

**Yogyakarta Principles Working Group
Meeting Summary**

The Williams Institute, UCLA School of Law

**Global Arc of Justice Conference
Los Angeles, California
March 11-12, 2009**

In March 2009, 33 experts and advocates from around the globe meet for two days to discuss the implementation of the Yogyakarta Principles, a set of principles on the application of international human rights law to sexual orientation and gender identity. The working group meeting was part of the Williams Institute's four day international Global Arc of Justice conference and funded by an anonymous donor. The meeting was convened by Brad Sears, Julie Dorf, David Cruz, Andrew Park, and Boris Dittrich. The participants came from over twenty countries representing Africa, Asia, South Asia, the Caribbean, Eastern Europe, Latin America, North America, and Western Europe. (See Appendix 1).

The working group session focused on addressing the following topics:
The history and background of the Yogyakarta Principles
Recent examples of their use to illustrate how they can be implemented
Critiques of the Principles and recommendations for revising them, and
Recommendations for implementing the Principles for academics, lawyers, NGOS,
and advocates.

The work of the working group included the following:
A core group of organizers planned the meeting and invited the participants;
Background research on the Principles was gathered, organized, and sent to participants (See Appendix 2);
A number of the participants were contacted in advance to help frame the agenda, gather further research, and provide preliminary input;
The roundtable met for a day and a half at the Williams Institute at UCLA Law; and
This report was drafted, circulated for feedback, and finalized.

This report provides a summary and recommendations of the working group related to the four topics above.

Background on the Yogyakarta Principles

While the working group began with an introduction to the Yogyakarta Principles, we provide only a brief summary below. The value of the working group is in the examples of how the Principles have been used, the critique and suggestions for revisions, and the recommendations for implementing them in the following sections.

The Yogyakarta Principles are a set of principles on the application of

international human rights law to sexual orientation and gender identity. They were created in 2006 by a distinguished group of international human rights experts who met in Yogyakarta, Indonesia. The Principles affirm binding international legal standards with which all states must comply.

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

The Yogyakarta Principles address the broad range of human rights standards and their application to issues of sexual orientation and gender identity. These include extrajudicial executions, violence and torture, access to justice, privacy, non-discrimination, rights to freedom of expression and assembly, employment, health, education, immigration and refugee issues, public participation, and a variety of other rights.

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

You can read the Principles and get more background information at <http://www.yogyakartaprinciples.org>. For further background, we also recommend Michael O'Flaherty and John Fisher, *Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles*, *Human Rights Law Review* 2008 8(2):207-248.

II Examples of How and Where the Yogyakarta Principles Are Being Used

The primary focus of the working group was to discuss how the Yogyakarta Principles could be implemented. This discussion began with examples from participants about how they have already used the principles. The examples below are to illustrate ways that the Principles could be used and implemented throughout the world.

Advocacy

Guyana, Joel Simpson. After the Yogyakarta Principles launched in Guyana in 2007, an advocacy group was looking for the right opportunity to make the public aware of the Principles through the media. A newsworthy debate occurred over whether homosexual people should be allowed to teach in public school. Joel's organization put out a press statement expressing outrage over the fact that people thought the topic was debatable and cited Yogyakarta Principle 12 about the right to work. Recently, there were a surge of arrests of transgender people in Guyana under a colonial era law against cross dressing. A newspaper ran an editorial (not written by Joel's organization) that said the rights of the arrested transgender people were not up

for debate and referred to the Yogyakarta Principles.

Venezuela, Jose Ramon Merentes. The Principles were distributed to police in Caracas to educate them on the rights of LGBT people.

Japan, Hiroyuki Taniguchi. After Yogyakarta Principles launched in New York, one man translated them into Japanese. The man was an office worker, not a lawyer, and translated them into ordinary Japanese, not the legal tongue (the two vary greatly in Japan). The government officials were reluctant to use the Yogyakarta Principles the way they had been translated. Hiroyuki, when he could not persuade any government official to do the translation, did it himself. Although the government wanted the “official” translation, NGOs in Japan have found the version translated into ordinary Japanese to be more valuable, exemplifying the importance of making the principles accessible to all people.

Public Education

Brazil, Sonia Correa. Sonia and others produced and distributed 10,000 copies of the Yogyakarta Principles in Brazil. An MCC pastor told Sonia he was planning to read 1 Principle per Sunday service for the rest of that year. Yogyakarta Principles are being used in Brazil mainly with respect to education.

Brazil, Sonia Correa. The Yogyakarta Principles are also used in law school course curriculum in Brazil.

Litigation

Peru, Susel Paredes. An amicus curiae brief presented to the United Nations Human Rights Council (UNHRC) cited all of the Yogyakarta Principles extensively even though they are not mandatory in the sense that they must be applied as a source of rights. As a litigating attorney, Susel has included relevant principles in her cases. She hopes that this way, judges and others can become familiar with the Principles

Venezuela, Tamara Adrian Hernandez. Tamara shared the Yogyakarta Principles with a group of attorneys in the General Attorney’s office when they met to analyze the position of LGBT people before the criminal court and while imprisoned.

Morocco, Abdelaziz Nouaydi. Generally in Arabic and Islamic society, the Yogyakarta Principles are ignored. Abdelaziz defended the men arrested in what was known as the “Gay Marriage Case”, a case in which a number of gay men were arrested at a party that included an unofficial demonstration of a wedding of two men. He raised the Principles in discussion after the case, which caused serious public unrest. After the case, an organization for human rights was established in Morocco and now there is potential for wider distribution of the Principles.

Informing International Human Rights

United States, Ali Miller. Ali worked with International Planned Parenthood Federation to draft a new Declaration on Sexual Rights (released in 2008). When preparing the document, the expert board looked at the Yogyakarta Principles to understand how sexual orientation and gender identity could be included in conversations about sexual and reproductive rights more generally. Ali reported that this exercise was an incredible test of how the Principles can be used in a broader framework.

Venezuela, Tamara Adrian Hernandez. Tamara held a meeting of three experts to analyze the status of LGBT rights around the world from three different perspectives.

The group was Tamara, a theologian, and a psychologist. She gave a copy of the Yogyakarta Principles to the theologian who said after the meeting, “You convinced me. You’re right.”

Boris Dittrich, USA/The Netherlands. Boris has used Principle 17 in international discussion of HIV/AIDS.

III. Critiques of the Yogyakarta Principles

The working group included several opportunities to critique the current Principles and offer recommendations for their improvements. These included a discussion of all working group members as well as a sub-group that focused on recommendations for revision – “Yogyakarta Principles 2.0.” These discussions were premised on a conceptualization of the Principles not as a finished document, but as open and evolving; that the current version can be and should be revised regularly. This section summarizes the critiques of the principles and recommendations for improving them.

It is important to note that this section does not present a consensus of the working group, but rather reports all critiques that were offered. Thus what follows, is not a set of agreed upon recommendations for revision, but offered as a starting place for further discussions about revising the Principles.

A. Challenges to the Principles Affirming Existing Binding Commitments

A number of concerns were raised that states might not view the Principles as a reflection of binding commitments already in international human rights law. There is a risk that the Principles might be seen by states as merely aspirational. States might also be persuaded by opponents of LGBTQI rights that existing international human rights laws do not in fact incorporate protections for sexual orientation and gender identity and expression. For example, the Catholic Family & Human Rights Institute (C-FAM) has been distributing materials in an attempt to undermine the Yogyakarta Principles, claiming “that not a single UN human rights treaty mentions sexual orientation” Further, in December 2008, Syria read a statement at the United Nations that claimed that “the notions” of sexual orientation and gender identity have “no legal foundations in any international human rights instrument” Part of the resistance to the binding nature of the principles may stem from a zero-sum view of rights—that embracing rights articulated in Yogyakarta Principles will undermine parental and familial authority, freedom of speech, religious freedom, etc.

Therefore it is important to remind states that they have already committed to protecting and respecting the human rights of all and that LGBTQI people are included in these protections. The principles are not aspirational but are supported by current international human rights law. An initial step in addressing these issues would be for the Yogyakarta Principles document itself to cite the treaties from which it draws its authority as a statement of legal standards. While this annotated version does not currently exist, Michael O’Flaherty & Scott Fisher are currently working on such a version.

Enforcement and Accountability

There is no enforcement or accountability mechanisms accompanying the Principles,

so it may be easy for a government to say that they endorse the principles while in practice, they do not. In addition, there was a concern that the Principles did not adequately address non-state actors. Instead, they adhere to traditional human rights laws obligation framework with a focus on states rather than expanding responsibility to non-state actors who have an impact on sexual and gender rights, such as churches, families, parents, communities, etc.

C. Equal Consideration of Transgender and Intersex People

A number of the critiques of the Principles during the working group focused on the primacy that the Principles give to sexual orientation, without equally addressing issues related to transgender and intersex people. These critiques included the belief that the Principles are not based upon a thorough enough analysis of the linkages and differences between gender, gender expression, gender identity, feminist analysis of sex, sexuality, and sexual orientation. These are not all about the same thing; though the Yogyakarta Principles treat them as such. More specifically, transgender and intersex people are inappropriately combined with gay men and lesbians which does not adequately address the different needs of transgender and intersex people.

Recommendations for improving the Principles to address these concerns included creating more parity between sexual orientation and gender identity and expression in the Principles in general, including by making this clear in the Preamble. In addition, these concerns, in part, formed the basis for recommending more stress on the right to bodily autonomy and adding a principle about the freedom of development of personality

D. Protection of LGBTIQI Families

Principle 24, the right to found a family, was critiqued in two different ways. First, the Principles do not call for states to extend marriage to same-sex couples. Rather, Principle 24 only requires non-discriminatory treatment of same-sex marriages in those states that have already recognized them. Second, there were also concerns expressed that Principle 24 and the Principles in general did not address the diversity of families that LGBTIQI people create, but only relationships that mirror those of different-sex married couples.

Protection of Transgender and Intersex People From Medical Abuse

One particular concern was that Article 18, Protection of Medical Abuses, is not broad enough to prohibit degrading medical examinations of transgender and intersex people that may not rise to the level of abuse but nevertheless violate human dignity. Stronger protections against medical-legal abuse were recommended.

Further, a concern was raised that that Article 18, and the Principles as a whole, do not give sufficient consideration of developments in the children's rights movement, which have given more specific content to the age of consent, maturing, and determining the best interests of the child.

One specific recommendation was to delete the language bracketed below in Principle 18, Protection of Medical Abuses, part B: "b) Take all necessary legislative,

administrative and other measures to ensure that no child's body is irreversibly altered by medical procedures in an attempt to impose a gender identity without the full, free and informed consent of the child [~~in accordance with the age and maturity of the child and guided by the principle that in all actions concerning children, the best interests of the child shall be a primary consideration;~~]

F. Focus on West and Civil and Political Rights

Concerns were also raised that the Western, Anglo, urban focus of Yogyakarta Principles does not address the needs of people in other countries and leaves them without a solid basis to address issues in their countries and cultures. In additional concerns were raised that cultural, social, and economic rights are not given the same importance as civil and political rights in the Principles

G. Other Specific Recommendations

Other recommendations for revising the Principles included: re-writing the Principles in language that is easier for non-lawyers to read; making the right to life principle number 1, instead of number 4; and in Principle 28, part F, eliminating the word "potential" (f) Ensure training and awareness-raising programs, including measures aimed at teachers and students at all levels of public education, at professional bodies, and at ~~potential~~ violators of human rights, to promote respect for and adherence to international human rights standards in accordance with these Principles, as well as to counter discriminatory attitudes based on sexual orientation or gender identity.)”

IV. Recommendations from the Working Group

The members of the Working Group split up into four sub-groups to come up with concrete recommendations for implementing the Principles. The recommendations of the sub-group focused on suggestions for revising the Principles are incorporated into Section III above. The other three groups focused on recommendations for:

Academics -- further research related to the Principles,
Lawyers -- implementing the Principles within the judicial system, and
Advocates and NGOs - implementation at the national level outside of the judicial system.

We did not have a sub-group on intergovernmental action, since that is where much of the Yogyakarta Principles implementation activities have been taking place, and what is already most clearly outlined in the recommendation section of the Principles themselves. Instead, we focused on lesser-explored areas for further implementation of the Principles by, academics, attorneys, and advocates and NGOs.

A. Academics -- Research Topic Ideas

The discussion group of how academics could use the Principles focused on developing the list of research topics below. However, the group also recommended that recommendations be developed for teaching the Principles in higher education, and that the Principles be promoted through academic associations and conferences.

Research Topics

Empirical research on the actual use of the Principles in various countries.
Case studies on specific uses of the Principles
Research the potential use of the Principles even in “leading” countries where human rights norms are firmly established
How does the “soft law” Principles relate to “hard” law? How do expert statements become international human rights law?
Do/should the Principles apply to private actors? If so how?
Strategies being used in human rights discourse to establish rights related to sexual orientation and gender identity in different sectors, such as education and litigation
Strategies for using the Principles to address issues of cultural variation
Specific problems of application of the Principles to transgender issues
Application of the Principles to discrimination in labor markets
Strategies for using the Principles to address trafficking, sex work, prostitution, and anti-trafficking work
What are the implications of the Principles incorporation of the language of opposition groups? For example, what are the ways that human rights are limited by using terms of “morality” or “public health” vis-à-vis sex and sexuality
How could the Principles be expanded from individual rights to group rights?
An analytical response to political pushback regarding the terminology of gender, gender identity and sexual orientation
The intersection of gender and sexuality and issues related to children’s rights such as consent, and best interests of the child
Uncovering the ethical values behind human rights to bolster the universality of human rights and the Principles, which can help address the cultural defense argument against the Principles

B Lawyers -Implementation within Legal System

The discussion of how to implement the Principles within the legal system focused on judicial education, legal education, and supporting litigation and court opinions that relied upon the Principles.

Judicial Education

Provide trainings for judges and judicial associations on the Principles and the use of “soft law” more generally
Provide trainings for judicial staff (paralegals, correctional officers, etc.)
Encourage judicial participation in international judges seminars where the Principles are taught
Send translations of the Principles to judges

Legal Education

Distribute the Principles, or the link to their website, to local bar associations
Provide CLE trainings to lawyers and bar associations on the Principles and the use of “soft law” more generally
Use legal clinics and law schools to spread the Principles
Make sure Principles are included in law textbooks
Try to promote the use of the Principles in moot court competitions e.g. the Jessup Moot Court competition that is international in scope

Litigation Incorporating the Principles

- Create a database of laws and decisions that reflect the Principles and their assumptions/approach
- Create a brief bank with model briefs and other documents using the Principles
- Have experts on call that can provide support in using the Principles in litigation
- Create relationships with Attorneys General and educate them about the Principles
- Create a mechanism to standardize interpretation of international law
- Write specific subject matter papers (e.g. family law) about the Principles
- Incorporate the Principles in restatements/annotations
- Educate Access to Justice programs and legal clinics about the Principles
- Widen standing rules so international organizations and experts can use the Principles in national courts
- Foster activist judiciary with knowledge of all international law and jurisprudence
- Get ECHR or Inter-American Court citation to the Principles through strategic litigation
- Use the Principles and recommendations to address bias within the legal system
- Encourage judicial notice and application of the Principles

Country-Level Implementation Outside of the Legal System

The discussion of how to implement the Principles outside of the legal system focused on NGOs, legislation and government officials, and public education. In addition, the group also recommended establishing an international monitoring mechanism for the Principles, such as the development of questionnaires or compliance checklists that could be put on the Principles' web page. These could be used by anyone in any country to check which aspects of the Principles are actually complied with or not in a certain country. This resource could become a database about the current status of the use of the Principles around the world.

NGOs

- Use the NGOs to disseminate the Principles
- Disseminate the Principles or the link to the Principles' website to human rights networks
- Provide trainings on the Principles for activists
- Use existing networks and partnerships to allow for joint trainings
- Provide capacity building resources to NGOs on the use of the Principles
- Develop strategies for how NGOs can apply Y-Principles in hostile environments
- Develop strategies for dealing with NGOs that avoid certain issues like gender identity, intersex, prostitution, protection of children, etc.
- There may be a need for more general human rights "ownership" for LGBT NGOs and communities through training, capacity building, etc. before the Principles can be fully employed.

Legislation and Government Officials

- Get the Principles incorporated into national legislation
- Distribute the Principles to key officials who deal with LGBTI issues (both governmental and opposition)
- Provide trainings to NGOs on how to use the Principles in local and national ordinances, statutes, etc.

Draft model laws and ordinances incorporating the Principles

Consider whether model laws incorporating the Principles should be changed to reflect local and country variations

Consider whether laws incorporating the Principles should be LGBTQI specific or more general

Public Education

Use popular education, videos, and other creative media forms to disseminate the Principles

Provide training for media on the Principles (See the Guyana example in Section II above)

Create “Yogyakarta Principles for Dummies” – in language for non-lawyers

Highlight the Principles on international days such as International Day Against Homophobia (IDAHO – May 17), Human Rights Day (December 10), International Day of Remembrance (November 20), and other pivotal moments

Be careful with translations of the Principles because the translations might lose meaning of the Principles

It is important to create community empowerment and human rights ownership when disseminating the Principles

Appendix 1 Working Group Members

Julie Dorf, Council for Global Equality, USA (convener and facilitator)

Brad Sears, Williams Institute, USA (convener)

Boris Dittrich, Human Rights Watch, USA (from the Netherlands) (convener)

David Cruz, Law Professor, USA (convener and reporter)

Christy Mallory, Williams Institute, USA (reporter)

Akim Ade Larcher, EGALE, Canada

Daniel Townsend, Youth Coalition for Sexual and Reproductive Rights, Jamaica

Poulaine Kimani, Gay and Lesbian Coalition of Kenya, Kenya

Pablo Cespedes Vargas, Igualdad LGBT, Bolivia

Caroline Bowley, Gender Dynamix, South Africa

Doug Sanders, Law Professor, Canada (now living in Thailand)

Hiroyuki Taniguchi, Law Professor, Waseda University Institute of Comparative Law, Japan

Olga Orraca-Paredes, Taller Lésbico Creativo, Puerto Rico

Abdelaziz Nouaydi, Law Professor and practicing attorney, Morocco

Darren Rosenblum, Pace Law Professor, USA

Joel Simpson, Society Against Sexual Orientation Discrimination, Guyana

Stefano Fabini, Global Rights, USA (from Italy)

Andrés Ignacio Rivera Duarte, Organización de Transexuales por la Dignidad de la Diversidad, Chile

Tamara Adrian Hernandez, Law Professor, University of Caracas, Venezuela

Sonia Correa, DAWN and Sexual Policy Watch, Brazil

Mauro Cabral, Mulabi, Argentina

German Rincon Perfetti, Law Professor, Colombia

Marcelo Sanchez, Colombia Diversa, Colombia

Jose Ramon Merentes, Union Afirmativa, Venezuela

Svyatoslov Sementsov, Tema and Interpride, Belarus

Adam Bodnar, Law Professor and Helsinki Foundation, Poland

Kim Vance, ARC International, Canada

Susel Paredes, LGBT Legal and ILGA, Peru

Belissa Perez, Runa Institute and ILGA, Peru

Justice Bala Ram KC from Nepal (observer)

Hari Phuyal, attorney and International Commission of Jurists, Nepal

Scott Long, Human Rights Watch, USA

Ali Miller, Law Professor, University of California-Berkeley, USA

Appendix 2 Background Documents Distributed to the Working Group Members