Alvarez Giraldo petitioned the Commission, alleging that the prison authorities in Colombia discriminated against her when they refused her conjugal visits with her same-sex partner. The Commission ruled in 1999 that the case was admissible; ultimately a friendly settlement was reached.

The second case dealing with issues of sexual orientation was received by the Commission in 2004 and granted a full hearing in 2008. The case relates to a Chilean woman, Ms. Karen Atala, who, having separated from her husband, went on to develop a co-habiting relationship with a woman. Initially, Ms. Atala was granted custody of the three children. However, in 2004 the Supreme Court of Justice of Chile revoked the custody arrangement in favour of the children's father.

In bringing her case to the IACHR, Ms. Atala claimed that her sexual orientation was a decisive factor in the Court's ruling to grant custody to her husband. She also claimed that the Court's characterisation of homosexual parents was discriminatory and based on stereotypical views of their ability to care for children and to create a healthy family environment. In December 2009 the IACHR ruled that Ms. Atala's rights had been violated and urged the State to make reparations to her and to

take steps to adopt legislation, policies, and programmes to prohibit and end discrimination based on sexual orientation.

OAS General Assembly Resolutions

The General Assembly of the OAS has issued two resolutions in recent years in relation to sexual orientation and gender identity. In both, the Assembly notes its concern about acts of violence and other related human rights violations against people because of their sexual orientation and gender identity. In the earlier one issued in 2008, the Assembly commits to include the topic of Human rights, sexual orientation, and gender identity on the agenda of the thirty-ninth session of the General Assembly and to ask the Permanent Council to report at that session on the implementation of the resolution. The second resolution, issued in June 2009, urges States to investigate and prosecute violations of human rights on the basis of sexual orientation and gender identity and to protect human rights defenders in this area.

The European System

The European Convention on Human Rights and Fundamental Freedoms, adopted by the Council of Europe

(CoE) in 1950, is the major human rights instrument at the European level. Forty-three of the forty-seven member States of the CoE are party to the Convention. The other important instrument is the European Social Charter, which was adopted in 1965. The Convention deals with civil and political rights, while the Charter deals with economic, social, and cultural rights. Like the UN system, the CoE has adopted a number of other conventions covering such areas as torture, national minorities, gender equality, and migrant workers. Cases dealing with the violations of rights are heard by the European Court of Human Rights in Strasbourg, France. This Court is the only permanent human rights court sitting on a full-time basis.

In March 2010 the CoE took an important step forward in providing legal protection for people of diverse sexual orientations and gender identities with the introduction of a Recommendation from the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. Described by the Secretary General of the CoE as the first legal instrument

In 2003, the Inter-American Court of Human Rights in its Advisory Opinion on the Juridical Condition and Rights of Undocumented Migrants included sexual orientation as a protected ground, thus signaling the desirability of redressing neglect in this area.

Also of note is the reference to sexual orientation in the 2008 Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. Under Principle II on Equality and Non-Discrimination, there is a prohibition on discrimination against people because of sexual orientation.

anywhere to deal specifically with this area, the Recommendation sets out a comprehensive range of human rights that are applicable in ensuring the equal dignity of people of diverse sexual orientations and gender identities. It incorporates practical measures to be taken by member states to ensure the full enjoyment of human rights over time. Implementation is backed by an agreement by the Committee of Ministers that progress will be reviewed in three years' time, and, it is expected, at regular intervals thereafter.

The Recommendation is important in its recognition of important principles and facts, including:

- The principle of universality of human rights in that they apply to all, including people of diverse sexual orientations and gender identities;
- LGBTI people have for centuries been subjected to intolerance and discrimination, and
- That neither cultural, traditional, and religious values, nor the rules of the dominant culture, can be invoked to justify discrimination on grounds of sexual orientation or gender identity.

The African Human Rights System

The African Charter on Human Rights and Peoples' Rights was adopted in 1981 and came into force in 1986. It has been ratified by all 53 member States of the Organization of African Unity (OAU). The African Commission on Human Rights is the main body charged with the promotion and protection of the rights enshrined in the Charter and was inaugurated in 1987. The Commission also has a role in

interpreting the provisions of the Charter. The African Court on Human Rights came into existence by virtue of a Protocol to the Charter, which entered into force in 2004. Thus far the Court has been concerned with organisational matters; it remains to be seen what impact its role will have on the overall agenda of the promotion and protection of human rights within the OAU.

The African Commission has not yet dealt directly with the issue of discrimination on the basis of sexual orientation and gender identity. However, in a recent decision on a case dealing with discrimination on the ground of political opinion brought by the Zimbabwe Human Rights NGO Forum, the Commission explicitly includes sexual orientation as a protected ground under Article 2 of the African Charter.

Asian Pacific Forum

In the Asia Pacific region there is not an inter-governmental body with the ability to address specific instances of human rights violations. One is under development within the Association of Southeast Asian Nations (ASEAN), a regional trade and economic bloc with a policy of non-interference in the internal affairs of its member states. The Intergovernmental Commission on Human Rights (AICHR), which began its work in late 2009, was formed by ASEAN as a step toward creating a regional mechanism for addressing human rights.

In the absence of any inter-governmental regional human rights arrangement in the Asia Pacific, the Asian Pacific Forum (APF), made up of National

Human Rights Institutions (NHRIs), was founded in 1996. NHRIs, or human rights commissions, are independent authorities established by law at the national level that have the power to receive and act on individual complaints of human rights, submit recommendations to the executive and legislature, and seek national compliance with international human rights standards. About seventeen countries in this diverse region, stretching from New Zealand to Jordan, have such institutions. Four countries (Indonesia, Thailand, Philippines, and Malaysia) with national human rights institutions in the Asia Pacific Forum are also members of ASEAN. The APF provides support and coordination to its member countries.

In May 2009, the APF brought together several member institutions in Yogyakarta, Indonesia, to discuss the role of NHRIs in promoting the implementation of the Yogyakarta Principles. A series of recommendations was made to the APF's full membership regarding the Principles and following this, the governing body of the forum adopted the Yogyakarta Principles as the reference point for

international human rights law regarding issues of sexual orientation and gender identity. Once issued by the APF, the review of national laws may offer activists an authoritative strategic blueprint for legislative and legal action in the region.

Rights for LGBTI People and International Human Rights Law

In recent years, international human rights bodies responsible for monitoring and adjudicating the law have interpreted the non-discrimination clause in the treaties to include sexual orientation. In one well-known example in 1994, the UN Human Rights Committee (HRC) examined the law of Tasmania forbidding male homosexual acts and decided that it was arbitrary and unreasonable. Even though sexual orientation may not be explicitly included in some international treaties, human rights bodies have interpreted prohibitions of discrimination based on "sex" or "other grounds" to also prohibit discrimination based on sexual orientation and gender identity.

The decision made by the HRC looked to the rulings of the European Court of

Together with equality before the law and equal protection of the law, the principle of non-discrimination provided under Article 2 of the Charter provides the foundation for the enjoyment of all human rights. As Shestack has observed, equality and non-discrimination "are central to the human rights movement." The aim of this principle is to ensure equality of treatment for individuals irrespective of nationality, sex, racial or ethnic origin, political opinion, religion or belief, disability, age, or sexual orientation.

Paragraph 169 of Annexure III
Decision by the African Commission on communication 245/2002 – Zimbabwe Human Rights NGO Forum/Zimbabwe, and Zimbabwe's response to the decision

Human Rights. The first such ruling was in 1981 in a case brought by a gay man in Northern Ireland, where male homosexual acts were a crime. The Court ruled that the law constituted an unreasonable interference in his private life. Its decision went on to say that hostility on moral grounds was not sufficient to justify criminalisation of homosexuality and that a democratic society should demonstrate tolerance and prohibit discrimination. Two similar cases followed in the same decade—one from the Republic of Ireland and the other from Cyprus. The decisions of the ECtHR led to the decriminalisation

of homosexuality in all three countries. In subsequent years, the Court ruled against discrimination on the grounds of sexual orientation in a number of important areas of daily life. In 2002, the Court made its first ruling in relation to gender identity, deciding that a transgender woman in the United Kingdom who had undergone gender reassignment surgery was entitled to have this change recorded in her birth certificate and was entitled to marry in her new gender.

Other important decisions by the UN Human Rights Committee concern

The NGO Forum of the African Commission is a gathering that precedes each bi-annual session of the Commission. In November 2009, at 46th Session of the African Commission, the NGO forum passed a *Resolution to end all forms of discrimination based on sexual orientation and gender identity in Africa*. The resolution was adopted by consensus by human rights groups from across Africa. It cites the Yogyakarta Principles and calls on the Commission to condemn discrimination and hatred based on sexual orientation and gender identity and to create a mechanism to address human rights violations based on sexual orientation and gender identity. It urges States to decriminalise non-heteronormative activities and gender identities and to end impunity for human rights violations based on sexual orientation and gender identity.

In December 2008, the High Court of Uganda ruled that the Government violated the rights of two lesbian human rights defenders and should pay damages to the claimants, Victor Juliet Mukasa and Yvonne Oyo. Ms. Mukasa was attacked and her home raided by government officials in July 2005. Both women were illegally arrested and sexually harassed and subjected to other inhuman and degrading treatment while in custody.

The High Court ruling is an important victory in a country where violence against LGBTI people is widespread. The ruling pointed to breaches of the women's rights under the constitution of Uganda, in particular the right to privacy, the right to personal liberty, and the right to protection from torture and inhuman treatment. In addition the judgment cited breaches to international human rights law, to which Uganda is a party, including the UDHR and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

pension rights. In a decision looking at Colombian law, the Committee rejected Columbia's argument that, in not permitting the transfer of benefits between same-sex couples, it was trying to protect heterosexual unions rather than discriminate against same-sex unions. UN Special Rapporteurs and Working Groups have also contributed toward the development of legal protection for people of diverse sexual orientations and gender identities by issuing reports that specifically refer to the human rights of LGBTI people. The first to do so was the Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions in 1999, when she included individual cases of severe persecution of sexual minorities.

A 2001 meeting between the Special Rapporteur on Freedom of Expression with trans activists in Argentina marks a significant moment in the recognition of transgender issues by UN human rights experts. That same year the Special Representative on Human Rights Defenders met with LGBTI organisations in Colombia. Also in 2001, the Special Rapporteur on Torture raised the issue of torture and discrimination against sexual minorities for the first time before the UN General Assembly. Finally, the Special Rapporteur on the Right to Health has also explored the issue of sexual orientation discrimination in some of his annual reports. Notable among these was the 2004 report to the UN Commission on Human Rights with its discussion on sexual rights as human rights and the affirmation that sexual rights includes the right to express one's sexual orientation.

Nevertheless, despite significant progress, the reportage and discussion on issues of sexual orientation and gender identity throughout the UN is inconsistent. As mentioned earlier in this Guide, it was these limitations within the system that was one of the motivating factors in the development of the Yogyakarta Principles.

The work of activists in interacting with the various organs of the international and regional human rights systems has been, and continues to be, a powerful driving force toward the full realisation of rights by all LGBTI people. Section 2, of this Guide, The Yogyakarta Principles Up Close, gives many examples of how national courts and legislatures fed the development of the international human right systems by interpreting international human rights in the context of issues raised by local LGBTI activists. It is not within the scope of this Guide to trace the history of the involvement of LGBTI activists within the various arenas; highlights will suffice.

Intergovernmental UN conferences have also had a distinct impact on the development of human rights. One such set of conferences, focusing on the rights of women, began with the first World Conference on Women in Mexico in 1975. These conferences provided a venue for governments and communities to seek to establish an international consensus supporting human rights. Their contribution has been toward the broad and deepening agenda of rights for women, while at the same time seeking to include issues specific to lesbian women and girls. It is within this arena—

the strategic advocacy efforts of women activists from all over the world in relation to the women's rights agenda—that the struggle for rights for LGBTI people gained an important boost.

Women activists advanced the debate toward sexual rights for women. Beginning with the International Conference on Population and Development in Cairo in 1994, the debate on reproductive rights for women moved beyond health and medical concerns to an understanding of women's right to sexual autonomy. While the Cairo conference did not produce the advancement in the debate that women sought, the Beijing Platform for Action

(BPfA) the following year did. The BPfA was, and is, an immensely important benchmark document in many ways; in the context of rights for people of diverse sexual orientations and gender identities, its articulation of women's rights as including sexual rights represented an opportunity to advance the debate even further toward the recognition of the right to freely express one's sexual orientation and gender identity without conformity to any prescribed set of norms.

The United Nations has sponsored a series of world conferences on racism over the past several decades. At the 2001 Durban conference on Racism, Racial Discrimination, Xenophobia and

The Human Rights Council (HRC) is the principal UN intergovernmental body responsible for human rights. Established in 2006, the 47 member States that make up the HRC are elected by the General Assembly of the United Nations. The term is three years, and no member may occupy a seat for more than two consecutive terms. The seats are distributed among the UN's regional groups as follows: thirteen for Africa, thirteen for Asia, six for Eastern Europe, eight for Latin America and the Caribbean, and seven for Western European and Others Group.

A key activity of the Council is to conduct a Universal Periodic Review (UPR) to examine the human rights record of each of the 192 UN Member States. The UPR Working Group reviews 48 countries per year over a period of three two-week sessions; this means every country will be reviewed every four years. Each country under review submits a national report detailing its progress on all obligations—not just those relating to an individual treaty. Reports from independent human rights experts and groups, other stakeholders (including NGOs), and National Human Rights Institutions are also taken into account.

Activists have the opportunity to participate in the UPR by submitting information about States to the Office of the High Commissioner for Human Rights (OHCHR), which then summarises the information and presents it to the Council. Activists can also contact Council members directly to ensure that the Council's review of a particular State focuses on issues of concern to the activists.

Related Intolerance LGBTI activists examined the intersection of various forms of oppressions. LGBTI activists attending the conference—as well as a number of governments—sought to give visibility to issues of sexual orientation and gender identity and formulate resolutions that would eventually find their way to other international bodies. A resolution later introduced by Brazil at the United National Human Rights Commission is a prime example of the impact of the Durban conference.

The draft resolution is a milestone in the journey toward recognition of human rights for people of diverse sexual orientations and gender identities in the United Nations. Presented to the then Human Rights Commission by the Brazilian government in 2003, the proposed resolution stirred a debate that became highly contentious, with particular opposition from the Organization of the Islamic Conference (OIC). The vote was postponed until the 2004 session of the Commission. Despite a concerted lobbying effort by a coalition of international and national NGOs at the following session, the Brazilian government postponed consideration of the resolution. Some observers believe that the withdrawal by the Brazilian government was due to a threat by the

OIC to boycott an Arab-Latin American Trade summit scheduled for the same year.

Two other milestones are worth mentioning. The first concerns a statement delivered by Norway on behalf of 54 member states of the United Nations to the UN Human Rights Council in Geneva in December 2006. The statement condemned human rights violations directed against people because of their sexual orientation or gender identity, commended the work of UN mechanisms and civil society in this area, and called on UN Special Procedures and Treaty Bodies to address these issues. It also urged the Human Rights Council to pay due attention to human rights violations based on sexual orientation and gender identity and, in particular, to put the matter on its agenda for its next session.

The second involves a significantly more powerful statement, this time supported by 66 member states and delivered within the General Assembly of the United Nations in New York, in December 2008. Once again condemning violence, killings and executions, torture, arbitrary arrest and deprivation of economic, social, and cultural rights on the basis of sexual orientation and gender

Those who are lesbian, gay or bisexual, those who are transgender, transsexual or intersex, are full and equal members of the human family, and are entitled to be treated as such.

United Nations High Commissioner for Human Rights, Navenethem Pillay

identity, the statement also calls for the decriminalisation of homosexuality in those countries where it still remains a crime.

This was the first time that the status of rights for LGBTI people was brought before the General Assembly. It was supported by countries from all five continents, including from a number of African countries. The statement was initially sponsored by The Netherlands and France, on behalf of the European Union, who were joined in the drafting process by a cross-regional group of countries, including Brazil, Norway, Croatia, Gabon, and Japan.

To Whom are the Yogyakarta Principles addressed?

Primarily the Yogyakarta Principles are targeted toward States, since it is mainly governments that have responsibilities under international human rights law. The obligations apply to all facets of the official machinery and personnel of the State: government departments; the agencies that deliver health, education, social welfare, and other such services on behalf of the State; the police; the court; and the military.

The Principles speak to all the functions of the State, drawing attention to how, in accessing State services or in trying to live and work and participate in society, LGBTI people have experienced or are likely to experience unequal treatment relative to others in society. So that, for example, under

- Principle 3, the Right to Recognition before the Law, deals with the State's

obligation to legally recognise a person's chosen identity, which means providing them with the means to change official documentation if they choose to change their identity from that officially registered at birth. States are also required to facilitate gender identity change without the requirement of sterilisation.

- Principle 6, The Right to Privacy, reminds States of their obligation to repeal laws that criminalise same-sex sexual activity, to ensure people have the right to choose how, when, and to whom they reveal information relating to their sexual orientation and/or gender identity, and to strike down any laws that prohibit or criminalise expression of gender identity.
- Principle 9, The Right to Treatment with Humanity while in Detention, addresses the obligation to adopt measures that will protect prisoners at risk of violence because of their sexual orientation or gender identity.
- Principle 16, The Right to Education, addresses obligations including protection for students and teachers in schools who face the risk of bullying and harassment because of sexual orientation and gender identity; the provision of an educational system that promotes respect for human rights and respect for diverse sexual orientations and gender identities; and measures to ensure that LGBTI students are not discriminated against when it comes to the administration of discipline.
- Principle 17, The Right to the Highest Standard of Health, requires States to provide competent and

non-discriminatory care for gender reassignment procedures; equality of treatment by health personnel to LGBTI patients and their partners; and policies and programmes to provide training to health care personnel so that they are equipped to provide care that is sensitive to the needs of patients of diverse sexual orientations and gender identities.

Because the primary target audience for the Yogyakarta Principles is the State, their language and structure reflect those of the international law upon which they are based. The structure is formal and the language is authoritative and detailed in the manner associated with legal documents that seek to cover every eventuality. In this way, policy makers and legislators can readily determine where in their system of laws and processes of governance changes need to be made so as to comply with the obligations. As such, the Yogyakarta Principles are an invaluable tool and resource.

In addition, there are a number of important recommendations appended to

the Principles that are addressed to other individuals, agencies, and professional bodies that also have responsibilities to promote and protect human rights. These include, for example, the United Nations High Commissioner for Human Rights, the Human Rights Council, UN agencies, experts and treaty bodies, national human rights commissions, courts, funders, the media and others.

Finally, the Yogyakarta Principles are also a tool and resource to others, including academics, lawyers, human rights defenders, human rights monitors, and activists.

The Yogyakarta Principles – a Living Document

It is important to understand that the Yogyakarta Principles are not a wish list—they are not aspirational. They reflect what the law currently says. On the positive side, this means that in claiming the rights articulated in the Yogyakarta Principles there is the security of solid ground. In insisting to governments that they have a duty to fulfill the rights spelled out in

Special procedures is the term given to the mechanisms established to assemble information and expertise to assist the HRC in its work. The term includes Special Rapporteurs, Special Representative of the Secretary-General, Independent Experts, and Working Groups. Each has a **mandate** from the HRC, which has as its focus either a country or theme. There are currently 31 thematic and 8 country mandates.

A primary function of the special procedures is to receive information about rights violations and to seek clarification from the government in the country concerned before drafting a report to the HRC. Special Rapporteurs often organise regional or national consultations with civil society as a way of learning about situations on the ground.

the Yogyakarta Principles, the weight and authority of international law provides the backup. On the other hand, there are areas of life for LGBTI people that are not dealt with in the Yogyakarta Principles and so they expose the inequalities in law that remain a reality.

Just as international human rights law is a living, evolving instrument, so too the Yogyakarta Principles is a living document. The scope of the Principles will expand as the law relating to people of diverse sexual orientations and gender identities continues to expand.

RECALLING that all human beings are born free and equal in dignity and rights, and that everyone is entitled to the enjoyment of human rights without distinction of any kind, such as race, colour, sex language, religion, political or other opinion, national or social origin, property, birth or other status;

Opening paragraph of the Preamble to the Yogyakarta Principles



A primary goal of this Guide is to encourage the promotion of the Yogyakarta Principles among policy makers and politicians, decision makers and the general population, as well as among human rights defenders and rights-holders. Activists—particularly LGBTI activists, but including the wider community of human rights activists—are to the forefront in this regard.



On one level, it is enough to know that the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* is an articulation of international law and that as such it sets out what countries are legally bound to do in order to ensure that LGBTI people enjoy the same rights and dignity as everyone else.

Understanding the Principles at a deeper level, however, will bring additional rewards and expand the opportunities for their broader application. This section hopes to go some way toward elaborating the intricacies and implications of the Yogyakarta Principles. It is hoped the overview provided in this section will encourage further exploration of the Principles and of the broader system of international human rights law. And it is important to note that the discussion of the Principles throughout this Guide represents an overview; it is not exhaustive. As with the law, the Principles hold the capacity for almost endless scrutiny. Whether it is to explore their application, maximise their use, or critique their limitations, it is the in-depth examination of the Principles by activists in relation to what is known on the ground that will yield their full potential.

In this section a number of approaches are used to explore the Principles, including:

- Showing how the structure and language of the Principles mirrors that of the international human rights law on which they are based;
- Using a thematic approach to discuss a number of Principles together, for example, Health, Families, Children, and Treatment within the Judicial System;
- Pointing to the wealth of official discourse on rights for LGBTI people, with reference to the General Comments and Recommendations of treaty bodies, reports from Special Rapporteurs and working groups, and judicial decisions and rulings in relation to claims of rights violations.

Some explanation is provided of the international human rights systems. These systems were designed to ensure the full implementation by governments of human rights through procedures for independent monitoring, peer review, and accountability, as well as mechanisms for civil society participation. They can appear daunting in their complexity and, while it is not necessary to understand their workings in order to understand and work with the Yogyakarta Principles, it is hoped that, for those new to this area, the overview will prove useful.

The Yogyakarta Principles – The Preamble

The primary function of the Preamble is to explain the rationale for the drafting of the Yogyakarta Principles. As such, it draws attention to the breadth of human rights violations experienced by people because of their sexual orientation and/or gender identity. Similarly, the Preamble highlights the principles of universality and non-discrimination, integral to human rights law, as a starting place for a discussion on the application of the law to people of diverse sexual orientations and gender identities.

It begins by recalling Articles 1 and 2 of the Universal Declaration of Human Rights, thereby situating the Principles within the context of the foundations of international human rights. The final paragraph of the Preamble reinforces the link between the Principles and international law by noting that the Principles reflect the current state of the law and will, therefore, require revision as the law continues to develop. We are reminded of the absolute prohibition of discrimination in relation to the enjoyment of human rights, and are reminded too of how people can experience multiple forms of discrimination, for example because of gender, race, disability, or a number of other characteristics, thus compounding their difficulties.

Importantly, the Preamble touches on the issue of equality between men and women and the imperative of combating practices, stereotypes, and customs

based on the notion of the inferiority of one sex. Integral to the goal of equality between men and women is respect for sexual rights, sexual orientation, and gender identity. The Preamble reminds us that the international community has recognised the right of all persons to freely decide on matters related to sexuality.

The Preamble provides definitions for both sexual orientation and gender identity. These are cited earlier in this Guide on page 11.

Finally the Preamble points to the value of systematically drawing together in one document the specific ways in which international human rights law relates to the lives and experiences of persons of diverse sexual orientations and gender identities.

The Yogyakarta Principles on Universality, Non-Discrimination and Recognition before the Law

Main Principles: 1, 2, 3

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.

Michael O’Flaherty, one of the signatories and Rapporteur for the development of the Yogyakarta Principles, explains that the experts placed these elements at the beginning of the text in order to recall “the primordial significance of the universality of human rights and the scale and extent of discrimination targeted against people of diverse sexual orientations and gender identities, as well as the manner in which they are commonly rendered invisible within a society and its legal structures.” (See *Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles*, by Michael O’Flaherty and John Fisher at www.yogyakartaprinciples.org)

Principle 1, The Right to the Universal Enjoyment of Human Rights, articulates one of the fundamental guiding principles that underpin the rationale for formalising and promoting a global approach to making life better for all the peoples of the world.

The aim of this Guide’s treatment of this first Principle is to demonstrate how the language and the structure of the Yogyakarta Principles mirrors those of the international human rights law upon which they are based.

The first sentence of Principle 1 states:

All human beings are born free and equal in dignity and rights.

This is also the first sentence of the Universal Declaration of Human Rights, adopted over 60 years ago within the United Nations, which marks the beginning of the formalisation of a set of laws relating to human rights to which countries all around the world would commit themselves. What is now a comprehensive and seemingly complex system begins with this simple statement of inclusivity—“**All human beings...**”.

But not all people are afforded equal treatment, and over the years international human rights law has had to be further elaborated to demonstrate that **All means All**: that **All** means people of all races, that **All** means children, that **All** means women, that **All** means people of all religions, and so on.

And so the second sentence of Principle 1:

Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights.

This statement is not an aspiration, despite the continuing struggle by LGBTI activists against discrimination. This is the status of international law. Though the laws of many countries fail to provide even basic protection of their rights, and

few, if any, ensure the equal treatment of people of diverse sexual orientations and gender identities, international law demands that they do. The development of the law since the UDHR clearly says that **All** means people of all sexual orientations and gender identities.

After the statement of principle, four obligations are listed under Principle 1. It is worth noting that the obligations—consistent among all 29 Principles—are preceded by the two words: “States shall”. This signals that what follows are legal requirements. The language is declarative and authoritative. Again, it reflects the language of international human rights law. Thus, this is not a set of recommendations of the type usually associated with a study by a group of independent experts. While all the obligations are informed by the expertise of those who are responsible for drafting

One way for NGOs to engage with the UN human rights system is by gaining consultative status through the offices of the **Economic and Social Council of the UN (ECOSOC)**. Known as **ECOSOC status**, accreditation has been granted to over 3000 NGOs, enabling them to submit written and oral reports at UN meetings and to organise events on UN premises. To date, just 10 LGBTI groups have gained ECOSOC status, the most recent being ABGLT (featured in Section 3 of this Guide on page 102) in July 2009. ABGLT is the first LGBTI organisation from the Global South to attain ECOSOC status.

NGOs without consultative (ECOSOC) status can also interact with the UN system in various ways:

Treaty bodies: through shadow reports and individual complaints

Universal Periodic Review: through stakeholder submissions

Human Rights Council: through individual complaints as well as UPR submissions

Special Rapporteurs: through consultation and individual complaints

National Human Rights Institutions: who can submit documentation to the Human Rights Council and other UN bodies.

the Yogyakarta Principles, their provisions are those compiled from the relevant treaties and associated law. They focus on the specific forms of ill treatment and discrimination experienced by people of diverse sexual orientations and gender identities, and at the same time are an accurate representation of how the States are to respond.

The “States shall” language is also a reminder that the Yogyakarta Principles are targeted to States. In the language of human rights law, to the “duty-bearers”—those countries that have voluntarily signed up to and ratified international human rights law and have a duty to protect the rights of people of diverse sexual orientations and gender identities.

The first obligation for Principle 1 talks about the nature of rights as universal, interrelated, interdependent, and indivisible. These concepts are intended to expand our understanding of the comprehensive nature of human rights and the corresponding attention that is required in making rights reality. Much has been written and debated about these concepts. In simple terms:

Universal means that all people, in all parts of the world, are entitled to human rights. They cannot voluntarily be given up, nor taken away.

Indivisible means that all rights—whether civil, cultural, economic, political, or social—have equal status, and cannot be ranked in hierarchical order. They are all inherent to the dignity of every person and equally necessary.

To say that human rights are **interdependent and interrelated** means that the realisation of one often depends, either in whole or in part, on the realisation of others. The right to adequate housing, for example, may depend on the right to work.

Fundamental to complying with the range of obligations embodied in international law, is the imperative to incorporate the standards of universality, interrelatedness, interdependence and indivisibility into a country’s constitution or other appropriate legislation. Beyond that, States are required to be proactive in making sure that people can realise their rights. The detail of how this is to be achieved is contained in the remaining three obligations of Principle 1:

- Laws have to be amended to bring them into line with the notion of ensuring full human rights for all;
- Public education and awareness programmes should be undertaken so as to create and promote a culture of respect for human rights and so enhance the opportunity to experience those rights;
- In order to demonstrate the interrelatedness and indivisibility of rights, States should adopt an holistic approach by integrating the legal norms and standards in all policy and decision-making processes. A pluralistic approach will affirm the commitment to all aspects of human identity, including sexual orientation and gender identity.

The main focus in **Principle 2, The Rights to Equality and Non-Discrimination**, is on discrimination: its negative impact on the realisation of rights, and the obligation on States to counter discrimination in a comprehensive manner.

A number of groups in society experience discrimination on a daily basis because of their race, their religion, their sex, their age, and so on. Discrimination is manifest at many levels in society, including at the personal, societal, and institutional levels. Equality and anti-discrimination legislation has evolved over recent years to protect these groups by expressly listing the grounds on which discrimination is prohibited. The laws of many countries include sexual orientation as a protected ground; many more do not and only a very few include gender identity. The 1996 constitution of the Republic of South Africa is the first to include sexual orientation as a protected ground and the 2009 constitution of Bolivia is the first to include gender identity as a protected ground. Fiji, Ecuador, and Portugal also include sexual orientation explicitly in their constitutional protections against discrimination.

Principle 2 states that people of diverse sexual orientations and gender identities are entitled to realise their rights on the same basis as everyone else and that States are obligated to ensure that they are enabled to do so and, critically, that they do not experience any particular impediment due to discrimination. To achieve this a comprehensive approach by the State is mandated, including legislation and policy change. These legal and administrative measures are

common to all Principles and made relevant to each Principle as appropriate. Fundamentally, the measures must encompass the following:

- All laws, policies, and procedures of all organs of the State must be consistent with a commitment to preventing the abuse of the rights of people of diverse sexual orientations and gender identities;
- The risks faced by people of diverse sexual orientations and gender identities in relation to the denial and abuse of their rights must be recognised and measures initiated by the State to protect against those risks;
- When the rights of people of diverse sexual orientations or gender identities are violated, the State, as the *duty-bearer*, must have measures in place to make sure that the violators—those who perpetrated the abuse—are held legally accountable. The State must also make sure that there are systems in place to allow the aggrieved *rights-holder* to be heard by a competent court or other adjudicator and to be able to seek appropriate redress;
- The State must promote a culture of respect for human rights. This is dealt with in more detail later in this section.

Importantly, Principle 2 goes to some length to specify what discrimination means for people of diverse sexual orientations and gender identities. It does this by i) providing a general definition of discrimination and ii) by detailing some specific manifestations of discrimination.

Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms.

This definition of discrimination is similar to that used in the Convention of the Elimination of All forms of Discrimination against Women (CEDAW) and in the Covenant on the Elimination of Racial Discrimination (ICERD). As such it will be familiar to law- and policy-makers, who should, therefore, be aware of what is involved in complying with this obligation. Clearly discrimination is multi-faceted and the task for the State is to determine what constitutes a “distinction” or “exclusion” and how to recognise “the effect of nullifying or impairing equality before the law” for people of diverse sexual orientations and gender identities.

Enacting laws prohibiting discrimination only goes so far in creating an equal playing field. Looking at how people of diverse sexual orientations and gender identities experience equality in relation to other populations in society is necessary to understanding what other measures need to be taken by States. This definition points to that distinction and reinforces the need for States to consult with LGBTI groups and their representatives so as to be able to take account of their specific needs.

Principle 2 echoes the comments of a number of the UN treaty bodies in its injunction to States to explicitly include sexual orientation and gender identity as a protected ground. In recent years a number of countries have done this, some by the introduction of new anti-discrimination or equality legislation and others by amending existing laws.

The United Nations Human Rights Committee has expressed concern over the lack of laws prohibiting discrimination. For example, in its concluding observations in relation to Hong Kong (China) in 1999, the Human Rights Committee expressed its concern at the lack of legislative protection from discrimination on the basis of sexual orientation and called for its enactment “in order to ensure full compliance with Article 26 of the Covenant” (The International Covenant on Civil and Political Rights).

The challenge of protecting the human rights of everyone is to apply a consistent and inclusive approach to all. Thus when it comes to recognition before the law, everyone is entitled to equal and unencumbered access. Stipulating conditions that place more of a burden on one group than on another may amount to a discriminatory practice. This is the case for many transgender people who face significant challenges at the level of fundamental rights and in terms of everyday life.

Principle 3 of the Yogyakarta Principles, **The Right to Recognition before the Law**, states that persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of their lives. The Principle enumerates some conditions and situations that transgender people face in the struggle for legal recognition of a change in their gender identity. As well as having to undergo a range of medical procedures, people may also be hindered on the basis of their marital and parental status.

In the vast majority of countries where legal recognition of change of gender is available, it is contingent on gender reassignment surgery, sterilisation, and hormonal treatment. Such requirements clearly run counter to respect for the physical integrity of the person. While

some transgender persons may want surgery, many do not and others may want some surgery but not the full regime that is required. For those who do want surgery, there are difficulties of availability and affordability.

In the last decade, some countries (the UK in 2004, Spain in 2006, Uruguay in 2009, South Africa in 2009) have brought in laws allowing for legal change of gender without the prerequisite of surgery or any other medical intervention. In February 2009, the Austrian Administrative High Court ruled that surgery was not a prerequisite for gender and name change. The Federal Supreme Court in Germany referred to the growing expert awareness that the precondition of surgery for change of gender is no longer tenable.

In Turkey a regional government used a court procedure to close the Rainbow Solidarity and Cultural Association for Transgenders, Gays, and Lesbians (Gokkusagi Dernegi), a non-governmental organisation that advocates for LGBTI rights, on the grounds that its establishment violated a prohibition in Turkish law of organisations that are “against the laws and morality rules”.

The Yogyakarta Principles on The Right to Life and Security of the Person

Main Principles: 4, 5

As with all of the rights dealt with in the Yogyakarta Principles, the right to life is articulated in a number of treaties within the UN system as well as in other regional treaties. The drafters of the Yogyakarta Principles were mindful of Article 4 of the American Convention, Article 14 of the African Charter and Article 2 of the European Convention on Human Rights.

Principle 4 of the Yogyakarta Principles restates what is contained in these treaties, namely that everyone has the right to life. It goes on to state explicitly that people of diverse sexual orientations and gender identities have the right to life, that they should not be deprived of life, nor subjected to violence because of their sexual orientation or gender identity. An important statement within Principle 4, just as within Article 6 of the International Covenant on Civil and Political Rights, declares that where the death penalty is still in place, it should only be used for the most serious crimes. International law also states that same-sex sexual acts, even where a national law prohibits them, do not constitute a serious crime. Principle 4 clearly states this position and affirms that no one should have to face the possibility of a sentence of death on the basis of their sexual orientation or gender identity.

In many countries people of diverse sexual orientations and gender identities face the risk of being attacked and killed.

In some instances killings are motivated by hate. In other cases it is due to the failure of the State or of the police to adequately protect LGBTI people, or a result of attacks by the police themselves, and in still others it is because of the imposition of the death penalty. Over seventy-five countries continue to regard same-sex sexual activity as a crime, and at least five specify the death penalty for such activity. (For up-to-date information on the status of laws, see ILGA's world map at www.ilga.org.)

International and regional human rights law states that the death penalty should be used only in the case of serious crime. In their deliberations, monitoring committees have reminded a number of countries of the necessity to comply with their legal obligation in this respect.

The impact of laws that criminalise or in other ways discriminate against people on the basis of sexual orientation or gender identity is felt far beyond

those who are charged under the law or who experience the discrimination directly. Being branded as a criminal can have serious psychological effects on individuals. It can inhibit their freedom and confidence to take their full place in society, causing them to stay in the closet, to stay away from social and cultural venues, to restrict their job and educational choices, and even to keep a distance from their families. In addition, such laws give license to view people of diverse sexual orientations and gender identities negatively, to discriminate against them, to feel entitled to hate them, and essentially to disregard their humanity. These impacts have been well documented and UN human rights mechanisms have brought them to the attention of States as a reminder of the consequences of discriminatory laws. For example the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions in an interim report to the UN General Assembly issued this comment:

[T]he continuing prejudice against members of sexual minorities and, especially, the criminalisation of matters of sexual orientation increase the social stigmatisation of these persons. This in turn makes them more vulnerable to violence and human rights abuses, including death threats and violations of the right to life....

In some instances, laws that are unclear have been interpreted to penalise people of diverse sexual orientations and gender identities. The application of section 377 of the penal code in India is one example (more details on this in the next section). Another is the use of the law in Egypt to crackdown on homosexuals. While

homosexuality is technically not a crime in Egypt, scores of men have been arrested because of their perceived or actual homosexuality. Once in prison they were tortured—some of them tried for a variety of crimes—convicted, and sentenced to hard labour.

Even where anti-discrimination laws cover sexual orientation and gender identity, law enforcement agencies in many parts of the world often fail to treat seriously crimes against people of diverse sexual orientations and gender identities. These failures include poor investigation of reported crimes, which in turn can result in failure to adequately prosecute the case in court. Where such treatment under the law is prevalent, it is difficult, if not impossible, for LGBTI human rights defenders to operate. They are perceived to be defending that which the law of the land criminalises and yet international law clearly and unequivocally permits.

Principle 5 deals with the obligation on states to protect its citizens against harm, whether inflicted by agents of the state or by private individuals or groups. This includes laws to outlaw discrimination and harassment as well as laws that enforce appropriate criminal penalties for any manifestation of threat, incitement or actual physical violence directed against people of diverse sexual orientations and gender identities. It also includes the rigorous investigation and prosecution of violent crimes against LGBTI people. Importantly, there is an obligation on the state to help prevent such crimes by combating the prejudices that often underlie violence related to sexual orientation and gender identity. While

The Yogyakarta Principles on the Right to Privacy

Main Principle: 6

The right to privacy is perhaps one that is most familiar to LGBTI activists as well as to the general population of LGBTI people around the world. Individuals going to court and demanding their right to privacy have obtained major advances in terms of recognition of the rights of people of diverse sexual orientations and gender identities and overturned repressive laws. Many of these early legal cases took place within the European Court of Human Rights.

When Jeffrey Dudgeon, a gay activist living in Northern Ireland, was arrested by the police and interrogated about his sexual activities, he brought a case to the European Court of Human Rights (ECtHR) claiming that his right to privacy and his right to be free from discrimination had been violated by his arrest. The Court ruled in 1981 that his right to privacy had been infringed, but declined to decide his discrimination claim.

The Dudgeon case was the first successful ruling in favour of LGBTI people from the ECtHR and has been referred to in many other court proceedings and rulings throughout the world. Most importantly at the time, the law in Northern Ireland that labeled homosexuality a crime was struck off the books. Since then many other countries have complied with their international legal obligation by removing similarly repressive laws.

Principle 6 makes it clear that privacy extends beyond what people do in private, away from the public gaze. The rationale put out by people who consider themselves ‘tolerant’ of LGBTI people is familiar to many: ‘whatever people do in the privacy of their own bedrooms is their own business, so long as they keep it to themselves.’ This argues more for keeping LGBTI people in the closet rather than for the protection of their right to privacy. Principle 6 recognises that when a government interferes with public conduct, it may still be violating the right to privacy if that conduct stems from an intimate, personal decision.

People who choose to use dress, speech, or mannerisms as ways of expressing their gender should be free to do so in the public market, on the main streets, at school, and in all other public spaces, as much as in the privacy of their own home.

Their right to privacy under the law means that they can make their own decisions about their bodies, including how they want to express their gender; it means they are free to reject the gender roles imposed by society and to choose their own gender identities. It also means that disclosure of their gender identities is at their own discretion and that documents have to reflect the person's preferred gender identity.

In 2002 the ECtHR issued its first ruling on gender identity issues. The Court held that the UK violated Christine Goodwin's right to privacy when it refused to recognise her preferred gender.

The Committee of Ministers of the Council of Europe in March 2010 issued the first intergovernmental agreement codifying the application of human rights standards to the issue of gender identity, outlawing discrimination on the basis of gender identity and in particular stating that States are obliged to ensure trans people have access to appropriate documentation.

The Chilean group Ovejas Negras experienced private media censorship during their national public awareness campaign, *Un beso es un beso* (A Kiss is a Kiss), which aimed to normalise LGBTI couples and assert their right to be treated with equal dignity in their relationships. Two major television channels refused to air the ads and were not reprimanded by the State. However, the ensuing public debate served to raise the issue both in Chile and abroad. The need for such campaigns is apparent in the censorship they generally face, along with the power that the media has in shaping public attitudes.

Principle 6 is a good example of the notion that rights are dependent on one another. To truly experience the right to privacy, one must be free from discrimination. Part A of Principle 6 deals with the range of measures needed to ensure that everyone, including people of diverse sexual orientations and gender identities can enjoy the right to privacy. Clearly, some of these measures must address discrimination by removing laws and practices that actually do discriminate as well as passing and enforcing laws that make it a crime to discriminate against people of diverse sexual orientations and gender identities.

The Yogyakarta Principles on Treatment by the Police and the Courts

Main Principles: 7, 8, 9, 10

Other Principles: 2, 17

Principles 7–10 of the Yogyakarta Principles address the rights and entitlements due to LGBTI people in relation to the powers of the police and the courts. Beginning with protection from violence and freedom from arbitrary arrest and detention, the rights cover other issues such as the right to a fair trial and humane treatment while in the prison system, including the right to be free from torture.

Before and during arrest

In many parts of the world, LGBTI people face the risk of arrest merely because of how they express their identity through dress or deportment. This difference is judged to be offensive and threatening, and police can take it upon themselves to arrest and detain those who appear not to conform. The risk of arbitrary arrest is also a possibility when other forms of expression are exercised (see The Yogyakarta Principles on Freedom of Conscience, Religion, Expression and Assembly on page 67). Often laws that are vaguely worded have been interpreted as criminalising LGBTI behaviour and thus provide the police with a basis for arrest. While specifically these laws, such as those recently overturned by the courts in India and Nepal (and discussed in the case studies section of this Guide), have been used to prosecute same-sex sexual activity, they have also been broadly applied against

LGBTI people in an arbitrary fashion. The 2002 report of the Working Group on Arbitrary Detention warned against using sexual orientation as the basis for arrest and in 2003 it reported it had received information that people were being arrested and imprisoned solely on the basis of their sexual orientation. All of these circumstances constitute human rights violations on the basis of sexual orientation or gender identity and are expressly prohibited by the obligations underpinning Principle 7.

Within the system

The basic procedures of informing detainees of the reasons for arrest, and promptness in a judicial determination of the grounds for arrest, apply to LGBTI people as they do to every other person. These and other requirements are outlined in a set of guidelines, *Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, adopted

by the UN General Assembly in 1988. The right to equality and non-discrimination, as expressed in Principle 2 of the Yogyakarta Principles, is invoked here.

Equal access to justice

Having equal access to justice, which includes the right to a fair trial as covered in Principle 8, is often denied to those most vulnerable in society who experience discrimination in many other aspects of their lives. Whether they face charges or register complaints, people of diverse sexual orientations and gender identities often encounter the same prejudice and discriminatory treatment inside the justice system. For example, the Special Rapporteur on the independence of judges and lawyers reported to the Human Rights Council in 2007 that the United Arab Emirates had not applied the normal requirements of law to a group of men charged in relation to homosexuality and obscenity. According to the law, four witnesses are required to corroborate the charges, and in this case no witnesses were called. The men were convicted and sentenced to six years' imprisonment.

Protection while in detention

The Yogyakarta Principles, under Principles 9 and 10, cover the basic right to be treated with respect and humanity as well to be free from torture, cruelty, and other inhuman and degrading treatment. In prison, people of diverse sexual orientations and gender identities can be subjected to discriminatory treatment from the prison personnel or fellow prisoners. They are likely to be more fearful, which will in turn compound their

marginalisation; they are often victims of physical and sexual abuse, including rape, and are exploited in other ways; if they are unwell, they may under-report their symptoms, and when they do seek care, the treatments they require may be denied them. The Committee Against Torture, in its concluding observations with respect to Brazil, noted its concern about discriminatory practices toward certain prisoners on the basis of sexual orientation, which placed these prisoners at a disadvantage in accessing already limited essential services. In 2001 the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment issued a report documenting that prisoners with gender dysphoria were being denied treatment such as hormone therapy.

Prison authorities are charged with the care of all prisoners within their facilities. Humane and dignified treatment necessitates training for personnel and it also, as Principle 9 points out, means involving prisoners in decisions about where and how they should be detained so as to take account of their sexual orientation and gender identity. Where conjugal visits are granted to heterosexual prisoners, they should be granted on an equal basis to all, regardless of the gender of the partner. Independent monitoring systems are needed and the involvement of organisations working in the spheres of sexual orientation and gender identity is crucial to ensuring that attention is paid to the needs of LGBTI detainees.

Of particular interest in this regard is the case of a prisoner in Wyoming in the

United States who during the process of being admitted to prison was found to be intersex. The prison authorities, concerned about the prisoner's safety, were loath to place her with the general population and confined her instead for the duration of her 18-month sentence in a maximum security isolation cell, causing her severe hardship. While an initial US Federal Judge ruled that the prisoner's due process rights had been violated, this ruling was subsequently over-turned.

Freedom from torture for all

The right to be free from torture applies to everyone, including, as stated in Principle 10, to people of diverse sexual orientations and gender identities. Numerous monitoring bodies have reiterated the universal applicability of this right. In recommendations, the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment recommended in a 2002 report to the Commission on Human

Rights (now the Human Rights Council) that training manuals be clear that the prohibition of torture is absolute and that personnel are bound to disobey an order which would violate this prohibition. The Committee against Torture in a General Comment in January 2008 noted the particular risk of torture faced by people of diverse sexual orientations and gender identities. The Committee advised that in order to ensure protection to minority groups, States Parties should ensure that acts of violence and abuse against members of minority groups should be fully prosecuted and punished. In a 2009 Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity, the United Nations High Commissioner for Refugees (UNHCR) noted that "severe forms of family and community violence, rape and other forms of sexual assault, particularly if occurring in detention settings, would fall within the definition of torture".

In February 2010 Pembe Hayat, Human Rights Watch (HRW), ILGA-Europe, and IGLHRC wrote a letter to the Prime Minister of Turkey expressing concern over the recent murder of two transgender women, one in Istanbul and the other in Antalya. The letter draws attention to a pattern of violence against LGBTI people, which includes the murder of at least eight transgender women in Turkey since November 2008. The letter also notes a 2009 European Commission Progress Report on Turkey, which noted that the provisions of the Turkish Criminal Code on "public exhibitionism" and "offences against public morality" are sometimes used to discriminate against LGBT people.

(see www.hrw.org/en/news/2010/02/18/letter-turkish-government-violence-and-murders-targeting-transgender-people)

The Yogyakarta Principles on Economic and Social Rights

Main Principles: 12, 13, 14, 15

Other Principles: 2, 11

The Yogyakarta Principles deal with the full range of economic and social rights as mandated in the International Covenant on Economic, Social, and Cultural Rights (ICESR). Here we are talking about the right to the necessities of life—to food and water, to housing and work, and to social security and welfare support as provided through public taxes. These are dealt with in Principles 13–15.

When it comes to the provision of these basic rights, account is taken of the State's ability to provide in terms of having the necessary financial resources. Basically, States are required to demonstrate that, where resources are limited, they are doing the best they can and are making steady progress toward full adequate provision.

However, when it comes to making sure that these rights are applied without discrimination, there is an obligation to act immediately. LGBTI people are to be treated on an equal footing with all others when it comes to social and economic rights. As an example of one of the many declarations of this right, the Committee on the Rights of the Child, in its 2007 Concluding Observations on Slovakia, expressed concern that anti-discrimination legislation in that country did not protect people from discrimination on the basis

of sexual orientation in a range of areas including social security, health, and education.

Crucial to achieving the rights to an adequate standard of living and to housing is the right to work and to earn a living. Principle 12 refers specifically to the right to *decent* work with favorable and just working conditions. Employment law has been at the forefront of anti-discrimination law, with many countries prohibiting discrimination based on sexual orientation and/or gender identity within employment, before enacting broader anti-discrimination legislation in other sectors. However, even where prohibited by law, in practice discrimination by employers is still a regular feature of the lives of LGBTI people. In addition, many LGBTI people may gain and maintain employment only on the condition that they conceal their sexual orientation or gender identity.

The right to work includes the right to protection from unemployment. When employment is not possible, LGBTI people are entitled to unemployment benefits and other forms of assistance to re-enter the labour market. These are some of the range of benefits detailed in Principle 13; others include parental leave, health insurance, family benefits, pensions, and supports in the event of the death of spouse or partner.

Often people who are unable to secure work find themselves at a heightened risk of being exploited, which can lead to their being sold or trafficked. Whether for work or for sex, LGBTI people are among the groups most vulnerable to all forms of exploitation, sale, and trafficking. Principle 11 exhorts states to address the root causes and risk factors of exploitation, which include discrimination in access to housing, accommodation, employment, and social services. The 2004 report of the Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography reported that transgender young people are among the most marginalised and vulnerable because of the degree of discrimination they experience in housing, education, employment, and health. Their

situation is further exacerbated when they are alone and unsupported by family and friends, leaving them especially vulnerable to prostitution.

Principle 14 specifically lists food, safe drinking water, sanitation, and clothing as components of an adequate standard of living. Where the population is at risk of insufficient access to these, States must prioritise the provision of services to the most needy. As an example of this obligation, General Comments from the Committee on Economic and Social Rights have provided clarity in this area pointing out the need to take deliberate, concrete and targeted steps in ensuring the right to water. In relation to food, there is an obligation to ensure freedom from hunger by enabling access to food that meets minimum essential nutritional requirements. Housing has become a contested right for LGBTI people internationally, warranting specific mention of the increased risk of forced eviction and homelessness of LGBTI people. Both private and State actors violate the right to adequate housing for LGBTI people. Numerous reports document State-endorsed evictions, prohibitions on renting, and homelessness among LGBTI people as a result of

Each of the human rights treaty-bodies periodically publishes **General Comments** (or, in the case of CEDAW, **General Recommendations**) intended to clarify the nature of the obligations outlined in the treaty. Addressed to States Parties, they are intended to assist States on how best to comply with their obligations. They do not impose new obligations but rather serve to deepen the interpretation of the law. **General Comments** can address thematic issues or the operation of the treaty body, as well as the actual provisions of the treaty. **General Comments** are formulated based on information gained from States Parties, independent reports and, where applicable, individual complaints.

being forced to leave their family home. Discrimination and prejudice against LGBTI people restrict their rights to choose where and with whom to live.

In a 2004 report Miloon Kothari, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, classed sexual minorities among groups who require special attention by the government in the area of forced evictions. Because they are already socio-economically vulnerable and face multiple forms of discrimination, they suffer disproportionately the effects of forced eviction. In Mongolia, experiences of the violation of the right to housing by lesbian couples are documented in a 2008 shadow report by a coalition of LGBTI activists to the Committee on All Forms of Discrimination Against Women. One lesbian couple were evicted without notice from a rented apartment in Ulaanbaatar when the landlord, who assumed they were cousins, let himself into the apartment early one morning and found them sleeping together in bed. Another lesbian couple in Ulaanbaatar explains what this means to their daily life,

We can't be ourselves even in our own home. We have to watch what we say in case our neighbours overhear us. We have to hide all photos of ourselves as a couple and all our lesbian literature whenever the landlady comes around. We have to make up a spare bed to look as if one of us sleeps in it. We rarely have our lesbian friends come around in case people in the building become suspicious. It is a precarious existence, and we always live in fear that someone will find out.

Within international jurisprudence, discriminatory housing practices have not been soundly prohibited. In *Kozak v Poland* (2010), the European Court of Human Rights (ECtHR) ruled that the blanket exclusion of same-sex relationships from the ability to claim property as a de facto marital relationship, in order to protect the traditional family, was not a proportionate differential treatment. In the case of *Karner v. Austria* (2003), the ECtHR ruled in favour of an applicant who had been evicted from a shared apartment after his partner, who owned the home, passed away. In both cases, however, the court ruled only that the government had failed to give weighty enough reason for difference in treatment in order to protect the traditional family, leaving open the possibility that it would allow such differential treatment in future.

The Yogyakarta Principles on Health

Main Principles: 17, 18

Other Principles: 2, 3, 7, 9, 13

The specific health needs and entitlements of LGBTI people and the corresponding State obligations are comprehensively articulated in the Yogyakarta Principles.

The Principles address sexual and reproductive health rights, control over one's own body, and health and discrimination. For LGBTI people the right to health can be violated through harmful practices, failure to provide necessary services specific to diverse sexual orientations and gender identities, or discrimination that restricts access to the highest possible quality health care.

Fulfilling the right to health

Principle 17, the Right to the Highest Attainable Standard of Health, contains numerous State obligations that require positive action specific to LGBTI people. Broadly, the State is obligated to design all facilities, goods, and services to meet the needs of people of all sexual orientations and gender identities.

Principle 17 emphasises sexual and reproductive rights and health. In 2004 Paul Hunt, Special Rapporteur at the time, reported that sexual and reproductive rights are often neglected or even restricted in law and are crucial to gender equality, as well as human and social development. States are specifically

obligated to facilitate competent treatment and support for gender reassignment. With few exceptions, such as Brazil and Cuba where it is provided free of charge, gender reassignment procedures can be expensive, in many cases prohibitively so.

The Principles deal with the provision of health care for LGBTI people in specific situations. When in detention, LGBTI people are entitled to adequate health care, appropriate to their sexual orientation and/or gender identity. As detailed in Principle 9 this includes access to reproductive health services, HIV/AIDS information and therapy, hormonal therapy, counselling, and gender-reassignment treatments. In 2001, the Special Rapporteur on the question of torture and other cruel, inhuman, or degrading treatment or punishment reported that transgender assault victims had received inadequate medical treatment in public hospitals on grounds of their gender identity. Where LGBTI people have been identified as victims of torture or cruel, inhuman, or degrading treatment or punishment, they are, Principle 10

states, entitled to receive appropriate medical and psychological support.

Control of personal health and bodily integrity

The Preamble of the Yogyakarta Principles notes the international recognition of everyone's right to

decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free from coercion, discrimination, and violence. This includes the freedom to choose whether or not to undergo modification of bodily appearance or function by medical, surgical or other means.

However, this choice is too often denied to trans and intersex people. In many countries, gender identities differing from that assigned at birth, or socially rejected gender expressions, are treated as mental illnesses. The same is true of homosexuality in some countries. According to Mauro Isaac Cabral, in a paper delivered at the expert workshop during the drafting of the Principles, this "pathologisation of difference" can result in the confinement of LGBTI people to psychiatric institutions, where they may be subjected to aversion techniques, including electroshock therapy, as a "cure" to this "illness".

The Yogyakarta Principles make clear that sexual orientation and gender identity should never be considered medical conditions to be cured, treated, or suppressed (Principle 18). Nor can they be the basis for any physical or psychological

testing, confinement to a medical facility, or any other harmful practices, including involuntary participation in research and other procedures such as treatment for HIV/AIDS and other diseases. This includes judgments based on cultural or stereotypical gender norms.

There are no circumstances under which medical procedures can be forced upon a person or required by law. The freedom of choice and of full, informed consent for any medical procedure or treatment is articulated in Principle 17. The role the principle of full, informed consent plays in respecting, protecting, and fulfilling the right to health was the subject of a 2009 report by Anand Grover, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The report discusses the need for laws and international instruments to account for the vulnerability of certain individuals whose rights are compromised due to power imbalances and structural inequalities. The report references Principles 17 and 18 in pointing out the need for health-care providers to adapt to the specific circumstances of lesbian, gay, bisexual, transgender, and intersex people.

The requirement of sterilisation as a condition for making changes in identity documents is synonymous with coercion into unwanted medical procedures and is prohibited by international law. The full implication of the violation is apparent when passport, voter registration, and other documents relating to the exercise of basic rights are involved. Whether actual or feared, the ramifications for people exercising their right to change their

identity are enumerated under Principle 3. According to former Special Rapporteur Paul Hunt (2004), one of the immediate obligations under the right to health is that States must respect a person's freedom to control his or her health and body, and this prohibits forced sterilisation.

Health and discrimination

The Yogyakarta Principles make causal links between health and discrimination. It is vital, for example, that States are mindful of how discrimination can impact the health of LGBTI people and their access to health care. The right to health cannot be guaranteed where there are laws prohibiting same-sex relationships, where there is a lack of protection of sexual minorities against violence and discrimination, or where young people are bullied and ostracised because of their sexual orientation or gender identity.

In its General Comment No. 3 (2003) on HIV/AIDS and the rights of the child, the Committee on the Rights of the Child notes that,

Discrimination is responsible for heightening the vulnerability of children to HIV and AIDS.... Of concern... is discrimination based on sexual orientation. In the design of HIV/AIDS-related strategies, and in keeping with their obligations under the Convention, States Parties must give careful consideration to prescribed gender norms within their societies with a view to eliminating gender-based discrimination as these norms impact on the vulnerability of both girls and boys to HIV/AIDS.

The Principles also address discrimination within the medical establishment, which can force people to forego necessary medical attention. To counter this, States are obligated to carry out education and training within the health sector on best practices when treating LGBTI people. Medical staff must treat patients and their partners with respect, including recognising partners as next of kin where desired (Principle 17). States must also guarantee access to health insurance without discrimination (Principle 13). In the additional recommendations, the Principles urge medical professional organisations to review their practices and guidelines to promote the implementation of the Principles.

A person's health status, including diagnosis of HIV/AIDS, is a prohibited ground of discrimination in international human rights law. The UN Working Group on Arbitrary Detention (2003) reported that in some countries homosexuals and people suffering from AIDS are locked up on the grounds that they represent a risk to society, thus violating their right to freedom from arbitrary deprivation of liberty. The introduction to the Principles acknowledges that discrimination based on sexual orientation or gender identity is often compounded by discrimination on other grounds including health status. Such discrimination can affect a person's employment, physical safety, and mobility. In turn, discrimination based on health status can have serious negative effects on health, including inability to access proper care.

Additional Recommendations

There are two specific additional recommendations related to health. The World Health Organization and UNAIDS are exhorted to develop guidelines for health services to best respond to the health needs of LGBTI persons. Medical organisations are among the professional organisations encouraged to review practices and guidelines with a whole-hearted commitment to the promotion of the Yogyakarta Principles in health care.

The United Nation's Stamford Agreement, 2003

The Stamford Agreement on human rights based programming states that:

- all development cooperation, policies and technical assistance should further the realisation of human rights
- human rights standards should guide development programming in all sectors at all times
- programming should both help States to meet their obligations and citizens to claim their rights.

The Yogyakarta Principles on the Promotion of a Human Rights Culture

Main: Principle 16, 27

Other: Principle 1, 2, 19, 28, 29

The obligation of States to promote a human rights culture is reiterated throughout the Yogyakarta Principles. Twelve of the 29 Principles expressly mention the need for the State to employ training, education, and awareness-raising programmes.

In addition, all of the Principles speak of the requirement to take all necessary legislative, administrative, and other measures to ensure the fulfillment of rights, and this is understood to include education on human rights. Promoting a human rights culture is primarily about a concerted effort to proactively and systematically create and foster an environment that places the promotion of human rights at the centre of all facets of the machinery of government. It is also about making sure that individuals and organisations outside of government are free to promote human rights and that human rights defenders are not silenced, discriminated against, persecuted, or limited in any way from exercising this right (Principle 27).

The Yogyakarta Principles spell out how States must promote a culture of respect for rights that recognises rights for LGBTI people as human rights. Opponents of rights for LGBTI people argue that such matters constitute social and

cultural issues, not human rights issues, and should therefore be addressed by individual States, rather than the international human rights framework.

Training and awareness raising

The aim of training and awareness-raising programmes is to promote and enhance the full enjoyment of human rights by all (Principle 1) and to eliminate prejudicial or discriminatory attitudes (Principle 2). General educational programmes should combat the idea of the superiority of any sexual orientation, gender identity, or gender expression over another (Principle 2) as well as the prejudices that underlie violence related to sexual orientation and gender identity (Principle 5).

The obligation to educate and train is further directed to increase human rights awareness and to eliminate discriminatory attitudes among service providers including in the public sector, social housing and homelessness agencies, teaching, and medical professionals.

Judges, legal professionals, law enforcement and prison personnel are targeted for awareness-raising programmes in international human rights standards and the principles of equality and non-discrimination (Principle 8).

Law enforcement and prison personnel require further training on arbitrary arrest and detention based on sexual orientation and gender identity and on their responsibilities in handling Pride parades and other LGBTI gatherings in a way that protects the participants as well as demonstrates the State's commitment to human rights for all.

LGBTI groups who have expertise on the issues are often involved in the creation and implementation of trainings. LGBTI groups and experts can also work as consultants to the government to develop training modules that ensure that the issues relevant to LGBTI people are appropriately and comprehensively addressed, whether in a broad human rights training or in a training specific to LGBTI issues. The impact of this collaboration often goes well beyond the training sessions and contributes to improved relationships between the LGBTI community and those agencies involved.

Human rights in the education system

Education is a crucial tool for advancing the ideals of human rights and for combating prejudicial and discriminatory attitudes. Human rights education can be incorporated into education systems in a number of ways: as an overall model for

both teaching methods and curriculum content; by developing a human rights aspect within the existing curriculum modules; or by adding a separate subject module. Principle 16, The Right to Education, deals with the need to ensure that educational methods, curricula, and resources are used toward the objective of enhancing understanding of, and respect for, diverse sexual orientations and gender identities. This includes promoting respect for diverse family models.

LGBTI NGOs are often engaged in working with educational authorities in developing guidelines and curricula. For LGBTI groups, promoting human rights education can lead to important opportunities for collaborations with other NGOs. The ideals of equality and respect at the basis of LGBTI rights education link LGBTI issues with other human rights issues in theory and in practice.

General human rights education can also be carried out through public awareness and media campaigns. Combating stereotypes and dispelling myths is fundamental to changing attitudes, and State-sponsored campaigns of this type send a powerful message of its commitment to human rights. State agencies, such as equality bodies or ombudsperson's offices, have undertaken such campaigns to signal the introduction of new anti-discrimination legislation or to combat some form of prejudice that is prevalent. Print and broadcast media should be prevented through legislation and regulation from fuelling hatred and discrimination against LGBTI people.

Protections for human rights defenders

While the State has the responsibility to promote awareness and understanding of human rights, civil society clearly takes the lead in this regard. Whether it is monitoring the State, documenting violations, providing immediate relief to victims, organising rallies, writing letters, advocating for better services, producing a newsletter, visiting those in detention, or any one of a myriad other actions, the role of LGBTI activists in promoting human rights is immeasurable. In international human rights law, such individuals and groups are referred to as human rights defenders and are designated as a group who face particular risks due to the nature of their work. Principle 27 of the Yogyakarta Principles deals with the right to promote human rights, including activities directed toward the promotion and protection of the rights of persons of diverse sexual orientations and gender identities.

The work of human rights defenders on issues of sexual orientation and gender identity often challenges long-standing social structures, traditional practices, or religious precepts that function to justify human rights violations. Because of the public nature of rights activism, it can be seen as threatening to the powers that be, as well as to some sectors of society, and therefore places rights defenders at increased risk of many of the same rights violations that occur in the wider LGBTI community. The correspondingly public nature of rights violations of human rights defenders is also noteworthy; the perpetrators often

act without fear of reprisal, and in order to send a wider message.

A 2007 summary of reports made to Hina Jilani, Special Rapporteur on human rights defenders, emphasises the seriousness of human rights abuses targeted at LGBTI activists, and illustrates why it is necessary to define this category of abuses separately. The summary covers reports from all regions and demonstrates that defenders of LGBTI rights 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 is an almost complete lack of seriousness with which such cases are treated by the concerned authorities. In numerous cases, police or government officials are the alleged perpetrators of violence and threats against defenders of LGBTI rights. In several of these cases, the authorities have prohibited demonstrations, conferences and meetings, allegedly beaten up or even sexually abused these defenders of LGBTI rights.

In a social climate where those who speak about rights are silenced and abused, there can be little expectation of respect for rights for LGBTI people in everyday life. This can result in a lack of hope amongst ordinary people seeking change. Addressing the lack of concern by the authorities in the face of such human rights abuses is a major requisite to protecting human rights defenders and promoting human rights. On page

74 of the Guide there is a discussion of the rights to effective remedy and the principle of accountability for perpetrators of human rights violations.

Other actors in the promotion of human rights culture

In the Additional Recommendations to the Yogyakarta Principles, international, regional, and national human rights courts and bodies, NGOs, specific UN bodies, professional and commercial organisations, the media, and funders are urged to play their part in the promotion of human rights for LGBTI people.

In a social climate where those who speak about rights are silenced and abused, there can be little expectation of respect for rights for LGBTI people in everyday life. This can result in a lack of hope amongst ordinary people seeking change.

The Yogyakarta Principles on Freedom of Conscience, Religion, Expression, and Assembly

Main Principles: 19, 20, 21

Other Principles: 27, 16, 2, 1, 28, 29

The right to peaceful assembly and the right to freedom of expression, two of the most basic rights enshrined in international human rights law, are dealt with in Principles 19 and 20 of the Yogyakarta Principles.

While the LGBTI community around the world has grown in confidence and strength in its efforts to exercise these rights, opposition, discrimination, and harassment is encountered on many fronts.

Principle 19 deals with many of the obstacles to freedom of expression that have arisen for both LGBTI individuals and organisations. LGBTI organisations can face a myriad of obstacles in their work: registration is often refused or delayed in unnecessary and unexplained bureaucracy; office premises are hard to secure; access to print and broadcast media is denied; conference venues are hard to come by. These are the issues that, under Principle 19, States are obligated to address so as to ensure that LGBTI groups are not discriminated against in any of these processes.

As with most of the Principles, the methods specified by which the State is to fulfill its obligations are “legislative, administrative, and other measures.”

In terms of legislation this would mean enacting laws, where they do not already exist, that would prohibit such discriminatory measures; and where laws are in place, to make sure that the laws are enforced. Administrative measures would include taking steps within the relevant agencies to speed up the registration process and to remove any discriminatory criteria and processes that place LGBTI groups at a disadvantage. Instances such as this call for training for personnel.

At an individual level, LGBTI people may experience a violation of their right to free expression due to censorship of dress, deportment, bodily characteristics, or choice of name. While name-calling and harassment in public spaces is one level of abuse, many have been arrested because their self-expression is deemed to be immoral and offensive. The Special Rapporteur on the right to freedom of expression has reported on violations in this area experienced by LGBTI people on a number of occasions. One was

in relation to the Jamaican Forum of Lesbians, All-Sexuals and Gays (JFLAG) and the risk that group faced from public authorities wanting to suppress their free speech. Another relates to concern about the possible link between a complaint made by the Blue Diamond Society in Nepal about the alleged rape by police of four transgender women, and the arrest of thirty-nine transgender women. Meanwhile the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression reported in 2002 on a law that mandated a prison sentence of up to fifteen days for wearing clothes of the opposite sex. States are also required to ensure that the rights of people of diverse sexual orientations and gender identities are not violated through others in society exercising their right to free expression. Some countries have tackled this situation by introducing hate crime legislation. The Special Representative of the Secretary-General on the situation of human

rights defenders, Hina Jilani, expressed concerns in 2007 that a new law on its way through the parliament of Nigeria would make it a crime to support the rights of lesbian and gay people and that this, and similar restrictions in the new legislation, would seriously impinge on freedom of expression.

Principle 21 is important for its articulation of the obligation of States to ensure that matters of conscience and religious beliefs are not used as an excuse to discriminate against LGBTI people. This could apply to discrimination in employment on the basis of sexual orientation or gender identity by religious-run organisations that are in receipt of state funding. Principle 21 also draws attention to the right to hold and practice beliefs free from interference or fear of the imposition of other beliefs. LGBTI people are entitled to enjoy this right on the same basis as everyone else in society.

In March 2010, the Regional Police of East Java withdrew the permit it had previously granted to ILGA-ASIA (The Asian Regional branch of the International Lesbian, Gay, Bisexual, Trans and Intersex Association) for its conference. The conference, the fourth of its kind, was due to be held in Surabaya, Indonesia. It was reported that local police had said that the LGBTI people attending the conference were prone to making trouble and disturbing the peace. The deputy-mayor of Surabaya, the local branch of a major political party and the Minister of Religious Affairs also voiced their opposition to the conference, claiming that the city of Surabaya was a religious city and that a conference of this kind did not fit in with the culture and religion of the people. ILGA-ASIA reported that the Minister of Religious affairs threatened to prosecute the organisers of the conference on the basis that the conference represented an affront to religion.

ILGA-ASIA believes that its right to freedom of assembly, as articulated in Principle 20, has been violated and has written to the National Commission on Human Rights to investigate the matter and to take appropriate action against those agencies responsible.

When it comes to freedom of assembly, the issues are perhaps most evident with Pride parades. In many parts of the world, Pride parades are met with hostility and opposition from society at large, from church leaders and from government. Marches are banned; politicians abuse their parliamentary privilege in their use of inflammatory language; participants face threatened and actual homophobic violence from extremists among the bystanders; and very often the police fail to protect Pride participants and may decide arbitrarily to break up peaceful demonstrations.

Principle 20 is clear that the peaceful assembly of LGBTI people is to be protected by all means at the State's disposal. It deals with any attempt on the part of the State itself to impede the exercise of this right and exhorts the State to guard against notions of public order, health, morality, or security being used as excuses. Often such arguments are used to hide the real reason for denial of equal protection, which is simply opposition to any affirmation of diverse sexual orientations and gender identities. In 2007, the European Court of Human Rights ruled that the organisers of a Pride parade had been denied their right to freedom of peaceful assembly when the mayor of Warsaw banned the march because of the group's failure to produce a traffic organisation plan. Such criteria had not been applied to other groups whose events took place on the same day. The relevance of Principle 2 is evident here in the application of a non-discriminatory approach toward the LGBTI group.

More recently, in October 2009, the Human Rights Committee expressed its concern about a range of rights violations against LGBT people in Russia, including harassment, assaults, systematic discrimination, intolerance, and prejudice by public officials, religious leaders, and the media. Noting the absence of legislation prohibiting discrimination on the basis of sexual orientation, the Committee also drew attention to the infringement of the right to freedom of assembly and association. Among its recommendations to Russia, the Committee directed the State to take all measures necessary to guarantee the right to peaceful association and assembly for the LGBTI community.

Where Pride parades have become contentious, training for police forces has often proved effective, not only in protecting LGBTI people from violence from hostile bystanders, but also in demonstrating to the public that such violence is not tolerated by the State and that the State is committed to freedom of expression and assembly for all, including for people of diverse sexual orientations and gender identities.

Linked to protecting the rights to freedom of expression and assembly is the obligation to promote a culture of human rights, which includes protecting human rights advocates and defenders. Many of the gatherings of LGBTI people have a clear objective to promote rights for LGBTI people. As such, the protection of human rights defenders comes into play, alongside the protection of free speech and assembly.

Clearly a State that works systematically to build a culture—within the organs of government and within society at large—that promotes respect for human rights will be better equipped to accommodate diversity. In this respect, the Yogyakarta Principles are an invaluable tool for policy makers in the reformulation of policies to reflect their commitment to rights for LGBTI people.

Likewise Principles 28 and 29 have a bearing on the exercise of these rights, in that when denied a permit to hold a Pride parade, or refused an article in a State-sponsored newspaper, there must be mechanisms in place to allow individuals to appeal such decisions, as well as processes through which the State publicly sets out its reasons for taking the actions it takes and allows those decisions to be questioned.

The Yogyakarta Principles on Asylum

Main Principles: 23

Other Principles: 4, 10, 7

Principle 23 deals expressly with the right of people of diverse sexual orientations and gender identities to seek asylum. States are obligated to ensure through legislation that a well-founded fear of persecution on the basis of sexual orientation or gender identity is accepted as a ground for the recognition of refugee status.

Some countries have included specific references to sexual orientation in the definition of refugee in domestic legislation, such as in the Swedish Refugee Act. Others conform by including sexual orientation or gender identity under the grounds of membership of a particular social group. Some countries that systematically recognise asylum for LGBTI people are Australia, Austria, Belgium, Canada, Finland, Germany, Greece, Ireland, Netherlands, New Zealand, Norway, South Africa, and the United Kingdom. Denmark, France, and the United States, among others, have recognised LGBTI people for asylum on a few occasions.

Principle 23 also covers extradition and other situations where a person may face removal to another country, signaling the need to take account of their fear of torture, persecution, or other similar cruel treatment in that country. Clearly Principle 7, Freedom from Arbitrary Deprivation of Liberty, and Principle 10, The Right to

Freedom from Torture and Cruel, Inhuman or Degrading Treatment or Punishment are applicable in these circumstances.

The grounds for claiming refugee and asylum status are set out in the 1951 Convention Relating to the Status of Refugees. Claims made by people on the basis of sexual orientation and gender identity have been legitimised in line with their status as members of a particular social group. A 2002 publication by the United Nations High Commissioner for Refugees (UNHCR) acknowledged that where claims for refugee status are based on persecution because of sexual orientation, a gender element is involved. Most commonly, according to that publication, these claims are from “homosexuals, transsexuals, or transvestites” and come on foot of extreme hostility or discrimination experienced over a sustained period of time.

Principle 23 also requires that asylum-seekers are not discriminated against in law or in practice because of sexual orientation or gender identity. The recently-lifted 22-year immigration ban barring anyone with HIV/AIDS from entering the United States demonstrates a discriminatory immigration policy thinly veiled in public health concerns. There are still just under a dozen countries with similar bans.

Additional Recommendation G of the Principles urges The UN High Commissioner for Refugees (UNHCR) to “integrate these Principles in efforts to protect persons who experience, or have a well-founded fear of, persecution on the basis of sexual orientation or gender identity, and ensure that no person is discriminated against on the basis of sexual orientation or gender identity in relation to the receipt of humanitarian assistance or other services, or the determination of refugee status”.

The UNHCR would appear to have responded to that recommendation with the publication in 2009 of its Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity.

The Guidance makes it clear that the abusive, hostile, and discriminatory practices experienced because of sexual orientation and gender identity can amount to persecution. A wide range of circumstances are listed, including forced marriage (either as arranged by family or due to social pressure), physical and sexual violence, arbitrary arrest and detention, medical abuse, threat of execution, or honour killing.

LGBTI asylum-seekers often have limited evidence to establish their LGBTI identity, and this challenge is dealt with in the Guidance. Where an action that has been initiated or is condoned by the State forces someone to forsake or conceal one’s sexual orientation and/or gender identity, this could constitute persecution. Forced concealment violates a number of rights, including the right to freedom of expression (Principle 19), the right to the universal enjoyment of human rights (Principle 1), and the right to equality and non-discrimination (Principle 2).

The UNHCR Guidance deals with the possibility of people having left their countries of origin for a reason other than their sexual orientation or gender identity

Additional Recommendation G of the Yogyakarta Principles recommends that:

The UN High Commissioner for Refugees integrate these Principles in efforts to protect persons who experience, or have a well-founded fear of, persecution on the basis of sexual orientation or gender identity, and ensure that no person is discriminated against on the basis of sexual orientation or gender identity in relation to the receipt of humanitarian assistance or other services, or the determination of refugee status.

and who then ‘come out’ in the country of asylum. People in this circumstance could qualify for refugee status if they can demonstrate a well-founded fear of future persecution.

It has been established, as discussed elsewhere in this Guide, that people of diverse sexual orientations and gender identities are not everywhere secure of certain basic human rights, including the right to life, often because of laws or practices of the State. This can amount to persecution.

The Yogyakarta Principles on Effective Remedies and Redress, and Accountability

Main Principles: 28, 29

Other Principles: 27, 2, 1

Full redress, as outlined in Principle 28 of the Yogyakarta Principles, includes restitution, compensation, rehabilitation, satisfaction, guarantee against recurrence, and any other means appropriate.

The breadth and inclusivity of the means by which a victim of a human rights abuse can seek redress reflects the robustness required of the judicial system. Such means of redress should be available to all, including people of diverse sexual orientations and gender identities. Where States have such systems in place, they have to ensure that they are enforced and effective, and that they are actively applied and available to people of diverse sexual orientations and gender identities.

An element of the overall system of redress that is generally recognised as standard practice is the facility to independently monitor how reports of rights violations are handled by the State. This kind of scrutiny is necessary for a number of reasons: to encourage public trust in the system, to make sure that vulnerable groups, such as LGBTI people, have equal access to the system (including, where necessary, free legal aid), and to make sure the State is held accountable. Many national

and international NGOs serve this function; Principles 28 and 29 point to what the State is required to do in this regard, whether through the office of Ombudsperson, Human Rights Commission, or the judiciary.

Redress cannot be obtained if those responsible for violating the human rights of people of diverse sexual orientations and gender identities cannot be held accountable because they are protected or shielded in any way. On a basic level, this will mean that when LGBTI people report a crime, a prompt and thorough investigation is started. If there is evidence for a legal case, those responsible should be prosecuted and, if found guilty, punished according to the law.

Principle 28 draws attention to the crucial importance of awareness-raising programmes targeted at many sectors of society as part of an agenda of promoting respect for human rights and appreciation of diversity. Such

programmes would help to minimise the need for redress systems by helping to prevent discriminatory actions.

The interdependence of the Principles is once again evident. Principle 29 speaks about ensuring the elimination of discrimination on the basis of sexual orientation and gender identity. All of the other 28 Principles in some way speak to this overall goal. And accountability, articulated in Principle 29, is necessary to enable the State—and all other stakeholders—to monitor its progress and measure its commitment.

Redress cannot be obtained if those responsible for violating the human rights of people of diverse sexual orientations and gender identities cannot be held accountable because they are protected or shielded in any way. On a basic level, this will mean that when LGBTI people report a crime, a prompt and thorough investigation is started.

The Yogyakarta Principles on Children

Main Principles: 16, 24

Other Principles: 11, 13, 14, 18

The Yogyakarta principles apply as fully to children as to adults. The Preamble to the Principles echoes the provisions of the Convention on the Rights of the Child in emphasising two tenets central to the Convention.

First, children have the right to express their views and to have their views given due weight in decisions concerning them. Second, in any situation that involves children, the best interests of the child must be the primary and overriding consideration.

The Yogyakarta Principles address LGBTI children as autonomous individuals, stressing the particular vulnerabilities these children can experience and the additional barriers to rights fulfillment they can face. The Principles also address children as part of a family unit with LGBTI members, recognising the very real effects of discrimination sometimes directed at children because of their association with others. Particular rights and obligations towards children are enumerated in the realms of family, health, housing, and education.

Family

For people of diverse sexual orientations and gender identities, the right to found

a family may mean having equal access to adoption services or assisted procreation technologies. The rights of children are also central to the right to found a family, and Principle 24 echoes the Preamble in stressing the need to involve children in decisions that concern them and to take account of the best interests of the child.

Children often face discrimination on the basis of the sexual orientation or gender identity of a family member. For instance, children have no legal rights to a non-biological parent where their parents are in a same-sex relationship. Only a few countries allow the adoption of a same-sex partner's child (Denmark, Germany, Israel, Norway, and some parts of Australia, Canada, and United States). This leaves children of LGBTI parents at a disadvantage relative to children of heterosexual parents.

Problems can occur when a parental relationship ends by death or separation. If the biological parent of a child dies, there is a risk that the child will be taken

away from the other parent and the home and put in the custody of biological relatives. In the case of separation, the non-biological parent may be denied visitation rights with the child. The rights of children to their parents may be restricted in various ways when a parent undergoes gender reassignment. In the Czech Republic, for example, a parent may be forced to give up parental rights to undergo gender reassignment, or may have their parental rights automatically restricted.

Even where no legal recognition of same-sex relationships exists, in order to meet the rights of the child, the State must, at a minimum, ensure that the best interests and, where appropriate, the opinion of the child are taken into account in decisions concerning the child. Measures must be in place to ensure that children do not suffer as a result of discriminatory measures when it comes to social security and welfare benefits, which could be especially at risk where same-sex unions are not recognised by the State.

Health

Once again the obligations to keep the best interests of the child uppermost and to involve children in decisions concerning them are stressed in Principle 18, which deals with protection from medical abuses. For intersex children, perhaps the most basic violation of rights is un-consented-to genital surgery. Children have the right to the power of full, free, and informed consent in any such procedures, in accordance with the age and maturity of the child. This means that to the extent possible, the child must be consulted and allowed to make a choice. States are obligated to establish protection mechanisms specific to children to ensure that no child is at risk of, or subject to, any form of medical abuse. The Special Rapporteur on Health in a 2009 report dealing with the issue of informed consent, says that health care providers should do everything they can to postpone intersex genital surgery until the child is mature enough to give informed consent. He notes that some research indicates that the procedure is painful, high-risk, and has no proven medical benefits.

Principle 16 deals with all the protections due to LGBTI students and to students whose family includes LGBTI people. These include not having to face disciplinary action solely for expressing one's sexual orientation or gender identity, as well as protection against violence, bullying, and harassment by staff or other students.

The decisions of the Constitutional Court of Colombia in three cases in the 1990s relating to surgery on intersex children are noteworthy. As a result of the first case the Court introduced a blanket moratorium on such surgeries. The decision in the third case, however, established a more balanced approach by introducing a heightened informed consent test. This means that parents have to give a fully informed consent repeatedly in writing over a period of time before such medical interventions for intersex children can be considered legal in that country.

Education

Within the context of the right to education, as articulated in Principle 16, the development of a culture of understanding and respect for diverse sexual orientations and gender identities should be a goal of the educational system. The importance of such a culture clearly has a particular relevance for children who are LGBTI, or who have a family member who is LGBTI. The Yogyakarta Principles recognise both the importance of the school environment to the safety and development of the individual, as well as the power of education in forming life-long attitudes and practices. Equal access to the educational system, as well as equal treatment within the system, are essential elements of the right to education (Principle 16). In addition, in line with the broad goals of education, the developmental needs of all children, including those of diverse sexual orientations and gender identities, must be met.

In 2001, the Special Rapporteur on the Right to Education, Katarina Tomaševski reported progress on equal access to education:

Domestic courts have started to recognise that children themselves have standing to vindicate their right to education and rights in education. The Supreme Court of Colombia examined a complaint by two boys who had been prevented from continuing their education by attending evening classes...because of their homosexuality. The Court faulted the school for having failed to exhibit the values of tolerance and respect for diversity, adding that a public school which posits that "homosexuality is sinful" excludes potential learners.

She further reported that in most countries children who do not conform to accepted gender norms experience abuse and discrimination by school officials and bullying by other students. The result, for many children whose gender identity or gender expression does not conform, is a basic violation of the right to education. Such abuses lead to serious mental and physical harm and to early school leaving.

Principle 16 deals with all the protections due to LGBTI students and to students whose family includes LGBTI people. These include not having to face disciplinary action solely for expressing one's sexual orientation or gender identity, as well as protection against violence, bullying, and harassment by staff or other students. It goes further to prescribe to schools measures for handling such instances when they do arise, by requiring

schools include the child in any decisions meant to remedy the situation, consider the child's best interests, and ensure that the protection of students at risk of violence is not achieved through marginalisation or segregation.

The right to education also requires curricula to promote respect for and understanding of diverse sexual orientations and gender identities as well as human rights in general. Schools can provide models for practicing and experiencing human rights ideals like equality, empowerment, and respect for diversity. Validation by authority figures and peers at school of a child's sexual orientation or gender identity, or their family structure and family members, is crucial to a child's development. If children are accepted as who they are, then they are likely to do the same for others as they mature. The development of attitudes and behaviours that respect diversity is crucial to promoting a culture of human rights in society, which is discussed elsewhere in this Guide on page 63.

Housing

Principle 15, the Right to Adequate Housing, recognises the increased vulnerability to homelessness for children and young people because of their sexual orientation or gender identity. Coming out to family can result in rejection, expulsion from the home, and introduction into poverty. In 2004 Juan Miguel Petit, Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography documented increased incidence of homelessness, poverty, and sexual exploitation

among LGBTI youth in countries all over the world due to the violence and discrimination they encounter in their homes, communities, and schools. Principle 15 addresses the State's obligation to establish social programmes to tackle underlying conditions contributing to homelessness.

The Yogyakarta Principles on Families

Main Principles: 13, 24

Other Principles: 11, 15, 17, 24

The rights and entitlements applicable to LGBTI families are contained in a number of Principles, the most apparent of which is Principle 24, The Right to Found a Family. While international law has so far not provided a definition of family, it does acknowledge, as stated in Principle 24, that families exist in diverse forms. In a 1990 General Comment on Article 23 of the ICCPR, the Right to Found a Family, the Human Rights Committee noted “the concept of the family may differ in some respects from State to State, and even from region to region”.

Trans people face particular barriers in relation to the right to family. Where change of gender identity is permitted, the obligation to undergo sterilisation results in that person’s ongoing right to found a family being severely curtailed. Even in relation to existing children, many countries have restrictions, including requiring the trans person to wait until the children have reached a certain age before applying for gender identity change. Still many more countries mandate divorce, thus effectively breaking up the family unit. Where civil partnership arrangements exist for same sex couples, divorce is required before the same-sex partnership can be legally registered. Some countries prevent trans people from marrying in their new gender altogether.

Crucial to the right to found a family is the right to parent children. For LGBTI people this may mean the right to adopt or to have access to assisted procreation technologies. Being afforded the benefits of the States granted to families is a right of LGBTI parents and Principle 24 covers a number of these, including social welfare, public benefits, employment, and immigration rights. These rights and benefits should apply even if the State does not provide any legal same-sex partnership registration facility. Similar guarantees of rights in relation to protection against discrimination are addressed in Principle 13 dealing with social security and in Principle 16 dealing with education.

The rights and recognition of LGBTI partners are further referred to in specific instances. Principle 9, The Right to Treatment with Humanity while in Detention, requires States to grant conjugal visits, where permitted, on an equal basis to all prisoners and detainees, regardless of the gender of their partner. In Principle 17, The Right to the Highest Attainable Standard of Health, States are obligated to ensure that all health service providers treat clients and their partners without discrimination, including with regard to recognition as next of kin.

Principle 15, the Right to Adequate Housing, requires States to provide services without discrimination on the basis of sexual orientation, gender identity, or marital or family status. Even where the registration of a same-sex relationship is legally unavailable, it is still prohibited to discriminate because of this status. Unlawful forced eviction is often the outcome of discrimination.

The right to equal treatment and protection from discrimination is as far as the Principles go regarding LGBTI relationships so that any entitlement, privilege, obligation, or benefit available to different-sex unmarried partners must also accrue to unmarried same-sex partners. Where States choose to recognise same-sex marriages or registered partnerships, different-sex and same-sex couples must be treated equally within those institutions. While international human rights law does provide for the universal and equal enjoyment of human rights including the right to marry, the law is not read to guarantee same-sex marriage.

The Principles also acknowledge that family is not always a benign force in a person’s life. The obligations of States to protect persons from human rights violations, therefore, extend to the realm of the family. In Principle 3, the Right to Security of the Person, States must impose appropriate criminal penalties for violence, threats, or harassment based on sexual orientation or gender identity in all spheres of life, including within the family. The Yogyakarta Principles identify rejection by families or cultural communities as a risk factor in all forms of exploitation, including sexual exploitation and trafficking in Principle 11 and homelessness and domestic violence in Principle 15. Principle 24 also recognises the freedom to choose not to marry or found a family and the freedom from coercion to do so.

The Yogyakarta Principles Additional Recommendations

Sixteen Additional Recommendations complete the Yogyakarta Principles. The one sentence introduction to this section is a reminder that the responsibility for protecting and promoting human rights rests not only with national governments.

Indeed, the responsibility on all of us to respect the dignity of all human beings is integral to the concept of rights for all and to the implementation of international human rights law.

Seven of the Additional Recommendations—listed A to P—are addressed to United Nations entities and the remainder to a range of bodies, including inter-governmental organisations, non-governmental organisations, and professional and commercial associations, as well as the media and funders. The general thrust of the Recommendations is toward the endorsement, integration, and promotion of the Yogyakarta Principles so that the work of these organisations is better oriented toward respect for the rights of LGBTI people.

The Recommendation to the UN High Commissioner for Human Rights (UNHCHR) has three elements to it: to endorse the Principles, to promote their implementation, and to integrate the Principles into the work of the Office of the High Commissioner for Human Rights (OHCHR). This is a comprehensive recommendation and as such points to the importance of the OHCHR in

relation to its ability to galvanise relevant stakeholders. It is encouraging to note that at the launch of the Principles in 2007, the then UNHCHR, Louise Arbour, described them as a welcome reminder of the basic tenets of universality and non-discrimination.

The Recommendations similarly exhort the UN Human Rights Council (HRC) to endorse the Yogyakarta Principles and to give “substantive consideration to human rights violations based on sexual orientation and gender identity”. This is of paramount importance, for, while many of the offices, experts, and agencies within the UN are engaging more and more in this area, the HRC has the power to effect meaningful change within the entire UN system. A number of States have responded positively to the Principles; shortly after their launch in Geneva, 30 States made positive interventions in relation to sexual orientation and gender identity, with seven States specifically citing the Yogyakarta Principles. The 2008 Declaration on sexual orientation, discussed on page 34 of this Guide, is an encouragement that progress is being made.

Other recommendations to UN bodies include that Special Procedures integrate

the Principles into the implementation of their respective mandates; that the Economic and Social Council grant accreditation to NGOs whose focus is rights for LGBTI people; that the World Health Organization (WHO) and UNAIDS develop guidelines for the delivery of appropriate care in relation to people of diverse sexual orientation and gender identity and that the High Commissioner for Refugees integrate the Principles in the work to protect and provide assistance to those who seek refugee status because of persecution on the basis of sexual orientation or gender identity.

The Treaty Bodies are exhorted to ‘vigorously’ integrate the Principles both in their case law and in the examination of State reports and to adopt General Comments on the application of human rights law to persons of diverse sexual orientations and gender identities. The tenor of this recommendation demonstrates the importance of the work of the Treaty Bodies.

Intergovernmental organisations (IGOs) have a number of important functions that can have a positive impact on the promotion of human rights. They provide a forum for discussion and for the dissemination of information, and they enhance transparency and encourage good governance. Some IGOs—such as the Organisation for American States (OAS), the African Union (AU), and the Council of Europe (CoE)—have parliaments, human rights treaty bodies, courts, and other mechanisms, while others, such as the Asian Development Bank and the African Development Bank, are organised around a development

mandate. Recommendation H is addressed to these organisations. Individually and collectively, these organisations interact with a vast array of governments and agencies in the work they do, and they reach many millions of people. The promotion of the Yogyakarta Principles by these organisations could prove enormously influential and effective.

The Additional Recommendations also target private sector organisations. Recommendation M urges professional organisations in the medical, criminal or civil justice, and educational sectors to review their practices and guidelines in light of the Yogyakarta Principles. Commercial organisations, as employers and producers of goods and services, have a position of influence. Recommendation N asks them to acknowledge that position and to exercise their important role to promote the Principles both nationally and internationally. Lastly among this group are the mass media, and the Recommendations address the need to promote tolerance and acceptance of diversity of sexual orientation and gender identity while avoiding the use of stereotypes.

The final Recommendation is addressed to funders—both governmental and private—and urges them to provide financial assistance to NGOs working in the area of human rights for people of diverse sexual orientations and gender identities. As mentioned a number of times in this Guide, activists, whether within NGOs or other structures, are at the forefront of the work to promote the implementation of human rights. Without adequate financial assistance, their work is restricted.



These sixteen case studies illustrate applications of the Principles. In most cases, activists have used the Yogyakarta Principles as an extra tool to enhance the effectiveness of their goals. These are stories of activists claiming rights, holding duty-bearers to account, and affirming and defending the values that underlie the Principles.



The case studies are organised into five categories that demonstrate how the Principles have been used to:

Challenge oppressive legal standards by bringing litigation in India against the sodomy law, making a court challenge in Nepal to address systemic discrimination against LGBTI people, demanding that government officials eliminate a requirement in the Netherlands that an individual be sterilised in order to change gender identity, and seeking a change in the Chinese medical community to depathologise homosexuality.

Develop new government policy in Brazil in the course of formulating national strategy for LGBTI issues, in Belize when addressing health concerns of men who have sex with men, at the foreign policy level when Sweden implemented an LGBTI programme, and at the municipal level in Bogota, Columbia when activists coordinated their advocacy around city-wide activities.

Seek a more responsive government by increasing the capacity of the national human rights institution in New Zealand and sensitising and training healthcare practitioners in Chile.

Educate the public about international legal standards that prohibit the dismissal of teachers because of sexual orientation and gender identity in Guyana, the rights of transgender people in India, and the historical basis for international human rights for LGBTI people in Poland.

Build a movement by equipping LGBTI people with knowledge about their rights under international human rights standards in opposition to curative rape in South Africa and providing human rights training for lesbians and transgender women in Lebanon.

Challenging oppressive legal standards

Many LGBTI groups mount challenges to oppressive legal standards. These challenges come in the form of litigation, lobbying to overturn unfair laws, protests, efforts to change political leadership, and an endless number of other tactics. Every successful legal challenge brought to the high court of any country since 2005 has involved some reference to the Yogyakarta Principles. As these case studies show, the Principles serve as a way to communicate an entire body of law to a judge, elected official, or government employee.



Blue Diamond Society (BDS), Nepal

The Context

The Right to Recognition before the Law (Principle 3) has been an issue for many groups in Nepal, not just LGBTI people. Oppressive legal standards in Nepal have been a barrier to individuals in certain groups obtaining full and equal recognition, citizenship, access to employment and health care, and participation in government, among other things. In the transition from a Royal Parliamentary system to a government led by a secular assembly, Nepal considered early submissions to the drafting process of the Interim Constitution calling for better treatment and representation for many of the population and a new vision of equality in Nepalese society: affirmative action for *dalits*, more women in government, and anti-discrimination protection for sexual minorities. One of the groups most on the fringes of Nepalese society is transgender women, known in Nepal as *metis*. The abuse and violence, arbitrary arrests, and torture targeted against the *metis* has been well documented and reported upon, both locally in Nepal and internationally by International Human Rights NGOs and the media.

In addition to protection from violence, *metis* are also denied basic civil rights, in that they are regularly refused access to a Citizenship Card. This document, granted to all men and women on reaching the age of majority, entitles citizens to passports, residential rights, and other privileges. Without such identification people often cannot rent rooms, get a job, access

health care, or vote. Authorities usually deny *metis* their citizenship cards, telling them that they do not look like their given name or do not fit the 'male' or 'female' categories, or that they will be given a card only if they accept the State's designation that they are "male". The result is literally to disenfranchise most *metis*, and to strip them of the ability to perform many everyday functions in society that ordinary Nepalis take for granted. This creates an environment where *metis* are seen as outside the law, and are easy victims for police harassment and abuse, as well as pervasive social discrimination.

Other LGBTI people are also discriminated against in many areas of life in Nepal. The term "third sex" has been used by some in Nepal and other parts of South Asia to denote all sections of the LGBTI community. Societal and institutional attitudes toward, and treatment of *metis* are, in some measure, directed toward all so-called sexual minorities.

The Action

Blue Diamond Society (www.bds.org.np) is the leading organisation in Nepal working on behalf of the LGBTI community, with a strong focus on supporting HIV/AIDS and STI prevention and education. Over many years, an important part of BDS's work focused on trying to draw domestic and international attention to individual cases where people, particularly *metis*, were subjected to human rights violations. BDS exposed the Police practice of arbitrary arrests of *metis* and the inhuman conditions in jail, including beatings and rape. During the violent period of Nepal's civil war, such incidents increased and police in major

cities enjoyed virtual impunity to harass and persecute people they did not like.

BDS filed a petition on the Supreme Court of Nepal on April 18, 2007; it contained three broad demands:

- Recognition of the civil rights of transgender people, without requiring them to renounce one gender identity for another
- The creation of a new law prohibiting discrimination and violence against LGBTI people
- Reparation to LGBTI victims of State violence and/or discrimination.

BDS's decision to petition the Supreme Court was motivated not only by a determination to see an end to the violence but also to challenge the State's denial of human rights to LGBTI people in general and to *metis* in particular. BDS recognised that the denial of the citizenship card to *metis* was at the root of the many other rights violations embedded in the institutions and culture of Nepalese society. The arguments in this groundbreaking case were lengthy and complex, citing the Yogyakarta Principles among many legal precedents. BDS and its lawyers faced several challenges, typical of those which may confront similar legal cases in other countries:

- Nepal's government responded that there was no need for special legal protections, since Nepal's Interim Constitution guaranteed the right to non-discrimination on the basis of religion, sex, caste, origin, race, language, or belief.

- The Court was initially completely unfamiliar with the language of "sexual orientation," much less "gender identity".
- International and domestic legal precedents around the world have paid much less attention to issues of gender identity than to issues of sexual orientation. Where courts have acknowledged transgender people's rights at all, it has most often been in relation to people who have undergone sex reassignment surgery—which many *metis* do not want, even if they could afford it. There was, therefore, a lack of jurisprudence that the lawyers could present to the court.

Nevertheless, the concept of a "third gender" in the context of Nepal and similar gender identities in India, was clearly laid out by the lawyers, who were careful to place it in a local and regional context. Several international organisations assisted by providing briefs or other documentation to the court.

The Outcome

In December 2007 the Supreme Court handed down its decision, a sweeping victory for BDS and for Nepal's *metis*, and indeed for the entire LGBTI community in Nepal. This ruling is arguably the single most comprehensive judgment affirming protections for gender identity anywhere in the world. In its ruling, the court acknowledged that Nepal had been negligent in protecting the rights of people of the "third gender" and those of LGBTI people in general.

The Court ordered the Government of Nepal to provide all necessary documents to recognise the gender identity of "third gender" people, including citizenship cards, passports, voter ID cards, and other papers. It also ordered the Government to take necessary measures, including specific anti-discrimination legislation, to protect their dignity and that of all LGBTI people.

Since then, BDS reports that police violence against *metis* is down by 98%, that the rights of all LGBTI people are adequately covered in the new draft constitution (due to be adopted by May, 2011) and that several *metis* have successfully applied for their citizenship cards using the category third gender. In addition one major bank as well as the Human Rights Commission has provided for the option "other" in its public forms and LGBTI people are growing in confidence and taking their place in Nepalese society.

Application of the Yogyakarta Principles

The Yogyakarta Principles allowed the lawyers to make the case for gender identity as a separate ground of non-

discrimination. The Court cited the Yogyakarta Principles (translated for the Court into Nepali) when it quoted from the Preamble as evidence of the discrimination and ill treatment meted out to people of diverse sexual orientations and gender identities. It also relied on the Principles' definitions of gender identity and sexual orientation.

The Supreme Court decision acknowledged that there was an onus on Nepal to live up to its obligations under international law and cited a number of articles from the International Covenant on Civil and Political Rights (ICCPR). Among these was Article 16, which identifies the right to recognition before the law. Principle 3 of the Yogyakarta Principles deals with this right and spells out some of the issues faced by the *metis*, including lack of access to passports and other documentation, as well as difficulties in securing property. Article 17 of the ICCPR was also cited; again the obligations with regard to the right to privacy as they apply to people of diverse sexual orientations and gender identities are enumerated in Principle 6 of the Yogyakarta Principles.

In its ruling, the court acknowledged that Nepal had been negligent in protecting the rights of people of the "third gender" and those of LGBTI people in general.

Naz Foundation and Voices Against 377, India

The Context

More than eighty countries around the world still have laws prohibiting consensual sexual relations between same-sex adults, essentially giving government and law enforcement the ability to regulate a person's private and intimate decisions. These laws are often the legacy of colonial legal codes and, as such, have become deeply embedded both in terms of their seeming immovability and also their implementation. The laws often carry with them other statutes that render LGBTI people unequal. Section 377 of the Indian Penal Code, introduced by the British colonial rulers in 1860, prohibited "carnal intercourse against the order of nature" and allowed for sentences of up to life imprisonment. While the law does not specify same-sex sexual activity, it has been interpreted in the main to apply to homosexual sex.

In effect, this has meant the harassment, blackmail, and imprisonment of lesbian, gay, bisexual, and transgender people simply because of their actual or perceived sexual orientation or gender identity. The law has resulted in the arrest and torture of HIV/AIDS workers in Lucknow and hijras in Bangalore, restrictions of the right to freedom of assembly and expression, and a culture of fear, contempt, and revulsion toward LGBTI people among society as a whole.

It should be noted that there had been a previous legal challenge to Section 377, mounted by AIDS Bedhbhav Virodhi Andolan (ABVA) in 1993. An important difference this time around was the combination of extended legal argument (including citations to the Yogyakarta Principles) and the work to present the case through the actual lived experiences of those who suffered the effects of discrimination. Privacy, it was argued, means more than what goes on behind closed doors. In fact it means little to those in society who, because of poverty, cannot afford their own space. Nor does privacy, as currently understood, take account of the effects of the law on people of diverse sexual orientations and gender identities in relation to censorship, public scorn, police harassment, and workplace discrimination.

The Action

Two groups would mount a challenge to Section 377. Naz Foundation India (www.nazindia.org), an NGO working on HIV/AIDS issues, filed a petition in the Delhi High Court in 2001 claiming that the law violated privacy rights, and asked that it be reinterpreted to decriminalise consensual same-sex activity between adults in private. Voices Against 377 (www.voicesagainst377.org) is a coalition of children's rights, women's rights, and LGBTI groups that came together to join the challenge with Naz. The approach was multi-faceted; with campaigns to raise public awareness and to encourage action, events to foster dialogue and debate, public demonstrations and community interventions, Voices Against 377 sought to bring a range of

perspectives to the arguments against Section 377. In 2006 Voices Against 377 filed an intervention in the court in support of the Naz Foundation's petition.

Activists realised that changing the law needed to be accompanied by a change in public attitudes, challenging myths and stereotypes, and building coalitions to strengthen mainstream, media, and political support. Outside the courtroom, it was important to stress how the law created substantive inequality and led to discrimination against LGBTI people in every walk of life. These political perspectives captured the reality of diverse aspects of LGBTI people's lives and resonated with other marginalised groups suffering discrimination. They helped mobilise communities to oppose the law in the public arena.

For instance, on June 29, 2008, over 2000 people—a record number, given the weight of stigma and silence—participated in Pride marches in Delhi, Kolkata, and Bangalore. These demonstrations, focused on overturning 377, attracted major media attention domestically and worldwide. More importantly, this exposure let the judiciary know that a wider audience was watching the outcome of the case and was involved in the struggle. Meanwhile, a widely-publicised open letter signed by prominent intellectuals and public figures—authors, lawyers, doctors, academics, artists, actors, and social activists—declared support for "the overturning of Section 377 of the Indian Penal Code, a colonial-era law dating to 1861, which punitively criminalizes romantic love and private, consensual sexual acts between adults of the same sex".

The Outcome

In 2003 the government responded to Naz's legal challenge by arguing that Indian society, by and large, disapproves of homosexuality, and that this disapproval justified the criminal statute. The government also argued that the law was needed to protect children from child abuse. The latter argument failed to take account of the fact that the legal challenge presented to court sought not to strike out the law but simply to interpret the law to exclude adult, private, consensual same-sex acts from the ambit of Section 377. Effectively, this would mean the decriminalisation of consensual same sex acts.

The Application of the Yogyakarta Principles

The Yogyakarta Principles provide a clear statement of the position of international law in relation to the imperative to repeal sodomy laws wherever they still exist. International jurisprudence, which informs the Principles, is also clear on the far-reaching effects of sodomy laws on LGBTI people beyond arrest and prosecution. Often the threat of arrest is accompanied by social prejudice, hostile attitudes, and a very real fear of backlash. Principle 6 encompasses the notion of protection of private spaces as well as protection of private decisions.

The legal team referred to the Principles in their oral arguments, citing the definitions for sexual orientation and gender identity given in the Principles. In outlining global trends in legislation related to homosexuality, the Yogyakarta Principles were referenced alongside

the decision of the South African Constitutional Court, the Fijian High Court, the High Court of Hong Kong, the European Court of Human Rights, the Nepalese Supreme Court, and the UN Human Rights Committee.

The decision of the Delhi High Court was given in July, 2009. The Court held that criminalisation of consensual sex between adults in private violates the Constitution's guarantees of dignity, equality, and freedom from discrimination based on sexual orientation. While the law would remain to deal with non-consensual sex between adults and any sex involving children, this ruling provides the much-needed clarification in relation to same-sex sexual acts and effectively decriminalises same sex acts between adults. In the Court Ruling, the judges also referenced the Yogyakarta Principles. In particular they noted:

The Principles recognise:

- Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights;
- All persons are entitled to enjoy the right to privacy, regardless of sexual orientation or gender identity;
- Every citizen has a right to take part in the conduct of public affairs including the right to stand for elected office, to participate in the formulation of policies affecting their welfare, and to have equal access to all levels of public service and employment in public functions, without discrimination on the basis of sexual orientation and gender identity.

The archaic formulation of many sodomy laws (the fact that they do not clearly specify which acts, much less which groups, they target) means it is sometimes difficult to construct a legal challenge to them based on equality unless the legal system has a tradition of overturning laws written with neutral language but that have unequal impacts on different groups. Formal equality is rule-bound; it demands that laws treat everyone alike and focuses on eliminating inequalities written into the language of the law. Substantive equality strives to analyze and root out deeper, sometimes hidden inequalities in the application, effects, and contexts of laws. A formalistic approach to Section 377 might find little wrong with it, since it does not explicitly single out any particular group or identity for legal sanction. Only an approach that looked at the actual social and practical effects of the provision would uncover the way it consigned gays, lesbians, *hijras*, and others to second-class status.

Transgender Network Nederland (TNN)

The Context

The Netherlands has been to the forefront in developing policies for rights for lesbian and gay people. It was the first country to legalise same-sex marriage in 2001. In terms of making progress on issues relating to transgender people, however, the government admits that this has not been given the same attention.

Those wishing to change their gender have been able to do so in the Netherlands since 1985, but only within certain limitations. Gender change is open to a person who has undergone sex reassignment surgery, and the request for a legal change of gender must be accompanied by a statement from experts verifying that the person's body has been adapted to the new gender as far as possible from a medical and psychological viewpoint. A further official requirement is that the person will never again be able to parent or to bear children. This means forced surgical sterilisation for both trans men and trans women.

Meanwhile, shortly after the launch of the Yogyakarta Principles in 2007, the Dutch government announced that it would use the Yogyakarta Principles as guidance for its international LGBT policy. The government included this commitment in its *Simply Gay* policy plan issued in 2008.

The Action

Transgender Network Nederland (TNN) has for a number of years been lobbying the Dutch government on many issues relating to transgender people, including the issue of forced sterilisation. In 2007 when *Simply Gay* was first announced in Parliament, it contained no mention of a change of policy on forced sterilisation. Knowing that the government had endorsed the Yogyakarta Principles in relation to its international LGBT policy, TNN drew the government's attention to the inconsistency in their policy positions.

With close reference to the relevant Principles, TNN consulted with Ministry staff and parliamentarians from all parties and lobbied the Minister to abolish the requirement for forced sterilisation. Within two weeks, the Minister announced that the government would bring the law in this area in line with the Yogyakarta Principles.

Since there had been no actual movement on the issue, TNN took the opportunity to raise the issue again in 2008 when the Dutch Minister for Foreign Affairs was in New York for the presentation of a statement on sexual orientation, gender identity and human rights at the United Nations. When he was speaking at a side-event, the then Chair of TNN produced his passport proclaiming that in order to get the passport he had to prove sterilisation and demanded of the Minister present that he do his homework and apply the Yogyakarta Principles at home as well as abroad.

The Outcome

A further Ministerial announcement was made that a change of law was imminent and this was followed up by a letter from the Minister for Justice to TNN stating that a proposal would come to parliament by the end of 2009.

A letter from the Ministry of Education, Culture, and Science to the Speaker of the Dutch House of Representatives in October 2009 states the Minister's intention to change the law. The letter discusses the rationale for the government's proposed changes to the policy of forced sterilisation. It also refers to *Simply Gay*, in which the government acknowledges its lack of knowledge of the issues facing "the cautiously estimated 30,000 to 100,000 transgender persons" in the Netherlands.

Importantly, the letter draws attention to the argument that the requirement for forced sterilisation has lost its importance in the context of same-sex marriage. The intention of the law at the time was to prevent the situation of a child having two parents of the same sex. Since there are now many such children, the original intent of the law is redundant.

Without the use of the Yogyakarta Principles, we would have been stuck with the existing law for much longer, and any change could easily have mirrored the Belgian law on gender marker changes (of 2007), which still requires sterilization of trans people as a pre-requisite for a legal gender change. Only through the consequent use of the Yogyakarta Principles in our argumentation have we been able to ensure that a proposal for a new law is likely to have no bodily requirements for the applicants.

Justus Eisfeld, Former Chair, TNN

The Application of the Yogyakarta Principles

The launch of the Yogyakarta Principles and their adoption by the Dutch government as a guide to its international LGBT policy provided the opportunity for TNN to reinforce its lobbying efforts by "shaming" the government into applying the same approach at home as it does abroad. The action also gave the opportunity to delve into the specifics of the Principles. It is likely that the Dutch government accepted the application of the Yogyakarta Principles without appraising itself of the details.

Several obligations that pertain to transgender persons on this issue are reinforced by the Principles. Principle 3, among other things, relates to the right to choose one's gender identity and to legal recognition of one's identity, without having to undergo any medical interventions. In Principle 17, the rights to the highest attainable standard of health and to free and informed consent in decisions in relation to healthcare are stressed. Principle 18 deals with issues of protection from medical abuses, and Principle 6 deals with the right to choose whether or not to disclose information

relating to one's sexual orientation or gender identity and decisions and choices regarding one's body.

The applicability of the Yogyakarta Principles was reinforced for the Dutch government by the publication by the Council of Europe (CoE) of an issue paper on transgender. This is referenced in the Minister of Education's October 2009 letter to the Parliament. It points out the shift within the CoE paper from that of treating sex change as a medical and legal issue to one of gender identity and human rights. The letter lists twelve recommendations for transgender policy in Europe for the forty-seven member states of the CoE. At the top of that list of twelve is the recommendation to take the Yogyakarta Principles as the starting point. (It should be noted that the final text of CoE Recommendation, launched in March 2010, and discussed briefly on page 28 of this Guide, does not include any reference to the Yogyakarta Principles.)

Several obligations that pertain to transgender persons on this issue are reinforced by the Principles. Principle 3, among other things, relates to the right to choose one's gender identity and to legal recognition of one's identity, without having to undergo any medical interventions.

AIZHI Action Project and Chinese Society for the Study of Sexual Minorities (CSSM)

The Context

Medicine has a long history of enforcing particular moral perspectives about sexuality under the guise of “healing”. These views have justified invasive and abusive ways of “treating” homosexual desire that have harmed many people and reinforced social and cultural prejudices.

The Yogyakarta Principles are clear about this issue and articulate international law as it applies to this pervasive form of prejudice. Principle 18 affirms, “a person’s sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed”. It goes further to say that States shall, “Ensure that any medical or psychological treatment or counseling does not, explicitly or implicitly, treat sexual orientation and gender identity as medical conditions to be treated, cured or suppressed”. In 1973, the American Psychiatric Association removed homosexuality as a listed disorder from its Diagnostic and Statistical Manual (DSM), a volume that had great influence on the profession worldwide. The World Health Organization removed homosexuality from its own list of mental illnesses in 1990.

The development of this issue in China, though arising before the Principles, is a good case study about the application of Principle 18. Despite some positive changes in Chinese law, such as the

1997 repeal of the law used against homosexuality banning “hooliganism”, the medical profession remained a site of abuse for LGBTI people in China. So, when the Chinese Psychiatric Association (CPA) set up a task force to review the Chinese Classification of Medical Disorders (CCMD)—its version of the DSM—LGBTI activists recognised an opportunity to advocate for the delisting of homosexuality as an illness.

The Action

A coalition of two main groups undertook a campaign of action. AIZHI Action Project (www.aizhi.org) is a not-for-profit organisation based in Beijing that provides information on sexual health, including HIV and AIDS. It also works to defend sexual rights in the areas of education, law, and policy. Wan Yanhai, the founder of AIZHI, is a former public health official fired for setting up an HIV and AIDS hotline. The Chinese Society for the Study of Sexual Minorities (www.csssm.org/English/front.htm) is an independent alliance founded in September 1997 by a group of students, scholars, and other professionals across the world that promotes gay and lesbian affirmation in Chinese culture, with a focus on mainland China.

In the push for depathologisation—the removal of homosexuality from lists of diseases—activists faced two serious challenges. First, the cultural and social authority of the medical profession made it resistant to outside criticism and to internal debate. Second, medical attitudes to homosexuality resonated far beyond the medical sphere; the

repressive political system had historically used psychiatry as a tool to suppress opposition, making the misuse of psychological diagnoses a dangerous subject on which to advocate.

The general approach of AIZHI was simply to ask for an opinion on homosexuality, rather than advocate a position. At the same time, AIZHI targeted gay-friendly psychiatrists and urged them to participate in the effort to delist homosexuality from CCMD. Enlisting international pressure was an important dimension, especially since the space for domestic lobbying was limited. Activists persuaded the American Psychological Association and the American Psychiatric Association to write directly to the Chinese Psychiatric Association and call for removing homosexuality from the new version of the CCMD. Further raising the visibility of the issue, a special issue of the AIZHI Newsletter included information on the current situation of homosexuality in other countries, the American Psychological Association’s Policy Statements on Gay, Lesbian, and Bisexual Issues, and other materials related to civil rights and minority rights issues. The newsletter was mailed to all CCMD task force members, some 170 psychiatric hospitals, and almost 300 psychologists, sexologists, and other health care professionals nationwide.

Meanwhile, a mental health magazine published in Zhejiang Province and targeted to the general public began publishing articles on whether homosexuality was a desire or a diagnosis. Though many of the articles opposed depathologisation, more

than a third supported it. The medical argument in the magazine broadened to a discussion of facts about the lives and social status of lesbians and gays in China. One writer referred to it as the first open debate on homosexuality in the Chinese media.

The Outcome

In 2001 the latest edition of the Chinese Classification of Mental Disorders (CCMD-3) removed the diagnosis of homosexuality as an illness. This represented an important step forward. Changing the culture and practice of the medical world is clearly a longer-term project, and this advance is the necessary basis for change. It is also an important tool for ongoing activism that can be used to push for those changes in culture and practice. Also of significance was the public debate that surrounded the campaign.

Disappointingly, the new CCMD continues to state that homosexuals experiencing distress due to their sexual orientation (ego-dystonic homosexuality) need mental health services, implying that sexual orientation itself predisposed a person to a high level of stress that could develop into a condition requiring mental health services.

The Application of the Yogyakarta Principles

As stated above, the Yogyakarta Principles articulate the position of international human rights law on this issue. States are obligated to ensure that “any medical or psychological treatment or counseling

does not, explicitly or implicitly, treat sexual orientation and gender identity as medical condition to be treated, cured or suppressed”.

It is important to note that while “sexual orientation” has been declassified as a mental illness in many countries, “gender identity” or “gender identity disorder” often remains under consideration. The Yogyakarta Principles address this in Additional Recommendation F to the World Health Organization.

The Yogyakarta Principles also address the medical profession directly in Additional Recommendation M, urging the review of practices and guidelines so as to bring them into line with the standards outlined in the Principles.

In terms of incorporating the Principles into their work and finding opportunities for their broader promotion, AIZHI has translated the Principles into Chinese. They have organised two major events: a conference specifically on the background and application of the Principles and a workshop on HIV and human rights in Beijing in 2007. In their lobbying work AIZHI has written to the State Administration of Film, TV, and Radio urging a lifting of the ban on LGBT films and TV programmes and to the China National Human Rights authority demanding that rights for LGBT people be included in the government’s human right action plan. In both letters AIZHI referenced the Yogyakarta Principles.

It is important to note that while “sexual orientation” has been declassified as a mental illness in many countries, “gender identity” or “gender identity disorder” often remains under consideration.

Developing new government policy

LGBTI activists have achieved significant success in recent years as governments increasingly respond to the needs of LGBTI people. As governments develop policies around labour, public safety, health, education, and other sectors, activists can influence the policy-making process to achieve better outcomes for LGBTI people. In these case studies, activists have used the Principles to communicate to government officials and define obligations of the government.



Brazilian Association of Lesbians, Gays, Bisexuals, Travestis and Transsexuals (ABGLT)

The Context

Much progress toward ensuring that lesbians, gay men, bisexuals, and trans persons can live with the same dignity and respect to which all people have a right has taken place in Brazil over the last thirty years due to the ever-strengthening activism of the LGBT movement in that country. Nevertheless violence against LGBTI people continues to be rampant. LGBTI people continue to be treated as if they did not have full human rights, and laws continue to treat LGBTI people unequally. Taken as a whole, the Principles make the point that LGBTI people have the same range of rights as others.

In 2004 the government launched *Brazil without Homophobia*, a public education and persuasion programme designed to curb discriminatory attitudes against LGBTI people. That programme was developed after a series of consultations between the government and civil society with the stated aim to promote LGBT citizenship by ensuring equal rights and combating homophobic violence and discrimination.

The Action

ABGLT (www.abgl.org.br) was founded in 1995 and is a national network, with 237 member organizations representing all states. It is the largest LGBT network in Latin America. ABGLT's mission is to

promote the citizenship and defend the rights of lesbians, gay men, bisexuals, and trans persons and advocate for a democracy free from all forms of discrimination.

While it strongly welcomed *Brazil without Homophobia*, ABGLT recognised that this ambitious programme needed to be embraced by all government ministries if it was to become effective. The group recognised that there needed to be projects designed to strengthen organisations that work to promote LGBT citizenship and to combat homophobia, increased capacity for professionals and representatives of the LGBT movement who work to defend human rights, and general education about human rights for the public at large. ABGLT lobbied the government to disseminate information about human rights so as to promote the understanding that all should enjoy the rights enjoyed by society at large, including LGBTI people.

The Principles were translated into Portuguese by Sexuality Policy Watch (SPW) and launched in August 2007 in three major cities. After the national launch, ABGLT approached The National Special Secretary on Human Rights, who republished the Principles (10,000 copies) for distribution at the National Conference on Public Policies for the LGBT population in June 2008. ABGLT has helped the State distribute them in all areas of the country. Both ABGLT and SPW have made efforts to disseminate the Principles in Portuguese-speaking African countries. The Principles are available for download on both websites.

The Outcome

In Partnership with the National Articulation of Trans Persons (ANTRA), ABGLT has run a campaign to permit trans people to use their preferred name ("social name"), rather than the name found on their ID documents, on all State school records and in the school environment. The objective was to help reduce absenteeism and withdrawal from formal education owing to stigma and discrimination and to avoid the consequent social marginalisation. One of the main tools used to promote the campaign was the Yogyakarta Principles, which were sent to the Education Departments and Education Councils of the country's 27 states, as well as to the Ministry of Education and the National Education Council, with the request for the official adoption of trans persons' social names in the school environment. As of March 2010, seven states, five municipalities, and one university have brought the measure into force. Other states and municipalities have introduced the measure in other areas such as social services. One state and the municipality of Sao Paulo have implemented the measure in all their government services. This has been one of the principal outcomes to which Yogyakarta Principles have contributed.

The Principles have also served as a persuasive tool for ABGLT to use in the policy-making process. ABGLT monitors the legislative process in the National Congress, as well as cases involving LGBT issues brought before the Supreme Court. Three bills of particular interest for LGBT are currently being appraised by the

National Congress: civil union between same sex couples; the prohibition of discrimination including on the grounds of sexual orientation and gender identity; and the right for trans persons to change their forenames. Three cases are also before the Supreme Court, two of them requiring the recognition of same-sex unions and the other regarding the change of trans persons' forenames. In all these cases ABGLT has provided the Yogyakarta Principles to the congressmen and congresswomen and the judges involved. As at March 2010, no final decision had been reached.

The Application of Yogyakarta Principles

The launch of the Principles provided ABGLT with an unprecedented opportunity. Here was a new tool that encompassed all dimensions of human rights as they applied to LGBT people. In terms of building capacity and raising awareness, the Yogyakarta Principles had the potential to achieve much more and to fulfil more objectives than anything else available. In addition, because of their breadth in describing the realities of life for LGBT people and because of their genesis in international law, the Principles would become a springboard for ongoing training and policy formation.

United Belize Advocacy Movement (UNIBAM), Belize

The Context

Same-sex sexual activity is a criminal offence in Belize. Homosexuals and prostitutes are prohibited from immigrating to the country and, since rape is defined as an offence against women, men are not legally protected from rape. These colonial-era laws and a society ridden with prejudice, discrimination, and police violence toward the LGBTI population are among the barriers preventing men who have sex with men (MSM) population from accessing public health prevention, care, treatment, and support services in Belize. Because of these barriers, MSM are at a higher risk for HIV/AIDS. The Yogyakarta Principles offer a rights-based approach to this health issue by providing a basis to advocate for decriminalisation of same-sex sexual activity and the right to the highest attainable standard of health.

The Action

United Belize Advocacy Movement (www.unibam.org) is the only organization working on issues of sexual orientation in Belize. Their work focuses mainly on HIV/AIDS prevention and access to treatment for men who have sex with men, as well as on advocacy for legal reform and public education to confront discrimination and homophobia in the country.

In February 2008, UNIBAM produced a ground-breaking report called *Show No Mercy: Barriers that Exist for Men who*

Have Sex with Men to Access Sexual and Reproductive Services. That report targeted the National AIDS Commission (NAC), a body created in 2005 to coordinate, facilitate, and monitor the national response to HIV and AIDS as well as the National HIV/AIDS Strategic Plan.

The goal of the report was to examine the practices and attitudes of the health and medical establishment towards MSM clients while at the same time studying the perceptions, attitudes, and behavior of the MSM community as they attempt to access the services provided by the health and medical establishment in Belize.

There has been little public debate on repeal of Belize's sodomy law, and UNIBAM's report refrained from addressing the criminalisation of homosexual conduct at length. However, it laid out the causal connections between criminalisation—which drives vulnerable people underground and hampers targeted outreach and information—and heightened rates of HIV infection. Moreover, citing the Yogyakarta Principles allowed UNIBAM to make the case that international law, as well as public-health pragmatism, mandated the repeal of Section 53, the law criminalising same-sex sexual activity.

The Outcome

The NAC had started a process of legislative and policy review of HIV/AIDS prevention and treatment efforts at the time the report was issued, and UNIBAM's strategy was to highlight the situation of MSM and push for recommendations that would increase the community's access to

treatment and prevention programmes. UNIBAM's long-term goal is to make use of the NAC's mandate to develop policies friendly to people vulnerable to HIV and AIDS and enlist the Council in the cause of changing the law.

The Application of the Yogyakarta Principles

Show No Mercy highlights the Yogyakarta Principles in a section on international standards relating to MSM issues.

A copy of the Principles was among the supporting documentation that UNIBAM submitted to the National AIDS Commission. The activists used the Principles to introduce a rights-based framework as complementary to a public health one. They also used them to reinforce the basic claim that discrimination and stigma based on sexual orientation deny MSM their fundamental human right to the highest attainable standard of health.

UNIBAM has used the Principles to promote awareness of health as a human right—and the consequences of other rights abuses on health—among professionals and within its own community. There are plans to use the Principles as a benchmark in an initiative supported by USAID to assess gaps for the LGBTI community within government policy. In addition, in classes on human rights at the University of Belize, UNIBAM has used the Principles to demonstrate the breadth of provision within human rights law.

With the NAC in particular, it is too early to tell as the review of the legislative framework is in its infancy. There is a new government and hence a change of chair, so only time will tell. But what is important is that we included the Principles in an electronic copy of our newsletter, distributed to 250 persons in the health system. And also we incorporated them in our teaching sessions in the MSM community during outreach.

Caleb Orozco of UNIBAM

Swedish International Development Co-operation Agency (Sida)

Rights for LGBTI people and development policy

The Context

International human rights law encompasses a very wide range of governmental activity and standards. Because of this breadth, determining how human rights standards apply to one group of people can be a daunting task. The Principles offer, within one reference document, a synthesis of human rights standards and how they relate to LGBTI people. The Swedish International Development Co-operation Agency (Sida), under the oversight of the Ministry of Foreign Affairs, provides development aid and support in approximately 120 countries in Africa, Asia, Latin America, and Europe. Its programmatic emphases include human rights and democracy, as well as education and health. Its recognition, therefore, of rights for LGBTI people as human rights, and its focus on the relationship between rights for LGBTI people and development can have a far-reaching impact on its partner organisations—which receive funding and support from Sida,—as well as on the governments of those countries in which they operate.

A 2005 study of Swedish policy and administration of LGBTI issues in international development cooperation concluded that the level of knowledge

and understanding among Sida staff of the linkages between gender identity and sexual orientation with core development issues such as poverty reduction, the protection and exercise of human rights and combating gender-based violence was uneven and in many cases inadequate. The study also turned up a lack of explicit mention of LGBTI issues in Swedish policy and strategy documents and concluded that Sida-supported programmes did not deal with LGBTI issues in a consistent manner, if at all.

The Action

In order to implement the recommendations of this report, the Swedish government mandated an *Action plan for Sida's work on sexual orientation and gender identity in international development cooperation 2007–2009*. The overall goal was to systematically include an LGBTI perspective in development cooperation, and therefore to improve living conditions for LGBTI people, including their ability to influence their own situations.

Sida's starting point for the plan's implementation was to create best practice in internal operations, through the inclusion of LGBTI issues in Sida's staff and organisational policy. Staff and partners would be equipped to appropriately incorporate LGBTI issues into their work through the inclusion of an LGBTI perspective in all training sessions on human rights, gender equality, and HIV/AIDS. In addition, Sida provided special training in LGBTI issues to regional advisers working in the fields of human rights, democracy, and HIV/AIDS.

The action plan also called for Sida to include LGBTI issues in all relevant government dialogue and lobbying and to provide support to local and national LGBTI groups and related policy measures.

The Outcome

The evaluation of the 2007-2009 action plan demonstrates the significant work done in many countries on LGBTI issues, including dialogue with civil society, other donors, and governments; inclusion in country strategies; and programme initiatives. As well as directly funding a number of LGBTI groups, Sida headquarters has actively promoted LGBTI issues in its networking with other donors and international stakeholders, and by giving radio and TV interviews, writing a newspaper article, participating in and arranging seminars at pride festivals and the World Out Games, and including LGBTI rights in newly-adopted policies.

The Application of the Yogyakarta Principles

The impact of staff training was reflected in the inclusion of violence against LGBTI people in a definition of gender-based violence in Sida's 2008-2010 action plan for work on gender-based violence. In its efforts to establish the relationship between gender norms and violence against LGBTI people, the plan cites the Yogyakarta Principles, directly quoting a paragraph from the Introduction to the Principles:

Many States and societies impose gender and sexual orientation norms on individuals through custom, law and violence and seek to control how they experience personal relationships and how they identify themselves. The policing of sexuality remains a major force behind continuing gender-based violence and gender inequality.

The plan further references the Yogyakarta Principles to support the definition of gender-based violence as a violation of human rights and the pursuant State obligations. Importantly, the plan recommends that Sida workers and partners support the implementation of the Yogyakarta Principles in their own work as well as in government policy. A range of other recommendations to address gender-based violence refer directly to LGBTI people. They seek to empower LGBTI people by raising their awareness about their rights in order to enhance their ability to demand and exercise their rights through the justice system and other means; support existing government and civil-society initiatives to improve access to appropriate services and support for survivors of gender-based violence (as well as tackle the stigma that exists around the use of these services, especially for women, girls and LGBTI people facing multiple discrimination); and to challenge attitudes by recognising LGBTI people's right to control their bodies and sexuality.

The Yogyakarta Principles Additional Recommendation P is addressed specifically to governmental and private funders. Funders enjoy unique positions of influence and can use this influence to promote equality and non-discrimination among the programmes they fund. Funders can often exercise influence with government agencies to which they provide development assistance, thus allowing them, among other efforts, to initiate inter-agency dialogue on the topic of rights for LGBTI people.

Additional Recommendation P of the Yogyakarta Principles recommends that:

Governmental and private funders provide financial assistance to non-governmental and other organisations, for the promotion of the human rights of persons of diverse sexual orientations and gender identities.

Alliance for full citizenship for LGBT People, Colombia

The Context

In Colombia there are laws that recognise and guarantee people's rights. Historically, these have been denied to LGBT people. These are the basic rights ("derechos patrimoniales") of a couple to social security and, in the case of the death of a partner, a pension.

It is important to note that in some cities of the country public policy actions are being put into place with the aim of restoring a non-discriminatory culture and promoting the respect and guarantee of full citizenship for LGBT people; it is also important to realise that public policies are of a municipal character, not national.

The case of the Colombian capital city is worth highlighting. In Bogotá, a public policy decree was first signed (Decree 608, adopted in 2007) that obliged institutions, by direct order of the government, to transversalise (mainstream) their work in matters such as sexual orientation and gender identity in the city. This document was later passed by agreement (Agreement 371, adopted in 2009), meaning that the city's legislators must decide by consensus that non-discrimination is a fundamental matter for Bogotá; this made it possible to build sport centres such as the LGBT District Community Centre, the first of its kind in Latin America.

The Action

The alliance for full citizenship for LGBT people is a coalition of groups and individuals created to work in coordination with the city government in Bogotá. Its aim is to contribute to, monitor, evaluate and test socially the implementation of the LGBT public policy in alliance with its goals. The city government of Bogotá began work on its LGBT policy in 2006 by engaging in a wide-ranging consultative process that included convening focus groups with specific populations (for instance, LGBT children and their families; transgender people doing sex work) and workshops with public officers from the sectors identified as key by the LGBT community (health, education, security, work, culture).

The Outcome

Decree 608 was adopted on 28 December 2007, and in 2009 agreement 371 was signed announcing public policy guidelines designed to guarantee full rights to lesbian, gay, bisexual, and transgender people in the capital district. The agreement committed the city to a broad range of anti-discrimination measures with regard to sexual orientation and gender identity and affirmed that the city "recognises and respects the right of all people to construct their own self-definition with respect to their body, their sex, their gender, and their sexual orientation". The policy was allocated a budget to ensure its implementation. Some encouraging early progress was realised across a

number of sectors, in particular health, education, and justice.

The Constitutional Court of Colombia has been instrumental in bringing about the recognition of rights for LGBT people; the Court has been responsible at a national level for the restoration of social security and pension rights as well as access to healthcare.

Finally, of particular importance to the ongoing implementation of the policy is the consolidation of the LGBT Consultative Council, which communicates directly with the district of Bogotá on matters to do with sexual orientation and gender identity. The Council is comprised of four civil society representatives elected by the LGBT community through a community participatory process.

The Application of Yogyakarta Principles

In this context, the Yogyakarta Principles have helped strengthen the perception that the protection of sexual orientation and gender identity rights is based on an international consensus.

The alliance used the Yogyakarta Principles as reference materials in its work with the city authorities, to argue that the needs of LGBT people were a city matter in keeping with the principle that a city should be free of all forms of discrimination. Since the Principles covered all rights in such a way as to reflect real-life situations of LGBT people and their social, political, and cultural environments, they had the potential to act as a guide for policy makers. Also, given that the Principles had international applicability, the Consultative Council was confident that promoting the Principles to policy-makers would add authority to their efforts.

Of course, the Principles are not legally binding. That is not where their force lies. In my view, what is important is the effect they have on people, the way in which, as people become more familiar with them, they realise that yes, all those rights are also about us.

Sandra Montealegre, Colombia

Seeking a more responsive government

Laws, new and old, can be meaningless to the lives of individual LGBTI people if they are not implemented in a manner consistent with human rights standards. These case studies are examples of activists seeking to ensure that service providers, civil servants, law enforcement officers, and health care providers carry out their duties in fulfillment of the rights of community members.



New Zealand Human Rights Commission

The Context

Beginning in 1999, nine years of Labour-led governments in New Zealand brought about a number of significant improvements in the lives of lesbian, gay, and bisexual people, including the Civil Union Act enabling the registration of same-sex partnerships. However, like many other countries, New Zealand still requires the dissolution of a trans person's marriage in order for that person to change his or her birth certificate.

The New Zealand Human Rights Act of 1993 explicitly prohibits discrimination on the basis of sexual orientation and sex, but not gender identity. The New Zealand Human Rights Commission, supported by the government's legal office, has always accepted complaints of discrimination based on gender identity on the ground of sex. However, the decision to interpret the prohibition of discrimination based on sex to also cover discrimination based on gender identity is easily reversed. Additionally, it is not common knowledge throughout the trans community that such a protection currently exists.

To build an overall picture of the status of human rights in New Zealand, the 2005 *Mana kit e Tangata: the New Zealand Action Plan for Human Rights* was developed through a consultative process with over 5000 people. Trans people emerged as one of the most marginalised groups in the country.

The action plan consequently recommended an inquiry into the discrimination faced by trans people in New Zealand. The recommendation was given priority because of the level of marginalisation trans people faced, the very limited understanding of and minimal consultation by government agencies with trans people, and the role the Commission could play in emphasising that this was a human rights issue.

The Action

Launched in 2006, the Inquiry placed individual trans people's stories within a human rights framework, referencing the Yogyakarta Principles to firmly situate the issue of gender identity within international human rights law. In an approach akin to the Yogyakarta Principles, the inquiry did not seek to identify new or specific rights for trans people, but took the rights set out in the Universal Declaration of Human Rights and New Zealand law and sought to determine whether trans people experienced those rights to the same extent that other New Zealanders did.

From the beginning, the inquiry set out and succeeded at being an empowering process, with emphasis on the participation of and accountability to the widest possible range of transgender people. The Commission provided a neutral place for trans people to meet and learn from and about each other's experiences. As part of the Commission's human-rights-based approach, the inquiry process itself was meant to allow trans people to begin to use human rights as leverage in activism and to legitimise their voices in decision-making.

The Human Rights Commission consulted trans people on which issues were most relevant to investigate, and this led to a focus on three areas: discrimination in general, access to health care, and legal recognition of gender. Over a year and a half, the Commission interviewed over two hundred transgender and intersex New Zealanders. Participants told stories of discrimination in employment, housing and services, harassment in public and private places, and violent assault. The vast majority of submissions to the Inquiry were oral rather than written, with a number of group discussions—from the offices of a sex workers' organisation to a large meeting of Maori trans people.

The Outcome

To Be Who I Am/Kia noho au ki toku ano ao, the first extensive inquiry by a national human rights institution into discrimination based on gender identity, was released by the Commission in 2008. The final report of the inquiry represents an evidence base that had not previously existed, and thus a solid rationale for the Inquiry's final recommendations. The Inquiry called for immediate action in

the following areas, as well as detailed recommendations:

- Increasing participation of transgender people in decisions that affect them
- Strengthening the legal protections to bar discrimination based on gender identity
- Improving access to health services, including gender reassignment services
- Simplifying requirements for change of sex on government ID documents.

The report also recommends in-depth consideration by the Human Rights Commission and relevant government agencies of the specific human rights issues facing intersex people. Given the level of confusion among trans people about whether or not they were protected under the law, the Inquiry recommended that the legislation be reworded to include gender identity.

The Human Rights Commission has continued steady involvement in trans issues since publishing the report, with an implementation programme up to 2011.

The Human Rights Commission did a very good job in completing the report. They called public meetings in various different main centres, and also went to smaller centres to interview individuals. I work for NZPC- the New Zealand Prostitutes Collective—and they came in to our branches in Auckland and Christchurch, as well as our office in Wellington, and spoke with groups of transgender people in an environment they were comfortable with, and felt safe in. The meetings were recorded, and notes were also taken. It was very in-depth, and those who took part believe the Commission did a very good job, and were more than satisfied by the results.

Calum Bennachie, a sex worker activist

Its focus is on empowering trans activists to sustain campaigns and to engage directly with government agencies. Its activities have included:

- The Assume Nothing exhibition and workshop on transgender issues and human rights. One very positive result from the public workshops around the Assume Nothing exhibition is the growing visibility and activism of trans youth with the emergence of trans youth groups in three cities.
- The hosting in 2009 of a national human rights hui/meeting that presented an opportunity for many of those involved in the Inquiry to meet. A follow-up hui is planned for 2010.
- The facilitation of two intersex roundtable events, bringing together intersex people and groups, family members, health professionals, government agencies, and academics.
- The development of a Frequently Asked Questions resource on trans issues for schools.

While the recommendations are not binding, they do provide trans activists with specific actions for which to hold the government accountable. The report serves as an official survey of the needs of transgender people in New Zealand and what the government must do to meet them.

Some government departments and agencies have responded:

- The Department of Internal Affairs has changed its criteria for sex-change information on passports from medical evidence of full gender reassignment

surgery to a simple Family Court declaration. Trans people still have the option of not having their sex recorded on their passport.

- The Ministry of Health, in consultation with the Human Rights Commission, is setting up a Gender Reassignment Health Services Working Group to develop guidelines for the provision of appropriate health services for trans people.
- The Police has amended policies and procedures for trans recruits.
- The Department of Labour's Transgender People at Work published guides for employers and employees.

The Application of the Yogyakarta Principles

The Commission referenced the Principles as a tool, both to understand the range of issues faced by trans people as well as to understand the application of international human rights law to these issues. Its work to uncover the issues and to pay attention to a part of New Zealand society that, up to this point, had been ignored can be characterised as fulfilling the mandate of Principles 1 and 2, which seek to ensure that all citizens enjoy all rights without discrimination on the basis of gender identity or gender expression.

As discussed in the Yogyakarta Principles Up Close (page 63), the promotion of human rights within society as a whole is an obligation that needs to be discharged throughout all the functions of the State so as to maximise the opportunities for the realisation of specific rights. This permeates all of the Principles in the form

of measures to raise public awareness, to train State personnel, to review legislative and administrative measures, and to foster a proactive approach to ensuring human rights. In many countries this becomes in large measure the remit of human rights institutions. An important dimension of the exercise undertaken by the Commission in New Zealand was toward the empowerment of trans people—both to step forward to claim recognition before the authorities regarding the realisation of their rights and also to step forward to take their place in New Zealand society. In effect the Commission was responding to one of the Yogyakarta Principles' Additional Recommendations addressed to national human rights institutions that they integrate the promotion and protection of the human rights of persons of diverse sexual orientations and gender identities into their work.

Participants told stories of discrimination in employment, housing and services, harassment in public and private places, and violent assault. The vast majority of submissions to the Inquiry were oral rather than written, with a number of group discussions—from the offices of a sex workers' organisation to a large meeting of Maori trans people.

Transsexual Organisation for Dignity in Diversity, Chile

The Context

Criteria and procedures for gender-change recognition in Chile are onerous and humiliating, with final decisions being taken at the discretion of judges. Gender reassignment surgery is mandatory and such surgery can only be undertaken following psychological and psychiatric evaluations, hormone treatment, and living in the desired gender for a period of five years. At this point transsexuals bring their request for official sex change to the Court. The Civil Registry, the government agency in charge of issuing identification documents in Chile, has taken the position that if the transsexual person has had children he should not be permitted any change of official documentation. The Medical Legal Board is required to verify through invasive physical examination that gender reassignment surgery has been undertaken. And, after all of this, the decision rests with the judge. In effect, there are no provisions within the law governing the process, no guarantee that the prescribed procedure will result in the desired legal change, and beyond that no safeguards to protect the dignity of those petitioning the court in this matter. Neither is there any economic or service support from the State.

The Action

Transsexual Organisation for Dignity in Diversity (Organización de Transexuales por la Dignidad en la Diversidad, OTD)

was founded in 2004 in Rancagua, Chile. Its mission is to advocate for the human rights, visibility, personal development, and social integration of transgender men.

An important area of OTD's work is providing sensitivity and awareness training to healthcare practitioners. OTD facilitates workshops in faculties of nursing, medicine, and psychology, as well as for staff at public hospitals. Through the participants in those workshops, OTD is building a network of sympathetic professionals to whom they can refer trans people. OTD also works intensively with trans men themselves, facilitating workshops to make them more aware of their rights—particularly in the area of health care—as well as to help them interact with health care institutions.

The Yogyakarta Principles have become a core part of all OTD's trainings. The Principles are now part of the dossier that is distributed to all workshop participants. The Principles are cited as a basis for claiming the highest attainable standard of health. Healthcare practitioners are taught about the rights of those in need of services, and trans men are educated about their ability to advocate for the rights articulated in the Principles.

The Outcome

The reaction to the Yogyakarta Principles has been very positive from all workshop participants. OTD considers it very important to demonstrate clearly that the issues faced by trans people are in fact human rights issues and to foster among community members both confidence and a notion of entitlement to equal

rights. As Andres Rivera Duarte, President of OTD says, "It is very important for trans men themselves to know this".

The reaction from health professionals to the Principles has also been very positive, according to OTD activists. Health professionals are able to gain a more comprehensive understanding of the challenges faced by trans people and how health services and practices can accommodate the needs of trans people. Given that the Principles have been drafted by an eminent group of experts, they carry an authority and authenticity that makes their promotion easier.

OTD made a submission to the United Nations Human Rights Council when the council was reviewing Chile's compliance with international human rights standards. This review, part of the Council's Universal Periodic Review procedure in May 2009, produced a number of recommendations regarding the removal of laws that discriminate on the basis of sexual orientation and gender identity. The Netherlands included in its recommendation in this regard that Chile use the Yogyakarta Principles as a guide to policy and legal development. OTD is hopeful that it will begin talks

with the new government in Chile in May 2010 and work toward a radical change in policies to benefit transsexuals in the areas of education, health, and social integration.

The Application of the Yogyakarta Principles

It is clear that the work of OTD has been enhanced through the use of the Yogyakarta Principles. This new tool allows them to deliver their trainings with more confidence and authority and to talk about the issues faced by trans people within the framework of human rights law, to which Chile has signed up. The Principles provide them with concrete examples of discrimination and marginalisation and all with the verification, so to speak, of a group of international experts.

It is easier to understand and believe what we are saying when it comes with the support of such an impressive group of experts on gender identity. Also it is important because this issue is very new, at least in Chile. It has been only in the last four years that the words 'transsexuality' or "'gender identity' have begun to circulate. In that sense, the Principles have been of great help to us, because they allow us to start 'stepping on the shoulders' of international experts.

Andres Rivera Duarte, President of OTD

Unión Afirmativa de Venezuela

The Context

Union Afirmativa or UAF (unionafirmativa0.tripod.com) is a Venezuelan NGO founded in 2000. Its mission is to raise local awareness about international standards protecting the human rights of lesbian, gay, bisexual, and transgender people, and to encourage the Venezuelan government's adherence to those standards. It provides legal advice, engages in advocacy, and offers human rights trainings to various government departments.

In 2006, the National Ombudsperson Office (NOO), the government agency in Venezuela designated as the national implementer of human rights norms, began developing human rights training programmes for police personnel as well as for the staff of the Attorney General's Office and the Defence Counsel Offices. UAF was invited to teach sessions on "Sexual Diversity and International Protection".

The Action

In 2006, UAF helped train 800 police officers from Caracas. In 2007, about 120 staffers from the Attorney General's and Defence Counsel Offices took part in the trainings, which were organised as workshops to allow for maximum participation. Participants engaged in role-play, during which police officers assumed the role of a member of the LGBTI community and tried to understand the experience.

José Ramón Merentes, UAF's President, explains the method:

We wanted a change of attitude in those who took the training that would later translate into changes in the way they dealt with gays and lesbians. That is why we chose a workshop structure—learning by doing, so the experiences could be more easily internalised. Those who attended the workshop had the opportunity to identify with gays and lesbians, to stand in their shoes, and that made them reflect in a different way about their own biases.

The Outcome

Participation by the police officers showed a marked development of co-operation over time. In the beginning there was some resistance from a minority of participants. Some choosing to leave altogether, while others slouched in their chairs, wearing their sunglasses and clearly showing contempt for the process. Most, however, were open and those who initially showed resistance eventually developed a more positive attitude. Crucially, they became receptive to the idea that people whose sexuality differs from the norm are equal citizens, and the fact that the State has responsibilities towards them was firmly established.

According to UAF, the trainings were a measurable success in terms of reported incidents. The organisation reports that the NOO documented a reduction in the number of incidents of abuse against gays and travesties by police—from 15-17 monthly down to 3 in a seven-

month period. Raids by police on gay bars practically stopped completely. As Merentes says, "What had been a systematic practice shrank to just a few isolated incidents".

The Application of the Yogyakarta Principles

The Yogyakarta Principles were integrated into the training modules. Particular attention was given to Principle 2, The Rights to Equality and Non-Discrimination; Principles 5, The Right to Security of the Person; Principle 19, The Right to Freedom of Opinion and Expression; and Principle 22, The Right to Freedom of Movement.

UAF has based its work on the tenets of human rights since it began operation in 2000. The Yogyakarta Principles provides the organisation with a means of referencing the applicability of all human rights to the LGBT community whom they served, in a way that carried authority.

Because of the work of the organisation the NOO plans to establish a Special Ombuds Office to deal with LGBTI issues, similar to those already in place for women, people with disabilities, public services, and consumer rights. In addition, UAV is working with the NOO in the organisation of an international academic event on sexual rights and LGBTI rights.

When the Principles came up, I felt as if I had written them myself: the content was the same that we have been circulating all these years! I have always emphasised the ethical component in human rights and the Principles reinforce the principles of the interdependence, indivisibility, and universality of human rights.

José Ramón Merentes, Venezuela

Educating the public

Social change for LGBTI people will only be achieved when the public is persuaded that LGBTI people have human rights. These case studies describe the use of the Yogyakarta Principles in media, as part of campaigns to document and raise awareness about human rights violations, and as an element in a creative visual arts project.



Sasod, Guyana

The Context

Guyana's colonial-era criminal code, like other British legal legacies across the Caribbean, criminalises "buggery" and "acts of gross indecency" between men. The existence of the legislation contributes to an atmosphere of social stigma against LGBT people. Homophobia is rife in Guyanese popular culture, including through Caribbean music that promotes and praises violence against gay men.

The Society Against Sexual Orientation Discrimination (SASOD) [www.sasod.org.gy] is a Guyanese organisation founded in 2003 to work toward the eradication of discrimination on the grounds of sexual orientation and gender identity, and to promote the rights of lesbian, gay, bisexual, and transgender (LGBT) people in Guyana, the Caribbean, the Americas, and around the world. SASOD is a small group working in a challenging environment. Their work is made more difficult because fear prevents many gay and lesbian Guyanese from coming out. This in turn makes it difficult to gather documentation of abuses that could be used to gain publicity and support.

The Action

In March 2007, the Ministry of Health, the National AIDS Programme, and the Guyana Teachers' Union announced a debate on the topic: "Teachers who are homosexual/lesbian should not be allowed to teach". Shocked by the willingness of the country's HIV and AIDS

establishment even to entertain an open endorsement of discrimination, SASOD acted quickly through the media. On March 24, SASOD submitted a detailed letter to the editor of the *Stabroek News*, which was published on March 26.

Only days earlier, the Yogyakarta Principles had been formally launched at the UN Human Rights Council in Geneva. The letter began with a four-paragraph invocation of the Yogyakarta Principles, explaining their goals and their status as a summation of international law. SASOD then called on the government and the Teacher's Union to implement the Yogyakarta Principles, particularly Principle 12 (The Right to Work). The letter brought the Principles home by recalling that the International Commission of Jurists, of which Guyanese legal luminary, Sir Shridath Ramphal, is an honorary member, took part in the development of the Principles.

The Outcome

The letter was an inexpensive and easy way to get access to Guyana's mainstream press. One goal was to expose the position of the government and of the Teachers Union as sponsors of the debate and their disregard for the rights of lesbian and gay teachers in Guyanese schools. The debate went ahead, but the letter stimulated the broader public discussion about the appropriateness of the debate itself. SASOD received considerable support from other NGOs because of the publication of the letter.

A more recent newspaper editorial of February 2009 in the *Kaieteur News* illustrates a powerful impact of the 2006

SASOD letter. The editorial criticised a series of crackdowns against male-to-female transgender people for cross-dressing in downtown Georgetown, Guyana's capital city. Authoritatively citing the Yogyakarta Principles, the editorial condemned the violence against the transgender people that lead to the arrests and called for the recognition of rights for LGBT people.

The Application of the Yogyakarta Principles

Using the Yogyakarta Principles helped strengthen SASOD's case in several ways:

- It framed SASOD's objections to the debate as a human rights issue using the Principles to establish its argument.
- It placed the government and the Guyana Teachers Union in the position of ignoring accepted international human rights standards.
- It employed the Principles to present SASOD as part of a world-wide human rights movement, supported by important experts and institutions, which helped legitimise the organisation, but also potentially offered some protection from violence, discrimination, and harassment.

As well drawing attention to Principle 12, The Right to Work, SASOD in its letter urged the Guyanese Teachers Union to comply with Additional Recommendation M, which is addressed to a range of professional bodies and calls on them to review their practices to ensure that they comply with the Yogyakarta Principles.

Sangama, India

The Context

Sangama (www.sangama.org), based in Bangalore, India, is a human rights organisation working with and on behalf of sexual minorities, especially from poor and non-English speaking backgrounds, as well as sexual minority sex workers, who have otherwise little or no access to information and resources. A goal of the organisation is to bring sexuality, sexual preference, and gender identity into the public discourse and to create links to gender, human rights, and other social movements. The *hijra* and *kothi* communities have been the victims of persistent violent attack at the hands of the police authorities in Bangalore. In tandem with this, the police have failed to protect both communities from attacks by others in society. Sangama has sought to respond to the needs of this community.

The Action

Documenting violations of human rights is an important element in Sangama's work. This practice demands a variety of skills on the part of those collecting data, one of which is the ability to instil trust in the people whose rights have been violated. This is particularly crucial in relation to extreme physical violence and rape. The reluctance of victims to come forward and speak out is further compounded when those in positions of authority and power—such as the police—have been the perpetrators. In seeking to build its capacity to take on these challenges and to bring forward cases that could be prosecuted in court, Sangama began by building a strong community network,

first by forming the Coalition for Sexuality Minority Rights. The first report of the illegal detention of a *kothi* came only after the distribution by the Coalition of thousands of leaflets in cruising areas, drawing attention to the rights of sexual minorities and providing a contact number in case of police harassment. This first case not only went to court but became the focus of a capacity- and confidence-building campaign that empowered the community to come forward to report further abuses, assured that action could be taken.

Sangama documented each violation in detail and, where the victim was willing, publicised it widely in Bangalore and secured legal counsel to pursue remedy for the violations. In addition, through a national and international campaign they put out a call for letters to the Karnataka State authorities, demanding action against the perpetrators. Public rallies, condemning the torture and rape of *hijras* and *kothis*, were organised, and thousands of flyers both in English and Kannada naming the police officers responsible and calling for their suspension were distributed. The media covered these protests and spread the word that police officers could no longer enjoy anonymity as well as impunity for abuses.

Finally, the stories Sangama had collected were compiled with the help of a mainstream human rights organisation (People's Union for Civil Liberties—Karnataka) into a human rights report. The weight of the assembled stories proved that these were not just isolated incidents, but part of a pattern of arbitrary arrests

based on sexual orientation and gender identity in Bangalore.

Outcome

The campaign sent a message that human rights violations against the *hijra* and *kothi* communities would not be suffered silently but would be responded to. Raising the issue at local, national, and international levels meant that the State had to respond to the rights violations and could not ignore them as before.

Sangama's work can also be measured by the alliances it has helped the organisation build with other human rights groups and social movements in Karnataka. Documentation not only helps pressure state authorities and other responsible parties; by establishing the seriousness of human rights violations and giving prominence to the voices of survivors and victims, it can help persuade other civil society actors to join in alliances to end these abuses. It can also reveal links and similarities to the persecution that other groups and identities confront. For example, in 2008, when Bangalore police arrested five *hijras*

and then detained Sangama workers who had come to the police lockup to assist them, over one hundred fifty human rights activists in the city—including lawyers, women's rights advocates, Dalit groups, and others—gathered to protest. Many were arrested as well.

The Application of the Yogyakarta Principles

When documenting human rights violations, the structure of the Yogyakarta Principles provides a good resource. First, the Principles explain what each human right entails with regard to persons of diverse sexual orientations and gender identities. Secondly, the Principles outline States' obligations corresponding to each right, which provides the context for what governments must do to address such rights violations.

In many circumstances, documenting rights violations can be a dangerous activity. Yogyakarta Principle 27, the Right to Promote Human Rights, affirms the right of individuals and groups to engage in such activities and their entitlement to the protection and support of the State.

There shall be no impunity for perpetrators of human rights violations related to sexual orientation or gender identity.

Principle 29, The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity.

Campaign Against Homophobia (KPH), Poland

The Context

A national survey carried out and published by KPH and Lambda Warsaw for the years 2005/2006 reveals that 17.6 % of the lesbian, gay and bisexual respondents experienced physical violence and of these 41.9 % were subjected to violence on three or more occasions. Eighty-five per cent of the cases were not reported because of a lack of confidence in the police and also because of the fear of further repression. Hate speech against people of diverse sexual orientations and gender identities is a daily occurrence in the print and broadcast media in Poland.

The Polish Constitution prohibits discrimination on all grounds. Nevertheless, in 1995 a proposal for the inclusion of a prohibition on grounds of sexual orientation in the Constitution was rejected, after strong opposition from the Catholic Church. The Constitution states that marriage is restricted to a man and a woman, thus making the possibility of any movement toward civil partnership very remote. Poland initially opposed the EU Human Rights Charter, primarily because of Article 21 prohibiting discrimination on the grounds of sexual orientation. It has more recently lifted its opposition to the Charter but continues to stall the implementation of EU anti-discrimination legislation.

In recent years, the gay Pride parades have been either repeatedly banned or confronted with hostile counter-

demonstrations. On the positive front, the era of banning Pride parades in Poland is over and a planned ban on "homosexual propaganda" in Polish schools has been scrapped. Nevertheless, it remains difficult to introduce any anti-homophobia material in schools.

Campaign Against Homophobia (KPH) was established in 2001. Its work has grown to cover a number of crucial areas: legal support for individuals and lobbying for legal change at both national and international level; training programmes for the LGBTI population; public education campaigns and, more recently, training targeted to the police force; and research, documentation, and monitoring carried out in collaboration with Lambda Warsaw.

The Action

Berlin - Yogyakarta is a series of twenty posters using archival and contemporary photographs of LGBTI people from the late nineteenth to the early twenty-first century. Accompanied by text, these posters depict a story of early acceptance of gays in Berlin, the horrors of the persecution of homosexuals during the Nazi regime, and the hope represented by the Yogyakarta Principles as evidence of progress toward rights for LGBTI people.

The exhibition begins with Magnus Hirschfeld, founder of the first association for homosexuals, who in 1898 led a campaign to repeal the law criminalising homosexuality in Germany. The campaign was not successful, but the association gained 5000 members within eight years. Toward the end of the exhibition,

Poster 19 gives the text of Principle 25 of the Yogyakarta Principles (The Right to Participate in Public Life) alongside a photograph of the mayor of Berlin with his long-term, same-sex partner and a public statement he made before his first election to office in 2001: “I am gay and that is good.” Also in Poster 19 is a photograph of Johanna Sigurdardottir, Prime Minister of Iceland, the first openly (gay) lesbian elected head of national government.

In between, the posters trace the history of the fall from grace of the gay movement in Berlin, the beginning of the homophobic vitriol and the harassment, detention, and for some death, of gay men in Sachsenhausen concentration camp. Poster 9 is titled “Timeline of Terror”, and it begins in 1934 with Heinrich Himmler’s edict that all homosexual men be registered, and continues from there to 1937, when homosexual people were categorised as public enemies, then to 1941 when, in the interests of “the maintenance of cleanliness”, orders were given for members of the SS who engaged in homosexual acts to be shot. The final date in the timeline is 1945, when the police department dealing with homosexual people was reinstated.

The library personnel, who might have been reluctant to give space for an exhibition dealing with LGBTI people, were more open when they saw the relationship between the discrimination suffered by LGBTI people and the persecution suffered at the hands of the Nazi regime.

Katarzyna Remin, Author and Project Manager of Berlin - Yogyakarta

Poster 7 is titled “Persecution of Homosexual Women” and shares the story of Lotte Hahm, president of the Damenklub Violetta, who was sent to a concentration camp in 1935. Elsa Conrad who was half Jewish, the owner of a women’s club and a lesbian activist was sentenced to 15 months in 1935 and again in 1937 for an unknown period of time. One of the photographs shows Lilly Wust and her partner Felice Schragenheim at a lake outside Berlin, a few hours before Felice was arrested by the Gestapo in August 1941. (It is important to note that the women were rarely persecuted solely because they were lesbian and that Felice was arrested because she was Jewish and an activist of the Jewish resistance.)

The Outcome

The exhibition was designed as an educational tool. Among the target audiences to date are middle and high school teachers and university students and professors. It was first shown in October 2009 for three weeks at the prestigious University Library in Warsaw where 500 brochures and 200 copies of the Yogyakarta Principles (translated into Polish) were distributed. It was also shown in Lublin, Wrocław, and Gdansk.

It traveled to Kraków in April and Łódź in May 2010. The exhibition and the accompanying brochure are being translated into English, and KPH has requests for the exhibition from groups in Riga and Liverpool, as well as Europride in Warsaw in July 2010.

The Application of the Yogyakarta Principles

The concept for the exhibition grew out of a desire to draw the public’s attention, as well as that of the LGBT community, to the persecution of homosexuals during the Nazi regime. The concept was given a frame of reference when KPH became aware of the Yogyakarta Principles. The sponsors to the project, Stiftung EVZ, a German Human Rights Foundation, were very happy with the idea of using the Yogyakarta Principles as the framework for the exhibition.

There are resonances between the forgotten persecution of homosexuals in Nazi Germany—despite so much remembering of the horrors of that regime—and the unacknowledged rights for LGBTI people by those who deny the applicability of international human rights law to LGBTI people. The Yogyakarta Principles reveal the full authority of international human rights law as it applies to people of diverse sexual orientations and gender identities. *Berlin - Yogyakarta* juxtaposes the historical with the contemporary and traces a journey of struggle and perseverance.

Building a movement

Recruiting allies, empowering individual LGBTI people, choosing priorities – all of these are necessary to building an LGBTI movement. These case studies are examples of how activists have used the Principles to build confidence amongst LGBTI people about asserting their rights, reach out to non-LGBTI human rights groups to support campaigns, and identify rights violations in order to form community priorities.



07-07-07 Campaign, South Africa

The Context

On July 7, 2007 two young South African lesbians, Sizakele Sigasa and Salome Massoa, were brutally murdered in Soweto. They were raped, tortured, and shot execution style; Sizakele was shot six times in the neck and head and Salome once in the back of her skull. This horror became a particularly well-publicised example of a pattern of violence that South African lesbians say pervades their lives. Many other lesbians, their names well known among human rights defenders in South Africa, have been murdered. The killers of Zoliswa Nkonyana and Eudy Simolane have gone to trial; many others remain unprosecuted.

And this despite South Africa having one of the most progressive constitutions in the world and one of very few that expressly prohibits discrimination on the grounds of sexual orientation. Yet, as noted in the 2003 Human Rights Watch report, *More than a name: State sponsored homophobia and its consequences in South Africa*, “Law and litigation have not filtered down to the level of everyday life. The fact of prejudice against lesbian, gay and bisexual, and transgender people persists, and the State has done little to counteract it”.

Homophobia, and the violence it can cause, is deeply rooted as much in society as in State practice. Everyone has the

right to expect protection from violence, from wherever that violence emanates. The State must protect all its citizens equally and that includes its LGBTI citizens. Indeed, it is obliged to create an environment that actively protects LGBTI people from bodily harm and ensures their security of person.

The Action

A national coalition of South African LGBTI, HIV, and women’s rights organisations responded by launching the 07-07-07-Campaign. The campaign—named for the date of the killing—attempted to turn the anger of activists and community members into an organised call for legal action and political change. Its goal is to bring an end to hatred against LGBTI people.

South Africa has one of the highest rates of sexual assault in the world. The campaign’s first challenge was to remind a public saturated with stories and fears of rape that particular communities within the general crisis have particular vulnerabilities. The campaign held a series of public meetings and protests across South Africa to build awareness of how violence against LGBTI people persists in spite of a progressive constitution. The hope was to mobilise communities and the general public to pressure government officials to prevent and punish such violence.

The campaign advocates for more effective and community-sensitive policing in townships and rural areas; more efficient and faster investigations and prosecutions; disaggregation of

official statistics so that more information about the scope of hate crimes based on sexual orientation and gender identity can be known; and legislation expressly punishing crimes motivated by hate, including hatred based on sexual orientation and gender identity.

From the beginning, the campaign's materials and manifesto cited the Yogyakarta Principles so as to underline South Africa's obligations under international law to protect LGBTI people.

The Outcome

The impact of the campaign has been most visible on two fronts. First, the campaign has built solidarity among a range of activists and reinvigorated public activism. There have been powerful public protests held in four major cities and a range of resources and supports put in place to sustain the campaign through a long, protracted appeal for justice.

Documenting the prevalence of violence against lesbians is a key tool in the campaign. The aim is to draw attention to "the disparity between a progressive

constitution and the implementation of human rights on the most basic level", one participant explained. A strategic goal of the campaign is to put structures and programmes in place so that incidents of hate- and gender-based violence against black lesbians in townships and rural communities can be reported and victims can be supported.

There has also been a good deal of opposition, and the campaign has been hindered by an atmosphere of silence and shame that surrounds both issues of sexual orientation and sexual violence in many South African communities. Such an environment has made documenting cases difficult. Moreover, activists face a situation where, despite the clear message of the constitution, prejudice is reinforced at the highest political levels.

Perhaps the most important effect of the campaign so far has been in giving training and direction to a new generation of LGBTI activists. Many LGBTI people and leaders had turned away from activism following the overthrow of apartheid and the success

The impact of the campaign has been most visible on two fronts. First, the campaign has built solidarity among a range of activists and reinvigorated public activism. There have been powerful public protests held in four major cities and a range of resources and supports put in place to sustain the campaign through a long, protracted appeal for justice.

of constitutional inclusion. One township-based campaigner pleaded,

It is vital to be visible and to mobilise the community, because women's livelihoods are being compromised and lives are lost on a daily basis. Let this not be a campaign on paper, but a campaign that will be an active voice for the most vulnerable and violated.

The Application of the Yogyakarta Principles

The Yogyakarta Principles, then, are a reminder not just of statements of principle, but of the State obligations and concrete actions needed to translate principles into practice. Just as the promise of equality in South Africa's Constitution must be backed by meaningful policies and programmes to address homophobia, lesbophobia, and transphobia, so too the Yogyakarta Principles seek to translate statements of principle into concrete action, by detailing the measures States must take to give effect to their legal obligations. These measures include police training, protection from hate crimes, public education, and other initiatives called for by the 07-07-07 Campaign.

In its ongoing work the campaign focuses on other issues besides the murder of lesbians. The incidence of curative rape—that is, where the rapist rationalises his crime in terms of attempting to "cure" lesbians of their attraction to other women—has grown sharply. So too has the matter of secondary victimisation, which refers to the physical and verbal harassment meted out to women by the

police authorities to whom they report the initial act of violence. Principles 28 and 29 deal extensively with the right to laws, systems, and processes whereby people of diverse sexual orientations and gender identities can report rights violations in safety and without risk of further victimisation. Offences cannot be ignored, regardless of who the victims are; all crimes must be investigated using the full resources of the State on an equal basis, enabling all citizens, including people of diverse sexual orientations and gender identities, to obtain satisfactory redress.

Meem, Lebanon

The Context

Lesbian, bisexual, queer, and questioning women and transgender persons (LBTQ) in Lebanon still face incredible challenges legally, socially, and personally. They know well what to expect in a society steeped in patriarchy, where female sexuality should be at the service of males. They are ostracised by families and in the workplace and often face harassment and blackmail from police forces. When young women come out to their families, they are often locked in their rooms (sometimes for months), taken out of school, and sometimes kicked out of their homes. Many young LBTQ women have no choice but to hide their sexual orientation or gender identity in order to maintain their livelihood and secure their education.

Meem was launched on August 4, 2007 with the vision of a better quality of life for lesbian, bisexual, queer & questioning women and transgender persons in Lebanon. The handful of founding members saw the need for a group focused on women and transgender people within the overall gay community in order to create the opportunity for LGTQ women to empower themselves and each other through mutual support.

The Action

In effect, the action is the creation of Meem, which has provided the space and opportunity for the empowerment of LBTQ women in Lebanon. The careful, strategic planning initiated and negotiated by the growing membership has been, and remains, focused on building membership capacity toward

There is much mystery and fantasy surrounding the concept of female sexuality in Lebanon. Even more taboo is the topic of homosexuality, and a lot more has been said about male homosexuality than female homosexuality. This comes as no surprise in a patriarchal society where women's issues are often dismissed. And sexuality, because it touches upon reclaiming our bodies and demanding the right to desire and pleasure, is the ultimate taboo of women's issues. We have published this book in order to introduce Lebanese society to the real stories of real people whose voices have gone unheard for hundreds of years. They live among us, although invisible to us, in our families, our schools, our workplaces, and our neighborhoods. Their sexualities have been mocked, dismissed, denied, oppressed, distorted, and forced into hiding.

From the introduction of *Bareed Mista3jil*, a brave new book published by Meem in Beirut, Lebanon. The book, available in both English and Arabic versions, is a collection of forty-one true (and personal) stories from lesbians, bisexuals, queer, and questioning women and transgender persons from all over Lebanon. Go to www.bareedmista3jil.com/about.htm.

activism. On one level this means skills training in communications, teamwork, campaigning, leadership, and so on; and, importantly, on another level it means education and awareness-raising about the intersectionality of other forms of oppression. To this end there are workshops on gender identities, queer theory, feminisms, religions, minority rights, and other topics. And because Meem's goal is to situate their work for recognition and rights for LBTQ women within a broader framework of human rights for all, there are workshops also on political lobbying, legal reform, and different forms of governance.

With over three hundred members and a commitment to a volunteer-run, weekly magazine, Meem published *Bareed Mista3jil*, a collection of forty-one true stories by and about LBTQ persons in Lebanon, in May 2009. The objective behind the book is to raise awareness about and increase the visibility of lesbian, bisexual, queer, and questioning women and transgender people in Lebanon. The book has been a huge success; with over 4000 copies sold to date, it continues to generate positive articles in national and international press and has reached the top ten best sellers list at Virgin Megastore. It is available in both Arabic and English online, in popular venues, and in bookstores.

The Outcome

The outcome of the action is the growth of a movement. Meem is committed to a long-term vision of work on advocacy, lobbying for legal reform, and campaigning to raise public

awareness. Their strategy is one of slow movement building, both within their own membership and by networking with women's and human rights organisations, producing online awareness campaigns, and building gay-straight alliances.

They are conscious that the political and security conditions of recent years in Lebanon can paralyse any advocacy project that aims to advance human rights, and LBQT rights in particular. They are also aware of what they see as the implicit silencing within activist coalitions of issues relating to diverse sexual orientations and gender identities in the interest of other issues. Favouring one cause over another encourages a hierarchy of acceptance and discrimination within society to emerge. Meem tries to operate on the basis that as Arabs, as well as queer women and transgender persons in Lebanon, they do not separate themselves from other movements but seek to situate their causes within the larger frameworks of sexual and bodily rights, women's rights, and human rights in general.

They recognise that when they advocate for protection from violence against women (a draft law that local NGO Kafa is focusing on), they are also working towards ensuring that all women, including queer women, are protected from domestic violence. When they support the Right to Nationality campaign, they are also advocating the right for queer women to bear children and have them officially recognised as Lebanese citizens (which is currently not possible in Lebanon, as even straight women cannot pass on their nationality to their spouses and children). They see it as

essential that they support and bring their perspective to any ongoing campaign that advocates for human rights, as abuses of human rights usually affect women—queer or not—the most.

There is also Article 534 of the Lebanese Penal Code that criminalizes “sexual acts against nature” and promotes general hatred towards LBQT people in Lebanon. This article, while not commonly used to persecute queer women, still constitutes a perpetual menace used to intimidate LGBT individuals, to justify the illegitimacy of their sexualities, to silence and threaten them throughout their lives. Meem’s activities, while not necessarily focused on the project to have article 534 abolished, do contribute to that goal by demonstrating the vibrancy within the movement and raising awareness about the real lives of lesbian, bisexual, queer, and questioning women and transgender persons in Lebanon.

The Application of the Yogyakarta Principles

In the work to build the capacity of the members to engage in human rights activism, Meem is excited about the opportunities for learning available through the Yogyakarta Principles. For Meem, the Principles represent an opportune tool in its overall programme of activist training. In the first instance, the Yogyakarta Principles’ comprehensive and inclusive treatment of the application of international human rights law to the lives of LBQT people makes it an invaluable one-stop resource. It is also the ideal springboard to a deeper exploration of how human rights are implemented and monitored and of how

local activists can contribute to the process. For Meem, the Principles will be used, first and foremost, to empower its members. In line with their cautious strategic approach, they plan to brainstorm and assess other ways to utilise the Principles when their initial goal is reached.



Activists and individual LGBTI people are the engine of social change for the LGBTI community. Anyone who acts peacefully for the promotion and protection of human rights is a human rights defender, and is recognised as such by international human rights law. Even if you have never before engaged with human rights advocacy, taking up the Yogyakarta Principles makes you a human rights defender.



So far this Guide has pointed to a number of ways in which activists can use the Yogyakarta Principles as a tool or resource in their day-to-day work. The case studies in Section 3 give details of a variety of effective and inventive uses.

Other examples are presented more briefly, whether in sidebars or in the Up Close section on page 39 to illustrate the application of the Principles, and there are passing references to yet more examples. Hopefully, through the discussion of the mechanisms associated with international law, other potential uses will have emerged.

The promotion of the Yogyakarta Principles is about making life better for people of diverse sexual orientations and gender identities. LGBTI activists around the world employ a range of approaches to accomplish their goals. Whether it is providing social opportunities or healthcare services, advocating to end bullying in schools, mounting a legal challenge to discriminatory laws, or working with government officials to secure the release of people jailed because of their sexual orientation or gender identity, activists share a common goal in working to make things better for the people in their communities.

All these activities focus on enhancing the potential for people to realise their human rights. Activists may not use the language of human rights, or they

may use it without explicit reference to international law. Other activists use the language, and organise their work according to the principles upon which rights have been formulated. Over recent years more and more activists have adopted what has become known as a human rights-based approach to their work, a core facet of which is to talk about the rights LGBTI people are entitled to, rather than their needs.

So, there are a number of ways to think about human rights and to work toward their realisation. Similarly there are many ways to work with the Yogyakarta Principles. The promotion of the Yogyakarta Principles does not require working within the human rights system or adopting the language that goes with that. It does not mean having to know what the treaties are, nor their functions, how often countries have to report on their progress, what is meant by progressive realisation, or any other technical detail.

It is enough to know that the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* is an articulation of international law and that it sets out the obligations governments face in order to ensure that LGBTI people live their lives freely and enjoy the same rights and dignity as everyone else.

Larger questions inevitably present themselves and demand answers:

- How specifically do the Yogyakarta Principles relate to human rights law?
- How do they apply where I live, to the law and culture of my country, and to the realities of life of the people our organisation serves?
- Are they comprehensive?
- What is likely to be the response from officialdom?
- How can I get other NGOs with whom we work to endorse the Principles?

In short, how can I make the most of the Yogyakarta Principles in the work that I do?

The promotion of the Yogyakarta Principles is about making life better for people of diverse sexual orientations and gender identities.

Potential Applications

This section outlines four broad applications. The order in which they are presented represents a suggested sequence:

No. 1
Brief Up on the Yogyakarta Principles (the starting point)

No. 2
Reference & Disseminate the Yogyakarta Principles (relatively easy)

No. 3
Integrate the Yogyakarta Principles (requires some organisational reflection)

No. 4
Strategise the Yogyakarta Principles (involves strategic analysis of the wider environment)

No. 1 Brief Up on the Yogyakarta Principles

I. Two levels are suggested here.

A. The Yogyakarta Principles - Basic

The aim at this level is to be able to give a succinct, comprehensive description of the Principles. To be able to answer the following basic questions:

- What are the Yogyakarta Principles?
- How and when did the Yogyakarta Principles come into being?
- How do the Principles relate to international and regional human rights treaties?
- How do the Principles apply where I live and to the law and culture of my country?
- How do the Principles apply where I live and to the realities of life of the people our organisation serves?

B. The Yogyakarta Principles - Advanced

Depending on time and resources, the aim at this level will include:

- Becoming familiar with the jurisprudence and other components of international human rights law upon which the Yogyakarta Principles are based

- Knowing the scope of the application of the Principles in relation to one or more areas, e.g., health, promoting human rights, freedom of assembly, gender identity, and others
- Being aware of how the Principles have been received and applied by national equality bodies, international monitoring committees, national governments, NGOs, academics, and others
- Knowing how other LGBTI activists have responded to the Principles
- Knowing the critiques and criticisms of the Principles
- Understanding the limitations of the Yogyakarta Principles and of the limitations of international human rights law.

This level of knowledge will enable you to:

- Be equipped for other approaches
- Enhance community empowerment
- Build internal capacity
- Consider working with other LGBTI groups and other NGOs in developing awareness
- Demystify, if that is what is needed, the language and mystic about the human rights system
- Learn how international law has advanced LGBTI issues, where the opportunities exist and where the road blocks are

- Learn how activism and advocacy has influenced progress in international law
- Use the knowledge as a springboard for other Yogyakarta Principles – related activities.

In briefing up, you might want to consider:

- Focusing on a selected number of the Principles, perhaps those most relevant to your work
- Planning a number of sessions, with different members of staff and/or volunteers taking on responsibility for different sections
- Inviting human rights academics to address your organisation
- Inviting, if possible, one of the signatories to the Principles.

No. 2 Reference & Disseminate

The goal is to cite the Principles as often as is appropriate:

- In submissions to government departments and State agencies
- In meetings – with service providers, with policy-makers, with other NGOs and human rights defenders, etc.
- In shadow reports to international bodies
- In newsletters and press releases.

In terms of dissemination, think of:

- Seeking funding for translation
- National Human Rights and Equality Bodies
- Posting the Principles on your website
- Writing articles for relevant publications
- Strategic selection from mailing list for receipt of hard copy
- Public fora – seminars dealing exclusively with the Yogyakarta Principles, as well as presentations at broader-focused conferences
- Preparing summaries or selected excerpts for distribution to selected target groups within LGBTI population
- Brainstorming other creative, outside-the-box ways of communicating the Principles.

No. 3 Integrate the Yogyakarta Principles

This will require some reflection within your organisation to:

- Identify an objective for integrating the Yogyakarta Principles into your work
- Determine which Principles are most relevant to what you do
- Assess your capacity – time, money, talent
- Assess and identify the resources needed to integrate the Yogyakarta Principles
- Consider if and how a human rights based approach would enhance your work.

Most LGBTI organisations are engaged in one or more of the following strands of work:

- Legal – individual/group support and/or strategic litigation
- Training
- Lobbying
- Service Provision
- Public education and awareness.

In determining how the Yogyakarta Principles can enhance the work that you do, the following questions might be useful:

- How can integrating the Yogyakarta Principles enhance the objectives you have already established in each stand of work?
- In terms of broader organisational goals—developing broader coalitions, leveraging funding, deepening partnerships with State agencies, increasing membership—what role can the Principles play?
- Does working with the Principles present any new objectives that can be readily integrated in the existing workplan?
- When it comes to a new strategic workplan, how can the Principles inform that plan and what needs to be done to accommodate that process?

No. 4 Strategise the Yogyakarta Principles

This approach asks you to think of ways to apply the Principles beyond the day-to-day work of your organisation. This will require examining the environment in which you work. If No. 3 Integrate the Yogyakarta Principles involves inward reflection, No. 4 Strategise the Yogyakarta Principles involves looking outward to assess the strengths, weaknesses, opportunities, and threats of the broader environment within which you work. This will take time and resources and may involve a wide range of stakeholders—members, board, funders, peer organisations, institutional partners, and others.

Considerations might include:

- Is there an issue around which a legal strategy can be built in the context of which the human rights principles laid out in the Yogyakarta Principles can play a supportive role?
- Can you play a role in developing training on the Yogyakarta Principles to lawyers, police, service providers, etc.?
- How can you engage with the UN system, via the Universal Periodic Review, shadow report to treaty bodies, in coalition with others, making contact with Special Rapporteurs, etc.?
- If thinking of asking the government, a State agency, or other organisation to endorse the Yogyakarta Principles, consider what that would mean.

How would an endorsement be demonstrated—for example, as training for State agencies, dissemination to equality bodies, translation, implementation by government departments, or some other way?

Unplanned Activities

As some of the case studies in the previous section demonstrate, it is not always possible to plan ahead. Often, we are presented with such egregious human rights violations that, even if it is outside of what we normally do and even if we consider that we do not have the capacity, we have to respond and respond immediately. Such was the case in South Africa with the 07-07-07 Campaign, initially a response to the murder of lesbians; and in Nepal with the continuous harassment, detention, and cruel treatment of the metis, the time was ripe for challenging the law.

Sometimes opportunities present themselves—the introduction of a new law or regulation that is discriminatory; an invitation to be part of a consultative group on multi discrimination; an opportunity to appear on television, to present a paper at a conference, or to contribute to the development of a training course. Similarly with strategising about the Yogyakarta Principles, opportunities will present themselves that simply cannot be planned for. Being ready to make the most of those opportunities can be achieved by deepening your knowledge of the Principles.

Conclusion and Resources

Activists and individual LGBTI people are the engine of social change for the LGBTI community. Anyone who acts peacefully for the promotion and protection of human rights is a human rights defender, and is recognised as such by international human rights law. Even if you have never before engaged with human rights advocacy, taking up the Yogyakarta Principles makes you a human rights defender. As stated by the 1998 United Nations General Assembly Declaration on Human Rights Defenders, everyone has the right to advocate for human rights, including the right to discuss and develop new human rights ideas. The Declaration imposes on States the duty to protect human rights defenders and to support their work. When you undertake activities discussed in this Guide, not only do you create change, but you become a valued part of the international human rights system that operates for the benefit of all people.

As you carry out activities to implement the Yogyakarta Principles, share your activity with other activists. Visit www.ypinaction.org, where you can submit a description of your activity to be posted along with other stories of activism. While there, you can see how the Principles are being used by others, view numerous other unofficial translations, and download a digital version of this Guide.

Information about international human rights bodies, copies of treaties, and information about the human rights situation in all countries can be accessed through the website of the office of the United Nations High Commissioner for Human Rights. (www.ohchr.org)

A copy of the Yogyakarta Principles in each of the official languages of the United Nations (English, French, Spanish, Russian, Arabic, and Chinese) can be found at the (www.yogyakartaprinciples.org).

The Jurisprudential Annotations to the Yogyakarta Principles, providing information about the legal standards on which each Principle is based as of the time the Principles were adopted, can be found on the website of the Yogyakarta Principles. (www.yogyakartaprinciples.org/yogyakarta-principles-jurisprudential-annotations.pdf)

Demanding credibility and sustaining activism: a guide to sexuality-based advocacy, Global Rights (2008), provides an overview to sexual rights, discussion on how to advocate, and a thorough Appendix listing organisations, advocacy manuals, international human rights source materials and a listing of recent LGBTI reports. (www.globalrights.org/site/docserver/guide__sexuality_based_initiative.pdf)

Practitioners guide no. 4 – sexual orientation, gender identity and international human rights law, International Commission of Jurists (2009), explains how international law and standards can and should be used to provide victims of human rights violations, on the grounds of sexual orientation or gender identity, the protection to which they are entitled. (www.icj.org/dwn/database/PractitionersGuideonSOGI.pdf)

Together, Apart, Human Rights Watch (2009), based on written surveys and interviews with more than 100 activists working in the global south, outlines prevailing patterns of abuse against LGBT people in each of five regions as well as current activities being undertaken, sometimes without the support of funders and the broader human rights community, as well as opportunities for change. (www.hrw.org/en/reports/2009/06/10/together-apart)

Claiming Rights, Claiming Justice. A Guidebook on women human rights defenders, by Asia Pacific Forum on Women, Law and Development (APWLD), foreword by Hina Jilani, UN Special Representative of the Secretary-General on the Situation of Human Rights Defenders. The aim of this Guidebook is to assist women human rights defenders name the specific risks, violations, and constraints they face in their work. It contains information on useful mechanisms to gain redress and remedy and to protect women human rights defenders. (www.apwld.org/pb_claiming_rights.htm)

Sexual Rights: An IPPF Declaration, International Planned Parenthood Federation (2008), represents the culmination of more than two years of work that spanned the globe. The Declaration developed through regional meetings and events that took place across the Federation and built on the IPPF Charter of Sexual and Reproductive Rights. (www.ippf.org/NR/rdonlyres/9E4D697C-1C7D-4EF6-AA2A-6D4D0A13A108/0/SexualRightsIPPFdeclaration.pdf)

Bringing Rights to Bear Anew: 2008 Update, Centre for Reproductive Rights (2008). Initially published in 2002, *Bringing Rights to Bear* takes a long, hard look at the thousands of comments, statements, and recommendations produced by UN treaty-monitoring bodies, analysing their potential for advancing reproductive rights. (www.reproductiverights.org/en/press-room/bringing-rights-to-bear-anew-2008-update)

Make it work: 6 steps to effective LGBT human rights advocacy, ILGA-Europe, 2010, presents a six-step model of advocacy that provides a logical structure and a set of methods, tools and skills for planning and implementing advocacy work. It is primarily concerned with how and where LGBT human rights advocates in the domestic setting can employ international and regional human rights instruments to frame their arguments and achieve their advocacy objectives. (www.ilga-europe.org)



THE YOGYAKARTA PRINCIPLES

The Application of International
Human Rights Law in Relation
to Sexual Orientation and
Gender Identity

